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37THACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

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

I. INTRODUCTION

1. This 37th 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 **June to December 2014**. It highlights amongst others, the Statutory meetings of the Commission; the Resolutions adopted by the Commission; the human rights complaints before the Commission; Letters of Urgent Appeal sent by the Commission; the human rights situation on the continent; promotion missions and fact finding missions undertaken by the Commission; financial and administrative matters; as well as implementation of Executive Council decisions.

II. STATUTORY MEETINGS

2. Three statutory meetings were held during the reporting period, namely: (i) the 6th Meeting of the Joint Bureaux of the Commission and the African Court on Human and Peoples' Rights (the African Court) which was held on 16 July 2014 in Kigali Rwanda; (ii) the 3rd Annual Meeting of the Two Institutions which took place on 18 - 19 July 2014 in Kigali, Rwanda; and (iii) the 16th Extra-Ordinary Session (EOS) of the Commission, which took place from 20 to 29 July 2014, also in Kigali, Rwanda.

a) 6th Joint Bureaux Meeting - Kigali, Rwanda, 16 July 2014

3. The meeting of the Joint Bureaux considered the work that had been undertaken by the Registry of the African Court and the Secretariat of the Commission to implement the decisions taken by the Two Institutions in their previous joint meetings; the meeting also reviewed the preparations for the Third Annual Meeting of the Two Institutions.

b) 3rd Annual Joint Meeting - Kigali, Rwanda, 18-19 July 2014

4. Among other things, the Two Institutions discussed issues directed at deepening their complementary relationship and facilitating the promotion and protection of human rights on the continent; they also reviewed the preparations for the celebration of 2016 as the African Year of Human Rights with Special Reference to Women's Rights in line with Executive Council Decision EX.CL/857(XXV).

c) 16th EOS - Kigali, Rwanda, 20 to 29 July 2014

5. During the 16th EOS, the Commission adopted 8 Resolutions and considered 26 Communications as appears more fully in paragraphs 9 and 18 - 21 hereinafter, respectively.

d) 56th Ordinary Session

6. The 56th Ordinary Session, which had initially been scheduled for 14-30 October 2014, was postponed twice due to the Ebola outbreaks especially in Guinea, Sierra Leone and Liberia. The Commission now plans to hold this Session at the

Headquarters of the Union in Addis Ababa, Ethiopia. The new dates will be communicated in due course.

III. STATE REPORTING

7. The status of submission of Periodic Reports to the Commission by Member States currently stands as follows:

Status	State Party
Report with the Commission for consideration - 10	Malawi, Nigeria, Senegal, Sierra Leone, Uganda, Niger, Ethiopia, Djibouti, Kenya and Algeria.
Up to date - 6	Cameroon, Côte d'Ivoire, Gabon, Liberia, Mozambique and SADR.
1 Report overdue - 6	Burkina Faso, Burundi, Libya, Namibia, Sudan and Togo.
2 Reports overdue- 6	Angola, Botswana, Congo Brazzaville, DRC, Mauritius and Rwanda.
3 Reports overdue - 6	Zimbabwe, Benin, Tanzania, Tunisia, Madagascar and Zambia.
More than 3 Reports overdue - 13	Cape Verde, Chad, CAR, Egypt, The Gambia, Ghana, Guinea, Lesotho, Mali, Mauritania, Seychelles, South Africa and Swaziland.
Never submitted a Report - 6	Comoros, Equatorial Guinea, Eritrea, Guinea-Bissau, Sao Tome and Principe and Somalia.
Yet to ratify the African Charter -1	South Sudan.

8. There are 10 Periodic Reports currently before the Commission: those of Senegal, Sierra Leone, Malawi, Niger, Nigeria, Uganda, Djibouti, Ethiopia, Kenya and Algeria. If the 56th Ordinary Session had taken place as scheduled, at least 8 of these Reports would have already been considered by now. The Commission will prioritize consideration of these Reports during the 56th Ordinary Session of the Commission later this year.

IV. RESOLUTIONS ADOPTED BY THE COMMISSION

9. As indicated in paragraph 5 above, the Commission adopted 8 Resolutions during the reporting period, as follows:
 - (i) Resolution on the Food Crisis in Somalia;
 - (ii) Resolution on the Need to Conduct a Study on Child Marriage in Africa;
 - (iii) Resolution on the Need to Conduct a Study on HIV, Human Rights and the Law;
 - (iv) Resolution on Freedom of Expression in the Kingdom of Swaziland;
 - (v) Resolution on Human Rights Abuses in Egypt;
 - (vi) Resolution Condemning the Perpetrators of Sexual Assault and Violence in the Arab Republic of Egypt;
 - (vii) Resolution Appointing an Expert Member for the Committee on the Protection of the Rights of People Living with HIV; and
 - (viii) Resolution on the UN World Conference on Indigenous Peoples.

