

RECOMMENDATIONS AND RESOLUTIONS ADOPTED BY THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

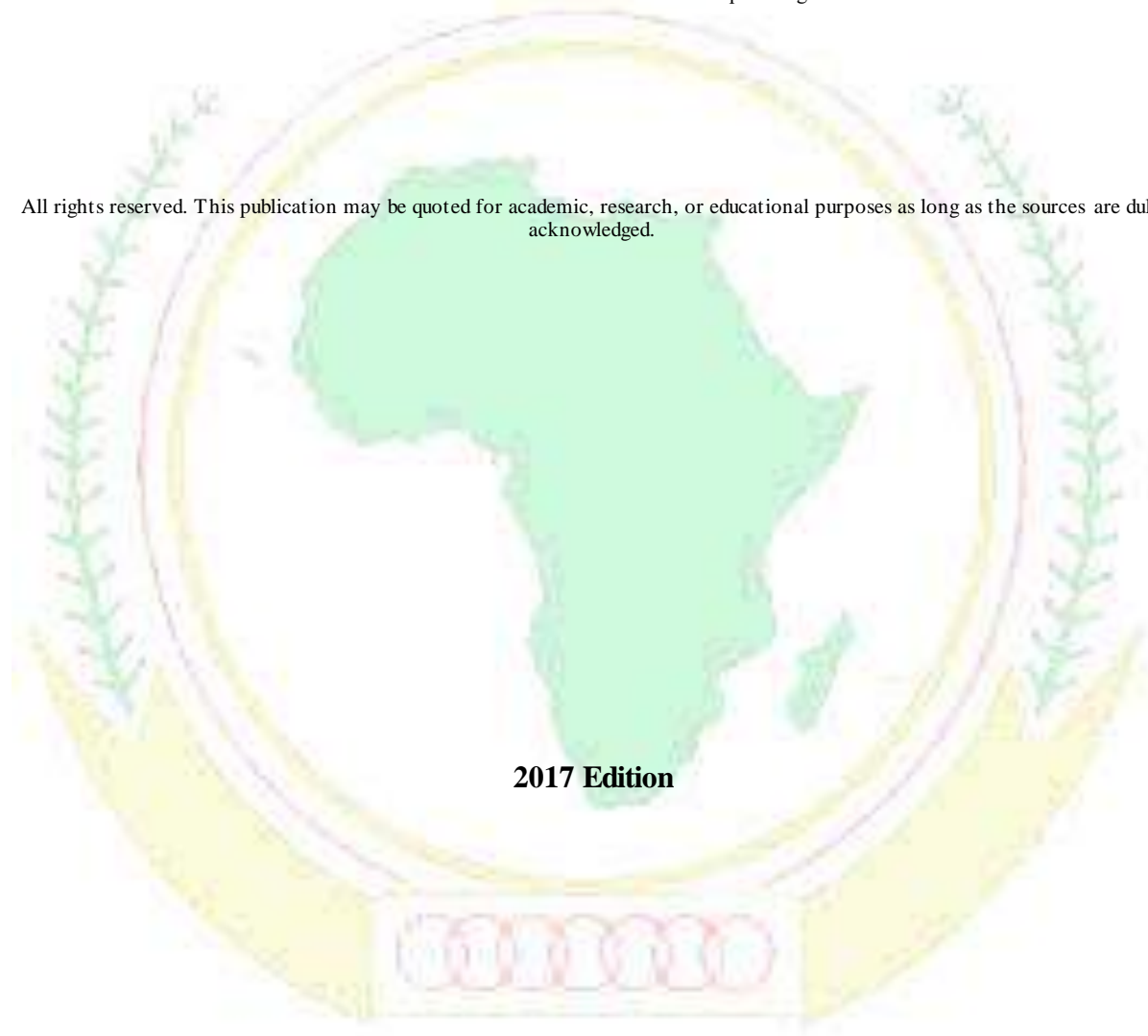


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211	ACHPR/RES.211 (EXT.OS/XI) 2012	Resolution on the Human Rights Situation in Nigeria
212	ACHPR/RES.212 (EXT.OS/XI) 2012	Resolution on the Mandate of the Working Group on Communications of the African Commission on Human and Peoples' Rights
213	ACHPR/Res.213 (LI) 2012	Resolution on the Unconstitutional Change of Governments
214	ACHPR/Res.214 (LI) 2012	Resolution on the Human Rights Situation in Nigeria
215	ACHPR/Res.215 (LI) 2012	Resolution on the Renewal of the Mandate of Expert Members of the Working group on Extractive Industries, Environment and Human Rights Violations in Africa
216	ACHPR/Res.216 (LI) 2012	Resolution on the Human Rights Situation in the Kingdom of Swaziland
217	ACHPR/Res.217 (LI) 2012	Resolution on the Situation in the North of Mali
218	ACHPR/Res.218 (LI) 2012	Resolution on the Human Rights Situation in Ethiopia
219	ACHPR/Res.219 (LI) 2012	Resolution on the Situation between Sudan and South Sudan
220	ACHPR/Res.220 (LI) 2012	Resolution on the Extension of the Mandate of the Committee on the Protection of the Rights of People living with HIV (PLWHIV), and those at risk, vulnerable to and affected by HIV in Africa
221	ACHPR/Res.221 (LI) 2012	Resolution on the attacks against Journalists and Media Practitioners in Somalia
222	ACHPR/Res.222 (LI) 2012	Resolution to Modify the Declaration of Principles on Freedom of Expression to include access to Information and Request for a Commemorative Day on Freedom of Information
223	ACHPR/Res.223 (LI) 2012	Resolution on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
224	ACHPR/Res.224 (LI) 2012	Resolution on a Human Rights-based approach to Natural Resources Governance
225	ACHPR/Res.225 (LII) 2012	Resolution on the Expansion of the Mandate of the Working Group on Communications and modifying its Composition
226	ACHPR/Res.226 (LII) 2012	Resolution on the Ratification of the Protocol to the

		African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights
227	ACHPR/Res.227 (LII) 2012	Resolution on the Expansion of the Mandate of the Working Group on Death Penalty in Africa
228	ACHPR/Res.228 (LII) 2012	Resolution on the need to Develop Guidelines on Conditions of Police Custody and pre-trial Detention in Africa
229	ACHPR/Res.229 (LII) 2012	Resolution on the Extension of the Deadline for the study on Freedom of Association in Africa
230	ACHPR/Res.230 (LII) 2012	Resolution on the need for a study on the Situation of Women Human Rights Defenders in Africa
231	ACHPR/Res.231 (LII) 2012	Resolution on the Right to Adequate Housing and Protection from Forced Evictions
232	ACHPR/Res.232 (EXT.OS/XIII) 2013	Resolution on Elections in Africa
233	ACHPR/Res.233 EXT.OS/XIII) 2013	Resolution on the Reconstitution of the Working group on Specific Issues relevant to the Work of the Commission and Modifying its Mandate and Composition
234	ACHPR/Res.234 (LIII) 2013	Resolution on the Right to Nationality
235	ACHPR/Res.235 (LIII) 2013	Resolution on Transitional Justice in Africa
236	ACHPR/Res.236 (LIII) 2013	Resolution on Illicit Capital Flight from Africa
237	ACHPR/Res.237 (LIII) 2013	Resolution Appointing Expert Members for the Working Group on Indigenous Populations/Communities in Africa
238	ACHPR/Res. 238 (EXT.OS/XIV) 2013	Resolution on the Political Situation in the Republic of Mali
239	ACHPR/RES 239 (EXT.OS/XIV) 2013	Resolution on the 2013 Elections in Africa
240	ACHPR/RES 240 (EXT.OS/XIV) 2013	Resolution on the Human Rights Situation in the Arab Republic of Egypt
241	ACHPR/Res. 241 (EXT.OS/XIV) 2013	Resolution on the Human Rights Situation in the Democratic Republic of Congo (DRC)
242	ACHPR/Res 242 (EXT.OS/XIV) 2013	Resolution on the Human Rights Situation in the Republic of Guinea
243	ACHPR/Res. 243 (EXT.OS/XIV) 2013	Resolution on the Human Rights Situation in the Central African Republic

244	ACHPR/Res.244 (LIV) 2013	Resolution on the Renewal of the Mandate of the Special Rapporteur on Prisons and conditions of detention in Africa
245	ACHPR/Res.245 (LIV) 2013	Resolution on the Renewal of the Mandate of the Special Rapporteur on the rights of Women in Africa
246	ACHPR/Res.246 (LIV) 2013	Resolution on the Renewal of the Mandate of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa
247	ACHPR/Res.247 (LIV) 2013	Resolution on the Renewal of the Mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa
248	ACHPR/Res.248 (LIV) 2013	Resolution on the Renewal of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa
249	ACHPR/Res.249 (LIV) 2013	Resolution on the Renewal of the Mandate of the Working Group on Indigenous Populations/Communities in Africa
250	ACHPR/Res.250 (LIV) 2013	Resolution on the Renewal of the Mandate of the Working Group on the Rights of Older Persons and People with Disabilities in Africa
251	ACHPR/Res.251 (LIV) 2013	Resolution on the Renewal of the Mandate of the Chairperson and Members of the Working Group on the Death Penalty, Extrajudicial, Summary and arbitrary killings in Africa
252	ACHPR/Res.252 (LIV) 2013	Resolution on the Renewal of the Mandate of the Working Group on Economic, Social and Cultural Rights in Africa
253	ACHPR/Res.253 (LIV) 2013	Resolution on the Renewal of the Mandate of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa
254	ACHPR/Res.254 (LIV) 2013	Resolution on the appointment of the Chairperson and renewal of the mandate of the Members of the Committee for the Prevention of Torture in Africa
255	ACHPR/Res.255 (LIV) 2013	Resolution on the renewal of the mandate of the working group on communications
256	ACHPR/Res.256 (LIV) 2013	Resolution on the appointment of the chairperson and renewal of the mandate of the members of the advisory committee on budgetary and staff matters
257	ACHPR/Res.257 (LIV) 2013	Resolution calling on the republic of Kenya to implement the Endorois decision
258	ACHPR/Res.258 (LIV) 2013	Resolution on summary execution and enforced disappearance in Mali
259	ACHPR/Res.259 (LIV) 2013	Resolution on police and human rights in Africa

260	ACHPR/Res.260 (LIV) 2013	Resolution on involuntary sterilisation and the protection of human rights in access to HI services
261	ACHPR/Res.261 (LIV) 2013	Resolution on the extension of the deadline for the study on Freedom of Association and Assembly in Africa
262	ACHPR/Res.262 (LIV) 2013	Resolution on Women's right to land and productive resources
263	ACHPR/Res.263 (LIV) 2013	Resolution on the prevention of attacks and discrimination against Persons with Albinism
264	ACHPR/Res.264 (EXT.OS/XV) 2014	Resolution on Attacks against Journalists and Media Practitioners in the Federal Republic of Somalia
265	ACHPR/Res.265 (EXT.OS/XV) 2014	Resolution on the Human Rights Situation in the Republic of South Sudan
266	<u>ACHPR/Res.266 (EXT.OS/XV) 2014</u>	Resolution on the human rights situation in the Central African Republic
267	<u>ACHPR/Res.267 (EXT.OS/XV) 2014</u>	Resolution on the human rights situation in the Federal Republic of Nigeria
268	<u>ACHPR/RES.268 (LV) 2014</u>	Resolution appointing expert members for the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa
269	ACHPR/Res.269 (LV) 2014	Resolution Appointing an Expert Member for the Working Group on the Rights of Older Persons and People with Disabilities in Africa
270	ACHPR/Res.270 (LV) 2014	Resolution appointing Expert Members of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary killings in Africa
271	ACHPR/Res.271 (LV) 2014	Resolution on Climate Change in Africa
272	ACHPR/Res.272 (LV) 2014	Resolution on the 2014 Elections in Africa
273	ACHPR/Res.273 (LV) 2014	Resolution on Extending the Scope of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa
274	ACHPR/Res.274 (LV) 2014	Resolution on the Drafting of Guidelines on Human Rights and the fight against Terrorism
275	ACHPR/Res.275 (LV) 2014	Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity
276	ACHPR/Res.276 (LV) 2014	Resolution on Terrorist Acts in Africa

277	ACHPR/Res.277 (LV) 2014	Resolution on the drafting of a Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality in Africa
278	ACHPR/Res.278 (LV) 2014	Resolution on the extension of the deadline for the Study on Transitional Justice in Africa
279	ACHPR/Res.279 (LV) 2014	Resolution on the Extension of the Mandate of the Committee on the Protection of the Rights of People living with HIV, and those at Risk, Vulnerable to and affected by HIV in Africa
280	ACHPR/Res.280 (LV) 2014	Resolution on the Extension of the Mandate of the Working Group on Specific Issues relevant to the Work of the Commission
281	ACHPR/Res.281 (LV) 2014	Resolution on the Right to Peaceful Demonstrations
282	ACHPR/Res.282 (LV) 2014	Resolution on the situation in the Sahrawi Arab Democratic Republic
283	ACHPR/Res.283 (LV) 2014	Resolution on the Situation of Women and Children in Armed Conflict
284	ACHPR/Res.284 (LV) 2014	Resolution on the Suppression of Sexual Violence against Women in the Democratic Republic of Congo
285	ACHPR Res. 285 (EXT.OS/XVI) 2014	Resolution Appointing an Expert Member for the Committee on the Protection of the Rights of People Living with HIV (PLHIV), and Those at Risk, Vulnerable to and Affected by HIV in Africa
286	ACHPR/Res.286 (EXT.OS/XVI) 2014	Resolution on Freedom of Expression in the Kingdom of Swaziland
287	ACHPR/Res.287 (EXT.OS/XVI) 2014	Resolution on Human Rights Abuses in Egypt
288	ACHPR/Res.288 (EXT.OS/XVI) 2014	Resolution Condemning the Perpetrators of Sexual Assault and Violence in the Arab Republic of Egypt
289	ACHPR/Res.289 (EXT.OS/XVI) 2014	Resolution on the Food Crisis in Somalia
290	ACHPR Res. 290 (EXT.OS/XVI) 2014	Resolution on the Need to Conduct a Study on HIV, the Law and Human Rights
291	ACHPR/Res.291 (EXT.OS/XVI) 2014	Resolution on the UN World Conference on Indigenous Peoples
292	ACHPR/Res.292 (EXT.OS/XVI) 2014	Resolution on the Need to Conduct a Study on Child Marriage in Africa
293	ACHPR/Res.293 (EXT.OS/XVII)	Resolution on 2015 Elections in Africa

	2015	
294	ACHPR/Res.294 (EXT.OS/XVII) 2015	Resolution on Good Governance at the African Commission on Human and Peoples' Rights and its Secretariat
295	ACHPR/Res.295 (EXT.OS/XVII) 2015	Resolution on Meetings of the Working Group on Communications
296	ACHPR/Res.296 (EXT.OS/XVII) 2015	Resolution on the Appointment of Expert Members of the Working Group on Economic, Social and Cultural Rights in Africa
297	ACHPR/Res.297 (EXT.OS/XVII) 2015	Resolution on the Deteriorating Human Rights Situation in the Arab Republic of Egypt
298	ACHPR/Res.298 (EXT.OS/XVII) 2015	Resolution on the Human Rights Situation in the Federal Republic of Nigeria
299	ACHPR/Res.299 (EXT.OS/XVII) 2015	Resolution on the Human Rights Situation in the Republic of The Gambia
300	ACHPR/Res.300 (EXT.OS/XVII) 2015	Resolution on the Obligations on the Right to Water
301	ACHPR/Res.301 (EXT.OS/XVII) 2015	Resolution on the World Bank's draft Environmental and Social Policy (ESP) and associated Environmental and Social Standard (ESS)
302	ACHPR/Res.302 (LVI) 2015	Resolution on terrorist acts in the Republic of Kenya
303	ACHPR/Res.303 (LVI) 2015	Resolution on the Right to Rehabilitation for Victims of Torture
304	ACHPR/Res.304 (LVI) 2015	Resolution condemning the Xenophobic Attacks in the Republic of South Africa
305	ACHPR/Res.305 (EXT.OS/XVIII) 2015	Resolution on Accessibility for Persons with Disabilities
306	ACHPR/Res.306 (EXT.OS/ XVIII) 2015	Resolution on the Expansion of the Mandate of the Special Rapporteur on Prisons and Conditions of Detention in Africa
307	ACHPR/Res.307 (EXT.OS/ XVIII) 2015	Resolution on the Development of Guidelines on Access to Information and Elections in Africa
308	ACHPR/Res.308 (EXT.OS/ XVIII) 2015	Resolution on the Extension of the Deadline for the Study on HIV, the Law and Human Rights
309	ACHPR/Res.309 (EXT.OS/XVIII) 2015	Resolution on the Human Rights Situation in Burundi
310	ACHPR/Res.310 (LVII) 2015	Resolution on the urgency for undertaking Fact-finding Mission to Burundi
311	ACHPR/Res.311 (LVII) 2015	Resolution on the Renewal of the Mandate and Reconstitution of the Working Group on Specific Issues Related to the Work of the Commission
312	ACHPR/Res.312 (LVII) 2015	Resolution on the Renewal of the Mandate and Reconstitution of the Working Group on the Rights of Older Persons and People with Disabilities in Africa

313	ACHPR/Res.313 (LVII) 2015	Resolution on the Renewal of the Mandate and Reconstitution of the Advisory Committee on Budgetary and Staff Matters
314	ACHPR/Res.314 (LVII) 2015	Resolution on the Renewal of the Mandate and Reconstitution of the Working Group on Communications
315	ACHPR/Res.315 (LVII) 2015	Resolution on the Renewal of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa
316	ACHPR/Res.316 (LVII) 2015	Resolution on the Appointment of the Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa and Renewal of the Mandate of its Members
317	ACHPR/Res.317 (LVII) 2015	Resolution on the Renewal of the Mandate of the Chairperson and Members of the Working Group on Death Penalty, Extrajudicial, Summary or Arbitrary Killings in Africa
318	ACHPR/Res.318 (LVII) 2015	Resolution on the Renewal of the Mandate of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa
319	ACHPR/Res.319 (LVII) 2015	Resolution on the drafting of Guidelines on Freedom of Association and Assembly in Africa
320	ACHPR/Res.320 (LVII) 2015	Resolution on the Renewal of the Mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa
321	ACHPR/Res.321 (LVII) 2015	Resolution on the Appointment of the Chairperson and Reconstitution of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa and Renewal of its Mandate
322	ACHPR/Res.322 (LVII) 2015	Resolution on the Renewal of the Mandate and Reconstitution of the Committee for the Prevention of Torture in Africa
323	ACHPR/Res.323 (LVII) 2015	Resolution on the Renewal of the Mandate of the Working Group on Indigenous Populations/Communities in Africa
324	ACHPR/Res.324 (LVII) 2015	Resolution on the Renewal of the Mandate of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa
325	ACHPR/Res.325 (LVII) 2015	Resolution on the Appointment of the Chairperson of the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV
326	ACHPR/Res.326 (LVII) 2015	Resolution on the Appointment of a new Commissioner

		for the Transitional Justice Study in Africa
327	ACHPR/Res.327 (LVII) 2015	Resolution on the Appointment of the Special Rapporteur on the Rights of Women in Africa
328	ACHPR/Res. 328 (EXT.OS/XIX) 2016	Resolution on the Modification of the Mandate of the Working Group on Specific Issues relevant to the Work of the Commission
329	ACHPR/Res. 329 (EXT.OS/XIX) 2016	Resolution on the Appointment of Expert Members of the Working Group on Indigenous Populations/Communities in Africa
330	ACHPR/Res. 330 (EXT.OS/XIX) 2016	Resolution on the Appointment of a New Expert Member of the Working Group on the Rights of Older Persons and Persons with Disabilities in Africa
331	ACHPR/Res. 331 (EXT.OS/XIX) 2016	Resolution on Elections in Africa
332	ACHPR/Res. 332 (EXT.OS/XIX) 2016	Resolution on Human Rights in Conflict Situations
333	ACHPR/Res. 333 (EXT.OS/XIX) 2016	Resolution on the Situation of Migrants in Africa
334	ACHPR/Res. 334 (EXT.OS/XIX) 2016	Resolution on Indigenous Populations /Communities in Africa
335	ACHPR/Res. 335 (EXT.OS/XIX) 2016	Resolution on the Situation of Internally Displaced Persons in Africa
336	ACHPR/Res. 336 (EXT.OS/XIX) 2016	Resolution on Measures to Protect and Promote the Work of Women Human Rights Defenders
337	ACHPR/Res. 337(LVIII) 2016	Resolution on the Extension of the Deadline for the Study on Transitional Justice in Africa
338	ACHPR/Res. 338(LVIII) 2016	Resolution on the Establishment of a Resolutions Committee
339	ACHPR/Res. 339(LVIII) 2016	Resolution on the Human Rights Situation in the Republic of Congo
340	ACHPR/Res. 340 (LVIII) 2016	Resolution on the Human Rights Situation in the Sahrawi Arab Democratic Republic
341	ACHPR/Res. 341(LVIII) 2016	Resolution on the human rights situation of the abducted Chibok girls and other abducted victims in Nigeria
342	ACHPR/Res. 342(LVIII) 2016	Resolution on Climate Change and Human Rights in Africa
343	ACHPR/Res. 343(LVIII) 2016	Resolution on the Right to Dignity and Freedom from Torture or Ill-Treatment of Persons with Psychosocial Disabilities in Africa
344	ACHPR/Res. 344(LVIII) 2016	Resolution on the fight against impunity in Africa
345	ACHPR/Res. 345(LVIII) 2016	Resolution on the Situation of Human Rights Defenders in Africa

346	ACHPR/Res. 346 (LVIII) 2016	Resolution on the Right to Education in Africa
347	ACHPR/Res. 347(LVIII) 2016	Resolution on the Human Rights issues affecting the African Youth
348	ACHPR/Res. 348(LVIII) 2016	Resolution on the Collaboration between the African Commission on Human and Peoples' Rights and Partners on Promoting The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)
349	ACHPR/Res. 349 (EXT.OS/XX) 2016	Resolution on the Attacks on Persons with Albinism in Malawi
350	ACHPR/Res. 350 (EXT.OS/XX) 2016	Resolution to Revise the Declaration of Principles on Freedom of Expression in Africa
351	ACHPR/Res. 351 (EXT.OS/XX) 2016	Resolution to Renew the Mandate of the Focal Point between the African Commission on Human and Peoples' Rights and the African Peer Review Mechanism
352	ACHPR/Res. 352 (EXT.OS/XX) 2016	Resolution on the Renewal of the Mandate of Expert Members of the Committee on the Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to and Affected by HIV
353	ACHPR/Res. 353 (EXT.OS/XX) 2016	Resolution on the Renewal of the Mandate of the Expert Members of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa
354	ACHPR/Res. 354(LIX) 2016	Resolution on the Appointment of an Expert Member of the Working Group on Indigenous Populations/Communities in Africa
355	ACHPR/Res. 355(LIX) 2016	Resolution on the Appointment of an Expert Member of the Working Group on Economic, Social and Cultural Rights in Africa
356	ACHPR/Res. 356(LIX) 2016	Resolution on the Human Rights Situation in the Federal Democratic Republic of Ethiopia
357	ACHPR/Res. 357(LIX) 2016	Resolution on the Human Rights Situation in the Republic of Burundi
358	ACHPR/Res. 358(LIX) 2016	Resolution on the Human Rights Situation in the Democratic Republic of Congo
359	ACHPR/Res. 359(LIX) 2016	Resolution on the Human Rights Situation in Gabonese Republic
360	ACHPR/Res. 360(LIX) 2016	Resolution on the Human Rights Situation in the Islamic Republic of The Gambia

361	ACHPR/Res. 361(LIX) 2016	Resolution on the Criteria for Granting and Maintaining Observer Status to Non-Governmental Organizations working on Human and Peoples' Rights in Africa
362	ACHPR/Res. 362(LIX) 2016	Resolution on the Right to Freedom of Information and Expression on the Internet in Africa - ACHPR/Res. 362(LIX) 2016
363	ACHPR/Res. 363(LIX) 2016	Resolution on the Need to Develop Guidelines on Policing and Assemblies in Africa
364	ACHPR/Res. 364(LIX) 2016	Resolution on Developing Reporting Guidelines with Respect to the Extractive Industries
SECTION G		
Resolutions adopted during the 21st Extra-Ordinary Session - 65th Ordinary Sessions (2017-21)		
365	ACHPR/Res. 365 (EXT.OS/XX1) 2017	Resolution on Developing Guidelines on Combatting Sexual Violence and its Consequences
366	ACHPR/Res. 366 (EXT.OS/XX1) 2017	Resolution on the Need to Develop Principles on the Declassification and Decriminalization of Petty Offences in Africa
367	ACHPR/Res. 367 (LX) 2017	Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector
368	ACHPR/Res. 368 (LX) 2017	Resolution on Implementation of the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa
369	ACHPR/Res. 369 (LX) 2017	Resolution on the Situation of Internally Displaced Persons in Africa
370	ACHPR/Res. 370 (LX) 2017	Resolution on the Granting of Affiliate Status to National Human Rights Institutions and specialized human rights institutions in Africa
371	ACHPR/Res. 371 (LX) 2017	Resolution on the Implementation of the New York Declaration for Refugees and Migrants
372	ACHPR/Res. 372 (LX) 2017	Resolution on the Protection of Sacred Natural Sites and Territories
373	ACHPR/Res. 373 (LX) 2017	Resolution on the Regional Action Plan on Albinism in Africa (2017-2021)
374	ACHPR/Res. 374 (LX) 2017	Resolution on the Right to Food and Food Insecurity in Africa
375	ACHPR/Res. 375 (LX) 2017	Resolution on the Right to Life in Africa
376	ACHPR/Res. 376 (LX) 2017	Resolution on the Situation of Human Rights Defenders

		in Africa
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Preface

This publication contains recommendations and resolutions of the African Commission on Human and Peoples' Rights (ACHPR) since its establishment in 1987 on very important issues adjudged to be pertinent to its operations as the implementation body of the African Charter on Human and Peoples' Rights. The decision to publish and publicise these recommendations and resolutions is in line with the Commission's commitment to openness and continuing desire to minimise or remove confidentiality, with regard to the work and proceedings of the Commission. This publication thus introduces to the public, other mechanisms by which the Commission tries to enhance its effectiveness as it strives to ensure implementation of the African Charter.

The publication is also in furtherance of the recognition that publicity is essential for the promotion of human and peoples' rights. For instance, some of the recommendations and resolutions obligate States Parties to the Charter to accomplish stated objectives seen as facilitative of the Commission's work. Most of these obligations, such as provided for in the resolutions for the integration of articles 1-29 of the Charter; international humanitarian law

into domestic legislation; inclusion in the training of all law enforcement officers, civil and military and in the educational curriculum for all schools, private and public, at all levels, are yet to be fulfilled by many State Parties. It is therefore hoped that this publication will serve as a reminder to defaulting States and all concerned or involved in the promotion and protection of human and peoples' rights that there is much work yet to be done.

The recommendations and resolutions contained in this pamphlet are in the main, consequential rules borne out of the experiences of the Commission since its establishment. They entail essential details necessary to give practicality and eliminate confusion from the broad formulae sometimes offered by the African Charter. The resolution on State Party reporting, for instance, empowers the Commission to give guidelines for the preparation of State reports and to examine them. The recommendations and resolutions also serve as useful guidelines intended to give operational effect to certain Charter provisions and consequently the expectations that can, with the benefit of clarity, be placed on the African Commission.

The publication of the recommendations and resolutions of the African Commission shall be continued as part of the evolving process of rendering the workings and work of the Commission a matter of public record. The Commission hopes by this, to generate and benefit from attendant public debates and positive contributions.

Most importantly, however, is the fact that it gives the Commission the opportunity to keep the peoples of Africa, for which it was established, and others concerned with the promotion and protection of human rights in Africa, informed of its internal dynamics and programmes of action undertaken and/or yet to be undertaken.

1st – 19th Extra-Ordinary Sessions
3rd – 60th Ordinary Sessions

- **5 Recommendations**
- **362 Resolutions**

Total Number of Recommendations and Resolutions= 367



1. ACHPR/Recom.1(III)88: RECOMMENDATION ON THE HEADQUARTERS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights, meeting at its Third Ordinary Session in Libreville, Gabon, from 18 to 28 April 1988;

Recalling that the African Charter on Human and Peoples' Rights which entered into force on 21 October 1986, established a Commission whose members were elected on 29 July, 1987 by the OAU Assembly of Heads of State and Government and which held its First Session in Addis Ababa;

Noting that the Charter does not contain any formal provision indicating that the Headquarters of the Commission be established at the Headquarters of the OAU;

Noting indeed that Article 30 of the Charter specifies only that an African Commission on Human and Peoples' Rights is established within the OAU, charged with promoting human and peoples' rights and ensuring their protection in Africa;

Noting also that Article 64 of the Charter stipulates that the OAU Secretary-General will convene the first meeting of the Commission at the Headquarters of the Organisation and that subsequently the Commission will be convened whenever necessary and at least once every year by its Chairman;

Bearing in mind the quasi-legislative nature of the Commission and its need for a full-time Secretariat, it is not desirable to have the Headquarters of the Commission where the political and administrative organs of the OAU are located;

Convinced that the Headquarters of the Commission can only be hosted by a State which has ratified the Charter and which offers to the Commission substantial material and human resource facilities for its establishment, work and research;

1. **RECOMMENDS** to the OAU Assembly of Heads of State and Government to establish the Headquarters of the African Commission on Human and Peoples' Rights in a country other than the one hosting the political and administrative organs of the OAU;
2. **RECOMMENDS ALSO** to the Assembly of Heads of State and Government to choose, in order to establish the Headquarters of the Commission, a country which has ratified the African Charter on Human and Peoples' Rights and which offers to the Commission substantial material and human resource facilities for its establishment, work and research.

2. ACHPR/Recom .2(III)88: RECOMMENDATION ON THE FINANCIAL RULES AND REGULATIONS GOVERNING THE FUNCTIONING OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights, meeting at its Third Ordinary Session in Libreville, Gabon, from 18 to 28 April 1988;

Considering that the African Charter on Human and Peoples' Rights adopted in Nairobi on 28 June 1981, entered into force on 21 October 1986, and that members of the African Commission on Human and Peoples' Rights set up to apply it, were elected on 29 July 1987, and installed on 2 November 1987;

Reaffirming their duty to ensure the promotion and protection of human and peoples' rights and freedoms, duly taking into account, the primordial importance traditionally attached to these rights and freedoms in Africa;

Conscious of the fundamental role of the African Commission on Human and Peoples' Rights to assist States Parties to the African Charter of Human and Peoples' Rights in the promotion and protection of human and peoples' rights and freedoms;

HAS AGREED THAT:

1. The Financial Rules and Regulations of the OAU dated 4 March 1979, apply to the African Commission on Human and Peoples' Rights, without prejudice to the following rules;
2. The Organisation of African Unity shall bear the financial cost of the Commission, pursuant to the relevant provisions of the OAU Charter and of the African Charter on Human and Peoples' Rights, Article 41 of which stipulates:

“The Secretary-General of the Organisation of African Unity shall appoint the Secretary of the Commission. He shall provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organisation of African Unity shall bear the cost of the staff and services.”

And Article 44 of which stipulates:

“Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organisation of African Unity”.

3. The Commission's budget shall form part of the Regular Budget of the Organisation of African Unity, but this budget shall be distinct and managed separately.

The Secretary-General of the OAU shall be the Accounting Officer and, in this capacity, shall be responsible for its management. He may however delegate all or part of his powers to the Chairman of the Commission for application of the financial rules and regulations of the OAU and the relevant provisions of the Rules of Procedure of the Commission.

The Accountant of the OAU shall be responsible for keeping the accounts. He shall be responsible for receiving financial resources and making relevant payments. He may,

following the exigencies of the service, delegate all or part of his powers to a staff member of the Secretariat of the Commission, in consultation with the Commission.

4. The Secretary-General of the OAU shall prepare and submit for consideration to the Advisory Committee on Administrative, Budgetary and Financial Matters, the OAU Programme of Action which shall include the programme of action of the Commission and the budgetary appropriations including those of the Commission.
5. The following are expenditure codes necessary for the effective execution of the tasks assigned to the Commission pursuant to the provisions of Article 27 of the Financial Rules and Regulations of the OAU, to cover:
 - the emoluments and allowances for the members of the Commission, as provided for in Article 44 of the Charter;
 - staff costs of the Secretariat of the Commission;
 - cost of facilities and activities of the Commission.
6. As regards additional resources to the financial contribution of the OAU to the Commission, the latter may accept in consultation with the OAU Secretary-General, grants, bequests and other donations compatible with the objectives of the African Charter on Human and Peoples' Rights.
7. If the budgetary appropriations of the Commission have not been approved or are inadequate or if new expenses are to be incurred as a result of financial implications of approved decisions after the Regular Budget of the OAU had been adopted, the Secretary-General of the OAU shall, in consultation with the Commission, submit to the Advisory Committee or sub-Advisory Committee, a rectified additional programme and budget for consideration. He shall subsequently submit the same to the Council of Ministers for approval. This would enable the Commission to carry out its task effectively.

The Secretary-General may also identify new financial sources by drawing from the overall balances available under some codes after the normal closing of the financial year.

8. If the budgetary estimates of the Commission are not adopted before 1 June, one-twelfth of the previous budget shall be released in accordance with Article 34 of the OAU Financial Rules and Regulations.

3. ACHPR/Recom.3(III)88: RECOMMENDATION ON PERIODIC REPORTS

The African Commission on Human and Peoples' Rights, meeting at its Third Ordinary Session in Libreville, Gabon, from 18 to 28 April 1988;

Having carefully examined the African Charter on Human and Peoples' Rights and, particularly, its Article 62 which stipulates:

“Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter”;

Considering that this provision of the Charter contains only the obligation which is that of a State Party to submit the report;

Considering that the Charter does not stipulate to which authority or body the periodic report should be directed;

Considering that the Charter has not specifically entrusted to the Commission with the responsibility to consider the periodic reports on Human Rights;

Considering further that it is difficult to see which other organ of the OAU could accomplish this work;

Considering that the African Commission on Human and Peoples' Rights is the only appropriate organ of the OAU capable not only of studying the said periodic reports, but also of making pertinent observations to States Parties, after providing them with general guidelines on the form and contents of the reports which they should submit, pursuant to Article 62 referred to above:

RECOMMENDS that the Assembly of Heads of State and Government:

1. Mandate the General Secretariat of the OAU to receive the said reports and communicate them to the Commission without delay;
2. Specifically entrust it with the task of examining the periodic reports submitted by the States Parties pursuant to Article 62 and other relevant provisions of the African Charter on Human and Peoples' Rights;
3. Authorise it to give the States Parties general guidelines on the form and the contents of the said periodic reports.

4.ACHPR/Recom.4(V)89: RECOMMENDATION ON MODALITIES FOR PROMOTING HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights, meeting at its Fifth Ordinary Session in Benghazi, Libya, from 3 to 14 April 1989;

Taking into account Resolution AHG/Res.176 (XXIV) adopted by the Twenty-fourth Ordinary Session of the Assembly of Heads of State and Government held in Addis Ababa, Ethiopia, in May 1988, approving the Activity Report of the Commission, its programme and the attached recommendations:

RECOMMENDS that the Assembly of Heads of State and Government of the OAU adopt the following recommendations:

“The Assembly of Heads of State and Government of the OAU meeting

Recalling that the African States “firmly convinced of their duty to ensure the promotion and protection of human and peoples' rights and freedoms, duly taking into account the primary importance traditionally attached to these rights and freedoms in Africa” adopted in Nairobi on 28 June 1981, the African Charter on Human and Peoples' Rights which came into force on 21 October 1986;

Taking into account Resolution AHG/Res. 176 (XXIV) adopted by the 24th Ordinary Session of the Assembly of Heads of State and Government held in Addis Ababa, Ethiopia, in May 1988, approving the Activity Report of the Commission, its programmes and the attached recommendations;

Aware of the fact that ignorance is the main obstacle to the respect for human and peoples' rights and that consequently it is necessary to promote the knowledge and the science of these rights and freedoms in the interest of the African people pursuant to Article 45 paragraph 1 (a) of the African Charter on Human and Peoples' Rights:

RECOMMENDS that African States parties to the African Charter on Human and Peoples' Rights:

- (i) introduce the teaching of human and peoples' rights at all levels of their educational systems (higher, secondary, primary, general, technical, professional, etc.);
- (ii) periodically broadcast, with the help of the African Commission on Human and Peoples' Rights, radio and television programmes on human rights in Africa;
- (iii) establish national and regional institutes of human and peoples' rights responsible for conducting studies and researches in co-operation with the African Commission on Human and Peoples' Rights, and for disseminating the knowledge and information on human and peoples' rights.

5. ACHPR/Recom.5(EXT.1)89: RECOMMENDATION OF THE COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights, meeting at its First Extraordinary Session in Banjul, The Gambia, on 13 and 14 June 1989;

Considering that by its Resolution AHG/Res. 176 (XXIV), the Twenty-fourth Ordinary Session of the Assembly of Heads of State and Government reaffirmed its determination to ensure the promotion and protection of human and peoples' rights in Africa,

Recalling the autonomous nature and the specific role of the Assembly of Heads of State and Government meeting in its Twenty-fourth Ordinary Session had conferred on the African Commission on Human and Peoples' Rights by adopting the specific financial rules and regulations of the Commission,

Considering that the appropriations voted for the Commission under the 1989/90 budget are inadequate for the realisation of the task assigned to the Commission by the African Charter on Human and Peoples' Rights,

Considering that the components of the emoluments approved for the members of the Commission are not commensurate with their actual responsibilities,

Considering that the Commission has no administrative staff to carry out human rights promotion and protection tasks as assigned to it by the Charter and that, pending the next financial year's allocations, it is urgent to provide the Commission with:

- a legal officer responsible for matters relating to human rights promotion;
- a legal officer responsible for human rights protection;
- a documentalist;
- a French/English translator,

1. **REAFFIRMS** the commitment of the Members of the Commission to do everything possible to carry out missions assigned to them by the Charter;
2. **PROPOSES** that the emoluments of the Members of the Commission now fixed at US\$250 for each day of meeting be raised to US\$300;
3. **REQUESTS** the Assembly of Heads of State and Government to grant the Commission an additional budget, until the next financial year, to enable it to carry out successfully its human rights promotion activities and to appoint the staff needed for the realisation of the above-mentioned promotion and protection task.

Part Two

Section A

Resolutions adopted during the 5th – 16th Ordinary Sessions

(1989 – 1994)

1. *ACHPR/Res.1 (V) 89*: RESOLUTION ON THE CELEBRATION OF AN AFRICAN DAY OF HUMAN RIGHTS

The African Commission on Human and Peoples' Rights, meeting at its Fifth Ordinary Session from 3-14 April 1989, in Benghazi, Libya;

Recalling that the African Charter on Human and Peoples' Rights, adopted by the 18th Assembly of Heads of State and Government, in June 1981, in Nairobi (Kenya), entered into force on 21 October, 1986, in accordance with the provisions of its Article 63;

Recalling that, as a safeguard measure, the Charter established an African Commission on Human and Peoples' Rights, under the provisions of the Article 30, which was seated on 2 November 1987, after the election of its members, in July, 1982;

Considering that the United Nations Organisation which has always endeavoured to establish regional arrangements for the promotion and protection of human rights, has welcomed the adoption of the Charter and its entry into force;

Considering that the UNO has always encouraged the celebration of anniversaries in the field of human rights,

Conscious of the fact that these celebrations make it possible to widely disseminate the regional or international instruments, and the human rights and fundamental liberties they proclaim, and revive interest in these rights and liberties as well as promote a better awareness thereof;

Convinced that the celebration of the anniversary of the coming into force of the African Charter on Human and Peoples' Rights would involve the peoples of the world in general and the African peoples in particular in the activities of the African Commission on Human and Peoples' Rights in the field of human and peoples' rights, as well as at the level of the African community in particular, the actual exercise and enjoyment of human and peoples' rights and of the basic freedoms:

INVITES the OAU Member States and all organisations concerned to adopt the 21st of October of every year as an African Day of Human Rights:

- to celebrate on that Day the coming into force of the African Charter on Human and Peoples' Rights;
 - to intensify their efforts to enable Africa to achieve new progress in that field.
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2.ACHPR/Res.2(V)89: RESOLUTION ON THE ESTABLISHMENT OF COMMITTEES ON HUMAN RIGHTS OR OTHER SIMILAR ORGANS AT NATIONAL, REGIONAL OR SUB-REGIONAL LEVELS

The African Commission on Human and Peoples' Rights, meeting at its Fifth Ordinary Session from 3-14 April 1989, in Benghazi, Libya;

Considering that the establishment of Committees on Human Rights or other similar organs at the national , regional or sub-regional level, as means by which to ensure respect for and as wide a promotion as possible of human rights has always been of interest to the various organs of the United Nations since the setting up of the Organisation;

Considering in particular Resolution 33/46 of 14 December, 1978, adopted by the UN General Assembly, and Resolution 24 (XXXV) of 14 March, 1979, adopted by the Human Rights Commission, which approved the guiding principles advocated by the Seminar, held in Geneva on 18 and 19 September, 1978, as regards national or local institutions for the promotion and protection of human rights;

Considering that it is desirable that the mission aimed at promoting human and peoples' rights sent by the African Commission on Human and Peoples' Rights, by virtue of its Charter, under Article 45, would be carried out through the assistance and support of national and regional committees established for that purpose, and composed of eminent personalities, which should also help governments solve their national or local problems relevant to human rights, thus promoting a better awareness of issues related to human rights:

1. **INVITES** all the States, parties to the Charter, where no national institutions as yet exist for the promotion and protection of human rights, to take appropriate measures to establish such institutions;
2. **CALLS ON THE STATES**, parties to the Charter, to take due account, when establishing national institutions, of those guiding principles, in planning their structure and functioning, born of the Seminar on national and local institutions for the promotion and protection of human rights, held in Geneva from 18 to 29 September 1978;
3. **REQUESTS** the OAU Secretary General to submit a detailed report on existing national institutions.

3. **ACHPR/Res.3(V)89: RESOLUTION ON THE INTEGRATION OF THE PROVISIONS OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS INTO NATIONAL LAWS OF STATES**

The African Commission on Human and Peoples' Rights, meeting at its Fifth Ordinary Session in Benghazi, Libya from 3 to 14 April 1989.

