

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي <i>African Commission on Human & Peoples’ Rights</i>		UNIÃO AFRICANA Commission Africaine des Droits de l’Homme & des Peuples
<i>31 Bijilo Annex Layout, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia</i> <i>Tel: (220) 4410505 / 4410506; Fax: (220) 4410504</i> <i>E-mail: au-banjul@africa-union.org; Web www.achpr.org</i>		

REV.5

31ST ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (AFRICAN COMMISSION)

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

INTRODUCTION

1. This is the Thirty-First (31st) Activity Report of the African Commission on Human and Peoples' Rights (the African Commission).
2. The Activity Report presents the activities undertaken by the African Commission during the Intersession period between the 49th and the 50th Ordinary Sessions of the Commission in 2011. A substantial portion of this report is also devoted to the proceedings of the 50th Ordinary Session.

50TH ORDINARY SESSION OF THE AFRICAN COMMISSION

Attendance at the Session

3. All members of the African Commission except one attended the Session; namely; Commissioners **Catherine Dupe Atoki, Kayitesi Zainabo Sylvie, Lucy Asuagbor, Reine Alapini-Gansou, Maya Sahli Fadel, Med S. K. Kaggwa, Soyata Maiga, Pacifique Manirakiza** and **Yeung Kam John Yeung Sik Yuen**. Commissioner **Mohamed Bechir Khalfallah** was absent due to illness. Commissioner **Faith Pansy Tlakula** left mid-session, with apologies.
4. The Session was attended by three hundred and seventy three (373) participants, including representatives from State Parties, International and Inter-Governmental Organizations, Organs of the African Union, National Human Rights Institutions (NHRIs), African and International Non-Governmental Organizations (NGOs), as well as other observers.
5. Five new Commissioners were sworn in during the 50th Ordinary Session: namely Commissioners **Reine Alapini Gansou** (re-elected), **Maya Sahli**

Fadel (elected), Med S. K. Kaggwa (elected), Pacifique Manirakiza (elected) and Faith Pansy Tlakula (re-elected).

6. The Commission elected Commissioner Catherine Dupe Atoki as its Chairperson and Commissioner Kayitesi Zainabo Sylvie as its Vice-Chairperson, for the next two years.
7. Two NGOs, the **Gambia Press Union** and the **East African Law Society**, were granted Observer Status by the African Commission in accordance with the Commission's Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the Field of Human and Peoples' Rights [ACHPR.Res.33(XXV)99]. This brings the total number of NGOs with Observer Status before the African Commission to four hundred and thirty (430).
8. The following State Parties made statements on human rights situations in their respective countries: Algeria, Angola, Burkina Faso, Burundi, Egypt, Cote d'Ivoire, Ethiopia, Kenya, Lesotho, Mauritania, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Senegal, South Africa, Sudan, Tunisia, Uganda and Zimbabwe.
9. The African Committee of Experts on the Rights and Welfare of the Child, the African Court on Human and Peoples' Rights (the African Court), the International Committee of the Red Cross and the United Nations Expert Mechanism on the Rights of Indigenous Peoples also delivered statements during the Session.
10. The Network of African National Human Rights Institutions (NANHRI) was represented by the South Africa Human Rights Commission; one NHRI took the floor on the human rights situation in Africa and forty-three (43) NGOs made interventions before the African Commission.

Intersession Activities of Members of the African Commission

11. The members of the African Commission presented reports of their activities during the intersession period. The reports covered activities undertaken in their capacities as Commissioners and as members of the Commission's Special Mechanisms. Some of the activities undertaken include the following:-
 - i. Commissioner Mohamed Béchir Khalfallah undertook a promotion country visit to the Central African Republic, jointly with Commissioner Lucy Asuagbor, the Special Rapporteur on Human Rights Defenders, in June 2011;

