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EXECUTIVE COUNCIL
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Khartoum, SUDAN

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REPORT OF THE AFRICAN COMMISSION ON HUMAN AND
PEOPLES' RIGHTS

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

SECTION I**Period Covered by the Report**

1. The present Nineteenth Activity Report covers the period from July to December, 2005.
2. It is to be recalled that the Eighteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (African Commission) was adopted by the 5th Ordinary Session of the Assembly of Heads of State and Government of the African Union, held from 4th to 5th July, 2005, in Sirte, Libya, in July, 2005. This followed the examination of the Report by the Executive Council.

SECTION II**Holding of the 38th Ordinary Session**

3. Since the adoption of the Eighteenth Annual Activity Report in July, 2005, the African Commission has held one Ordinary Session, the 38th Ordinary Session, which took place from 21st November to 5th December, 2005 in Banjul, The Gambia. The agenda of that session is attached to the present report as annex one (1).
4. The 38th Ordinary Session was preceded by an NGO Forum whose aim was to prepare towards the deliberations of the said 38th Ordinary Session. The NGO Forum took place from the 18th to 20th November, 2005, in Banjul, The Gambia.
5. All the under-listed members of the African Commission participated in the deliberations of the 38th Ordinary Session:-
 - Commissioner Salamata Sawadogo, Chairperson;
 - Commissioner Yassir Sid Ahmed El Hassan, Vice-Chairperson;
 - Commissioner Kamel Rezag-Bara;
 - Commissioner Musa Ngary Bitaye;
 - Commissioner Reine Alapini-Gansou;
 - Commissioner Mumba Malila;
 - Commissioner Angela Melo;
 - Commissioner Sanji Mmasenono Monageng;
 - Commissioner Bahame Tom Mukirya Nyanduga; and
 - Commissioner Faith Pansy Tlakula.
6. In conformity with Article 39 of the African Charter on Human and Peoples' Rights and Rule 16 of the Rules of Procedure of the African Commission, the following

Members of the African Commission, newly-elected by the Assembly of Heads of State and Government, took their oath of office:

- Commissioner Reine Alapini-Gansou;
- Commissioner Musa Ngary Bitaye;
- Commissioner Mumba Malila; and
- Commissioner Faith Pansy Tlakula.

Re –election of the Bureau

7. In accordance with Article 42 of the African Charter on Human and Peoples' Rights and with Rules 17 and 70 of the Rules of Procedure of the African Commission, Commissioners Salamata Sawadogo and Yasir Sid Ahmed El Hassan were re-elected Chairperson and Vice-Chairperson respectively.

Appointments of Special Rapporteurs and Members of Working Groups

8. During the 38th Ordinary Session, the following appointments were also made-:

Special Rapporteurs

- Commissioner Faith Pansy Tlakula - The Special Rapporteur on Freedom of Expression in Africa;
- Commissioner Mumba Malila - The Special Rapporteur on Prisons and Conditions of Detention in Africa; and
- Commissioner Reine Alapini-Gansou - The Special Rapporteur on Human Rights Defenders in Africa.
- In addition, the mandate of Commissioner Angela Melo, the Special Rapporteur on the Rights of Women in Africa, was renewed.

Members of Working Groups

- Working Group on Indigenous Populations/Communities in Africa: Commissioners Rezag Bara (Chair), Musa Bitaye; and Marianne Jensen, Naomi Kipuri, Mohammed Khattali and Zephyrin Kalimba;
- Working Group on Death Penalty: Commissioners Yassir Sid Ahmed El Hassan (Chair) and Bahame Tom Nyanduga; and 5 Experts to be nominated later;
- Working Group on Specific Issues Relevant to the Work of the African Commission on Human and Peoples' Rights: Commissioners Angela Melo, Abdellahi Babana and Pansy Tlakula; and Open Society Initiative, INTERIGHTS and African Institute for Human Rights and Development.
- Commissioner Mumba Malila was appointed to sit on the Follow- Up Committee on the Robben Island Guidelines.

Attendance

9. Delegates of the following twenty-three (23) Member States attended and made statements: Algeria, Burkina Faso, Burundi, Cameroon, Central African Republic, Democratic Republic of Congo, Cote d'Ivoire, Egypt, Eritrea, Ethiopia, Gambia, Guinea Bissau, Libya, Mali, Mauritania, Mozambique, Nigeria, Senegal, Republic of South Africa, Sierra Leone, Sudan, Tunisia and Zimbabwe.

10. A representative of the AU Commission attended the session.

11. Representatives of the Office of the High Commissioner for Human Rights, Office of the High Commissioner for Refugees, UN Permanent Forum on Indigenous Issues and the Organisation Internationale de la Francophonie (OIF) were also present.

Submission by States Parties of Initial and Periodic Reports

12. It is to be recalled that all the Member States of the African Union are States Parties to the African Charter on Human and Peoples' Rights. Under Article 62 of the African Charter on Human and Peoples' Rights, every State Party undertakes to present every two years, starting from the date of entry of the African Charter, a report on the legislative and other measures taken to give effect to the rights and freedoms recognised and guaranteed by the said Charter.

13. The status of presentation by State Parties of their initial and periodic reports is as follows:

A. There are 18 States which have not submitted any reports:

- | | |
|-----------------------------|---------------------------|
| 1. Botswana | 10. Guinea Bissau |
| 2. Central African Republic | 11. Kenya |
| 3. Comoros | 12. Liberia |
| 4. Cote d'Ivoire | 13. Madagascar |
| 5. Djibouti | 14. Malawi |
| 6. Equatorial Guinea | 15. Sao Tome and Principe |
| 7. Eritrea | 16. Sierra Leone |
| 8. Ethiopia | 17. Somalia |
| 9. Gabon | 18. Zambia |

B. There are 17 States which have submitted one report but owe more:

- | | |
|------------------------|--|
| 1. Angola | 10. Mali |
| 2. Burundi | 11. Mauritius |
| 3. Cameroon | 12. Mozambique |
| 4. Cape Verde | 13. Nigeria |
| 5. Chad | 14. Saharawi Arab Democratic
Republic |
| 6. Congo (Brazzaville) | 15. Swaziland |
| 7. Congo (DRC) | 16. Tanzania |
| 8. Guinea (Rep) | 17. Uganda |
| 9. Lesotho | |

C. There are 9 States which have submitted two or more reports but owe more:

- | | |
|------------|-------------|
| 1. Algeria | 6. Namibia |
| 2. Benin | 7. Togo |
| 3. Gambia | 8. Tunisia |
| 4. Ghana | 9. Zimbabwe |
| 5. Libya | |

D. There is one state which has submitted its report but has not yet presented it.

1. Seychelles

E. There are 8 States which have submitted and presented all their reports and are, therefore, up to date:

- | | |
|-----------------|-----------------|
| 1. Burkina Faso | 5. Rwanda |
| 2. Egypt | 6. Senegal |
| 3. Mauritania | 7. South Africa |
| 4. Niger | 8. Sudan |

14. The African Commission continues to urge Member States that have not yet done so, to submit their initial and periodic reports. Member States are also reminded that they can combine all the overdue reports into a single report for submission to the African Commission.

15. During its 38th Ordinary Session, the African Commission examined the periodic report of the Republic of South Africa and adopted Concluding Observations thereto. The African Commission was satisfied with the discussions that it held with the delegation from the Republic of South Africa.

16. The Republic of Seychelles had been scheduled to present its Initial Report during the 38th Ordinary Session of the African Commission. However, the African Commission was not able to examine the said report as there was no delegate from the Republic of Seychelles to present it.

17. The African Commission decided to remind Seychelles to send its representatives to present its Initial Report at the 39th Ordinary Session. Seychelles was also informed that if no State Delegate is present at the 39th Ordinary Session, the Report would be examined in Seychelles' absence.

Distribution of States Parties Among Members of the African Commission

18. During the session, Members of the African Commission agreed on the distribution of States Parties among themselves, for purposes of undertaking promotional activities. This is contained in annex two (2) of the present report.

Adoption of Reports on Missions

19. During the session, the African Commission adopted the following Reports:-

- a. *Reports of Promotional Missions to Central African Republic, Mauritania, Sao Tomé and Príncipe, Guinea Bissau, Seychelles and Botswana;*
- b. *Report of the Fact-finding Mission to the Democratic Arab Republic of Saharawi on the issue of African migrants to Europe;*

- c. *Reports of the Missions of the Special Rapporteur on the Rights of Women in Africa to Djibouti and Sudan;*
- d. *Interim Report of the Fact-finding Mission of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa to Senegal; and*
- e. *Reports of the Missions of the Working Group on Indigenous Populations/Communities to Botswana and Namibia.*
- f. *Reports of the 35th, 36th, 37th and 38th Ordinary Sessions.*

Organization of Seminars

20. The African Commission decided that funds permitting, it would organise seminars on the following topics in the course of 2006 -:

- Terrorism and Human Rights in Africa;
- Islam and Human Rights;
- Contemporary Forms of Slavery; and
- Refugees and Internally Displaced Persons in Africa.