Considering that its mission to promote human and peoples' rights includes the promotion and formulation of principles and rules which will enable the African States to solve their legal problems relating to the enjoyment of human and peoples' rights and fundamental freedoms in conformity with Article 45, paragraph 1, sub-paragraph (b) of the African Charter on Human and Peoples' Rights;

Bearing in mind the fact that the reception of international law is not uniform in all States Parties:

REQUESTS the Assembly of Heads of State and Government to adopt the following recommendation:

"The Assembly of Heads of State and Government, meeting

Recalling that African States solemnly declared in the OAU Charter, their duty to unite by harmonising their general policies and ensuring the well-being of their peoples, by furthering the legitimate aspirations to freedom, equality, justice and dignity;

Bearing in mind Resolution AHG/Res. 176 (XXIV) adopted by the Assembly of Heads of State and Government of the OAU at its Twenty-fourth Ordinary Session in Addis Ababa, Ethiopia, in May 1988 approving the Commission's Activity Report, its programme and recommendations appended;

RECOMMENDS that Member States of the OAU, parties to the African Charter on Human and Peoples' Rights;

INTRODUCE the provisions of Articles 1 to 29 of the African Charter on Human and Peoples' Rights in their Constitutions, laws, rules and regulations and other acts relating to human and peoples' rights."

4. ACHPR/Res.4(XI)92: RESOLUTION ON THE RIGHT TO RECOURSE AND FAIR TRIAL

The African Commission on Human and Peoples' Rights, meeting at its Eleventh Ordinary Session, in Tunis Tunisia, from 2 to 9 March 1992;

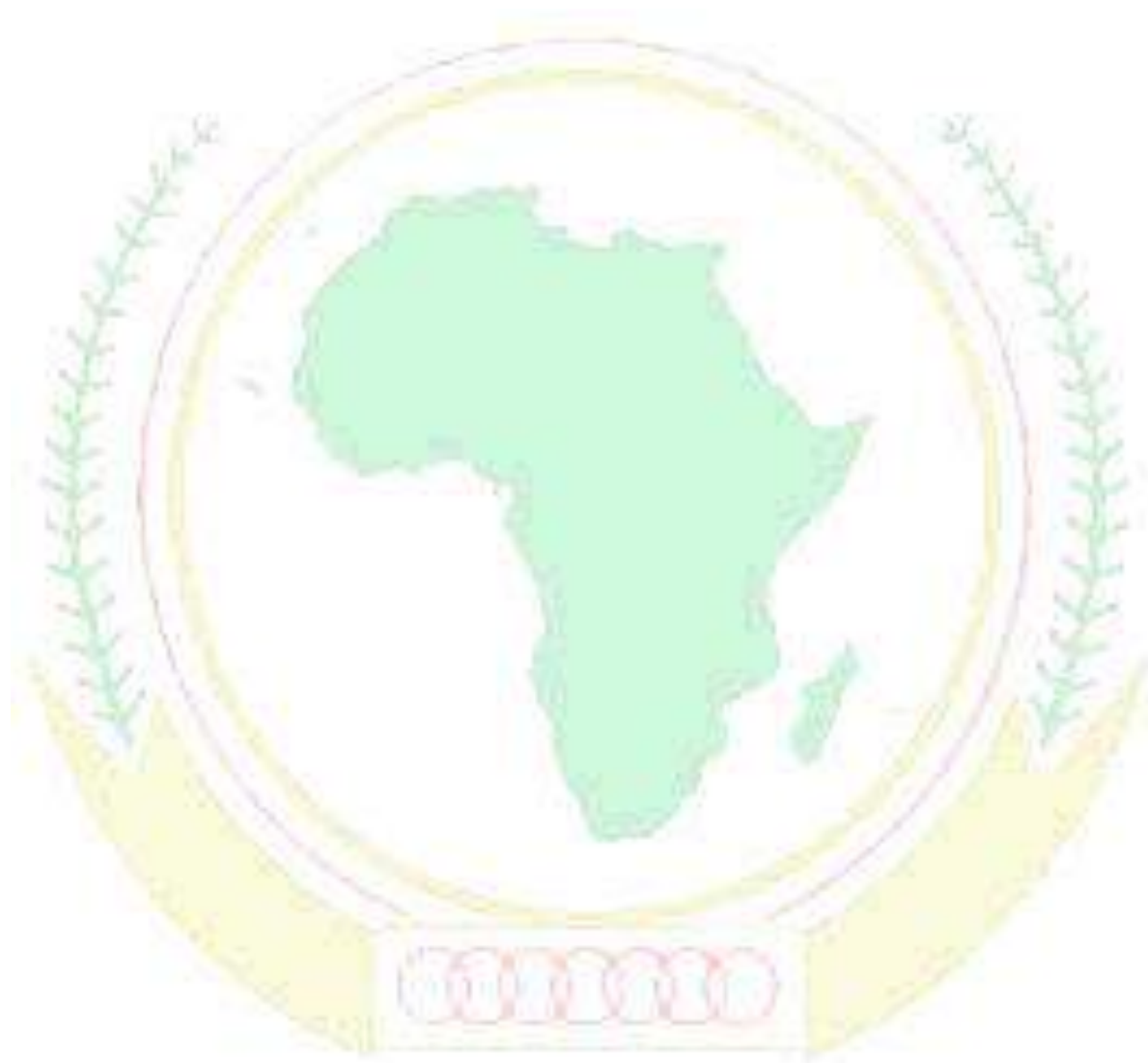
Conscious of the fact that the African Charter on Human and Peoples' Rights is designed to promote and protect human rights in accordance with the provisions contained in the Charter and recognised international human rights standards;

Recognising that the right to a fair trial is essential for the protection of fundamental human rights and freedoms;

Bearing in mind that article 7 of the African Charter on Human and Peoples' rights;

1. Considers that every person whose rights or freedoms are violated is entitled to have an effective remedy;
2. Considers further that the right to fair trial includes, among other things, the following:
 - a. All persons shall have the right to have their cause heard and shall be equal before the courts and tribunals in the determination of their rights and obligations;
 - b. Persons who are arrested shall be informed at the time of arrest, in a language which they understand, of the reason for their arrest and shall be informed promptly of any charges against them;
 - c. Persons arrested or detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or be released;
 - d. Persons charged with a criminal offence shall be presumed innocent until proven guilty by a competent court;
 - e. In the determination of charges against individuals, the individual shall be entitled in particular to:
 - i). Have adequate time and facilities for the preparation of their defence and to communicate in confidence with counsel of their choice;
 - ii) Be tried within a reasonable time;
 - iii) Examine or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
 - iv) Have the free assistance of an interpreter if they cannot speak the language used in court;
3. Persons convicted of an offence shall have the right of appeal to a higher court;

4. Recommends to States Parties to the African Charter on Human and Peoples' Rights to create awareness of the accessibility of the recourse procedure and to provide the needy with legal aid;
5. Decides to continue to be seized with the right to recourse procedures and fair trial with the view of elaborating further principles concerning this right.



5.ACHPR/Res.5(XI)92: RESOLUTION ON THE RIGHT TO FREEDOM OF ASSOCIATION

The African Commission on Human and Peoples' Rights, meeting at its Eleventh Ordinary Session, in Tunis, Tunisia, from 2 to 9 March 1992;

Taking into consideration all rights stipulated in the Universal Declaration of Human Rights, with special reference to articles 20, 23 guaranteeing the right to freedom of peaceful assembly and association;

Recalling article 22 of the international Covenant on Civil and Political Rights, and article 8 of the International Covenant on Economic, Social and Cultural Rights assuring that everyone shall have the right to freedom of association with others;

Highly evaluating the UN Sub-Commission on the Prevention of Discrimination, Resolution No. 13 (XXXIII) on the 11th of September 1980 which adopted the right to freedom of association;

Taking into consideration the provisions of the African Charter on Human and Peoples' Rights, in particular article 10(1), guaranteeing every individual the right to free association provided that he abides by the law;

CONSIDERS THAT:

1. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standards;
2. In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom;
3. The regulation of the exercise of the right to freedom of association should be consistent with State's obligations under the African Charter on Human and Peoples' Rights.

6. ACHPR/Res.6(XIV)93: RESOLUTION ON HUMAN RIGHTS EDUCATION

The African Commission on Human and Peoples' Rights meeting at its Fourteenth Ordinary Session in Addis Ababa, 1 - 10 December, 1993;

Acknowledging that education in human and peoples' rights is a prerequisite for the effective implementation of the African Charter on Human and Peoples' Rights and other international human rights instruments;

Bearing in mind that the African Charter on Human and Peoples' Rights provides in Article 17(1) for the right to education and that Article 25 of the African Charter calls upon States parties to the Charter to promote human and peoples' rights through teaching, education and publication;

Recalling the Resolution on the African Commission on Human and Peoples' Rights, AHG/Res. 227 (XXIX), published in the Commission's 6th Annual Activity Report, 1992 - 1993, which all States parties are requested to "ensure among other things (a) that human rights are included in the curriculum at all levels of public and private education and in the training of all law enforcement officials, and (b) that education for human rights and democracy should involve every organ of the society as well as the media";

Taking note of the UNESCO Plan of Action adopted at the International Congress on Education for Human Rights and Democracy in Montreal, 8-11 March 1993, which laid the foundation for the recommendation adopted at the World Conference on Human Rights in Vienna for a Decade of Human Rights Education to be declared;

Noting also the Declaration at the World Conference on Human Rights, Vienna 1993, encouraging all governments to include in the formal sector, curricula on the study of human rights in primary, secondary and tertiary institutions as well as those in the administration of justice, and for governments to be encouraged to undertake the promotion of human rights in the informal sector;

Taking into consideration the Programme of Activities of the African Commission on Human and Peoples' Rights, 1992 - 1996, adopted at its 11th Ordinary Session held 2-9 March 1992;

Recognising the importance of education as an active vehicle of inculcating the values and corresponding behaviours in a civil society based on full respect for human and peoples' rights, democracy, tolerance and justice;

Emphasising the importance of propagating the principle of human rights law as well as international humanitarian law;

Taking into consideration further the great efforts made by the African Non-Governmental Organisations to promote and implement human and peoples' rights through education on both formal and informal levels, using popular participatory methods and through the media;

Having considered the item on human rights education upon the request of a number of Non-Governmental Organisations:

1. **REITERATE** its request for States parties to include the study of human and peoples' rights in the curriculum at all levels of public and private education, including law schools to ensure, *inter alia*, that education and information regarding human and peoples' rights are included in the training of law enforcement personnel, civil or military, as well as medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;
 2. **DECIDES** to intensify the co-operation between the African Commission and the African Non-Governmental Organisations on human and peoples' rights education, bearing in mind in particular the activities contained in the Commission's Programme of Activities, 1992 - 1996;
 3. **UNDERLINES** the importance of education, through appropriate means and techniques, being geared among other things, to the need of specific groups such as women, children, refugees and internally displaced persons, victims of armed conflicts and other disadvantaged groups;
 4. **ENCOURAGES** Governments to take advantage of the activities of the Non-Governmental Organisations to organise a workshop on human and peoples' rights education with a special reference to popular participation and non-formal education during 1994, and any further initiatives which would strengthen the long term activities of the African Commission and Non-Governmental Organisations in the field of human rights education.
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7. ACHPR/Res.7(XIV)93: RESOLUTION ON THE PROMOTION AND RESPECT OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights meeting at its Fourteenth Ordinary Session in Addis Ababa, from 1 - 10 December, 1993:

Considering that human rights and international humanitarian law (IHL) have always, even in different situations, aimed at protecting human beings and their fundamental rights,

Noting the competence of the International Committee of the Red Cross (ICRC) to promote respect for international humanitarian law,

Recalling the resolution CM/Res. 1059 (XLIV), adopted at the 44th Ordinary Session of the Council of Ministers of the OAU which reaffirmed the determination of the OAU to support the ICRC in its activities and to grant it the necessary facilities to carry out its mandate,

Recalling also the conclusions of the seminar held in Banjul, The Gambia, 26-30 October 1992, following the 12th Session of the African Commission on Human and Peoples' Rights on the national implementation of the African Charter on Human and Peoples' Rights, which underscored the need to disseminate and implement the provisions of international humanitarian law applicable in time of armed conflicts,

Considering the Resolution on Human and Peoples' Rights Education adopted by the African Commission on Human and Peoples' Rights at its 14th Ordinary Session held 1 – 10 December 1993,

Recognising the need for a close co-operation in the field of dissemination of international humanitarian law and human and peoples' rights:

1. **INVITES** all States Parties to the African Charter on Human and Peoples' Rights to adopt appropriate measures at the national level to ensure the promotion of the provisions of international humanitarian law and human and peoples' rights;
2. **STRESSES** the need for specific instruction of military personnel and the training of the forces of law and order in international humanitarian law and human and peoples' rights respectively;
3. **STRESSES FURTHER** the importance of regular exchange of information between the African Commission on Human and Peoples' Rights, the International Committee of Red Cross and human rights non-governmental organisations, on teaching and dissemination activities undertaken on the principles of human and peoples' rights and international humanitarian law, in the schools, universities and all other institutions;
4. **DECIDES** to participate, as much as possible, in the seminars, conferences or technical sessions organised by the ICRC on questions of mutual interest and urges the ICRC to reciprocate for the activities of the Commission.

8. ACHPR/Res.8(XV)94: RESOLUTION ON THE SITUATION IN RWANDA

The African Commission on Human and Peoples' Rights meeting at its Fifteenth Ordinary Session in Banjul, The Gambia, from 18 - 27 April, 1994:

Deeply concerned about the alarming human rights situation in Rwanda characterised by serious and massive human rights violations,

Noting the OAU Secretary General's very energetic condemnation of the wanton killing of civilians and heinous acts perpetrated in this country,

Bearing in mind the recommendations made by the UN Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions following his visit to Rwanda in 1993:

1. CONDEMNS very strongly the cycle of violence and the massacre of innocent civilians by the different armed factions;
2. URGES the parties to the conflict to immediately cease hostilities and work towards a peaceful settlement through dialogue between all the peoples of Rwanda;
3. CALLS ON all parties to respect the African Charter on Human and Peoples' Rights, the principles of International Humanitarian Law as well as the activities of humanitarian organisations operating in the field;
4. INVITES the Special Rapporteur on Extra-judicial Summary or Arbitrary Executions to pay special attention to the situation in Rwanda and report back to the 16th Ordinary Session.

9. ACHPR/Res.9(XV)94: RESOLUTION ON SOUTH AFRICA

The African Commission on Human and Peoples' Rights meeting at its Fifteenth Ordinary Session in Banjul, The Gambia, from 18 - 27 April, 1994;

Noting the violence that has taken place in South Africa and the loss of lives that has assumed alarming proportions;

Reiterating the importance of protecting human lives and creating a climate conducive to free and fair elections;

Welcoming the positive developments that have emerged towards a consensus for holding the forthcoming election:

1. URGES all parties concerned to cease the violence and create a peaceful atmosphere;
2. URGES the concerned parties in South Africa to take all necessary steps to create an atmosphere conducive for free and fair elections;
3. URGES all political parties and others concerned in South Africa to accept the results of the election if it is declared to be substantially free and fair by the Independent Electoral Commission;

URGES the new government to ratify the African Charter on Human and Peoples' Rights and to ensure the protection of the human rights of all South Africans in accordance with the said African Charter and other relevant treaties and standards.



10. ACHPR/Res.10(XVI)94: RESOLUTION ON THE MILITARY

The African Commission on Human and Peoples' Rights meeting at its Sixteenth Ordinary Session held from 25 October to 3 November, 1994 in Banjul, The Gambia;

Recalling the intervention in African States by the military during the past three decades, and the fact that only very few states have escaped this phenomenon,

Affirming that the best government is one elected by, and accountable to, the people,

Aware that the trend world-wide and in Africa in particular is to condemn military take-overs and the intervention by the military in politics,

Recognising that the forcible take-over of government by Army, civilian or military group contravenes Articles 13(1) and 20(1) of the African Charter on Human and Peoples' Rights,

Considering that such interventions stultify political development and antagonise relations between national groups:

1. CALLS UPON African military regimes to respect fundamental rights.
2. REMINDS them that they are entrusted with the national armouries solely for the purpose of national defence and the maintenance of internal order under the direction of the legitimate authorities;
3. CALLS UPON incumbent military governments to handover political power to democratically elected governments without prolonging their incumbencies and unnecessarily delaying the return to democratic civilian rule;
4. ENCOURAGES states to relegate the era of military interventions in government to the past in the interest of the African image, progress and development, and for the creation of an environment in which human rights values may flourish.

11. ACHPR/Res.11(XVI)94: RESOLUTION ON NIGERIA

The African Commission on Human and Peoples' Rights meeting at its Sixteenth Ordinary Session held from 25 October to 3 November, 1994 in Banjul, The Gambia;

Recalling that Nigeria has ratified the African Charter on Human and Peoples' Rights,

BELIEVES that the restoration of democracy in Nigeria will be a positive step in African development,

REGRETS the annulment of the 12 June 1993 presidential election which was adjudged free and fair by national and international observers,

CONDEMNS the gross violations of human rights as evidenced in:

1. the exclusion of the African Charter on Human and Peoples' Rights from the operation of decrees adopted by the military regime;
2. the detention of pro-democracy activists and members of the press;
3. the exclusion of the jurisdiction of courts over decrees;
4. discarding of court judgements;
5. the promulgation of laws without proper procedure of penal laws with retroactive effect;
6. the closure of newspaper houses.

CALLS UPON the Nigerian military government to respect the right of free participation in government and the right to self-determination and hand over the government to duly elected representatives of the people without unnecessary delay;

RE-AFFIRMS the decision to send a delegation of Commission members to meet with the Nigeria Head of State, to express concern of the Commission about the gross violations of human rights and express the need for the Nigeria military government to urgently transfer power to a civilian government.

12. ACHPR/Res.12(XVI)94: RESOLUTION ON RWANDA

The African Commission on Human and Peoples' Rights meeting at its Sixteenth Ordinary Session held from 25 October to 3 November, 1994 in Banjul, The Gambia;

Considering the appointment at the 15th Ordinary Session of the Vice-Chairman of the African Commission as Special Rapporteur on extra-judicial executions,

Considering the report of the United Nations Special Rapporteur indicating that genocide and massive human rights and international humanitarian law violations have been committed in Rwanda,

Considering the preliminary report of the UN Experts' Committee on Rwanda and its findings corroborating those of the UN Special Rapporteur,

Considering the UN Security Council's decision to approve the establishment of an international tribunal on Rwanda,

Considering the pledge of the Government of Rwanda and the International Community as expressed in the Hague Declaration of 18th September, 1994 to try the authors of the atrocious crimes committed in Rwanda:

1. **CONDEMNS** the inhuman and heinous crimes committed in Rwanda during the recent conflict;
2. **EXPRESSES** its support for the establishment of an international tribunal by the UN to try those responsible for the crimes;
3. **CALLS FOR** the convening by the OAU over the next few months in collaboration with African and international NGOs, a meeting of African and international experts to study long-term solutions to the problem of impunity in Africa with special reference to the case of Rwanda, and to formulate appropriate recommendations;
4. **CALLS ON** the OAU to explore ways and means of encouraging African jurists to participate in the process of reconstruction of the judicial machinery in Rwanda;
5. **URGES** the Government of Rwanda to prevent the perpetration of acts of reprisals and vengeance by the rapid establishment of a new police force and a local administration respectful of human rights and composed of members of all ethnic groups of Rwanda.
6. **EXHORTS** the Government of Rwanda to ensure the rapid deployment of national and international human rights monitors as well as the strengthening of the interceding peace-keeping forces throughout Rwanda.
7. **URGES** international institutions and NGOs in general and African NGOs in particular to contribute to the effort of International solidarity and assist in the rapid reconstruction of Rwanda through the provision of technical and financial assistance especially by facilitating the resumption of the activities of local Human Rights NGOs in Rwanda.

13. ACHPR/Res.13(XVI)94: RESOLUTION ON THE GAMBIA

The African Commission on Human and Peoples' Rights meeting at its Sixteenth Ordinary Session held from 25 October to 3 November, 1994 in Banjul, The Gambia;

Recalling the military take-over of the reins of government of the Gambia on the 22nd of July 1994 which brought an end to an elected government and threatened the respect for human rights and the rule of law in that country.

Reaffirming the fundamental principle that all governments should be based on the consent of the people freely expressed by them and through their chosen representatives and that a military government is a clear violation of this fundamental principle of democracy,

Drawing attention to the provisions of article 13 of the Charter which provides, *inter alia*, that "Every citizen shall have the right to freely participate in the government of his country, either directly or through chosen representatives in accordance with the provisions of the law",

Convinced that the introduction of military rule is a clear setback to the cause of democracy and democratic development in The Gambia and Africa generally:

1. **REITERATES** that the military coup in The Gambia is a flagrant and grave violation of the right of the Gambian people to freely choose their government;
 2. **REQUESTS** the Armed Forces Provisional Ruling Council to transfer power to freely elected representatives of the people;
 3. **CALLS UPON** the military authorities to ensure that:
 - (i) the Bill of Rights contained in the Gambian Constitution remains supreme over all other legislation emanating from the Ruling Council;
 - (ii) the dependence of the judiciary is respected;
 - (iii) during the transition period, the rule of law, as well as the recognised international standards of fair trial and treatment of persons in custody are observed;
 - (iv) all detainees should either be charged with the commission of offences or released forthwith and that meanwhile the rights of detainees to have access to their lawyers and members of their families are scrupulously respected.
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14. ACHPR/Res.14(XVI)94: RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its Sixteenth Ordinary Session held from 25 October to 3 November, 1994 in Banjul, The Gambia;

Acknowledging that the human rights situation in many African countries is characterised by the violations of economic, social, cultural, civil and political rights;

Alarmed by the possible resurgence of the illegal seizure of the reins of government in Africa;

Expressing concern over the persistent situation of refugees and internally displaced persons affecting the African Continent,

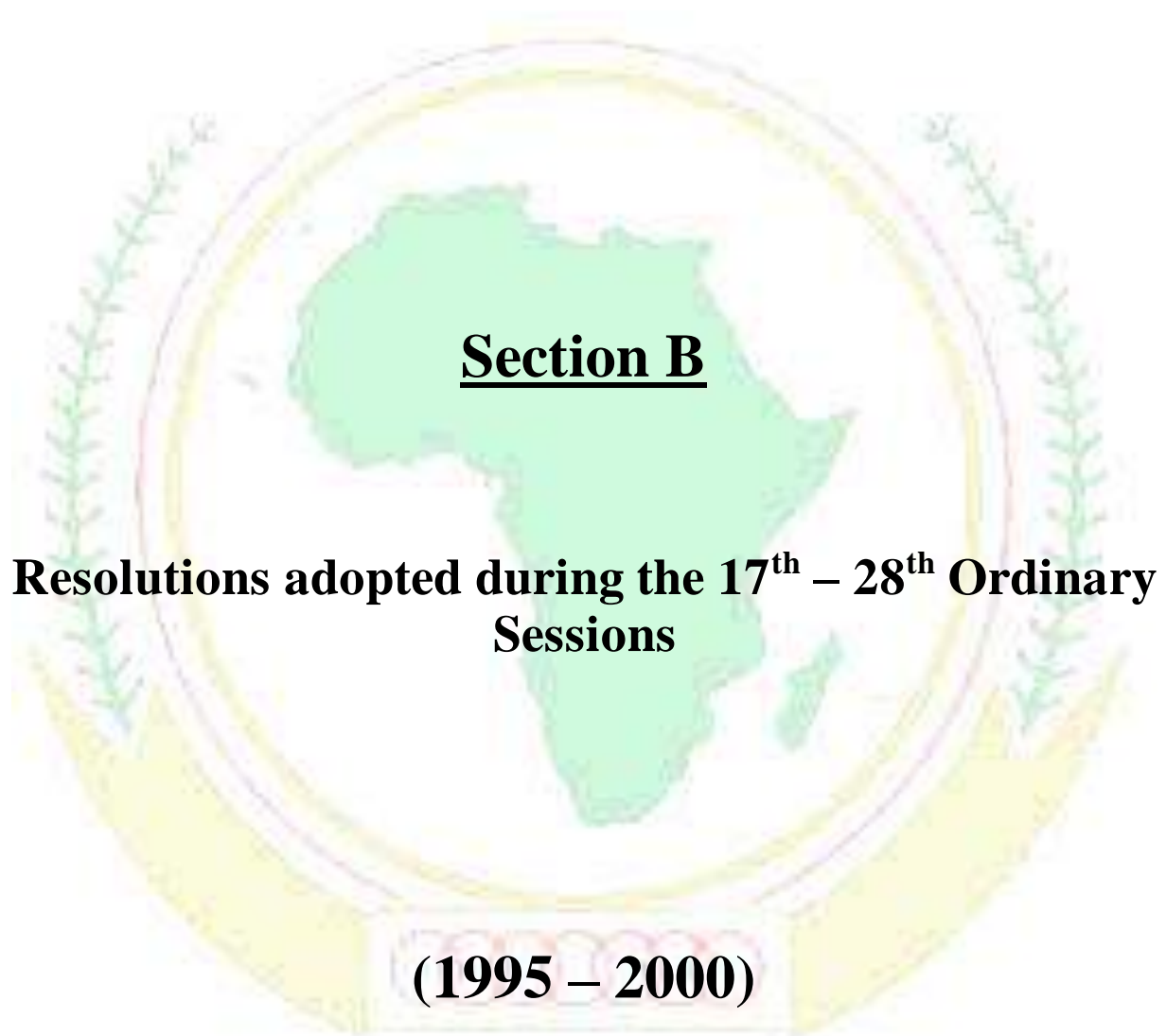
Seriously concerned with the continuous restrictions imposed on the right of freedom of expression by the arrest of journalists and the closure of newspapers in some African countries;

Considering that the persistent economic crisis in Africa has aggravated the human rights situation of vulnerable groups in African societies, in particular women and children;

Also concerned with the consequences of persistent wars in several African States, on the civilian population, which prevent the realisation of the right to development;

Bearing in mind its role under the African Charter on Human and Peoples' Rights, to ensure the protection of Human and Peoples' Rights:

1. **CONDEMNS** the planning or execution of *Coup d'Etats* and any attempt to seize power by undemocratic means;
2. **CALLS UPON** all African Governments to ensure that elections and electoral processes are transparent and fair;
3. **URGES** all African countries to adopt appropriate means to stop the phenomenon of refugees and internally displaced persons affecting the continent;
4. **CONDEMNS** all attempts at restricting the right to freedom of expression;
5. **CALLS UPON** all African Governments to adopt legislative and other measures to protect vulnerable groups of society, in particular women and children, against the consequences of the persistent economic crisis in Africa;
6. **URGES** all those parties engaged in war on the African continent, to abide by the provisions of International Humanitarian Law, particularly with regard to the protection of civilians and to undertake all efforts to restore peace.



15. ACHPR/Res.15(XVII)95: RESOLUTION ON SUDAN

The African Commission on Human and Peoples' Rights meeting at its Seventeenth Ordinary Session held from 13 to 22 March 1995 in Lomé, Togo;

Recalling that Sudan is legally bound to comply with international human rights and international humanitarian law treaties it has ratified, including the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, the Convention on the Rights of the Child and the four Geneva Conventions of 1949,

Considering the consistent reports from United Nations experts, non-governmental organisations and others of continuing gross violations of human rights committed by the Government of Sudan,

Further considering that such reports also document gross abuses committed by factions of the Sudan Peoples' Liberation Army (SPLA) and the South Sudan Independence Army (SSIA),

Mindful that the need for large scale humanitarian aid in parts of Sudan is principally a result of the continuing war and gross human rights abuses,

Alarmed by the large number of internally displaced persons and the continuing exodus of refugees, mainly from Southern Sudan and the Nuba Mountain region:

1. **EXPRESSED DEEP CONCERN** at the continuing human rights abuses in Sudan;
2. **CALLS** on the government to take immediate steps to respect all human rights, including bringing law and practice in line with international human rights standards, carrying out prompt, impartial and independent investigations into reports of human rights violations and bringing to justice those responsible;
3. **FURTHER CALLS** on the Government of Sudan to give all detainees prompt and regular access to their family, lawyers and doctors;
4. **CALLS** on all parties to the armed conflict to immediately cease using military force to interfere with the delivery of humanitarian assistance to the civilian population and to allow such assistance to be delivered unhindered;
5. **FURTHER CALLS** on all factions of the SPLA and the SSIA to respect international humanitarian law, particularly Article 3 common to the four Geneva Conventions of 1949, including ending deliberate and arbitrary killings and the torture of detainees;
6. **APPEALS** to the Government of the Sudan to support negotiations for a settlement to the conflict and ensure that any agreement includes strong guarantees for the protection of human rights;

7. **CALLS** for human rights monitors to be placed in Sudan and other locations to facilitate the monitoring and assessment of the human rights situation throughout the country.



16. ACHPR/Res.16(XVII)95: RESOLUTION ON NIGERIA

The African Commission on Human and Peoples' Rights meeting at its Seventeenth Ordinary Session held from 13 to 22 March 1995, Lomé, Togo;

Guided by the African Charter on Human and Peoples' Rights and other international human rights instruments to which Nigeria is a party;

Reaffirming that all States Parties including Nigeria have the duty to fulfil the obligations they have undertaken under the various international human rights instruments, particularly the African Charter on Human and Peoples' Rights;

Recalling the resolution passed by the African Commission at its 16th Ordinary Session in Banjul, The Gambia, in November 1994, which condemned the gross violations of human rights in Nigeria by the military government;

Deeply Concerned about the political, social, economic and general situation in Nigeria and the consequences that may result therefrom;

Condemns the continued gross and massive violations of human rights in Nigeria and particularly:

- (i) the arbitrary arrests and detention of human rights and pro-democracy activities, critics and opponents of military rule;
- (ii) severe restriction on the right to freedom of expression, including the banning of several newspapers and newsmagazines;
- (iii) circumscribing the independence of the judiciary and setting up military tribunals lacking independence and due process to try persons suspected of being opposed to the military regime;
- (iv) the abolition of *habeas corpus* with respect to political detainees;
- (v) restrictions on the right to leave the country;
- (vi) restrictions on the right to freedom of association;
- (vii) promulgation of decrees and laws ousting the application of the African Charter on Human and Peoples' Rights and preventing the Courts from intervening in cases of human rights violations.

CALLS UPON the military government in Nigeria to ensure respect for human rights and the rule of law, and in particular to release all political prisoners, reopen all closed media and respect freedom of the press, lift arbitrarily imposed travel restrictions, allow unfettered exercise of jurisdiction by the courts and remove all military tribunals from the judicial system.

URGES the military government in Nigeria to respect the rights of minorities and all religions and ensure full respect for the right of association.

AGAIN CALLS UPON the military government in Nigeria to take immediate steps to return Nigeria to democratic rule.

17.ACHPR/Res.17(XVII)95: RESOLUTION ON THE GAMBIA

The African Commission on Human and Peoples' Rights meeting at its Seventeenth Ordinary Session held from 13 to 22 March 1995, Lomé, Togo;

Recalling the condemnation of the 22 July 1994 *coup d'Etat* in The Gambia by the African Commission on Human and Peoples' Rights and the international community and the consequence of the military *coup d'Etat* on the principles of democracy and the rule of law,

Taking note of the continued presence of the military in power in The Gambia, despite calls for an immediate handing over to a civilian government, as expressed in the resolution on The Gambia by the ACHPR during its 16th Ordinary Session held in Banjul in October 1994,

Taking note with great concern that there are allegations of serious violations of human rights in the period of military rule:

1. **NOTES** the reduction of the timetable of transition to civilian rule by the Armed Forces Provisional Ruling Council from 4 to 2 years and therefore recommends strongly that the international Donor Community lift the economic sanctions imposed on The Gambia;
 2. **INSISTS** on the need for an independent judiciary and due process of law in The Gambia under all circumstances;
 3. **RENEWS** its demands on the AFPRC to accelerate the process of transition to constitutional rule and to abolish all decrees that infringe the freedom of The Gambia people individually and collectively, including the freedom of expression, the press, and the right of association and assembly;
 4. **CALLS UPON** the AFPRC to set up an independent commission of inquiry to investigate all allegations of violation of human rights.
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18. ACHPR/Res.18(XVII)95: RESOLUTION ON ANTI-PERSONNEL LAND MINES

The African Commission on Human and Peoples' Rights meeting at its Seventeenth Ordinary Session held from 13 to 22 March 1995, Lomé, Togo;

Recalling the 1980 United Nations Convention on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects;

Considering Resolution CM/Res. 1726 (LX) adopted at the Sixtieth Session of the OAU Council of Ministers in Tunis (6-11) June 1994), calling upon Member States to ratify the above Convention and considering the holding of its next Review Conference in Vienna from 25 September to 13 October 1995;

Noting with regret the extremely limited number of African States parties to this Convention;

Considering the significant ravages caused by the indiscriminate use of anti-personnel mines, particularly in Africa where more than 30 million mines are scattered;

Noting with concern the consequences of the proliferation of mines in African countries, particularly the failure of efforts of rehabilitation in the affected areas and of reconstruction, in countries which emerged from wars,

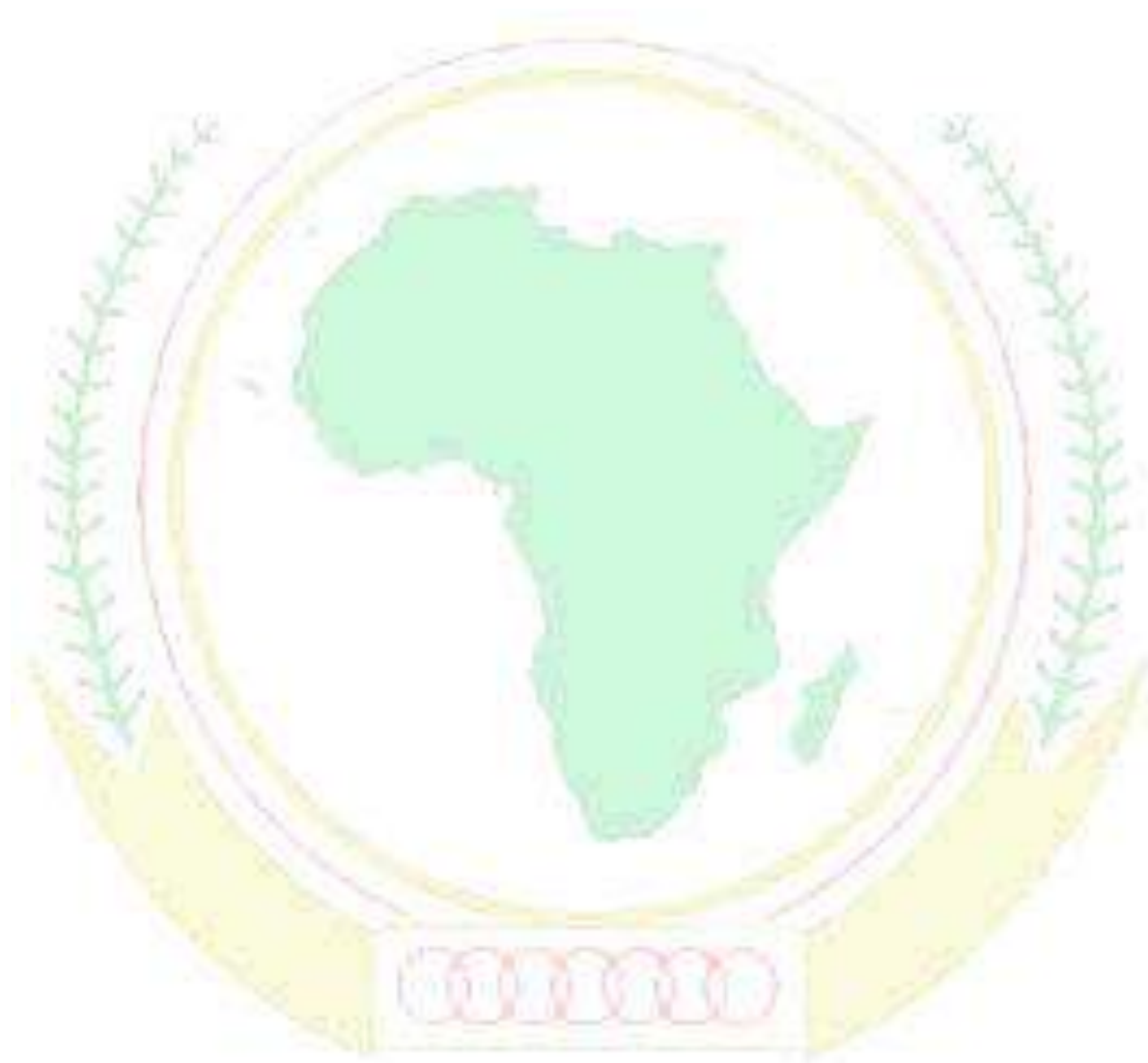
Considering that this phenomenon constitutes a flagrant violation of the provisions of the African Charter on Human and Peoples' Rights and, more specifically, of its article 4,

Further considering that one of the most adequate means to combat this calamity would be the extension of the 1980 United Nations Convention to situations of internal conflicts and, the adoption of effective provisions for the implementation of this Convention particularly aiming at the prohibition or restrictions on the use of mines;

Recognising the importance of the NGOs in highlighting public awareness and the need to strengthen their capacity in assisting mine victims:

1. **ENCOURAGES** African States to ratify, within the shortest possible time, the 1980 United Nations Convention on prohibition or restriction on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects;
2. **URGENTLY REQUESTS** African States to participate in large numbers in the review conference to press for the introduction of a clause on the prohibition or restriction of the use of mines in that Convention;
3. **RECOMMENDS** that concrete and effective steps be urgently taken to prohibit the manufacture of anti-personnel mines and to ensure that existing stocks are destroyed and an international control mechanism is set up;
4. **APPEALS** to the manufacturers of anti-personnel mines so that they may be conscious of the dangers and destruction caused by the use of their products;

5. **REQUESTS** that the provisions of the above Convention be extended to situations of internal conflicts;
 6. **CALLS UPON** Member States to closely associate NGOs with the implementation of the present resolution, and particularly with the conception and execution of consciousness raising and mine victims rehabilitation programmes.
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19. ACHPR/Res.19(XVII)95: RESOLUTION ON PRISONS IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its Seventeenth Ordinary Session held from 13 to 22 March 1995, Lomé, Togo;

Guided by the African Charter on Human and Peoples' Rights and, in particular, Article 45 of the Charter which defines the mandate of the Commission,

Considering that the rights established and guaranteed under the African Charter on Human and Peoples' Rights extend to all categories of persons including prisoners, detainees and other persons deprived of their liberty,

Considering also the leading role played by African States in the establishment of international norms and standards for the protection of human rights of prisoners including the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Standard Minimum Rules for the Treatment of Prisoners, among others, and that an overwhelming majority of the States Parties to the African Charter on Human and Peoples' Rights subscribe to the principles and rules contained in these international norms and standards,

Aware of Resolution 1984/87 of the United Nations Economic and Social Council which requests States to "inform the Secretary-General of the United Nations every five years of the progress made with the application of the Standard Minimum Rules for the Treatment of Prisoners and of the factors and difficulties, if any, affecting their implementation",

Concerned that the conditions of prisons and prisoners in many African countries are afflicted by severe inadequacies including high congestion, poor physical health and sanitary conditions; inadequate recreational, vocational and rehabilitation programmes, restricted contact with the outside world, large percentages of persons awaiting trial, among others,

Conscious that States assume responsibilities to look after the welfare of persons who have been deprived for their liberty including prisoners and detainees,

Mindful of the obligation of the States Parties to the African Charter on Human and Peoples' Rights to improve prison conditions and protect the human rights of prisoners, detainees and persons deprived of their liberty in Africa and efforts undertaken;

HEREBY:

1. **RESOLVES THAT** prison conditions in many African countries do not conform with the articles of the African Charter on Human and Peoples' Rights and to the international norms and standards for the protection of the human rights of prisoners including the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners, among others;
2. **URGES** States Parties to the African Charter on Human and Peoples' Rights to include in the reports submitted to the Commission under Article 62 of the Charter information on human rights affecting the human rights of prisoners;

CALLS UPON States Parties to the African Charter on Human and Peoples' Rights to comply with Resolution 1984/877 of the United Nations Economic and Social Council to submit periodic reports to the Secretary-General of the United Nations in compliance with the Standard Minimum Rules for the Treatment of Prisoners.

20. ACHPR/Res.20(XIX)96: RESOLUTION ON LIBERIA

The African Commission on Human and Peoples' Rights meeting at its Nineteenth Ordinary Session held from 26 March to 4 April 1996 in Ouagadougou, Burkina Faso;

Recalling the Abuja Agreement signed by all the parties to the Liberian conflict under which the Heads of the Warring Factions were allocated seats on the Governing Council of State in the hope that such an arrangement would facilitate and ensure disarmament of their fighters, a prerequisite for free and fair elections,

Taking note that the Council of State of the Liberian Transitional Government, created in pursuance of the Abuja Agreement, has been installed into office and that the government, including the judiciary and the legislature has been freely constituted and is now functional,

Considering however, that notwithstanding the establishment of the Council of State, the Warring Factions have refused to disarm, and that Liberia, contrary to the Abuja Agreement, still remains fragmented and partitioned among warring factions, and hostilities still exist, all of which have the potential to derail the peace process and prolong the suffering of the Liberian people and the strain on the West African sub-region,

Considering further that if peace is to be restored to Liberia, a civil government installed through a free and fair elections, and democratic institutions established with respect for human rights and the rule of law, Liberians themselves, and with the support of the international community, must exert efforts to cease all hostilities, disarm their combatants, have them encamped, demobilised and re-integrated into civil society,

Endorses the Abuja Peace Accord as the best means for the cessation of hostilities and the restoration of peace to Liberia and calls upon all parties to this Agreement to co-operate in good faith in its implementation,

Calls upon the Warring Factions to take all necessary steps to disarm their fighters, co-operate with the West African Peace Keeping Forces (ECOMOG) and the United Nations Observer Mission to Liberia (UNOMIL) and have fighters encamped, demobilised and re-integrated into civil society so as to pave the way for a free and fair general elections,

Calls also upon the Council of State to extend its authority over the whole of Liberia and to guarantee genuine respect for the rights and liberties of all its citizens and residents, and in this regard to observe the independence of the judiciary,

Further calls upon the Council of State to take all necessary measures to fight against impunity and ensure that all perpetrators of crimes against the Liberian people are brought to justice,

Appeals to the international community, especially the United Nations, to facilitate Liberia's transition from war to peace by enhancing the capacity of the West African Peace Keeping Force to encamp all combatants and to keep the peace through the provision of financial and logistic support; and to alleviate the suffering and the daily struggle of the Liberian people for survival through the provision of humanitarian relief and medical supplies.