- ii. The Special Rapporteur on the Rights of Women in Africa undertook a promotion mission to Niger, in conjunction with other special mechanisms of the African Commission, in July 2011;
- iii. The Special Rapporteur on Prisons and Other Places of Detention in Africa undertook a mission to Nigeria in August 2011; she also organized a stakeholders' strategy session on implementing penal reforms recommendations in Lagos, in August and September 2011, respectively;
- iv. The Chairperson of the Committee on the Protection of the Rights of Persons Living with HIV/AIDS and those at Risk organized the second meeting of the Committee and also undertook an information visit on HIV/AIDS to Kenya, in October 2011;
- v. The bi-annual meeting of the Working Group on Indigenous Populations/Communities in Africa was held Congo-Brazzaville, in August 2011;
- vi. The Working Group on the Death Penalty in Africa held a meeting in Pretoria, South Africa, in August 2011;
- vii. The Chairperson of the Committee for the Prevention of Torture in Africa organized a workshop on the effective functioning of the Senegalese National Prevention Mechanism Dakar, Senegal, in July 2011; she also finalized and adopted a Strategic Plan which will enhance efforts on the prevention of torture, in October 2011;
- viii. The African Commission held a Moot Court competition in Banjul, The Gambia to commemorate Africa Human Rights Day, on 21 October 2011;
- ix. The African Commission held a Colloquium to commemorate the 30th Anniversary of the African Charter on Human and Peoples' Rights, in Banjul, The Gambia, on 22-23 October 2011;
- x. The Working Group on Indigenous Populations/Communities in Africa held a meeting, in Banjul, The Gambia on 23-24 October 2011.
- xi. The Working Group on Economic, Social and Cultural Rights launched the Principles on the Implementation of Economic, Social and Cultural Rights in the African Charter and the Guidelines on Reporting by the State Parties on Economic, Social and Cultural Rights Under the African Charter, in Banjul, The Gambia on 25 October 2011;
- xii. The Chairperson as well as two Members of the Working Group on the Rights of Older Persons and People with Disabilities participated in a meeting in Cape Town, South Africa, in October 2011 on the Rights of Older Persons and People with Disabilities;
- xiii. The Special Rapporteur on Freedom of Expression and Access to Information in Africa organized a series of consultations on the Draft Model Law for AU Member States on Access to Information: on 27 to 29

June in Maputo, Mozambique; 28 to 31 August in Nairobi, Kenya; and 10 to 12 October in Dakar, Senegal.

Consideration of State Reports

12. The African Commission considered the Periodic Reports of Nigeria, Togo and Burundi. It adopted Concluding Observations on the Report of Nigeria, and deferred consideration of the Concluding Observations on the Reports of Togo and Burundi to the 51st Ordinary Session pending receipt of additional information from Burundi and Togo, as requested by the African Commission.

13. The Commission also adopted the Concluding Observations on the Periodic Reports of Burkina Faso and Uganda, which had been deferred from the 49th Ordinary Session.

Compliance with Article 62 by State Parties

14. As of the end of the 50th Ordinary Session, the status of submission of Periodic Reports by State Parties is as follows:

- a) State Parties that are up to date with their Periodic Reports - eleven (11); [Botswana, Burkina Faso, Cameroon, Congo Brazzaville, Democratic Republic of Congo, Ethiopia, Libya, Mauritius, Namibia, Rwanda, Uganda]
- b) State Parties that are behind in their reporting obligations by **one** Report - eight (8); [Algeria, Benin, Kenya, Madagascar, Sudan, Tanzania, Zambia, Zimbabwe]
- c) State Parties that are behind in their reporting obligations by **two** Reports - six (6); [Central African Republic, Egypt, Mauritania, Seychelles, South Africa, Tunisia]
- d) State Parties that are behind in their reporting obligations by **three** Reports - three (3); [Senegal, Niger, Sahrawi Arab Democratic Republic]
- e) State Parties that are behind in their reporting obligations by **more than three** Reports - ten (10); [Cape Verde, Chad, Eritrea, Gambia, Ghana, Guinea Republic, Lesotho, Mali, Mozambique, Swaziland]
- f) State Parties that have **never** submitted a report to the Commission - eleven (11); [Comoros, Cote d'Ivoire, Djibouti, Equatorial Guinea, Gabon, Guinea Bissau, Liberia, Malawi, Sao Tome & Principe, Sierra Leone, Somalia]
- g) State Parties whose periodic reports were considered during the 50th Ordinary Session - three (3); [Nigeria, Togo, Burundi]
- h) State Parties whose Periodic Reports are before the African Commission for consideration - one (1); [Angola]

- i) State Party whose Initial Report is not yet due – one (1). South Sudan attained independent statehood on 9 July 2011 and was formally admitted as a Member of the African Union on 15 August 2011. Its Initial Report is due in 2013.