21. At its 38th Ordinary Session, the African Commission adopted the following seventeen (17) resolutions -:

- Resolution on the Renewal of the Term of the Special Rapporteur on the Rights of Women in Africa;
- Resolution on the Composition and Operationalisation of the Working Group on the Death Penalty;
- Resolution on the Renewal of the Mandate and the Composition of the Working Group on Specific Issues Relevant to the Work of the African Commission on Human and Peoples' Rights;
- Resolution on the Composition and Extension of the Mandate of the Working Group on Indigenous Populations/Communities in Africa;
- Resolution on the Nomination of a Special Rapporteur on Prisons and Conditions of Detention in Africa;
- Resolution on the Nomination of a Special Rapporteur on Human Rights Defenders in Africa;
- Resolution on the Nomination of a Special Rapporteur on Freedom of Expression in Africa;
- Resolution on the Status of Women in Africa and the Entry into Force of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- Resolution relating to the Operationalisation of an Independent and Effective African Court on Human and Peoples' Rights;

- Resolution on Ending Impunity in Africa and on the Domestication and Implementation of the Rome Statute of the International Criminal Court;
- Resolution on the Protection of Human Rights and the Rule of Law while countering Terrorism;
- Resolution on the Human Rights Situation in Zimbabwe;
- Resolution on the Situation in the Democratic Republic of Congo;
- Resolution on the Human Rights Situation in Eritrea;
- Resolution on the Human Rights Situation in Ethiopia;
- Resolution on the Human Rights Situation in the Darfur region of Sudan;
- Resolution on the Human Rights Situation in Uganda.

22. The full texts of the Resolutions on the status of women in Africa; the operationalisation of the African Court Human and Peoples' Rights; ending impunity in Africa and the domestication and implementation of the statute of the international criminal court; the protection of human rights and the rule of law, while countering terrorism; the human rights situation in Zimbabwe; the situation in the Democratic Republic of Congo; the human rights situation in Eritrea; the human rights situation in Ethiopia; the human rights situation in the Darfur region of the Sudan and the human rights situation in Uganda, are all attached to the present report as annex three (3).

23. During the session, the African Commission discussed its cooperation with national human rights institutions and non- governmental organisations. The African Commission appealed to States Parties that had not yet done so, to establish national human rights institutions and strengthen the capacities of existing ones, in compliance with the Paris Principles and its own resolution on these institutions.

24. During the 38th Ordinary Session, the African Commission granted Observer Status to the following twelve (12) Non-Governmental Organisations -:

- Association des Femmes Chefs de Famille (Mauritania);
- Community Law Centre (South Africa);
- Mbororo Social and Cultural Development Association (Cameroon);
- Civic Aid International Organisation (CIAO) (United Kingdom and the Sudan);
- Association Burkinabè pour la Survie de l'Enfance (ABSE) (Burkina Faso);
- Association Congolaise de lutte contre les Violences à l'Egard des Femmes et Filles (ACOLF) (Congo Brazzaville);
- Kataliko Action for Africa/Kataliko Action pour l'Afrique (Democratic Republic of Congo);
- Franciscans International (Switzerland);
- Access to Justice (Nigeria);
- Association for the Reconstruction and Development of the Mokooh Peoples of Cameroon (Cameroon);
- Global Network for Good Governance (Cameroon); and
- Sudan Organisation Against Torture (SOAT) (Sudan and the United Kingdom).

25. This brings the total number of non-governmental organizations that have observer status with the African Commission to three hundred and forty -two (342).

SECTION III

Promotional Activities

Inter-Sessional Promotional Activities of the Chairperson and the Members of the African Commission

26. As members of the Bureau of the African Commission, the Chairperson, Commissioner Salamata Sawadogo, and the Vice Chairperson, Commissioner El Hassan, worked to oversee the functioning of the African Commission during the intersession. The Chairperson, Commissioner Sawadogo, addressed several urgent appeals to a number of African Heads of State on various human rights matters.

27. Due mainly to the unavailability of funds, Members of the African Commission were unable to undertake promotional missions to Member States during the period under review. However, they were generally able to undertake other promotional activities, including participating in workshops and seminars at the invitation of partners of the African Commission.

28. From 18th to 22nd July, 2005, the Chairperson of the African Commission participated in the 4th Cycle on the Prohibition and Prevention of Torture in Africa, organized by FIACAT in collaboration with its partners in Ouagadougou, Burkina Faso. She made a presentation on 'Activities undertaken by the African Commission for the Prohibition and the Prevention of Torture, Cruel, Inhuman or Degrading Punishment and Treatment in Africa'. From 29th September to 1st October 2005, at the invitation of the Organisation Internationale de la Francophonie, (OIF), she participated in the 'Meeting on the Constitutional and Political Practices in Africa; the Recent Dynamics.' The meeting brought together representatives from the Commission of the African Union, OIF, experts, political activists, university students, participants from human rights institutions of Francophone and Portuguese- speaking countries.

29. For his part, the Vice Chairperson conducted consultations with the Special Rapporteur on the Rights of Women in Africa, Commissioner Melo, regarding her efforts in ensuring the quick ratification of the Protocol on the Rights of Women in Africa within Member States that have Islam as a dominant religion. This was done in his capacity as an expert on some issues relating to Sharia. On the 13th of July, 2005, he participated in a Panel Discussion organized in Khartoum, The Sudan, by the Geneva Institute for Human Rights and Civic Aid International Organization, in collaboration with the Sudanese Newspaper Al-Sahaffa. The theme of the panel discussion was 'The Regional Mechanisms for the Protection of Human and Peoples' Rights'. Between 18th and 22nd July 2005, with the collaboration of the government of Mauritania, the Office of the UNDP in Nouakchott, and with assistance from the Secretariat of the African Commission, he designed and conducted a training course on human rights in

Nouakchott, Mauritania, for about 30 high-ranking law enforcement officials and security officers, judges, university professors and members of the NGO community. Commissioners Rezag-Bara and Babana of the African Commission also participated in the training course as resource persons.

30. On 28th July 2005, Commissioner El Hassan participated in a conference in the Sudan where he made a presentation on the 'Functioning of the International Human Rights System, including the African System'. The Conference was attended by about 20 Sudanese human rights activists. From 29th to 31st of August, 2005, he participated in a workshop organized in Khartoum, the Sudan, by the Max Planck Institute for International and Comparative law (Germany) in collaboration with the Ministry of Justice; while from the 5th to 11th September 2005, as one of the experts representing the Sudan, he participated in the 3rd Technical Thematic Task Force Meeting (TTTF) held in Nairobi, Kenya. This was sponsored by the United Nations and the African Union Joint Secretariat of the International Conference on the Great Lakes Region. The meeting was attended by experts from a number of African countries, as well as experts from the UN and the African Union Joint Secretariat, UNDP, OHCHR, OCHA, ECA. Participants from the Group of Friends, other United Nations Agencies and Specialized Institutions, and the Special Representative of the Secretary General of the UN to the Great Lakes Region, were also in attendance. While in London to attend the second meeting of the Working Group on Economic, Social and Cultural Rights, held in London in October, 2005, Commissioner El Hassan had meetings with NGOs that have observer status with the African Commission.

31. For his part also, Commissioner Rezag-Bara participated as a resource person in the above-mentioned training course on human rights organized in Nouakchott, Mauritania, in collaboration with the Government of Mauritania and the Office of the UNDP in Nouakchott. From 28th October to 3rd November, 2005, he also undertook a Fact-finding Mission to the Liberated Territories of the Saharawi Arab Democratic Republic, in order to assess the situation regarding more than 100 Sub-Saharan migrants who had been expelled by the Moroccan authorities. The report of that mission was submitted for consideration and subsequently adopted by the African Commission during its 38th Ordinary Session. (see paragraph 18 above). On 8th November, 2005, he held a meeting with the Minister for Foreign Affairs of Algeria and former President of the International Court of Justice, Judge Mohammed Bedjaoui. Judge Bedjaoui has been entrusted with the task of chairing the meeting of government experts for drafting the instrument on the merger of the African Court of Justice and the African Court on Human and Peoples Rights. From 19th to 20th November, 2005, Commissioner Rezag-Bara participated as a resource person in the workshop of the NGO Forum which preceded the 38th Ordinary Session of the African Commission.

32. For his part, Commissioner Nyanduga participated in an international conference in Dakar, Senegal, organized jointly by the Council for the Development of Social Research in Africa (CODESRIA), and the Globalization Studies Network (GSN), a network of research institutions and universities from all over the world. The theme of the Conference was 'Globalization: Overcoming Exclusion, Strengthening Inclusion'. He participated in the panel discussion on the human rights implications of globalization.

