

AFRICAN UNION

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EXECUTIVE COUNCIL
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EX.CL/824(XXIV)Rev.1

**35TH 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

35TH ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

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 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 **April to October 2013**. It is structured as follows: introduction; activities undertaken by the Commission; State Reporting; Resolutions adopted by the Commission; protection activities; the human rights situation in Africa; promotion missions; finances and administration; implementation of Executive Council decisions and recommendations.

II. ACTIVITIES OF THE COMMISSION

3. During the period under review, the Commission held the following statutory meetings:

Fourth Meeting of the Bureaux of the Commission and the African Court on Human and Peoples' Rights (the African Court), Nairobi, Kenya, 17 July 2013

4. The Commission and the African Court held the Fourth Meeting of their Bureaux on 17 July 2013. This Meeting, between the two Institutions, explored strategies for enhancing their complementarity, reviewed the progress made so far in the relationship, and also discussed the Agenda of the ensuing Annual Meeting of the two Institutions.

Second Annual Meeting between the Commission and the African Court, Nairobi, Kenya, 18 to 19 July 2013

5. The annual Joint Meeting between the Commission and the African Court took place from 18 to 19 July 2013. Among others, it discussed strategies for facilitating the work of the two Institutions, challenges encountered so far, and the way forward. The Meeting agreed on modalities for facilitating the implementation of each other's mandate, and ensuring a good working relationship between them. The two Institutions agreed to request the African Union (AU) to declare **2016, the African Year of Human Rights**. 2016 marks a watershed on the continental human rights agenda: 2016 will usher in the 35th Anniversary of adoption of the African Charter; and the 30th anniversary of the coming into force of the African Charter; by 2016, the African Court will be marking 10 years of operation, while the Protocol to the African Charter on Human and Peoples' Rights Establishing the African Court on Human and Peoples' Rights (the Court Protocol) will just have celebrated 10 years of its entry into force on 22 January 2006. It is therefore most befitting that the year 2016 be celebrated and commemorated appropriately in recognition of the giant steps taken by our continental body on the

human rights front. Attached to this Activity Report, and also to the Activity Report of the African Court, is a brief *raison d'être* to this effect.

The Fourteenth Extra-Ordinary Session (14th EOS) Nairobi, Kenya, 20 to 24 July 2013

6. During the 14th EOS which was convened to deal with the backlog of Communications and other outstanding matters, the Commission considered and adopted 6 Resolutions and 21 Communications broken down as follows:

- (i) 6 on Seizure;
- (ii) 8 on Admissibility, of which 7 were declared admissible, and 1 inadmissible;
- (iii) 2 Communications on the Merits.
- (iv) 2 Communications on Review; and
- (v) 3 Communications were struck out.

54th Ordinary Session (54th OS) Banjul, The Gambia, 22 October – 5 November 2013

7. The opening ceremony of the 54th OS was presided over by Honourable Commissioner Catherine Dupe Atoki, the outgoing Chairperson of the Commission, while the Session was declared open by the Attorney General and Minister of Justice of the Republic of The Gambia, Honourable Justice Mama Fatima Singhateh.

8. Four (4) Commissioners were sworn in during the 54th OS: the newly elected Commissioner, Honourable Commissioner Lawrence Murugu Mute, and the 3 Commissioners who were re-elected during the May 2013 Session of the Assembly of Heads of State and Government of the AU namely, (Honourable Commissioner Yeung Kam John Yeung Sik Yuen; Honourable Commissioner Lucy Asuagbor; and Honourable Commissioner Soyata Maiga)

9. A new Bureau was elected; comprising Honourable Commissioner Kayitesi Zainabo Sylvie as Chairperson of the Commission, and Honourable Commissioner Mohamed Béchir Khalfallah as Vice-Chairperson.

10. The following Members of the Commission attended the Session: Honourable Commissioner Kayitesi Zainabo Sylvie; Honourable Commissioner Mohamed Béchir Khalfallah; Honourable Reine Alapini-Gansou; Honourable Commissioner Med S. K. Kaggwa; Honourable Commissioner Maya Sahli Fadel; Honourable Commissioner Pacifique Manirakiza; Honourable Commissioner Lucy Asuagbor; Honourable Commissioner Soyata Maiga; Honourable Commissioner Yeung Kam John Yeung Sik Yuen; and Honourable Commissioner Lawrence Murugu Mute. Honourable Commissioner Pansy Tlakula was absent with apologies.

11. The following Member States attended the Session: Algeria, Angola, Burkina Faso, Cameroon, Côte d'Ivoire, Djibouti, Equatorial Guinea, Ethiopia, Gabon, The Gambia, Lesotho, Liberia, Mauritania, Niger, Nigeria, Rwanda, Sahrawi Arab

Democratic Republic, Senegal, South Africa, Sudan, Togo, Uganda, Zambia and Zimbabwe.

12. Five hundred and sixty (560) delegates participated in the Session. Of these, 132 represented Member States, 7 represented AU Organs, 42 represented National Human Rights Institutions (NHRIs), 14 represented International and Inter-Governmental Organizations, 316 represented African and International Non-Governmental Organisations (NGOs), while 49 represented Press and other observers.

13. Eleven (11) NGOs were granted Observer Status with the Commission.

14. The Commission considered and adopted the Reports of the Promotion Mission to Chad; the Joint Mission to Tunisia, and the Fact Finding Mission to Mali.

15. The Commission also considered and adopted the following: Report of the Advisory Committee on Budgetary and Staff Matters; Report on the Execution of the Budget; Report of the Working Group on Communications; Template for the Report of the Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings in Africa; the Communications Audit; and the Report of the Secretary.

16. Deliberations were also held on the following: Report of the Research and Information Mission of the Working Group on Indigenous Populations/Communities in Africa to Tanzania; Report of Women Human Rights Defenders; Report of the Study Group on Freedom of Association in Africa; General Comments on Article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol); and the Paper on Citizenship.

III. STATE REPORTING

17. As at the 54th OS, the status of submission of Periodic Reports by Member States stands as follows:

Status	State Party
Up to date – 13	Angola, Cameroon, Cote D'Ivoire, Gabon, Liberia, Malawi, Mozambique, Nigeria, SADR, Senegal, Sierra Leone, The Sudan, and Uganda.
1 Report overdue – 8	Botswana, Burkina Faso, Burundi, DRC, Libya, Namibia, Rwanda and Togo.
2 Reports overdue – 7	Algeria, Benin, Congo (Brazzaville), Ethiopia, Madagascar, Mauritius, and Tanzania.
3 Reports overdue – 6	Central African Republic, Kenya, Seychelles, Tunisia, Zambia and Zimbabwe.
More than 3 Reports overdue – 12	Cape Verde, Chad, Egypt, The Gambia, Ghana, Guinea, Lesotho, Mali, Mauritania, Niger, South Africa, and Swaziland.
Never submitted a Report – 7	Comoros, Djibouti, Equatorial Guinea, Guinea-Bissau, Sao Tome and Principe, Somalia and Eritrea.
Still to ratify the African Charter	South Sudan

18. The Commission considered the Periodic Reports of Cameroon and Gabon, and deferred the adoption of the Concluding Observations on both Reports to a later date, to allow the Member States to furnish additional information to the Commission.

19. The Commission commends the following Member States for submitting their outstanding Periodic Reports for consideration by the Commission: Liberia, Malawi, Mozambique, Nigeria, SADR, Senegal, Sierra Leone, and Uganda. As conveyed to the respective States, these Reports will be considered in subsequent Sessions of the Commission.

20. In that regard, the Commission seizes this opportunity to inform Member States that the Commission has increased the duration of its Public Sessions to 9 Days, to allow adequate engagement with States in this very important exercise.

21. The Commission uses this opportunity to thank those Member States that have hosted Sessions of the Commission, and extends appreciation to Angola and Niger for offering to host the 55th and 56th Ordinary Sessions of the Commission, respectively.

22. The Commission also avails itself of this opportunity to exhort other Member States, especially those that have never done so, to consider hosting one of the future Sessions of the Commission – not only to lessen the burden on the Commission's gracious host country, The Gambia, but also to join the ranks of that family of nations which have reaped the benefits of partnering with the Commission in disseminating information and knowledge about the Commission, its mandate, and its activities.