21.ACHPR/Res.21(XIX)96: RESOLUTION ON THE RESPECT AND THE STRENGTHENING OF THE INDEPENDENCE OF THE JUDICIARY

The African Commission on Human and Peoples' Rights, meeting at its Nineteenth Ordinary Session held from 26 March to 4 April 1996 in Ouagadougou, Burkina Faso;

Noting that justice is an integral part of human rights and a necessary condition for democracy,

Considering the importance and the role of the judiciary, not only in the quest for the maintenance of social equilibrium, but also in the economic development of African countries,

Recognising the need for African countries to have a strong and independent judiciary enjoying the confidence of the people for sustainable democracy and development,

Considering the need to train lawyers in human rights in order to enable them apply judiciously international human rights instruments:

1. CALLS UPON African countries to:

- repeal all legislation which are inconsistent with the principles of respect of the independence of the judiciary, especially with regard to the appointment and posting of judges;
- provide, with the assistance of the international community, the judiciary with sufficient resources in order to enable the legal system fulfil its function;
- provide judges with decent living and working conditions to enable them maintain their independence and realise their full potential;
- incorporate in their legal systems, universal principles establishing the independence of the judiciary, especially with regard to security of tenure;
- refrain from taking any action which may threaten directly or indirectly the independence and the security of judges and magistrates.

2. URGES African judges to organise nationally and regionally, periodic meetings in order to exchange experience and evaluate efforts undertaken in various countries to bring about an efficient and independent judiciary.

22. ACHPR/Res.22(XIX)96: RESOLUTION ON THE ROLE OF LAWYERS AND JUDGES IN THE INTEGRATION OF THE CHARTER AND THE ENHANCEMENT OF THE COMMISSION'S WORK IN NATIONAL AND SUB-REGIONAL SYSTEMS

The African Commission on Human and Peoples' Rights, meeting at its Nineteenth Ordinary Session held from 26 March to 4 April 1996 in Ouagadougou, Burkina Faso;

Noting the central role that lawyers play in advocacy, judicial and other adjudicative processes in national legal systems and considering further how such roles can be used to promote reference to and reliance on the Charter in the Judicial and other adjudicative processes,

Considering the mandate and judicial competence of judges to base their reasoning and judgements on all relevant human rights instruments, either as applicable authoritative laws or as persuasive aids to interpretation of constitutional and legislative provisions on fundamental rights, freedoms and duties,

Recognising the importance of specialised and continuing training in human and peoples' rights for legal practitioners, judges, magistrates and the commissioners,

Appreciating the initiative of Commonwealth judges to incorporate and further develop human rights instruments and principles in their work:

1. **URGES** Judges and magistrates to play a greater role in incorporating the Charter and future jurisprudence of the Commission in their judgements thereby promoting and protecting the rights and freedoms guaranteed by the Charter;
 2. **CALLS UPON** lawyers to place greater reliance on the Charter and other international and regional human rights instruments in their various legal advocacy roles;
 3. **URGES** law societies, legal and human rights Non-governmental Organisations with observer status with the Commission, associations or organisations of judges and magistrates, to initiate specialised and comprehensive training for judicial officers, lawyers at national and sub-regional levels.
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23. ACHPR/Res.23(XIX)96: RESOLUTION ON ELECTORAL PROCESS AND PARTICIPATORY GOVERNANCE

The African Commission on Human and Peoples' Rights, meeting at its Nineteenth Ordinary Session held from 26 March to 4 April 1996 in Ouagadougou, Burkina Faso;

Having taken note of the report on recent elections in the Republic of Benin,

Taking note of the report on the smooth organisation of elections in the Comoros Islands,

Further noting the satisfactory manner in which the Presidential Elections were held in the Republic of Sierra Leone:

1. **ASSERTS** that elections are the only means by which the people can elect democratically the government of their choice in conformity with the African Charter on Human and Peoples' Rights;
 2. **COMMENDS** the governments and the peoples of the Republic of Benin, the Comoros and the Republic of Sierra Leone for having organised successfully, free and fair elections and hopes that their example will encourage and motivate other countries in transition to democratic rule;
 3. **EMPHASISES** that it is the duty of State Parties to the Charter to take the necessary measures to preserve and protect the credibility of the electoral process. This measures should include the presence of national and international observers during the elections and guarantee access to the electoral process and personal safety to enable them to fulfil their mission and prepare their report on elections in a proper manner;
 4. **FURTHER EMPHASISES** it is the responsibility of State Parties to provide electoral commissions and other organs entrusted with the task of organising elections in their countries with adequate material resources and any items necessary for the preparation and holding of elections;
 5. **REAFFIRMS** the importance of African countries and institutions to participate in observation of elections in State Parties; and reasserts its willingness to place at the disposal of States Parties and other institutions its expertise and that of its members in observing elections.
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24. ACHPR/Res.24(XIX)96: RESOLUTION ON BURUNDI

The African Commission on Human and Peoples', meeting at its Nineteenth Ordinary Session held from 26 March to 4 April 1996 in Ouagadougou, Burkina Faso;

Extremely concerned with the serious human rights violations and abuses occurring in Burundi, especially extra-judicial executions by some members of the security forces, armed gangs and militias,

Considering that impunity is one of the main causes of the worsening human rights situation in Burundi,

Considering that the independence of the judiciary is the corner stone of the effective struggle against human rights violations in general and impunity in particular,

Concerned with the plight of refugees and displaced persons and their vulnerability to human rights violations and abuses,

Considering that the Burundi crisis is made worse by the hate media and that the high point of the message of hatred was reached with the launching of "*Radio Démocratie la voix du peuple*",

1. **URGES** the government of Burundi to:

- a) conduct transparent and impartial investigations into all human rights violations and abuses;
- b) take the necessary steps to guarantee the independence of the judiciary by ensuring, *inter alia*, that there is no interference in its functioning by the executive and that judges and magistrates are protected in the carrying out of their duty;
- c) ensure that persons accused of human rights violations and abuses are tried in compliance with international fair trial standards;
- d) improve the living conditions of refugees and displaced persons, ensure their safety and security and create conditions to enable them to return to their homes in collaboration with International Governmental and Non-Governmental Organisations;
- e) allow the Mission International d'Observation au Burundi (MIOB), human rights monitors and Special Rapporteurs from the United Nations, African Commission on Human and Peoples Rights and other international bodies freedom of movement throughout the country and take adequate and effective steps to guarantee their

safety and security without compromising their independence;

2. **FURTHER URGES** the government of Burundi and the concerned political parties to respect the spirit and letter of the Agreement which they signed in 1994 in the supreme national interest of Burundi;
 3. **CALLS UPON** the OAU to strengthen MIOB and include human rights monitoring in its mandate;
 4. **REQUESTS** the UN to provide adequate resources to enable its Commission of inquiry sent to Burundi to function efficiently and to complete its task as soon as possible;
 5. **CALLS UPON** the international community to assist the government of Burundi and neighbouring countries to rid the region of media which propagate hatred and fuel communal conflict in Burundi especially the Radio Station “*Radio Démocratie la voix du Peuple*” or “*RUTOMORANGINGO*”;
 6. **DECIDES** to involve itself more in efforts to resolve the crisis affecting Burundi by, among other things, sending a mission to Burundi and participating actively in the process of national reconciliation.
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25. ACHPR/Res.25(XXI)97: RESOLUTION ON THE PROTECTION OF THE NAME, ACRONYM AND LOGO OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights, meeting at its Twenty - First Ordinary Session in Nouakchott, Mauritania, from 15 to 24 April 1997;

Recalling the relevant provisions of the African Charter on Human and Peoples' Rights, particularly Articles 30 and 45;

Noting with satisfaction the enthusiasm demonstrated by the civil society in Africa in the promotion of human and peoples' rights;

Considering however, the misuse by some NGOs of the name, logo and acronym of the Commission;

Recalling the need to avoid any confusion which may result in an uncontrollable use of names, acronyms, logos or other external signs bearing resemblance to those belonging to the African Commission on Human and Peoples' Rights;

Calls upon States Parties to do everything, in collaboration with the OAU Secretariat, to ensure the protection of the name, acronym and logo of the Commission throughout their countries;

Calls on States Parties to refuse granting registration to NGOs whose names, acronyms or symbols could cause confusion prejudicial to the Commission;

Furthermore Calls upon organisations concerned to proceed to make the necessary rectification in conformity with the present resolution.

26. ACHPR/Res.26(XXIV)98: RESOLUTION ON THE RATIFICATION OF THE CONVENTION ON ANTI-PERSONNEL MINES

The African Commission on Human and Peoples' Rights, meeting at its Twenty – Fourth Ordinary Session from 22 to 31 October 1998 in Banjul, The Gambia,

Taking Note of the various international and regional meetings ushering in the coming into force of the Ottawa Convention as September 1998, prohibiting the production, use, transfer and stockpiling of anti-personnel mines,

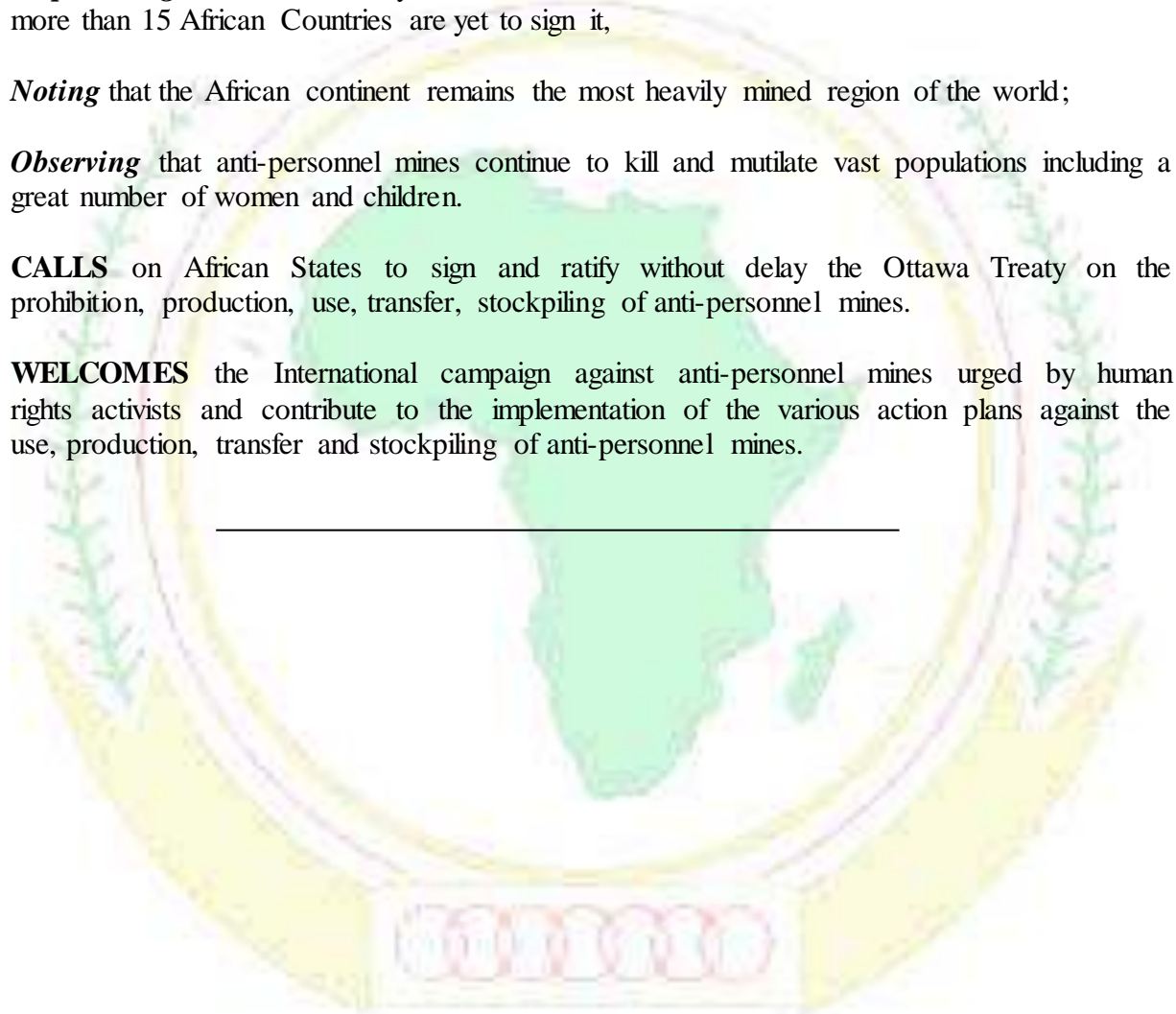
Emphasising that to date only five African countries have ratified this Convention, and that more than 15 African Countries are yet to sign it,

Noting that the African continent remains the most heavily mined region of the world;

Observing that anti-personnel mines continue to kill and mutilate vast populations including a great number of women and children.

CALLS on African States to sign and ratify without delay the Ottawa Treaty on the prohibition, production, use, transfer, stockpiling of anti-personnel mines.

WELCOMES the International campaign against anti-personnel mines urged by human rights activists and contribute to the implementation of the various action plans against the use, production, transfer and stockpiling of anti-personnel mines.



27. ACHPR/Res.27(XXIV)98: RESOLUTION ON THE RATIFICATION OF THE TREATY ON THE INTERNATIONAL CRIMINAL COURT

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fourth Ordinary Session from 22 to 31 October 1998 in Banjul, The Gambia,

Considering that the 67th Ordinary Session of the OAU Council of Ministers, meeting in Addis Ababa in February 1998, adopted the Dakar Declaration on an International Criminal Court;

Considering that the 34th Assembly of Heads of State and Government of the OAU, meeting in Ouagadougou, Burkina Faso, 8 -10 June 1998, also adopted the Dakar Declaration on an International Criminal Court;

Considering that around 43 Member States of the OAU participated in the Diplomatic Conference on the International Criminal Court (ICC) in Rome, Italy, 15 June to 17 July 1998, and that African countries supported the creation of a permanent, independent, impartial and effective ICC;

Considering that the statute of the ICC was adopted in Rome, Italy on 16 July 1998 by 120 States, of which more than 40 were African Countries;

Considering that 19 African States have signed the statute, demonstrating the will of African countries to create an effective ICC;

Considering the serious and troubling situation of human rights in Africa, especially in zones of armed conflict, and taking note of the universal consensus to end impunity for crimes which shock the conscience of humanity;

CALLS ON all States Parties to the African Charter on Human and Peoples' Rights to carry out all the appropriate constitutional procedures to sign and ratify the Rome Treaty on the International Criminal Court; and

INVITES THEM to take all necessary legislative and administrative steps to bring national laws and policies in conformity with the Statute.

28. ACHPR/Res.28(XXIV)98: RESOLUTION ON NIGERIA'S RETURN TO A DEMOCRATIC SYSTEM

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fourth Ordinary Session from 22 - 30 October 1998 in Banjul, The Gambia.

Considering paragraph two of the preamble to the African Charter on Human and Peoples' Rights which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples",

Recalling the firm conviction of the States Parties to the African Charter on Human and Peoples' Rights of their duty "...to promote and protect human and peoples' rights and freedoms, taking into account the importance traditionally attached to these rights and freedoms in Africa";

Notes with satisfaction the positive evolution in the field of human rights, the promises and democratic advances made by the Nigerian Government since the end of June 1998;

WELCOMES the release of the Ogoni prisoners and other detainees previously held in the Port Harcourt central prison and the gradual return to the country of numerous political exiles in favour of democratic transition in Nigeria;

EXHORTS the Government of Nigeria to persist in its efforts toward the course of democracy, respect for, and protection of human rights;

ASSURES the Government of its total support and readiness to help it in its task of rebuilding in Nigeria a democratic society which respects human rights.

29. ACHPR/Res.29(XXIV)98: RESOLUTION ON THE RATIFICATION OF THE ADDITIONAL PROTOCOL ON THE CREATION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

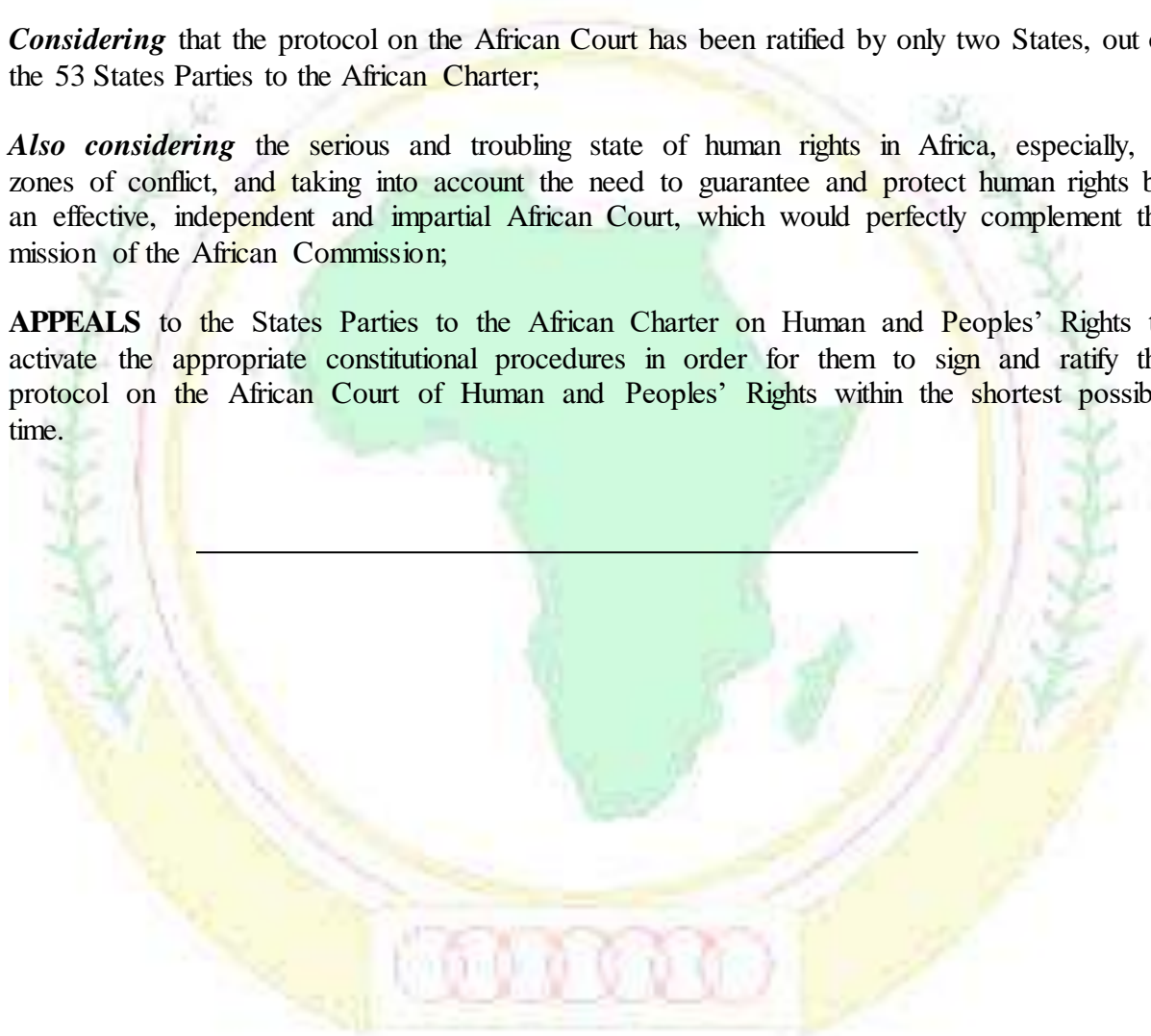
The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fourth Ordinary Session from 22 - 30 October 1998 in Banjul, The Gambia.

Recalling the adoption of the protocol by the 34th Ordinary Session of the Assembly of Heads of State and Government of the OAU, held from 8 - 10 June 1998, in Ouagadougou, Burkina Faso, and its signature by 32 African countries;

Considering that the protocol on the African Court has been ratified by only two States, out of the 53 States Parties to the African Charter;

Also considering the serious and troubling state of human rights in Africa, especially, in zones of conflict, and taking into account the need to guarantee and protect human rights by an effective, independent and impartial African Court, which would perfectly complement the mission of the African Commission;

APPEALS to the States Parties to the African Charter on Human and Peoples' Rights to activate the appropriate constitutional procedures in order for them to sign and ratify the protocol on the African Court of Human and Peoples' Rights within the shortest possible time.



30. ACHPR / Res.30 (XXIV)98: RESOLUTION ON THE CO-OPERATION BETWEEN THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND NGOS HAVING OBSERVER STATUS WITH THE COMMISSION

BACKGROUND

1. Article 45 of the African Charter on Human and Peoples' Rights sets out the mandate of the Commission as follows:
 - i) to promote human rights;
 - ii) to protect human rights;
 - iii) to interpret provisions of the African Charter;
 - iv) any other tasks that may be referred to the Commission by the OAU.
2. In the performance of its tasks and to enhance its efficiency, the Charter also makes provision for the Commission to work with other partners in the field of human rights. Article 45 (1) (c) of the African Charter on Human and Peoples' Rights provides that the Commission shall co-operate with other African and International Institutions concerned with the promotion and protection of human and peoples' rights. In accordance with this article, the African Commission on Human and Peoples' Rights has since its inception granted observer status to 231 human rights NGOs.
3. The granting of this status enables the NGOs to participate directly in the Commission's activities. Rules 75 and 76 of the Rules of Procedure of the African Commission ensure this participation in the Commission's Sessions by requesting the Secretary to the Commission to inform all NGOs with observer status of the days and agenda of the forthcoming Session, at least four weeks before the Session. NGOs with observer status can then authorize their representatives to attend and participate in the public Sessions of the Commission and its subsidiary bodies. Participation can be in either written or oral forms.
4. Apart from participating in the sessions, all documents such as final communiqués of the session and other relevant documents have to be sent by the Secretariat to all NGOs with observer status.
5. Another benefit enjoyed by NGOs with observer status is the preparation of 'shadow' reports on the human rights situation in their countries. These 'shadow' reports enable the Commission to have a constructive dialogue with a State representative when that country's periodic report is being considered.
6. During its 11th Ordinary Session held in Tunis, Tunisia, the Commission reiterated its desire to co-operate with NGOs in the promotion and protection of human and peoples' rights on the continent. In order to encourage and ensure reciprocal commitment on the part of its NGO partners, it was decided that all NGOs that have observer status with the Commission should submit their activity reports once every two (2) years from the date the said status was granted.
7. The Commission's readiness to co-operate with national, regional and international Human Rights NGOs is further emphasized, and its importance stressed in the Mauritius Plan of Action 1996 - 2001, which was adopted at the Commission's 20th Ordinary Session. The

said Plan proposes the creation of an exchange and communication network, especially with regards to NGOs operating in Africa, to establish an appropriate mechanism for promotional and protective activities in Africa. This network is intended to enhance co-operation amongst NGOs and the Commission concurrently.

8. The present status of submission of the activity reports of NGOs in compliance with the decision taken at the 11th Ordinary Session of the Commission leaves much to be desired. Out of 231 NGOs that had been granted observer status by October 1998, 197 were expected to have submitted all due and overdue reports. Out of this number, only 26 have submitted all their reports up to date, 48 have submitted some of the reports and 114 have submitted none at all. This clearly shows the extent of the lack of commitment on the part of these NGOs.
9. It is also clear that the Commission continues granting observer status to NGOs, while it is not adequately informed by most of them about what work they are doing in the sphere of human rights or how they are helping to promote and/or protect human rights in Africa. The very essence of having NGOs as partners in creating a culture of recognition of and respect for human rights on the African continent is thereby betrayed.
10. Note must also be taken of the fact that some of these NGOs on occasion, have been found to use their granted status to raise funds which is sometimes totally misused, or is used for purposes other than the promotion and protection of human rights. The fear, therefore, that some of them may have either changed their mandate or shifted their focus to issues other than human rights becomes legitimate.
11. To address this situation, it is hereby recommended that the Commission revise its criteria for granting and enjoying observer status.
12. The Conference of the Heads of States and Governments of the Organization of Africa (OAU), as its Thirty-Fourth Ordinary Session [AHG/Dec. 126 (XXXIV) para. 3], requested the African Commission to review its criteria for granting and enjoying observer status to NGOs.

Therefore,

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fourth Ordinary Session from 22 to 31 October 1998, in Banjul, The Gambia,

Recalling that the African Charter on Human and Peoples' Rights, which entered into force on 21 October 1986, mandates the African Commission on Human and Peoples' Rights under Article 45 (1)(c) to co-operate with other African national and international institutions concerned with the promotion and protection of human and peoples' rights;

Recalling further its decision taken during its Second Ordinary Session held in Dakar, Senegal, in February 1988, to grant observer status to NGOs working in the field of human rights in Africa;

Also recalling Rules 75 and 76 of the Commission's Rules of Procedure which further emphasise this co-operation;

Aware of the Mauritius Plan of Action which emphasises the importance of co-operation with NGOs,

Convinced that such co-operation will provide NGOs with the support and opportunity to work closely with the Commission, and recognising the invaluable role institutions such as NGOs can play in the enhancement of human rights in Africa;

Further convinced that for any meaningful co-operation to take place, there has to be commitment and reciprocity on the part of all parties;

Bearing in mind the decision taken at its 11th Ordinary Session requiring all NGOs having observer status to submit their activity reports to the Commission at least once every two years;

Convinced that the submission of activity reports by NGOs is a way of enhancing the protection of human rights, and the co-operation between the Commission and NGOs;

Firmly convinced that the said reports can be very invaluable not only to the Commission, but also to the ever increasing number of human rights workers around the world;

Considering the request of the Conference of Heads of State and Government of the OAU to review the criteria for granting observer status to NGOs;

EXPRESSES its profound appreciation to those NGOs which have submitted their reports regularly;

NOTES WITH CONCERN the fact that the majority of NGOs whose reports are due have not submitted their reports, and have ceased communicating with the Commission;

DECIDES that representatives of NGOs that have applied for observer status should be present to be interviewed during the consideration of their application;

DECIDES ALSO to review, in conformity with the Decision AHG/Dec.126 (XXXIV) by the Conference of the Heads of State and Government, the criteria for obtaining and enjoying observer status with the Commission;

INVITES NGOs which have observer status with the Commission but which have not yet submitted their overdue reports, to do so before the 27th Ordinary Session of the Commission.

DECIDES FINALLY to revoke observer status of any NGO that does not submit any activity report at the 27th Ordinary Session.

REQUESTS the Secretary to the Commission to submit a report on the implementation of this resolution at each Session.

31. ACHPR/Res.31 (XXIV)98: RESOLUTION ON GRANTING OBSERVER STATUS TO NATIONAL HUMAN RIGHTS INSTITUTIONS IN AFRICA

BACKGROUND

In the preamble of the African Charter on Human and Peoples' Rights adopted at the Eighteenth Conference of Heads of State and Government in Nairobi in June 1981, Member States of the Organization of African Unity reaffirmed

"their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and United Nations."

In the same preamble, African Countries pledged to "...coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights."

With the aim of concretizing this commitment, Article 26 of the African Charter on Human and Peoples' Rights stipulates that :

"States Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter."

The use of the word "allow" suggests not just encouraging and promoting the establishment of National Institutions but also developing a mutually cooperative relationship in order to "promote and ensure, through teaching, education and publication, respect for the rights and freedoms contained in the present charter ..." (Article 25).

National Institutions, therefore, are an essential partner in the implementation of the Charter at National Level. It is noted that the Mauritius Plan of Action (1996-2001) envisages workshops on national institutions as one of its promotion activities. It also seeks the cooperation of national institutions in fulfilling its mandate of promoting and protecting human and peoples' rights.

Finally, the 2nd Seminar of Ambassadors of African States to the OAU held in Addis Ababa from 8 to 9 September 1998, recognized the importance of National Institutions and urged Governments to accord them appropriate support.

African States in general and the African Commission on Human and Peoples' Rights in particular took an active part in the deliberations of the World Conference on Human Rights which was held in Vienna in June 1993. The Vienna Conference's Declaration and Programme of Action reaffirmed:

"the important and constructive role played by national institutions for the promotion and protection of Human Rights, in particular in their advisory role to the competent authorities, their role at remedying human rights violations, in the dissemination of information and education in human rights."

The World Conference on Human Rights also encouraged:

"the establishment and strengthening of national institutions..." and recognized "... that it is the right of each State to choose the framework which is best suited to its particular needs at the national level..."

At this Conference a formal status was granted to the International Committee for Coordination of National Institutions as a statutory liaison instrument of the United Nations system. This Committee shall organize a biennial world meeting of national institutions.

At the International level, the United Nations Human Rights Commission approved by its Resolution 1992/54 of the 3rd of March 1992 under the heading "**Principles Relating to the Status of National Institutions**", also known as the Paris Principles, rules which define the mandate of such institutions. The General Assembly of the United Nations endorsed these principles in its Resolution 48/144 of 20th of December 1993.

The objective of these principles is to guarantee the independence of national institutions in their work and pluralism in their composition. The central mission of national institutions is to play an advisory role to the government, parliament and other relevant bodies and authorities involved in giving opinion and making recommendations on all issues related to the promotion and protection of human rights.

In Africa, the trend to establish national institutions has continued to develop especially after 1991. At present, Africa has more than twenty (20) national human rights institutions which are represented in the International Coordination Committee by Cameroon, Morocco, South Africa and Togo.

At the first conference of national human rights institutions in Africa held in Yaounde, Cameroon, from 5 to 7 February 1996, participants adopted the Yaounde Declaration which commended "...the creation of new National Institutions in Africa..." and expressed the hope that these institutions will be given "... a proper representative status on the African Commission." At the 2nd Conference of African National Institutions held in Durban from 1 to 3 July 1998, the need for a clear relationship and a unique status in the African Commission were reiterated.

Since the Mauritius Session, the issue of African national human rights institutions has always been included on the agenda of meetings of the Commission. A paper on this subject was presented by Commissioner K. Rezag-Bara at the 21st Ordinary Session of the Commission held in Nouakchott, Mauritania in April 1997. The Commission decided at its 22nd Ordinary Session held in Banjul in November 1997 to entrust Commissioners K. Rezag-Bara and N. Barney Pityana with the task of preparing a draft resolution on the advisory status of national institutions in the African Commission on Human and Peoples' Rights. The matter was deferred for finalization at the 24th Ordinary Session.

Therefore,

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fourth Ordinary Session from 22 to 31 October 1998, in Banjul, The Gambia, **Considering** the preamble of the African Charter on Human and Peoples' Rights which reaffirms the adherence of African States to "human and peoples' rights and freedoms contained in the

declarations, conventions and other instruments adopted by the organization of African Unity, the Movement of Non-Aligned countries and the United Nations”;

Considering that Article 26 of the African Charter on Human and Peoples' Rights stipulates that "States Parties to the present Charter shall have the duty to ... allow the establishment and the improvement of appropriate national institutions entrusted with the promotion and protection of rights";

Considering the recommendation adopted in the Programme of Action of the World Conference on Human Rights held in Vienna, Austria in June 1993 and United Nations resolutions on human rights, particularly resolution 1992/54 of 3 March 1992 of the Commission Human Rights and resolution 48/134 of 20 December 1993 of the United Nations General Assembly;

Considering the decisions, resolutions, recommendations and the final declaration adopted by the first conference of national human rights institutions in Africa held in Yaounde, Cameroon from 5 to 7 February 1996 and the 2nd Conference held in Durban, South Africa on 1 - 3 July 1998;

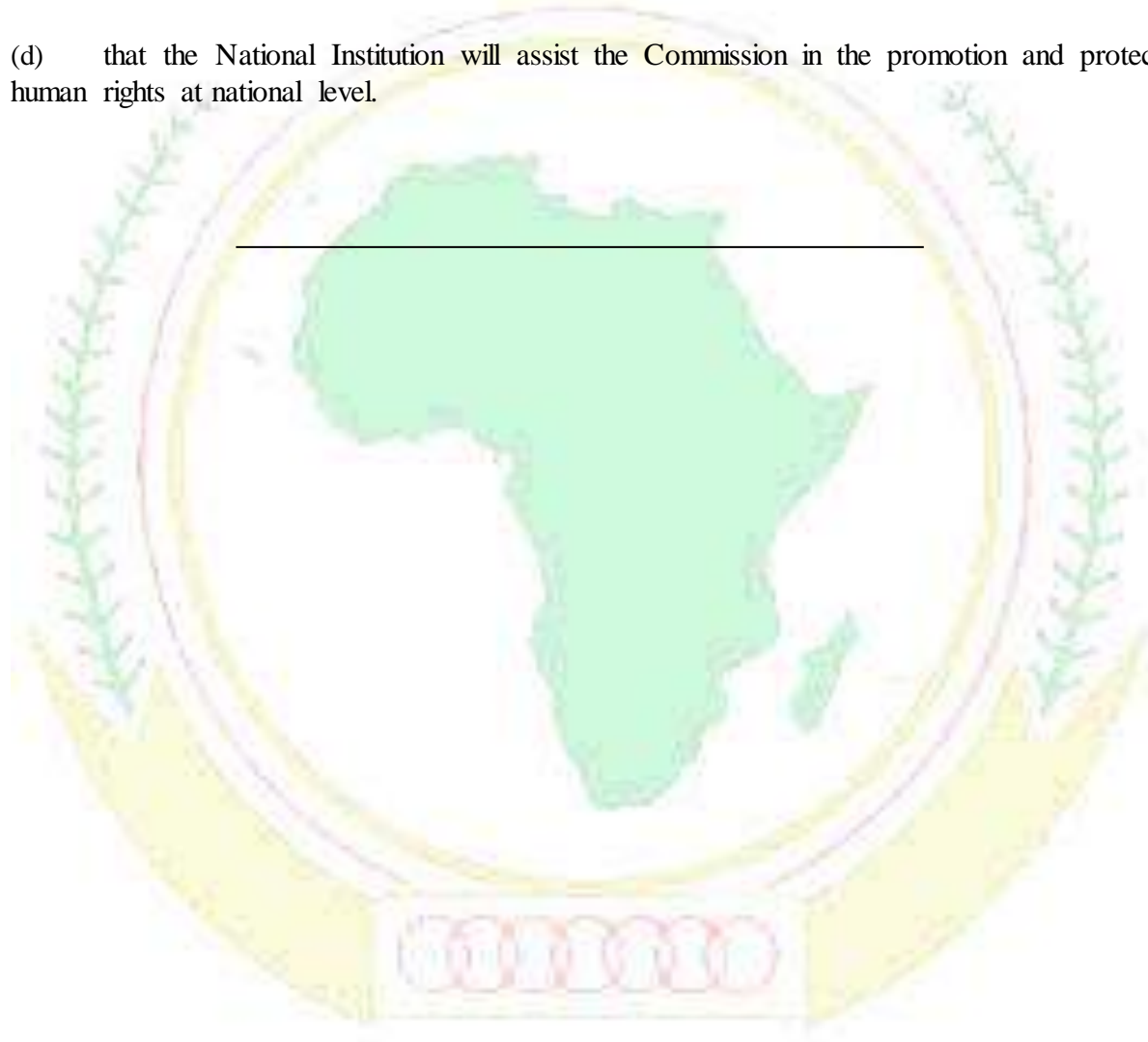
Convinced of the importance of the role of national institutions in the promotion and protection of human rights and in creating public awareness in Africa with regard to the institutional defense of human rights;

1. **COMMENDS** the increasing interests shown by African states in establishing and strengthening national institutions for the protection and promotion of human rights based on the principles of independence and pluralism.
2. **RECOGNIZES** that it is the right of each state to establish, according to its sovereign prerogatives and within the most appropriate legislative framework, a national institution charged with the promotion and protection of human rights according to internationally recognized norms.
3. **NOTES WITH SATISFACTION** the significant participation of African National Institutions in the deliberations of the sessions of the African Commission on Human and Peoples' Rights and registers positively the wish expressed by several institutions to be granted an observer status with the Commission.
4. **DECIDES** to grant special observer status to any African national institution established in Africa and functioning according to internationally recognized norms and standards.
 - (a) that the following criteria for the status of affiliated institution shall apply:
 - the national institution should be duly established by law, constitution or by decree;
 - that it shall be a national institution of a state party to the African Charter;
 - that the national institution should conform to the Principles relating to the Status of National Institutions, also known as the Paris Principles, adopted by the General Assembly of the United Nations under Resolution 48/144 of 20 December 1993.
 - that a National Institution shall formally apply for status in the African Commission.
 - (b) that such institutions shall have the following rights and responsibilities.

- be invited to sessions of the African Commission according to rule 6 of the Rules and Procedures,
- be represented in public sessions of the Commission and its subsidiary bodies,
- participate, without voting rights, in deliberations on issues which are of interest to them and to submit proposals which may be put to the vote at the request of any member of the Commission.

(c) that any national institution shall be required to submit reports to the Commission every two years on its activities in the promotion and protection of the rights enshrined in the Charter and;

(d) that the National Institution will assist the Commission in the promotion and protection of human rights at national level.



32. ACHPR/Res.32(XXIV)98: RESOLUTION ON THE PEACE PROCESS IN GUINEA BISSAU

The African Commission on Human and Peoples' Rights meeting at its Twenty-Fourth Ordinary Session in Banjul, The Gambia, from 22 to 31 October 1998.

Concerned by the situation prevailing in Guinea Bissau and especially by the numerous violations of human rights resulting from the situation of war (conflict) in this country since June 1998,

Noting with satisfaction the favourable evolution of the conflict towards direct dialogue between the belligerents,

RECOGNIZES the efforts initiated by the Economic Community of West African States (ECOWAS) and the Portuguese speaking countries community (PSCC) in order to find a peaceful settlement of the Guinea Bissau conflict,

COMMENDS the continuation of negotiations between parties to the conflict and pays tribute to H.E. Colonel (Rtd) Yahya Jammeh, President of the Republic of the Gambia for his mediation,

EXPRESSES ITS SUPPORT to the ongoing peace process and calls on parties to the conflict and Member States of the ECOWAS and PSCC to take necessary measures to ensure restoration of peace in Guinea Bissau.



33. ACHPR/Res.33 (XXV)98: RESOLUTION ON THE CRITERIA FOR GRANTING AND ENJOYING OBSERVER STATUS TO NON- GOVERNMENTAL ORGANISATIONS WORKING IN THE FIELD OF HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fifth Ordinary Session, held in Bujumbura, Burundi, from 26 April - 5 May 1999.

Considering the provisions of article 45 of the African Charter on Human and Peoples' Rights, which establishes the competence and determines the mandate of the Commission;

Considering the Grand Bay (Mauritius) Declaration and Plan of Action, adopted at the 1st African Ministerial Conference on Human Rights (12-16 April 1999), which «recognises the contribution made by African NGOs to the promotion and protection of human rights in Africa ...»;

Considering the provisions of Chapter XIII (Articles 75 and 76) of the Rules of Procedure of the Commission regarding representation of, and consultation with NGOs by the African Commission on Human and Peoples' Rights;

Considering that since its establishment in October 1986, 231 African and international non-governmental organisations have been granted observer status with the African Commission on Human and Peoples' Rights;

Considering the Decision AHG/dec.126 (XXXIV) of the Assembly of Heads of State and Government which requests the African Commission on Human and Peoples' Rights to «undertake a review of the criteria for observer status with the Commission, with a view to enhanced efficiency and co-operation, and to suspend the granting of the said status until the adoption of the new criteria ...»;

Convinced of the need to strengthen its co-operation and partnership with NGOs working in the field of human rights;

ADOPTS the new criteria for granting and enjoying observer status, the text of which is annexed to the present resolution;

DECIDES that the new criteria shall immediately enter into force;

REQUESTS the Secretary to the Commission to report at each Ordinary Session on the implementation of the present resolution.

ANNEX - CRITERIA FOR THE GRANTING OF AND FOR MAINTAINING OBSERVER STATUS WITH THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Chapter I

1. All Non-Governmental Organisations applying for observer status with the African Commission on Human and Peoples' Rights shall be expected to submit a documented application to the Secretariat of the Commission, with a view to showing their willingness and capability work for the realisation of the objectives of the African Charter on Human and Peoples' Rights.

2. All organisations applying for observer status with the African Commission shall consequently:
 - (a) Have objectives and activities in consonance with the fundamental principles and objectives enunciated in the OAU Charter and in the African Charter on Human and Peoples' Rights;
 - (b) Be organisations working in the field of human rights;
 - (c) Declare their financial resources.
3. To this effect, such an Organisation shall be requested to provide:
 - (a) A written application addressed to the Secretariat stating its intentions, at least three months prior to the Ordinary Session of the Commission which shall decide on the application, in order to give the Secretariat sufficient time in which to process the said application;
 - (b) Its statutes, proof of its legal existence, a list of its members, its constituent organs, its sources of funding, its last financial statement, as well as a statement on its activities.
4. The statement of activities shall cover the past and present activities of the Organisation, its plan of action and any other information that may help to determine the identity of the organisation, its purpose and objectives, as well as its field of activities.
5. No application for Observer Status shall be put forward for examination by the Commission without having been previously processed by the Secretariat.
6. The Commission's Bureau shall designate a rapporteur to examine the dossiers. The Commission's decision shall be notified without delay to the applicant NGO.

Chapter II: PARTICIPATION OF OBSERVERS IN PROCEEDINGS OF THE AFRICAN COMMISSION

1. a) All observers shall be invited to be present at the opening and closing sessions of all Sessions of the African Commission.
 - b) An observer accredited by the Commission shall not participate in its proceedings in any manner other than as provided for in the Rules of Procedure governing the conduct of sessions of the African Commission.
2. All observers shall have access to the documents of the Commission subject to the condition that such documents:
 - a) shall not be of a confidential nature;
 - b) deal with issues that are of relevance to their interests.

The distribution of general information documents of the African Commission shall be free of charge; the distribution of specialised documents shall be on a paid-for basis, except where reciprocal arrangements are in place.