Between 5th and 10th September, 2005, the Commissioner took part in the proceedings of the African Human Rights Moot Court Competition and the International Conference on Human Rights at the University of Johannesburg, South Africa. The 2005 African Human Rights Moot Court Competition was organized by the Centre for Human Rights of the University of Pretoria and brought together members of faculties of law and students from universities across Africa. The moot court competition simulates the African Court on Human and Peoples' Rights.

33. In September 2005, he assisted the Legal and Human Rights Centre in providing advice to several Tanzanian NGOs in respect of the process of applying for observer status before the African Commission. On 10th October, 2005, he participated in a workshop which was part of the global campaign to abolish the death penalty. The workshop was organized by the Legal and Human Rights Centre, a Tanzanian NGO that has observer status with the African Commission. The workshop discussed in detail, the legal position on the question of the death penalty in Tanzania as well as the political and institutional failures in the administration of the criminal justice system, as highlighted by an October, 2004 FIDH Fact-Finding mission to Tanzania. 34. On 20th October, 2005, he attended a conference in Accra, Ghana, organized by Africa Legal Aid, under the theme 'Emerging Trends in Human Rights Issues of Special Significance to Africa.' The conference was organized on the occasion of the 10th Anniversary of Africa Legal Aid, and the commemoration of Africa Human Rights Day, on 21st October 2005. On 19th November 2005, he attended the NGO Forum preceding the 38th Ordinary Session of the African Commission and participated in group discussions on the situation of refugees and Internally Displaced Persons in Africa.

34. For her part, Commissioner Monageng was unable to undertake a promotional mission to Zimbabwe because, prior to travelling, she was informed that the Government of Zimbabwe had withdrawn the authorization for the mission. On 16th to 17th October, 2005, at the invitation of the Centre for Human Rights in Botswana (DITSHWANELO), Commissioner Monageng participated in a seminar on the Death Penalty which took place in Gaborone, Botswana. From 14th to 15th September, 2005, she attended a seminar on Documenting Human Rights Violations, at the invitation of the Centre for Ethics and Law at Brandeis University in Boston, USA. She also presented a paper on how the African Commission documents human rights violations, and gave lectures at the University of Boston, Brandeis University and various human rights institutions.

Inter-sessional Activities of the Special Mechanisms

35. As the Special Rapporteur on the Rights of Women in Africa, Commissioner Melo lobbied and advocated for the speedy ratification of the Protocol on the rights of women in Africa by Member States. She widely disseminated the Protocol as well as a simplified version of it; and she drafted a section on the promotion and protection of women's rights, for inclusion in the Guidelines provided to states on State Reporting. Further, she undertook a mission to Cape Verde. During the period, she commenced work on the development of a Directory of partners working in the field of human rights

of women; as well as on the development of a project geared towards lobbying Muslim States to lift their reservations on the Protocol.

36. As the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons, Commissioner Nyanduga participated in the Humanitarian and Security Assessment Mission to the Darfur Region of Sudan from 2nd to 4th June, 2005, at the invitation of the African Union. The main objective of the mission was to make an assessment of the humanitarian and security situation in the Darfur region, following the deployment of the African Union Military Observer Force there.

37. Following the launch of operation Murambatsvina in Zimbabwe on 24th June, 2005, he wrote an urgent appeal to the Government of Zimbabwe, through the Minister of Foreign Affairs, Hon. Mumbengengwi of Zimbabwe and the Minister of Justice, Legal and Parliamentary Affairs, Hon. Patrick Chinamasa, requesting the Government Zimbabwe “. . . to halt the eviction and demolition exercise, and assist the victims of the operation, by providing them with humanitarian assistance in the form of temporary shelter, accommodation, water, food, medicines and other forms of assistance, while looking for an amicable solution to the illegal settlements and squatter problem in a manner that upholds the dignity of the individuals and the families, which have become victims of the . . . operations,”

38. In respect of Operation Murambatsvina, he was requested by the Commission of the African Union to undertake a Fact-finding Mission to Zimbabwe between 30th June and 4th July 2005. The Special Rapporteur travelled to Zimbabwe on 30th June, 2005. Negotiations were conducted to enable the Special Rapporteur carry on with the Mission but they proved unsuccessful; and on 6th July, 2005, the Ministry of Foreign Affairs of the Republic of Zimbabwe requested the Special Rapporteur to leave Harare.

39. From 16th to 17th August, 2005, he attended a meeting of the Steering Group, established by the Representative of the UN Secretary General on Human Rights of IDPs. The Steering Group comprises among others, representatives of the UNHCR, OCHA, ICRC, the Brooking Institute-Bern University IDP Project and other international experts on IDP issues. The Steering Group is developing a manual for use by legislators and governments. From 16th to 17th November, 2005, he attended the second meeting of the Steering Group on the Legislators' Manual on internally displaced persons in Geneva, Switzerland.

40. From 24th to 26th August, 2005, he participated in a Regional Seminar on Internal Displacement in the SADC region, held in Gaborone, Botswana. The seminar was jointly organized by the UNHCR, the Representative of the Secretary General of the UN on the Human Rights of IDPs, and the Brookings Institution-Bern University IDP Project and hosted by the Government of Botswana. It brought together government officials responsible for refugees and IDP issues from SADC Member States, the Humanitarian and Refugee Coordination Department within the Commission of the African Union and NGOs dealing with IDP issues.

41. From 29th August to 3rd September, 2005, he undertook a Fact-finding mission to Senegal to investigate the situation of Mauritanian refugees in Senegal. The mission to Senegal was part of a process being undertaken by the Special Rapporteur, which will also involve undertaking missions to Mali and Mauritania in the course of 2006. This is with a purpose to facilitating a durable solution to the Mauritanian refugee problem. A report of the mission was presented before the African Commission and adopted during the 38th Ordinary Session. (see paragraph 18 above)

42. The **Working Group on Economic, Social and Cultural Rights in Africa** held two meetings, from 4th to 5th August 2005, in Pretoria, South Africa and from 6th to 7th October 2005, in London. During these meetings, the Working Group discussed the draft Guidelines on the Implementation of Economic, Social and Cultural Rights in Africa.

43. The **Working Group on Indigenous Populations/ Communities in Africa** undertook a mission to the Republic of Botswana from 15th to 23rd June, 2005. The Working Group met government officials and civil society organizations, academic institutions and indigenous communities. It also undertook a mission to the Republic of Namibia from 26th July to 5th August, 2005. The Working Group held meetings with government officials, civil society organizations and indigenous communities. In August and September, 2005, it undertook information/research visits to Libya and the Democratic Republic of Congo, respectively. The Working Group also held a Coordination Meeting from 18th to 20th November, 2005, in Banjul, The Gambia. It distributed the Report of the Working Group to governments, NGOs, and international institutions including the UN and the ILO, and academics, across Africa, Europe and the USA.

44. The **Working Group on the Death Penalty in Africa** held its first meeting on 20th November, 2005, in Banjul, The Gambia. The Working Group had agreed to hold at least two meetings during the intersession; but owing to resource constraints, it was only able to hold that one -day meeting, with financial assistance from Federation Internationale des Droits de l'Homme (FIDH). Among other issues, the meeting discussed a draft position paper on the death penalty; and agreed on the need to involve the public in debating the matter.

45. The **Working Group on Specific Issues Relevant to the Work of the African Commission** held two meetings between July and November, 2005. During these meetings, the Working Group considered and reviewed the rules of procedure of the African Commission, and proposed major changes in that regard. Additionally, the Working Group considered the role of the African Commission in all the African Union structures; and in this regard, the Members of the Working Group met and held discussions with senior officials of various departments of the Commission of the African Union.

46. The **Working Group on the Implementation of the Robben Island Guidelines** was unable to undertake any activities during the intersession, due mainly to lack of funds. It is to be noted that all the activities that the Working Group has undertaken so

far have been funded by a member of that Working Group, namely the Association For The Prevention of Torture (APT). However, the APT is unable to continue giving this assistance because of the difficulties it is itself encountering.

Other Promotional Activities

47. In keeping with its Strategic Plan of 2002 to 2006, the African Commission had decided to organise several seminars and conferences as part of its promotional activities. However, during the period under review, the Commission was unable to organise any seminars or conferences, mainly because of lack of funding.

SECTION IV

Protection Activities

48. During the 38th Ordinary Session, the African Commission considered fifty-four (54) Communications, including thirteen (13) decisions on seizure and four (4) decisions on admissibility. It further considered and decided to remove two (2) Communications from its list of Communications. The reference numbers and the names of the parties of the Communications, are attached to the present report as annex four (4). For various reasons, the rest of the Communications were deferred to the 39th Ordinary Session for further consideration.