Report of the Secretary to the Commission

15. The Report presented by the Secretary to the 50th Ordinary Session briefed the Commission on staffing and administrative matters, and developments during the intersession, among others. She indicated that the staffing situation had improved slightly, but that more staff were still needed. She called attention to some human rights situations that had been referred to the Commission, and highlighted various issues for consideration and decision by the Commission, such as the need for the Commission to review the way it handles Communications, with a view to improving it. She also briefed the Commission on the reasons why the 29th and 30th Activity reports were not adopted at the African Union Summit, including the bulk of the Activity Reports.

Construction of the Headquarters of the Commission

16. The Commission continues to follow up on this matter with the Host Government but there has been no progress thus far.

Consideration of Communications

17. The African Commission considered ninety two (92) Communications; three of which were transferred by the African Court to the Commission. It was seized with six (6). Three (3) communications which were considered for seizure did not meet the requirements. It considered three (3) on admissibility and one (1) on the merits.
18. The African Commission decided to dismiss four (4) Communications for want of diligent prosecution. These are:-
 - i. Communication 350/07- Sizalobuhle Moyo Mpofu v. Zimbabwe
 - ii. Communication 352/07- Sarah Mwatenga v. Zimbabwe
 - iii. Communication 358/08- Zimbabwe Exiles Forum v. Zimbabwe
 - iv. Communication 364/08- Jurists and Journalists for the Defence of Human Rights and Citizenship Rights v. Angola
19. One Communication was withdrawn by the Complainant because the subject matter before the African Commission was dealt with by the Constitutional Court in Sudan, namely Communication 311/05- Riffaat Makkawi v. Sudan.

20. Seventy-four (74) communications were deferred to the next Session, in the majority of cases due to failure by one or both parties to make submissions.

Reports and Documents

21. The Commission deliberated on and adopted the following reports: Reports of the missions of the Special Rapporteur on Prisons and Conditions of Detention in Africa to Tunisia and Nigeria; Report of the Research and Information Visit to Kenya by the Working Group on Indigenous Populations/Communities in Africa; Reports of the joint promotional missions to Algeria and Cameroon; and the Study on the Question of the Death Penalty in Africa.

Resolutions

22. The Commission adopted **twelve (12)** Resolutions relating to the renewal and reconstitution of its Special Mechanisms. It also adopted a Resolution reconstituting the membership of its Advisory Committee on Budgetary and Staff Matters and extending its mandate, and adopted a Resolution Establishing a Working Group on Communications and Appointment of Members. In addition the Commission adopted the following Resolutions: Resolution on the General Human Rights Situation in Africa; Resolution on the Situation of Human Rights Defenders in Africa; and a Resolution on Indigenous Peoples' Rights in the Context of the World Heritage Convention and Designation of Lake Bogoria as a World Heritage Site.

23. Furthermore, the African Commission issued a Communiqué on the abduction of three international humanitarian NGO workers from Sahrawi Refugee Camps, which recognized the role played by international aid organizations in alleviating the situation of refugees and demanded the immediate and unconditional release of the hostages.

The Status of Human and Peoples Rights on the Continent

24. Information from the promotional missions undertaken by Members of the Commission to State Parties, from the Periodic Reports of State Parties considered by the Commission, from the intersession activity reports of the Members and Special Mechanisms of the Commission and from the interventions made by State Parties during the 50th Ordinary Session, reveal both positive developments as well as causes for concern regarding the status of human and peoples' rights on the continent during the last six months.