3. Observers may be invited specially to be present at closed sessions dealing with issues of particular interest to them.

4. Observers may be authorised by the Chairman of the African Commission to make a statement on an issue that concerns them, subject to the text of the statement having been provided, with sufficient lead-time, to the Chairman of the Commission through the Secretary to the Commission.
5. The Chairman of the Commission may give the floor to observers to respond to questions directed at them by participants.
6. Observers may request to have issues of a particular interest to them included in the provisional agenda of the African Commission, in accordance with the provisions of the Rules of Procedure.

Chapter III: RELATIONS BETWEEN THE AFRICAN COMMISSION AND OBSERVERS

1. Organisations enjoying observer status shall undertake to establish close relations of co-operation with the African Commission and to engage in regular consultations with it on all matters of common interest.
2. NGOs enjoying observer status shall present their activity reports to the Commission every two years.
3. Administrative arrangements shall be made, whenever necessary, to determine the modalities of this co-operation.

Chapter IV: FINAL PROVISIONS

1. The provisions of the General Convention on the privileges and immunities of the OAU and those of the Headquarters Agreement of the African Commission shall not apply to observers except as regards the granting of visas.
 2. The Commission reserves the right to take the following measures against NGOs that are in default of their obligations:
 - non-participation in sessions;
 - denial of documents and information;
 - denial of the opportunity to propose items to be included in the Commission's agenda and of participating in its proceedings.
 3. Observer status may be suspended or withdrawn from any organisation that does not fulfil the present criteria, after deliberation by the Commission.
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34. ACHPR/Res.34(XXV)99: RESOLUTION ON THE SITUATION IN COMOROS

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fifth Ordinary Session, in Bujumbura, Burundi, from 26 April – 5 May 1999;

Recalling the military *coup d'état* which took place on 30 April 1999 in Comoros, which resulted in the overthrow of the Government of the interim President, Mr. TADJEDDINE BENSAID by the Army Chief of Staff, Colonel AZALI ASSOUMANE;

Recalling its resolution on military regimes in Africa, adopted at its 16th Ordinary Session, held in Banjul (The Gambia), from 25 October – 3 November 1994;

Noting that the Declaration and Plan of Action of Grand Bay (Mauritius), adopted by the First Ministerial Conference on Human Rights in Africa (12 – 16 April 1999) recognises that the causes of human rights violations in Africa include unconstitutional changes of government;

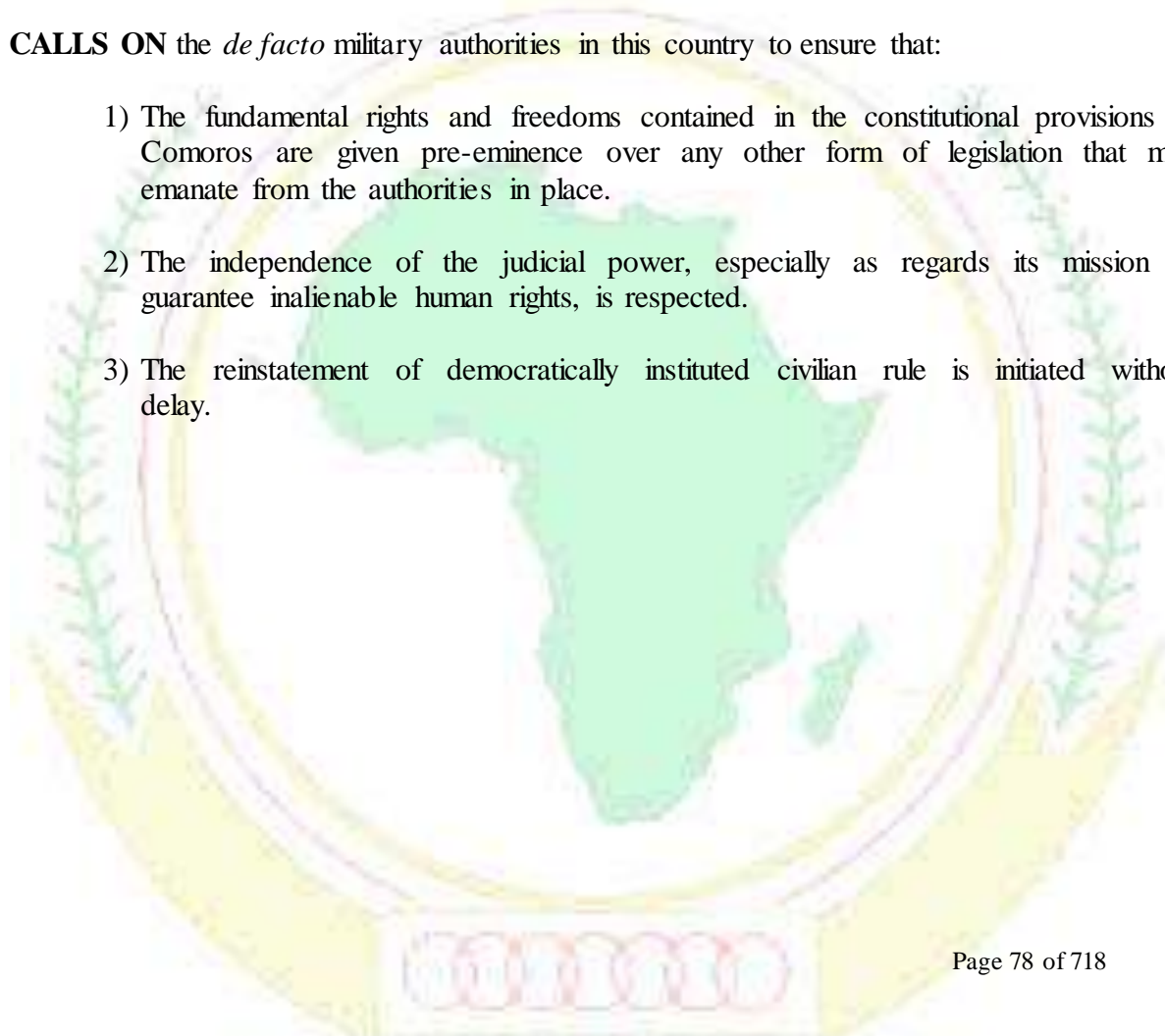
Reaffirming the fundamental principle that for a government to be legitimate it must be freely chosen by the people and through democratically elected representatives;

Recognising that the take-over of power by force is contrary to the provisions of articles 13(1) and 20(1) of the African Charter on Human and People's Rights and that accession to power by military regimes through *coups d'état* constitutes an intolerable infraction of the democratic principles of the rule of law;

DECLARES that the military *coup d'état* in Comoros is a grave and unacceptable violation of the rights of the Comorian People to freely choose their government;

CALLS ON the *de facto* military authorities in this country to ensure that:

- 1) The fundamental rights and freedoms contained in the constitutional provisions of Comoros are given pre-eminence over any other form of legislation that may emanate from the authorities in place.
- 2) The independence of the judicial power, especially as regards its mission to guarantee inalienable human rights, is respected.
- 3) The reinstatement of democratically instituted civilian rule is initiated without delay.



35. ACHPR/Res.35(XXV)99: RESOLUTION ON THE SITUATION IN NIGER

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fifth Ordinary Session, in Bujumbura (BURUNDI), from 26 April – 5 May 1999;

Recalling the military *coup d'état* which took place on 9 April 1999 in Niger, in which President IBRAHIM MAINASSARA BARE was assassinated and his Government overthrown by the Presidential Guard under the Command of Colonel WANKE;

Recalling its resolution on military regimes in Africa, adopted at its 16th Ordinary Session, held in Banjul (The Gambia), from 25 October – 3 November 1994;

Noting that the Declaration and Plan of Action of Grand Bay (Mauritius), adopted by the First Ministerial Conference on Human Rights in Africa (12 – 16 April 1999) recognises that the causes of human rights violations in Africa include unconstitutional changes of government;

Reaffirming the fundamental principle that for a government to be legitimate it must be freely chosen by the people and through democratically elected representatives;

Recognising that the take-over of power by force is contrary to the provisions of articles 13(1) and 20(1) of the African Charter on Human and People's Rights and that accession to power by military regimes through *coups d'état* constitutes an intolerable infraction of the democratic principles of the rule of law;

DECLARES that the military *coup d'état* in Niger is a grave and unacceptable violation of the rights of the Nigerian People to freely choose their government;

CALLS ON the *de facto* military authorities in this country to ensure that:

- 1) The fundamental rights and freedoms contained in the constitutional provisions of NIGER are given pre-eminence over any other form of legislation that may emanate from the authorities in place.
 - 2) The independence of the judicial power, especially as regards its mission to guarantee inalienable human rights, is respected.
 - 3) The reinstatement of democratically instituted civilian rule is initiated without delay.
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36. ACHPR/Res.36 (XXV) 99: RESOLUTION ON THE RATIFICATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fifth Ordinary Session, in Bujumbura, Burundi, from 26 April – 5 May 1999;

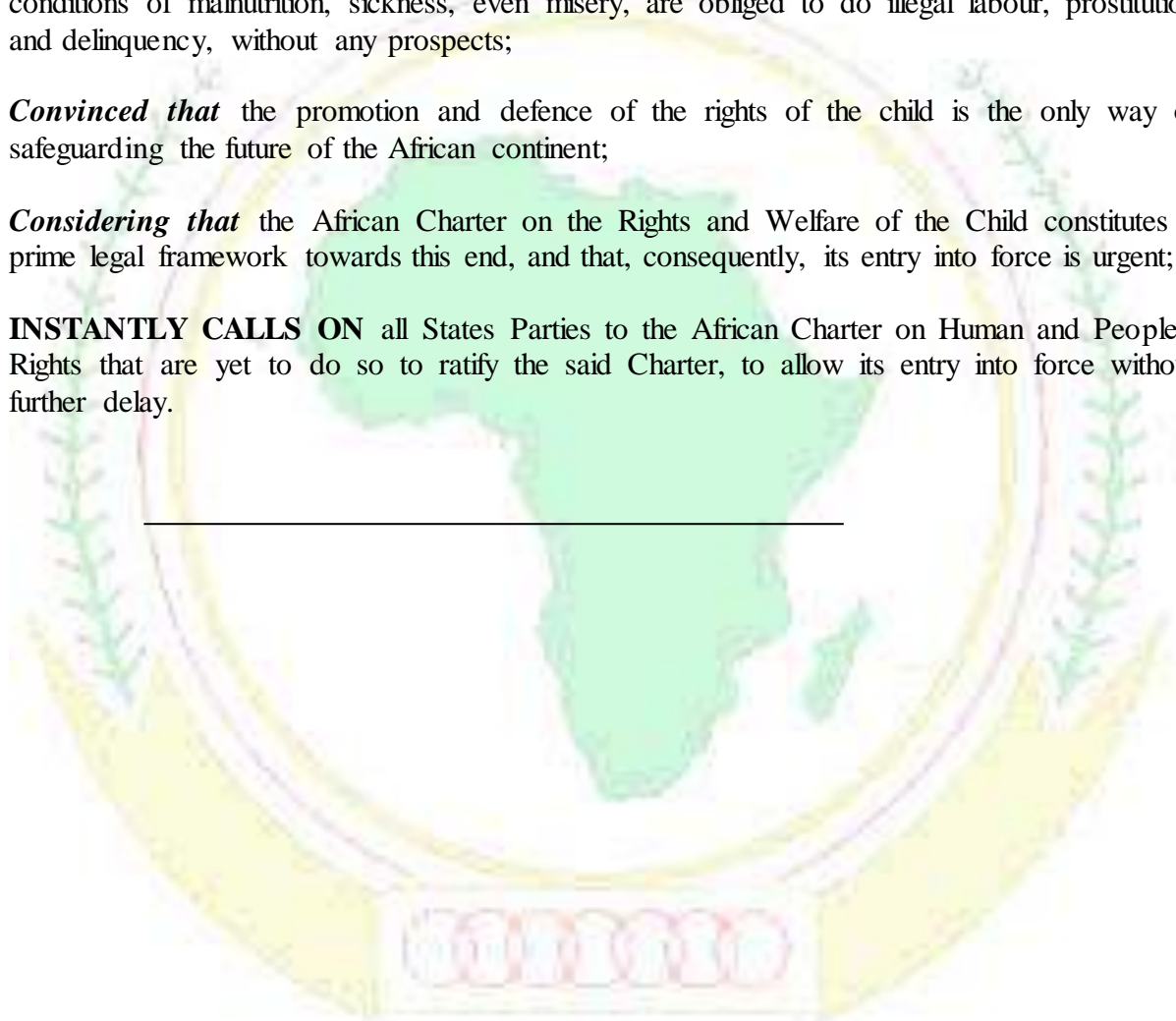
Taking note that the persistence of situations of war, famine and underdevelopment bring about particularly negative consequences for the African child population, especially their physical, intellectual and psychological development;

Considering that one of the consequences of this situation is manifested all over the continent, with thousands of displaced, refugee, handicapped, orphaned children, living in conditions of malnutrition, sickness, even misery, are obliged to do illegal labour, prostitution and delinquency, without any prospects;

Convinced that the promotion and defence of the rights of the child is the only way of safeguarding the future of the African continent;

Considering that the African Charter on the Rights and Welfare of the Child constitutes a prime legal framework towards this end, and that, consequently, its entry into force is urgent;

INSTANTLY CALLS ON all States Parties to the African Charter on Human and Peoples' Rights that are yet to do so to ratify the said Charter, to allow its entry into force without further delay.



37. ACHPR/Res.37 (XXV) 99: RESOLUTION ON THE EXTENSION OF THE MANDATE OF THE SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fifth Ordinary Session, in Bujumbura, Burundi, from 26 April – 5 May 1999,

Recalling its decision to designate Professor E.V.O. Dankwa to the post of Special Rapporteur on prisons and conditions of detention in Africa, taken at its 20th Ordinary Session;

Considering that the mandate of the Special Rapporteur is of two years' duration, subject to renewal;

Considering further that the initial term of two years of the Special Rapporteur comes to an end with the 24th Ordinary Session;

Emphasising the importance of the work of the Special Rapporteur as regards the search for solutions to the problems arising from the restriction of the freedom of the individual, in particular;

DECIDES TO EXTEND the mandate of the Special Rapporteur on prisons and conditions of detention in Africa for a period of two years, with effect from 31 October 1998.



38. ACHPR/Res.38 (XXV) 99: RESOLUTION ON THE DESIGNATION OF A SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fifth Ordinary Session, in Bujumbura, Burundi, 26 April – 5 May 1999,

Recalling the United Nations Convention on the Elimination of all Forms of Discrimination against Women;

Recalling further the provisions of article 18.3 of the African Charter on Human and Peoples' Rights;

Referring to the provisions of article 45.1(a) of the African Charter on Human and Peoples' Rights;

Recognising the need to place particular emphasis on the problems and rights specific to women in Africa;

Recalling further the decision taken by the Commission at its 23rd Ordinary Session, held in Banjul (The Gambia) to designate Mrs. Julienne Ondziel-Gnelenga to the post of Special Rapporteur on the Rights of Women in Africa;

DESIGNATES Mrs .Julienne Ondziel-Gnelenga to the post of Special Rapporteur on the Rights of Women in Africa for a period of two years, subject to renewal, with effect from 31st October 1998.



39. ACHPR/Res.39(XXV)99: RESOLUTION CONCERNING THE REPUBLIC OF SEYCHELLES' REFUSAL TO PRESENT ITS INITIAL REPORT

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Fifth Ordinary Session, in Bujumbura, Burundi, 26 April – 5 May 1999,

Considering that, in accordance with article 62 of the Charter, the Republic of Seychelles has been summoned, at several occasions, to present at its 17th session, its initial report submitted on September 1994;

Considering that the Republic of Seychelles, despite repeated demands made to its Government, has refused, on several occasions, to abide by the Commission's request, under the pretext that the resources to implement such an obligation were not provided by the State;

Considering that such a persistent behaviour represents a deliberate violation of the Charter to which the Republic of Seychelles is party;

Considering that the Commission, at its 25th ordinary session in Bujumbura, Burundi, firmly condemned this unspeakable behaviour on behalf of an OAU Member State, party to the Charter;

INVITES the Heads of State and Government Conference to be held in Algiers, in July 1999, to express their disapproval of such a persistent refusal that amounts to a deliberate violation of the Charter by the Republic of Seychelles

REQUESTS the Conference to invite Seychelles to abide by the Charter and to consider the appropriate measures to be taken against the Republic of Seychelles.

40. ACHPR/Res.40(XXVI)99: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN AFRICA

The African Commission on Human & Peoples' Rights, meeting at its Twenty-Sixth Ordinary Session held in Kigali, Rwanda, from 1-15 November 1999:

Inspired by the principles enshrined in the African Charter on Human & Peoples' Rights;

Noting with appreciation that all member states of the OAU are parties to the Charter;

Mindful of the fact that States Parties to the Charter undertook to adopt legislative or other measures to give effect to the rights, duties and freedoms enshrined in the Charter:

1. **WELCOMES** the commitment of States Parties to the promotion and observance of human rights obligations as expressed in the Grand Bay (Mauritius) Declaration and Plan of Action, subsequently endorsed by the 35th Ordinary Session of the OAU Assembly of Heads of State and Government and contained in the Algiers Declaration of July 1999;

However noting with regret, that the human rights situation in many States continues to cause concern;

2. **WELCOMES** the resumption of democracy in Nigeria and urges the new Nigerian government to speed up the process of repealing all decrees and laws enacted by previous regimes, which violated the Charter;

3. **DECIDES** to establish cooperation with the OAU Mechanism for Conflict Prevention, Management and Resolution as well as the OAU Secretary General's special representatives in the countries in conflict;

4. **EXPRESSES DEEP CONCERN** about the situation in the Great Lakes region, Ethiopia and Eritrea as well as in Sierra Leone;

5. **DECIDES TO SEND** a mission to Sierra Leone to seek information about the current situation in Sierra Leone, to undertake dialogue with the existing administrative, political and other structures in the country, and to make recommendations as appropriate.

6. **CALLS** upon the governments of Ethiopia and Eritrea to halt all hostilities, refrain from the tit-for-tat practice of forced deportations, observe the cease-fire agreement and make the necessary efforts at finding a peaceful resolution to the conflict;

7. **CALLS** for the resumption of the Arusha Peace process on Burundi and urges the belligerents to observe the rights and freedoms enshrined in the African Charter.

8. **FURTHERMORE DECIDES TO UNDERTAKE** a promotional goodwill visit to Kenya to, among other things, encourage Kenya, which witnessed the adoption of the African Charter in Nairobi on 26 June 1981 and ratified the Charter on 23 January 1992, to submit its initial country report as required by Article 62 of the Charter.

9. **INVITES** NGOs having observer status with the Commission as well as independent national institutions for the promotion and protection of human rights, to submit regular written reports on human rights situations in Africa in such a manner as would assist the Commission in the execution of its mandate.

41. ACHPR/Res.41 (XXVI) 99: RESOLUTION ON THE RIGHT TO A FAIR TRIAL AND LEGAL AID IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its Twenty-Sixth Ordinary Session, held in Kigali, Rwanda, from 1-15 November 1999;

Considering the provisions of the African Charter on Human and Peoples' Rights relating to the right to a fair trial, in particular Articles 7 and 26;

Recalling the resolution on the Right to Recourse and Fair Trial adopted by the Commission at its 11th Ordinary session in Tunis, Tunisia, in March 1992;

Recalling further the resolution on the Respect and the Strengthening of the Independence of the Judiciary adopted at the 19th Ordinary session held in Ouagadougou, Burkina Faso, in March 1996;

Noting the Recommendations of the Seminar on the Right to a Fair Trial in Africa held in collaboration with the African Society of International and Comparative Law and Interights, in Dakar, Senegal, from 9-11 September 1999;

Recognising the importance of the right to a fair trial and legal assistance and the need to strengthen the provisions of the African Charter relating to this right;

1. **ADOPTS** the attached Dakar Declaration and Recommendations on the Right to a Fair Trial in Africa;
2. **REQUESTS** the Secretariat of the Commission to forward the Dakar Declaration and Recommendations to Ministries of Justice and Chief Justice of all States Parties, Bar Associations and law schools in Africa and non-governmental organizations with observer status, and to report to the 27th Ordinary Session in this regard;
3. **DECIDES** to establish a Working Group on Fair Trial under the supervision of Commissioner Kamel Rezag-Bara and consisting of members of the Commission and representatives of non-governmental organizations;
4. **REQUESTS** the Working Group to prepare a draft of general principles and guidelines on the right to a fair trial and legal assistance under the African Charter and submit it to the 27th Ordinary Session of the Commission and for comments and observations by the Members of the Commission during the period between the 27th and the 28th Sessions;
5. **FURTHER REQUESTS** the Working Group to report to the 28th Ordinary Session on the final draft of the general principles and guidelines on fair trial and legal assistance for consideration;
6. **REQUEST** the Secretariat to provide the Working Group with all support and assistance needed to implement this mission.

42. ACHPR/Res.42(XXVI)99: RESOLUTION URGING STATES TO ENVISAGE A MORATORIUM ON THE DEATH PENALTY

The African Commission on Human and Peoples' Rights meeting at its Twenty-Sixth Ordinary Session held from 1-15 November 1999 in Kigali, Rwanda;

Recalling Article 4 of the African Charter on Human and Peoples' Rights which affirms the right of everyone to life and Article V(3) of the African Charter on the Rights and Welfare of the Child providing that Death Sentence shall not be pronounced for crimes committed by children;

Recalling UN Commission on Human Rights' resolutions 1998/8 and 1999/61, which calls upon all states that still maintain the death penalty to, *inter alia*, establish a moratorium on executions, with a view to abolishing the death penalty;

Recalling UN Sub-Commission on the Promotion and Protection of Human Rights' resolution 1999/4 which calls upon all States that retain the death penalty and do not apply the moratorium on executions, in order to mark the millennium, to commute the sentences of those under sentence of death on 31 December 1999 at least to sentences of life imprisonment and to commit themselves to a moratorium on the imposition of the death penalty throughout the year 2000;

Noting that three States Parties to the African Charter have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolition of the death penalty;

Noting further that at least 19 States Parties have *de facto* or *de jure* abolished the death penalty;

Considering the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are authorised to impose;

Concerned that some States Parties impose the death penalty under conditions not in conformity with the rights pertaining to a fair trial guaranteed in the African Charter on Human and Peoples' Rights;

1. **URGES** all States Parties to the African Charter on Human and Peoples' Rights that still maintain the death penalty to comply fully with their obligations under the treaty and to ensure that persons accused of crimes for which the death penalty is a competent sentence are afforded all the guarantees in the African Charter;
2. **CALLS** upon all States Parties that still maintain the death penalty to:
 - a) limit the imposition of the death penalty only to the most serious crimes ;
 - b) consider establishing a moratorium on executions of death penalty;
 - c) reflect on the possibility of abolishing death penalty.

43. ACHPR/Res.43(XXVI)99: RESOLUTION ON THE OBSERVANCE OF THE 30TH ANNIVERSARY THE OAU CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEES IN AFRICA

The African Commission on Human & Peoples' Rights, meeting at its Twenty-Sixth Ordinary Session held in Kigali, Rwanda, 1-15 November 1999:

Noting that the OAU Convention Governing the Specific Aspects of Refugee problems in Africa was adopted by the Assembly of Heads of State at Addis Ababa on 10 September 1969;

Recalling the principles laid down in the Grand Bay (Mauritius) Declaration and Plan of Action that the high number of refugees, displaced persons and returnees in Africa constitutes an impediment to development as well as the link between human rights violations and population displacement;

Considering that African states bear the brunt of receiving and caring for refugee populations;

Concerned about the plight of more than 6 million refugees, asylum-seekers and internally displaced persons across the Continent;

Aware that current mechanisms for the protection of refugees and asylum-seekers appear to be inadequate and ineffective:

1. **CONGRATULATES** those states, which have spared no effort to honour their obligations under the Convention and continue to uphold solidarity with Africa's refugees and asylum-seekers;
2. **WELCOMES** the efforts by the United Nations High Commissioner for Refugees to integrate issues of refugee protection to human rights across Africa and to establish cooperation between the Commission and the field offices of UNHCR in Africa;
3. **DECIDES TO PARTICIPATE IN THE COMMEMORATION** of the 30th Anniversary of the OAU Convention Concerning Specific Aspects of Refugee Problems in Africa by supporting the proposed OAU/UNHCR Conference to be held in Guinea early 2000;
4. **DECIDES TO ESTABLISH A CLOSER COOPERATION** with the OAU Refugees Bureau in the spirit that violations of human rights are the prime causes of refugee outflows throughout the world.
5. **APPEALS** to State Parties to the Charter to:
 - i) take steps to ensure effective implementation of the provisions of the Convention;
 - ii) establish a legal and administrative environment in their countries to ensure the best possible protection of the rights of refugees and asylum-seekers; and
 - III) by their observance of the Charter, to address the root causes of refugee outflows and population displacement.

6. DECIDES TO MAINTAIN the agenda item on Refugees, Asylum Seekers and Displaced Persons in its Ordinary Sessions.

44. ACHPR/Res.44(XXVII)00: RESOLUTION ON THE PEACE PROCESS IN THE DEMOCRATIC REPUBLIC OF CONGO

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Seventh Ordinary Session in Algiers, Algeria, from 27 April – 11 May 2000,

Considering the holding in Algiers, Algeria on 30 April 2000, of the Summit on the situation in the Democratic Republic of Congo (DRC) at the invitation of H.E. Mr. Abdelaziz BOUTEFLIKA, President of the Democratic and Popular Republic of Algeria and current Chairman of the Organization of African Unity (OAU);

Considering that the said Summit provided an opportunity for an exhaustive evaluation of the implementation of the Lusaka Accord, in the light of the latest developments in the peace process;

Noting with satisfaction the efforts of H.E. Mr. Abdelaziz BOUTEFLIKA, President of the Democratic and Popular Republic of Algeria and current Chairman of the OAU as well as those of the African Heads of State who participated at the Algiers Summit for a rapid and peaceful settlement of the conflict ravaging the Democratic Republic of Congo;

Concerned at the persistence of the state of conflict which has caused deep suffering for the civilian populace and grave violations of human rights on the territory of the DRC;

Noting however the significant progress recorded in the Great Lakes Region and in other forums, both regional and international, in the search for a solution to the conflict in the DRC;

1. **Expresses its profound appreciation** to H.E. President Abdelaziz BOUTEFLIKA for all the initiatives taken by him and strongly encourages him to pursue his laudable efforts in the search for a rapid settlement to the conflict in DRC;
 2. **Welcomes** the results achieved by the Algiers Summit of 30 April 2000 on the Democratic Republic of Congo and expresses its conviction that these results would represent a qualitative push forward for the peace dynamics in the Democratic Republic of Congo and the Great Lakes region;
 3. **Expresses its appreciation** for the encouraging results achieved in the implementation of the Lusaka Accord and calls on the concerned parties to respect the cease-fire and to contribute to a successful outcome to the ongoing peace dynamics;
 4. **Urges** all Member States of the OAU to give their full support to the peace process in DRC and to contribute actively to the restoration of peace and security to the Great Lakes Region.
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45. ACHPR/Res.45(XXVII)00: RESOLUTION ON THE WESTERN SAHARA

The African Commission on Human and Peoples' Rights, at its Twenty-Seventh Ordinary Session held in Algiers, from 27 April to 11 May 2000:

Considering the preamble to the African Charter on Human and Peoples' Rights which states that the Member States reassert their adherence to the human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organisation of African Unity, the Non-Aligned Movement and the United Nations Organisation,

Considering Article 20 of the African Charter on Human and Peoples' Rights which stipulates that:

“All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen”,

Recalling UN Security Council Resolution 658 (1990) by which it approved UN Secretary General's report S/21360 on the situation in the Western Sahara,

Recalling UN Security Council Resolution 690 (1991) in which the UN Security Council approved UN Secretary General's report S/22464 and decided to set up, under the latter's authority, the United Nations Mission on the Western Sahara (MINURSO),

Recalling paragraphs 5, 8, 9 and 10 of the general rules dated 8 November 1991 (S/126185, Appendix III) on the organisation of a referendum in the Western Sahara, which stipulated that the Saharawi people's referendum on self-determination must be free, regularly conducted and free of coercion,

Recalling the Algiers Appeal (adopted at the 35th Summit Meeting of OAU Heads of State and Government from 12 to 14 July 1999) which hails Africa's action in solidarity towards completion of the decolonisation process on the continent, and specifically implementation of the UNO/OAU peace plan for the Western Sahara,

In view of the delay registered in the process for the referendum on self-determination in the Western Sahara,

Calls for the organisation, within the allotted time, of the Saharawi people's referendum on self-determination, in a free, fair and regular manner, as desired by the International Community,

Calls for observance of the agreement concluded on 27 December 1997 at Houston between the two parties, Morocco and the Polisario Front, under the aegis of James Baker, special envoy of the UN Secretary General.

46. ACHPR/Res.46(XXVII)00: RESOLUTION ON THE PEACE PROCESS AND NATIONAL RECONCILIATION IN SOMALIA

The African Commission on Human and Peoples' Rights meeting in Algeria at its Twenty-Seventh Ordinary Session from 27 April to 11 May 2000:

Recalling articles 19 through 24 and other articles of the African Charter on Human and Peoples' Rights;

Considering the Charter of the OAU that stipulates that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples;

Concerned at the fluid situation of statelessness prevailing in Somalia;

Convinced that paying attention to the right to development, civil and political rights and the right to national and international peace and security, necessitates the existence of a democratically elected government by all people in Somalia;

Welcoming the meeting of traditional leaders and members of the civil society in Somalia, which started in Djibouti since the 2nd of May 2000;

Appreciating the efforts of the government of Djibouti, the Inter-Governmental Authority on Development, the Arab League, the OAU and the UN in their endeavours to maintain and preserve the national unity of the Somali people and the integrity of the State of Somalia;

Welcomes the national reconciliation efforts currently taking place in the Djibouti Conference which started in Djibouti on 2 May 2000, initiated by the government of Djibouti and supported by IGAD, the Arab League, OAU, and United Nations;

Appreciates the efforts of H.E President Ismail Omar GUELLEH and the Government of Djibouti in bringing together the Somali people in order to consider the future of Somalia, and in guiding the negotiations towards successful results;

1. **Appeals** to the Somali members of the civil society, the people of Somalia, traditional and political leaders in Somalia to adhere to the peaceful settlement of their differences and to give priority to the national interest of maintaining the unity and integrity of Somalia;
2. **Encourages** all efforts aiming at achieving national peace and security and promoting and protecting the human rights of the Somali people.
3. **Calls upon** all Heads of State and Government of African countries parties to the African Charter on Human and Peoples' Rights and the International Community to support the on-going Somalia reconciliation process.

47. ACHPR/Res.47(XXVIII)00: RESOLUTION ON CÔTE D'IVOIRE

The African Commission on Human and Peoples' Rights meeting at its Twenty-Eighth Ordinary Session in Cotonou, Benin from 23 October to 6 November 2000,

Considering that Côte d'Ivoire is a party to the African Charter on Human and Peoples' Rights and other international human rights instruments;

Deploring the events of Wednesday 25 and Thursday 26 October 2000 in Côte d'Ivoire, which were marked by shootings, wounding and massacres of innocent civilians;

Welcoming with appreciation the Government's statement that it is going to set up a Commission of Enquiry;

1. **Urges** the OAU to set up an International Commission of Enquiry, which would involve the African Commission, to investigate all human rights abuses that occurred on or about Wednesday 25 October through to Friday 27 October 2000 and all consequences thereof;
 2. **Urges** the Ivorian Government to co-operate closely with the Commission of Enquiry and give it all the necessary assistance;
 3. **Calls** on the Ivorian Government to undertake to bring to justice all persons who would have been found to be involved in the human rights violations by the investigation;
 4. **Further calls** upon the Ivorian Government to ensure full compliance with the provisions of the African Charter on Human and Peoples' Rights and other international human rights instruments.
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48. *ACHPR/Res.48(XXVIII)00*: RESOLUTION ON THE SITUATION IN PALESTINE AND THE OCCUPIED TERRITORIES

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Eighth Ordinary Session held in Cotonou, Benin, from 26 October to 6 November 2000;

- **Considering** the values and fundamental principles of the African Charter on Human and Peoples' rights and the commitment to the people of Africa and to the human and people's rights and freedoms contained in the Declarations, Conventions and other instruments adopted within the framework of the Organisation of African Unity, and the United Nations Organisation;
- **Noting** the status of the Palestine Liberation Organisation within the O.A.U. and the concerns that a prolonged state of conflict and instability in the Middle East will adversely affect a number of States Parties to the Charter;
- **Noting with deep indignation** the excessive and inconsiderate use of military force against civilians which has led since the beginning of the conflict to about 150 deaths, including the death of children, and to more than 3000 wounded;
- **Bearing in mind** the Resolution adopted during the Special Session of the United Nations Human Rights Commission held in Geneva from 17 to 19 October 2000 devoted to the situation of human rights in occupied Palestine;
- **Calls upon** the competent organs of the OAU. to:
 1. **Condemn** strongly the repression and the inconsiderate and disproportionate use of force by the army of Israel in Palestine and in the occupied territories which resulted in many deaths and injuries among the Palestinian civilians, especially children;
 2. **Support** the efforts of the International Community for the creation of an International Commission of Inquiry into the events that occurred in September 2000 and that led to the killings of Palestinian civilians, including children, by the Israel occupation forces.

49. *ACHPR/Res.49(XXVIII)00: RESOLUTION ON COMPLIANCE AND IMMEDIATE IMPLEMENTATION OF THE ARUSHA PEACE AGREEMENT FOR BURUNDI*

The African Commission on Human and Peoples' Rights meeting at its Twenty-Eighth Ordinary Session in Cotonou, Benin, from 23 October to 6 November 2000,

Considering the massacres of innocent people committed in Burundi since 21 October 1993;

Considering the effects of the protracted civil war on the economy and well-being of the people of Burundi;

Considering with concern that the on-going armed conflict between the rebels and the Government army has caused serious violations of human rights and freedoms of the people of Burundi;

- ***Expresses*** its support for the Arusha Peace Agreement for Burundi and urges the conflicting parties to conclude a cease-fire and immediately and unconditionally implement the Arusha Accord signed in Arusha on 28 August 2000;
- ***Congratulates*** former President Nelson Mandela for the progress achieved through his mediation and exhorts him to continue with his efforts towards achieving lasting peace in Burundi;
- ***Calls upon*** the rebel groups who have not yet signed the peace agreement concluded under the auspices of former President Nelson Mandela to do so urgently;
- ***Makes an urgent appeal*** to the Great Lakes countries to give their full support to the peace process and put pressure on all the belligerents to renounce violence;
- ***Calls upon*** the OAU and UN to take all appropriate measures to put a stop to the hostilities in Burundi and bring the belligerents to give greater importance to negotiation for the resolution of their dispute;
- ***Urges*** the International Community to support the peace process and settlement of the conflict that has rocked Burundi.

50. ACHPR/Res.50 (XXVIII)00: RESOLUTION ON THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

The African Commission on Human and Peoples' Rights, meeting at its Twenty-Eighth Ordinary Session in Cotonou, Benin, from 23 October to 6 November 2000,

Having considered the report on the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance due to take place in South Africa from 31 August to 7 September 2001;

Noting that the African Commission and the OAU have not been adequately involved in the regional preparations for the World Conference;

Noting further that a regional experts seminar in preparation for the World Conference was held in Addis Ababa, 4 to 8 October 2000 and that a regional preparatory Conference is scheduled to take place in Dakar, Senegal in January 2001;

Considering that it is critical that African States in general, including regional institutions and civil society be fully involved in the preparations for, and to influence the outcomes of the World Conference;

Recalling its decision to nominate Commissioner Jainaba Johm as the focal point for the preparation of this World Conference;

1. **Resolves** to seek observer status with the Preparatory Committee of the World Conference, the next session of which will take place in Geneva in May 2001;
2. **Nominates** a Committee of 4 members with the focal point as a convenor with the following mandate:
 - To represent the Commission in all matters relating to the preparation for the World Conference and invite the OAU to take an active part in the preparation and holding of the Conference ;
 - To prepare a document on the issues to be considered by the World Conference and propose a strategy for effective participation by the Commission;
 - To disseminate within Member States information materials likely to raise awareness of the World Conference;
 - To encourage State parties to the African Charter and civil society to organise national preparatory meetings and to engage in preparations for the World Conference with all diligence ;
 - To report on developments at the 29th Ordinary Session of the African Commission;
3. **Resolves** to have this item on the Agenda of its 29th and 30th Ordinary Sessions; of the African Commission;

4. **Requests** the Secretariat to make all appropriate arrangements for the implementation of this resolution and report to the 29th Session.
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51. ACHPR/Res.51(XXVIII)00: RESOLUTION ON THE RIGHTS OF INDIGENOUS PEOPLES/COMMUNITIES IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 28th Ordinary Session in Cotonou, Benin from 23rd October to 6th November 2000,

- **Recalling** that at its 26th Ordinary Session held in Kigali, Rwanda, it constituted a Committee made up of 3 Commissioners to further consider the issue of Indigenous People in Africa and advise accordingly;
- **Having reconsidered** the issue and its implications;

Resolves to:

1. **Establish** a working group of experts on the rights of indigenous or ethnic communities in Africa ;
2. **Set up** a working group constituted of 2 members of the African Commission, one of whom should be designated as convenor and 2 African experts in the field of human rights or indigenous issues;
3. **Assign** the following mandate to the working group:
 - a) Examine the concept of indigenous people and communities in Africa;
 - b) Study the implications of the African Charter on Human Rights and well being of indigenous communities especially with regard to:
 - *the right to equality (Articles 2 and 3);*
 - *the right to dignity (Article 5);*
 - *protection against domination (Article 19);*
 - *on self-determination (Article 20); and*
 - *the promotion of cultural development and identity (Article 22).*
 - c) Consider appropriate recommendations for the monitoring and protection of the rights of indigenous communities;
4. **Have** a funding proposal prepared with a view to raising donor funds to meet the costs of the work of the working group;
5. **Submit** a report at the 30th Ordinary Session of the Commission.



Section C



52. ACHPR/Res.52(XXIX)01: RESOLUTION ON THE AFRICAN UNION AND THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights, meeting at its 29th Ordinary Session in Tripoli, Great Socialist People's Libyan Arab Jamahiriya, from 23rd April to 7th May 2001,

Recalling the Sirte Declaration of 9th September 1999, adopted during the 4th Extraordinary Session of the Assembly of Heads of State and Government of the Organisation of African Unity;

Recalling the adoption of the Constitutive Act of the African Union by the 36th Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Lomé, Togo, from 10th to 12th July, 2000;

Noting that all Member-States have signed the Constitutive Act of the African Union and that the legal conditions for its entry into force are now met, after the deposit of the 36th instrument of ratification;

Recalling that one of the objectives of the African Union, aims at “promoting and protecting human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments” (Article 3 of the Constitutive Act);

Noting with satisfaction the substantial contributions made by the participants during the consideration of this agenda item at the 29th Ordinary Session;

Noting the need to initiate in-depth discussion on all the implications of the entry into force of the Constitutive Act of the African Union on the provisions of the African Charter on Human and Peoples’ Rights and on the functioning of the African Commission on Human and Peoples’ Rights;

1. **Expresses** its total adherence to the noble ideals, principles and objectives contained in the Constitutive Act of the African Union, in particular the commitment of States Parties “to promote and protect human and peoples’ rights, promote gender equality consolidate democratic institutions and culture, to ensure good governance and the rule of law, to promote the respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities as well as unconstitutional changes of governments;
2. **Decides to set up** a three-member working group of the Commission with a mandate to initiate an in-depth discussion on all the implications of the entry into force of the Constitutive Act of the African Union on the African Charter and the African Commission on Human and Peoples’ Rights;
3. **Requests** the working group to present an interim report at the 30th Session and a final report at its 31st Session;
4. **Requests** the Secretariat to provide the working group with the necessary means to carry out its mandate and decides to keep this issue on its agenda.

53. ACHPR/Res.53(XXIX)01 : RESOLUTION ON HIV/AIDS PANDEMIC – THREAT AGAINST HUMAN RIGHTS AND HUMANITY

The African Commission on Human and People's Rights, meeting at its 29th Ordinary Session in Tripoli, the Great Socialist Peoples' Libyan Arab Jamahiriya from 23rd April to 7th May 2001,

Noting the rampant escalation of the HIV/AIDS pandemic in Africa especially in sub-Saharan Africa where estimates show that some 9 million people have died and within the next decade some 25 million people will become infected;

Noting with satisfaction the convening of the Africa Summit on HIV/AIDS in Abuja, Nigeria, from 24th to 26th April 2001 where the crisis was declared and interventions of emergency proportions called for;

Welcoming the statement of the Abuja Summit and the emergency measures declared there especially the announcement by the Secretary General of the UN on the establishment of a US\$10 billion war chest to fight HIV/AIDS in Africa;

Welcoming the forthcoming UN General Assembly Special Session on HIV/AIDS to be held in June 2001 and trusting that it will increase awareness of the need for international action to fight the pandemic and devise strategies by international co-operation against HIV/AIDS;

Mindful of the mandate of the Commission in terms of the Charter to “promote human and peoples’ rights and ensure their protection in Africa” and especially in this regard allow the right of every individual to “enjoy the best attainable state of physical and mental health” (Article 16);

1. **Declares** that the HIV/AIDS pandemic is a human rights issue which is a threat against humanity;
2. **Calls** upon African Governments, State Parties to the Charter to allocate national resources that reflect a determination to fight the spread of HIV/AIDS, ensure human rights protection of those living with HIV/AIDS against discrimination, provide support to families for the care of those dying of AIDS, devise public health care programmes of education and carry out public awareness especially in view of free and voluntary HIV testing, as well as appropriate medical interventions;
3. **Calls** upon the international pharmaceutical industries to make affordable and comprehensive health care available to African governments for urgent action against HIV/AIDS and invites international aid agencies to provide vastly increased donor partnership programmes for Africa including funding of research and development projects.