SECTION V

Entry Into Force of the Protocol to the African Charter on the Rights of Women in Africa

49. It would be recalled that the Protocol to the African Charter on the Rights of Women in Africa was adopted by the 2nd Ordinary Session of the Conference of Heads of State and Government of the African Union on 11th July, 2003, in Maputo, Mozambique.

50. On 25th November, 2005, the Protocol to the African Charter on the Rights of Women in Africa entered into force, thirty (30) days after the deposit of fifteen (15) instruments of ratification. The African Commission, in collaboration with the African Centre on Democracy and Human Rights Studies, and with support from Action-Aid – The Gambia, held celebrations to mark the entry into force of the Protocol. The occasion was marked with statements and sharing of experiences. In attendance were Members of the African Commission, the Attorney General and Secretary of State of the Republic of The Gambia, Hon. Sheik Tijan Hydara, members of the diplomatic corps accredited to the Gambia, representatives of local NGOs and participants attending the 38th Ordinary Session.

51. To date, sixteen (16) Member States have deposited their instruments of ratification. They are the following:

1. Benin
2. Cape Verde
3. Comoros
4. Djibouti
5. Gambia
6. Libya
7. Lesotho
8. Mali
9. Malawi
10. Mauritania
11. Namibia
12. Nigeria
13. Rwanda
14. South Africa
15. Senegal
16. Togo

52. The African Commission invites those Member States that have not yet done so, to ratify the said Protocol as soon as possible.

SECTION VI

Administrative And Financial Matters

53. Under Article 41 of the African Charter, the Commission of the African Union is responsible for meeting the costs of the African Commission's operations, including the provision of staff, financial resources and services. However, the work of the Secretariat of the African Commission continues to be severely compromised due to lack of funding. Even for its staffing requirements, the African Commission continues to depend more on extra-budgetary resources than on the AU for funding. These extra-budgetary resources, notwithstanding, the staffing situation still remains inadequate, given the increasing workload of the African Commission. There is the urgent need to recruit more staff of all categories to ensure the smooth running of the Commission. It is to be noted also, as already indicated in paragraph 27 above, that regarding the discharge of its mandate, under article 45 of the African Charter, the African Commission was unable to carry out several promotional and protection missions to Member States during the period under review, due to lack of funding.

54. In order to supplement the limited resources allocated to it by the African Union, the African Commission continues to seek financial and material assistance from external partners.

55. During the period under review, the African Commission benefited from such financial and material support from the following partners -:

a) Danish Human Rights Institute

56. The Secretariat of the African Commission received extra-budgetary resources from the Danish Human Rights Institute (former Danish Human Rights Centre) to finance the post of a Policy Phasing and Resource Mobilisation Officer, as well as research activities.

b) Government of the Netherlands

57. The Ministry of Foreign Affairs of the Netherlands continued to support posts in the documentation centre, the public relations section and the legal section of the Secretariat of the African Commission. This project comes to an end on 31st December 2005 and the Government of the Netherlands has indicated that it will not renew it.

c) Rights and Democracy

58. The Canadian NGO--Rights and Democracy--made a subvention to the African Commission for the following specific activities -:

- Campaign for the Ratification of the Protocol to the African Charter dealing with the creation of an African Court of Human and Peoples Rights;
- Ratification of the Protocol to the African Charter dealing with Women's Rights in Africa;
- Meeting on democracy and elections in Africa; and
- The services of an Assistant to the Special Rapporteur on Women's Rights in Africa.

d) Danish International Development Agency (DANIDA)

59. DANIDA continues to support activities of the Working Group on Indigenous Populations/Communities. This support will continue until 2007.

e) The Office of the UN High Commissioner for Human Rights (OHCHR)

60. The OHCHR continues to finance the activities of the Special Rapporteur on Human Rights Defenders in Africa.

61. The African Commission expresses its profound gratitude to all donors and partners, whose financial, material and other contributions have enabled it to discharge its mandate during the period under review.

SECTION VII

Adoption Of The Nineteenth Activity Report

62. The African Commission submits the present Nineteenth Activity Report to the Executive Council for its consideration and transmission to the 6th Ordinary Session of the Assembly of the African Union, meeting in Khartoum in January, 2006. This is with a view to enabling the Assembly to adopt it and authorize its publication.

AFRICAN UNION

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UNION AFRICAINE

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Website: www.africa-union.org

EXECUTIVE COUNCIL

Eighth Ordinary Session

16 – 21 January 2006

Khartoum, SUDAN

EX.CL/236 (VIII)

Annex I

AGENDA OF THE 38TH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

From 21 November to 5 December 2005, Banjul, The Gambia

AGENDA OF THE 38TH ORDINARY SESSION OF THE AFRICAN
COMMISSION ON HUMAN AND PEOPLES' RIGHTS

From 21 November to 5 December 2005, Banjul, The Gambia

- Item 1: Opening Ceremony (**Public Session**)
- Item 2: Swearing in of new Members of the African Commission (**Public Session**)
- Item 3: Election of the Bureau of the African Commission (**Private Session**)
- Item 4: Adoption of the Agenda (**Private Session**)
- Item 5: Organisation of Work (**Private Session**)
- Item 6: Appointments of: (**Private Session**)
- a) Special Rapporteurs:
- **The Special Rapporteur on the Rights of Women in Africa;**
 - **The Special Rapporteur on Freedom of Expression in Africa;**
 - **The Special Rapporteur on Prisons and Conditions of Detention in Africa; and**
 - **The Special Rapporteur on Human Rights Defenders in Africa.**
- b) Members of Working Groups:
- **Working Group on Indigenous Populations;**
 - **Working Group on Death Penalty; and**
 - **Working Group on Specific Issues Relevant to the Working of the ACHPR.**
- Item 7: Adoption of the Draft Reports of the 35th, 36th and 37th Ordinary Sessions (**Private Session**)
- Item 8: **Cooperation and Relationship with National Human Rights Institutions and NGOs** (Public Session)
1. **Cooperation between the African Commission on Human and Peoples' Rights and National Human Rights Institutions**
- a) **Relationship with National human Rights Institutions; and**
 - b) **Consideration of applications for affiliate status from National Human Rights Institutions.**

2. Cooperation between the African Commission on Human and Peoples' Rights and NGOs.

- a) **Relationship with NGOs; and**
- b) **Consideration of applications of NGOs for Observer Status.**

Item 9: Human Rights Situation in Africa (Public Session)

- a) **Statements by State Delegates and Guests;**
- b) **Statement by Intergovernmental Organizations**
- c) **Statements by National Human Rights Institutions;**
- d) **Statements by NGOs**

Item 10: Consideration of State Reports (Public Session)

- a) **Status of Submission of State Party Reports;**
- b) **Consideration of the Initial Report of Seychelles; and**
- c) **Consideration of the Periodic Report of South Africa**

Item 11: The Establishment of the African Court on Human and Peoples' Rights: (Public Session)

Status of ratification of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights and the effective establishment of the same.

Item 12: Promotion Activities (Public Session)

- a) **Presentation of the Activity Reports of the Chairperson and Members of the African Commission;**
- b) **Presentation of the Report of the Special Rapporteur on the Rights of Women in African and the status of ratification of the Protocol to the African Charter on the Rights of Women in Africa;**
- c) **Presentation of the Report of the Special Rapporteur on Human rights Defenders in Africa;**
- d) **Presentation of the Report of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa;**
- e) **Presentation of the Report of the Special Rapporteur on the Freedom of expression in Africa;**
- f) **Presentation of the Report of the Chairperson of the Working Group on the Implementation of the Robben Island Guidelines;**
- g) **Presentation of the Report of the Chairperson of the Working Group on the Situation of Indigenous Peoples/Communities in Africa;**
- h) **Presentation of the Report of the Chairperson of the Working Group on ECOSOC rights in Africa;**

- i) **Presentation of the Report of the Chairperson of the Working Group on Specific Issues Relevant to the Work of the African Commission on Human and Peoples' Rights;**
- j) **Report of the Working Group on Death Penalty; and**
- k) **Organization of Conferences and Seminars.**

Item 13: Consideration and Adoption of Draft Reports (**Private Session**)

- a) **Draft Reports on the Promotional Missions to *Seychelles, Burundi, Rwanda, Mali, Central African Republic, Mauritania, Guinea Bissau and Botswana*;**
- b) **Draft Report of the Mission of the Special Rapporteur on Refugees, Asylums Seekers and IDPs to *Senegal*;**
- c) **Draft Reports of the Missions of the Special Rapporteur on the Rights of Women in Africa to *Democratic Republic of Congo, Djibouti, Sudan and Sao Tome and Principe*; and**
- d) **Draft Reports of the missions of the Working Group on Indigenous Populations/Communities to *Botswana and Namibia*.**

Item 14: Consideration of: (**Private Session**)

- a) **Position Paper on Death Penalty in Africa; and**
- b) **Concept Paper on African Policing Civilian Oversight Forum (APCOF)**

Item 15: Establishment of a Hotline on Prisons in Africa: **modalities of operationalization (Private Session).**

Item 16: Protection Activities (**Private Session**)

- a) ***Locus stand*: before the African Commission; and**
- b) **Consideration of Communications.**

Item 17: Report on the follow up of the Recommendations of the Retreat of the ACHPR and the UPPSALA consultation (**Private Session**).