V. PROMOTION/RESEARCH MISSIONS

10. The Commission was not able to undertake any promotional mission during the reporting period. The reason for this was two-fold. In some cases this was because Member States did not respond or authorize the requested promotional missions. In other cases it was because of the inability to find dates that were mutually convenient for the Member States and the Commission, especially in light of the uncertainty around the dates and venue of the 56th Ordinary Session on account of the Ebola outbreak in West Africa, which meant that other planned activities had to be put on hold.
11. The Commission exhorts those Member States to which requests for promotional missions have been addressed to accede to these requests, and also seizes this opportunity to reiterate its request to Member States to give the Commission standing invitations to undertake promotional missions in their respective countries in line with Executive Council Decision EX.CL/856(XXV), so as to facilitate and expedite implementation of the Commission's mandate.

VI. FACT-FINDING MISSION

a. Fact-Finding Mission to the Central African Republic

12. The Chairperson of the Commission, Honourable Kayitesi Zainabo Sylvie, together with Commissioner Béchir Mohamed Khalfallah who is the Vice-Chairperson of the Commission and also the Commissioner responsible for human rights promotion and protection in the Central African Republic (CAR), and Commissioner Maya Sahli-Fadel who is the Commission's Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa, jointly undertook a fact-finding mission to the CAR from 10 - 14 September 2014.
13. The Commission delegation held discussions with representatives of the government, the UN System, different religious groups, civil society organizations and internally displaced persons. The delegation managed to gather evidence regarding cases of serious human rights violations that have occurred in the country, some of which are still ongoing. The report of the fact-finding mission will be considered by the Commission during the 56th Ordinary Session, after which the outcome will be shared with the Government of the CAR and the AU Policy Organs.

VII. LETTERS OF URGENT APPEAL, STATEMENTS AND PRESS RELEASES

14. During the reporting period, the Commission sent Letters of Urgent Appeal to the following Member States, regarding different human rights issues alleged to have taken place in their respective countries:
 - i. Ethiopia - a Letter of Urgent Appeal was sent regarding the situation of some human rights defenders in the country (8 May 2014);
 - ii. Sudan - a Letter of Urgent Appeal was sent concerning the sentences of 100 lashes and death by hanging allegedly meted out to one Meriam Yahia Ibrahim for adultery and apostasy (27 May 2014);
 - iii. Egypt - a Letter of Urgent Appeal was sent regarding 10 persons allegedly sentenced to death (18 June 2014);
 - iv. Mauritania - a Letter of Urgent Appeal was sent concerning detention of some human rights activists (4 July 2014);
 - v. Democratic Republic of Congo - Letters of Urgent Appeal were sent concerning some human rights defenders (4 July 2014 & 25 July 2014);
 - vi. Burundi - Letters of Urgent Appeal were sent concerning the retention of patients in hospitals for non-payment of medical fees, and also regarding dead bodies found in Lake Rweru on the Burundi side of the

border between Burundi and Rwanda (18 September 2014 & 3 October 2014);

vii. Nigeria - a Letter of Urgent Appeal was sent regarding soldiers allegedly sentenced to death (19 September 2014);

viii. The Gambia - a Joint Letter of Urgent Appeal was sent by the Special Rapporteur on Freedom of Expression and Access to Information in Africa and the Commissioner responsible for human rights in The Gambia, regarding the alleged continued incommunicado detention of Journalist Chief Ebrima Manneh since 2006 (8 October 2014).

15. The following countries responded to the Letters of Urgent Appeal from the Commission:

i. Egypt - the Government said it was not aware of the case of 10 persons allegedly sentenced to death and requested additional information, which the Commission is working on; the Government also sought to justify the application of the death penalty in the country and to indicate the procedural and legal guarantees provided by law in such cases.

ii. The Gambia - The Government responded, stating that it sees no reason why Chief Manneh will be detained for eight (8) years for a crime that the Government did not know about, when those charged with treason are tried in public courts.