IV. RESOLUTIONS

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

Session	Resolutions adopted
14 th EOS	<ul style="list-style-type: none"> ✓ Resolution on the 2013 Elections in Africa; ✓ Resolution on the Human Rights Situation in the Central African Republic; ✓ Resolution on the Human Rights Situation in the Democratic Republic of Congo; ✓ Resolution on the Political Situation in the Republic of Mali; ✓ Resolution on the Arab Republic of Egypt; and ✓ Resolution on the Human Rights Situation in the Republic of Guinea.
54 th OS	<p>A. Resolutions on the Renewal of the Mandate of Special Mechanisms</p> <ul style="list-style-type: none"> ✓ Special Rapporteur on Prisons and Conditions of Detention in Africa;

Session	Resolutions adopted
	<ul style="list-style-type: none"> ✓ Special Rapporteur on the Rights of Women in Africa; ✓ Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa; ✓ Special Rapporteur on Freedom of Expression and Access to Information in Africa; ✓ Special Rapporteur on Human Rights Defenders in Africa; ✓ Working Group on Indigenous Populations/Communities; ✓ Working Group on Older Persons and Persons with Disabilities; ✓ Working Group on the Death Penalty, Extra-Judicial, Summary or Arbitrary Executions in Africa; ✓ Working Group on Economic and Social Rights; ✓ Working Group on Extractive Industries, Environment and Human Rights Violations in Africa; ✓ Committee for the Prevention of Torture in Africa; ✓ Working Group on Communications; ✓ Advisory Committee on Budgetary and Staff Matters. <p>B. Country Resolutions</p> <ul style="list-style-type: none"> ✓ Resolution Calling on the Republic of Kenya to Implement the Endorois Decision; and ✓ Resolution on Extra-Judicial Killings and enforced Disappearances in Mali. <p>C. Thematic Resolutions</p> <ul style="list-style-type: none"> ✓ Resolution on Police and Human Rights in Africa; ✓ Resolution on Involuntary Sterilization and the Protection of Human Rights in Access to HIV Services; ✓ Resolution on Women’s Right to Land and Productive Resources; ✓ Resolution on the Extension of the Deadline for the Study on Freedom of Association and Assembly in Africa; ✓ Resolution on Prevention of Attacks and Discrimination Against Persons with Albinism.

V. PROTECTION ACTIVITIES

24. 89 Communications are currently before the Commission; they were considered as follows:

(a) Communications considered

Session	Communications considered
14 th EOS	<p>I. <u>Seizure</u></p> <p>Seized:</p> <ul style="list-style-type: none"> ✓ Communication 444/13 - Justice Thomas S. Masuku (Represented by Lawyers for Human Rights (Swaziland) v Swaziland; ✓ Communication 445/13 - Human Rights Council and Others v Ethiopia; ✓ Communication 446/13 - Jennifer Williams & Others (Represented by Zimbabwe Lawyers for Human Rights) v Zimbabwe; ✓ Communication 451/13-452/13 - Nenna Obi, Solomon Adekunle, Godwin Pius, Thankgod Ebhos and All Prisoners on Death Row in Nigeria (Represented by LEDAP and SERAP) v Nigeria ; and ✓ Communication 452/13 - Ali Askouri and Abdel-Hakeem Nasr (On behalf of Persons Affected by the Construction of the Merowe and Kajbar Dams) v Sudan. <p>II. <u>Admissibility</u></p> <p>Admissible:</p> <ul style="list-style-type: none"> ✓ Communication 426/12 - Agnes Uwimana-Nkusi and Sadata Mukakibibi v Rwanda; ✓ Communication 419/12 - The Indigenous Peoples of the Lower Omo (Represented by Survival International Charitable Trust) v Ethiopia; ✓ Communication 389/10 - Mbiankeu Genevieve v Cameroon; ✓ Communication 392/10 - Muhayeyezu Théogène v. Rwanda; ✓ Communication 408/11 – Jose Alidor Kabambi Beya Ushiye v DRC; and ✓ Communication 370/09 - Social and Economic Rights Action Centre v Nigeria. <p>Inadmissible:</p> <p>Communication 413/12 - David Mendes (Represented by Centre for Human Rights) v Angola.</p> <p>III. <u>Merits</u></p> <ul style="list-style-type: none"> ✓ Communication 259/02- Groupe de Travail sur les Dossiers Judiciaires Stratégiques v DRC ; and ✓ Communication 320/06- Pierre Mamboundou v Gabon. <p>IV. <u>Communication Struck Out for Want of Diligent Prosecution</u></p> <p>Communication 374/09 – Morin Family (Represented by Small Island Institute) v Seychelles</p>

Session	Communications considered
	<p>V. <u>Communications Reviewed</u></p> <ul style="list-style-type: none"> ✓ Communication 331/06 (R) - Kamanakao Association, Reteng & Minority Rights Group v Botswana; and ✓ Communication 375/09 (R) - Priscila Njeri Echaria v Kenya
54 th OS	<p>I. <u>Seizure</u></p> <p>(a) Seized:</p> <ul style="list-style-type: none"> ✓ Communication 453/13 – Roseline Emma Rasolovoahangy v Madagascar; ✓ Communication 454/13 – Nde Ningo v Cameroon; ✓ Communication 455/13 – Abubaker Ahmed Mohamed et al v Ethiopia; ✓ Communication 456/13 – Emmanuel Joseph Uko v South Africa; ✓ Communication 458/13 – Peter Odiwuor Ngoge v Kenya; and ✓ Communication 459/13 – Devendranath Hurman v Mauritius. <p>(b) Not seized</p> <p>Communication 457/13-Pastor Key Mwandu v DRC</p> <p>II. <u>Admissibility</u></p> <p>Admissible :</p> <ul style="list-style-type: none"> ✓ Communication 354/07 - Mohamed Khairat Al-Shatir and Others v Egypt; ✓ Communication 398/11 - IHRDA and Congolese Human Rights Observatory v Congo; ✓ Communication 401/11 - Hawa Abdallah (Represented by African Center for Justice and Peace Studies) v Sudan; and ✓ Communication 424/12 - Samira Ibrahim Mohamed Mahmoud and Rasha Ali Abdel-Rahman (Represented by the Egyptian Initiative for Personal Rights and INTERIGHT) v Egypt. <p>Inadmissible:</p> <p>Communication 280/03 - Nzuzi Phutuka v DRC.</p> <p>III. <u>Merits</u></p> <ul style="list-style-type: none"> ✓ Communication 274/03 & 282/03 – INTERIGHTS, ASADHO and Advocate O. Disu v DRC; ✓ Communication 328/06 - Front for the Liberation of the State of Cabinda v Angola; ✓ Communication 368/09 - Abdelhadi Ali Radi and

Session	Communications considered
	<p><i>Others v Sudan; and</i> ✓ Communication 409/12 - <i>Luke Munyandu Tembani and Benjamin John Freeth (Represented by Norman Tjombe) v Zimbabwe and 13 Others.</i></p> <p>IV. <u>Oral Hearing</u> Communication 383/10: <i>Al-Assad v Djibouti</i></p> <p>V. <u>Communication for Re-listing</u> Communication 290/04: <i>Open Society Justice Initiative v Cameroon.</i></p> <p>VI. <u>Follow-up on Implementation</u> Communication 323/06: <i>Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt.</i></p> <p>VII. <u>Communication with Request for Change of Name</u> Communication 429/12: <i>The Ngambela of Barotseland and Others v Zambia.</i></p> <p>VIII. <u>Communication with request for amicable settlement</u> Communication 389/10: <i>Mbiankeu Geneviere v Cameroon</i></p>

25. The above tables show that during the 6 months between April and October 2013 alone:

- 11 new Communications were seized;
- 1 Complaint was not seized;
- 12 decisions were adopted at admissibility level -10 were declared admissible, and 2 inadmissible;
- 6 decisions were adopted at merits level;
- 2 Communications were reviewed;
- 1 Communication was re-listed;
- 1 Communication was struck out for lack of diligent prosecution;
- A request for amicable settlement was considered in 1 Communication;
- A request for change of name was considered in 1 Communication; and
- An oral hearing was held in 1 Communication.

26. The Commission also seizes this opportunity to inform the honourable Council of the adoption of **Communication 334/06 - Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt** which was adopted by the Commission during its 9th Extra-Ordinary Session.

