

AFRICAN UNION

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COMBINED 32ND AND 33RD ACTIVITY REPORT OF THE AFRICAN
COMMISSION ON HUMAN AND PEOPLES' RIGHTS

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

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I. INTRODUCTION

1. The African Commission on Human and Peoples' Rights (the Commission) has the honour to present to the Assembly of Heads of State and Government of the African Union (the AU Assembly), through the Executive Council, the present Combined Activity Report in accordance with Article 54 of the African Charter on Human and Peoples' Rights (the African Charter).

2. The Report covers the period between February and October 2012, and is structured as follows: the legal framework and mandate of the Commission; activities undertaken by the Commission; state reporting; resolutions adopted by the Commission; protection activities; the human rights situation in Africa 25 years following the establishment of the Commission; subsidiary mechanisms of the Commissions • achievements, challenges and prospects; finances and administration and recommendations.

II. LEGAL FRAMEWORK AND MANDATE

3. It will be recalled that the Commission is an independent organ established under the African Charter with the mandate to promote and protect human and peoples' rights in Africa; and that the Commission comprises 11 Members elected for a term of six years, renewable once. The members serve in their personal capacity, in an independent and impartial manner.

III. ACTIVITIES OF THE COMMISSION

4. During the period being reported on, the Commission held the following statutory meetings: the 11th Extra-Ordinary Session (Banjul, 22 February - 01 March 2012); the 51st Ordinary Session (Banjul, 18 April • 02 May 2012); the Second Meeting of the Bureaux of the two Institutions (Algiers, 24 - 25 July 2012); the First Annual Joint Meeting with the African Court on Human and Peoples' Rights (Algiers, 26- 27 July 2012); the 12th Extra-Ordinary Session (Algiers, 30 July • 04 August 2012); and the 52nd Ordinary Session, which also coincided with the 25th anniversary of the establishment of the Commission.

MEETINGS WITH THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS, 24 - 27 JULY 2012, ALGIERS

5. In line with their respective Rules of Procedure, the Commission and the African Court on Human and Peoples' Rights (the Court), organized statutory meetings of their Bureaux (24 - 25 July 2012) and their two institutions (26 - 27 July 2012), where they agreed on concrete ways of collaboration with a view to facilitating their complementarity.

THE EXTRA-ORDINARY SESSIONS

6. The Extra-Ordinary Sessions (EOS) were convened to deal with the backlog of Communications and other outstanding matters. The 11th EOS examined 14 Communications, and adopted 2 Resolutions: one on the human rights situation in Senegal and the other on the human rights situation in northern Mali. The 12th EOS examined 18 Communications and adopted the Reports of: the Promotion Mission to the Central African Republic; the Promotion Mission undertaken by the Committee for the Prevention of Torture in Africa to the Islamic Republic of Mauritania; and the Working Group on Communications. The „Manual for the Promotion and Protection of the Rights of Indigenous Peoples/Communities“ was also adopted during the 12th EOS.

THE ORDINARY SESSIONS

51st Ordinary Session • Banjul , The Gambia: 18 April • 02 May 2012

7. The Session, which was opened by the Attorney General and Minister of Justice of the Republic of The Gambia, and presided over by Honourable Commissioner Catherine Dupe Atoki, Chairperson of the Commission, was attended by the Members of the Commission.

8. Four hundred and seventeen (417) participants attended the Session. Five NGOs were granted Observer Status with the Commission, and 2 State Periodic Reports were considered (Angola and the Sudan).

9. The Commission examined 10 Communications, and heard oral arguments from parties in relation to 4 Communications. It adopted the Report of the Promotion Mission to the Republic of Niger, and also adopted Resolutions on the human rights situation in a number of countries.

52nd Ordinary Session, Yamoussoukro, C,te d'ivoire, 9 - 22 October 2012

10. The 52nd Ordinary Session, which was attended by 565 participants, coincided with the 25th anniversary of the Commission, and was presided over by Honourable Commissioner Catherine Dupe Atoki, Chairperson of the Commission.

11. The President of the Republic of C,te d'ivoire, H.E. Mr. Alassane Ouattara, graced the Opening Ceremony, delivered the key-note address and declared the Session open. He also presided over the Commission's commemorative award giving ceremony. The awards which were given in recognition of the contribution of National Human Rights Institutions (NHRIs) and Non-Governmental Organizations (NGOs) to the Commission's work in the promotion and protection of human and peoples' rights in Africa went to the Uganda Human Rights Commission and the Centre for Human Rights at the University of Pretoria, respectively.

12. The Commission granted Observer Status to 12 NGOs; considered the Periodic Report of the Republic of Côte d'Ivoire; examined 16 Communications; adopted 7 Resolutions as well as the Reports of the following: Study Group on Freedom of Association; Follow-up Mission of the Working Group on Indigenous Populations/Communities in Africa to the Central African Republic; Fact-Finding Mission to the Sahrawi Arab Democratic Republic (SADR);¹ it also adopted the General Comment on Article 14(1)(d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; as well as the Protocol on the Rights of Older Persons.

COMMEMORATION OF THE COMMISSION'S 25TH ANNIVERSARY

13. Twenty five years ago, in 1987, the OAU established the Commission to promote and protect human and peoples' rights on the continent. To commemorate this landmark occasion, the Commission held panel discussions on the various aspects of its work to review how it has performed since its establishment. The panel discussion covered the relationship between the Commission and Member States, between the Commission and other AU bodies, between the Commission and its partners (including NHRIs, NGOS and the United Nations); as well as the Commission's jurisprudence. Panelists in the commemorative reflections included former Chairpersons of the Commission, other AU organs, State Parties, NHRIs, inter-governmental institutions, international and regional organizations, civil society organizations, and a former Secretary to the Commission.