16. Also, while the Sudan did not respond to the Letter of Urgent Appeal from the Commission, it is the understanding of the Commission on the basis of information subsequently available in the public domain, that the concerning sentence has since been overturned by the Supreme Court of the Sudan and the alleged victim - Meriam Yahia Ibrahim - has been released, and has left and taken up residence outside the country.

17. In addition to Statements issued by the Commission and its Special Mechanisms to commemorate the various days of particular significance on the human rights calendar and to address diverse human rights situations on the continent, the Commission also issued seventeen (17) Press Releases during the reporting period.

18. The Commission would also like to indicate that, pursuant to Article 45(1) (c) of the Charter, it 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. COMPLAINTS OF HUMAN RIGHTS VIOLATIONS CURRENTLY BEFORE THE AFRICAN COMMISSION

19. Eighty-seven (87) Communications are currently before the Commission. As indicated in paragraph 5, during the 16th EOS the Commission examined 26 Communications¹, broken down as follows:

- i. Nine (9) Communications on *Seizure* - Of these, Provisional Measures were issued in four (4) of these Communications, one (1) Communication was deferred pending receipt of additional information, while one (1) request for review of a seizure decision was deferred also pending receipt of additional information;
- ii. Thirteen (13) Communications on *Admissibility* - nine (9) were declared admissible, two (2) were declared inadmissible, one (1) was deferred for further consideration, and in one (1) request for review of admissibility decision was denied;
- iii. One (1) *struck out* for want of diligent prosecution; and
- iv. Two (2) Communications on the *Merits*.

20. The detailed breakdown of these 26 Communications² is as follows:

I. Communications at Seizure Level

a) Seized:

- (i) Communication 471/14** - Meriam Yahia Ibrahim and Others v. Sudan
- (ii) Communication 476/14** - Magdy Moustafe El-Baghdad v. Sudan
- (iii) Communication 477/14** - Crawford Lindsay Von Abo v. Zimbabwe

b) Seized and Provisional Measures Issued:

- (i) Communication 472/14** - La Famille de Feu Audace Vianned Habonarugira v. Burundi

¹ Two (2) of the Communications which were considered by the Commission during the reporting period have not been authorized for publication by the Executive Council, as indicated in paragraph 8 of Executive Council Decision Ex.CL/887(XXVI).

² Ibid.

- (ii) **Communication 473/14** - La Famille de Feu Jackson Ndikuriyo v. Burundi
- (iii) **Communication 474/14** - La Famille de Feu Jean Claude Ndimumahoro v. Burundi
- (iv) **Communication 475/14** - La Famille de Feu Medard Ndayishimiye v. Burundi

c) Not Seized (deferred pending further information)

- (i) **Communication 468/14** - Remember Miamingi v. South Sudan and Uganda

d) Request for review of seizure decision (deferred pending further information)

- (i) **Communication 465/14 (R)**- Benedict F. Sannoh (represented by Innocent Project Africa) v. South Sudan

II. Communications at Admissibility Level

a) Admissible:

- (i) Communication 332/06 - CEMIRIDE v. Kenya
- (ii) Communication 406/11 - Law Society of Swaziland v. Swaziland
- (iii) Communication 430/12 - Gabriel Shumba and Others v. Zimbabwe
- (iv) Communication 454/13 - Nde Ningo v. Cameroon
- (v) Communication 428/12 - Dawit Isaak v. Eritrea
- (vi) Communication 423/12 - Mack-Kit Samuel and Moukoko Priso (represented by Moualal Ruben) v. Cameroon
- (vii) Communication 425/12 - Legal Defence and Assistance Project (on behalf of Mr. Abiodun Subaru) v. Nigeria
- (viii) Communication 377/09 - Mendukazi Patricia Monakali v. South Africa
- (ix) Communication 444/13 - Justice Thomas Masuku (represented by Lawyers for Human Rights Swaziland) v. Swaziland

b) Inadmissible:

- (i) **Communication 435/12 - Eyob B. Asemie v. Lesotho**
- (ii) **Communication 366/09 - Hammadi Kamoun v. Tunisia**

c) Deferred for further consideration

- (i) **Communication 400/11 - West African Network of Human Rights Defenders (ROADDH - WAHRDN) and the Ivorian Coalition of Human Rights Defenders (CIDDH) v. Cote d'Ivoire**

d) Denial of Request for review of decision at admissibility level

- (i) **Communication 260/02 - Bakweri Land Claims Committee (BLCC) v. Cameroon**

III. Communications struck off for want of diligent prosecution

- (i) **Communication 390/10 - Abba Aboubakar v Cameroon**

IV. Communications at Merits Level³

21. During the reporting period, the Commission received a request for an Oral Hearing from the Complainant in Communication 288/2004 - Gabriel Shumba v Zimbabwe, regarding implementation of the Commission's decision and recommendations. The request was made within the framework of Rule 112 of the Rules of Procedure of the Commission, and will also be considered during the Commission's upcoming Session.