(b) Implementation of the Commission's Decisions

27. With regards to **Communication 419/12 - The Indigenous Peoples of the Lower Omo (Represented by Survival International Charitable Trust) v Ethiopia**, the Commission issued an Order against the State, requesting the latter to adopt Provisional Measures to prevent irreparable harm being caused to the victim of alleged human rights violations; the State has not respected that Order.

VI. THE HUMAN RIGHTS SITUATION IN AFRICA

28. The human rights situation on the continent continues to show both positive developments, as well as issues of concern as follows:

(a) Positive developments

- i) Cameroon's implementation of the Commission's decision in **Communication 272/03 Association of Victims of Post Electoral Violence & INTERIGHTS v Cameroon**, and paying compensation to the victims for the prejudice they suffered during the post-electoral violence of 1992 in the North West Region, headquartered in Bamenda, Cameroon;
- ii) Signature by Cote D'Ivoire of the declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Court Protocol) on 31 July 2013, making it the 7th Member State to make the declaration in addition to Burkina Faso, Ghana, Mali, Malawi, Rwanda, and Tanzania;
- iii) The number of Member States complying with Article 62 of the African Charter and submitting their Periodic Reports to the Commission has increased significantly;
- iv) Increased human rights related interventions at the national level by Member States, such as: Cote Ivoire's adoption of a Bill, in September 2013, to promote and protect the rights of human rights defenders; and Ethiopia's adoption of a three year Human Rights Action Plan for the period 2013-2015 to promote and protect human rights in Ethiopia;
- v) Lesotho's National Disability Policy which recognises that persons with disabilities should have equal access to education, training, employment, health and other aspects of life;

- vi) Increasing recognition of the relevance of regional and international human rights instruments to the national context, as reflected in Nigeria's Gender and Equal Opportunities Bill 2010/13 to domesticate the Maputo Protocol; and Guinea Bissau's accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights on 24 September 2013;
- vii) The decision of the Kenyan High Court on 26 July 2013, which quashed a Government plan to move 55,000 mostly Somali refugees from Nairobi and other cities to camps on the basis that relocation would violate the right of the refugees to dignity, free movement, and would also be tantamount to indirectly forcing them back to Somalia;
- viii) Increased recognition of the need to protect the rights of children in many Member States, for example: South Africa's fight against substance abuse, and its comprehensive National Plan of Action for Children (2012-2017), to guide all Government departments, civil society and other partners on how to address children's issues; Senegal's Plan of Action adopted on 5 June 2013 with a view to eradicate all forms of child labor in Senegal before 2016; Lesotho's campaigns to disseminate the Education (Amendment) Act of 2010 and the new curriculum for schools which include components of human rights issues affecting children; and adoption by the Executive Council of the Federation in Nigeria, of a Draft National Policy on Child Labor on 11 September 2013, to address the challenges faced by over 6 million Nigerian children involved in child labor;
- ix) Efforts by some Member States to promote freedom of expression, press freedom and freedom of information, including Sierra Leone's adoption of a Freedom of Information Law on 29 October 2013; and the Draft Media Law of Somalia of 11 July 2013, which includes proclamations on media freedom and safeguards for transparency in media ownership;
- x) Progress by some Member States in the health sector, such as: measures taken by Nigeria to reduce infant and maternal mortality rate through establishment of primary health-care clinics across Nigeria; the deployment of a greater number of skilled health-care professionals to rural areas, and payment of allowances to pregnant women as incentives to register for ante-natal care; and provision of free medical services to all under 5 years and over 65 years of age in Zimbabwe;
- xi) Significant progress in the area of HIV/AIDS, notably: the reduction of the prevalence of HIV/AIDS in Senegal to 1 %; Angola's National Health Policy on Universal Access to primary healthcare to eradicate mother to child transmission of HIV/AIDS; provision of free HIV testing and counseling services in Zimbabwe; strategies by the Government and CSOs to fight against HIV/AIDS in Uganda; Cameroon's Strategic Plan on HIV/AIDS with the objective to eliminate mother to child transmission by intensifying

prevention; and the promulgation of progressive HIV/AIDS-friendly legislative frameworks to protect people living with HIV/AIDS;

- xii) Efforts to improve conditions in prisons and other places of detention and to build the capacity of prison officials in international human rights norms and standards, such as the adoption by Burkina Faso of regulations to combat torture and strategies to improve conditions of detention in the country; Stepping up of efforts to address gender discrimination and promote the rights of women in many Member States, including public awareness campaigns in Angola to combat domestic violence and promote women's participation in public life; and the Enactment of **Law No. 3/ 2013 of June 2013**, amending the Nationality Code of Senegal to allow women to pass on nationality to children conceived from marriages with non-nationals; and increase in the representation of women in political and decision-making positions in Rwanda;
- xiii) Senegal's launching of a National Family Security Grants Programme to fight against poverty and promote economic, social, and cultural rights; and
- xiv) Holding of peaceful, free and fair presidential and parliamentary elections in Cameroon, Guinea, Madagascar, Mali, Rwanda, Swaziland and Zimbabwe, as well as the adoption of a new Constitution by Zimbabwe in May 2013 which, amongst other things, paved the way for the peaceful elections in July 2013.

(b) Areas of concern

- i) Lack of political will by some Member States to implement the recommendations and decisions of the Commission, to respond to urgent appeals from Members of the Commission, to comply with Provisional Measures issued by the Commission; and delays by Parties to Communications in making submissions to the Commission;
- ii) The continued existence in some Member States of laws that criminalize certain types of speech, which are used to punish legitimate critical self-expression; as well as violence against human rights defenders, journalists and other media practitioners, including torture, ill-treatment, arbitrary arrests and detention, forced disappearances, murder and intimidation;
- iii) Adoption by some Member States of approaches to HIV/AIDS such as forced sterilization of women living with HIV/AIDS and punitive measures which hinder HIV prevention and protection of people living with HIV/AIDS;
- iv) Continuing challenges in the area of corrective justice in some countries, with overcrowding in prisons, poor conditions of detention and rehabilitation facilities; use of incarceration as the first, rather than the last resort regardless of the nature of the crime; not enough use of alternative

sentences such as community services; poor treatment of juveniles, use of torture and lack of independent policing oversight mechanisms where individuals can report police misconduct and abuse of police powers and get redress;

- v) Only 26 Member States have ratified the Court Protocol, while only 7 have made the declaration under Article 34(6) allowing individuals and NGOs direct access to the African Court;
- vi) Acts of terrorism, sectarian violence and civil conflicts in some Member States, resulting in mass internal displacements as well as refugee situations, with their disproportionate impact on women, children, older persons and people with disabilities;
- vii) Persons with disabilities, and people with albinism continue to experience prejudice in some countries, again with a disproportionate toll on women with disabilities and/or albinism;
- viii) Deepening levels of poverty which result in child labour as well as flows of migrants from the continent to Europe in search of better lives, resulting in incidents such as the loss of life of over 300 migrants on 3 October 2013 in a boat accident on Lampedusa Island;
- ix) 10 years after the adoption of the Maputo Protocol, only 36 Member States have ratified it;
- x) Periodic Reports submitted by Member States in terms of Article 62 of the African Charter do not comply with either the Commission's Guidelines for reporting under the Maputo Protocol or the Commission's Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter;
- xi) Female genital mutilation (FGM) and other traditional cultural/harmful practices are still continuing;
- xii) Appropriation of land by extractive industries without free, prior and informed consent or adequate compensation to the affected populations;
- xiii) Increasing usage and implementation of the death sentence in some Member States, such as the execution of 4 prisoners (*Chima Ejiofor, Daniel Nsofor, Osarenmwinda Aiguokhan and Richard Igagu*) on death row in Benin City, Edo State Nigeria, on 24 June 2013; and
- xiv) Inappropriate approaches to dealing with mental illness in some Member States, such as incarcerating patients, instead of treating them, and their

continued stigmatization through the use of derogatory terminology like 'lunatics' and 'idiots'.

VII. PROMOTION MISSION

29. As part of the Commission's promotion mandate under Article 45 of the African Charter, the Commission undertook joint human rights Promotion Mission to Uganda from 26 to 30 August 2013, while Gabon and Seychelles have authorized Promotion Missions by the Commission in January 2014. The Commission commends these Member States and also exhorts those to whom requests have been extended to kindly positively authorize the undertaking of the proposed Mission.