Item 18: Consideration of the consultants' evaluation report on the review of the procedures of the African Commission on Human and Peoples' Rights (**Private Session**).

Item 19: Relationship between the African Commission and different AU Organs/Institutions (**Private Session**).

Item 20: Administrative and Financial Matters (**Private Session**)

- a) **Report of the Secretary on the budget and financial statements of the Commission;**
- b) **Administrative situation of the Secretariat:**
 - **Information on office space and other staff matters;**
 - **Construction of the Headquarters of the African Commission.**

Item 21: Methods of Work of the African Commission (**Private Session**)

Item 22: Consideration and Adoption of Recommendations, Decisions and Resolutions including: (**Private Session**)

- a) **Concluding Observations on the initial Report of the Seychelles and the periodic reports of South Africa;**
- b) **Recommendations of the NGO Forum;**
- c) **The recommendations from the experts meeting held in Maputo, Mozambique on:**
 - **Violence against women in Africa; and**
 - **Women and poverty in Africa**
- d) **The Code of Conduct of the members of the African Commission.**

Item 23: Dates, Venue and Draft agenda of the 39th Ordinary Session of the Commission (**Private Session**)

Item 24: Any other Business (**Private Session**)

Item 25: Preparation of the Session Report and the Final Communiqué of the 38th Ordinary Session (Private Session)

Item 26: Adoption of the Session Report and the Final Communiqué of the 38th Ordinary Session (**Private Session**)

Item 27: Reading of the Final Communiqué and closing Ceremony (**Private Session**).

Item 28: Press Conference (**Private Session**).

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Executive Council
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EX.CL/236 (VIII)

Annex II (Rev.1)

**GEOGRAPHICAL DISTRIBUTION OF COUNTRIES AMONG
COMMISSIONERS FOR THEIR PROMOTION ACTIVITIES**

GEOGRAPHICAL DISTRIBUTION OF COUNTRIES AMONG
COMMISSIONERS FOR THEIR PROMOTION ACTIVITIES

<u>NO.</u>	<u>COMMISSIONER</u>	<u>COUNTRIES</u>
1.	H.E. Salamata Sawadogo	Gabon, Ethiopia, Algeria, Niger and Republic of Congo (Brazzaville) and Benin
2.	Mr. Yasser El Hassan	Mauritania, Somalia, Djibouti, Libya, Chad and Egypt
3.	H.E. Amb. Kamel Rezag Bara	Burkina Faso, Saharawi Arab Democratic Republic, Central African Republic, Comoros and Madagascar
4.	Madame Reine Alaphini-Gansou	Cameroon, Togo, Senegal, Democratic Republic of Congo and Tunisia
5.	Mr. Masa Ngary Bilaye	Ghana, Nigeria, Sierra Leone and Zimbabwe
6.	Adv. Faith Pansy Tlakula (Ms.)	Swaziland, Namibia, Zambia and Gambia
7.	Mr. Mumba Malila	Malawi, Kenya, Tanzania and Uganda
8.	Dr. Argela Melo	Angola, Soa Tome & Principe, Cape Verde, Equatorial Guinea and Guinea Bissau
9.	Mr. Mohamed A. Ould Babana	Sudan, Burundi, Rwanda, Mali, Côte d'Ivoire and Guinea
10.	Ms. Sanji M. Monageng	Mauritius, Liberia, Mozambique and Lesotho
11.	M. Bahame Tom M. Nyanduga	South Africa, Eritrea, Seychelles and Botswana

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EX.CL/236 (VIII)

Annex III

RESOLUTIONS

ACHPR/Res.86 (XXXVIII)05:

RESOLUTION ON THE STATUS OF WOMEN IN AFRICA AND THE ENTRY INTO FORCE OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 38th Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005;

Recalling the commitments of the Heads of State and Government in the solemn Declaration on Gender Equality in Africa made during the Third Ordinary Session held in Addis Ababa, Ethiopia, from 6 – 8 July 2004.

Noting with appreciation the election in Liberia of the first female President in Africa;

Further noting with appreciation the Member States of the African Union that have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which entered into force on 25 November 2005; Benin, Cape Verde, Comoros, Djibouti, Gambia, Libya, Lesotho, Mali, Malawi, Namibia, Nigeria, Rwanda, the Republic of South Africa, Senegal and Togo;

Recognising that the women of Africa continue to be subject to discriminatory laws and practices;

Reiterating its commitment to continue working towards the promotion of the rights of women in Africa:

1. **CONGRATULATES all women of Africa on the occasion of the historic and speedy entry into force of the Protocol;**
2. **CONGRATULATES the Liberian people on the election, in November 2005, of the first female President in Africa, Ms. Ellen Johnson Sirleaf;**
3. **URGES Member States of the African Union that have not already done so to urgently ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa without reservations and to remove the reservations where these have been placed;**
4. **FURTHER URGES Member States that have already ratified this Protocol to immediately undertake measures for domestication including the amendment of internal laws to conform with the provisions of the Protocol;**
5. **ENCOURAGES Member States to increase the participation of women in peace keeping initiatives in the Continent;**

6. **CALLS on Member States to implement strategies including affirmative action that ensure that women can attain the highest levels of education and leadership in governance;**
7. **URGES Member States to respect their commitments under the CEDAW and the Beijing Platform of Action and urgently repeal or amend all laws and policies and eradicate all practices that are discriminatory against women;**
8. **URGES Member States, the African Union and international organisations to provide more support to the work of the Special Rapporteur on the Rights of Women.**

Done at Banjul, The Gambia, December 5th 2005.

ACHPR/Res.86 (XXXVIII)05:

RESOLUTION RELATING TO THE
OPERATIONALIZATION OF AN INDEPENDENT AND
EFFECTIVE AFRICAN COURT ON HUMAN AND
PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights, meeting at its 38th Ordinary Session from 21 November to 5 December 2005 in Banjul, The Gambia.

Considering the terms of its Resolution of the 11 May 2005 on the creation of an effective African Court on Human and Peoples' Rights;

Favourably receiving the recommendations of the Executive Council of the African Union requesting its Member States that have not yet ratified the protocol on the establishment of the African Court to do so;

Noting with appreciation the decision of the Assembly of Heads of State and Government of the African Union to elect Judges for the African Court on Human and Peoples' Rights.

1. **URGES the Assembly of Heads of State and Government to operationalize the African Court on Human and Peoples' Rights by electing judges and allocating adequate resources to the African Court on Human and Peoples' Rights for its functioning;**
2. **URGES the African Union to include the African Commission on Human and Peoples' Rights in the work and operationalization process of the African Court on Human and Peoples' Rights;**
3. **URGES the Assembly of Heads of state and Government to consider putting in place a mechanism that will allow direct access for individuals to the African Court on Human and Peoples' Rights;**
4. **URGES the Member States of the African Union to take measures for the settlement of their financial obligations towards the African Union and to take concrete measures for effecting voluntary contributions to the Human Rights Fund.**

Done in Banjul, the 5th December 2005

ACHPR/Res.87 (XXXVIII)05:

RESOLUTION ON ENDING IMPUNITY IN AFRICA
AND ON THE DOMESTICATION AND
IMPLEMENTATION OF THE ROME STATUTE OF
THE INTERNATIONAL CRIMINAL COURT

The African Commission on Human and Peoples' Rights, meeting at its 38th Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005.

Recalling the African Commission on Human and Peoples' Rights' Resolution on the Ratification of the Treaty on the International Criminal Court (the Rome Statute), Banjul, 31 October 1998 and the Resolution on the Ratification of the Statute of the International Criminal Court by OAU Member States, Pretoria, 16 May 2002;

Noting with concern the numerous human rights abuses in parts of the African Continent, notably that men, women and children have been the victims of genocide, war crimes, crimes against humanity and other crimes recognised under international human rights law and international humanitarian law.