IX. APPEARING BEFORE THE AFRICAN COURT

22. During the reporting period the Commission appeared before the African Court on Human and Peoples' Rights for the very first time, to argue a case that it has submitted to the Court. The Public Hearing of the Commission's case, which is before the African Court as **Application 006/12 - African Commission on Human and Peoples' Rights V. Kenya**, took place on **27 and 28 November 2014**, at the seat of the Union in Addis Ababa, Ethiopia.
23. This matter previously came before the Commission as **Communication 381/09 - Centre for Minority Rights Development - Kenya and Minority Rights Group International (on behalf of the Ogiek Community of the Mau Forest) v. Kenya**.
24. The Commission referred the matter to the African Court on 12 July 2012, on account of the Respondent State's failure to comply with the Provisional Measures issued by the Commission in the matter and the serious/massive violations of human rights involved.

³ Ibid. The 2 Communications considered on the Merits have not been authorized for publication on the basis of the referenced Executive Council Decision.

25. Referral to the African Court by the Commission was made in accordance with Articles 45(2) and 58 of the African Charter on Human and Peoples' Rights, Articles 2, 3 and 5 (1)(a) of the Protocol Establishing the African Court, Rule 29(3) of the Rules of Court of 2010 and Rules 84 (2), 118(2) & (3) of the Rules of Procedure of the Commission of 2010.
26. The decision of the Court on the matter is still awaited.

X. MEETINGS, CONFERENCES, SEMINARS AND WORKSHOPS

27. The intersession activities undertaken by the Honourable Commissioners in their capacities as Members of the Commission and as Members of Special Mechanisms of the Commission mainly consist of their participation in the Sessions and other statutory meetings of the Commission, promotion missions and fact-finding missions in various Member States, as well as seminars, conferences, workshops and meetings aimed at promoting and protecting human rights on the continent.
28. Normally, Members of the Commission would have reported their intersession activities to the Commission during the 56th Ordinary Session of the Commission, and by now reports of these activities would already be available on the website of the Commission. However, given that the 56th Ordinary Session of the Commission did not take place and that as a result, reports of these activities are not yet in the public domain, this Activity Report will highlight a few of these activities.
 - a. **Continental Conference on the Abolition of the Death Penalty in Africa, 2-4 July 2014, Cotonou, Benin**
29. The Commission organized a Continental Conference on the Abolition of the Death Penalty in Africa, among other things, (i) to raise awareness among AU Member States and other stakeholders on the issue of the death penalty and the need for the AU to adopt an African Protocol on the Abolition of the Death Penalty; (ii) to build the capacities of stakeholders to advocate for the abolition of the death penalty; (iv) to provide a platform for participants to develop advocacy strategies at country and regional levels in this respect; (v) to encourage Member States to support the proposed United Nations General Assembly Resolution calling for a moratorium on the death penalty and advocate for its implementation in African countries. At the end of the Conference, participants unanimously adopted the Declaration on the Abolition of the Death Penalty in Africa (the Cotonou Declaration).

b. Meeting of the Committee on the Protection of the Rights of People Living with HIV and AIDS, 6-7 June 2014, Pretoria, South Africa

30. The Commission's Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV organized a Consultative Technical Meeting on "*HIV, The Law and Human Rights in The African Human Rights System: Key Challenges, Best Practices and Opportunities for Rights-based Responses to HIV*" on 6-7 June 2014 in South Africa, to consider the human rights challenges faced by people living with HIV and AIDS, and how best to address them.
31. Further to a Resolution earlier adopted by the Commission calling for a Study on *HIV, Human Rights and the Law*, the Committee also organized a meeting on 12-13 December 2014 in Congo Brazzaville, to draw up a roadmap for the preparation of the Study, including its Work Plan for the period 2015-2019.

c. Seminar on the Impact of Conflict on the Rights of Women and Girls, 28-30 October 2014, Bamako, Mali