VIII. FINANCES AND ADMINISTRATION

(a) Staffing

30. The staffing situation at the Commission's Secretariat continues to be a great cause for concern; especially since recruitment exercise has not been expedited enough to bring on board the critically needed staff.

(b)Funding

31. It is noteworthy that, while a budget of US \$ 8,488,770.00 was approved for the Commission for 2013 (an Operational Budget of US\$ 3, 882,000.00 and a Programs Budget of US\$ 4, 606,770.00), actually no AU funds at all were allocated to the program activities of the Commission for the 2013 fiscal year, which means that these activities must exclusively be funded from external sources. This is an untenable and unacceptable situation. The Commission therefore calls for adequate operational as well as programs budget to enable it effectively execute the mandate entrusted to it.

IX. IMPLEMENTATION OF EXECUTIVE COUNCIL DECISIONS

(a) Mission to Northern Mali

32. It will be recalled that the Solemn Declaration on the Situation in Mali, adopted by the Assembly during its 19th Ordinary Session, 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 to the Executive Council, together with concrete recommendations on the way forward. The Fact-finding mission was undertaken from 3 to 7 June 2013, and the Report of the mission, which was adopted by the Commission during its 54th OS, has been forwarded to the AUC for inscription on the Agenda of this Session of the Council.

(b) African-led International Support Mission to Mali

33. In line with the request of the Assembly during its 20th Ordinary Session that the Commission be part of the African-Led International Support Mission to Mali (AFISMA), a member of the Commission is leading the human rights monitoring team that has been deployed to Mali since April 2013, as part of AFISMA, now the African Union Mission for Mali and the Sahel Region (MISAHEL).

(c) Insurance cover and emoluments for Commissioners

34. The Commission held discussions with a team from the AUC Medical Services during its 53rd OS and again during the 14th EOS, on the modalities of providing insurance cover for Commissioners. It is hoped that this will be finalised soon, especially as members of the Commission are increasingly being called upon by the AU Policy Organs to undertake missions in some of the more volatile parts of the continent.

35. The matter of the emoluments of members of the Commission is also still outstanding; and it is hoped that this will be finalised soon, in line with the Executive Council and Assembly decisions on the matter. Given how long this matter has been outstanding, it is proposed that in the meantime, the Commission be permitted to implement the applicable provisions of Executive Council Decision **EX.CL/351 (XI)** with regards to sitting allowances, within the confines of the budget already approved for the Commission for 2014.

X. RECOMMENDATIONS

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

To State Parties:

- i) Ratify the Court Protocol and make the declaration required under Article 34 (6) of the Court Protocol;
- ii) Sign, ratify, domesticate and implement regional and international human rights instruments;
- iii) Comply with obligations under Article 62 of the African Charter by presenting reports regularly, in compliance with the Commission's Guidelines for Reporting under the Maputo Protocol as well as the Commission's Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter.
- iv) Respect timeframes with respect to submissions on Admissibility and Merits, in accordance with the Rules of Procedure of the Commission, to enable the Commission dispose of Communications in time;

- v) Implement and report on the measures taken with regard to the Commission's decisions on Communications; comply with Provisional Measures issued by the Commission and its Subsidiary Mechanisms; and agree to requests by the Commission and its Subsidiary Mechanisms to undertake country visits;
- vi) Consider hosting one of the Sessions of the Commission; and
- vii) Those Member States which have not yet done so, to observe a moratorium on the death penalty in line with the Resolutions of the Commission, while States already observing the Moratorium should take necessary steps to abolish the death penalty.

To the Republic of South Sudan:

Ratify the African Charter.

To the AUC:

- i) Concretize insurance coverage for Members of the Commission, including those who reside outside Vanbreda's current geographical coverage; and
- ii) Finalize the harmonization of emoluments for elected officials.

To the Executive Council:

- i) Increase, both in material and financial terms, support to the Commission to enable it to carry out its work effectively;
- ii) Call upon the AUC to expedite the harmonization of the remuneration of elected officials of AU Organs, in line with Executive Council Decision Ext/EX.CL/Dec.1(XIII); and
- iii) Authorise the Commission to implement the applicable provisions of Executive Council Decision Ex.CL/351(XI) within the confines of the budget already approved for the Commission for 2014.

To the Assembly of Heads of State and Government:

- i) Ensure implementation of and compliance with decisions of the Commission;
- ii) Take note of non-compliance by some Member States with Provisional Measures issued by the Commission and the African Court;

- iii) Request the Commission and the African Court to submit a Concept a Note to the AU Policy Organs with a view to having 2016 declared the African Year of Human Rights; and
- iv) Declare 2016, the African Year of Human Rights.

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**REPORT OF THE FACT-FINDING MISSION TO
THE REPUBLIC OF MALI
3 - 7 JUNE 2013**

ACKNOWLEDGEMENTS

The African Commission on Human and Peoples' Rights (the Commission) is grateful to the Government of the Republic of Mali for kindly hosting the fact-finding mission that was undertaken in Mali from 3 to 7 June 2013.

The Commission expresses its sincere gratitude to the country's highest authorities for providing the delegation with the necessary facilities and personnel for the smooth conduct of the mission.

I. Introduction

1. During its 19th Ordinary Session held from 15 to 16 July 2012 in Addis Ababa, Ethiopia, the Assembly of Heads of State and Government of the AU issued a Solemn Declaration on the Situation in Mali approving the AU Peace and Security Council Decision¹ in which it:

“Calls upon the African Commission on Human and People’s Rights 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”.

2. In accordance with this decision and the relevant provisions of its Rules of Procedure, the African Commission on Human and Peoples’ Rights (the African Commission) undertook a fact-finding mission to the Republic of Mali from 3 to 7 June 2013.

II. Composition of the delegation

3. The delegation was composed of four (4) members of the African Commission:

- Mrs Reine Alapini Gansou, Commissioner responsible for human rights promotion in Mali and Special Rapporteur on Human Rights Defenders in Africa, Head of Delegation;
- Mr. Béchir Khalfallah, Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa;
- Mrs Lucy Asuagbor, Chairperson of the Committee on the Rights of People Living with HIV, and Those at Risk, Vulnerable to and Affected by HIV; and
- Mrs Maya Sahli Fadel, Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa.

4. The members of the Commission were assisted by staff members of the Secretariat of the Commission.

¹ See Communiqué PSC/AHG/COMM/1(CCCXXVII).

III. Mandate of the mission

5. The AU Peace and Security Council instructed the Commission to lay emphasis on human rights violations committed in northern Mali. However, for reasons of consistency and considering the gravity of the violations committed across the Malian territory, the African Commission delegation decided that it was necessary to deal with all other forms of human rights violations reported.

6. The terms of reference of the mission were as follows:

- Hold discussions with the authorities and key stakeholders in the area of human rights promotion and protection;
- Investigate and gather relevant information on the situation and human rights violations committed in northern Mali;
- Learn about the situation of internally displaced persons following the conflict in northern Mali, the level of enjoyment of their rights and the challenges they face;
- Visit the northern part of Mali if the security and logistical conditions are conducive;
- Meet with the beneficiaries of soldiers victims of the atrocities committed in January 2012 in Aguel'hoc;
- Interview individuals who may provide information on the events of Aguel'hoc and human rights violations committed in northern Mali, etc.

IV. Methodology

7. During the mission, the delegation collected the necessary information to be able to establish facts and reveal the truth towards identifying the responsibilities of the perpetrators of human rights violations. The delegation met with the country's highest authorities, including the Prime Minister Mr Diango Sissoko. The delegation held meetings with representatives of the Ministry of External Relations and International Cooperation, Ministry of Justice and Keeper of the Seals, Ministry of Religious Affairs and Worship, Ministry of Defence and Former Combatants, Ministry of Internal Security and Civil Defence, Ministry of Territorial Administration, Decentralisation and Regional Planning, Ministry of Humanitarian Affairs, Solidarity and the Elderly, Ministry of Culture, Ministry for Women's Empowerment, Children and the Family, and Ministry of Malians Abroad and African Integration.