14. The panel discussions, which were moderated by Members of the Commission, made a number of recommendations, including the following: the need for continuous and constructive dialogue between the Commission and all stakeholders and especially State Parties; the need for political will on the part of State Parties to cooperate with the Commission and comply with the Commission's appeals, requests, recommendations and decisions; the need for the AU to adequately resource the Commission in human, financial and material terms; the need for the Commission to improve collaboration with other AU Organs with a human rights mandate, as well as with NHRIs, NGOs and other partners working in the area of human rights in the continent; the need for the Commission to interpret the African Charter in light of African traditions and values since the African Charter was created to respond to Africa's specific needs, and to do this without compromising or losing the essence of international instruments and other human rights norms; the need for the African Charter to be reviewed to among other things either make the position of the Chairperson a permanent one or adequately resource that position, and to give the Commission greater involvement in the recruitment of staff including the Secretary; and the need for the Commission to expedite the consideration of Communications.

15. Other commemorative activities organized by the Commission in collaboration with the Ivorian Government included the 'Running for Human Rights' Marathon competition; a Human Rights Musical Concert and a simulated Human Rights Moot Court litigation argued before the Commission as the sitting Bench between Université de l'Atlantique and the Institut Universitaire d'Abidjan. The Université de l'Atlantique emerged as the winner.

¹ This Report is attached to the Report on the Activity

IV. STATE REPORTING

16. The status of submission of Periodic Reports by State Parties as at the end of the 52nd Ordinary Session stands as follows:

Periodic Reports	State Party
Up to date • 8	Angola, the Democratic Republic of the Congo, Côte d'Ivoire, Libya, Nigeria, Sudan, Togo and Uganda.
1 Report overdue • 7	Botswana, Burkina Faso, Burundi, Cameroon, Ethiopia, Namibia and Rwanda.
2 Reports overdue • 6	Benin, Congo (Brazzaville), Madagascar, Mauritius, Tanzania and Tunisia.
3 Reports overdue • 7	Algeria, Central African Republic, Kenya, Mauritania, South Africa, Zambia and Zimbabwe.
More than 3 Reports overdue • 14	Cape Verde, Chad, Egypt, The Gambia, Ghana, Guinea, Lesotho, Mali, Mozambique, Niger, Sahrawi Arab Democratic Republic, Senegal, Seychelles and Swaziland.
Never submitted a report • 11	Union of the Comoros, Djibouti, Equatorial Guinea, Gabon, Guinea-Bissau, Liberia, Malawi, Sao Tome and Principe, Sierra Leone, Somalia and Eritrea.

17. During the reporting period, the Commission considered the Periodic Reports of the Republics of Angola, Sudan and Côte d'Ivoire, and adopted Concluding Observations on the same. The Periodic Report of the Republic of Togo was considered during the 50th Ordinary Session, and the Concluding Observations were adopted during the 51st Ordinary Session following receipt of additional information from the State.

V. RESOLUTIONS

18. During the reporting period, the Commission adopted the following 22 Resolutions:

Session	Resolutions adopted
11 th EOS	Resolution on the Human Rights Situation in Senegal; Resolution on the Human Rights Situation in the North of Mali; Resolution on the Human Rights Situation in the Federal Republic of Nigeria;
51 st OS	Resolution on the Situation of the North of the Republic Mali; Resolution on the Human Rights Situation in Federal Republic of Nigeria; Resolution on the Human Rights Situation in the Democratic Republic of Ethiopia; Resolution on the Situation Between Sudan and South Sudan; Resolution on the Human Rights Situation in the Kingdom of Swaziland;

	<p>Resolution on the Unconstitutional Change of Governments; Resolution on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; Resolution on the Attacks Against Journalists and Media Practitioners in Somalia; Resolution to modify the Declaration of Principles on Freedom of Expression to include Access to Information and request for a Commemoration Day on Freedom of Information; Resolution on the Renewal of the Mandate of Expert Members of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa; Resolution on the Renewal of the Mandate of the Committee on the Protection of the Rights of People Living with HIV and those at risk, Vulnerable to and Affected by HIV and Re-appointment of Members of the Committee. Resolution on the Human Rights-Based Approach to Natural Resources Governance.</p>
52 nd OS	<p>Resolution on the Expansion of the Mandate of the Working Group on Communications and Modifying its Composition; Resolution on the Expansion of the Mandate of the Working Group on the Death Penalty in Africa; Resolution on the Extension of the Deadline for the Study on Freedom of Association in Africa; Resolution on the need to Develop Guidelines on Conditions of Police Custody and Pre-trial Detention in Africa; Resolution on the need for a Study on the Situation of Women Human Rights Defenders in Africa; Resolution on the Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights; and Resolution on the Right to Adequate Housing and Protection from Forced Evictions.</p>

VI. PROTECTION ACTIVITIES

19. In line with the Commission's protective mandate to consider complaints of allegations of human and peoples' rights violations from individuals and State Parties, the Commission has, since its inception, handled a total of 426 Communications. It has concluded 210 Communications, including ruling 82 Communications Inadmissible and striking out 13 Communications. It has issued Provisional Measures with regards to 22 Communications and has also referred 2 Communications to the Court. As at the 52nd Ordinary Session, 76 Communications are pending before the Commission.

20. The following table gives the geographical breakdown of decisions on Communications as at the 31st Activity Report:

Table 1: Geographical breakdown of Decided Communications

West Africa	North Africa		East Africa		Central Africa		Southern Africa	
Benin	6	Algeria	3	Comoros	0	Burundi	2	Angola
Burkina Faso	2			Djibouti	1	Cameroon	12	Botswana
Cape Verde	2	Egypt	6	Eritrea	3	CAR	0	Lesotho
Cote d'Ivoire	3	Libya	2	Ethiopia	9	Chad		
The Gambia	10	Mauritania	5	Kenya	8	DRC		Malawi
Ghana	6	SADR	0	Madagascar	1	Equatorial Guinea		
Guinea	3	Tunisia	1	Mauritius	0	Gabon		Mozambique
Guinea-Bissau	0			Rwanda	3			
Liberia	2			Seychelles	1	Republic of Congo		Namibia
Mali	0			Somalia	0	Sao Tome & Principe	0	Swaziland
Niger	1			South Sudan	0			South Africa
Nigeria	32			Sudan				
Senegal	4			Tanzania				Zambia
Sierra Leone	1			Uganda	3			Zimbabwe
Togo	5							0