32. The Special Rapporteur on the Rights of Women in Africa organized a Seminar on the Impact of Conflict on the Rights of Women and Girls in Mali in collaboration with the Ministry of Women, Children and Family Affairs of the Republic of Mali. The objective of the Seminar was, among other things, to assess the impact of the conflict on women and girls in the country, as they account for the vast majority of those adversely affected by the crises. The Seminar also discussed the Commission's contribution towards the protection of the rights of women and girls in Mali during the crisis.

d. Missions of the Special Rapporteur on Freedom of Expression and Access to Information in Africa, to Mozambique, Ghana, Swaziland and SADC Secretariat

33. The Special Rapporteur on Freedom of Expression and Access to Information in Africa undertook missions to Mozambique (26 June 2014), Ghana (1-2 July 2014), the SADC Secretariat (7 July 2014), and Swaziland (18-21 August 2014.). The Special Rapporteur used these missions, among other things, to advocate for the adoption of Right to Information Bills which are before the National Parliaments of the countries visited; she also used the visit to the SADC Secretariat to discuss possible areas of

collaboration with the SADC Secretariat with regards to implementation of the Model Law on Access to Information.

e. Meeting of the Special Rapporteur on Human Rights Defenders in Africa, 18-21 August 2014, Cotonou, Benin

34. In accordance with the Commission's Resolution ACHPR/Res.151 (XLVI) 2009 on the need to conduct a study on freedom of association in Africa, and Resolution ACHPR/Res.230 (LII) 2012 on the need for a study on the situation of women human rights defenders in Africa, the Special Rapporteur on Human Rights Defenders in Africa organized a meeting in Cotonou, Benin, from 18-21 August 2014 to finalize the Studies on Freedom of Association and Assembly and the Situation of Women Human Rights Defenders in Africa.
35. The Special Rapporteur on Human Rights Defenders also undertook a mission to Cote d'Ivoire on 19 - 23 December, among other things, to follow up on the implications for human rights defenders of the legislation which had been recently enacted in the country.

f. Southern African Regional Consultation on Extractive Industries, Environment and Human Rights Violations in Africa, 29 - 31 August 2014, Johannesburg, South Africa

36. The Commission Working Group on Extractive Industries, Environment and human Rights Violations in Africa (WGEI) in collaboration with the Legal Resource Centre, organized a Southern African Regional Consultation on Extractive Industries, Environment and Human Rights Violations in Africa. The main objective of the Consultation was to evaluate and strengthen the implementation of Articles 21 and 24 of the African Charter on Human and Peoples' Rights (the African Charter) which relate to the right of peoples to freely dispose of their natural resources and enjoy an environment that is satisfactory and favourable to their development.
37. In addition, the WGEI also convened a meeting of its members on 14-15 July 2014 in Kigali, Rwanda, to review its progress to date and also to discuss its Work Plan for the period 2015-2016.

g. Strategic Planning on the Implementation of the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, in Accra, Ghana, 20 November 2014

38. Among other things, the Special Rapporteur on Prisons and Conditions of Detention in Africa participated in a meeting that brought together stakeholders from Member States, Non-Governmental Organizations, and the donor community to discuss police arrest, custody and pre-trial detention. The meeting which came up with many recommendations and strategies for improving human rights in this area, was co-organized with the African Policing Civilian Oversight Forum and the Commission for Human Rights and Administrative Justice, with support from the UNDP Regional Service Centre for Africa.

h. Internal Meeting and Roundtable Discussion on the Prevention and Prohibition of Torture, Kampala, Uganda, 17-18 December 2014

39. The Commission's Committee for the Prevention of Torture in Africa (CPTA) organized a Roundtable Discussion on challenges and good practices with regard to the prevention and prohibition of torture. This Roundtable Discussion was preceded by an internal meeting of the CPTA during which the Committee reviewed its 2014-2015 Operational Work Plan and also considered the draft Technical Paper on the development of a General Comment on Article 5 of the African Charter on Human and Peoples' Rights.

i. Experts Meeting on Statelessness and the Right to Nationality, Saly, Senegal, 17- 19 December 2014

40. The Commission's Special Rapporteur on Refugees, Returnees and Internally Displaced Persons jointly organized a meeting with the Office of the UN High Commissioner for Refugees on the issue of statelessness and the right to a nationality. Among other things, the meeting discussed the challenges that confront Africa in this area, especially having regard to the prevalence of conflicts and crises on the continent and the many refugees, returnees and internally displaced persons which they spawn.