8. The delegation also held meetings with the various national institutions, including the National Human Rights Commission and the Dialogue and Reconciliation Commission. It also met with representatives of the African-led

International Support Mission in Mali (AFISMA) and the UN, including the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), the UN High Commissioner for Refugees (UNHCR) and UN Women. The delegation met with several representatives of civil society and national and international NGOs working in the area of human rights and international humanitarian law, including the International Committee of the Red Cross (ICRC).

9. The delegation gathered testimonies from the beneficiaries of the victims of the Aguel'hoc attacks, soldiers of the Aguel'hoc camp who survived the attacks and other witnesses of the human rights violations committed in northern Mali. Through these testimonies the delegation was able to gather information on the human rights situation in Mali.

10. The delegation visited the Niamana camp and held discussions with families of internally displaced persons. The delegation visited the Bamako Central Prison and interviewed people detained in connection with the events which occurred in northern Mali. The delegation noted that between February 2012 and 5 June 2013 there were 143 prisoners, including 117 Malians, six Nigeriens, four Nigerians, one Somali, two Burkinabés, one Tunisian, two Algerians, one Sahrawi and ten minors detained in the Boulé prison for minors. Most of the prisoners are said to be charged with terrorism, compromising State security and destruction of property.

11. The delegation also visited the Camp 1 detention centre of the national gendarmerie where it met with military personnel involved in procedures in connection with the counter-coup of 30 April 2012. In this detention centre, the delegation met with a total of 17 prisoners, including eight officers (one lieutenant-colonel, one commander, two captains, four lieutenants and one sub-lieutenant) and nine non-commissioned officers (seven 2nd class and two 1st class). The delegation also visited the accommodation centre of the Association for Progress and the Defence of the Rights of Malian Women (*Jigiyaso-Maison de l'espoir*) where it met with women victims of the conflict in northern Mali.

12. The mission ended with a debriefing session with the authorities of the Ministry of External Relations, followed by a press conference.

V. General information and background

A- Brief history of Mali

13. A former French colony known as French Sudan, Mali gained its independence on 22 September 1960 under Modibo Keita. In 1968, following a military coup, Moussa Traoré took over power and established a one-party state. On 26 March 1991, a group of soldiers led by Amadou Toumani Touré overthrew Moussa Traoré and established a transitional period which led to the presidential election of 1992. Alpha Omar Konaré won the election and was re-elected in 1997. In 2002, General Amadou Toumani Touré returned to power through elections and was re-elected in 2007. On 21 March 2012, before the end of his term of office, he was

overthrown by a group of mutineers who blamed him for his lack of action against the Tuareg rebellion in the northern part of the country.

B- Geography of Mali

14. The Republic of Mali is a West African country which shares a 7,420 km border with seven countries, including Algeria to the north, Niger and Burkina Faso to the east, Côte d'Ivoire and Guinea to the south, and Mauritania and Senegal to the west. The country shares a 1,300 km border with Algeria, 2,140 km border with Mauritania and a 900 km border with Niger, just to name "the core countries".

15. Still regarding the country's geography, it has been noted that it is Mali's northern part that is prey to criminal invasion.

VI. Genesis of the conflict in northern Mali

16. The issue of the independence of northern Mali, commonly called Azawad, is at the origin of the conflict that has always existed in the north of Malian territory. On the eve of the independence of Mali, Azawad requested autonomy while still under French administration. France did not grant the request and at the dawn of the country's independence, this aspiration for independence took the form of a military demand. Tuareg combatants made news in the region from time to time.

17. The situation worsened after the fall of the Muammar Gaddafi regime in Libya. Several combatants who took part in combat in Libya returned to the Sahel region with military equipment.

18. In January 2012, attacks were launched in this part of Mali. The National Movement for the Liberation of Azawad (MNLA) whose main interest is the independence of Azawad claimed responsibility for the attacks. The MNLA was joined by the Salafi movement Ansar Dine whose aim is to impose sharia. The Sahel region then became a major hub for drug traffickers and terrorist groups such as Al-Qaeda in the Islamic Maghreb (AQMI) and the Movement for Unity and Jihad in West Africa (MUJAO).

VII. Causes of the conflict

19. During the various meetings held in the course of the mission, individuals interviewed laid emphasis on the causes which contributed to worsening the security situation in northern Mali. They underscored poor governance, the weakness of the military and the porosity of Mali's borders.

A. Poor governance

20. Individuals interviewed were unanimous in stating that the main reason for the conflict in northern Mali is poor governance both at the political, judicial and economic levels.

21. They indicated that there was gross negligence by the Government at the highest level regarding several cases of human rights violations. They recounted in detail the impunity that reigned in the country. This situation was marked by the unorganised enactment of amnesty laws and unorthodox appointment and promotion decisions in the military and territorial administration.

22. Moreover, the state of poverty of the population, worsened by the presence and activities of drug traffickers, and corruption are the factors that worsen the situation in Mali, especially in the northern part of the country. The authorities and individuals met indicated that the various funds allocated for development projects in northern Mali have been used for other activities.

B. Weakening of the military

23. The credibility of the Malian military was also questioned during the mission. The 1991 Tamanrasset Peace Accord, the 1992 National Pact and the Algiers Accord, all signed after the various rebellions from 1990 to 2006, contributed to the integration of former Tuareg rebels into the Malian military. These Tuareg rebels, according to information received, enjoyed special treatment which placed the majority of them above sanctions even in cases of established serious misconduct. This led to a situation of double standards.

24. These advantages granted to former rebels under the aforementioned agreements are said to have resulted in the disengagement of the Malian military in the northern part of the country and the weakening of its chain of command. It is reported that the weakening of the military worsened when the conflict broke out through the desertion of several soldiers, and that high-ranking personnel from former rebellions chose to join armed groups.

C. Porosity of Mali's borders

25. **The nature of Mali's borders poses a major challenge to the conflict in Mali: Mali shares a border of about 1,300km with Algeria, 2,140km with Mauritania, and 900 km with Niger. According to information received, Mali's borders with Algeria and Mauritania are porous. For over ten (10) years, the northern part of Mali has served as a refuge, while the border with Mauritania is a cross-border basin where the homogeneity of the people is based on very strong ties, in particular blood ties. Despite the obvious difficulties presented by the very difficult topography, Algeria has deployed considerable efforts towards ensuring border security. Algeria has also been in constant engagement not only with Mali but also with the other neighbouring countries, with a view to effectively contributing to the search for a lasting solution to the conflict.**

26. Another factor, the war in Libya. The Libyan crisis also contributed to the worsening of the Malian situation with the return of several Tuareg mercenaries following the fall of Muammar Gaddafi.

VIII. Mali's commitments in promoting and protecting human rights

27. The legal instruments of the Republic of Mali, both national and international, lay great emphasis on the protection of human rights and public freedoms. The Constitution recognizes ethnic, cultural and religious diversity. It guarantees the principle of equality of all citizens.

28. The Republic of Mali is a party to most regional and international conventions on human rights and international humanitarian law. It is a party to the Rome Statute establishing the International Criminal Court.

IX. Classification of human rights violations committed during the Malian armed conflict

29. The delegation noted that human rights violations were committed throughout the Malian territory with more seriousness in the northern part of the country, the case of Aguel'hoc being extremely serious.

A- The case of Aguel'hoc

30. The violations committed in Aguel'hoc, as were recounted, can be classified as acts of summary execution, inhuman and degrading treatment, vandalism and destruction and looting of public and private property.

- Summary executions

31. According to information collected during the meeting with survivors, widows and witnesses to the events, the town of Aguel'hoc, in particular the military camp, experienced two major attacks. The first attack was carried out on 18 January 2012 at 3 am and the second on 24 January 2012.

32. During the January 24 attack, the rebels took advantage of the exhaustion of the soldiers of the Malian military and except for a few survivors, other soldiers taken hostage including their leader Captain Sékou TRAORE were executed by either putting a bullet in the head or cutting the throat, with their hands tied behind their backs. The number of soldiers killed in the Aguel'hoc conflict varies between 94 and 150 according to various sources. Other wounded soldiers are said to have been killed on their hospital beds, including the nurse on duty at the time of the events.

33. According to sources, these gruesome events occurred while high-ranking personnel and soldiers of the Malian military were deserting to join rebel camps. The

attacks are reported to have been carried out with the complicity of the mayor of Aguel'hoc.