21. During the period being reported on, the Commission considered the following Communications:

Table 2: Communications considered

Session	Communications considered
11 th EOS	<p>I. <u>Seizure</u></p> <p>(i) Communication 409/12 • Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v. Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe</p> <p>(ii) Communication 410/12 - Congress for Justice and Democracy v. Gabon</p> <p>II. <u>Admissibility</u></p> <p>Admissible:</p> <p>Communication 290/05 • Open Justice Initiative (on behalf of Pius Njawe Noumeni v. Cameroon</p> <p>Inadmissible:</p> <p>(i) Communication 351/07 • Givemore Chari (represented by Gabriel Shumba) v. Zimbabwe;</p> <p>(ii) Communication 331/2006 - Kamanakao Association, Reteng & Minority Rights Group v. Botswana</p> <p>(iii) Communication 356/07 • The Gambia Task Force v. The Gambia</p>

	<p>(iv) Communication 278/03 - Promoting Justice for Women and Children (PROJUST) v. DRC</p> <p>(v) Communication 340/07- Zimbabwe Human Rights NGO Forum v. Zimbabwe</p> <p>(vi) Communication 314/06 Zimbabwe Lawyers for Human Rights and Human Rights Trusts of Southern Africa v. Zimbabwe</p> <p>III. <u>Merits</u></p> <p>Communication 288/04 - Gabriel Shumba v. Zimbabwe</p> <p>IV. <u>Request for withdrawal of Communication</u></p> <p>Communication 380/09 - Global Conscience Initiative Cameroon v. Cameroon</p> <p>V. <u>Implementation of the Commission's recommendations</u></p> <p>Communication 313/05 • Kenneth Good v. Botswana</p> <p>VI. <u>Referred to the African Court</u></p> <p>Communication 381/09 • Centre for Minority Rights Development (CEMIRIDE) (Kenya) and Minority Rights Group v. Kenya</p>
51 st OS	<p>I. <u>Seizure</u></p> <p>(i) Communication 411/12 - Mr. Saif Al-Islam Gaddafi (represented by Mishana Hosseinioun) v. Libya; (request for Provisional Measures - issued on 18 April 2012)</p> <p>(ii) Communication 412/12 - Journal Echos du Nord (represented by Maitre Paulette Oyane-Ondo) v. Gabon</p> <p>(iii) Communication 413/12 - Mr. David Mendes (Represented by Centre for Human Rights) v. Angola; (request for Provisional Measures - issued on 30 April 2012)</p> <p>(iv) Communication 414/12 - Lawyers for Human Rights (Swaziland) v. Swaziland</p> <p>II. <u>Oral Hearings</u></p> <p>(i) Communication 335/08 - Dabalorivhuwa Patriotic Front v. South Africa</p> <p>(ii) Communication 365/08 - Christopher Bygonza v. Uganda;</p> <p>(iii) Communication 379/09 • Monim Elgak, Osman Hummeida and Amir Suliman, International Federation for Human Rights (FIDH) and World Organization Against Torture (OMCT) v. Sudan;</p> <p>(iv) Communication 54/91, 61/91, 98/93, 164/97, 196/97, 210/98 - Malawi Africa Association, Amnesty International, Ms. Sarr Diop, Union Inter africaine des Droits de l'Homme and RHADDHO, Collectif des Veuves et Ayant Droit, Association Mauritanienne des Droits de l'Homme v. Mauritania</p> <p>III. <u>Merits</u></p> <p>Communication 295/04 • Zimbabwe Human Rights NGO Forum v. Zimbabwe</p>
12 th EOS	<p>I. <u>Seizure</u></p> <p>(i) Communication 415/12 • Mr. E. N. Etonde Ekoto v. Cameroon</p> <p>(ii) Communication 416/12 • Mr. Jean Marie Atangana Mebara v. Cameroon</p> <p>(iii) Communication 417/12 - ADHUC v. Republic of Congo</p> <p>(iv) Communication 418/12 - Chief Akpabio and Lady Apostle Helen Akpabio v. Nigeria</p> <p>(v) Communication 419/12 - Indigenous People of the Lower Omo Valley (represented by Survival International Charitable Trust) v. Ethiopia</p> <p>(vi) Communication 420/12 - Sudanese Civilians in South Kordofan and Blue Nile (represented by the Enough Project) v. Sudan (Joined with 402/11)</p> <p>II. <u>Follow-up of Provisional Measures</u></p> <p>(i) Communication 402/11 - Sudan Democracy First Group, INTERIGHTS & Human Rights Watch v. Sudan</p> <p>(ii) Communication 411/12 - Mr. Saif Al-Islam Gaddafi (represented by Mishana Hosseinioun) v. Libya</p> <p>(iii) Communication 413/12 - David Mendes (represented by the Centre for Human Rights) v. Angola</p> <p>III. <u>Admissibility</u></p> <p>Inadmissible:</p> <p>Communication 337/2007- Dr Kevin Ngwang Gumne & others v. Nigeria and Cameroon</p> <p>Admissible:</p>