j. Meeting of the Working Group on Economic, Social and Cultural Rights, Dakar, Senegal, 14-16 December 2014

41. Among other things, the Commission's Working Group on Economic, Social and Cultural Rights (ECOSOC), organized a meeting in Dakar, Senegal, to work on its 2015-2018 Plan of Action, to finalize the Concept Note for the organization of a Continental Conference on "The Right to Education for All - Africa's Post-2015 Priorities and Challenges", to consider the activities which the Group would organize to celebrate the African Year of Human Rights, and to explore ways of

strengthening collaboration between the Working Group and the UN Special Procedures with a similar mandate.

k. Workshop of the Working Group on Indigenous Populations/Communities in Africa, 15-16 December 2014, Brazzaville, Congo

42. Following the participation of Members of the Commission's Working Group on Indigenous Populations/Communities in Africa (WGIP) in the UN World Conference on Indigenous Peoples (WCIP) in New York, on 22 - 23 September 2014, where they discussed the role and contribution of the African Human Rights System in promoting and protecting the rights of indigenous populations, the WGIP organized a meeting in Congo-Brazzaville on 15 - 16 December 2014. The Brazzaville Workshop was co-organized with the Department of Human Rights and Fundamental Freedoms of Congo, and its objectives were to raise awareness regarding the outcome of the WCIP, and also to discuss the status of implementation of Law No. 05-2011 relating to the promotion and protection of indigenous populations in Congo.

XII. THE HUMAN RIGHTS SITUATION IN AFRICA

43. It will be recalled that this section of the Commission's Report was introduced pursuant to a decision of the Executive Council calling upon the Commission to brief the Policy Organs on the human rights situation on the continent, paying particular attention to those human rights issues which the Commission is privy to by virtue of its being the premier human rights body of the Union.
44. The Commission generally gathers some of the information for this section during the ordinary course of its engagement with Member States and other human rights stakeholders as it goes about the execution of its mandate. The Commission also uses its Ordinary Sessions to get an overview of the human rights situation on the continent. Indeed, the Ordinary Sessions of the Commission are a very good barometer to measure the human rights situation on the continent because representatives of both Member States and civil society are present in the same room with the Commission during the Commission's Sessions and are therefore able to raise their concerns and provide responses and clarifications as necessary.

45. As already indicated, however, the 56th Ordinary Session of the Commission did not take place as scheduled during the reporting period. Consequently, this section of the Report cannot be as expansive as it usually is.

(a) Positive developments

- i) With regards to freedom of expression, press freedom and access to information: endorsement of the Right to Information Bill by the Ghanaian Parliamentary Select Committee on Constitutional, Legal and Parliamentary Affairs; the initiative by the Government of Mozambique to develop a Right to Information Bill, which is currently before Parliament; the finding by the Constitutional Court of the Republic of Zimbabwe that Section 31 (a) (iii) of the Criminal Law (Codification and Reform Act) which criminalized defamation was unconstitutional, with the result that defamation is no longer a criminal offence in the Republic of Zimbabwe; and the delivery on 5th December 2014 of the landmark decision by the African Court on Human and Peoples' Rights in favour of freedom of expression in *Application 04/2013: Konate v Burkina Faso*;
- ii) An increase in the number of States Parties submitting their Periodic Reports to the Commission in compliance with Article 62 of the African Charter;
- iii) As of December 2014, eighteen (18) States Parties to the African Charter had enacted national legislation abolishing the death penalty.⁴ Eleven (11) States Parties had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) on the abolition of the death penalty, and ten (10) of these States were also abolitionists.⁵ A further twenty-four (24) States Parties had not carried out an execution for ten years;⁶
- iv) Progress had also been made across the continent during the intersession including through the on-going review of the penal code in the Comoros

⁴ Angola, Benin, Burundi, Cape Verde, Côte d'Ivoire, Djibouti, Gabon, Guinea-Bissau, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, South Africa, and Togo.

⁵ Benin, Cape Verde, Djibouti, Gabon, Guinea-Bissau, Mozambique, Namibia, Rwanda, Seychelles and South Africa. Liberia is the 11th State that has ratified OPII but not yet abolished the death penalty in national legislation. Angola, Madagascar and Sao Tome and Principe have signed but not ratified the Protocol.