(a) Positive Developments

25. A number of countries have adopted legislation to domesticate international and regional human rights instruments: Senegal adopted a law instituting the National Observer of Places of Deprivation of Liberty as its National Preventive Mechanism; the Freedom of Information Act was passed into law in Nigeria; the Children's Protection and Welfare Act 2011 was passed in Lesotho; in addition Nigeria, Togo, Namibia and Uganda initiated bills criminalizing torture in their respective jurisdictions.
26. A number of countries either ratified or acceded to various international and regional human rights instruments during the intersession. Guinea and Zambia ratified the African Charter on Democracy, Elections and Governance; Togo ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; Benin ratified the Second Optional Protocol to the International Convention on Civil and Political Rights; Tunisia acceded to the Rome Statue of the International Criminal Court and the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT); while Cape Verde and Mauritania also signed the same Protocol during the intersession.
27. Further, South Africa launched a Child Protection Unit within the South African Police Service; the Government of Zimbabwe purchased and officially handed over a building to accommodate the Zimbabwe Human Rights Commission, and an Older Persons Bill was gazetted and now awaits debate in the Parliament of Zimbabwe; additional resources were allocated to improve places of detention in the Kingdom of Swaziland, in South Africa and in Tunisia; while Burundi established a National Human Rights Commission.
28. With regard to the right to popular participation, peaceful presidential elections were held in Cape Verde (07 August 2011), in Sao Tome & Principe (07 August 2011), in Cameroon (09 October 2011) and in Zambia (20 September 2011). In Liberia the first round of elections was held in Liberia on 11 October 2011; additionally, Tunisia successfully held parliamentary elections following the popular uprising which occurred at the beginning of the year.
29. During a promotion visit to Nigeria, the Special Rapporteur on Prisons and Conditions of Detention in Africa was informed that over the last four years, the Government of Nigeria had renovated over sixty per cent of the prisons in the country, and had also built some new prisons and new cells to ensure that the environment where prisoners are kept does not detract

from their humanity. The Special Rapporteur also commended the establishment of the Borstal institutions for the rehabilitation of young male offenders.

30. During a promotion visit to Tunisia, the Special Rapporteur on Prisons and Conditions of Detention in Africa was impressed with the great strides made in Tunisia in responding to the situation of women and children in prison. The Special Rapporteur also appreciated the range of training and skills programmes to rehabilitate women and children offenders in all the detention places visited. She further noted that in Prison of Mahdia, Prison of Messadine, Prison of Borg El Ami and Women Prison Mornaguia, prison reform educational programs allow the prisoners to obtain an academic degree or vocation. The Special Rapporteur commended Tunisia for offering education in prison, as this gives prisoners the chance to have a better future outside of the prison system by helping them to be equipped with useful and practical knowledge to become self-sufficient.
31. During a joint promotion visit to Algeria, several Special Mechanisms of the African Commission noted the improvement in the representation of women in some governance structures, such as in the Parliament, Government Ministries and other decision-making positions. Further, the Delegation observed the various measures taken over the past few years to eliminate discriminatory laws against women, and in particular the amendment of Article 31 of the Constitution which now guarantees equality between men and women and the establishment of a Commission to ensure its implementation.
32. The African Commission commended the inclusion of provisions prohibiting torture in the training manual of the Uganda Peoples Defence Force (UPDF) and commuting the death sentences of sixty (60) prisoners to life imprisonment following the Constitutional Court Judgement, in the Concluding Observations on the Periodic Report of the Republic of Uganda.
33. Further, the African Commission commended the adoption of the law relating to the protection of handicapped persons and the establishment of mechanisms for the promotion of their rights, in the Concluding Observation on the Periodic Report of the Republic of Burkina Faso.

(b) Causes for Concern

34. These positive developments notwithstanding, the African Commission continued to both note and receive reports of human rights violations from different parts of the continent.