34. Civilians are also reported to have died in these attacks. According to information gathered from the Chairperson of the Special Commission of Inquiry into the Aguel'hoc Attacks, dead soldiers were buried in two mass graves in Aguel'hoc.

- **Acts of torture and cruel, inhuman and degrading treatment**

35. According to information provided to the delegation by soldiers who survived, there were two groups of survivors: those held by AQMI and Ansar Dine rebels and those held by the MNLA. According to military sources, 32 soldiers were held in Aguel'hoc, 29 in Timbuktu, 76 in Kidal, 97 in Tessalit and 84 in Tinzawatène. Some of the hostages were released on 21 September 2012. It is reported that during their captivity, these soldiers were deprived of several rights and were victims of torture and inhuman and degrading treatment. The delegation noted that some of them still had scars from the injuries inflicted by torturers.

- **Acts of vandalism, destruction and looting of public and private property**

36. According to information gathered by the delegation, rebel groups carried out acts of looting and destruction of private and public property in Aguel'hoc. For example, the Teacher Training Institute (IFM) and the Aguel'hoc military camp were looted and ransacked by rebels. The rebels are said to have set fire on the property and premises of the camp.

B- Human rights violations committed in other northern cities and the rest of Malian territory

37. During the mission, the delegation noted that human rights violations were also committed in Diabali, Konna and even in Bamako.

- **Summary executions in Diabali**

38. The delegation noted that in October 2012, Malian soldiers on duty at the entry point of Diabali opened fire on a group of people of the Dawa sect coming from Mauritania. It is estimated that 17 people were killed.

39. The delegation however noted that even though a national commission of inquiry was established to investigate the case, proceedings are yet to be brought against the presumed perpetrators of these acts.

- **Acts of summary and extrajudicial executions committed in Konna**

40. The delegation learned that armed groups executed Malian soldiers and wounded five soldiers in Konna. Still in this region, in January 2013, Malian soldiers

are reported to have retaliated by executing people suspected of conniving with the rebels.

- **Arbitrary arrest, torture, enforced disappearance and extrajudicial executions conducted in Bamako following the military takeover of 30 April 2012**

41. The delegation visited the national gendarmerie Camp 1 where it interviewed 17 red beret soldiers including 8 officers detained in connection with the events of the counter-coup of 30 April 2012. For most of these individuals, their arrest and detention do not comply with the relevant procedures since there are no arrest warrants or renewal of warrants where such warrants exist. They indicated that they were subjected to torture and inhuman treatment at the time of their arrest.

42. According to information provided by reliable sources, twenty-one (21) red beret soldiers involved in the counter-coup were victims of summary execution or enforced disappearance. It is reported that they were taken from prison, in the early hours of 4 May 2012, by the green berets. Some are said to have been taken from their homes and hospitals to be executed. The most plausible case is that of the soldier Abocar Kola Cissé who is reported to have discussed with his wife before his disappearance. The wife said she saw him for the last time after the events of 30 April 2012 among other red berets arrested and shown on television. Her story was corroborated by other individuals, including her husband's comrades.

43. Moreover, the soldiers indicated that their detention conditions following the coup could amount to cruel, inhuman and degrading treatment.

- **Rape and gender-based violence**

44. During the same period, the main cities of Gao, Timbuktu and Kidal were the theatre of various forms of violence and violations of human dignity against women and girls.

45. Reports and testimonies indicate that many women were victims of individual and collective rape carried out by armed men. There were cases of women who were raped in the presence of their husbands and children.

46. From the information gathered, the delegation notes that rape victims are reported to have been dark skin women. It should also be noted that these women do not know the rapists. They however stated that the majority of the rapists are light skin men most of whom speak Tamasheq, Arabic and Daoussaq. These acts of rape often led to unwanted pregnancy.

47. It should be noted that cases of rape committed by the Malian military were also reported to the delegation, including the case of a girl raped by two Malian gendarme officers in Mopti.

48. According to data collected, the age of rape victims ranges between 6 and 60 years.

49. Other cases of violence against women were reported to the delegation, including abduction, illegal confinement, sexual enslavement, forced marriage and early marriage. Cases of physical violence were also reported for cases where the victims tried to defend themselves.

50. The delegation was unable to obtain reliable information on the possible HIV contamination and status of the victims.

- **Violations of freedom of religion, movement and cultural rights**

51. Armed groups, in particular Ansar Dine, AQMI and MUJAO, imposed sharia on the population in areas under their control. As such, all religious groups without distinction were victims of barbaric acts. The delegation noted that religious buildings, in particular mausoleums of saints and Christian churches were destroyed in Timbuktu and Gao. Inhabitants of the Christian faith were forced to flee the north to seek refuge in towns in the southern part of the country. Women bore the brunt of this blind sharia practice. Women were deprived of their right to leisure, freedom of expression and free movement.

52. The delegation also noted that these same groups closed down several tailoring workshops claiming that tailors make indecent clothes. Hair salons faced a similar fate. According to them, women should not expose their hair but should veil their entire face.

- **Violations of physical integrity, torture and cruel, inhuman and degrading treatment**

53. Still with regard to the implementation of sharia, the delegation learned that terrible acts such as stoning, flogging and amputation were carried out during the period of occupation. According to information gathered, these acts were carried out by armed Islamic groups, in particular Ansar Dine, MUJAO and AQMI, following a system of summary justice which they established.

54. The most striking case is that of a ninth-year student in Timbuktu whose veil fell off while she was doing laundry. The delegation was informed that the girl was taken to the road junction where people are disgraced to be flogged.

- **Destruction of cultural heritage and manuscripts in northern Mali**

55. Malian cultural heritage in northern Mali did not escape the conflict.

56. From the various reports, in particular that of the Ministry of Culture on an assessment of the damages caused to cultural heritage, the delegation noted several cases of destruction of cultural heritage.

57. In Timbuktu, 11 mausoleums out of the 16 on the world heritage list and three others situated in Kabara and Goudan were destroyed between May and December 2012. The door of the Sidi Yahia mosque, an element of world heritage and considered sacred by the inhabitants was destroyed in July 2012. Monuments of key importance to the expression of the identity of communities such as the independence monument with the El Farouk effigy were also damaged.

58. The delegation was informed of the destruction by fire of several manuscripts (between 2,000 and 3,000) at the Ahmed Baba Institute of Advanced Studies and Islamic Research (IHERI-AB). These manuscripts are reported to have been burned on 27 January 2013 by armed groups in retaliation for the French military intervention in Mali.

59. The delegation notes that several symbols of sculptures of art and decoration were destroyed. The great Toguna in the centre of town was ransacked and the sculpted pillars were burned.

60. In Gao, the El Kebir mausoleum belonging to the great Kounta family was destroyed by Islamists in October 2012.

- Violations of the right to health

61. The conflict in northern Mali had consequences on the right to health. During the occupation, medical personnel were forced to flee the region. Health infrastructures were destroyed and medicine stores were looted by armed groups.

62. The delegation was also informed that armed groups prevented female patients from consulting and getting treatment from male doctors/nurses and vice-versa. As a result, the majority of the population in northern Mali did not have access to basic health services.

- Violations of the right to education

63. The massive displacement of the population from northern Mali to other parts of the country and abroad led to several students staying away from school. Even families that stayed behind were not spared. Schools were forced to close down due to lack of infrastructure as a result of destruction or the lack of teaching personnel who were forced to move to secure areas.

- Recruitment of child soldiers

64. From the reports gathered, the delegation noted that armed groups in northern Mali recruited child soldiers between the ages of 12 and 15 for military purposes. These children were seen, hardly carrying their weapons, in vehicles belonging to the MNLA and Ansar Dine at the various checkpoints set up in Gao and at the exit points of occupied towns. The delegation learned that these children were even used by

these groups to serve as human shields. The presence of child soldiers was also reported on the side of vigilante militias trained by the Malian Government.

- **Situation of internally displaced persons and refugees**

65. The armed conflict in northern Mali and violations committed by the various armed groups led to the massive displacement of populations to non-combat areas in the south of the country and neighbouring countries.

a) Situation of internally displaced persons

66. According to information collected from the UNHCR Office in Bamako, the number of internally displaced persons was estimated at approximately 300,000 as at the end of April 2013, and they are living in camps in Kayes, Koulikoro, Ségou, Sikasso, Mopti and Bamako.