⁶ Algeria, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Democratic Republic of Congo, Eritrea, Ghana, Guinea, Kenya, Lesotho, Liberia, , Malawi, Mali, Mauritania, Niger, Saharawi Arab Democratic Republic, Sierra Leone, Swaziland, Tanzania, Tunisia, and Zambia.

and the drafting of a constitutional amendment to abolish the death penalty in Ghana. In Chad, a new penal code that made no allowance for the death penalty was also approved by parliamentarians in September 2014. On 10 December 2014, the Parliament of Madagascar voted for a bill abolishing the Death Penalty, and that bill now awaits the signature of the President to become a law;

- v) An increase in the ratification of regional and international human rights instruments by States Parties: ratification by Eritrea on 25 September 2014 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by Mozambique and Niger, respectively on 1st July 2014 and 7 November 2014.

(b) Areas of concern

- i) Large scale destruction caused by terrorist acts in different regions of the continent has severely negatively impacted communities and set back developmental and peace-building efforts. More often than not, innocent civilians are the primary target of these attacks, depriving them of their most fundamental human right to life and physical integrity. In the Central African Republic, insecurity and violence persist, increasing the number and the vulnerability of internally displaced persons and refugees; South Sudan is in the grip of a crisis characterized by horrendous violence and massive displacement; and the continuing threats and attacks from Al Shabaab in Somalia and Boko Haram in Nigeria targeting civilians are causing untold suffering, particularly to women and girls;
- ii) Poverty and unemployment remain major challenges to the effective enjoyment of socio-economic rights, especially by those living below the international poverty threshold;
- iii) Reports of extra-judicial killings, enforced disappearances, assault, harassment, arrest and detention of human rights defenders, journalists and other media practitioners continue to reach the Commission;
- iv) So far only 27 of the 54 AU Member States have ratified the Protocol to the African Charter on the Establishment of the African Court; only 7 out of the 54 AU Member States have made the Declaration under Article 34(6) of the Protocol allowing individuals and NGOs direct access to the African Court; only 38 of the 54 AU Member States have ratified the Maputo

Protocol; and South Sudan has still not ratified the African Charter on Human and People's Rights;

- v) So far only 16 African countries have adopted national action plans for women, peace and security whilst two regional action plans have been adopted by IGAD and the Great Lakes Region;
- vi) Women continue to be vulnerable to the HIV epidemic which is fueled by conflict situations in a number of African countries, as well as socially-endorsed cultural, economic and social discriminatory practices and inequities against women in many African countries;
- vii) There is insufficient awareness and attention to the huge problem of statelessness on the continent.

XIII. ADMINISTRATIVE AND FINANCIAL SITUATION

(a) Communication

46. Communication with the Commission and its Secretariat remains a huge challenge, posing a major impediment to the Commission's effective discharge of its mandate. Telephone landlines do not work and the Office has to rely on a form of cordless phone system locally referred to as *Jamano*, which is not as efficient as fixed landlines and does not support office extensions; the fax is not working; internet connectivity continues to be a major problem for the Commission; even the Microsoft Outlook installed by the AUC Headquarters to link all AU Organs and Offices is erratic at best, despite the huge efforts deployed by the AUC in this regard; sending and receiving documents by email is extremely difficult and sometimes impossible - indeed, both Member States and other stakeholders have expressed frustration regarding the difficulties of transmitting documents to the Commission.

(b) Construction of the Commission's Permanent Headquarters

47. No progress was made with regards to the construction of the Commission's permanent Headquarters during the reporting period.

(c) Funding

48. A total of US\$ 6,395,466.00 was approved for the Commission for the 2014 fiscal year, being US\$ 4, 821,043.00 from Member States' assessed contribution and US\$ 1,569, 423.00 pledges from partners.

49. As in preceding years, no program budget at all was allocated to the Commission from the Member States. This means that therefore the Commission had to rely fully on partner funds to implement the mandate entrusted to it under the African Charter on Human and Peoples' Rights. Such a situation cannot be right. And yet this is exactly the same situation with regards to the budget approved for the Commission for the 2015 fiscal year - no budgetary provision has been approved for the Commission's program budget from Member States' contribution.

XIV. IMPLEMENTATION OF EXECUTIVE COUNCIL DECISION

(a) Implementation of decisions and recommendations of the Commission

50. It will be recalled that among other things, Executive Council Decision (EX.CL/856(XXV)) on the Thirty-Sixth (36th) Activity Report of the Commission requested parties to Communications to provide the Commission with information on the implementation of the Commission's decisions and recommendations. Following adoption of this Decision, the Commission sent Notes Verbales and letters to parties to Communications (both Respondent States and Complainants), requesting information regarding implementation of the Commission's decisions and recommendations. The Commission did not receive any information on this during the reporting period. The Commission therefore calls upon all Respondent States and Complainants to avail this information to the Commission, to facilitate the Commission's effective discharge of the mandate entrusted to it to promote and protect human rights in Africa.