	<p>(i) Communication 368/2009 • Abdel Hadi Ali Radi v. Sudan (ii) Communication 379/09 • Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v. Sudan</p> <p>IV. <u>Review</u> Communication 384/09 - Kevin Ngwang Gumne et al v. Cameroon</p> <p>V. <u>Implementation of the Commission's recommendations</u> Communication 276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya</p> <p>VI. <u>Merits</u> Communication 301/05 - HRDA v. Ethiopia</p>
52 nd OS	<p>I. <u>Seizure</u> (i) Communication 423/12 • Mack-Kit Samuel and Moukoko Priso (represented by Moualal Ruben) v. Cameroon (ii) Communication 424/12 • Samira Ibrahim Mohamed Mahmoud and Rasha Ali Abdel-Rahman (represented by the Egyptian Initiative for Personal Rights and INTERIGHT) v. Egypt (iii) Communication 425/12 • Legal Defense and Assistance Project (on behalf of Mr. Abiodun Subaru) v. Nigeria (iv) Communication 426/12 • Agnes Uwimana-Nkusi & Sadata Mukakibibi (represented by Media Legal Defence Initiative) v. Rwanda</p> <p>II. <u>Communications with Non -Compliance with Provisional Measured issued by the Commission</u> Communications proceeding to the admissibility stage: (i) Communication 402/11 & 420/12: Sudanese Civilians in South Kordofan and Blue Nile (represented by Sudan Democracy First Group, REDRESS, Human Rights Watch, INTERIGHTS and Enough Project) v. Sudan (ii) Communication 413/12: David Mendes (represented by the Centre for Human Rights) v. Angola Communications referred to the African Court: Communication 411/12: Mr. Saif Al-Islam Gaddafi (represented by Mishana Hosseinioun) v. Libya</p> <p>III. <u>Admissibility</u> Admissible Communication 409/12 • Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe</p> <p>IV. <u>Merits</u> (i) Communication 286/04 : Dino Noca v. DRC (ii) Communication 365/08: Christopher Byagonza v. Uganda</p> <p>V. <u>Communications struck out for want of diligent prosecution</u> (i) Communication 285/04: Mr. Kizila Watumbula v. DRC (ii) Communication 289/04: Maîtres Brahima Kon... et Ti...oul... Diarra v. Côte d'Ivoire (iii) Communication 342/07: PAIN v. Sudan (iv) Communication 372/09: Adolfo Samuel Beira (represented by Zeldá de Vasconcelos) v. Mozambique (v) Communication 391/10: Mr. Abdelrahman Mohamed Gassim & 9 Others (represented by East and Horn of Africa Human Rights Defenders Project) v. Sudan (vi) Communication 397/11: Omo Valley and Lake Turkana Communities v. Kenya and Sudan</p>

22. The above tables show that during the 12 months of the reporting period alone: 16 new Communications were seized; 16 Decisions were adopted • 5 on Merits and 11 at Admissibility level (of the 11 Communications decided at Admissibility level, 7 were declared

inadmissible and 4 admissible); 6 Communications were struck out; 2 Communications were referred to the African Court; provisional measures were issued on 2 Communications; the Commission followed up on the implementation of its decisions in 2 Communications; it also followed up on the provisional measures it had issued with regards to 5 Communications.

23. Furthermore, in addition to the Communications already reported on by the Commission in its 31st Activity Report, during the 10th Extra-Ordinary Session the Commission also adopted Communication 277/2003 -Spilg and Mack & Ditshwanelo (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana and Communication 323/06 - EIPR and INTERIGHTS v. Arab Republic of Egypt on the Merits. Three Communications were considered on admissibility: Communication 347/07 € Association Pro Decheros Humanos De Espana (APDHE) v. Equatorial Guinea and Communication 372GTK/09 € INTERIGHTS v Federal Democratic Republic of Ethiopia declared inadmissible; Communication 328/06 € Front for the Liberation of the State of Cabinda v. Angola declared admissible.

Implementation of the Commission's decisions

24. The Commission would like to bring to the attention of the Executive Council the refusal of the Republic of Botswana to implement the Commission's Decision in Communication 313/05 • Kenneth Good v. Botswana. Through Diplomatic Note Ref: 10/12 BEA5/21 C VIII (4) AMB of 23 March 2012, the Republic of Botswana unequivocally stated the following: ,the Government has made its position clear; that it is not bound by the decision of the Commission.f It will be recalled that this decision was referenced in the 28th Activity Report of the Commission which was authorized for publication by the Executive Council through Decision EX.CL/600(XVII). The Commission is bringing this refusal to the attention of the Council for appropriate action.

VII. THE HUMAN RIGHTS SITUATION IN AFRICA 25 YEARS ON - ACHIEVEMENTS AND CHALLENGES/ PROSPECTS

25. In 2011, through Executive Council Decision EX.CL/Dec.639 (XVIII), the Executive Council requested the Commission to include in its reports, the status of human and peoples' rights in the continent.

26. The first such report, contained in the Commission's 3rd Activity Report and submitted to the 20th Session of the Executive Council in January 2012, provided the baseline of the human rights situation in Africa. That report showed the human rights situation on the continent to be a variegated one in that, while achievements have been made in some areas, some aspects have proved particularly resistant to change, while others have even regressed. That picture has not changed much in the 18 months since then.

27. On the upside, major international human rights instruments have been signed, ratified and/or acceded to, which take into account Africa's specific situation and needs, including: the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the Protocol to the African Charter on Human and Peoples' Rights on the

Establishment of the African Court on Human and Peoples' Rights; the African Charter on Democracy, Elections and Governance; to name but a few. This has been augmented by domestication of some of these instruments into national laws, and the establishment, or reconstitution, of a number of institutions for the promotion and protection of human rights in a number of States, including National Human Rights Institutions. A number of referenda have been held, which have led to adoption of new national constitutions, that incorporate human and peoples' rights, which guarantee fundamental rights in accordance with relevant human rights treaties ratified. Additionally, there has been marked movement from non-interference to non-indifference in situations within Member States, in line with the Constitutive Act of the African Union. There is some evidence of willingness on the part of Member States to cooperate with the Commission: for instance, in compliance with the decision of the Commission in the SERAC v Nigeria case, the Nigerian Government established the Federal Ministry of Environment and the Niger Delta Cooperation; and the Zambian Government reviewed its Constitution in response to the Commission's ruling in the case of Legal Resources v Zambia. There is more visibility of the Commission and its protective mandate as reflected by the increase in the number of Communications brought before the Commission, including 2 between State Parties: one in 1999 (Democratic Republic of the Congo v Burundi, Rwanda and Uganda); and the other one which was brought by the Republic of The Sudan against the Republic of South Sudan this year (2012), which unfortunately the Commission could not be seized of as, according to the status of ratification of AU treaties, South Sudan is yet to ratify the African Charter. In addition, the Commission is increasingly playing a more prominent role on human rights issues at the continental level, for example, it has undertaken fact missions suo motu, to Mauritania, Darfur, South Africa, Zimbabwe, to name a few.