67. The delegation met with internally displaced persons in the Niamana camp in Bamako. It was however informed that a good number of them are living with host families, which is an extra burden to these families.

68. The delegation was informed that since April 2013, more than 14,000 internally displaced persons have spontaneously returned to their regions of origin (the north) since their living condition in the south had started to dwindle due to lack of means of subsistence. The delegation also noted the willingness shown by the people in the Niamana camp to return home and be able to vote in the upcoming elections.

b) Situation of refugees

69. Regarding the refugee situation abroad, the delegation noted that refugees who fled the conflict (estimated at about 175,000) have sought refuge in neighbouring countries.

X. Responsibility for the various violations committed

70. From the various testimonies and reports, it emerges that the main identified perpetrators of violations are the armed groups. However, the responsibility of the Malian military can also be questioned in certain respects; not leaving out some Malian administrative employees, even as accomplices.

A- Responsibility of armed groups

71. More generally, the MNLA, Ansar Dine, MUJAO, Boko Haram and AQMI are the main groups responsible for the various human rights violations committed in northern Mali. The responsibility of armed groups is based on the fact that they exercised their rule by imposing sharia during the period under consideration.

72. Regarding the Aguel'hoc attacks, the MNLA admitted guilt since, through Mohamed Ag Najim, it claimed responsibility for the attacks. It should be noted that it assumes full responsibility for the attacks with the complicity of deserted Malian soldiers and the mayor of Aguel'hoc.

73. It should also be noted that all human rights violations committed in the Kidal region should be attributed to the MNLA since up to the date this report was written, this armed group continued to claim its rule in this region. In any case, the MNLA and other armed groups failed in their obligation to protect populations living in areas under their control.

B- Responsibility of the Malian military

74. From information collected, the delegation noted cases of human rights violations committed by elements of the Malian regular army in northern Mali during Operation Serval. Some soldiers carried out acts of vengeance against the civilian population accused of being accomplices or belonging to the same family as the armed groups.

75. However, the delegation noted that to date, proceedings are yet to be brought against soldiers who committed these violations. The competent authorities claim they lack factual evidence and expect victims to file the necessary complaints. This is the case of a girl who was raped by two Malian gendarme officers in Mopti.

76. It should also be underscored that the Malian military has to account for the various human rights violations committed during the counter-coup. Soldiers involved in these violations must be brought to account before the competent courts.

XI. Response of the Malian Government to the crisis in northern Mali

77. The delegation noted that the Malian Government is conscious of the seriousness of the crisis in the north and, with the support of the international community, has taken some measures to halt the situation.

A- Establishment of a National Commission of Inquiry

78. By Order No. 0234/MSIPC-SG of 31 January 2012, the Government, through the Minister of Internal Security and Civil Defence, established a Special Commission of Inquiry to investigate the events which occurred in Aguel'hoc on 18 and 24 January 2012. The Commission has already presented its report.

B- Prosecutions

79. At the national level, the Government has decided to start judicial proceedings against the presumed perpetrators of the various human rights violations committed in northern Mali. As part of its commitment, 28 international arrest warrants have been issued against the political and military leaders of the MNLA, MUJAO and

Ansar Dine. Other presumed perpetrators have been brought before the national courts. This task has been assigned to the Public Prosecutor's Office of the Commune III Court of Appeal.

80. At the international level, the Malian authorities informed the delegation that the Ministry of Justice, on behalf of the Malian Government, has brought the violations committed in northern Mali before the International Criminal Court.

C- Establishment of a Dialogue and Reconciliation Commission

81. On 6 March 2013, the transitional Government issued a decree establishing a Dialogue and Reconciliation Commission. The Commission was officially launched on 24 April 2013 and its main mandate is to achieve lasting peace and national reconciliation among all Malians without distinction of race or ethnicity.

D- Establishment of a Ministry of Religious Affairs and Worship

82. Conscious of the predominance of the religious and jihadist aspects of the crisis in northern Mali and the role of religion in national reconstruction, the transitional Government established a Ministry of Religious Affairs and Worship.

83. The delegation took note of the activities that the ministry plans to conduct in order to find solutions to the Malian crisis, in particular by organising panel discussions, colloquiums and training sessions on religion and religious leadership, adopting a religious policy, and reviewing training programmes in *medersas* and religious training institutes.

84. The delegation however noted that the majority of the officials of this ministry are Muslims, an element which could compromise the credibility of the institution.

XII. Conclusion and recommendations

A- Conclusion

85. Following the fact-finding mission and discussions held with all the relevant stakeholders, the delegation came up with the conclusions below.

86. The crisis in northern Mali is as a result of the laxity of the Malian authorities coupled with the complicity of some Malian citizens who facilitated the infiltration, into the northern part of Mali, of ex-prisoners from neighbouring countries, terrorists and hostage takers (Europeans abducted), drug traffickers and fundamentalists fleeing their countries.

87. The weakness of the Government is also a major factor of the crisis in northern Mali. On this point, it was noted that there is poor governance of public affairs, in particular those of the northern regions. It is also worth highlighting the shortcomings relating to the limited administrative and security coverage in the

northern part of the country, the dictates of the Tamanrasset Accord which limited the military's scope of action in the Kidal region, the porosity of the borders and lapses in issuing visas to foreign nationals who promoted the introduction of radical Islam, failure to monitor the construction of religious buildings, in particular mosques and religious centres, which served as places for indoctrination, and the lack of legislation on religious matters.

88. The northern part of Mali thus became a land of asylum for the various terrorist movements led by Ansar Dine, AQMI, MUJAO and MNLA. Due to the poverty of the population and the low level of development in the region, youth recruitment by these terrorist movements in northern Mali became rampant.

89. The occupation of this region led to several cases of human rights violations, including the summary execution of soldiers in the Aguel'hoc camp, violations of the freedom of religion of the population, violations of the physical and moral integrity of the population through flogging, amputation, stoning and rape of women, the destruction of mausoleums and places of worship, and violations of the right to health and education..

90. Considering the length of the period during which human rights violations were committed and the number of victims, there is no doubt that there were serious and massive human rights violations.

91. The Aguel'hoc and Diabali attacks may also be classified as crimes against humanity. The rape carried out against women and girls during the crisis are crimes against humanity and should be judged by the International Criminal Court in the absence of action by the Malian Government.

92. In spite of the willingness of the Malian authorities to prosecute the perpetrators of these acts, one notes the lack of cooperation by the neighbouring countries in which the presumed perpetrators and/or people who ordered the violations committed in northern Mali are seeking refuge. This situation has obstructed, to date, the implementation of international arrest warrants issued against such individuals.

93. The prosecution of perpetrators of human rights violations committed in northern Mali at the national level by the Commune III Court of Appeal is hampered by the problem of proximity of the courts with regard to witnesses, plaintiffs and all individuals who have to contribute to establishing the truth.

94. The insecurity that reigned in northern Mali led to the massive displacement of populations from the north to the south of the country and to neighbouring countries such as Algeria, Burkina Faso, Mauritania and Niger.

95. The delegation noted that with the gradual return to peace in northern Mali, the majority of internally displaced persons have shown interest in returning to their

regions of origin if some conditions are met, including the presence of the police, access by families to health and the education of their children, and food support.

96. At the time this report was written, the delegation noted two significant developments:

- a) The National Assembly had just lifted the immunity of parliamentarians in order for them to be prosecuted for charges levied against them, including in connection with the Malian crisis, which gives hope that **impunity will be a key area of concern for the Malian Government; and**
- b) **As a result of the agreement signed in Ouagadougou on 18 June 2013, the liberation of the entire northern region becomes more and more feasible with the restoration of administration in Kidal and the cantonment of armed groups.**

97. The delegation notes that Mali plans to hold elections and that the country needs to build on viable institutions that are representative of all Malians. The delegation would like to encourage the political authorities and the entire Malian population to strive towards restoring peace and security.