Noting that the perpetrators of these crimes are rarely brought to justice, while the victims have been frequently denied an effective remedy;

Noting that the Constitutive Act of the African Union, Art. 3(h) and 4(o), expressly condemns and rejects impunity;

Further noting that 27 African States have ratified the Rome Statute and that some of them have made efforts to give legal effect to the application of the Rome Statute nationally;

Deeply concerned that some African Governments that have ratified the Rome Statute have not taken the necessary measures to incorporate it at the national level;

Considering that, under the Rome Statute, the International Criminal Court has jurisdiction to try individuals suspected to have committed genocide, war crimes and crimes against humanity:

1. **URGES the Member States of the African Union to ensure that the perpetrators of crimes under international human rights law and international humanitarian law should not benefit from impunity;**
2. **URGES Member States of the African Union that have not yet done so to ratify the Rome Statute and to adopt a national action plan for the effective implementation of the Rome Statute at the national level;**
3. **URGES African Governments to withdraw from the Article 98 Bilateral Immunity Agreements and refrain from engaging in acts that would**

weaken the effectiveness of the Court in line with their international obligations;

4. **CALLS on civil society organizations in Africa to work in collaboration and develop partnerships in order to further respect the rule of law internationally and to strengthen the Rome Statute;**
5. **ENCOURAGES the Assembly of Heads of state and Government of the African Union to urge its Member States to condemn and reject impunity.**

Done at Banjul, 5th December 2005.

Resolution on the Protection of Human Rights and the
Rule of Law in the fight against Terrorism

The African Commission on Human and Peoples' Rights, meeting at its 38th Ordinary Session held in Banjul, The Gambia from 21 November to 5 December 2005.

Considering the preamble to the African Charter on Human and Peoples' Rights requesting Member States to re-affirm their support to human and peoples' rights and liberties contained in the Declarations, Treaties and other Instruments adopted within the framework of the United Nations and of the African Union;

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, condemns impunity, political assassinations, acts of terrorism and subversive activities;

Taking into consideration Article 23 of the African Charter on Human and Peoples' Rights which guarantees the right of people to peace and security and prohibits States from allowing their territories to be used as bases for subversive or terrorist activities;

Considering also the fundamental importance of guaranteeing respect of all human and peoples' rights and the standards of the rule of law when legislating and implementing anti-terrorism laws;

Bearing in mind Articles 45 (1) and (2) of the African Charter on Human and Peoples' Rights mandating the African Commission on Human and Peoples' Rights to formulate and lay down principles on human rights issues upon which African Governments may base their legislation and requiring it to ensure the protection of human and peoples' rights as well as Article 60 permitting the African Commission on Human and Peoples' Rights to draw inspiration from the international law on human and peoples' rights;

Recalling Article 22(1) of the Convention of the Organization of African Unity (OAU) on the Prevention and Combating of Terrorism that stipulates that no provisions of the Convention may be interpreted in a manner that derogates from the general principles of international law, particularly the principles of international humanitarian law and the African Charter on Human and Peoples' Rights.

Further recalling Article 3(k) of the Protocol to the OAU Convention on the Prevention and Combating of Terrorism under which States Parties commit themselves to outlaw torture and other degrading and inhuman treatment, including, discriminatory and racist treatment of terrorist suspects, which are inconsistent with international law;

Considering the role of the Peace and Security Council of the African Union as enshrined in Protocol relating to the Establishment of the Peace and Security Council to coordinate and harmonise continental efforts in the prevention and combating of terrorism;

Considering further the role assigned to the African Commission on Human and Peoples' Rights in the Protocol relating to the Establishment of the Peace and Security Council of the African Union: *“to seek close cooperation with the Peace and Security Council and to draw the attention of the Peace and Security Council to all issues of relevance to its mandate”*;

Recalling Resolutions 1373 and 1456 of the United Nations Security Council, Resolutions 57/219 and 58/187 of the General Assembly, Resolutions 2003/68 and 2004/87 of the Human Rights Commission, Resolution 2003/15 and 2004/14 of the Sub-Committee on the Promotion and Protection of Human Rights re-affirming that States should ensure that all measures taken to combat terrorism conform to their obligations under the terms of international law in general, and international human rights law, international humanitarian law and the rights of refugees in particular;

Deeply concerned by the increase in the number of terrorist acts perpetrated on the Continent and legislations, measures and practices of States Parties, that may be inconsistent with the provisions of the African Charter on Human and Peoples' Rights;

Reaffirming the role of the African Commission on Human and Peoples' Rights in the implementation and monitoring of the respect for the provisions of the African Charter on Human and Peoples' Rights;

Recognising that the acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental liberties and democracy, constitute a threat to territorial integrity, the security of States and seek to destabilise legally constituted Governments;

1. CALLS ON all African States to take the necessary measures to reinforce their activities of cooperation in order to prevent and combat terrorism;
2. REAFFIRMS that African States should ensure that the measures taken to combat terrorism fully comply with their obligations under the African Charter on Human and Peoples' Rights and other international human rights treaties, including the right to life, the prohibition of arbitrary arrests and detention, the right to a fair hearing, the prohibition of torture and other cruel, inhuman and degrading penalties and treatment and the right to seek asylum;
3. UNDERTAKES TO ENSURE that all the special procedures and mechanisms of the African Commission on Human and Peoples' Rights consider within the framework of their mandates, the protection of human rights and fundamental freedoms in the context of measures aimed at preventing and combating terrorism and to coordinate their efforts, as appropriate, in order to promote a coherent approach in this regard;

4. **DECIDES to organise a meeting of experts on the protection of human rights and the rule of law within the framework of the fight against terrorism in Africa;**
5. **APPEALS to the relevant organs of the African Union and requests the other partners to provide the required assistance in the quest for resources and modalities to organise this experts' meeting;**
6. **INSTRUCTS the Secretariat to follow-up and coordinate this activity.**

Done in Banjul, 5th December 2005.

ACHPR/Res.89 (XXXVIII) 05: RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN ZIMBABWE

The African Commission on Human and Peoples' Rights, meeting at its 38th Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005;

Considering that Zimbabwe is party to the African Charter on Human and Peoples' Rights and other international human rights instruments.

Recalling the recommendations to the government of Zimbabwe and contained in the African Commission Report of the Fact-Finding Mission to Zimbabwe in June 2002;

Further recalling the recommendations to the government of Zimbabwe by the United Nations Special Envoy on Human Settlement Issues in Zimbabwe and contained in her Report published on 22 July 2005;

Deeply Concerned by the continued undermining of the independence of the judiciary through defiance of court orders, harassment and intimidation of independent judges and the executive ouster of the jurisdiction of the courts.

Further Concerned by the continuing violations and the deterioration of the human rights situation in Zimbabwe, the lack of respect for the rule of law and the growing culture of impunity;

Alarmed by the number of internally displaced persons and the violations of fundamental individual and collective rights resulting from the forced evictions being carried out by the government of Zimbabwe:

1. **CONDEMNS the human rights violations currently being perpetrated in Zimbabwe;**
2. **URGES the government of Zimbabwe to cease the practice of forced evictions throughout the country, and to adhere to its obligations under the African Charter on Human and People's Rights and other international human rights instruments to which Zimbabwe is a party;**
3. **URGES the government of Zimbabwe to implement without further delay the recommendations contained in the African Commission Report of the 2002 Fact-Finding Mission to Zimbabwe and the recommendations in the July 2005 Report of the UN Special Envoy on Human Settlement Issues, in particular by ensuring full and unimpeded access for the provision of aid and protection to the victims of the forced evictions and demolitions by impartial national and international humanitarian agencies and human rights monitors, and by ensuring that those responsible for the violations are brought to justice without delay;**

4. **CALLS ON the government of Zimbabwe to uphold the principle of separation of powers and the independence of the judiciary and URGE the government of Zimbabwe to repeal or amend Constitutional Amendment (No.17) and provide an environment conducive to constitutional reform based on fundamental rights;**
5. **CALLS ON the government of Zimbabwe to uphold the principle of separation of powers and the independence of the judiciary and URGE the government of Zimbabwe to repeat or amend Constitutional Amendment (No.17) and provide an environment conducive to constitutional reform based on fundamental rights;**
6. **CALLS ON the government of Zimbabwe to cooperate with the African Commission Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa and other African Commission Special Mechanisms, including by allowing a Fact-Finding Mission to investigate the current situation of internally displaced persons in Zimbabwe;**
7. **URGES the African Union to renew the mandate of the African Union Envoy in Zimbabwe to investigate the human rights implications and the humanitarian consequences of the mass evictions and demolitions.**

ACHPR/Res. 90 (XXXVIII) 05: RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN THE DEMOCRATIC REPUBLIC OF CONGO

The African Commission on Human and Peoples' Rights, meeting at its 38th Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005;

Considering the two wars of 1996 and 1998 experienced by the Democratic Republic of Congo and their consequences of serious violations of human rights and international humanitarian law;

Considering that the International Criminal Court has opened an inquiry on the crimes committed in the Democratic Republic of Congo from 1st July 2002;

Recalling the Resolution 1592 (2005) adopted by the United Nations Security Council on the 30th March 2005 and its preceding Resolutions;

Disturbed by the continuing violence in the East of the Democratic Republic of Congo, in particular in the Provinces of the Northern and Southern Kivu and in the Ituri District, and by the serious human rights and international humanitarian law violations accompanying it:

1. **CALLS ON the Government of National Unity and Transition to guarantee the security of civilians including the humanitarian personnel by extending the authority of the State effectively over the entire national territory of the Democratic Republic of Congo;**
2. **REQUESTS the Congolese government to bring to justice the perpetrators of crimes provided for by the Rome Statute, committed in Congolese territory and to cooperate fully with the organs of the International Criminal Court, notably by adopting a law adapting the Statute of the International Criminal Court;**
3. **REQUESTS the coordinators of the various transitional institutions in the Democratic Republic of Congo to achieve concrete progress for the effective holding of the elections, notably by promoting the constitutional referendum and the adoption of an electoral law, as well as the registration of voters on electoral lists;**
4. **REQUESTS MONUC to enforce its mandate relating to the enforcement of the process of disarmament, demobilization, repatriation and reintegration of the rebel Congolese Armed Groups, as well as the protection of the civilian population;**

5. **CALLS ON the entire international community, in particular the countries of the Great Lakes Region, to strictly implement the Arms Embargo in conformity with the various relevant Resolutions of the Security Council.**

ACHPR/Res.91 (XXXVIII)05: RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN ERITREA

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session held in Banjul, The Gambia from 21 November to 5 December 2005;

Considering that the State of Eritrea is a State Party to the *African Charter on Human and Peoples' Rights*;

Recalling that freedom of opinion and expression as well as the right to assembly are fundamental rights enshrined in international instruments ratified by Eritrea and notably Articles 9 and 11 of the *African Charter on Human and Peoples' Rights*;

Recalling Article 7 of the *African Charter on Human and Peoples' Rights* which ensures the right to a fair trial and the Guidelines and Principles' on the Right to a Fair Trial and to Judicial Assistance in Africa developed by the African Commission on Human and Peoples' Rights;

Considering the provisions of the *Constitutive Act of the African Union*, the *United Nations Charter*, as well as the *African Charter on Human and Peoples' Rights* and other international human rights instruments to which Eritrea is a party and, consequently, that the State is legally bound to fully and effectively implement these same instruments without any discrimination whatsoever;

Deeply concerned about the arbitrary arrests and continued detention without trial for many years of several former cabinet ministers and government officials, members of opposition groups, journalists and media practitioners in violation of the provisions of the *African Charter on Human and Peoples' Rights*;

Recalling the decision of the African Commission, under Communication No. 250/2002 and the call addressed to the Government to comply with the recommendation of the former for the release of the detainees:

- 1. CONDEMNS the continued detention of the former cabinet ministers, government officials, members of Parliament, journalists, media practitioners and others for many years;**
- 2. CALLS ON the Government of Eritrea to fulfil its obligations in line with the *Constitutive Act of the African Union*, the *African Charter on Human and Peoples' Rights* and other pertinent instruments to which Eritrea is a party;**
- 3. CALLS ON the Government of Eritrea to guarantee, at all times, the right to a fair trial, freedom of opinion and expression as well as the right to peaceful assembly;**

4. **CALLS ON the Government of Eritrea to immediately free the former cabinet ministers, government officials, members of Parliament, journalists, media practitioners and other individuals who have been arrested and detained without trial for many years;**

5. **CALLS ON the Eritrean Government to comply with the international instruments ratified by Eritrea, most notably the *African Charter on Human and Peoples' Rights* (ACHPR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and to cooperate with the African Commission on Human and Peoples' Rights.**

ACHPR/Res.92 (XXXVIII)05: RESOLUTION ON THE SITUATION OF
HUMAN RIGHTS IN ETHIOPIA

The African Commission on Human and Peoples' Rights, meeting at its 38th Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005;

Considering that the Democratic Federal Republic of Ethiopia is a State Party to the African Charter on Human and Peoples' Rights;

Recalling that freedom of opinion and expression as well as the right to assembly are fundamental rights enshrined in the international instruments ratified by Ethiopia, and notably Articles 9 and 11 of the African Charter on Human and Peoples' Rights;

Recalling Article 7 of the African Charter ensuring the right to a fair trial and the Guidelines and Principles on the Right to a Fair Trial and to Judicial Assistance in Africa developed by the African Commission on Human and Peoples' Rights;

Deeply concerned about the situation going on since June 2005 in Ethiopia and notably the arbitrary arrests and other serious human rights violations directed at suspected members and supporters of opposition groups, students and human rights defenders;

Recalling that on 8th June and 1st November 2005, security forces killed and injured demonstrators during a demonstration protesting the results of the parliamentary elections in Addis Ababa and other towns;

Concerned by the arbitrary detention of opposition leaders and journalists in Ethiopia;

Noting the creation by the government of Ethiopia of a National Parliamentary Commission to investigate the facts concerning the acts of violence in the country:

1. **DEPLORES the killing of civilians during confrontations with security forces;**
2. **REQUESTS that the Ethiopian authorities release arbitrarily detained political prisoners, human rights defenders and journalists;**
3. **CALLS ON the Ethiopian government to guarantee, to any accused individuals, the right to a fair trial as provided by the African Charter on Human and Peoples' Rights and other relevant international human rights instruments, including the right to seek pardon or commutation of sentence;**
4. **CALLS ON the Ethiopian government to ensure the impartiality, independence and integrity of the National Parliamentary Commission investigating the recent acts of violence in the country and to bring the perpetrators of human rights violations to justice;**

5. **URGES the Ethiopian government to guarantee, at all times, the freedoms of opinion and expression as well as the right to hold peaceful demonstration and political assembly;**
6. **REQUESTS that the Ethiopian government guarantees, in all circumstances, the physical and psychological integrity of human rights defenders in compliance with international instruments especially the Declaration of Human Rights defenders adopted by the UN General Assembly in December 1998;**
7. **CALLS ON the Ethiopian government to comply with the international instruments ratified by Ethiopia and notably, the African Charter on Human and Peoples' Rights (ACHPR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).**

ACHPR/Res.93 (XXXVIII)05: RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN THE DARFUR REGION OF SUDAN

The African Commission on Human and Peoples' Rights, meeting at its 38th Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005;

Considering the provisions of the Constitutive Act of the African Union (AU), the Charter of the United Nations Organization (UN) as well as those of the African Charter on Human and peoples' Rights and other regional and international human rights instruments to which the Sudan is a state party;

Recalling relevant Decisions and Communiqués adopted by the AU Assembly of Heads of State and Government and those of the Peace and Security Council on the situation in Darfur, notably Decisions AU/Dec.54 (III) and Assembly/AU/Dec.68 (IV) adopted at the 3rd and 4th Ordinary Sessions of the AU Assembly of Heads of State and Government respectively, as well as Communiqués PSC/PR/Comm (XIII) and PSC/PR/Comm (XVII) adopted by the AU Peace and Security Council at their 13th and 17th Meetings respectively;

Recalling Resolutions 1556/2004 of 30 July 2004 and 1590/2005, 1591/2005 and 1593/2005 adopted by the UN Security Council on the situation in Darfur, Sudan in March 2005;

Recalling also Resolution ACHPR/Res.74 (XXXVII) 05 adopted by the 37th Ordinary Session of the African Commission on Human and Peoples' Rights on 11th May 2005 on the situation in the Darfur region of Sudan and Resolution ACHPR/Res.68 (XXXV) 04 adopted by the 35th Ordinary Session on 4th June 2004, as well as Resolution E/CN.4/Res.2005/82 adopted by the UN Commission on Human Rights on 21st April 2005 on the situation of human rights in Sudan;

Deeply concerned at the continuing grave violations of human rights and international humanitarian law in Darfur committed by parties to the conflict, in particular the continued depopulation of vast areas in the region from their indigenous owners, threats of violence, intimidation and assault against UN agencies and humanitarian organization, the targeting and killing of AU troops in Darfur, and the killing and abductions of staff members of national and international humanitarian organizations;

Concerned that the African Commission undertook a Fact-Finding Mission to the Darfur region of Sudan in July 2004 and dispatched its report to the government of Sudan but has not yet received a response:

- 1. CALLS ON the government of Sudan to submit its comments to the African Commission with respect to its report on the 2004 Fact-Finding Mission to Sudan;**

2. **CALLS ON the government of Sudan to comply with its obligations under the African Charter on Human and Peoples' Rights, the AU Constitutive Act, the UN Charter and other relevant instruments to which the Sudan is a state party, and comply with the following:**
 - a. **Cease, with immediate effect, all attacks against civilians in Darfur and end the grave violations of human and peoples' rights, in particular the forced de-population of entire areas in the region, rape and sexual violence against women and girls, abduction of women and children, and to cease all support, including the provision of supplies, to the *Janjaweed* militiamen;**
 - b. **Provide the necessary support to all international agencies and humanitarian organizations in order to ensure effective and full access to the war affected areas of Darfur and to facilitate delivery of humanitarian assistance to civilian populations;**
 - c. **Fully and unconditionally cooperate with the Office of the Prosecutor of the International Criminal Court in his efforts to investigate and bring to justice all persons suspected of perpetrating war crimes and crimes against humanity as prescribed in the report of the International Commission of Inquiry on Darfur;**
 - d. **Take all appropriate measures to ensure the effective implementation of the Resolutions 1556/2004 of 30 July 2004 and 1590/2005, 1591/2005 and 1593/2005 adopted on 29 and 31 March 2005 by the United Nations Security Council.**
3. **CALLS ON all parties to the conflict to return to negotiations and to cooperate with the international organs and humanitarian organizations.**