28. These positive developments notwithstanding, the Commission regrets to note the prevalence of on-going conflicts in Somalia, the Darfur region of Sudan and the Democratic Republic of Congo, of differing intensities, which continue to destroy livelihoods and infrastructure, trigger mass displacements of whole populations creating internally displaced persons (IDPs), refugees and asylum seekers on the continent. Added to these are the post-conflict issues affecting still impacting Liberia, Sierra Leone and Côte d'Ivoire; conflicts which arose from contested elections in Kenya, Côte d'Ivoire and Senegal; the bloody uprisings of the Arab Spring; conflicts which arose from unconstitutional changes of Government in Guinea, Madagascar, Mali, Guinea Bissau; and the Rwanda genocide. In addition, increased attention to economic, social and cultural rights notwithstanding, continuing poverty and illiteracy levels pose a major challenge to the achievement of the Millennium Development Goals (MDGs) on the continent and erode gains that are being made in other spheres. Further, in spite of increasing ratification of international and regional human rights instruments, they are hardly implemented by the State Parties that signed them. Aside from the particular instances noted earlier relating to Nigeria and Zambia, Member States generally do not comply with the decisions of the Commission or implement its recommendations. They also do not respect provisional measures issued by the Commission to prevent irreparable harm to victims.

Subsidiary Mechanisms

29. Starting from 1995, the Commission has set up Subsidiary Mechanisms to complement its mandate by focusing on human rights issues of particular concern to the Commission and the continent. These Subsidiary Mechanisms comprise Special Rapporteurs (SRs), Working Groups (WGs), and Committees whose task is to spearhead the thrust of the Commission's work in these specific areas. A review of the work of these Subsidiary Mechanisms• their achievements, challenges and prospects shows the main areas of concern on the continent and also provides an overview of the human rights situation in Africa since the establishment of the Commission. The Commission currently has 13 such Subsidiary Mechanisms, as set out hereunder.

Special Rapporteur on Prisons and Conditions of Detention in Africa

30. Established during the Commission's 20th Ordinary Session in 1996, the mandate of this mechanism is to examine the situation of persons deprived of their liberty within the territories of State Parties to the African Charter, emphasizing individual state accountability and responsibility to care for prisoners and other detainees, and to guarantee the minimal standard of prisoners' rights. Since the creation of this mechanism, the Commission has adopted a number of instruments relating to the standards of prisons in Africa, and the mechanism has helped raise the profile of prisoners' rights in the Commission's agenda by examining approximately 270 prisons and places of detention in the last decade and undertaking more than sixty missions to over 40 AU Member States.

31. However, nearly twenty years after the establishment of the mechanism, the conditions of prisons and prisoners do not conform with the articles of the African Charter and to international norms and standards for the protection of the human rights of prisoners. Prisons in many countries are characterized by severe inadequacies including high congestion; poor physical; health and sanitary conditions, inadequate recreational, vocational and rehabilitation programs; restricted contacts with the outside world and a large percentage of persons awaiting trial. It is not unusual to see women being imprisoned in the same facility as men, men guarding female prisoners; children being imprisoned with adults; and mentally ill patients to be locked up in prison.

Special Rapporteur on the Rights of Women in Africa

32. Established during the 23rd Ordinary Session in 1999, in line with the Commission's determination to promote the rights of women and girls and address the discrimination and injustice that they continue to experience, the SR spearheaded the development of the Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa (popularly known as 'the Maputo Protocol'), led the drafting of the Guidelines for State Reporting under the Maputo Protocol, and has undertaken missions to Member States and has participated in several key meetings, seminars and workshops.

33. However, the situation of women's rights remains a source of constant concern, for example gender-based violence remains a concern, particularly in conflict areas. The SR wishes to state that many State Parties to the Protocol are yet to harmonize some of their

domestic laws with the provisions of the Protocol, with the result that discriminatory laws and legislative gaps in crucial areas such as inheritance, access to land, marriage and custody of minors still exist. The SR further notes that despite the commitments made by State Parties, diseases such as malaria, HIV/AIDS, tuberculosis, in addition to negative social, cultural, economic and legal factors continue to threaten the lives and health of a large number of women and girls in the continent. Furthermore the maternal death rate related to pregnancy and childbirth in Africa is still one of the highest in the world, despite the adoption of legislative and corrective measures. The situation of women in the rural areas remains dire, and in the area of education, the problem of girls access to education despite the progress made by some countries.

Special Rapporteur on Human Rights Defenders

34. Established at the 35th Ordinary Session in 2004, the SR was established to seek, receive, examine and act upon information on the situation of human rights defenders in Africa. Since establishment, the SR has undertaken several promotion missions to various member states, collaborated with NGOs in developing working tools for human rights defenders, publishes a bulletin titled *The Rapporteur's Newsletter*, has sent numerous letters of allegations to many of the AU State Parties, and published 31 press releases and statements.

35. Regarding the current situation, SR observes that human rights defenders constantly work in very difficult and often hostile environments. The Mechanism continues to receive information on cases of reprisals against human rights defenders, particularly with regards to the rights of the freedom of association and to peaceful demonstration. Additionally the SR is highly concerned with the rights of female human rights defenders, who are subjected to abuses ranging from violence in their private and social lives, to being subjected to restrictions in some States.

Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons

36. Established at the 35th Ordinary Session in 2004, the SR's mandate is, *inter alia*, to seek, receive, examine, and act upon the situation of refugees, asylum seekers and internally displaced persons in Africa. The SR led the drafting of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, and has been involved in advocacy efforts to promote the rights of refugees, asylum seekers, internally displaced persons and migrants in Africa through the publication of press releases, the adoption of resolutions and the issuance of urgent appeals, as well as through activities conducted during various promotion missions. However, the SR faces a number of challenges in fulfilment of its mandate, in particular the continuing conflicts in African which continue to spawn IDPs, refugees and asylum seekers, also creating conditions which make it impossible for the SR to undertake missions to the affected areas to monitor the situation of affected populations; for example the Commission delegation could not access the occupied territories of the Western Sahara, to undertake the fact finding mission mandated by the Executive Council through Executive Council Decision EX.CL/Dec. 689 (XX).