98. In the light of this brief analysis, the delegation makes the recommendations below.

B- Recommendations

The Government of the Republic of Mali:

- Take the necessary urgent measures, if it has not yet done so, to establish democracy and the rule of law that will ensure good governance at the political, judicial and economic levels;
- Take the necessary measures to combat impunity and refrain from sacrificing human rights for the sake of other considerations;
- Take the necessary measures to strengthen national courts, including by establishing a special court to prosecute perpetrators of crimes committed during the crisis;
- Provide the necessary financial and material resources for the deployment of judges in order to facilitate access to justice for victims of human rights violations committed in northern Mali;
- Rehabilitate infrastructures to enable communities to have access to basic social services throughout the country;

- Prepare a national religious policy and take the necessary measures to preserve the secular nature of Mali while regulating sermons, teachings and the construction of religious buildings;
- Take the necessary measures to resolve the issue of poor governance and laxity for which some Malian government authorities have always been blamed;
- Take the necessary measures to strengthen the Malian military to be better equipped to meet the security challenges in northern Mali;
- Bring before the competent courts all military authorities presumed to be perpetrators of human rights violations, in particular those involved in the summary executions carried out in Diabali and the atrocities of the counter-coup of April 2012;
- Increase security at the borders and monitor arrivals and departures;
- Implement an effective policy that will help protect communities living in Malian territory, in particular the light skin communities;
- Take the necessary measures to alleviate the poverty of Malian populations, including by boosting the economy;
- Ensure that all the various religions are represented at the Ministry of Religious Affairs and Worship;
- Provide the National Human Rights Commission and the Dialogue and Reconciliation Commission with the necessary human and material resources to effectively implement their mandates;
- Take the necessary measures to put an end to the recruitment and use of child soldiers for military and other purposes;
- Ensure that children recruited by armed groups are rehabilitated and reintegrated without delay;
- Expedite the implementation of the law on the status of victims of human rights violations committed in northern Mali in order to ensure their right to reparation;
- Ratify the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

The National Human Rights Commission:

- Continue to advocate for the Malian Government to implement the Paris Principles;

- Implement its mandate in an impartial manner and continue to work with the entire Malian civil society.

The Dialogue and Reconciliation Commission:

- Extend dialogue to include all the parties to the conflict in northern Mali;
- Lay emphasis on truth and justice, including by promoting genuine social unity;
- Draw from the examples of transitional justice in other countries of the region and beyond Africa.

The AU and MINUSMA:

- Use their good offices to convince States harbouring the presumed perpetrators of violations to implement international arrest warrants as soon as possible;
- Continue efforts to support the Malian authorities in combating impunity;
- Promote the establishment of good governance across Mali and preserve Mali's territorial integrity;
- Strengthen their human rights component in order to support the efforts of Malian authorities in promoting and protecting human rights in Mali;
- Work closely with the African Commission and the UN Independent Expert on the situation of human rights in Mali towards an effective implementation of the present recommendations.

International organisations and the international community:

- Increase security and improve living conditions in refugee camps;
- Provide technical and financial assistance to Malian authorities to help combat impunity and restore the authority of the State;
- Continue to support the Malian Government in promoting and protecting human rights, as well as consolidating democracy and the rule of law.

Civil society organisations:

- Assist victims of violations in bringing matters before the competent courts;
- Continue to implement their human rights monitoring mandate in an impartial manner;
- Prioritise information sharing and networking in order to strengthen coordination among the various human rights stakeholders in Mali.

EX.CL/824(XXIV)
Annex2

**PROPOSAL BY THE AFRICAN COURT ON HUMAN AND
PEOPLES' RIGHTS AND THE AFRICAN COMMISSION ON
HUMAN AND PEOPLES' RIGHTS FOR 2016 TO BE
DECLARED AFRICAN HUMAN RIGHTS YEAR**

**PROPOSAL BY THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
AND THE AFRICAN COMMISSION ON HUMAN AND PEOPLES'
RIGHTS FOR 2016 TO BE DECLARED AFRICAN
HUMAN RIGHTS YEAR**

INTRODUCTION

1. It will be recalled that the adoption of the United Nations Universal Declaration of Human Rights in 1948 stirred Africa to come up with and establish a human rights regime specifically tailored to suit the needs and realities of the African continent. This resolve resulted in the elaboration and adoption of the African Charter on Human and Peoples' Rights (the African Charter) in 1981. It will be recalled that this Charter came into force on 21 October 1986; indeed, it will also be recalled that the Union has already designated 21 October as African Human Rights Day to mark the significance of the entry into force of this important treaty.

2. Article 30 of this Charter provided for the establishment of the African Commission on Human and Peoples' Rights (the Commission), charged with responsibility for promoting and protecting human and peoples' rights on the continent. It will be recalled this Commission was established and became operational in 1987.

3. It will be further recalled that in 1998 the Organisation of African Unity (OAU), now the African Union (AU/Union) adopted the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (the African Court). This Court was established with the specific mandate of complementing the mandate of the Commission to protect human and peoples' rights in Africa. The Court Protocol was adopted on 9 June 1998 and came into force on 25 June 2004; and the Court itself started operating in November 2006.

4. In addition to these two premier human rights institutions, other key AU Organs have also been established by the Union, whose mandates also reinforce and promote the promotion and protection of human rights on the African continent. These include, amongst others, the African Committee on the Rights and Welfare of the Child, a treaty body of the African Charter on the Rights and Welfare of the Child, which was established when its first 11 members were elected in July 2001; the Pan African Parliament which was established in March 2004; the Peace and Security Council which was established when the Protocol Relating to the Peace and Security Council (PSC) of the AU entered into force on 26 December 2003; and the Economic, Social and Cultural Council which was established under the provisions of Articles 5 and 22 of the Union's Constitutive Act and was officially launched on 9 September 2008.

5. In addition to establishing and operationalizing the above-mentioned Organs whose combined synergistic efforts seek to push the continental human rights agenda forward, the Union adopted a number of human rights instruments which also promote human and peoples' rights. These include, among others, the following: the African

Charter on the Rights and Welfare of the Child; the Protocol to the Establishment of the Peace and Security Council of the Union; the Protocol to the African Charter on the Human and Peoples' Rights on the Rights of Women in Africa; the Convention on Preventing and Combating Corruption; the African Charter on Democracy, Elections and Governance; and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

6. In the years since their establishment, the Commission and the African Court have generated a rich and progressive cutting edge human rights jurisprudence which has inspired and informed international human rights norms; the two institutions have engaged extensively with other human rights stakeholders on the continent; and they have extended the frontiers of human rights.

7. Together with the other AU Organs with a human rights mandate, the Commission and the Court have made significant contributions to the promotion and protection of human and peoples' rights on the continent. AU Member States have been more than willing partners in this endeavour, and they have taken initiatives and measures at their level to give expression to the human and peoples' rights enshrined in the African Charter particularly through the establishment of national human rights institutions with the mandate to promote and protect human rights. As a result, while there are continuing human rights challenges on the continent, very significant strides have been made and many achievements have been made, which are deserving of noting and celebrating, particularly in the year 2016.

8. The year 2016 marks a veritable watershed in the continental human rights trajectory: 2016 celebrates the 35th anniversary of the adoption of the African Charter in 1981; 2016 marks the 30th anniversary of the entry into force of the African Charter in 1986; the year marks the 29th anniversary of the operationalization of the Commission in 1987 (in 2016 the Commission will be just one year short of its 30th anniversary); 2016 also marks the 10th anniversary of the operationalization of the African Court.

9. It is for this reason that the Commission and the African Court exhort the Assembly of the Union to declare this auspicious year (2016) the African Human Rights Year, to mark, commemorate and celebrate these significant milestones in Africa's continental human rights progression.

10. The Commission and the African Court propose a series of activities spread across the entire year in 2016, activities to celebrate the achievements made, to review the human rights situation on the continent, to take stock of what still needs to be done to create a culture of human rights observance on the continent, and how best to address these remaining challenges.

11. The objective is to initiate an advocacy and coordinating campaign that effectively reaches out to stakeholders and partners at all levels (political, institutional, civil society organizations, national and community levels) to give ownership to all key

stakeholders as well as the repositories/beneficiaries of the rights enshrined in the African Charter, spread across the whole year, generating a ground swell of support culminating in the Africa Human Rights Day on 21 October 2016, which commemorates the coming into force of the African Charter.

2014

35th activity report of the African commission on Human and Peoples' rights submitted in accordance with article 54 of the African charter in human and peoples' rights

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