(b) Expediting ACHPR Recruitment Process

51. The above Council Decision also echoes other earlier Executive Council Decisions which requested the AUC to expedite recruitment for the Commission's Secretariat. In that regard, the Commission is happy to report that during the reporting period the AUC was able to recruit staff for some of the vacant posts at the Secretariat. However, there are still some key posts that remain vacant, including those of interpreters, translators, IT personnel, and human resource officers, to name a few. It is therefore hoped that the recruitment process will continue in an expeditious manner, to enable the Commission effectively discharge its mandate.

(c) Budgetary increase

52. It will be recalled that through the above Decision, Executive Council also decided to increase the budgetary allocation to the Commission's program budget in order to prevent the dependence of such a sensitive and important AU Organ on partner funds for the performance of its functions. This decision was not respected in the

budget approved for the Commission for the 2015 fiscal year, and it is sincerely hoped that this decision will be honoured and implemented when the 2015 budget allocations for the various Organs are firmed up during the January 2015 AU Policy Organ meetings in Addis Ababa, Ethiopia, to enable the ACHPR effectively execute its mandate.

XV. RECOMMENDATIONS

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

To State Parties:

- i) Sign, ratify, domesticate and implement African and international human rights instruments, more particularly, the Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and Peoples' Rights; the African Charter on Democracy, Elections and Governance; the African Union Convention on Preventing and Combating Corruption; the Convention for the Protection and Assistance of Internally Displaced Persons in Africa; and the Maputo Protocol Relating to the Rights of Women in Africa;
- ii) Make the Declaration required under Article 34 (6) of the Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and Peoples' Rights;
- iii) Comply with the Commission's Guidelines for National Periodic Reports, the Commission's State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, and also the Commission's Guidelines for State Reporting under the Maputo Protocol, in the preparation and presentation of their Periodic Reports;
- iv) Respect and honour the decisions and recommendations of the Commission on Communications and report on the measures they have taken to implement the decisions and recommendations as requested by Executive Council Decision EX.CL/856(XXV);
- v) Respect and respond to Letters of Urgent Appeal from the Commission as exhorted by Executive Council Decision EX.CL/856(XXV);
- vi) Grant the Commission standing authorization to undertake promotional missions in their respective countries in line with the exhortations of Executive Council Decision EX.CL/856(XXV);

vii) Implement Resolutions adopted by the Commission addressing various human rights issues on the continent as required by Executive Council Decision EX.CL/856(XXV);

viii) Consider hosting one of the Sessions of the Commission.

To the Republic of South Sudan:

Ratify the African Charter.

To those Member States to whom requests for authorization to undertake promotional missions in their respective countries have been made:

Accede to the Commission's requests to undertake promotional missions.

To the AUC:

Expedite the recruitment for the remaining positions at the Commission's Secretariat.

To the Commission's Host Government:

i) Make the necessary steps to construct the Commission's Permanent Headquarters as requested by the Executive Council Decision as soon as possible;

To the Executive Council:

i) Increase support to the Commission in material and financial terms, to enable it carry out its mandate effectively, in line with decision EX.CL/856(XXV) regarding prevention of the Commission's dependency on partner funds for the performance of its functions;

ii) Urge parties to Communications to inform the Commission of the measures (being) taken to implement the decisions of the Commission in their respective cases;

iii) Facilitate the Commission's prosecution of cases before the African Court by allowing the Members of the Commission representing the Commission before the Court to be paid a daily representation allowance assessed at the same rate as the daily sitting allowance currently allowed Commissioners during Sessions of the Commission;

iv) Include in the budget of the Commission funding for activities aimed at celebrating 2016 as the African Year of Human Rights with particular reference to the Rights of Women.

To the Assembly of Heads of State and Government:

- i) Urge Member States to honour their obligations under the African Charter and comply with the decisions of the Commission;
- ii) Urge the Republic of South Sudan to ratify the African Charter;
- iii) Urge the Republic of The Gambia to construct the Headquarters of the Commission and to address the communication challenges facing the Commission and its Secretariat.

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