54. ACHPR/Res.54(XXIX)01: RESOLUTION ON FREEDOM OF EXPRESSION

The African Commission on Human and Peoples' Rights meeting at its 29th Ordinary Session in Tripoli, the Great Socialist People's Libyan Arab Jamahiriya, from 23rd April to 7th May 2001,

Recalling Article 9 of the African Charter on Human and Peoples' Rights which guarantees the right to freedom of expression;

Recognising that freedom of expression is an essential attribute of human existence in all spheres of life and that there is now widespread international recognition of the cardinal role of freedom of expression in human progress;

Noting that freedom of expression is a potent and indispensable instrument for the creation and maintenance of a democratic society and the consolidation of development;

Concerned at the widespread violation of this right by States parties to the Charter through the harassment, arbitrary arrest and detention of journalists, victimisation of media houses deemed critical of the establishment, inadequate legal frameworks for regulating electronic media especially broadcasting, and criminal and civil laws that inhibit the right to freedom of expression;

Mindful of the potentially narrow scope of protection given by Article 9 of the African Charter on Human and Peoples' Rights;

Recognising the increasingly specialised nature of information technology and its impact on various aspects of the right to freedom of expression;

Recalling the recommendations of the Seminar on Freedom of Expression and the African Charter, it held in Johannesburg, South Africa, from 22nd to 25th November 2000;

Decides:

1. **To develop** and adopt, through a consultative process, a *Declaration of Principles on Freedom of Expression*, drawn from a comprehensive range of international standards and jurisprudence, to elaborate and expound the nature, content and extent of the right to freedom of expression provided for under Article 9 of the African Charter,
2. **To initiate** an appropriate mechanism to assist it review and monitor adherence to freedom of expression standards in general, the Declaration in particular to investigate violations and make appropriate recommendations to the Commission,
3. **To hold** periodic meetings with NGOs and African journalists to review progress in guaranteeing freedom of expression across the continent and in implementing the Declaration of Principles.

55. ACHPR/Res.55 (XXIX) 01: RESOLUTION ON THE IMMEDIATE LIFTING OF SANCTIONS IMPOSED ON LIBYA

The African Commission on Human and Peoples' Rights, meeting at its 29th ordinary session in Tripoli, the great socialist people's Libyan Arab Jamahiriya, from 23rd April to 7th May 2001;

Having considered the evolution of the Lockerbie case and in particular the fact that the Government of Libya has complied fully with the resolutions of the United Nations;

Bearing in mind that the sanctions imposed on Libya has seriously affected the enjoyment by the people of Libya of the rights enshrined in the African Charter on Human and People's Rights;

Taking note of the motion on the Lockerbie affair adopted by the Assembly of the OAU Heads of State and Government, meeting at its 5th Extraordinary Session held on 1st and 2nd March 2001 in Sirte, The Great Socialist People's Libyan Arab Jamahiriya ;

Bearing in mind the relevant OAU resolutions and decisions and those of other international and regional organisations;

1. **Notes with satisfaction** the motion on the Lockerbie affair adopted by the Extraordinary Session held on the 1st and 2nd March 2001 in Sirte, the Great Socialist People's Libyan Arab Jamahiriya.
2. **Urges** the Security Council of the United Nations Organisation to consider the immediate lifting of sanctions imposed on Libya.
3. **Decides** to monitor all further aspects of the legal proceedings initiated in the Lockerbie affair in conformity with the principles of the right to a fair trial.

56. ACHPR/Res.56(XXIX)01: RESOLUTION ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN TUNISIA

The African Commission on Human and Peoples' Rights, meeting at its 29th Ordinary Session in Tripoli, Great Socialist People's Libyan Arab Jamahiriya, from 23rd April to 7th May 2001,

Considering that the Republic of Tunisia is a party to the African Charter on Human and Peoples' Rights;

Considering the relevant provisions of the African Charter on Human and Peoples' Rights, in particular articles 9(2), 10(1), 12(1) and 12(2);

Considering the provisions of other international and regional human rights instruments on freedom of conscience, freedom of movement, and right to association;

Considering the Declaration of 9th December 1998 of the United Nations General Assembly on the "rights and responsibilities of individuals, groups and organs of society to promote and protect universally recognised human rights and basic freedoms" and in particular Article 1 which states that "every individual has the right, individually, or in association with others, to promote the protection and the implementation of human rights and basic freedoms";

Concerned by the decision dated on 27th November 2000 suspending the activities of the Ligue Tunisienne de Défense des Droits de l'Homme (LTDH), one of the oldest human rights NGOs in Africa;

Welcoming with satisfaction the recent initiatives by Tunisian authorities to address the situation.

1. **Invites** the Chairman of the African Commission on Human and Peoples' Rights to write to the President of the Republic of Tunisia to express its concerns about the situation of human rights defenders in Tunisia;
 2. **Offers to send** a mission of good offices, if necessary, led by the Chairman of the Commission, in view of addressing the problem of the suspension of the Ligue Tunisienne de Défense des Droits de l'Homme.
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57. ACHPR/Res.57(XXIX)01: RESOLUTION ON THE RECENT VIOLENCE IN KABYLIA, ALGERIA

The African Commission on Human and Peoples' Rights, meeting at its 29th Ordinary Session in Tripoli, the Great Socialist People's Libyan Arab Jamahiriya, from 23rd April to 7th May 2001,

Noting the recent upsurge of violence in the Kabylia region of north-east Algeria where some 50 people are reported to have died and scores of others injured or arrested. The riots were sparked by the death of a student, Guermah Massinissa while held at a police station on 18th April 2001;

Encouraged by the announcement by President Abdelaziz Bouteflika on Monday 30 April 2001 of the establishment of a national commission of inquiry to bring light into the circumstances of the events and also the establishment of a Parliamentary Commission of Enquiry;

Mindful of its obligations in terms of the African Charter "to promote human and peoples' rights and ensure their protection" and especially conscious of the rights in the Charter to enjoy the rights and respect to economic, social and cultural development;

Recalling its Resolution on the rights of Indigenous Populations/Communities and the establishment of a Working Group to propose appropriate mechanisms for the promotion and protection of the rights of indigenous populations/communities in terms of the Charter;

Inspired by the leadership of President Abdelaziz Bouteflika in Africa and the hopes his democratic election aroused in 1998 for an end to sectarian violence, the establishment of human rights, good governance and security as well as the end to impunity especially within the security forces;

Satisfied that Algeria presented its periodic report, which was examined at the 29th Ordinary Session in Tripoli, the Great Libyan Jamahiriya and commending this country on the measures taken to give effect to the rights, duties and freedoms enshrined in the Charter.

1. **Requests** the Chairman of the Commission to write to the Government of Algeria and convey its deep concerns of the Commission at the recent events especially as it concerns a vulnerable community;
2. **Commends** the Government of Algeria on the speedy establishment of a National Commission of Enquiry and also a Parliamentary Commission of Enquiry and seeks the assurance that those responsible for human rights violations will be brought to justice;
3. **Offers** its good offices to help resolve the human rights problems underlying the disturbances and to send a fact-finding mission to Algeria at the earliest opportunity;
4. **Sends** condolences to the families of those who died during the tragic events.

58. ACHPR/Res.58(XXX)01: RESOLUTION ON THE CONSTRUCTION OF THE HEADQUARTERS OF THE AFRICAN COMMISSION ON HUMAN & PEOPLES' RIGHTS

The African Commission on Human and Peoples' Right meeting at its 30th Ordinary Session in Banjul, The Gambia, 13th –27th October 2001;

Noting that in 1989 the Republic of The Gambia and the OAU signed a solemn and binding Agreement to establish the seat of the African Commission on Human and Peoples' Rights in Banjul, and to provide adequate facilities for the Commission to execute its mandate in terms of the African Charter on Human and Peoples' Rights;

Noting with appreciation that the Government of the Republic of the Gambia has now resolved to construct the headquarters building to house the Secretariat of the Commission and towards that end has allocated a site on which such headquarters building is to be situated; and

Noting also that on 24th October 2001 to mark United Nations Day and African Human Rights Day (21st October), the Foundation Stone was laid during a ceremony on the site presided over by the Hon. Attorney General and Secretary of State for Justice and in the presence of the Chairman, other members of the Commission, the staff of the Secretariat and other dignitaries.

1. **Congratulates** the Government of the Republic of the Gambia on the provision of land and for the resolve to construct the headquarters of the African Commission;
2. **Supports** the Government of the Republic of the Gambia in all fundraising efforts necessary to raise the necessary capital for the construction of the building;
3. **Instructs** the Secretary to the Commission to report regularly on the progress of the appeal.

59. ACHPR/Res.59 (XXXI) 02: RESOLUTION ON THE RATIFICATION OF THE STATUTE ON THE INTERNATIONAL CRIMINAL COURT BY OAU MEMBER STATES

The African Commission on Human and Peoples' Rights, meeting at its 31st Ordinary Session in Pretoria, South Africa, from 2nd to 16th May 2002;

RECALLING that the establishment of the International Criminal Court (ICC) represents an important development in the history of humanity and Universal jurisdiction and more specifically in the struggle against impunity for the more serious crimes as crimes of war, crimes against humanity and genocide;

RECALLING that the 60 ratifications necessary for the entry into force of the ICC Statute was reached in April 2002 and that the statute will subsequently enter into force on 1st July 2002;

NOTING WITH SATISFACTION the fact that among the 66 States who have presently ratified the ICC Statute, 14 are African countries: South Africa, Benin, Botswana, Gabon, Ghana, Lesotho, Mali, Mauritius, Niger, Nigeria, Central African Republic, Democratic Republic of Congo, Senegal, Sierra Leone ;

CAUTIOUS that for the ICC to reflect universal jurisdiction and to receive universal credibility, as many countries as possible, from all regions of the world should ratify the Rome Statute;

RECALLING that the Assembly of States Parties will meet at the beginning of September 2002 in order to adopt the final texts necessary for the functioning of the ICC and to appoint and elect the judges;

NOTING that only the States party to the Statute will have the opportunity to present candidates for the position of judges;

CONVINCED that by dealing with crimes against humanity, war crimes, crimes of aggression, crimes of genocide and by putting an end to the tradition of impunity, the International Criminal Court will enhance and contribute sensitively to the protection of Human and Peoples' Rights;

URGES OAU Member States who have not yet done so to ratify the ICC Statute without delay;

CALLS upon the States that have ratified the ICC Statute to rapidly incorporate it into their domestic legislation in order to be able to fully cooperate with the ICC and implement the principle of complementarity with their national courts;

CALLS on OAU Member States to ensure the active participation of Africans in the functioning of the International Criminal Court;

60. ACHPR/Res.60(XXXI)02: RESOLUTION ON THE RATIFICATION OF THE PROTOCOL TO THE AFRICAN CHARTER ON THE ESTABLISHMENT OF AN AFRICAN COURT

The African Commission on Human and Peoples' Rights, meeting at its 31st Ordinary Session in Pretoria, South Africa, from 2nd to 16th May 2002;

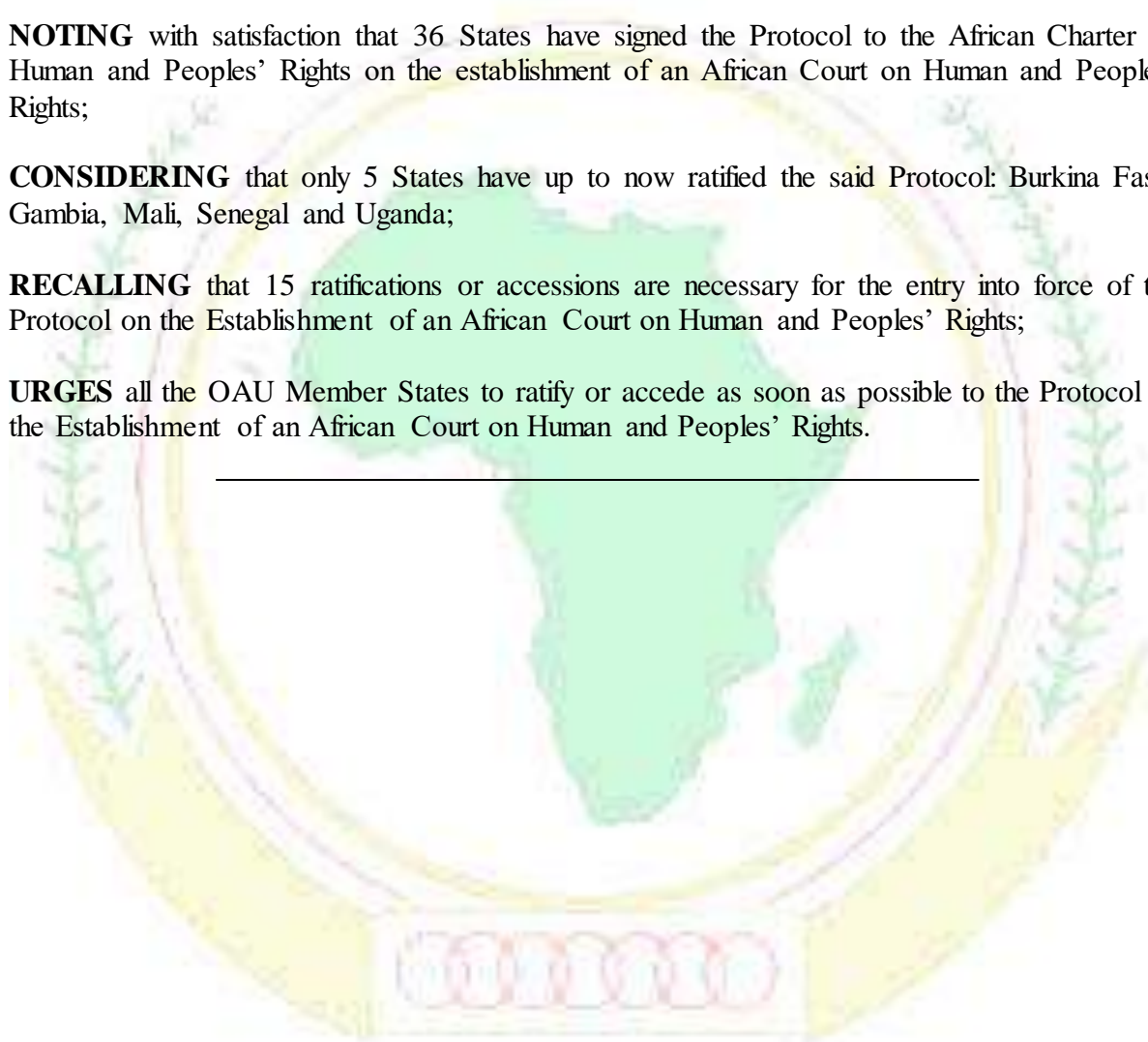
RECALLING that the Assembly of Heads of States and of Governments of the Organisation of African Unity (OAU) adopted the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights at its 19th Ordinary Session on 9 July 1998 in Ouagadougou, Burkina Faso;

NOTING with satisfaction that 36 States have signed the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights;

CONSIDERING that only 5 States have up to now ratified the said Protocol: Burkina Faso, Gambia, Mali, Senegal and Uganda;

RECALLING that 15 ratifications or accessions are necessary for the entry into force of the Protocol on the Establishment of an African Court on Human and Peoples' Rights;

URGES all the OAU Member States to ratify or accede as soon as possible to the Protocol on the Establishment of an African Court on Human and Peoples' Rights.



61. ACHPR/Res.61 (XXXII) 02: RESOLUTION ON GUIDELINES AND MEASURES FOR THE PROHIBITION AND PREVENTION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 32nd ordinary session, held in Banjul, The Gambia, from 17th to 23rd October 2002;

Recalling the provisions of -:

- Article 5 of the African Charter on Human and Peoples' Rights that prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;
- Article 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations;
- Articles 3 and 4 of the Constitutive Act of the African Union wherein States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

Recalling further its Resolution on the Right to Recourse Procedure and Fair Trial adopted during its 11th ordinary session, held in Tunis, Tunisia, from 2nd to 9th March 1992;

Noting the commitment of African States to ensure better promotion and respect of human rights on the continent as reaffirmed in the Grand Bay Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa;

Recognising the need to take concrete measures to further the implementation of existing provisions on the prohibition of torture and cruel, inhuman or degrading treatment or punishment;

Mindful of the need to assist African States to meet their international obligations in this regard;

Recalling the recommendations of the *Workshop on the Prohibition and the Prevention of Torture and Ill-treatment*, organised jointly by the African Commission and the Association for the Prevention of Torture, on Robben Island, South Africa, from 12th to 14th February 2002;

1. **Adopts** the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).
2. **Establishes** a Follow-up Committee comprising of the African Commission, the Association for the Prevention of Torture and any prominent African Experts as the Commission may determine.
3. **Assigns** the following mandate to the Follow-up Committee -:

- To organise, with the support of interested partners, seminars to disseminate the Robben Island Guidelines to national and regional stakeholders.
 - To develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels.
 - To promote and facilitate the implementation of the Robben Island Guidelines within Member States.
 - To make a progress report to the African Commission at each ordinary session.
4. **Urges** Special Rapporteurs and Members of the African Commission to widely disseminate the Robben Island Guidelines as part of their promotional mandate.
 5. **Encourages** States parties to the African Charter, in their periodic reports to the African Commission, to bear in mind the Robben Island Guidelines.
 6. **Invites** NGOs and other relevant actors to widely disseminate and utilise the Robben Island Guidelines in the course of their work.

Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)

Part I: Prohibition of Torture

A. Ratification of Regional and International Instruments

1. States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:
 - a) Ratification of the Protocol to the African Charter of Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights;
 - b) Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under Articles 21 and 22 and recognising the competency of the Committee to conduct inquiries pursuant to Article 20;

- c) Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;
- d) Ratification of or accession to the Rome Statute establishing the International Criminal Court;

B. Promote and Support Co-operation with International Mechanisms

2. States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on prisons and conditions of detention in Africa, the Special Rapporteur on arbitrary, summary and extra-judicial executions in Africa and the Special Rapporteur on the rights of women in Africa.
3. States should co-operate with the United Nations Human Rights Treaties Bodies, with the UN Commission on Human Rights' thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.

C. Criminalisation of Torture

4. States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.
5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.
6. National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture.
7. Torture should be made an extraditable offence.
8. The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.
9. Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
10. Notions such as "necessity", "national emergency", "public order", and "ordre public" shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.

11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.
12. Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.
13. No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.
14. States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.

D.Non-Refoulement

15. States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.

E.Combating Impunity

16. In order to combat impunity States should:

- a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process.
- b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law.
- c) Ensure expeditious consideration of extradition requests to third states, in accordance with international standards.
- d) Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody.
- e) Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.

F.Complaints and Investigation Procedures

17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.

18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.
19. Investigations into all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol)¹.

E. Part II: Prevention of Torture

A. Basic Procedural Safeguards for those deprived of their liberty

20. all persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:
 - a) The right that a relative or other appropriate third person is notified of the detention;
 - b) The right to an independent medical examination;
 - c) The right of access to a lawyer;
 - d) Notification of the above rights in a language, which the person deprived of their liberty understands;

B. Safeguards during the Pre-trial process

States should:

21. Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ².
22. Ensure that those subject to the relevant codes of criminal procedure conduct criminal investigations.
23. Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.

¹

Annexed to UN GA Res. A/55/89, 4 Dec. 2000, UN Publication No.8, HR/P/PT/8.

² UN GA/Res. 43/173, 9 Dec.1988

24. Prohibit the use of incommunicado detention.
25. Ensure that all detained persons are informed immediately of the reasons for their detention.
26. Ensure that all persons arrested are promptly informed of any charges against them.
27. Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.
28. Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio taped recordings of interrogations.
29. Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings except against persons accused of torture as evidence that the statement was made.
30. Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.
31. Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.
32. Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

C. Conditions of Detention

States should:

33. Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the UN standard minimum rules for the treatment of prisoners³.
34. Take steps to improve conditions in places of detention, which do not conform to international standards.
35. Take steps to ensure that pre-trial detainees are held separately from convicted persons.

³ UN ECOSOC Res. 663 C (XXIV), 31 July 1957, amended by UN ECOSOC Res. 2076 (LXII), 13 May 1977

36. Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.
37. Take steps to reduce over-crowding in places of detention by inter alia, encouraging the use of non-custodial sentences for minor crimes.

D.Mechanisms of Oversight

States should:

38. Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary.⁴
39. Encourage professional legal and medical bodies, to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.
40. Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.
41. Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights⁵.
42. Encourage and facilitate visits by NGOs to places of detention.
43. Support the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty by a State Party.
44. Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.

⁴ UN Doc. E/CN.4/1995/39

⁵ UN A/Res/48/134, 20 Dec. 1993

D. Training and empowerment

45. Establish and support training and awareness-raising programmes which reflect human rights standards and emphasise the concerns of vulnerable groups.
46. Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.

E. Civil Society Education and Empowerment

47. Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.
48. The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.

Part III: Responding to the Needs of Victims

49. Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.
50. The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all States should ensure that all victims of torture and their dependents are:
 - a) Offered appropriate medical care;
 - b) Have access to appropriate social and medical rehabilitation;
 - c) Provided with appropriate levels of compensation and support;

In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.

62. ACHPR/Res.62(XXXII)02: RESOLUTION ON THE ADOPTION OF THE DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, in Banjul, The Gambia, from 17th to 23rd October 2002;

Reaffirming the fundamental importance of freedom of expression and information as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms;

Concerned at violations of these rights by States Party to the Charter;

Taking into consideration the 1991 Windhoek Declaration on Promoting an Independent and Pluralistic African Press, the Final Report of the African Conference of "The Journalist and Human Rights in Africa" held in Tunis, Tunisia from 31st October to 1st November 1992, the Resolution on Freedom of Expression adopted by the African Commission on Human and Peoples' Rights in Tripoli on 7th May 2001, the Statement of the Seminar on "Freedom of Expression and the African Charter" held from 23rd to 25th November 2000 in Johannesburg, South Africa and the first and second meetings of the Commission's Working Group on Freedom of Expression held in Cape town, South Africa from 10th to 11th February 2002 and in Pretoria, South Africa on 1st May 2002 respectively;

Decides to adopt and to recommend to African States the Declaration of Principles on Freedom of Expression in Africa annexed hereto;

Decides to follow up on the implementation of this Declaration.

Declaration of Principles on Freedom of Expression in Africa

Preamble

Reaffirming the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms;

Reaffirming Article 9 of the *African Charter on Human and Peoples' Rights*;

Desiring to promote the free flow of information and ideas and greater respect for freedom of expression;

Convinced that respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy;

Convinced that laws and customs that repress freedom of expression are a disservice to society;

Recalling that freedom of expression is a fundamental human right guaranteed by the *African Charter on Human and Peoples' Rights*, the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*, as well as other international documents and national constitutions;

Considering the key role of the media and other means of communication in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy;

Aware of the particular importance of the broadcast media in Africa, given its capacity to reach a wide audience due to the comparatively low cost of receiving transmissions and its ability to overcome barriers of illiteracy;

Noting that oral traditions, which are rooted in African cultures, lend themselves particularly well to radio broadcasting;

Noting the important contribution that can be made to the realisation of the right to freedom of expression by new information and communication technologies;

Mindful of the evolving human rights and human development environment in Africa, especially in light of the adoption 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 principles of the *Constitutive Act of the African Union*, 2000, as well as the significance of the human rights and good governance provisions in the New Partnership for Africa's Development (NEPAD); and

Recognising the need to ensure the right to freedom of expression in Africa, the African Commission on Human and Peoples' Rights declares that:

I

The Guarantee of Freedom of Expression

1. Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
2. Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

II

Interference with Freedom of Expression

1. No one shall be subject to arbitrary interference with his or her freedom of expression.
2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

III *Diversity*

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things:-

- availability and promotion of a range of information and ideas to the public;
- pluralistic access to the media and other means of communication, including by vulnerable or marginalized groups, such as women, children and refugees, as well as linguistic and cultural groups;
- the promotion and protection of African voices, including through media in local languages; and
- the promotion of the use of local languages in public affairs, including in the courts.

IV *Freedom of Information*

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
 - everyone has the right to access information held by public bodies;
 - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
 - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
 - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
 - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
 - secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

V *Private Broadcasting*

1. States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression.
2. The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:
 - there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community;

- an independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions;
- licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting; and
- community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves.

VI

Public Broadcasting

State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

- public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;
- the editorial independence of public service broadcasters should be guaranteed;
- public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
- public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
- the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.

VII

Regulatory Bodies for Broadcast and Telecommunications

1. Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
2. The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.
3. Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.

VIII

Print Media

1. Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.
2. Any print media published by a public authority should be protected adequately against undue political interference.
3. Efforts should be made to increase the scope of circulation of the print media, particularly to rural communities.

4. Media owners and media professionals shall be encouraged to reach agreements to guarantee editorial independence and to prevent commercial considerations from unduly influencing media content.

IX *Complaints*

1. A public complaints system for print or broadcasting should be available in accordance with the following principles:
 - complaints shall be determined in accordance with established rules and codes of conduct agreed between all stakeholders; and
 - the complaints system shall be widely accessible.
2. Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts.
3. Effective self-regulation is the best system for promoting high standards in the media.

X *Promoting Professionalism*

1. Media practitioners shall be free to organise themselves into unions and associations.
2. The right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions.

XI *Attacks on Media Practitioners*

1. Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.
2. States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.
3. In times of conflict, States shall respect the status of media practitioners as non-combatants.

XII *Protecting Reputations*

1. States should ensure that their laws relating to defamation conform to the following standards:
 - no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
 - public figures shall be required to tolerate a greater degree of criticism; and
 - sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.
2. Privacy laws shall not inhibit the dissemination of information of public interest.

XIII
Criminal Measures

1. States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.
2. Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

XIV
Economic Measures

1. States shall promote a general economic environment in which the media can flourish.
2. States shall not use their power over the placement of public advertising as a means to interfere with media content.
3. States should adopt effective measures to avoid undue concentration of media ownership, although such measures shall not be so stringent that they inhibit the development of the media sector as a whole.

XV
Protection of Sources and other journalistic material

Media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except in accordance with the following principles:

- the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;
- the information or similar information leading to the same result cannot be obtained elsewhere;
- the public interest in disclosure outweighs the harm to freedom of expression; and
- disclosure has been ordered by a court, after a full hearing.

XVI
Implementation

States Parties to the African Charter on Human and Peoples' Rights should make every effort to give practical effect to these principles.

63. ACHPR/Res.63(XXXIV)03: RESOLUTION ON THE RENEWAL OF THE MANDATE OF THE TERM OF THE SPECIAL RAPPOREUR ON THE RIGHTS OF WOMEN IN AFRICA

The African Commission on Human and Peoples' Rights at its 34th Ordinary Session that took place from 6th to 20th November 2003 in Banjul, The Gambia,

Recalling the resolution it adopted at its 25th Ordinary Session that took place from 26th April to 5th May 1999 in Bujumbura, Burundi, in which it appointed a Special Rapporteur on the Rights of Women in Africa;

Recalling further the provisions of Article 18(3) of the African Charter on Human and Peoples' Rights;

Referring further the provisions of Article 45(1) A of the African Charter on Human and Peoples' Rights;

Recalling its decision taken at the 30th Ordinary Session, in October 2001 in Banjul, the Gambia, nominating Commissioner Angela Melo as the Special Rapporteur on the Rights of Women in Africa;

Considering the necessity to allow the Special Rapporteur to continue to carry out her mandate;

Decides to renew the mandate of Angela Melo as Special Rapporteur on the Rights of Women in Africa for a period of one (1) year;

Requests the Secretariat of the African Commission to enhance its efforts to mobilise resources that could assist the Special Rapporteur to carry out her mandate.

64. ACHPR/Res.64(XXXIV)03: RESOLUTION ON THE ADOPTION OF THE “OUAGADOUGOU DECLARATION AND PLAN OF ACTION ON ACCELERATING PRISON AND PENAL REFORM IN AFRICA”

The African Commission on Human and Peoples’ Rights meeting at its 34th Ordinary Session held in Banjul, The Gambia from 6 - 20 November 2003;

Recalling Article 30 of the African Charter on Human and Peoples’ Rights which mandates it to promote and protect human and peoples’ rights and to ensure their protection in Africa;

Recalling its resolution on prisons in Africa adopted by the African Commission at its 17th Ordinary Session held in Lomé, Togo in 1995;

Recalling further the appointment of the Special Rapporteur on Prisons and Conditions of Detention in Africa at its 20th Ordinary Session held in Grand Bay, Mauritius in 1996;

Considering the adoption of the Kampala Declaration on Prison Conditions in Africa in 1996 and the progress made in raising general prison standards in Africa since then;

Bearing in mind the various international instruments relating to the promotion of the rights of persons deprived of their liberty in general and penal reform in particular;

Reaffirming the necessity to promote and protect the rights of persons deprived of their liberty through penal reform;

Adopts the “Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa”.

Decides to publish as soon as possible the “Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa” and ensure its wide distribution to Member States of the African Union, Civil Society Organisations and decision makers in the field of penal reform and the administration of justice;

Request the Special Rapporteur on Prisons and Conditions of Detention in Africa to report on the implementation of this resolution at its 35th Ordinary Session.

65. ACHPR/Res.65(XXXIV)03: RESOLUTION ON THE ADOPTION OF THE “REPORT OF THE AFRICAN COMMISSION’S WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES”

The African Commission on Human and Peoples’ Rights, meeting at its 34th Ordinary Session, in Banjul, The Gambia from 6th to 20th November 2003;

Recalling the provisions of the African Charter on Human and Peoples’ Rights which entrusts it with a treaty monitoring function and the mandate to promote human and peoples rights and ensure their protection in Africa;

Conscious of the situation of vulnerability in which indigenous populations/communities in Africa frequently find themselves and that in various situations they are unable to enjoy their inalienable human rights;

Recognising the standards in International law for the promotion and protection of the rights of minorities and indigenous peoples, including as articulated in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the International Labour Convention 169 on Indigenous and Tribal Peoples in Independent Countries, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child;

Considering the emphasis given in International law to self identification as the primary criterion for the determination of who constitutes a minority or indigenous person; and the importance of effective and meaningful participation and of non discrimination, including with regard to the right to education;

Considering that the African Commission at its 28th Ordinary Session held in Cotonou, Benin in October 2000, adopted the “*Resolution on the Rights of Indigenous Populations/Communities*” which provided for the establishment of a Working Group of Experts on the Rights of Indigenous Populations/Communities in Africa with the mandate to:

- Examine the concept of indigenous populations/communities in Africa;
- Study the implications of the African Charter on Human and Peoples Rights on the well being of indigenous communities;
- Consider appropriate recommendations for the monitoring and protection of the rights of indigenous populations/communities.

Noting that a Working Group of Experts comprised of three Members of the African Commission, three Experts from indigenous communities in Africa and one Independent Expert was established by the African Commission at its 29th Ordinary Session held in Tripoli, Libya in May 2001 and consequently held its first meeting prior to the 30th Ordinary Session held in Banjul, the Gambia in October 2001 where it agreed on developing a *Conceptual Framework Paper* as a basis for the elaboration of a final report to the African Commission, and where it agreed on a work-plan;

Noting further that the Working Group of Experts convened a Roundtable Meeting prior to the 31st Ordinary Session of the African Commission in April 2002 in Pretoria, South Africa where it discussed the first draft of the *Conceptual Framework Paper* with African human rights experts whose contributions were taken into account in the elaboration of the second draft of the *Conceptual Framework Paper* which was further discussed at a Consultative Meeting held in January 2003, in Nairobi, Kenya;

Emphasising that the Final Report of the Working Group of Experts is the outcome of a thorough consultative process involving various stakeholders on matters relating to indigenous populations/communities in Africa;

Reaffirming the need to promote and protect more effectively the human rights of indigenous populations/communities in Africa;

Taking into account the absence of a mechanism within the African Commission with a specific mandate to monitor, protect and promote the respect and enjoyment of the human rights of indigenous populations/communities in Africa;

Decides to:

Adopt the “*Report of the African Commission’s Working Group on Indigenous Populations/Communities*”, including its recommendations

Publish as soon as possible and in collaboration with International Working Group of Indigenous Affairs (IWGIA) the report of the Working Group of Experts and ensure its wide distribution to Member States and policy makers in the international development arena;

Maintain on the agenda of its ordinary sessions the item on the situation of indigenous populations/communities in Africa

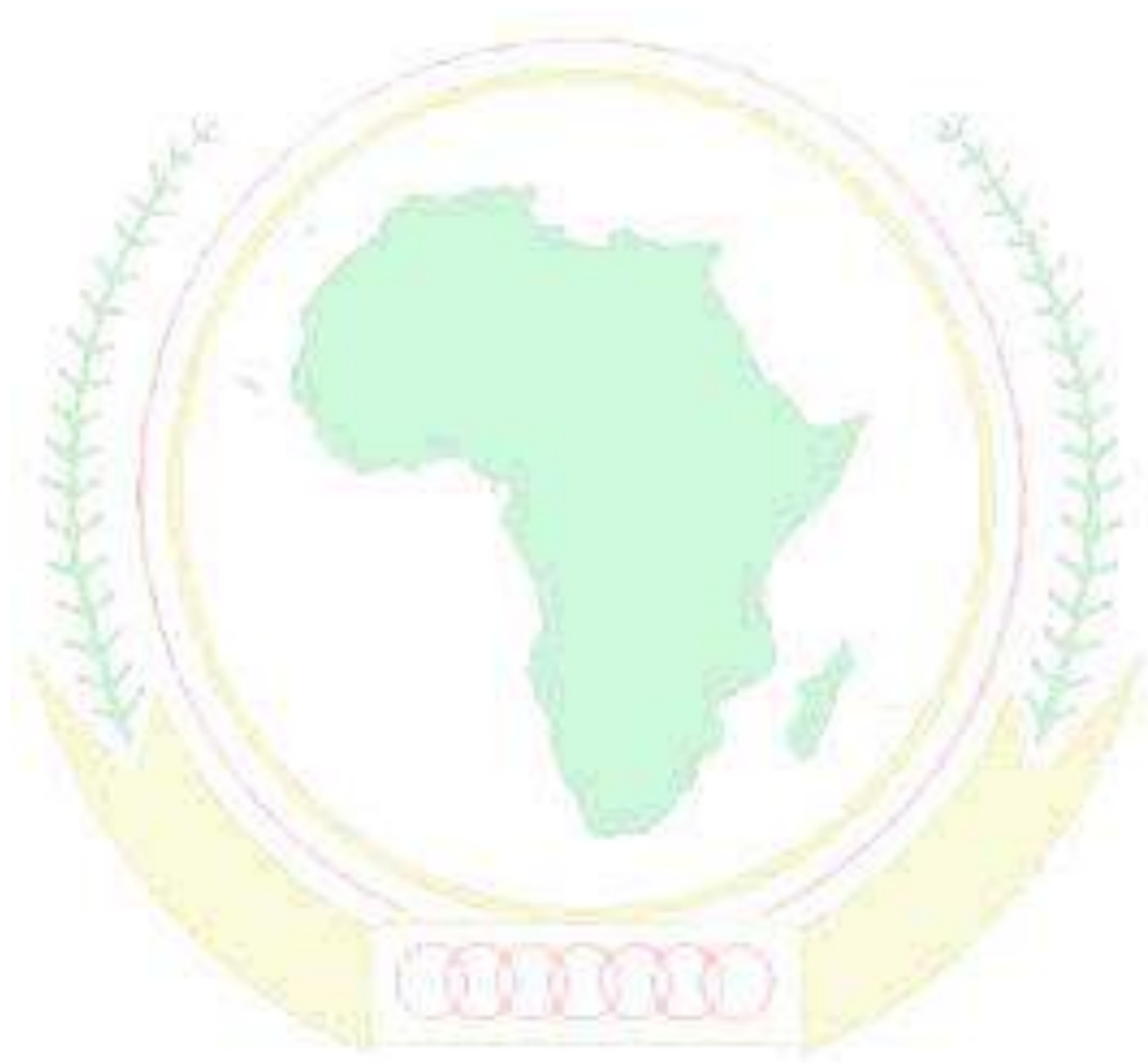
Establish a Working Group of Experts for an initial term of 2 years comprising of -:

1. Commissioner Andrew Ranganayi Chigovera (Chair)
2. Commissioner Kamel Rezag Bara,
3. Marianne Jensen (Independent Expert)
4. Naomi Kipuri
5. Mohammed Khattali
6. Zephyrin Kalimba

for the promotion and protection of the rights of indigenous populations/communities in Africa and with the following Terms of Reference;

- With support and cooperation from interested Donors, Institutions and NGOs, raise funds for the Working Group’s activities relating to the promotion and protection of the rights of indigenous populations/communities in Africa;
- Gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous populations and their communities and organisations, on violations of their human rights and fundamental freedoms;
- Undertake country visits to study the human rights situation of indigenous populations/communities;
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;

- Submit an activity report at every ordinary session of the African Commission;
 - Co-operate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.
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66. ACHPR/Res.66 (XXXV)04: RESOLUTION ON THE SITUATION OF WOMEN AND CHILDREN IN AFRICA

The African Commission on Human and Peoples' Rights during its 35th ordinary session held from 21 May to 4 June 2004 in Banjul, The Gambia,

Recalling that the Assembly of Heads of State and Government of the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa at its 2nd Ordinary Session held in July 2003 in Maputo, Mozambique;

Noting that the African Charter on the Rights and Welfare of the Child entered into force on 29th November 1989 and the Committee of Experts on the Rights of Child;

Considering that the situation of the women and children in Africa need to be thoroughly addressed;

Considering that women and children are victims of multiple human rights violations;

Considering deportation, slavery, child trafficking and the proliferation of street children in some countries of our continent;

Considering the persistence of traditional practices that are harmful to women and children in some African countries ("almoudou" children and genital mutilation);

Concerned about widespread poverty among women and the stigmatization of women and children with HIV/AIDS;

1. **Urges** member states of the African Union to ratify the Protocol to the African Charter on the Rights of Women in Africa in order to facilitate its entry into force;
2. **Urges** all AU member states to ratify the United Nations Convention against All Forms of Discrimination against Women, and member states that have ratified it with reservations to withdraw them;
3. **Launches** an appeal to Member States to incorporate the above-mentioned international instrument into their national laws;
4. **Urges** member states to set up a special protection mechanism for women and children in war zones;
5. **Appeals** to member states to disarm and demobilize child soldiers, and put in place a system for their social reintegration;
6. **Appeals** to Member States to implement programmes to fight against HIV/AIDS;
7. **Appeals** to Member States to devise a system to help women benefit from social security.

67. ACHPR/Res.67(XXXV)04: RESOLUTION ON CÔTE D'IVOIRE

The African Commission on Human and Peoples' Rights at its 35th Ordinary Session held in Banjul from 21st May – 4th June 2004, in Banjul, The Gambia;

Considering the provisions of the Constitutive Act of the African Union, the Charter of the United Nations, as well as those of the African Charter on Human and Peoples' Rights (African Charter), and other regional and international human rights and international humanitarian law treaties, to which the Republic of Cote d'Ivoire is a party;

Deploring the events of 24 – 26 March 2004, which were marked by shootings, wounding and massacres of innocent civilians;

Welcoming with appreciation the Government's statement that a Commission of enquiry will be set up;

Considering the findings of the Commission of Inquiry of the Office of the United Nations High Commission for Human rights which found the Government authorities responsible for the March 2004 gross human rights violations;

Considering the grave concerns expressed on 27 May 2004, by the Peace and Security Council of the African Union, at the situation prevailing in Cote d'Ivoire and its repercussions on peace and security, stability for the country and for the entire sub-region;

Deeply concerned over the deadlock in the implementation of the Linas-Marcoussis Agreement and the continuing deterioration of the situation in Côte d'Ivoire and the impunity enjoyed by perpetrators of gross human rights violations against civilians since 1999;

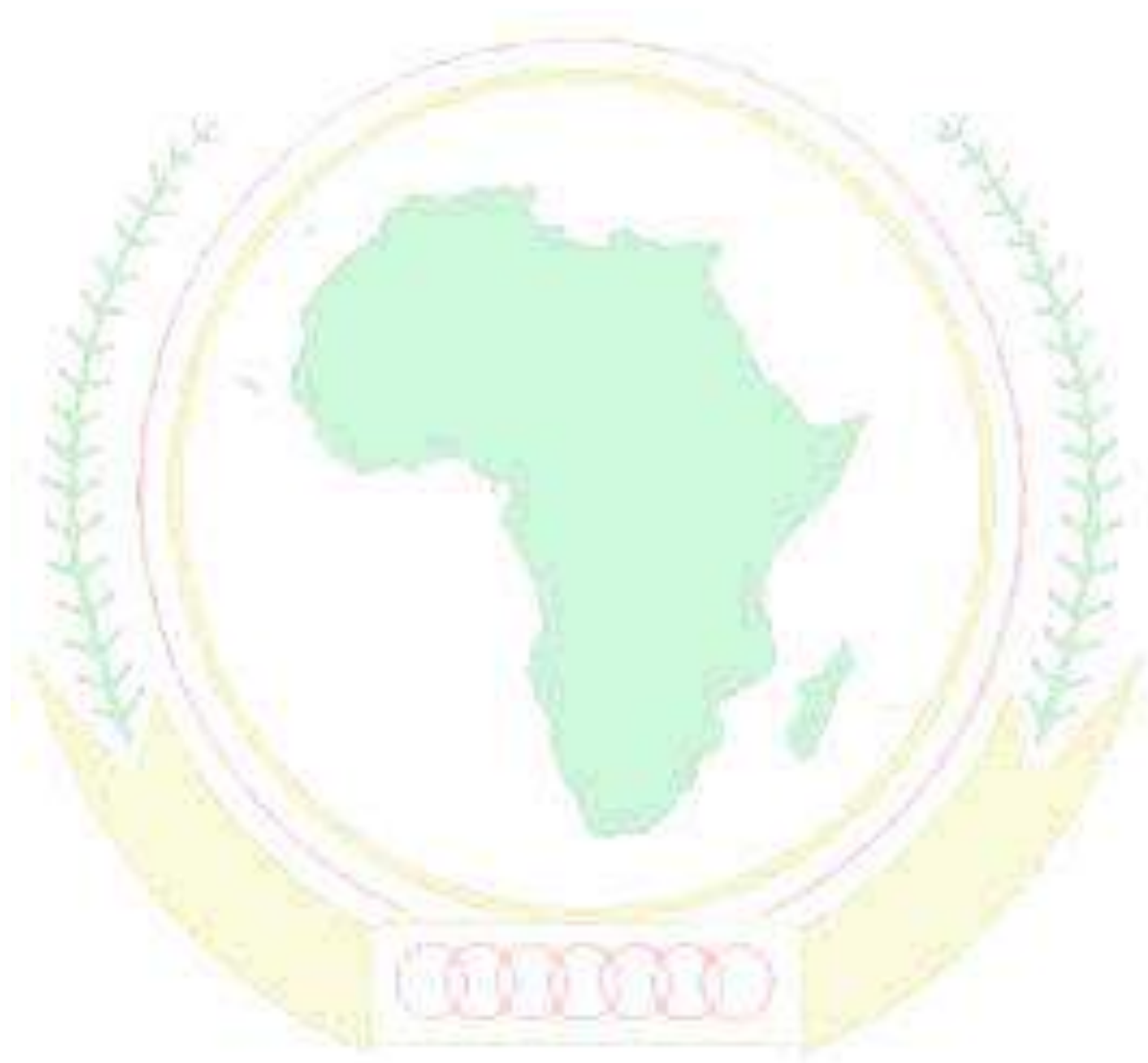
Recalling the missions carried out by the Commission in April 2 - 4, 2001 and April 24 - 26, 2003;

Considering the initiative of the United Nations High Commission for Human Rights to set up a Commissioner to investigate the human rights violations perpetrated since the beginning of the crisis in Côte d'Ivoire;

Noting the laudable role of ECOWAS in its efforts to bring peace to Côte d'Ivoire and the efforts of the President of the African Union Commission to facilitate an effective re-launch of the peace process in Côte d'Ivoire and, more particularly, to contribute to the promotion of dialogue and understanding among the leaders of the countries of the region;

1. **Deplores** the grave and rampant human rights violations committed against the civilian populations, such as summary and arbitrary executions, torture and arbitrary detention and disappearances;
2. **Requests** the President of the Republic of Cote d'Ivoire, National Reconciliation Government and all Ivorian political parties to implement the Linas-Marcoussis agreement;
3. **Urges** the Ivorian authorities to spare no efforts in ensuring that the perpetrators of the violation of human rights of March 24-26 2004 and any other violation perpetrated are brought to justice, the victims, their families are appropriately compensated;

4. ***Calls upon*** the Ivorian Government to ensure full compliance with the provisions of the African Charter on Human & Peoples' Rights and other international human rights instruments.
5. ***Undertakes*** to send a fact finding mission to investigate human rights violations committed in Cote d'Ivoire since the beginning of the crisis.