37. The general situation with regards to the rights of refugees, asylum seekers, displaced persons and migrants in Africa has not significantly improved over the years. Political instability and conflicts that have occurred in some African countries have increased the number of refugees, asylum seekers, displaced person and migrants. For example, in Mali, East of DRC, Sudan, Somalia, the dire security and humanitarian situation have caused massive movement of populations, forcing many of our African brothers and sisters to flee their homes. The problem of ,illegalf or ,clandestinef migrants continues to be a major area of concern. The illegal migration influx across the Atlantic and the Mediterranean, and through the Gulf of Eden, has increased and at times caused loss to life due to dangerous travelling conditions.

Special Rapporteur of Freedom of Expression and Access to Information

38. Established during the 36th Ordinary Session in 2004 to champion the right to freedom of expression, which is fundamental to the existence and consolidation of democracy, including accountability of Governments, the SR's major achievements include: the adoption of the Declaration on the Principles of Freedom of Expression in Africa; the Draft Model Law on Access to Information in Africa developed in October 2010; the project to decriminalize defamation and libel laws in Africa launched in May 2012; and monitoring the situation of freedom of expression and access to information on the continent, including transmitting urgent letters of appeal to Member States to protect the rights of victims. Additionally, the SR contributed to the ratification efforts for the African Charter on Democracy, Elections and Governance.

39. However, the situation of freedom of expression and access to information in Africa over the last decade has deteriorated and continues to pose challenges on the continent. Many countries in Africa still have laws that criminalize certain types of speech (defamation and other types of †insult€, sedition, false news)which are used to punish disapproved legitimate critical expression. In response to allegations of human rights violations, the SR responds by transmitting urgent Letters of Appeal to the concerned state, through which the SR has observed the prevalence of the following issues: intimidation, harassment, kidnapping, threats, unwarranted detention/arrest and murder of journalists and media practitioners, closure of newspapers and media houses. Some of the letters also express concerns about the content of laws related to freedom of expression and access to information, and usually call for an amendment of such laws to bring them in line with the African Charter, and the Declaration.

Working Group on Indigenous Populations/Communities in Africa

40. Established during the 28th Ordinary Session in 2000, with the mandate to, inter alia, examine the concept of indigenous populations/communities in Africa and study the implications of the African Charter for the wellbeing of indigenous communities, in response to the critical situation of indigenous peoples on the continent which is marked, among other things, by marginalization, exploitation, dispossession, harassment, poverty and illiteracy. The Working Group has since carried out an intensive advocacy campaign to draw the attention of Member States to the plight of indigenous communities on the continent, including a film on the situation of indigenous peoples in Africa, and the result of this

advocacy is that some States have designed policies and programs that are favorable to indigenous people, enacted national laws that take into account the specific needs of indigenous peoples and ratified international treaties on indigenous peoples.

41. However, the main issues of concern related to the rights of indigenous peoples comprise mainly the lack of recognition by State Parties. Consequently, they are yet to enjoy all rights due to them; and where the rights do exist, the terms used in laws and policies to refer to them are in contradiction with international law. In the majority of cases, they are victims of land and property dispossession; they suffer discrimination and marginalization in all aspects of their lives, and are also victims of inhuman and degrading treatment from the dominant groups.

Working Group on Economic, Social and Cultural Rights

42. Established during the 36th Ordinary Session in 2004, the WG was created to develop and submit to the Commission draft principles and guidelines on economic, social and cultural rights and to prepare a revised draft of state reporting guidelines for economic, social and cultural rights. The achievements of the WG include the adoption of the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter; the adoption of the State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter; undertaking promotion missions to some States Parties to the African Charter; organisation of advocacy campaigns for the ratification of the Protocol to the International Covenant on Economic, Social and Cultural Rights; the publication of press releases condemning violations of these rights; and the organisation of meetings with victims of economic, social and cultural rights violations.

43. However, despite the progress noted in some African countries, compliance with the international and regional instruments guaranteeing these rights is still a problem. The Commission has demonstrated through its jurisprudence that these rights are justiciable, which, however, is not yet the case in many African countries.

Working Group on the Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa

44. Established during the 37th Ordinary Session in 2005, the WG is mandated to monitor the death penalty in Africa, in addition to issues of extra-judicial, summary or arbitrary killings. The WG has organized two regional conferences on the death penalty in Africa; finalized the Study on the Question of the Death Penalty in Africa which was adopted by the Commission during its 51st Ordinary Session; organized advocacy and awareness raising meetings and workshops; and continues to monitor the situation of the death penalty on the continent. Furthermore, the WG has started the process of drafting of an Additional Protocol to the African Charter on the Abolition of the Death Penalty in Africa, to fill the gap on the inviolability and sanctity of life.

45. As at the time of the establishment of the Commission, some 25 years ago, the situation with regards to the death penalty in Africa was bleak. To date, 17 State Parties have abolished the death penalty for all crimes, and a further 19 states have a moratorium in

place for more than ten years. However between 2011 and 2012, there has also been a sudden wave of executions that have taken place in a number of African States, namely Botswana, Egypt, The Gambia, Somalia and South Sudan.

Working Group on Older Persons and People with Disabilities in Africa

46. Established during the 42nd Ordinary Session in 2007 to articulate the rights of older persons and people with disabilities, and in response to growing concerns about the situation of older persons in Africa, the WG's core mandate is to develop a concept paper to serve as a basis for the adoption of a Draft Protocol on Ageing and People with Disabilities. The WG uses as its advocacy platform the African Union Policy Framework and Plan of Action on Ageing, which requires State Parties to recognize the rights of older persons, to abolish all forms of discrimination based on age, and to ensure that the rights of older persons are protected through appropriate legislation. In addition, the WG spearheaded the development of the Protocol on the Rights of Older Persons, which has been forwarded to the Commission of the African Union in Addis Ababa so that it can go through the normal AU processes.