35. During the intersession, allegations of arrests and arbitrary detention of civilians, journalists and human rights defenders, pre-trial detention, torture and harassment of human rights defenders, violations of the rights of women and breaches of the rights of groups such as migrants in some State Parties, were reported the Commission.
36. In addition, high levels of overcrowding, disease, malnutrition, torture and ill-treatment of inmates and unduly long periods of pre-trial detention were noted in some of the places of detention in Africa. For instance, the Special Rapporteur on Prisons and Conditions of Detention in Africa has expressed concern regarding the over-crowding which she noted in many of the prisons that she visited during her promotion visit to Nigeria, a fact acknowledged by the Delegation of the Federal Republic of Nigeria during presentation of its 4th Periodic Report at the 50th Ordinary Session of the Commission. The Special Rapporteur was especially concerned about prisoners in Nigeria who have been awaiting a decision from the court for well over thirteen years. In this regard, the Special Rapporteur recommended adherence to Section 35 of the Nigerian Constitution and Article 7(1) (a) of the African Charter, which guarantee the right of persons to be brought before a court of law within a reasonable time. The Africa Commission also noted its concern about the high number of prisoners on death row and overcrowding in prisons, in its Concluding Observations on the Periodic Report of the Republic of Uganda.
37. The African Commission is concerned about the prevailing conflict situation in Somalia which has further exacerbated the famine and led to an influx of refugees into Kenya. In addition, reports of extra-judicial killings and persecution of African migrant workers in Libya, as well as the killing of innocent civilians during the Libyan conflict, were also brought to the attention of the African Commission. The situations in Southern Kordofan and the Blue Nile, in the Sudan, which have reportedly resulted in the displacement of populations, and created a serious human rights situation, were also brought to the attention of the Commission.
38. Access to the African Court on Human and Peoples Rights continues to be constrained by the limited number of ratifications, as well as the reluctance of State Parties that have ratified the Protocol establishing the African Court, to make the requisite Declaration, as stated in Article 34(6) of the Protocol, to allow individuals and NGOs direct access to the African Court.
39. Further to this, the African Commission is also concerned about the low rate of implementation and domestication of those regional and

international human rights instruments that have been ratified by State Parties, as this impedes the realization of human and peoples' rights on the continent.

(c) Interventions of the African Commission

40. The African Commission has taken a number of measures and actions, including the following, in response to some of the challenges outlined above:

- i. The African Commission adopted and launched the Principles on the Implementation of Economic, Social, and Cultural Rights and the Guidelines on Reporting by State Parties on Economic, Social and Cultural Rights, to guide the efforts of State Parties in providing basic healthcare, education, water, adequate shelter, food, and other basic necessities to their people.
- ii. The African Commission organized a number of sensitization seminars, workshops and a host of other activities in various countries, in collaboration with State Parties and other partners. These workshops and seminars were aimed at raising public awareness and empowering relevant stakeholders on human rights promotion and protection on the continent.
- iii. The African Commission undertook promotion missions to a number of State Parties and held discussions on the issues and challenges which influence the implementation of regional human rights instruments. The African Commission met with government authorities and engaged in constructive and continuing dialogue in order to identify good practices, share experiences and make recommendations on ways and means of addressing the challenges facing them with a view to strengthening existing policies, programs and plans of action and initiating new ones.
- iv. By virtue of Article 62 of the African Charter, the Commission received and examined Periodic Reports submitted by State Parties to the Charter. It engaged in constructive dialogue with the authorities of those State Parties and made useful recommendations on ways and means of enhancing and sustaining a culture of respect for human rights and fundamental freedoms.
- v. The African Commission, acting under Rule 98 of the Commission's Rules of Procedure, has adopted provisional measures on the human rights situation in Southern Kordofan.

- vi. The African Commission and its Special Mechanisms adopted Resolutions, issued Press Statements, and sent Urgent Appeals to concerned State Parties with a view to raising its concerns about various human rights violations that has come to its attention. It issued, for example, a Press Statement on the deteriorating human rights situation in Libya and Egypt, which, *inter alia*, condemned the violence against civilians and called on those Governments to uphold the fundamental rights and freedoms as provided in the African Charter.

Dates and Venue of the Next Sessions

41. The Commission decided to hold an Extra-Ordinary Session from 21st February to 1st March 2012 in Banjul, The Gambia, and the 51st Ordinary Session from 18th April to 2nd May 2012, at a venue to be decided.

Submission of the Thirty-First Activity Report

42. In accordance with Article 54 of the African Charter, the African Commission hereby presents the 31st Activity Report.

31ST ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (AFRICAN COMMISSION)

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