68. ACHPR/Res.68(XXXV)04: RESOLUTION ON DARFUR

The African Commission on Human and Peoples' Rights at its 35th Ordinary Session held in Banjul from 21st May – 4th June 2004, in Banjul, The Gambia

Considering the provisions of the Constitutive Act of the African Union, the Charter of the United Nations, as well as those of the African Charter on Human and Peoples' Rights (African Charter), and other regional and international human rights and international humanitarian treaties, to which the Sudan is a party;

Mindful that, Sudan, as a State Party to the aforementioned instruments, is legally bound to fully and effectively implement the provisions of these instruments and respect the human rights and fundamental freedoms set therein without discrimination on any grounds;

Recalling the report of the UN High Commissioner for Human Rights, Situation of Human Rights in the Darfur region of the Sudan, 7 May 2004;

Deeply concerned over the prevailing situation in Darfur, particularly the continuing humanitarian crisis and the reported human rights violations committed in that region since the beginning of the crisis such as the mass killings, sexual violence as a means of warfare and the abduction of women and children;

Alarmed by the large number of internally displaced persons and the continuing exodus of refugees mainly from Darfur;

Recalling the Resolution on Sudan adopted by the African Commission on Human and Peoples' Rights at its 17th Ordinary session in Lome, Togo;

Recalling the decision on the crisis in the Darfur region of Sudan, adopted by the Peace and Security Council of the African Union on the 25th May 2004, urging the Parties to fully and scrupulously implement the Humanitarian Ceasefire Agreement signed on 8 April 2004, in N'djamena, Chad, between the Government of Sudan (GoS), the Sudan Liberation Movement / Army (SLM/A), and the Justice and Equality Movement (JEM);

Mindful of the mandate of the African Commission in terms of the Charter to "promote human and peoples' rights and ensure their protection in Africa" and especially in a situation of serious or massive violation of human and peoples' rights (article 58 (1));

1. **Deplores** the ongoing gross human rights violations in the Darfur region of Sudan;
2. **Calls upon** all parties to the armed conflict to immediately cease using military force to interfere with the delivery of humanitarian assistance to the civilian population and to allow such assistance to be delivered unhindered;
3. **Welcomes** the announcement by the Sudanese authorities of their decision to allow and facilitate access of humanitarian agencies and organizations and the deployment of observers from the African Union and the international community to Darfur, as well as to facilitate the return of IDPs and refugees;
4. **further welcomes** the announcement by the Sudanese Government of their decision to allow and facilitate access of a fact-finding mission of the African Commission;

Accepts to send a fact finding mission to Darfur to investigate reports on human rights violations in Darfur and to report back to it.

69. ACHPR/Res.69(XXXV)04: RESOLUTION ON THE PROTECTION OF HUMAN RIGHTS DEFENDERS IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 35th Ordinary Session held from 21st May to 4th June 2004, in Banjul, The Gambia;

Recognising the crucial contribution of the work of human rights defenders in promoting human rights, democracy and the rule of law in Africa;

Seriously concerned about the persistence of violations targeting individuals and members of their families, groups or organisations working to promote and protect human and peoples' rights and by the growing risks faced by human rights defenders in Africa;

Noting with deep concern that impunity for threats, attacks and acts of intimidation against human rights defenders persists and that this impacts negatively on the work and safety of human rights defenders;

Recalling that it is entrusted by the African Charter on Human and Peoples' Rights with the mandate to promote human and peoples' rights and ensure their protection in Africa;

Reaffirming the importance of the observance of the purposes and principles of the African Charter for the promotion and protection of all human rights and fundamental freedoms for human rights defenders and all persons on the continent;

Bearing in mind the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders);

Mindful that in the Grand Bay (Mauritius) Declaration, the Organisation of African Unity called on Member States "to take appropriate steps to implement the UN Declaration on Human Rights Defenders in Africa";

Mindful that the Kigali Declaration recognises "the important role that the human rights defenders play in the promotion and protection of human rights in Africa"

Recalling its decision to include on its agenda the situation of human rights defenders and to nominate a focal point on human rights defenders; **Now decides to appoint** a Special Rapporteur on human rights defenders in Africa for a period of two years with the following mandate:

- a. to seek, receive, examine and to act upon information on the situation of human rights defenders in Africa;
- b. to submit reports at every Ordinary Session of the African Commission;
- c. to cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders, human rights defenders and other stake holders;

- d. to develop and recommend effective strategies to better protect human rights defenders and to follow up on his/her recommendations;
- e. to raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa;
1. **Further decides** to nominate Commissioner Jainaba Johm as the Special Rapporteur on Human Rights Defenders for the current duration of her mandate within this Commission;
 2. **Reiterates** its support for the work carried out by human rights defenders in Africa;
 3. **Calls upon** Member States to promote and give full effect to the UN Declaration on Human Rights Defenders, to take all necessary measures to ensure the protection of human rights defenders and to include information on measures taken to protect human rights defenders in their periodic reports;
 4. **Invites** its members to mainstream the issue of human rights defenders in their activities;
 5. **Urges** Member States to co-operate with and assist the Focal Point in the performance of his/her tasks and to provide all necessary information for the fulfilment of his/her mandate;
 6. **Requests** the African Union to provide adequate resources, assistance and support in the implementation of this Resolution.
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70. ACHPR/Res.70 (XXXV) 04: RESOLUTION ON NIGERIA

The African Commission on Human and Peoples Rights at its 35th Ordinary Session held from 21st May to 4th June 2004, in Banjul, The Gambia.

Considering the provisions of the Constitutive Act of the African Union, the Charter of the United Nations, as well as those of the African Charter on Human and Peoples' Rights and other regional and international human rights and international humanitarian law treaties to which the Republic of Nigeria is a party;

Deeply concerned over the prevailing situation in the Northern States of Nigeria, particularly the recent ethnic and religious violence in Yelwa, Plateau State and Kano State respectively in May 2004;

Alarmed by the large number of internally displaced persons and enormous loss of life as a result of the recent ethnic and religious violence;

Recalling the declarations of the United Nations Secretary-General on May 10, 2004 urging the Nigerian Government to ensure the security of individuals and property and to promote reconciliation in conformity with the principles of the rule of law;

Mindful of the mandate of the African Commission in terms of the Charter to promote and protect human and peoples rights

1. **Deplores** the grave and rampant human rights violations committed against the civilian populations in the Northern part of Nigeria
2. **Urges** the Nigerian Government to bring the perpetrators of any human rights violation to justice, and to compensate victims and their families;
3. **Calls upon** the Nigerian Government to ensure full compliance with the provisions of the African Charter on Human and Peoples Rights and other international human rights instruments;
4. **Decides** to send a fact-finding mission to investigate all human rights violations committed in the northern part of Nigeria.

71. ACHPR/Res.71 (XXXVI) 04: RESOLUTION ON THE MANDATE AND APPOINTMENT OF A SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 36th Ordinary Session held from 23rd November to 7th December 2004, in Dakar, Senegal;

Recalling the Resolution on Freedom of Expression adopted at its 29th Ordinary Session held from 23rd April to 7th May 2001, in Tripoli, Libya to initiate an appropriate mechanism to assist it review and monitor adherence to freedom of expression standards and to investigate violations and make appropriate recommendations to the African Commission;

Recalling the Declaration of Principles on Freedom of Expression in Africa adopted at its 32nd Ordinary Session held from 17th to 23rd October 2002, in Banjul, The Gambia;

Recalling further the decision taken at its 33rd Ordinary Session held in Niamey, Niger from 15 – 29 May 2003 to nominate a Focal Point responsible for overseeing any activity relating to the implementation of the Declaration of Principles on Freedom of Expression in Africa in line with the resolution adopting the Declaration;

Bearing in mind the recommendations of the Johannesburg Consultative Meeting on Freedom of Expression held in Johannesburg in August 2003 and the African Conference on Freedom of Expression held in Pretoria in February 2004;

Recalling the decision taken at its 35th Ordinary Session held from 21 May – 4 June 2004, in Banjul, The Gambia to postpone the appointment of a Special Rapporteur on Freedom of Expression pending the elaboration of an appropriate mandate;

Reaffirming the commitment of the African Commission on Human and Peoples' Rights to promote the right to freedom of expression and monitor the implementation of the Declaration of Principles on Freedom of Expression in Africa within Member States of the African Union;

1. **Decides** to appoint a Special Rapporteur on Freedom of Expression in Africa with the following mandate:

- (a) analyse national media legislation, policies and practice within Member States, monitor their compliance with freedom of expression standards in general and the Declaration of Principles on Freedom of Expression in particular, and advise Member States accordingly;
- (b) undertake investigative missions to Member States where reports of massive violations of the right to freedom of expression are made and make appropriate recommendations to the African Commission;
- (c) undertake country Missions and any other promotional activity that would strengthen the full enjoyment of the right to freedom of expression in Africa;
- (d) make public interventions where violations of the right to freedom of expression have been brought to his/her attention. This could be in the form of issuing public statements, press releases, urgent appeals;

- (e) keep a proper record of violations of the right to freedom of expression and publish this in his/her reports submitted to the African Commission; and
- (f) submit reports at each Ordinary Session of the African Commission on the status of the enjoyment of the right to freedom of expression in Africa.
- (2) **Further decides** to appoint Commissioner Andrew Ranganayi Chigovera as Special Rapporteur on the Right to Freedom of Expression in Africa for the remainder of his mandate;
- (3) **Calls upon** Member States of the African Union to take all necessary measures to ensure the protection of the right to freedom of expression and to include information on measures taken to ensure the enjoyment of the right to freedom of expression in their periodic reports to the African Commission;
- (4) **Urges** Member States of the African Union to co-operate with and assist the Special Rapporteur in the performance of his tasks and to provide all necessary information for the fulfilment of his mandate;
- (5) **Invites** its Members to incorporate the issue of freedom of expression in their promotional activities to Member States;
- (6) **Requests** the African Union to provide adequate resources, assistance and support for the implementation of this Resolution.

Adopted at the 36th Ordinary Session of the African Commission on Human and Peoples' Rights in Dakar, Senegal, on 7th December 2004.

72. ACHPR/Res.72(XXXVI)04: RESOLUTION ON THE MANDATE OF THE SPECIAL RAPPORTEUR ON REFUGEES, ASYLUM SEEKERS AND INTERNALLY DISPLACED PERSONS IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 36th Ordinary Session held from 23rd November to 7th December 2004, in Dakar, Senegal;

Mindful of the fact that the African Charter on Human and Peoples' Rights recognises and guarantees enjoyment, promotion and the protection of the rights and freedoms of every individual, without distinction of any kind, such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, or other status;

Considering that the African Charter, while guaranteeing the freedom of movement and freedom of residence of every individual within a state subject to being law abiding, recognises that when persecuted, every individual shall have the right to seek and obtain asylum in other countries in accordance with the respective laws of the said countries, and international law,

Conscious of the fact that in spite of the adoption of the 1969 OAU Convention Governing the Specific Aspects of Refugees Problems in Africa, refugees in Africa continue to face untold suffering arising principally from the lack of respect of their basic and fundamental human rights as individuals, *inter alia*, women, children and the elderly being the most vulnerable among refugees,

Aware also that in the recent past the incidence of conflicts, and in certain cases, natural calamities have forced mass movement of people to seek refuge, thus causing a huge problem of internal displacement of populations within national borders,

Recalling the Memorandum of Understanding signed between the African Commission and the United Nations High Commissioner for Refugees on strengthening mutual cooperation in the effective promotion and protection of the human rights of refugees, asylum seekers, returnees and other persons of concern in Africa;

Recalling that the African Commission, during its 34th Ordinary Session designated a focal point on refugees and internally displaced persons, with a limited responsibility of monitoring developments concerning the plight of refugees and internally displaced persons in Africa, while the Commission reviewed its special rapporteur mechanism,

Recalling its decision to establish the position of Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa at its 35th Ordinary Session held from 21st May to 4 June 2004 in Banjul, The Gambia and decided to designate, for an initial period of two years, Commissioner Bahame Tom Nyanduga, as the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa;

Reaffirming the importance of the mechanism of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa;

Noting the numerous problems faced by refugees, asylum seekers and internally displaced persons in Africa and the urgent need to develop appropriate strategies to ensure their protection;

7. **Decides that** the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa shall operate under the following mandate to -:
- f. seek, receive, examine and act upon information on the situation of refugees, asylum seekers and internally displaced persons in Africa;
 - g. undertake studies, research and other related activities to examine appropriate ways to enhance the protection of refugees, asylum seekers and internally displaced persons in Africa;
 - h. undertake fact-finding missions, investigations, visits and other appropriate activities to refugee camps and camps for internally displaced persons;
 - i. assist Member States of the African Union to develop appropriate policies, regulations and laws for the effective protection of refugees, asylum seekers and internally displaced persons in Africa;
 - j. cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental and non governmental bodies, international and regional mechanisms involved in the promotion and protection of the rights of refugees, asylum seekers and internally displaced persons;
 - k. develop and recommend effective strategies to better protect the rights of refugees, asylum seekers and internally displaced persons in Africa and to follow up on his recommendations;
 - l. raise awareness and promote the implementation of the UN Convention on Refugees of 1951 as well as the 1969 OAU Convention Governing the Specific Aspects of Refugees Problems in Africa;
 - m. submit reports at every ordinary session of the African Commission on the situation of refugees, asylum seekers and internally displaced persons in Africa;
8. **Calls upon** Member States to take all necessary measures to ensure the protection of refugees, asylum seekers and internally displaced persons and to include information on measures taken to that effect;
9. **Urges** Member States to co-operate with and assist the Special Rapporteur in the performance of his tasks and to provide all necessary information for the fulfilment of his mandate;
10. **Invites** its members to incorporate the issue of refugees, asylum seekers and internally displaced persons in their promotional activities;
11. **Requests** the African Union to provide adequate resources, assistance and support in the implementation of this Resolution.

73. ACHPR/Res.73(XXXVI)04: RESOLUTION ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 36th Ordinary session held from 23rd November to 7th December 2004 in Dakar, Senegal.

Recalling that the African Charter enshrines economic, social and cultural rights, in particular in Articles 14, 15, 16, 17, 18, 21 and 22.

Considering regional and international human rights instruments that stress the indivisibility, interdependence and universality of all human rights, including the African Charter, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Universal Declaration of Human Rights, the Declaration on the Right to Development, the International Covenant on Economic, Social and Cultural Rights and the Convention for the Elimination of All Forms of Discrimination Against Women;

Recognising also that the objectives and principles of the Constitutive Act include a commitment to the promotion and protection of human and peoples' rights, respect for democratic principles, human rights, rule of law and good governance and the promotion of social justice to ensure balanced economic development;

Noting that despite the consensus on the indivisibility of human rights, economic, social and cultural rights remain marginalized in their implementation;

Concerned that there is inadequate recognition by States Parties of economic, social and cultural rights that results in the continued marginalization of these rights, which excludes the majority of Africans from the full enjoyment of human rights;

Appreciating the vast positive impact that information and communication technologies (ICTs), transfer of technology, economic and regional integration can have on the promotion, protection and realization of economic, social and cultural rights;

Recognising that there are several constraints that limit the full realisation of economic, social and cultural rights in Africa;

Deeply concerned by the ongoing and longstanding conflicts in the sub-regions of Africa, which impede the realization of economic, social and cultural rights;

Concerned Further by the lack of human security in Africa due to the prevailing conditions of poverty and under-development and the failure of African States to address poverty through development;

Further Recognizing the urgent need for human rights, judicial and administrative institutions in Africa to promote human dignity based on equality and to tackle the core human rights issues facing Africans including, food security, sustainable livelihoods, human survival and the prevention of violence;

- 1. Adopts** the attached *Declaration* of the Pretoria Seminar on Economic, Social and Cultural Rights in Africa, adopted on 17 September 2004, in Pretoria, South Africa;

2. **Requests** the Secretary to the African Commission on Human and Peoples' Rights to forward the Pretoria Statement to the Commission of the African Union, Ministries of Justice and Social affairs and Chief Justice, National Human Rights Institutions of all States parties, International institutions working in African and Regional economic communities, Bar Associations and Law Schools in Africa and civil society organizations including non-governmental organizations with observer status, and to report to the 37th Ordinary session;
3. **Urges** its members, its Special Rapporteurs and Working Groups to pay particular attention to economic, social and cultural rights during their missions and in the discharge of their respective mandates;
4. **Further decides** to establish a working group composed of Members of the African Commission on Human and Peoples' Rights and non-governmental organizations with a mandate to:

develop and propose to the African Commission on Human and Peoples' Rights a draft Principles and Guidelines on Economic, Social and Cultural Rights;

elaborate a draft revised guidelines pertaining to economic, social and cultural rights, for State reporting;

undertake, under the supervision of the African Commission on Human and Peoples' Rights, studies and research on specific economic, social and cultural rights;

make a progress report to the African Commission on Human and Peoples' Rights at each Ordinary session;

5. **Requests** the African Union to provide the Working group with all support and assistance needed to implement this mission.

Annex I

Pretoria Declaration on Economic, Social and Cultural Rights in Africa

In conformity with its mandate under Article 45 of the African Charter on Human and Peoples' Rights to promote and protect human and peoples' rights in Africa, the African Commission on Human and Peoples' Rights in collaboration with the International Centre for Legal Protection of Human Rights (Interights), the Cairo Institute for Human Rights Studies and the Centre for Human Rights, University of Pretoria, held a Seminar on Economic, Social and Cultural Rights in Pretoria, South Africa, from 13 – 17 September 2004. The participants at the workshop, who included members of the African Commission, representatives of 12 African States, civil society organizations, national human rights institutions, academics and representatives of UN organizations and Regional Economic Communities (RECs) adopted the following Statement, which is recommended for consideration and adoption by the African Commission on Human and Peoples' Rights at its 36th Ordinary Session:

Preamble

Recalling that the African Charter enshrines economic, social and cultural rights, in particular in its Article 14, Article 15, Article 16, Article 17, Article 18, Article 21 and Article 22;

Recognising the existence of regional and international human rights standards that stress the indivisibility, interdependence and universality of all human rights. Among these are the African Charter, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Universal Declaration of Human Rights, the Declaration on the Right to Development, the International Covenant on Economic, Social and Cultural Rights and the Convention for the Elimination of All Forms of Discrimination Against Women;

Recognising also that the objectives and principles of the Constitutive Act include a commitment to the promotion and protection human and peoples' rights, respect for democratic principles, human rights, the rule of law and good governance and the promotion of social justice to ensure balanced economic development;

Noting that despite the consensus on the indivisibility of human rights, economic, social and cultural rights remain marginalized in their implementation;

Concerned that there is resistance to recognizing economic, social and cultural rights that results in the continued marginalization of these rights, which excludes the majority of Africans from the enjoyment of human rights;

Appreciating the positive impact that information and communication technologies (ICTs) can have on the promotion, protection and realization of economic, social and cultural rights;

Recognising that there are several constraints that preclude the full realisation of economic, social and cultural rights in Africa;

Deeply disturbed by the ongoing and longstanding conflicts in the regions of Africa, which impede the realization of economic, social and cultural rights;

Concerned further by the lack of human security in Africa due to the prevailing conditions of poverty and under-development and the failure to address poverty through development;

Further recognizing the urgent need for human rights, judicial and administrative institutions in Africa to promote human dignity based on equality and to tackle the core human rights issues facing Africans including, food security, sustainable livelihoods, human survival and the prevention of violence;

The participants state that:

1. States Parties to the African Charter on Human and People's Rights have solemnly undertaken to respect, protect, promote and fulfill all the rights in the Charter including economic, social and cultural rights.
2. By doing so, States Parties have agreed to adopt legislative and other measures, individually or through international cooperation and assistance, to give full effect to the economic, social and cultural rights contained in the African Charter, by using the maximum of their resources. States parties have an obligation to ensure the satisfaction of, at the very least, the minimum essential levels of each of the economic, social and cultural rights contained in the African Charter.
3. States are therefore called upon to address with all appropriate measures their obligations in relation to the full realization of economic, social and cultural rights as well as tackling the following constraints:
 - Lack of good governance and planning and failure to allocate sufficient resources for implementation of economic, social and cultural rights;
 - Lack of political will;
 - Corruption, misuse and misdirection of financial resources;
 - Poor utilization of human resources and absence of effective measures to curtail brain drain;
 - Failure to ensure equitable distribution of income from natural resources;
 - Trafficking in women and children;
 - Continued outflow and existence of refugees and internally displaced persons;
 - Illiteracy and lack of awareness,
 - Conditionality of aid and unserviceable debt burdens,
 - Privatization of essential services
 - Cost recovery including access fees and charges for essential services;
 - Lack of support for and recognition of the work of civil society organizations;
 - Lack of implementation of obligations assumed under international law into national law,
 - Under development of social amenities;
 - Limited engagement with human rights on the part of some judges;
 - Lack of protection of African indigenous knowledge;
 - Failure to enforce some judicial decisions against the state;

- The adverse effects of globalization.
4. States Parties have also undertaken to eliminate all forms of discrimination, including all forms of discrimination against women, and to promote the equal enjoyment of all human rights. Non-discrimination and equal treatment are the key components of economic, social and cultural rights since vulnerable and marginal groups including refugees and internally displaced persons are disproportionately affected by a failure of the state to respect, protect and fulfill these rights.
 5. The right to property in Article 14 of the Charter relating to land and housing entails among other things the following:
 - Protection from arbitrary deprivation of property;
 - Equitable and non-discriminatory access, acquisition, ownership, inheritance and control of land and housing, especially by women;
 - Adequate compensation for public acquisition, nationalization or expropriation;
 - Equitable and non-discriminatory access to affordable loans for the acquisition of property;
 - Equitable redistribution of land through due process of law to redress historical and gender injustices;
 - Recognition and protection of lands belonging to indigenous communities;
 - Peaceful enjoyment of property and protection from arbitrary eviction;
 - Equal access to housing and to acceptable living conditions in a healthy environment.
 6. The right to work in Article 15 of the Charter entails among other things the following:
 - Equality of opportunity of access to gainful work, including access for refugees, disabled and other disadvantaged persons;
 - Conducive investment environment for the private sector to participate in creating gainful work;
 - Effective and enhanced protections for women in the workplace including parental leave;
 - Fair remuneration, a minimum living wage for labour, and equal remuneration for work of equal value;
 - Equitable and satisfactory conditions of work, including effective and accessible remedies for work place-related injuries, hazards and accidents;
 - Creation of enabling conditions and taking measures to promote the rights and opportunities of those in the informal sector, including in subsistence agriculture and in small scale enterprises activities;
 - Promotion and protection of equitable and satisfactory conditions of work of women engaged in household labour;
 - The right to freedom of association, including the rights to collective bargaining, strike and other related trade union rights;
 - Prohibition against forced labour and economic exploitation of children, and other vulnerable persons;
 - The right to rest and leisure, including reasonable limitation of working hours, periodic holidays with pay and remuneration for public holidays.

7. The right to health in Article 16 of the Charter entails among other things the following:
- Availability of accessible and affordable health facilities, goods and services of reasonable quality for all;
 - Access to the minimum essential food which is nutritionally adequate and safe to ensure freedom from hunger to everyone and to prevent malnutrition;
 - Access to basic shelter, housing and sanitation and adequate supply of safe and potable water;
 - Access to reproductive, maternal and child health care based on the life cycle approach to health;
 - Immunization against major infectious diseases;
 - Education, prevention and treatment of HIV/AIDS, malaria, tuberculosis and other major killer diseases;
 - Education and access to information concerning the main health problems in the community including methods of preventing and controlling them;
 - Training for health personnel including education on health and human rights;
 - Access to humane and dignified care of the elderly and for persons with mental and physical disabilities;
8. The right to education in Article 17 of the African Charter entails among other things the following:
- Provision of free and compulsory basic education that will also include a programme in psycho-social education for orphans and vulnerable children;
 - Provision of special schools and facilities for physically and mentally disabled children;
 - Access to affordable secondary and higher education;
 - Accessible and affordable vocational training and adult education;
 - Addressing social, economic and cultural practices and attitudes that hinder access to education by girl children;
 - Availability of educational institutions that are physically and economically accessible to everyone;
 - Development of curricula that address diverse social, economic and cultural settings and which inculcate human rights norms and values for responsible citizens;
 - Liberty of parents and guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down by the State, and to ensure the religious and moral education of their children in conformity with their own convictions;
 - Continued education for teachers and instructors including education on human rights and the continuous improvement of the conditions of work of teaching staff;
 - Education for development that links school curricula to the labour market and society's demands for technology and self-reliance.
9. The right to culture in Articles 17 and 18 of the African Charter entail among other things the following:
- Positive African values consistent with international human rights realities and standards;
 - Eradication of harmful traditional practices that negatively affect human rights;

- Participation at all levels in the determination of cultural policies and in cultural and artistic activities;
- Measures for safeguarding, protecting and building awareness of tangible and intangible cultural heritage, including traditional knowledge systems;
- Recognition and respect of the diverse cultures existing in Africa;

10. The social, economic and cultural rights explicitly provided for under the African Charter, read together with other rights in the Charter, such as the right to life and respect for inherent human dignity, imply the recognition of other economic and social rights, including the right to shelter, the right to basic nutrition and the right to social security.

11. Having highlighted the core contents of economic, social and cultural rights under the African Charter, participants make the following recommendations:

a) States Parties should:

- i.* Ratify, if they have not done so, the treaties mentioned in the Preamble, especially the Protocol on the Rights of Women in Africa;
- ii.* Incorporate into domestic law and fully implement the provisions of regional and international treaties on economic, social and cultural rights;
- iii.* Establish constitutional protection of economic, social and cultural rights subject to non-discrimination and equality;
- iv.* Come up with National Action Plans, which set out benchmark indicators for the progressive realization of social economic and cultural rights;
- v.* Take effective measure to ensure budgetary processes are transparent and consultative;
- vi.* Involve civil society in meaningful consultations in policymaking and in the implementation of economic, social and cultural rights generally;
- vii.* Review all national policies, which undermine the realization of specific economic, social and cultural rights;
- viii.* Provide reports under Article 62 of the Charter on how far they have gone in making economic, social and cultural rights both accessible and non discriminatory;
- ix.* Adopt measures for the prudent use of resources, including the investigation of affordable alternatives for health drugs e.g. generic vs. patent medicines
- x.* Ensure effective citizen participation in government through credible electoral processes, liberalization of the mass media and in the formulation of legislation and policies;
- xi.* Adopt special measures for women and address the economic, social and cultural rights of vulnerable and marginalized groups including children, indigenous peoples, displaced persons, refugees, persons living with HIV/AIDS and the disabled;
- xii.* Develop mechanisms to hold non-state actors especially multi-national corporations and businesses accountable for violations of economic, social and cultural rights in such matters relating to child labour, industrial safety standards, protection against forced evictions and low wages, protection of the environment, including global warming and its impact on ecosystems, livelihood and food security;
- xiii.* Strengthen the capacity of State institutions to produce disaggregate data that would provide an accurate assessment of the implementation of economic, social and cultural rights;
- xiv.* Promulgate and implement comprehensive ICT policies and programmes;

- xv. Consult with civil society organisations in the nomination and election of members of the African Commission and judges of the African Court;
- xvi. Ratify the Protocol on the African Human Rights Court and make the declaration under Article 34(6) of the Protocol allowing individuals and non-governmental organisations to file cases, if they have not done so;
- xvii. Nominate and elect judges of the African Human Rights Court so that it may be established without further delay;
- xviii. Take necessary measures to reduce military spending significantly in favour of increasing spending on the implementation of economic, social and cultural rights;
- xix. Ensure that economic, social and cultural rights take primacy in the negotiations of bilateral and multilateral trade and economic agreements;
- xx. Create independent, impartial and well-resourced national human rights institutions and if they already exist to strengthen their independence and impartiality.

b) The African Union should:

- i. Urge Member States that have not done so, to ratify the human rights treaties mentioned in the Preamble, in particular the Protocol on the Rights of Women in Africa;
- ii. Provide sufficient funds for African human rights institutions to enable them to effectively fulfil their mandate;
- iii. Establish the African Court on Human and Peoples' Rights without further delay;
- iv. Urge Member States that have not done so to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, and to make the necessary declaration under Article 34(6) of the Protocol;
- v. Establish the Human Rights Fund as recommended by the First AU Ministerial Conference on Human Rights held in Kigali, Rwanda, in May 2003;
- vi. Strengthen the Secretariat to enhance the functioning of the African Commission;
- vii. Urge the AU Peace & Security Council to adopt urgent measures to address the conflicts in Africa in order to create a conducive environment for the respect of economic, social and cultural rights;
- viii. Call upon the organs of the AU to encourage Member States to uphold economic, social and cultural rights and to hold them accountable for violations of economic, social and cultural rights;
- ix. Integrate the monitoring of economic, social and cultural rights into the work of relevant AU institutions as well as the CSSDCA Peer Review Mechanism and New Partnership for Africa's Development (NEPAD) African Peer Review Mechanism process;
- x. Follow up recommendations of the African Commission to ensure implementation of its decisions by Member States.

c) The African Commission should:

- i. Elaborate principles and guidelines on economic, social and cultural rights and establish a working group for this purpose;
- ii. Integrate economic, social and cultural rights into the mandates of existing Special Rapporteurs and Working Groups;
- iii. Urge States to duly submit their reports to the African Commission under Article 62 of the African Charter;

- iv. Address economic, social and cultural rights during the examination of State Reports under Article 62 during questions and concluding observations;
- v. Review its guidelines for state reporting pertaining to economic, social and cultural rights;
- vi. Consider alternative means of examining implementation of provisions of the Charter by a State that is in perpetual default of its reporting obligations under Article 62 of the Charter.
- vii. Provide substantive recommendations to the AU Assembly on economic, social and cultural rights;
- viii. Undertake studies and research under Article 45 on specific economic, social and cultural rights;
- ix. Pay special attention to economic, social and cultural rights during promotional visits to States;
- x. Ensure effective dissemination of relevant decisions and resolutions of the Commission in collaboration with relevant governmental and non-governmental national and sub-regional institutions;
- xi. Further elaborate the economic and social rights implicit in the African Charter;
- xii. Urge the AU to establish the African Human Rights Court without further delay and those States that have not done so, to ratify the Protocol establishing the Court and to make the necessary declaration under Article 34(6) of the Protocol.

d) Civil Society should:

- i. Play a more pro-active role in the nomination of and lobby for the election of candidates to the African Commission who are conversant with economic, social and cultural rights;
- ii. Advocate for States to ratify the Protocol of the African Human Rights Court and to make the declaration allowing NGOs and individuals to file cases;
- iii. Advocate for the African Human Rights Court to be established without further delay;
- iv. Prioritize monitoring of economic, social and cultural rights in their advocacy work;
- v. Play a role in raising public awareness of economic, social and cultural rights and the obstacles to fulfillment of these rights in particular harmful cultural practices;
- vi. Actively participate in the budgetary process, both in terms of formulation and analysis;
- vii. Develop partnerships with both the State and private sector, where possible, for the protection of economic, social and cultural rights;
- viii. Compile and submit to the African Commission shadow reports on economic, social and cultural rights;
- ix. Improve networking amongst NGOs and their support activities of the African Commission and its Special Rapporteurs and Working Groups;
- x. Bring more cases on economic, social and cultural rights to the African Commission, the African Committee on the Rights and Welfare of the Child, national courts, and the African Human Rights Court, when it is established;
- xi. Become involved in specific projects in the implementation of economic, social and cultural rights especially in the rural areas;
- xii. Advocate for comprehensive national and regional ICT policies and programmes, and to incorporate ICT training, provision and access in their work plans.

e) National Human Rights Institutions should:

- i. Undertake studies, monitor and report on economic, social and cultural rights;

- ii. Scrutinise existing laws and administrative acts and make submissions to Parliament on bills relating to economic, social and cultural rights;
- iii. Publish and distribute their reports on economic, social and cultural rights;
- iv. Establish regional networks /coalitions and involve NGOs in these coalitions;
- v. Apply for affiliate status with the African Commission, if they have not done so;
- vi. Raise awareness on economic, social and cultural rights among particular groups such as the public service, the judiciary, the private sector and the labour movement and encourage the Government to integrate human rights in the school curricula;
- vii. Examine complaints of infringements of economic, social and cultural rights and make recommendations on redress, and where possible file cases before national courts;
- viii. Conduct follow up activities in the implementation of recommendations of international treaty bodies and publicize their reports, especially on economic, social and cultural rights;
- ix. Advocate for States to ratify the Protocol of the African Human Rights Court and to make the declaration allowing NGOs and individuals to file cases;
- x. Advocate for the African Human Rights Court to be established without further delay;

f) International and regional entities should:

- i. Pay particular attention to African needs related to development and the realisation of economic, social and cultural rights;
- ii. Cancel the unserviceable debt burdens of African States;
- iii. Ensure that bilateral and multilateral trade and economic agreements conform to international treaty obligations relating to economic, social and cultural rights;
- iv. Play a role in the implementation of economic, social and cultural rights including through assistance and co-operation with African States;
- v. Take measures to regulate trade in extractive industries (such as oil, mining) that are exploitative, corrupt and fuel conflicts in Africa;
- vi. Co-operate with African countries in their efforts to repatriate money and cultural artefacts that have been unlawfully removed from African countries;
- vii. Ensure compliance with the principles of corporate social responsibility.

12. In conclusion, the African Union, its Member States, international and national organisations and non-state actors should fully recognise human rights as a fundamental objective of development and that development has to achieve the full realisation of all human rights. Economic, social and cultural rights should therefore be integrated into development planning and implementation so that African needs and aspirations are fully addressed.

74. ACHPR/Res.74(XXXVII)05: RESOLUTION ON THE SITUATION IN DARFUR,SUDAN

The African Commission on Human and Peoples' Rights meeting at its 37th Ordinary Session held from the 27th of April to the 11th of May 2005 in Banjul, The Gambia;

Considering the Human Rights situation in Africa generally and, *inter alia*, the situation of human rights in the Darfur Region of The Sudan;

Recalling the Resolution **ACHPR/Res. 68 - (XXXV) 04** adopted on 4 June 2004 by the African Commission on Human and Peoples' Rights during the 35th Session on the situation in the Darfur Region of The Sudan, and **Resolution E/CN/4/2005/L.36/Rev. 3** adopted by the UN Commission on Human Rights on the 21 April 2005 on the situation of human rights in The Sudan;

Considering the provisions of the Constitutive Act of the African Union, the African Charter on Human and Peoples' Rights, the Charter of the United Nations and other regional and international human rights and international humanitarian law instruments to which the Republic of The Sudan is a party;

Recalling numerous decisions of the Assembly of Heads of State and Government of the African Union, the Peace and Security Council of the African Union on the Darfur, in particular **Decisions AU/Dec.54 (III), AU/Dec. 68 (IV), and PSC/PR/Comm. (XIII) and PSC/PR/Comm. (XVII);**

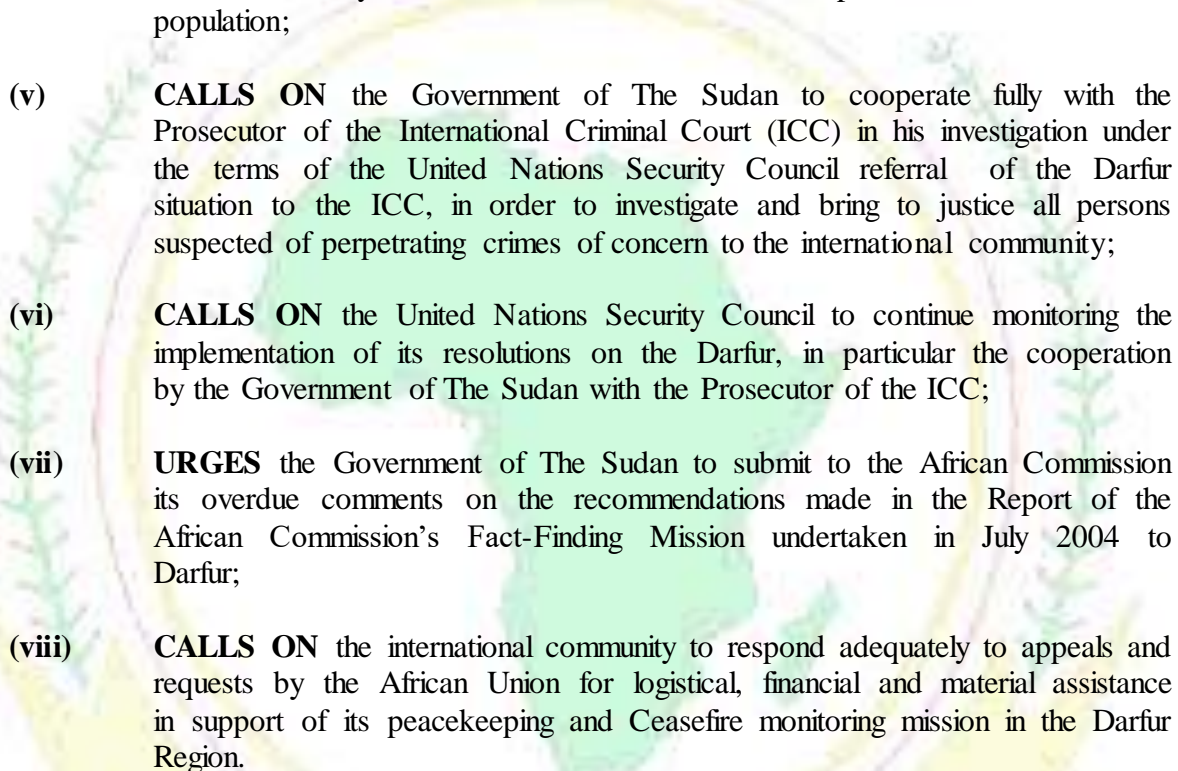
Commending the International Commission of Inquiry on Darfur for its investigation into the human rights situation in the Darfur and its recommendations regarding the violations of human rights and international humanitarian law in the Darfur contained in its report of January 25, 2005;

Welcoming the United Nations Security Council Resolutions **1556/2004, 1590/2005, 1591/2005 and 1593/2005** of March 2005 on the situation in The Sudan and Darfur;

Deeply concerned that in spite of the presence of African Union monitors and international humanitarian agencies in the Darfur Region, violations of human rights and international humanitarian law continue to occur;

NOW THEREFORE:

- (i) **CALLS ON** the Government of The Sudan to comply with its obligation under the Constitutive Act of the African Union, the United Nations Charter and the African Charter on Human and Peoples' Rights, and other relevant instruments to which Sudan is a State party;
- (ii) **CALLS ON** the parties to the conflict in the Darfur to observe the terms of the Ceasefire Agreements concluded in Ndjamena, Tchad, and to resume negotiations in Abuja, Nigeria, under the auspices of the current Chairman of the African Union, President Olusegun Obasanjo of the Federal Republic of Nigeria, with a view to finalize a permanent ceasefire and a Comprehensive Peace Agreement on the conflict in the Darfur;

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- (iii) **CALLS ON** all parties to the conflict to cease with immediate effect, all attacks against civilians in the Darfur, and particularly calls on the government of The Sudan and the Janjaweed militia to stop their campaign of forced depopulation of entire areas of the region through their indiscriminate attacks of villages, rape and sexual violence against women, girls and children, abduction of women and children, looting of livestock and foodstuff from villages in the Darfur Region;
- (iv) **URGES** the Government of The Sudan to continue its cooperation with all international agencies and humanitarian organizations and to ensure their full, safe and unhindered access to the conflict affected areas of Darfur in order to facilitate delivery of humanitarian assistance and protection to the civilian population;
- (v) **CALLS ON** the Government of The Sudan to cooperate fully with the Prosecutor of the International Criminal Court (ICC) in his investigation under the terms of the United Nations Security Council referral of the Darfur situation to the ICC, in order to investigate and bring to justice all persons suspected of perpetrating crimes of concern to the international community;
- (vi) **CALLS ON** the United Nations Security Council to continue monitoring the implementation of its resolutions on the Darfur, in particular the cooperation by the Government of The Sudan with the Prosecutor of the ICC;
- (vii) **URGES** the Government of The Sudan to submit to the African Commission its overdue comments on the recommendations made in the Report of the African Commission's Fact-Finding Mission undertaken in July 2004 to Darfur;
- (viii) **CALLS ON** the international community to respond adequately to appeals and requests by the African Union for logistical, financial and material assistance in support of its peacekeeping and Ceasefire monitoring mission in the Darfur Region.