ACHPR/Res.94 (XXXVIII)05: RESOLUTION ON THE HUMAN RIGHTS SITUATION
IN UGANDA

RESOLUTION ON THE HUMAN RIGHTS SITUATION IN UGANDA

The African Commission on Human and Peoples' Rights, meeting at its 38th Ordinary Session held in Banjul, The Gambia, from the 21st November to 5th December 2005,

Bearing in mind Article 45 of the African Charter on Human and Peoples' Rights which stipulates the mandate of the African Commission on Human and Peoples' Rights;

Considering that conflicts in many African countries, including the Republic of Uganda have been responsible for the violation of the Human Rights of civilian population, in particular vulnerable groups such as the elderly, women and children;

Concerned that the said conflict has been responsible for insecurity in Northern Uganda leading to displacement of an estimated 1.8 million people; among whom are young children who are constantly trekking between their villages and towns at night to avoid abduction;

Taking note of the previous concerted efforts by the Government of the Republic of Uganda to bring this conflict to an end;

Welcoming the investigations by the Office of the Prosecutor of the International Criminal Court and the subsequent issuance of arrest warrants in respect of the top leaders and commanders of the Lord Resistance Army (LRA);

Aware that the Republic of Uganda is committed to the independence of the Judiciary and legal profession in that country, as stipulated under Article 26 of the African Charter on Human and Peoples' Rights;

Recalling Article 7 of the African Charter and the Guidelines and Principles on the Rights to Fair Trial and to Judicial Assistance developed by the African Commission on Human and Peoples' Rights;

Deeply concerned and disturbed that the LRA has committed grave Human Rights violations against the civilian population in particular, the mutilation of their victims, abduction of young boys into its rebel forces as child soldiers and forces the young girls into sexual slavery;

Disturbed by recent events on 16th November 2005 threatening the judiciary and lawyers in Uganda:

1. **CALLS ON the parties to the conflict to immediately open negotiation with a view to a conclusion of a ceasefire and peace agreement;**
2. **CALLS ON the LRA to free immediately all the child soldiers, young girls and women held by them and demobilize all combatants;**
3. **SUPPORTS the efforts of the Office of the Prosecutor of the International Criminal Court in its investigations against conduct and activities by the parties to the conflict deemed to be violations of the Rome Statute and to bring those responsible for war crimes in Northern Uganda to justice;**
4. **CALLS ON the international community to urge the parties to the conflict in Northern Uganda to find a peaceful and lasting resolution to the conflict;**
5. **URGES the international community to offer material support to take steps to demobilize the combatants of the LRA, and to assist the people of Northern Uganda in their rehabilitation after 19 years of conflict;**
6. **CONDEMNS the recent incidents of violence in Uganda, which threatens the peace and stability of the country, in particular the threats to the independence of the judiciary and the legal profession in Uganda;**
7. **CALLS ON the Government of the Republic of Uganda to guarantee the independence of the Judiciary and the integrity of the members of the legal profession, in order to ensure impartiality in rendering justice, without intimidation or interference;**
8. **CALLS ON the Government of Uganda to undertake amendments to its laws and abolish the practice of bringing civilians before the Court Martial, and reserve its exclusive jurisdiction to matters affecting serving members of the military in Uganda;**
9. **URGES the Government of the Republic of Uganda to ensure that it guarantees the respect, promotion and protection of human and peoples' rights in Uganda.**

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Executive Council
Eighth Ordinary Session
16 – 21 January 2006
Khartoum, SUDAN

EX.CL/236 (VIII)
Annex IV

**COMMUNICATIONS CONSIDERED BY THE AFRICAN
COMMISSION DURING THE 38TH ORDINARY SESSION**

COMMUNICATIONS CONSIDERED BY THE AFRICAN COMMISSION
DURING THE 38TH ORDINARY SESSION

1. Communication 306/2005 – Zimbabwe Lawyers for Human Rights (on behalf of S. Muzerengwa and 110 others) Zimbabwe
2. **Communication 307/2005 - Obert Chinahamo/Zimbabwe**
3. **Communication 304/2005 - FIDH and al/Senegal**
4. **Communication 308/2005 - Michael Majuru/Zimbabwe**
5. **Communication 305/2005 - Mamboleo/Democratic Republic of Congo**
6. **Communication 303/2005 - Egyptian Initiative for Personal Rights/Egypt**
7. **Communication 257/2002 - Campaign for Good Governance/Libya**
8. **Communication 280/2003 - Nzuzi Phutuka/Democratic Republic of Congo**
9. **Communication 288/2004 - Gabriel Shumba/Zimbabwe**
10. **Communication 297/2005 - Scanlen & Holderness/Zimbabwe**
11. **Communication 305/2005 – Article 19/Zimbabwe**
12. **Communication 312/2005 – INTERIGHTS and the Egyptian Initiative for Personal Rights/Egypt**
13. **Communication 313/2005 – Kenneth Good/Botswana**
14. **Communication 310/2005 – Darfur Relief and Documentation Centre/Sudan**
15. **Communication 309/2005 – Nagat Hassan Abd Alha/Sudan**
16. **Communication 311/2005 – Riffaat O. Makkawi/Sudan**
17. **Communication 298/2005 – Zimbabwe Lawyers for Human Rights/Zimbabwe**
18. **Communication 291/2004 – Chief Fawehinmi/Nigeria**
19. **Communication 300/2005 – SERAP/Nigeria**

20. **Communication 296/2005 – COHRE/Sudan**
21. **Communication 242/2001 – Interights & IHRD/Mauritania**
22. **Communication 299/2005 – Anuak Justice Council/Ethiopia**
23. **Communication 265/2003 – IHRD/Mauritania**
24. **Communication 292/2004 – IHED/Angola**
25. **Communication 278/2003 – PROJUST/Democratic Rep. of Congo**
26. **Communication 284/2003 – ZLHR & ANZ/Zimbabwe**
27. **Communication 275/2003 – Article 19/Eritrea**
28. **Communication 293/2004 – ZLHR & IHRD/Zimbabwe**
29. **Communication 294/2004 – ZLHR & IHRD/Zimbabwe**
30. **Communication 314/2005 – ZLHR & SAHRIT/Zimbabwe**
31. **Communication 270/2003 – Access to Justice/Nigeria**
32. **Communication 287/2004 – Titanji Dugu Ernest/Cameroon**
33. **Communication 272/2003 – CFVPRN & Interights/Cameroon**
34. **Communication 259/2002 – Groupe de Travail/Democratic Rep. of Congo**
35. **Consolidated Communication 274/2003 and 282/2003 – Interights & ASADHO and Odette & Others/Democratic Republic of Congo and Odette & Others/Democratic Republic of Congo**
36. **Communication 281/2003 – Marcel Wetshiokonda/Democratic Republic of Congo**
37. **Communication 285/2004 – Kizila Watumbulwa/Democratic Republic of Congo**
38. **Communication 286/2004 – Dino Noca/Democratic Republic of Congo**
39. **Communication 289/2004 – Koné & Diarra/Côte d’Ivoire**
40. **Communication 267/2003 – Boussamba/Gabon**
41. **Communication 253/2002 – Antoine Bissangou/Congo**

42. **Communication 237/2001 – Ouengue Henri/Gabon**
43. **Communication 266/2003 – Kevin N. Gunme/Cameroon**
44. **Communication 301/2005 – Haregewoin Gabre-Sellassie (On behalf of Former Dergue Officials/Ethiopia)**
45. **Communication 262/2002 – M.I.D.H/Côte d’Ivoire**
46. **Communication 246/2002 – M.I.D.H/ Côte d’Ivoire**
47. **Communication 247/2002 – Jean Simbarakiye/Democratic Rep. of Congo**
48. **Communication 276/2003 – CMRD/Kenya**
49. **Communication 295/2004 – Zimbabwe Human Rights NGO Forum/Zimbabwe**
50. **Communication 279/2003 – SHRO/Sudan**
51. **Communication 235/2000 – Curtis Doebbler/Sudan**
52. **Communication 241/2000 – Purohit & Moore/The Gambia**
53. **Communication 245/2002 – Zimbabwe Human Rights NGO Forum/Zimbabwe**
54. **Communication 277/2003 – Spilg & Mack and DITSHWANELO/Botswana**

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