47. However, while some progress has been made, older people and persons with disabilities continue to experience challenges of discrimination, poverty and severe difficulties in accessing fundamental rights. In Africa there is a strong relationship between disability and poverty. Poverty makes people become more vulnerable to disability, and disability reinforces and deepens poverty. Gender is at the heart of many violations of the rights of older persons in Africa, and the illiteracy rate is known to be high in many African countries, in particular among women in rural areas. Furthermore, lack of reliable data about the conditions of older persons and people with disabilities, make it difficult to advocate for proper mainstreaming of their rights in the policies and development programs of Member States.

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

48. Established barely 3 years ago during the 46th Ordinary Session in 2009 to address allegations of human rights violations committed in the extractive industries sector in Africa by different agents (State agents, as well as non-state actors), the WG was only able to hold its inaugural and follow-up internal meetings, in 2011 and 2012 respectively. The WG has since developed a Work Plan to guide its activities, and is currently working on a comprehensive report of the human rights situation and needs in the extractives industry sector, for consideration by the Commission.

49. In its initial work, the WG has observed that the continent of Africa is very rich in mineral and natural resources. However, the situation referred to as the ,resource curse' or the ,paradox of plenty' has been observed in a number of State Parties, with the extraction of these mineral resources fuelling or aggravating massive human rights violations committed by non-state actors, and in some cases by the States themselves. Persistent human rights violations committed by those involved in the extractive industries sector, including by non-state actors, have impacted negatively on countries at large, and on the

communities who live in resource-rich areas as they experience forced relocation and eviction, loss of livelihood, destruction of the environment, to name a few.

Committee for the Prevention of Torture in Africa

50. Though prohibited under Article 5 of the Charter, torture and other forms of ill treatment are still prevalent in many parts of the continent. In recognition of this, in October 2002 the Commission adopted the Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (the RIGs) to assist State Parties to the Charter effectively implement the provisions of Article 5. During its 35th Ordinary Session in 2004, the Commission established the Committee for the Prevention of Torture in Africa (CPTA) to monitor the implementation of the RIGs and related instruments. The Committee has among other things: published and disseminated the RIGs in the four AU official languages; held training workshops for the police and security personnel for a number of Member States; organized conferences/seminars on the prohibition and prevention of torture in various Member States; undertaken promotion missions to several Member States; runs a database on the status of the criminalization of torture and the ratification of the applicable instruments; and to date 43 States that have ratified the Convention against Torture, largely due to the advocacy role played by CPTA.

51. However, despite this absolute prohibition, it is a fact that torture is still a widespread and endemic problem in most parts of the African continent, and that impunity for perpetrators is deeply entrenched. This state of affairs is influenced by the political and socio-economic situation in most parts of the continent, characterized by poverty, acute deficiencies in governance and the rule of law, corruption, discrimination, social exclusion, impunity, ignorance and a host of other factors. Added to these, the non-criminalization of torture in domestic legislation, inadequate independent monitoring of places of detention, as well as the disregard of basic procedural safeguards for persons deprived of their liberty, have created conditions that enhance the practice of torture.

Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV

52. Established less than 2 years ago during the 47th Ordinary Session in 2010, to seek, request, receive, analyze and respond to reliable information on the situation and rights of PLHIV and those at risk, the Committee has so far elaborated its Work Plan, held internal organizational meetings, and started interacting with various stakeholders, including representatives from Government, the medical field, civil society and human rights defenders, to raise awareness on the situation and rights of PLHIV, with a view to having suitable appropriate interventions put in place.

53. The Committee notes that Africa remains the continent most affected by HIV and AIDS. Recent data available on the HIV epidemic indicates that about 68% of people living with HIV in the world are living on the African continent, a region with only 12% of the global population. Furthermore, more than half of the people newly infected with HIV live in Sub-Saharan Africa, and about 65% of AIDS-related deaths reported globally occur in Sub-Saharan Africa. Stigma, discrimination, marginalization and exclusion, gender inequalities

and inadequate human rights protections are well-recognized as both a cause and consequence of the HIV epidemic on the continent and thus, barriers to effective responses to HIV on the continent. This recognition implies that non-discrimination, equality and the promotion and protection of human rights are to be at the centre of the response to HIV and AIDS at a global, regional and national level.

Challenges

54. From the above report, a general trend can be observed indicating the lack of political will by Member States to support and cooperate with the Commission and its subsidiary mechanisms, as evidenced by the lack of implementation of the Commission's recommendations, general reluctance in granting authorization to conduct promotion and fact finding missions, and not responding to urgent appeals or letters concerning allegations of human rights violations.

55. Other challenges are that a relatively small number of Member States have signed, ratified and/or acceded to crucial regional human rights instruments; there are delays in depositing the instruments of ratification; there is very little implementation of the instruments signed/ratified/acceded to; and very few countries incorporate these treaties into their national laws.

56. The scorecard on the human rights situation in Africa 25 years after the establishment of the Commission is thus a mixed bag of major breakthroughs, continuing concerns and challenges.

VIII. FINANCES AND ADMINISTRATION

STAFFING

57. From an approved staff complement of 13 as at 2007 in line with the Maputo Decision of 2003, the Commission's Secretariat now has an approved staff establishment of 46; however only 22 of these are currently on ground, including those on fixed term and short term contracts. While this represents a major achievement which cannot be gainsaid, the fact remains, however, that to date only a few of the staff approved have actually come on board and the bulk of the approved posts are still vacant as the recruitment process has not been as expeditious as the needs of the Commission demand, particularly in relation to the Commission's language requirements. Additionally, to date the Secretariat has only one Legal Officer who can work in French, which has severely hampered the work of the Commission and its Secretariat.