75. ACHPR/Res.75(XXXVII)05: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN TOGO

The African Commission on Human and Peoples' Rights meeting at its 37th Ordinary Session held from the 27th of April to the 11th of May 2005 in Banjul, The Gambia;

Recalling that following the death of the late Gnassingbe Eyadema, former President of the Republic of Togo, the country was plunged into a constitutional crisis;

Aware that following concerted efforts of the African Union, the Economic Community of West African States (ECOWAS) and the international community, the authorities in the Republic of Togo accepted to conduct free and fair presidential elections;

Concerned that events in Togo prior, during and after the presidential election were characterized by violence which resulted in the outflow Internally Displaced Persons (IDPs) and of refugees into neighbouring countries, instability and violation of fundamental and basic rights of individuals and citizens in Togo;

Concerned that the presidential election was characterized by irregularities which call to question the integrity of the electoral process and its results, both of which have created conditions for violation of human rights in the wake of the violence and its suppression by government security forces ;

Recalling that the current Chairperson of the African Union undertook consultations with some of the Togolese political leaders with a view to promoting respect for the outcome of the elections and the need to establish a government of national unity;

CALLS ON the newly elected President, Faure Gnassingbe, to form a government of national unity as agreed in Abuja on the 25 April 2005;

CALLS ON the Government of Togo to create conducive conditions for the voluntary return of Internally Displaced Persons (IDPs) and the more than 15,000 refugees who have fled to the neighbouring countries in the aftermath of the presidential elections;

DECIDES to send a fact-finding mission to Togo to investigate the violations of human rights which occurred prior, during and after the presidential elections.

76. ACHPR/Res.76(XXXVII)05: RESOLUTION ON THE ESTABLISHMENT OF AN EFFECTIVE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights meeting at its 37th Ordinary Session held from the 27th of April to the 11th of May 2005 in Banjul, The Gambia;

Noting that the Protocol on the establishment of an African Court on Human and Peoples' Rights entered into force on 25 January 2004;

Noting the Decision of July 2004 of the Assembly of Heads of State and Government of the African Union to merge the African Court on Human and Peoples' Rights with the African Court of Justice of the African Union;

Considering that the two Courts have essentially different mandates and litigants;

Deeply concerned that the July 2004 AU Assembly decision, and the non-ratification by the majority of Member States of the African Union have a negative impact on the establishment of an effective African Court on Human and Peoples' Rights;

Noting that Decision **EX.CL/Dec.165 (VI)** of the Executive Council in January 2005 allows the operationalization of the Court notwithstanding the continuing discussions on the merger;

Welcoming the recommendations by the Executive Council of the African Union asking Member States of the AU which have not yet done so to ratify or accede to the Protocol establishing the African Court on Human and Peoples' Rights as soon as possible;

- (i) **CALLS ON** the Assembly of Heads of State and Government of the African Union to operationalize the African Court on Human and Peoples' Rights at the earliest through the election of Judges, determination of the seat of the Court and allocation of adequate resources;
- (ii) **URGES** the Assembly, when considering determination of the seat of the Court to, accord due consideration to easy accessibility by litigants and delegates, among other criteria, in particular entry visa requirement policies;
- (iii) **CALLS ON** Member States, which have not done so, to ratify or accede to the protocol without further delay;
- (iv) **CALLS ON** Member States, which have not done so, to make and deposit the declaration under Article 34 (6) of the Protocol, and those yet to ratify or accede to do so upon ratification or accession;
- (v) **CALLS ON** Member States to comply with the requirements specified under the African Union Commission Note Verbale to member states on the nomination of judges, by observing a transparent nomination process and respecting gender parity, among others;
- (vi) **CALLS ON** Member States to meet their financial obligation towards the African Union, and in particular to establish the Human Rights Fund and make regular voluntary contributions to the said Fund.

77. ACHPR/Res.77(XXXVII)05: RESOLUTION ON THE CREATION OF A WORKING GROUP ON SPECIFIC ISSUES RELEVANT TO THE WORK OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights, meeting at its 37th Ordinary Session held from 27th April to 11th May in Banjul, The Gambia;

1. **Considering** the necessity for certain matters to be dealt with expeditiously;
2. **Bearing in mind** the creation of the African Union and the creation of various organs and institutions within the afore mentioned Union;
3. **Noting** the entry into force of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights and the complementary role of the African Commission and the aforementioned Court;
4. **Noting** also the delay in the finalization of certain issues including the follow-up to its recommendations and decisions;
5. **Noting** further Articles 42 (2) of the African Charter on Human and Peoples' Rights and Rule 121 of the Rules of Procedure of the African Commission on Human and Peoples' Rights on the modalities of amendment of the said Rules of Procedure;
6. **Noting** Rule 28 of the Rules of Procedure on the establishment of Committees and Working Groups;
7. **Decides** to establish a Working Group to deal with the following specific issues :
 - a. The review of the Rules of Procedure of the African Commission on Human and Peoples' Rights, ensuring that the following items are included:
 - The relationship between the Bureau and the Secretariat of the African Commission on Human and Peoples' Rights;
 - The relationship between the African Commission and its various partners;
 - The relationship between the African Commission and the various organs and institutions of the African Union; and
 - Any other relevant issues.
 - b. The mechanism and procedure on the follow-up on decisions and recommendations of the African Commission;
 - c. The structure of different reports of the African Commission;
 - d. The modalities for the establishment of a Voluntary Fund for Human Rights in Africa; and
 - e. The follow-up on the implementation of the recommendations of the Retreat of the African Commission in Addis Ababa of September 2003, the evaluation report on the work of the African Commission and the UPPSALA consultation of June 2004.

8. The Working Group will comprise 3 Members of the African Commission and 3 external experts from its partners Interights, Open Society Justice Initiative and the Institute for Human Rights and Development in Africa.
9. The Working Group shall have a mandate of six months.
10. The Working Group shall report to the African Commission at its 38th ordinary session.
11. The African Union is hereby requested to provide the Working Group with the necessary resources to successfully discharge its mandate.



78. ACHPR /Res.78(XXXVIII)05: RESOLUTION ON THE RENEWAL OF THE TERM OF THE SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN IN AFRICA

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

Recalling the Resolution it adopted at its 25th Ordinary Session that took place from 26th April to 5th May 1999 in Bujumbura, Burundi, in which it appointed a Special Rapporteur on the Rights of Women in Africa;

Recalling further the provisions of Article 18(3) of the African Charter on Human and Peoples' Rights;

Referring further the provisions of Article 45(1) a of the African Charter on Human and Peoples' Rights;

Recalling the decision taken at the 30th Ordinary Session which took place in October 2001 in Banjul, the Gambia, regarding nominating Commissioner Angela Melo Special Rapporteur on the Rights of Women in Africa;

Recalling the Resolution it adopted at its 34th Ordinary Session that took place from 27 April to 11th May 2005 in Banjul, The Gambia, to renew the mandate of Commissioner Angela Melo as Special Rapporteur for a period of two (2) years;

Considering the important work done by the Special Rapporteur;

Considering the necessity of allowing the Special Rapporteur on the Rights of Women in Africa to continue her mandate;

Commends Commissioner Angela Melo, Special Rapporteur for the Rights of Women in Africa, for the work done;

Decides to renew the mandate of Commissioner Angela Melo as Special Rapporteur on the Rights of Women in Africa for a period of two (2) years;

Requests the Secretariat of the African Commission to enhance its efforts to mobilise resources that could assist the Special Rapporteur to carry out her mandate.

79. ACHPR /Res.79(XXXVIII)05: RESOLUTION ON THE COMPOSITION AND THE OPERATIONLISATION OF THE WORKING GROUP ON DEATH PENALTY

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

Considering the provisions of the *African Charter on Human and Peoples' Rights* which entrusts it with a treaty monitoring function and a mandate to promote human and peoples' rights and ensure their protection in Africa;

Recalling the Resolution adopted at its 26th Ordinary Session held from 1st to 15th November 1999 in Kigali, Rwanda, urging Member States to envisage a Moratorium on the Death Penalty;

Recalling the decision of the African Commission at its 37th Ordinary Session to appoint two Commissioners to work with the Special Rapporteur on Prisons and Conditions of Detention in Africa to improve the document on the Question of the Death Penalty in Africa;

Considering the trends in international law which encourage the abolition of the death penalty, in particular the *2nd Protocol to the International Covenant on Civil and Political Rights*, the *Statute on the International Criminal Court* and the Resolution of the UN Commission on Human Rights, 2005/59, on the Question of the Death Penalty and the debates and initiatives undertaken by civil society and other stakeholders on the question of the death penalty;

Recognising that 14 African Union Member States have already abolished the death penalty and 13 others are exercising a moratorium on its application;

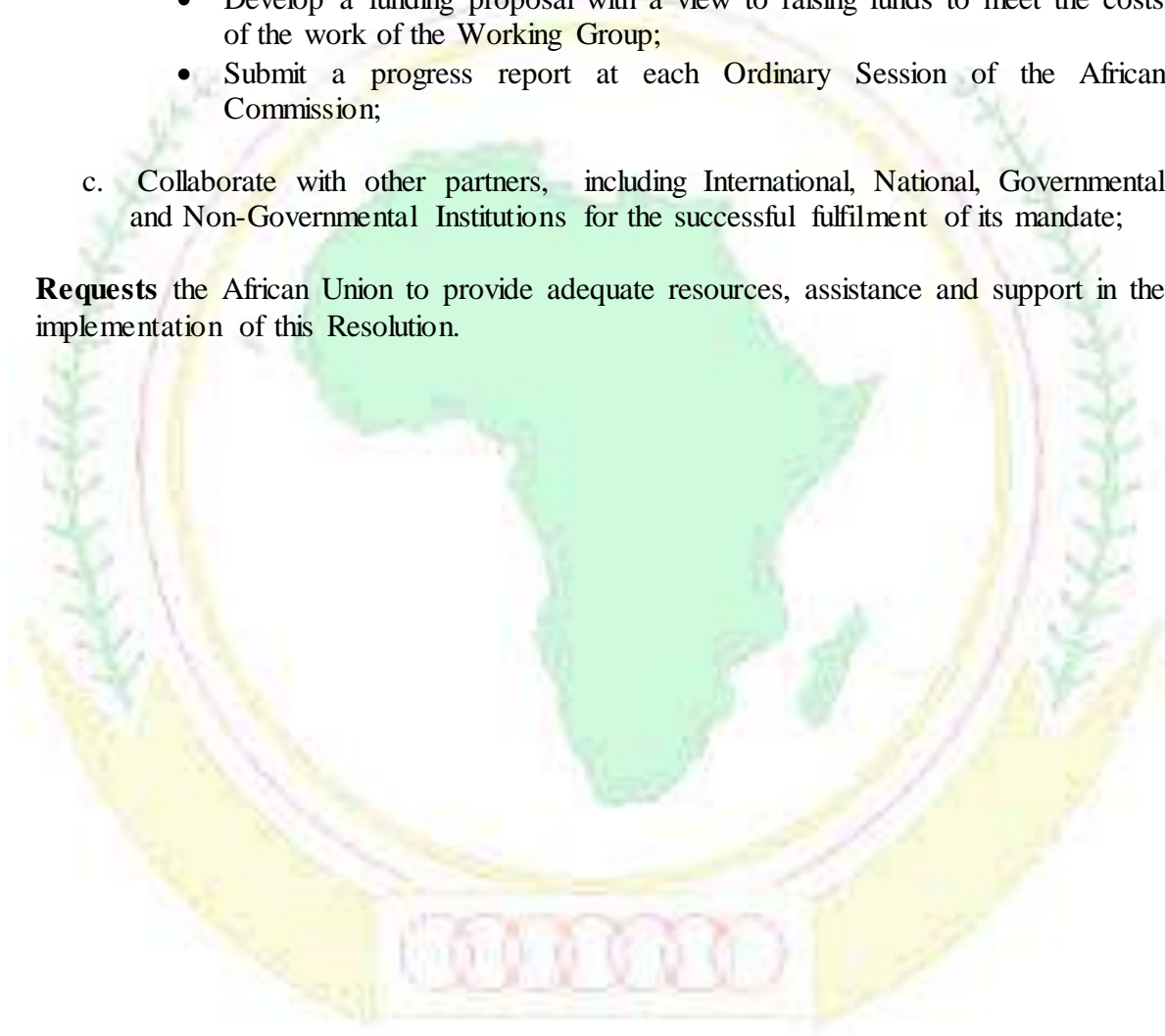
Calls upon Member States of the African Union that have abolished the death penalty *de jure* to encourage other Member States which still carry out the death penalty about the necessity of abolishing the death penalty;

Resolves to:

- a. Expand the composition of the Working Group to include:
 - two (2) Members of the African Commission on Human and Peoples Rights, namely Commissioner Yasser El Hassan and Commissioner Bahame Tom Nyanduga;
 - Five (5) experts chosen to represent the different legal systems and the different regions in Africa;

- b. Broaden the mandate of the Working Group in the following manner-:
- Elaborate further a Concept Paper on the Death Penalty in Africa;
 - Develop a Strategic Plan(s), including a practical and legal framework on the abolition of the Death Penalty;
 - Collect information and continue to monitor the situation of the application of the Death Penalty in African States;
 - Develop a funding proposal with a view to raising funds to meet the costs of the work of the Working Group;
 - Submit a progress report at each Ordinary Session of the African Commission;
- c. Collaborate with other partners, including International, National, Governmental and Non-Governmental Institutions for the successful fulfilment of its mandate;

Requests the African Union to provide adequate resources, assistance and support in the implementation of this Resolution.



80. ACHPR /Res.80(XXXVIII)05: RESOLUTION ON THE RENEWAL OF THE MANDATE AND COMPOSITION OF THE WORKING GROUP ON SPECIFIC ISSUES RELATING TO THE WORK OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

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

Recalling the Resolution adopted at its 37th Ordinary Session that took place from 27th April to 11th May 2005 in Banjul, The Gambia, by which it created the Working Group on Specific Issues Relating to the Work of the African Commission on Human and Peoples' Rights;

Appreciating the work that the Working Group has done over the intersession period;

Considering the interim report of the Working Group;

Considering further the necessity to allow the Working Group to continue to carry out its mandate and address urgent pending issues failing within the said mandate;

Decides to renew the mandate of the Working Group for twelve (12) months;

Further decides that the composition of the Working Group will be as follows:

- a) Commissioner Mohamed Abdellahi Ould Babana;
- b) Commissioner Angela Melo;
- c) Commissioner Pansy Tlakula; and
- d) One (1) representative from each of the following Non Governmental Organisations:
 - The Institute for Human Rights and Development in Africa (IHRDA);
 - INTERIGHTS; and
 - Open Society Justice Initiative.

Requests the Working Group to deal as a matter of priority with the following matters and to report accordingly to the African Commission at its 39th Ordinary Session:

- a) The relationship between the African Commission and the African Court on Human and Peoples' Rights ;
- b) The relationship between the Bureau of the African Commission and the Secretariat of the Commission ;
- c) The relationship between the African Commission and the different organs and institutions of the African Union.

Further requests the Secretariat of the African Commission to intensify its efforts to mobilise resources that could assist the Working Group to carry out its mandate.

81. ACHPR /RES.81(XXXVIII)05: RESOLUTION ON THE COMPOSITION AND RENEWAL OF THE MANDATE OF THE WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES IN AFRICA

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

Recalling its Resolution Ref. ACHPR/Res.65 (XXXIV) 03 on the adoption of the Report of the African Commission's Working Group on Indigenous Populations/Communities adopted at its 34th Ordinary Session held in Banjul, The Gambia from 6 to 20 November 2003;

Recalling that the African Commission established a Working Group composed of six members, amongst them, two Members of the African Commission;

Noting that the African Commission entrusted the Working Group with a mandate for an initial period of two years;

Considering that the initial term of two years of the Working Group comes to an end during the 38th Ordinary Session of the African Commission on Human and Peoples' Rights;

Commending the continuous assistance of the International Working Group on Indigenous Affairs (IWGIA) to the activities of the Working Group;

Appreciating the work undertaken by the Working Group during the past two years in the discharge of its mandate;

Recognising further the importance of the work of the Working Group in the promotion and protection of the rights of indigenous populations/communities in Africa and the necessity to allow the Working Group to continue to carry out its mandate;

Decides to:

- Extend the mandate of the Working Group for a period of two years with effect from 5 December 2005;
- Designate Commissioner Kamel Rezag Bara as Chairperson of the Working Group; and
- Appoint Commissioner Musa N Bitaye as Member of the Working Group.

82. ACHPR /Res.82(XXXVIII)05: RESOLUTION ON THE APPOINTMENT OF A SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

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

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights;

Reaffirming the importance of the observance of the purposes and principles of the *African Charter* for the promotion and protection of the human rights of all, including those of detainees and prisoners;

Recalling its decision to establish the position of and appoint a Special Rapporteur on Prisons and Conditions of Detention in Africa as a prison monitoring mechanism taken at its 20th Ordinary Session held in Grand Bay, Mauritius in October 1996;

Considering that the term of Dr. Vera Mlangazuwa Chirwa as a Member of the African Commission along with her mandate as Special Rapporteur on Prisons and Conditions of Detention in Africa came to an end on 21st November 2005;

Appreciating the work that Dr. Chirwa has done as Special Rapporteur on Prisons and Conditions of Detention in Africa;

Emphasising the importance of the work of the Special Rapporteur as regards the search for solutions to the problems arising from the restriction of the freedom of the individual, in particular;

Decides to appoint Commissioner Mumba Malila as the Special Rapporteur on Prisons and Conditions of Detention in Africa for a period of two years effective 5th December 2005.

83. ACHPR /Res.83(XXXVIII)05: RESOLUTION ON THE APPOINTMENT OF A SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS IN AFRICA

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

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the *African Charter on Human and Peoples' Rights*;

Mindful that in the *Grand Bay (Mauritius) Declaration and Plan of Action*, the Organisation of African Unity (African Union) called on Member States "to take appropriate steps to implement the UN *Declaration on Human Rights Defenders in Africa*";

Reaffirming the importance of the observance of the purposes and principles of the *African Charter* for the promotion and protection of all human rights and fundamental freedoms;

Reaffirming the commitment of the African Commission on Human and Peoples' Rights in the promotion and protection of the rights of human rights defenders;

Recognising the crucial contribution of the work of human rights defenders in promoting human rights, democracy and the rule of law in Africa;

Recalling the Resolution adopted at the 35th Ordinary Session held from 21 May to 4 June 2004 in Banjul, The Gambia by which the African Commission appointed the Special Rapporteur on Human Rights Defenders in Africa;

Considering that the term of Mrs. Jainaba Johm as a Member of the African Commission came to an end along with her mandate as Special Rapporteur on the 21 November 2005;

Appreciating the work that Mrs. Jainaba Johm has done as Special Rapporteur for Human Rights Defenders;

Emphasizing the importance of the work of the Special Rapporteur as regards the search for solutions to the problems arising from the protection of human rights defenders;

Decides to appoint Commissioner Reine Alapini-Gansou as the Special Rapporteur on Human Rights Defenders in Africa for a period of two years effective 5th December 2005.

84. ACHPR/Res.84(XXXVIII)05:RESOLUTION ON THE APPOINTMENT OF A SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION IN AFRICA

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

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights;

Recalling the Resolution on Freedom of Expression adopted at its 29th Ordinary Session held from 23rd April to 7th May 2001 in Tripoli, Libya, to initiate an appropriate mechanism to assist it in reviewing and monitoring adherence to standards of freedom of expression and to investigate violations and make appropriate recommendations to the African Commission;

Recalling the Declaration of Principles on Freedom of Expression in Africa adopted at its 32nd Ordinary Session held from 17th to 23rd October 2002 in Banjul, The Gambia;

Recalling further the Resolution on the Mandate and Appointment of a Special Rapporteur on Freedom of Expression in Africa adopted at its 36th Ordinary Session held from 23rd November to 7th December 2004 in Dakar, Senegal;

Reaffirming the commitment of the African Commission on Human and Peoples' Rights to promote the right to freedom of expression and monitor the implementation of the Declaration of Principles on Freedom of Expression in Africa within Member States of the African Union;

Considering that the term of Mr. Andrew Chigovera as a Member of the African Commission came to an end along with his mandate as Special Rapporteur on 21 November 2005;

Appreciating the work that Mr. Andrew Chigovera has done as Special Rapporteur on Freedom of Expression;

Decides to appoint Commissioner Faith Pansy Tlakula as the Special Rapporteur on Human Rights Defenders in Africa for a period of two years effective 5th December 2005.

85. ACHPR /Res.85(XXXVIII)05: RESOLUTION ON THE STATUS OF WOMEN IN AFRICA AND THE ENTRY INTO FORCE OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

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

Recalling the commitments of the Heads of States and Governments in the Solemn Declaration on Gender Equality in Africa made during the 3rd Ordinary Session held in Addis Ababa, Ethiopia, from 6 – 8 July 2004;

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

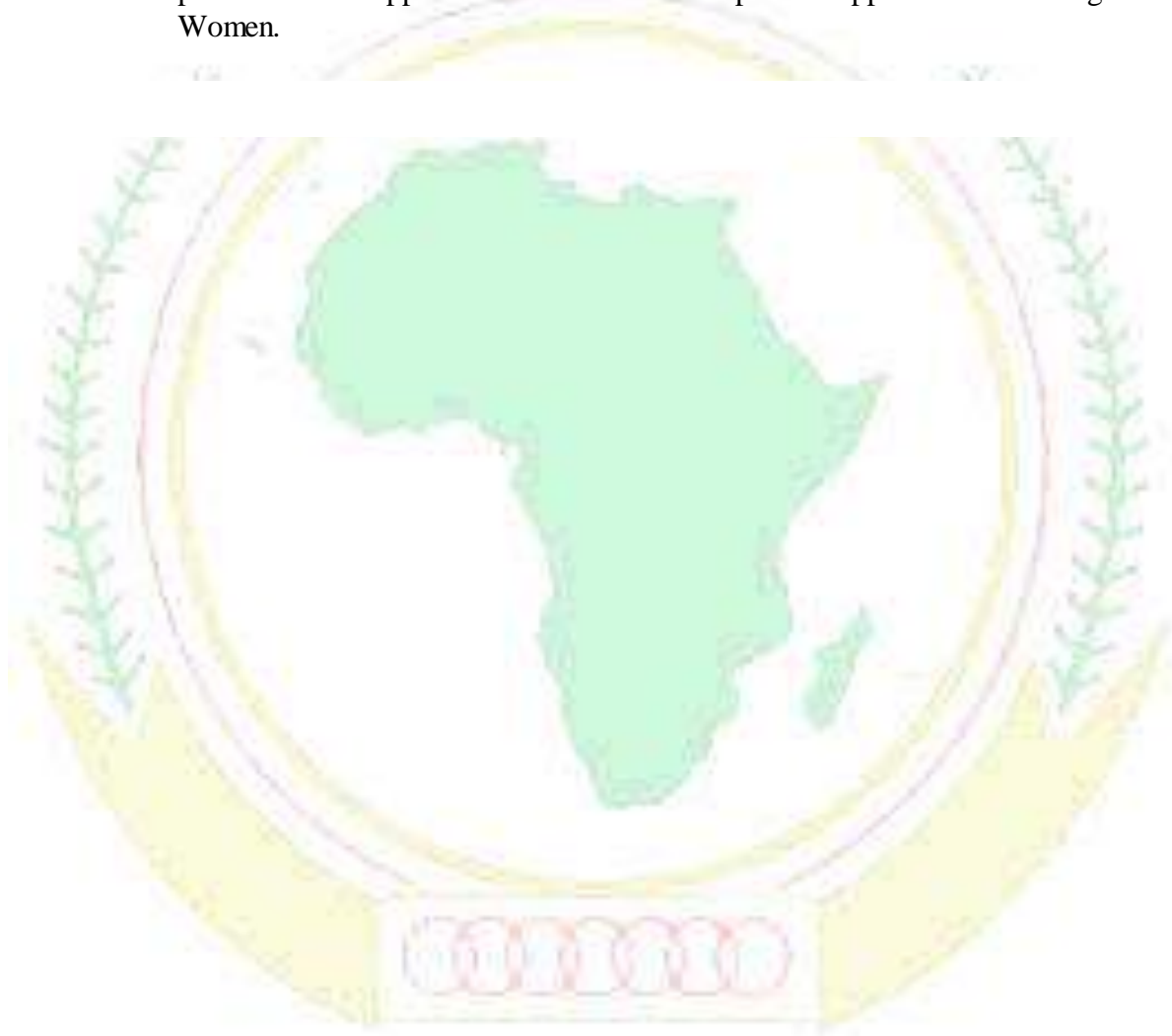
Further noting with appreciation the Member States of the African Union that have ratified the *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* which entered into force on 25 November 2005, namely Benin, Cape Verde, Comoros, Djibouti, Gambia, Libya, Lesotho,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

Recognizing that women in Africa continue to be subject to discriminatory laws and practices;

Reiterating its commitment to continue working to promote the rights of women in Africa;

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

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



86.ACHPR/Res.86(XXXVIII)05: RESOLUTION RELATING TO THE OPERATIONALISATION OF AN INDEPENDENT AND EFFECTIVE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS.

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

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

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

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

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

87. ACHPR/Res.87(XXXVIII)05: RESOLUTION ON ENDING IMPUNITY IN AFRICA AND ON THE DOMESTICATION AND IMPLEMENTATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

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

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

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

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

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

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

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

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

1. **Urges** the Member States of the African Union to ensure that the perpetrators of crimes under international human rights law and international humanitarian law should not benefit from impunity;
2. **Urges** Member States of the African Union that have not yet done so to ratify the Rome Statute and to adopt a national action plan for the effective implementation of the Rome Statute at the national level;
3. **Urges** African governments to withdraw from the Article 98 Bilateral Immunity Agreements and refrain from engaging in acts that would weaken the effectiveness of the Court in line with their international obligations;
4. **Calls** on civil society organizations in Africa to work in collaboration and develop partnerships in order to further respect for the rule of law internationally and to strengthen the Rome Statute;
5. **Encourages** the Assembly of Heads of State and Government of the African Union to urge its Members States to condemn and reject impunity.

88. ACHPR/Res.88(XXXVIII)05: RESOLUTION ON THE PROTECTION OF HUMAN RIGHTS AND THE RULE OF LAW IN THE FIGHT AGAINST TERRORISM

The African Commission on Human and Peoples' Rights, meeting at its 37th Ordinary Session held in from 21st November to 5th December 2005, Banjul, The Gambia,

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

Bearing in mind the provisions of the Constitutive Act of the African Union in Article 3(h), which enshrines the objective of the African Union to promote and protect human rights, and Article 4(o), which requires respect for the sanctity of human life, condemns impunity, political assassinations, acts of terrorism and subversive activities;

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

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

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

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

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

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

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

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

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

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

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

1. **Calls on** all African States to take the necessary measures to reinforce their activities of cooperation in order to prevent and combat terrorism;
2. **Reaffirms** that African States should ensure that the measures taken to combat terrorism fully comply with their obligations under the African Charter on Human and Peoples' Rights and other international human rights treaties, including the right to life, the prohibition of arbitrary arrests and detention, the right to a fair hearing, the prohibition of torture and other cruel, inhuman and degrading penalties and treatment and the right to seek asylum;
3. **Undertakes to ensure** that all the special procedures and mechanisms of the African Commission on Human and Peoples' Rights consider within the framework of their mandates, the protection of human rights and fundamental freedoms in the context of measures aimed at preventing and combating terrorism and to coordinate their efforts, as appropriate, in order to promote a coherent approach in this regard;
4. **Decides** to organise a meeting of experts on the protection of human rights and the rule of law within the framework of the fight against terrorism in Africa;
5. **Appeals** to the relevant organs of the African Union and requests its other partners to provide the required assistance in the quest for resources and modalities to organise this experts' meeting;
6. **Instructs** the Secretariat to follow-up and coordinate this activity.

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

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

Considering that Zimbabwe is a Party to the *African Charter on Human and Peoples' Rights* and other international human rights instruments;

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

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

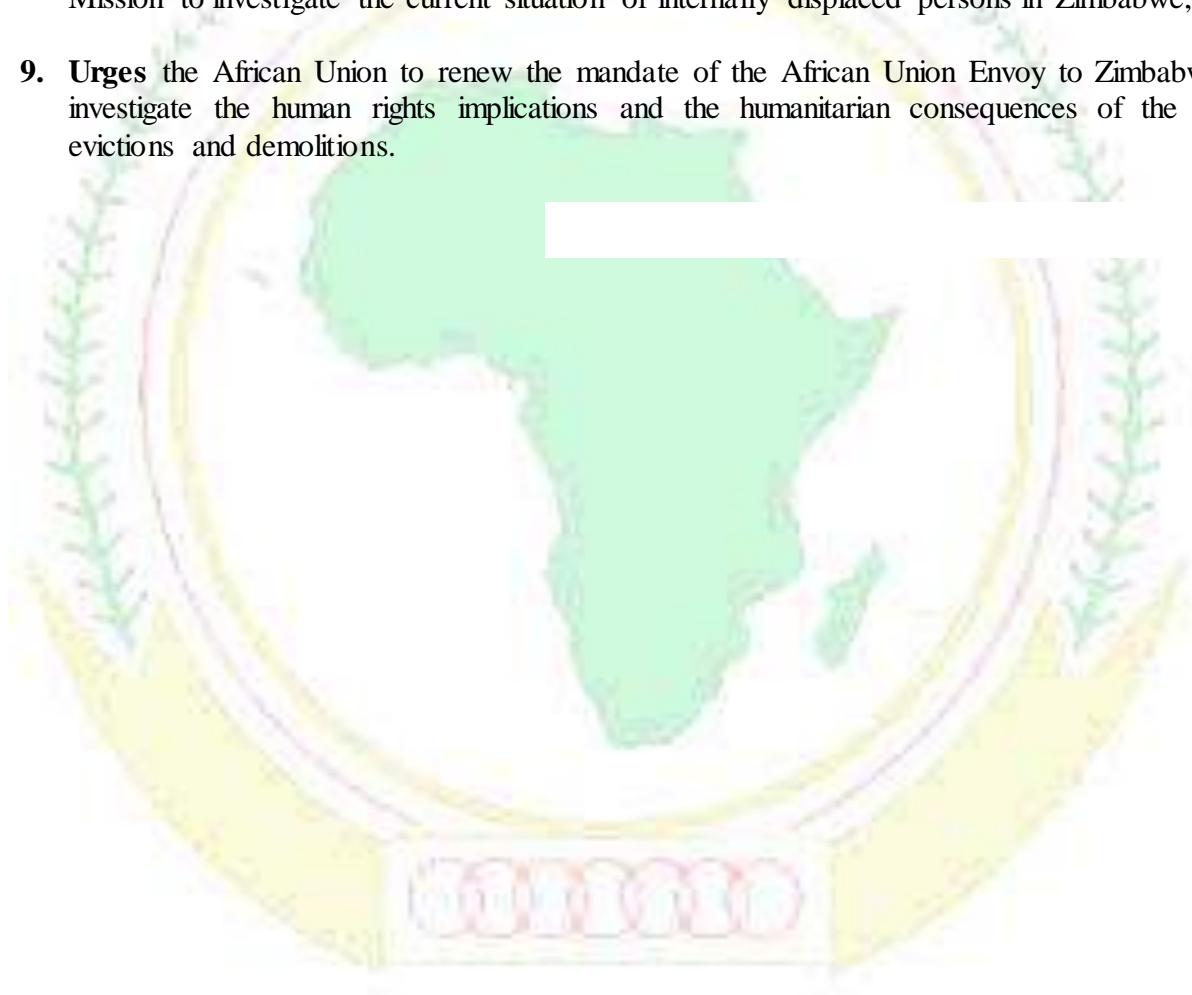
Deeply concerned by the continued undermining of the independence of the judiciary through defiance of court orders, harassment and intimidation of independent judges and the executive ouster of the jurisdiction of the courts;

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

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

1. **Condemns** the human rights violations currently being perpetrated in Zimbabwe;
2. **Urges** the government of Zimbabwe to cease the practice of forced evictions throughout the country, and to adhere to its obligations under the *African Charter on Human and Peoples' Rights* and other international human rights instruments to which Zimbabwe is a party;
3. **Urges** the government of Zimbabwe to implement without further delay the recommendations contained in the African Commission Report of the 2002 Fact-Finding Mission to Zimbabwe and the recommendations in the July 2005 Report of the UN Special Envoy on Human Settlement Issues, in particular to ensure full and unimpeded access for the provision of aid and protection to the victims of the forced evictions and demolitions by impartial national and international humanitarian agencies and human rights monitors, and to ensure that those responsible for the violations are brought to justice without delay;
4. **Calls** on the government of Zimbabwe to respect the fundamental rights and freedoms of expression, association and assembly by repealing or amending repressive legislation, such as the *Access to Information and Protection of Privacy Act*, the *Broadcasting Services Act* and the *Public Order and Security Act*;
5. **Calls** on the government of Zimbabwe to uphold the principle of separation of powers and the independence of the judiciary and urges the government of Zimbabwe to repeal or amend Constitutional Amendment (No.17) and provide an environment conducive to constitutional reform based on fundamental rights;

6. **Calls** on the government of Zimbabwe to cooperate with the African Commission Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa and other African Commission Special Mechanisms, including allowing a Fact-Finding Mission to investigate the current situation of internally displaced persons in Zimbabwe;
7. **Urges** the African Union to renew the mandate of the African Union Envoy to Zimbabwe to investigate the human rights implications and humanitarian consequences of the mass evictions and demolitions.
8. **Calls** on the government of Zimbabwe to cooperate with the African Commission Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa and other African Commission Special Mechanisms, including by allowing a Fact-Finding Mission to investigate the current situation of internally displaced persons in Zimbabwe;
9. **Urges** the African Union to renew the mandate of the African Union Envoy to Zimbabwe to investigate the human rights implications and the humanitarian consequences of the mass evictions and demolitions.



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

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

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

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

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

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

1. **Calls on** the Government of National Unity and Transition to guarantee the security of civilians, including humanitarian personnel, by extending the authority of the State effectively over the entire national territory of the Democratic Republic of Congo;
2. **Requests** the Congolese government to bring to justice the perpetrators of crimes committed in Congolese territory and to cooperate fully with the organs of the International Criminal Court, most notably by adopting a law adapting the Statute of the International Criminal Court;
3. **Requests** the coordinators of the various transitional institutions in the Democratic Republic of Congo to achieve concrete progress for the effective holding of the elections, most notably by promoting the constitutional referendum and the adoption of an electoral law, as well as the registration of voters on electoral lists;
4. **Requests** MONUC to enforce its mandate relating to the enforcement of the process of disarmament, demobilisation, repatriation and reintegration of the rebel Congolese Armed Groups, as well as the protection of the civilian population;
5. **Calls** on the entire international community, in particular the countries of the Great Lakes region, to strictly implement the Arms Embargo in conformity with the various relevant Resolutions of the Security Council.

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

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

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

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

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

Considering Article 1 of the *African Charter on Human and Peoples' Rights* which stipulates that "the State Parties recognise the rights, duties, and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them";

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

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

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

1. **Condemns** the continued detention of the former cabinet ministers, government officials, members of Parliament, journalists, media practitioners and others for many years;
2. **Calls** on the Government of Eritrea to fulfil its obligations in line with the *Constitutive Act of the African Union*, the *African Charter on Human and Peoples' Rights* and other pertinent instruments to which Eritrea is a party;
3. **Calls** on the Government of Eritrea to guarantee, at all times, the right to a fair trial, freedom of opinion and expression as well as the right to peaceful assembly;
4. **Calls** on the Government of Eritrea to immediately free the former cabinet ministers, government officials, members of Parliament, journalists, media practitioners and other individuals who have been arrested and detained without trial for many years;
5. **Calls** on the Eritrean Government to comply with the international instruments ratified by Eritrea, most notably the *African Charter on Human and Peoples Rights* (ACHPR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and to cooperate with the African Commission on Human and Peoples' Rights.

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

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

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

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

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

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

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

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

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

- 6. Deplores** the killing of civilians during confrontations with security forces;
- 7. Requests** that the Ethiopian authorities release arbitrarily detained political prisoners, human rights defenders and journalists;
- 8. Calls** on the Ethiopian government to guarantee, for any accused individual, the right to a fair trial as provided by the *African Charter on Human and Peoples' Rights* and other relevant international human rights instruments, including the right to seek pardon or commutation of sentence;
- 9. Calls** on the Ethiopian government to ensure the impartiality, independence and integrity of the National Parliamentary Commission investigating the recent acts of violence in the country and to bring the perpetrators of human rights violations to justice;
- 10. Urges** the Ethiopian government to guarantee, at all times, freedom of opinion and expression as well as the right to hold peaceful demonstration and political assembly;
- 11. Requests** that the Ethiopian government guarantees, in all circumstances, the physical and psychological integrity of human rights defenders in compliance with international instruments especially the *Declaration of Human Rights Defenders* adopted by the U.N. General Assembly in December 1998;
- 12. Calls** on the Ethiopian government to comply with the international instruments ratified by Ethiopia, most notably the *African Charter on Human and Peoples' Rights* (ACHPR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

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

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

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

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

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

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

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

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

1. **Calls** on the government of Sudan to submit its comments to the African Commission with respect to its report on the 2004 Fact-Finding Mission to Sudan;
2. **Calls** on the government of Sudan to comply with its obligations under the African Charter on Human and Peoples' Rights, the AU Constitutive Act, the UN Charter and other relevant instruments to which the Sudan is a State Party, and comply with the following:
3.
 - a. **Cease**, with immediate effect, all attacks against civilians in Darfur and end the grave violations of human and peoples' rights, in particular the forced de-population of entire areas in the region, rape and sexual violence against women and girls, abduction of women and

children, and to cease all support to the Janjaweed militiamen, including the provision of supplies.

b. Provide the necessary support to all international agencies and humanitarian organisations in order to ensure effective and full access to the war affected areas of Darfur and to facilitate delivery of humanitarian assistance to civilian populations.

c. **Fully and unconditionally** cooperate with the Office of the Prosecutor of the International Criminal Court in his efforts to investigate and bring to justice all persons suspected of perpetrating war crimes and crimes against humanity as prescribed in the report of the International Commission of Inquiry on Darfur.

d. **Take all appropriate measures** to ensure the effective implementation of the Resolutions 1556/2004 of 30 July 2004 and 1590/2005, 1591/2005 and 1593/2005 adopted on 29 and 31 March 2005 by the United Nations Security Council;

e. **Calls** on all parties to the conflict to return to negotiations and to cooperate with the international organs and humanitarian organisations.

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

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

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

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

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

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

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

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

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

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

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

1. **Calls on** the parties to the conflict to immediately open negotiation with a view to a conclusion of a ceasefire and peace agreement;
2. **Calls on** the LRA to free immediately all the child soldiers, young girls and women held by them and demobilize all combatants;
3. **Supports** the efforts of the Office of the Prosecutor of the International Criminal Court in its investigations against conduct and activities by the parties to the conflict deemed to be violations of the Rome Statute and to bring those responsible for war crimes in Northern Uganda to justice;

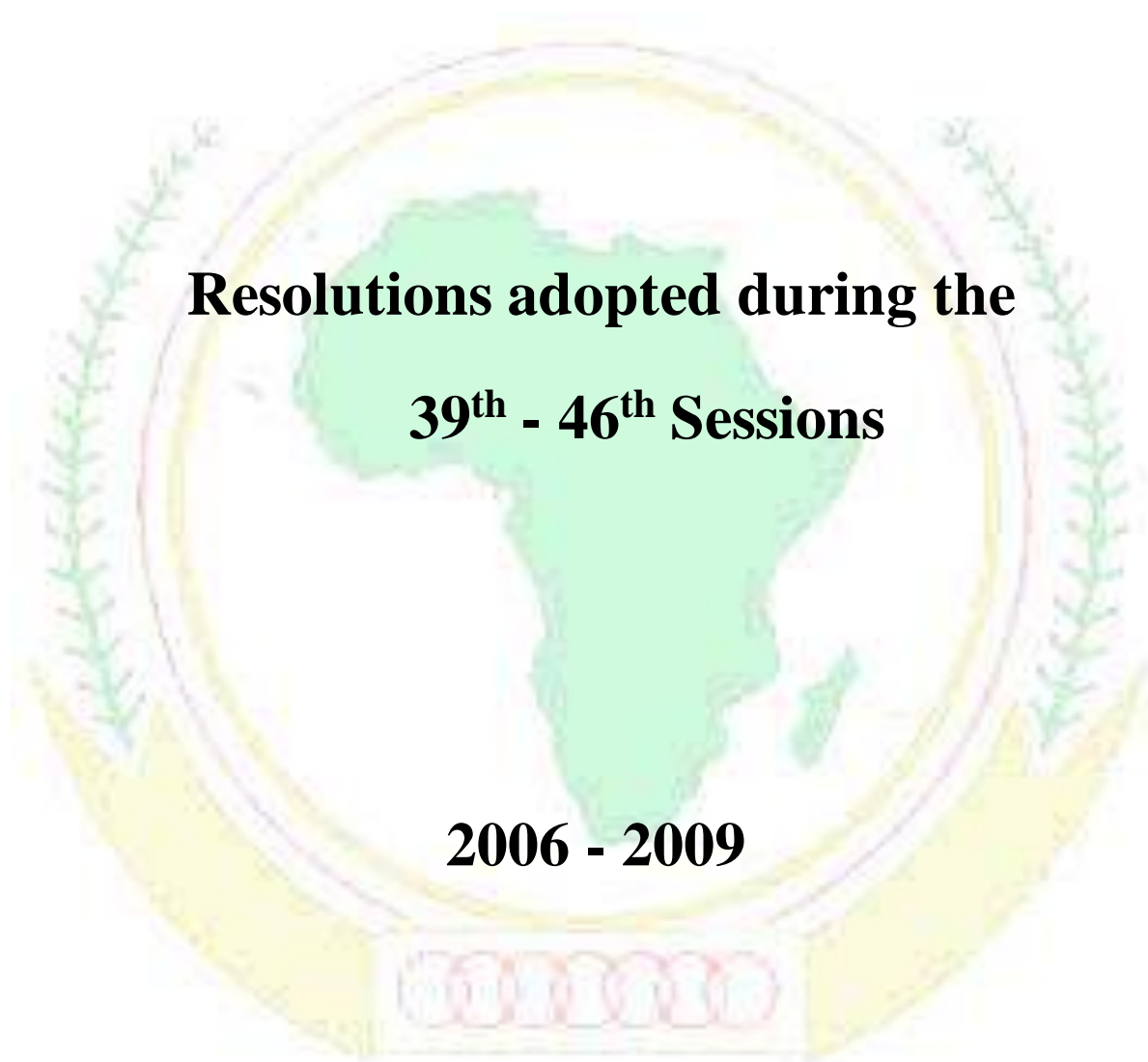
4. **Calls on** the international community to urge the parties to the conflict in Northern Uganda to find a peaceful and lasting resolution to the conflict;
5. **Urges** the international community to offer material support to take steps to demobilize the combatants of the LRA, and to assist the people of Northern Uganda in their rehabilitation after 19 years of conflict;
6. **Condemns** the recent incidents of violence in Uganda, which threatens the peace and stability of the country, in particular the threats to the independence of the judiciary and the legal profession in Uganda;
7. **Calls on** the Government of the Republic of Uganda to guarantee the independence of the Judiciary and the integrity of the members of the legal profession, in order to ensure impartiality in rendering justice, without intimidation or interference;
8. **Calls on** the Government of Uganda to undertake amendments to its laws and abolish the practice of bringing civilians before the Court Martial, and reserve its exclusive jurisdiction to matters affecting serving members of the military in Uganda;
9. **Urges** the Government of the Republic of Uganda to ensure that it guarantees the respect, promotion and protection of human and peoples' rights in Uganda.