FUNDING

58. The budget of the Commission has improved over the years but is still not enough to meet the Commission's requirements. For example for the 2012 fiscal year, the Commission's budget is US\$ 5,692,156, which represents 2.08% of the AU annual budget, a trend which has varied very little, as shown in the table below:

Table 1: African Commission Budget

Period	African Commission Budget	AU general budget	Percentage
1989	US\$742,165	US\$28,930,941	2.56
1990/1991	US\$678,400	US\$29,063,072	2.33
1992/1993	US\$501,881	US\$27,900,897	1.79
1993/1994	US\$430,801	US\$27,972,470	1.54
1994/1995	US\$511,215	US\$29,500,000	1.73
1995/1996	US\$489,630	US\$30,160,000	1.62
1996/1997	US\$588,580	US\$30,859,000	1.90
1997/1998	US\$542,158	US\$31,199,000	1.73
1998/1999	US\$596,456	US\$32,400,000	1.84
1999/2000	US\$567,820	US\$33,400,000	1.70
2000/2001	US\$792,200	US\$29,000,000	2.73
2001/2002	US\$760,870	US\$30,289,600	2.51
2003	US\$407,700	US\$22,600,000	1.80
2004	US\$982,929	US\$43,000,000	2.28
2005	US\$1,142,051	US\$129,931,494	0.87
2006	US\$1,142,436	US\$135,939,648	0.84
2007	US\$1,182,391	US\$132,963,152	0.88
2008	US\$6,003,857	US\$140,037,880	4.28
2009	US\$3,671,766 ²	US\$164,256,817	2.23
2010	US\$4,929,852 ³	US\$250,453,697	1.96
2011	US\$7,942,869 ⁴	US\$256,754,447	3.09
2012	US\$ 5,692,156	US\$ 274,095,386	2.08

59. The Commission is concerned that this budget is still insufficient to address the financial needs of the Commission and its work; it is further concerned that no AU funds at all have been allocated for the Commission's program activities, which means that therefore, these activities must be funded from external sources.

IX. IMPLEMENTATION OF EXECUTIVE COUNCIL DECISIONS

CONSTRUCTION OF THE COMMISSION'S HEADQUARTERS

60. The Commission is also further concerned that, 25 years after the establishment of the Commission, the Permanent Headquarters of the Commission have still not been constructed. Consequently, the Commission's Secretariat continues to work from temporary rented offices under very challenging conditions, characterized by interruptions in electrical power supply, which in turn affects the availability of internet facilities, all of which are so

² The contribution of AU Member States was US\$2,836,000 and that of partners was US\$835,127

³ The contribution of AU Member States was US\$3,451,071 and that of partners was US\$1,477,978

⁴ The contribution of AU Member States was US\$3,624,000 and that of partners was US\$4,318,289

crucial to the operations of an AU Organ such as this; phones and faxes do not work properly either.

61. When the Commission was relocated from Addis Ababa to Banjul in 1989, following its establishment in 1987, the understanding was that the Host Government would construct Permanent Headquarters for the Commission. In that regard, since then the Commission has continued to follow up on the matter with the Host Authorities, and in January 2012 the Executive Council, through Decision EX.CL/Dec.689(XX) enjoined the Host Authorities to, [,] provide a permanent Headquarters for ACHPR, in conformity with the Criteria for Hosting AU Organs adopted in Sirte, Libya, in July 2005.^f

MISSION TO THE OCCUPIED TERRITORIES OF THE SAHRAWI ARAB DEMOCRATIC REPUBLIC

62. It will be recalled that through Decision EX.CL/Dec.689(XX) the Executive Council requested the Commission to undertake a mission to the occupied territory of the Sahrawi Arab Democratic Republic (SADR) with a view to investigating human rights violations and report to this Session of Council. That mission was duly carried out, and the Report of that mission is attached hereto.

MISSION TO NORTHERN MALI

63. It will also be recalled that during its 19th Ordinary Session, the Assembly of Heads of State and Government of the African Union adopted a Solemn Declaration on the Situation in Mali, which, among other things, called on the Commission to investigate the human rights situation in northern Mali, including the atrocities committed against the Malian military and their families in Aguel'hoc, in January 2012, and to submit a comprehensive report with concrete recommendations on the way forward. After arrangements had been made for this mission, the Malian authorities requested that the mission be postponed to a future date, due to the instability and insecurity in the northern part of the country at the moment.

EMOLUMENTS FOR COMMISSIONERS

64. Despite two Executive Council decisions (Dec.EX.CL/529(XV), Dec.EX.CL/575(XVI), and one Assembly decision (Assembly/AU/Dec.200(XI)), calling for the upward review of the emoluments of the Members of the Commission, the matter has still not been resolved. This is in spite of Executive Council Decision Ext/EX.CL/Dec.1(XIII) which requests ,the African Union Commission to come up with a proposal to harmonize the remuneration of elected officials of AU organs as per the Executive Council and Assembly Decisions for consideration and adoption during the July 2012 Summit.^f The result is that Commissioners continue to work under extremely difficult circumstances, and are in many instances forced to subsidize the Commission.

X. PRESENTATION OF ACTIVITY REPORTS

65. Finally, the Commission would like to take this opportunity to address the Executive Council with regards to the directive that the Commission should henceforth submit its Activity Report to the Policy Organs only once a year. Such a directive would mean that it

would take at least a year before decisions of the Commission can be published and implemented, which would be a delay in the delivery of justice to victims of violations of human rights. And perhaps even more importantly, such a directive would be in breach of the Charter which specifically provides that the Commission shall submit a report of its activities to each Summit of Heads of State^f.

XI. RECOMMENDATIONS

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

To the Executive Council of the African Union :

- Increase, both in material and financial terms, support to the Commission to enable it to carry out its work effectively.
- Requests the AUC to expedite preparation of the proposal regarding the harmonization of the remuneration of elected officials of AU organs, in line with Executive Council Decision Ext/EX.CL/Dec.1(XIII).
- Call upon the Host Government to construct the Permanent Headquarters of the Commission.
- To call upon South Sudan to either ratify all regional and international human rights instruments, or confirm that it has seceded to all the human rights instruments to which the Sudan was a party to before South Sudan became an independent state.

To the Assembly of Heads of State and Government of the African Union :

- Ensure that State Parties to the African Charter implement the Recommendations and Decisions of the Commission.
- Ensure that the Commission is allowed to continue presenting its Activity Reports to each Ordinary Summit in compliance with Article 54 of the African Charter.

To State Parties :

- Comply with their obligations under Article 62 of the African Charter.
- Respond to and implement the Urgent Appeals sent to them by the Commission.
- Honour their obligations under the African Charter and implement the Commission's decisions on Communications.

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