Section D

Resolutions adopted during the

39th - 46th Sessions

2006 - 2009



95. ACHPR/Res.95(XXXIX)06: RESOLUTION ON THE RENEWAL OF THE TERM AND EXTENSION OF THE MANDATE OF THE SPECIAL RAPPORTEUR ON REFUGEES, ASYLUM SEEKERS, AND INTERNALLY DISPLACED PEOPLE IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 39th Ordinary Session held from 11th to 25th May 2006 in Banjul, The Gambia,

Recalling its decision at its 35th Ordinary Session held from 21st May to 4th June 2004 in Banjul, The Gambia, to establish a Special Rapporteur mechanism in respect of Refugees, Asylum Seekers and Internally Displaced Persons in Africa;

Recalling further its decision at its 35th Ordinary Session to designate, Commissioner Bahame Tom Nyanduga, as the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa for an initial period of two years;

Bearing in mind its resolution taken at its 36th Ordinary Session held from 23rd November to 7th December 2004 in Dakar, Senegal, by which it delineated the mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa;

Reaffirming the importance of the mechanism of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa;

Alarmed by the increase in the incidence, and number of migrants seeking to leave the territories of their State Parties, travelling through hazardous, dangerous and inhuman means and conditions, and the grave violations of the right to life, freedom of movement, right to liberty and dignity, among others faced by the migrants;

Considering the necessity of allowing the Special Rapporteur to carry on his mandate;

1. **Commends** Commissioner Bahame Tom Nyanduga, Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa for the work he has so far accomplished; in highlighting the plight of, and progress made in relation to refugees, asylum seekers and internally displaced persons in many parts of Africa;
2. **Decides** to renew the term of Commissioner Bahame Tom Nyanduga as a Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa, and extends the mandate to cover migration issues for a period of two years;
3. **Requests** the Commission of the African Union, in view of Article 41 of the African Charter on Human and Peoples' Rights, to provide adequate resources, assistance and support to facilitate the Special Rapporteur's efforts in discharging his mandate;
4. **Further requests** the Secretariat of the African Commission to enhance its efforts to mobilise resources that could assist the Special Rapporteur to carry out his mandate.

96. ACHPR/Res.96(XXXX)06: RESOLUTION ON THE ESTABLISHMENT OF A VOLUNTARY CONTRIBUTION FUND FOR THE AFRICAN HUMAN RIGHTS SYSTEM

The African Commission on Human and Peoples' Rights, meeting at its 40th Ordinary Session held in Banjul, The Gambia, from 15 - 29 November 2006,

Considering that article 45 of the African Charter on Human and Peoples' Rights provides the mandate for the promotion and the protection of human and peoples' rights in Africa;

Mindful of the fundamental objectives and principles provided for under the Constitutive Act of the African Union, which *inter alia*, enshrine the principles for the promotion and protection of human and peoples' rights in Africa;

Recalling that the African Court on Human and Peoples' Rights has been established under the terms of the Protocol to the African Charter on Human and Peoples on the establishment of the African Court on Human and Peoples' Rights,

Bearing in mind that the African Charter on the Rights and Welfare of the Child establishes the Committee of Experts on the Rights and Welfare of the Child in Africa;

Recalling that the Grand Bay (Mauritius) Declaration and Plan of Action adopted at the 1st Ministerial Conference of the Organisation of African Unity on Human Rights on 16 April 1999, *inter alia*, states «the need to provide the Commission with adequate human material and financial resources»;

Noting the Kigali declaration adopted at the 2nd Ministerial Conference of the Organization of African Unity on Human Rights on 8 May, 2003 calls upon the AU policy organs to provide the African Commission on Human and Peoples' Rights with suitable headquarters, an appropriate structure and adequate financial and human resources for its proper functioning, including the establishment of a Fund to be financed by Voluntary Contributions from Member States and international and regional institutions;

1. **CALLS UPON** the competent organs of the Commission of the African Union to present to the executive council a draft decision for the establishment of a Fund to be financed by Voluntary Contributions for the African Commission on Human and Peoples' Rights with the following mandate;
 - to strengthen the human, material, technical and financial resources of the African Commission for the implementation of its mandate of promotion and protection of Human Rights in Africa;
 - to strengthen the activities of the special mechanisms set up by the African Commission on Human and Peoples' Rights;
2. **PROPOSES** that the fund be financed through contributions from Member States, Inter-Governmental, Regional, and International Institutions, as well as public and private donors;
3. **RECOMMENDS** that the fund have a seven member Board of Directors comprising of:
 - A representative of the African Union Commission ;
 - Members of the African Commission on Human and Peoples' Rights Bureau (Chairperson, Deputy-Chairperson) ;
 - The Secretary of the African Commission on Human and Peoples' Rights;

- A representative of the African Court on Human and Peoples' Rights;
 - A representative of the Committee of experts on the rights and welfare of the child;
 - An independent expert nominated by the African Union Commission;
4. **RECOMMANDS** that African Union Budgetary regulations govern the management of the said funds;
 5. **REQUESTS** the Bureau of the African Commission on Human and Peoples Rights to follow up on this matter with the African Union Commission



97. ACHPR/Res.97(XXXX)06: RESOLUTION ON THE IMPORTANCE OF THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS BY STATES PARTIES

The African Commission on Human and Peoples' Rights, meeting at its 40th Ordinary Session in Banjul, the Gambia, from 15 - 29 November 2006,

Considering that the mandate of protection of human and peoples' rights entrusted to it by the African Charter on Human and Peoples' Rights implies *inter alia* the receipt and consideration of Communications in light of the provisions of the Charter and making findings on their violations or otherwise, with a view to safeguarding the enjoyment of human and peoples' rights and fundamental freedoms and providing redress for breaches thereof;

Considering also that in the process of achievement of the above-mentioned mandate deriving from the provisions of Articles 45(2) and 47-58 of the African Charter on Human and Peoples' Rights, the Commission makes recommendations on the basis of communications brought before it by individuals, groups of individuals and state parties alleging violations of human and peoples' rights;

Noting that State Parties in ratifying without any reservation, the African Charter on Human and Peoples' Rights have thus agreed to accept the authority and the essential role of the Commission in the promotion and protection of Human and Peoples' Rights throughout Africa;

Noting in addition that the member states of the African Union have solemnly reaffirmed their adherence to the principles enunciated by the Universal Declaration of Human Rights as well as to the African Charter on Human and Peoples' Rights and that the latter adherence was renewed through Articles 3d, g, h, k; 4h, l, m, o, p; 9(1) b, e & 23(2) of the Constitutive Act, establishing the African Union;

Noting further, by its Resolution AHG/Res. 198 (XV), of the Thirtieth Ordinary Session of the Assembly of Heads of State and Government (1994) reaffirmed the need for Member States to take concrete measures towards the effective implementation of the provision of the African Charter on Human and Peoples' Rights;

Recalling that the Vienna Declaration of 25 June 1993 and its programme of action – for which Member States of the African Union (then Organisation of African Unity) have actively participated in the elaboration and adhere to – calls upon the African Community to proceed in carrying human rights closer to their prime subject: the human being, and that the said process is the one followed by the African Commission on Human and Peoples' Rights by making recommendations to concerned States to provide remedies for the victims within their jurisdictions;

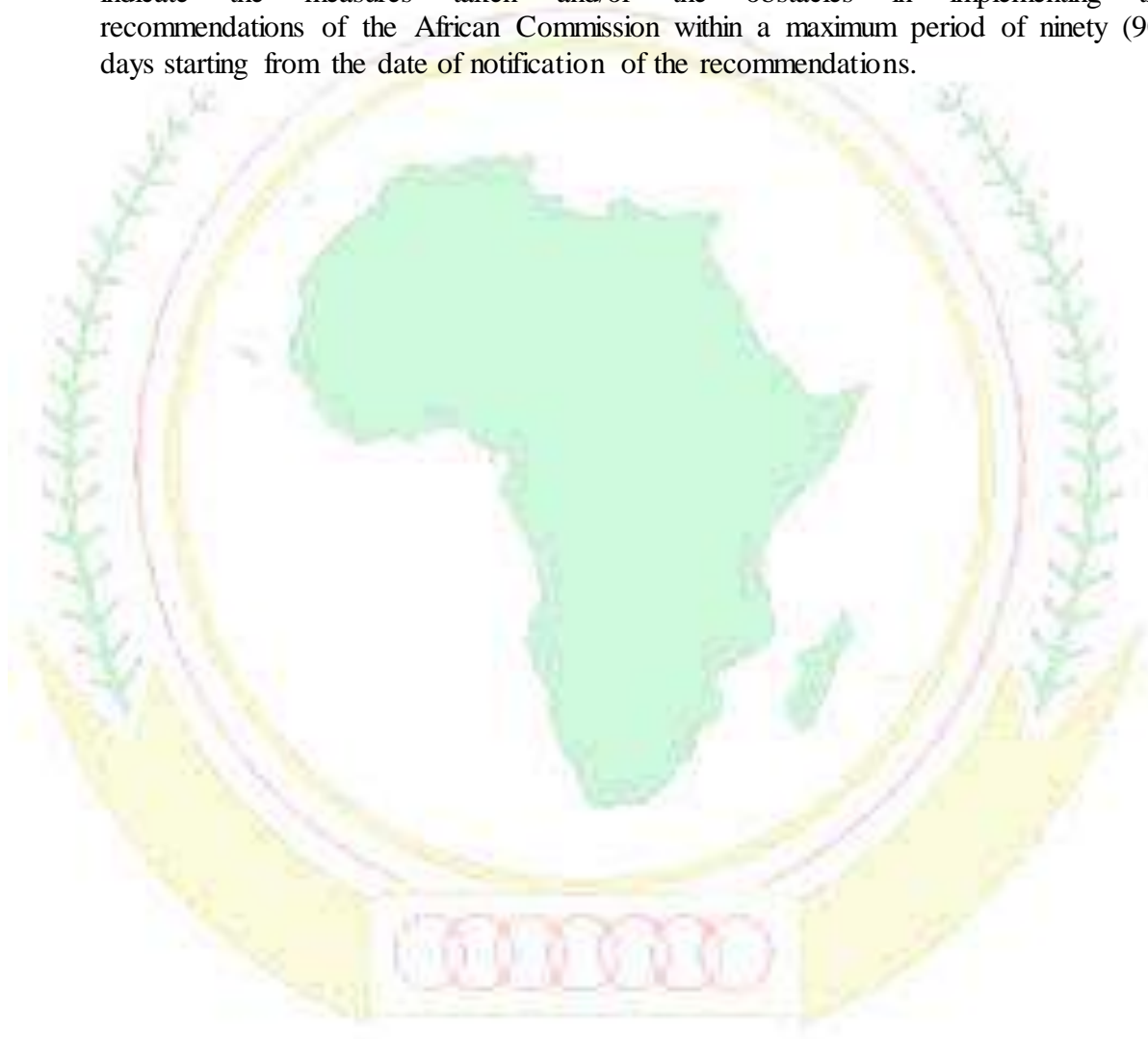
Convinced that compliance of State Parties to its recommendations will contribute to the enhancement of the work of the Commission as well as to the improvement of the conditions of the population under their jurisdiction and also contribute to the promotion and enhancement of the rule of law in Africa;

Recalling further that the Commission would not properly achieve its mission of promotion and protection of human and peoples' rights without the co-operation of state parties;

1. **CONGRATULATES** those State Parties who have complied with its recom-

mendations and encourage them to continue in the same way;

2. **CALLS UPON** all state parties to the African Charter on Human and Peoples' Rights to respect without delay the recommendations of the Commission;
3. **DECIDES** (without prejudice to the provisions of Articles 58 and 59 of the Charter) to submit at every session of the Executive Council a report on the situation of the compliance with its recommendations by the State Parties (annexed to its Annual Activity Report);
4. **REQUESTS** all State Parties to the African Charter on Human and Peoples' Rights to indicate the measures taken and/or the obstacles in implementing the recommendations of the African Commission within a maximum period of ninety (90) days starting from the date of notification of the recommendations.



98. ACHPR/RES.98(XXXIX)06: RESOLUTION ON THE APPOINTMENT OF A COMMISSIONER AS MEMBER OF THE WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES IN AFRICA

The African Commission on Human and Peoples' Rights, meeting in its 40th Ordinary Session held in Banjul, The Gambia, from 15 to 29 November 2006,

Considering that at its 28th Ordinary Session held in Cotonou, Benin in October 2000, the African Commission on Human and Peoples' Rights adopted a Resolution on the Rights of Indigenous Populations/Communities in Africa providing for the establishment of a Working Group and defining its mandate;

Recalling the Resolution of the African Commission on Human and Peoples' Rights on the Adoption of the Report of the Working Group on Indigenous Populations/Communities in Africa, taken at its 34th Ordinary Session held in Banjul, The Gambia, from 6 - 20 November, 2003 on the composition of the Group and specifying its mandate;

Bearing in mind the Resolution on the Composition and the Renewal of the Mandate of the Working Group on Indigenous Populations/Communities in Africa, taken at the 38th Ordinary Session held in Banjul, The Gambia from 21 November - 5 December, 2005;

Taking into consideration the intensification of the activities of the Working Group and the need to boost its composition;

1. **APPOINTS** Commissioner **Mumba Mallila** as Member of the Working Group on Indigenous Populations/Communities in Africa.

99. ACHPR/Res.99(XXXX)06: RESOLUTION ON THE SITUATION OF FREEDOM OF EXPRESSION IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 40th Ordinary Session, held in Banjul, The Gambia, from 15 - 29 November 2006,

Emphasizing that freedom of expression is a fundamental human right guaranteed on the one hand by Article 9 of the *African Charter on Human and Peoples' Rights* which provides that every individual shall have the right to receive information and express and disseminate his opinions within the law, and on the other hand, by the *Universal Declaration of Human Rights* (in particular, in its Article 19), the *International Covenant on Civil and Political Rights* (in particular, in its Article 19) and other treaties, resolutions, international instruments and national constitutions;

Recalling ACHPR/Res.62 (XXXII) 02 on the adoption of the *Declaration of Principles on Freedom of Expression in Africa* (2002) which elaborates on the nature and on the content and extent of the right to freedom of expression provided for under Article 9 of the *African Charter*;

Reaffirming the fundamental importance of freedom of expression and information as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms; as well as the need to ensure the full realization of the right to freedom of expression and information in Africa;

Concerned that, despite the adoption of the above-mentioned *Declaration of Principles on Freedom of Expression in Africa* and recent regional instruments, there has been a deterioration of the situation of freedom of expression in some parts of the African continent;

Concerned by recent reports of on-going and widespread violations of the right to freedom of expression by some States Parties to the Charter;

Concerned by the harassment, threats and intimidation of media practitioners, undue political interference with the media, victimisation of media houses deemed critical of government policies, seizure of publications and destruction of equipment, and the closure of private media establishments;

Concerned by the adoption of repressive laws or amendment to existing legislation that limit freedom of expression and the free flow of information;

Concerned by reports of disappearances, arbitrary arrests and detention of journalists and media practitioners, in some cases *incommunicado* and for extended period of time without charges or due process;

Particularly concerned about allegations of murder of journalists with impunity, torture and other forms of ill-treatment as well as death in custody of media practitioners;

1. **CALLS ON** Members States to take all necessary measures in order to uphold their obligations under the *African Charter on Human and Peoples' Rights* and other international instruments, including the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* providing for the right to freedom of expression;

2. **CALLS ON** Members States to extend their full collaboration with the mandate of the Special Rapporteur on Freedom of Expression in Africa, in order to strengthen the right to freedom of expression on the African continent and work towards the effective implementation of the principles enshrined in the *Declaration of Principles on Freedom of Expression in Africa* and other applicable human rights standards in the region in order to achieve this goal.



100. ACHPR/Res.100(XXXX)06: RESOLUTION ON THE ADOPTION OF THE LILONGWE DECLARATION ON ACCESSING LEGAL ASSISTANCE IN THE CRIMINAL JUSTICE SYSTEM

The African Commission on Human and Peoples' Rights meeting at its 40th Ordinary Session, held in Banjul, The Gambia, from 15 - 29 November 2006;

Recalling its mandate under Article 45(b) of the African Charter on Human and Peoples' Rights (the Charter) "to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African states may base their legislation";

Recalling Articles 7 and 26 of the Charter, which guarantee the right to a fair trial and legal counsel before independent courts;

Recalling its Resolution on the *Right to Recourse and Fair Trial*, adopted at its 11th Ordinary Session in Tunis, Tunisia in 1992;

Recalling further its resolution on the *Respect and Strengthening of the Independence of the Judiciary*, adopted at its 19th Ordinary Session in Ouagadougou, Burkina Faso in 1996;

Recognising its resolution on the *Right to Fair Trial and Legal Assistance in Africa*, adopted at its 26th Ordinary Session in Rwanda in 1999;

Recalling the *Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa*, adopted in 2001;

Concerned with the continued lack of legal aid in most parts of Africa and its adverse impact on the right to access to justice in Africa;

- 1. SUPPORTS** the *Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa*, adopted by the Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers, Lilongwe, Malawi, November 2004;
- 2. URGES** all stakeholders to make every effort to make these declarations widely known in Africa and invites State Parties to the Charter to take into account the principles in the Declaration when formulating policies and domestic legislation;
- 3. APPEALS** to Member States to take all necessary measures in order to uphold their obligations under the Charter and other international instruments, including the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* providing for the right to fair trial and access to justice;
- 4. CALLS** on Members States to extend their full collaboration with the mandate of the Special Rapporteur on Prisons and Conditions of Detention in Africa in monitoring prisons and conditions of detention in Africa.

101. ACHPR/Res.101(XXXX)06: RESOLUTION ON THE COMPOSITION AND OPERATIONALISATION OF THE WORKING GROUP ON DEATH PENALTY

The African Commission on Human and Peoples' Rights meeting at its 40th Ordinary Session held in Banjul, the Gambia, from 15 - 29 November 2006;

Considering the provisions of the African Charter on Human and Peoples' Right which entrusts it with a treaty monitoring function and a mandate to promote human and peoples' rights and ensure their protection in Africa;

Recalling the decision of the African Commission at its 37th Ordinary Session to appoint two Commissioners to work with the Special Rapporteur on Prisons and Conditions of Detention in Africa to improve the document on the Question of the Death Penalty in Africa;

Considering the trends in international law which encourage the abolition of the death penalty, in particular the 2nd Protocol to the International Covenant on Civil and Political Rights, the Statute of the International Criminal Court and the Resolution of UN Commission on Human Rights, 2005/59, on the Question of the Death Penalty and the debates and initiatives undertaken by civil society and other stakeholders on the question of the death penalty;

Recognizing that fourteen (14) African Union Member States have already abolished the death penalty and thirteen (13) others are exercising a moratorium on its application;

Recalling its resolution 79/XXXVIII/05 on the composition and operationalisation of the working group on the death penalty adopted at its 38th Ordinary Session to expand the composition of the Working Group to include two members of the Commission and five independent experts and to broaden its mandate;

1. **DECIDES TO** increase the number of independent experts to six (6) in order to adequately represent the different geographical sub-regions, legal systems as well as gender;
2. **APPOINTS** the following members as experts:
 - ✓ Ms. Alya Cherif Chammari (Tunisia)
 - ✓ Ms. Alice Mogwe (Botswana)
 - ✓ Mr. Mactar Diallo (Senegal)
 - ✓ Prof. Philip Francis Iya (Uganda)
 - ✓ Prof. Carlson E Anyangwe (Cameroon)
 - ✓ Prof. Mohamed S. El-Awa (Egypt)
3. **REQUESTS** the African Union to provide adequate resources, assistance and support in the implementation of this Resolution.
4. **CALLS UPON** other partners to provide further assistance to the Working Group to fulfil its mandate.

102. ACHPR/Res.102(XXXX)06: RESOLUTION ON THE SITUATION IN DARFUR

The African Commission on Human and Peoples' Rights, meeting in its 40th Ordinary Session held in Banjul, The Gambia, from 15 to 29 November 2006,

Being aware of the grave human rights situation prevailing in the Darfur Region of Sudan since February 2003;

Recalling its Resolutions *ACHPR /Res.68 (XXXV) 04, ACHPR /Res.74 (XXXVII) 05 and ACHPR/Res.93 (XXXVIII) 05* on the human rights situation in Darfur;

Noting with concern the human rights violations perpetrated by the parties to the conflict against the civilian populations, internally displaced persons in Darfur, and refugees who fled from Darfur;

Expressing satisfaction at the conclusion of the Darfur Peace Agreement in Abuja, Nigeria, in May, 2006;

Noting with regret the failure by some parties to the conflict to sign the Darfur Peace Agreement;

Concerned at the resurgence of the fighting and the violations of the human and peoples' rights of the civilian populations and the internally displaced persons in Darfur, and the deterioration of the humanitarian situation, in particular, the problems faced by humanitarian agencies in the Darfur;

Commending the agreement reached between the United Nations Secretary General, the African Union and the Government of the Republic of Sudan in Addis Ababa, Ethiopia, on 16 November 2006, on the logistical, financial support and the deployment of a joint United Nations/African Union Peacekeeping Operation in the Darfur;

Expressing satisfaction at the measures taken hitherto by the African Union Mission in Sudan to monitor the peace and protect the internally displaced persons and civilian populations in the Darfur, in spite of material and logistical constraints;

- 1. CONDEMNS** the attacks on the civilian populations, the personnel of the African Union Mission in Sudan, and attacks suffered by humanitarian agencies perpetrated by various parties to the conflict;
- 2. URGES** those parties to the conflict which have not done so, to sign the Darfur Peace Agreement and cease the armed conflict;
- 3. URGES** the Government of the Republic of Sudan to implement the terms agreed to in Addis Ababa on 16 November 2006 for the deployment of a joint United Nations/African Union Peacekeeping force in the Darfur without further delay;
- 4. COMMENDS** the African Union Mission in Sudan for the work it is doing in the Darfur, and recommends it to continue with its efforts towards the resolution of the conflict in the Darfur;
- 5. URGES** the Government of Sudan to acknowledge the 2004 Report of the African Commission Mission to the Darfur and submit its response to the African Commission.

**103. ACHPR/Res.103(XXXX)06: RESOLUTION ON THE SITUATION OF WOMEN
IN THE DEMOCRATIC REPUBLIC OF CONGO**

The African Commission on Human and Peoples' Rights, meeting in its 40th Ordinary Session held in Banjul, The Gambia, from 15 - 29 November 2006,

Considering the armed conflicts which have been affecting the Democratic Republic of Congo since 1996 and which have ushered in a climate of insecurity and violence, particularly for women;

Noting the recent promulgation of two laws relating to sexual violence in the Democratic Republic of Congo;

Concerned by the fact that the Government of the Democratic Republic of Congo has not yet ratified the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*;

Concerned by the widespread and systematic nature of sexual violence and other forms of violence against women in the Democratic of Congo;

Concerned by the impunity enjoyed by the perpetrators of sexual violence committed against women;

Concerned by the incapacity of the Police Authorities of the Democratic Republic of Congo to guarantee the right to life, to physical integrity and the security of women by preventing crimes and arresting the perpetrators;

Conscious of the difficulties of obtaining evidence inherent in the indictment and legal proceedings for crimes of sexual violence before national and international criminal courts;

Concerned by the complaints alleging collective rape by organised gangs against young girls in Kinshasa which have been brought to the attention of the Commission;

Concerned also by the allegations of collective rape committed by the Agents of the National Armed Forces which have been brought to the attention of the Commission;

Noting that an urgent appeal pertaining to the security of the young girls in Kinshasa had been issued in July 2006 by the Special Rapporteur on the Rights of Women in Africa to the President of the Democratic Republic of Congo and that the same had not been responded to;

Noting also the letters of allegation and the urgent appeals sent by the United Nations Special Rapporteurs concerning the cases of sexual abuse in the Democratic Republic of Congo;

Concerned by the spread of the HIV/AIDS virus among the women victims of sexual violence;

1. **URGES** the Government of the Democratic of Congo to take the necessary measures to guarantee the security of young girls and women in the entire country;
2. **CALLS ON** the Government of the Democratic Republic of Congo to ratify the Protocol to the African Charter on Human and Peoples' Rights relative to the Rights

of Women in Africa and to take measures for the harmonisation of its national laws with the Protocol;

3. **ENCOURAGES** the Government of the Democratic Republic of Congo to facilitate the effective implementation of the new law on sexual violence;
4. **URGES** the Government of the Democratic Republic of Congo to grant the necessary resources to the Police Force to enable it prevent and control the acts of sexual violence;
5. **URGES** the Government of the Democratic Republic of Congo to ensure that medical and psychological assistance is provided to the women victims of sexual violence;
6. **CALLS ON** the Government of the Democratic Republic of Congo to initiate action towards the sensitisation and the education of the population on the causes and consequences of the HIV/AIDS virus, particularly by supporting the initiatives of civil society in this area;
7. **RECOMMENDS** that the Special Rapporteur on the Rights of Women in Africa undertakes a mission to promote the fundamental human rights of women in the Democratic Republic of Congo.



104. *ACHPR/Res.104(XXXI)07: RESOLUTION ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN AFRICA*

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 41st Ordinary Session in Accra, Ghana, from 16 - 30 May 2007:-

Recalling the various human rights protection instruments, particularly the United Nations Declaration on Human Rights Defenders, the Grand Bay Declaration and Plan of Action, the Kigali Declaration, and the Principles and Guidelines on the Right to a Fair Trial and Legal Aid in Africa,

Also Recalling the obligations of States Parties to the African Charter on Human and Peoples' Rights (the African Charter) and to other regional and international human rights instruments for the protection of human rights, more especially, the obligation to guarantee the security of persons living in their own country, the freedoms of assembly association, and expression of human rights defenders, and their right to take part in the management and conduct of the public affairs of their countries,

Deeply Concerned by the situation of human rights defenders within the States Parties to the African Charter, who--as a result of their activities--have suffered multiple violations of their basic rights such as arbitrary arrests, illegal detentions, acts of torture, inhuman and degrading treatment, extra-judicial killings, lack of the right to counsel, and the refusal of medical care and food during the period of their detention,

Recognizing the insecurity that often characterizes post-election periods in Africa, more especially, as it affects human rights defenders, especially during election campaigns which take place in African countries:

1. **Urges** all States Parties to the African Charter to fulfill all their obligations as stipulated in the Charter, in the Principles and Guidelines on the Right to a Fair Trial and Legal Aid in Africa, in the United Nations Declaration on Human Rights Defenders, in the Grand Bay Declaration, in the Kigali Declaration, as well as in the other international and regional instruments to which they are parties;
2. **Urges** States Parties to take all the necessary measures to ensure the protection of all human rights defenders and ensure that they have an environment which allows them to carry out their activities safely, without suffering any acts of violence, threats, reprisals, discrimination, pressure and any arbitrary acts by State or non-State actors as a result of their human rights activities;
3. **Recommends** that States Parties to the Charter should take specific measures to ensure the physical and moral integrity of their peoples, especially those of human rights defenders, to enable the latter to fully play their role in the promotion and protection of human rights especially during election periods.

105.ACHPR/Res.105(XXXXI)07: RESOLUTION ON THE PREVENTION AND PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 41st Ordinary Session in Accra, Ghana, from 16 to 30 May 2007:-

Considering the provisions of the African Charter on Human and Peoples' Rights which mandates the African Commission to promote human and peoples' rights and ensure their protection in Africa,

Bearing In Mind Article 5 of the Universal Declaration of Human Rights which stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and that torturing a human being is an affront to human dignity and remains a crime under international law,

Recognising that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is also affirmed in Article 7 of the International Covenant on Civil and Political Rights, in the United Nations Convention against Torture (UNCAT), and, in particular, in the relevant regional instruments such as the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the Protocol to the African Charter on Human and Peoples' Rights on the Right of Women in Africa,

Recalling the African Commission's Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), adopted at its 32nd Ordinary Session held in Banjul, The Gambia, from 17 to 23 October 2002, and the African Commission's continuous work towards the implementation of the Resolution by States Parties,

Further Recalling the Robben Island Guidelines and measures for the prohibition and prevention of torture and other cruel, inhuman or degrading treatment or punishment in Africa, which were endorsed by the 2nd Ordinary Session of the Assembly of Heads of States and Government of the African Union, held from 4 to 12 July 2003 in Maputo, Mozambique,

Recalling Also that the Robben Island Guidelines impose obligations on States to take measures to prevent torture, combat impunity and create mechanisms of oversight,

Considering Further that African States have recognised the absolute need to take concrete measures to further the implementation of existing provisions on the prohibition of torture and cruel, inhuman or degrading treatment or punishment, especially as enshrined in Article 5 of the African Charter on Human and Peoples' Rights, and in the Grand Bay Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa, on 16 April 1999, in Mauritius,

Noting that Articles 1 and 43 of the Robben Island Guidelines relate to the ratification of regional and international instruments, and invite States to ratify and implement the Optional Protocol to United Nations Convention Against Torture of 18 December 2002,

Deeply Concerned by the continued prevalence of acts of torture and other cruel, inhuman or degrading treatment or punishment in the region,

Further Recalling the Follow-up Committee to the Robben Island Guidelines set up by the African Commission, at its 32nd Ordinary Session held in Banjul, The Gambia, from 17 to 23 October 2002,

Affirming the importance of the Follow-up Committee to the Robben Island Guidelines established by the African Commission, and the Committee's determination to ensure full compliance by States,

Emphasizing the importance of African States to take action to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment:

1. **CALLS** on all States Parties to ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Optional Protocol thereto, of 18 December 2002, without reservations;
2. **URGES** States Parties to implement the Robben Island Guidelines and Measures, and to ratify all regional and international instruments dealing with the prevention of torture;
3. **FURTHER URGES** States Parties to criminalise and penalise all acts of torture, promote and support cooperation with international mechanisms, establish complaints and investigation procedures, establish and support training and awareness-raising programmes for enforcement agents ;
4. **REQUESTS** States Parties to cooperate with, and fully assist, the Follow-up Committee in the performance of its mandate;
5. **REQUESTS** States Parties, when they submit their Initial and Periodic Reports in compliance with Article 62 of the Charter, to inform the African Commission of the concrete measures that they are taking to implement and operationalise the Robben Island Guidelines.

106. ACHPR/Res.106(XXXVI)07: RESOLUTION ON THE RIGHTS OF OLDER PERSONS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 41st Ordinary Session in Accra, Ghana, from 16 to 30 May 2007:-

BEARING IN MIND the rapid rate at which the population of older persons is increasing throughout the world and that the most rapid increase is taking place in the developing world, with Africa alone projected to have between **204** and **210** million older persons by **2050**,

RECOGNIZING that, in Africa, the care and support by the family and community that were taken for granted in the past are declining because of changes in society associated with urbanization and development related programmes,

RECALLING the continental efforts to address the challenges resulting from an ageing population in Africa--which started at the **1999** Session of the Organization of African Unity (OAU)'s Labour and Social Affairs Commission held in Windhoek, Namibia,

CONSIDERING the African Union Policy Framework and Plan of Action on Ageing (the African Union Policy Framework), which was first considered and adopted during the 25th Ordinary Session of the OAU Labour and Social Affairs Commission in Ouagadougou, Burkina Faso, in April 2002, and subsequently received final approval during the 38th Ordinary Session of the Assembly of Heads of State and Government in Durban, South Africa,

RECALLING the African Union Policy Framework in which "*States Parties recognized the fundamental rights of older persons and committed themselves to abolishing all forms of discrimination based on age*" and undertook "*to ensure that the rights of older persons are protected by appropriate legislation, including the right to organize themselves in groups and the right to representation in order to advance their interest,*"

NOTING that the International Plan of Action agreed upon in Madrid, Spain, during the Second World Assembly on Ageing in **April 2002**, borrowed significantly from the African Union Policy Framework, thereby, outlining the concerns of Africa's older persons,

RECALLING FURTHER that the African Union Member States undertook, *inter alia*, to ensure that the needs and rights of older persons are integrated into all existing and new policies in all sectors, and to enact legal provisions that promote and strengthen the role of the family and the community in the care of its older members,

CONSIDERING Article 18(4) of the African Charter on Human and Peoples' Rights which stipulates that: "The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs,"

FURTHER CONSIDERING Article 22 of the Protocol to the African Charter on the Rights of Women in Africa, which provides for special protection of elderly women and stipulates that "*The States Parties undertake to: provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training; ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age, and the right to be treated with dignity,*"

HAVING CONSIDERED paragraph 20 of the Kigali Declaration which "*calls upon States Parties to develop a Protocol on the protection of the rights of people with disabilities and the elderly,*"

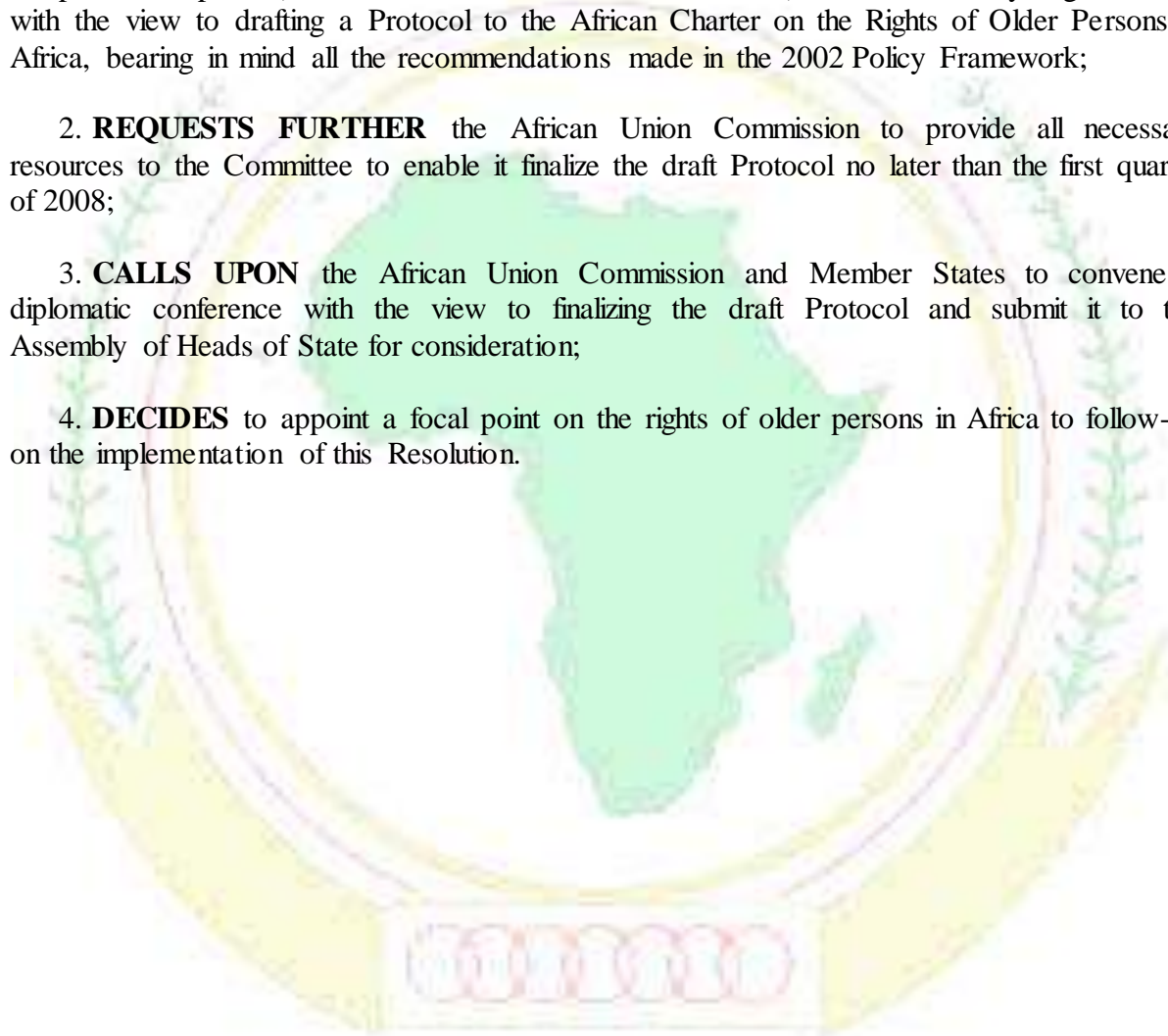
CONVINCED that only a Protocol to the African Charter on Human and Peoples' Rights on the rights of older persons in Africa ratified by all African Union Member States would ensure compliance of State Parties with the recommendations contained in the AU Policy Framework and Plan of Action on Ageing:

1. **REQUESTS** the African Union Commission to convene without delay a Committee of Experts composed of Members of the African Commission on Human and Peoples' Rights, independent experts (from the African Union Member States), and civil society organizations, with the view to drafting a Protocol to the African Charter on the Rights of Older Persons in Africa, bearing in mind all the recommendations made in the 2002 Policy Framework;

2. **REQUESTS FURTHER** the African Union Commission to provide all necessary resources to the Committee to enable it finalize the draft Protocol no later than the first quarter of 2008;

3. **CALLS UPON** the African Union Commission and Member States to convene a diplomatic conference with the view to finalizing the draft Protocol and submit it to the Assembly of Heads of State for consideration;

4. **DECIDES** to appoint a focal point on the rights of older persons in Africa to follow-up on the implementation of this Resolution.



107. ACHPR/Res.107(XXXI)07: RESOLUTION ON THE OPERATIONALIZATION OF THE “UNITED NATIONS -AFRICAN UNION COOPERATION: FRAMEWORK FOR THE TEN-YEAR CAPACITY BUILDING PROGRAMME FOR THE AFRICAN UNION”

The African Commission on Human and Peoples’ Rights (the African Commission), meeting at its 41st Ordinary Session in Accra, Ghana, from 16 - 30 May 2007:-

Recalling the signing, on 16 November 2006, of a Declaration on “Enhancing UN-AU Cooperation Framework for the Ten-Year Capacity Building Programme for the African Union” (the Framework), by H. E. Kofi Annan, former Secretary General of the United Nations, and H. E. Alpha Oumar Konare, Chairperson of the Commission of the African Union,

Noting that the Framework covers all aspects of the cooperation between the UN and the AU, including human rights, the rule of law, and assistance in institution-building,

Conscious of the fact that the African Commission on Human and Peoples’ Rights is one of the principal organs of the African Union responsible for the promotion and protection of human and people rights in Africa,

Noting the centrality of human and peoples’ rights in the promotion of peace, stability, good governance and sustainable development,

Recognising the necessity to enhance the capacity of the African Commission to enable it effectively discharge its mandate,

Cognizant of the importance of an effective African Commission in the promotion of human rights, the rule of law, peace, and good governance in Africa:

1. **Urges** the Secretariat of the United Nations and the Commission of the African Union to take the necessary measures to ensure the operationalization of the Framework;
2. **Further Urges** the Commission of the African Union to ensure that the operationalization of the Framework addresses the needs of the African Commission in the field of capacity building, and provides it with adequate resources as soon as possible;
3. **Decides** to create a focal point to follow-up on this matter.

108. ACHPR/Res.108(XXXXI)07: RESOLUTION REITERATING THE IMPORTANCE OF COMPLIANCE WITH REPORTING OBLIGATIONS UNDER THE AFRICAN CHARTER

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 41st Ordinary Session in Accra, Ghana, from 16 – 30 May 2007:-

Recalling that Article 62 of the African Charter on Human and Peoples' Rights (the African Charter) provides that "Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter,"

Recalling further its recommendation on Periodic Reports, in which it requested the Assembly of Heads of State and Government of the African Union (AU) then Organisation of African Unity (OAU) to entrust it with the mandate to examine the periodic reports of States submitted under Article 62 of the African Charter, taken at its 3rd Ordinary Session held from 18 – 28 April 1988 in Libreville, Gabon,

Considering that the Assembly of Heads of State and Government of the AU (the Assembly) at its 24th Ordinary Session, authorised the African Commission to examine State Reports submitted in accordance with Article 62 of the African Charter,

Recalling the African Commission's adoption, at its 4th Ordinary Session in October 1991, of the "Guidelines for States Periodic Reports," in which it outlined the form and content of periodic reports that States Parties are required to submit pursuant to Article 62 of the Charter,

Concerned that a large number of States Parties to the African Charter continue to lag behind in their reporting obligations under Article 62 of the African Charter,

Recalling further the African Commission's decision in November 1995 in which it recommended to States Parties to combine several overdue reports in one report with a view to facilitating compliance with the reporting obligation,

Reaffirming that all States Parties have the duty to fulfil the obligations they have undertaken under the African Charter,

Noting that, by its Resolution AHG/Res. 198 (XV), the 30th Ordinary Session of the Assembly of the AU (1994) reaffirmed the need for Member States to take concrete measures towards the effective implementation of the provisions of the African Charter,

Convinced that compliance by States Parties with their obligations under the African Charter and with the recommendations of the African Commission will enhance the work of the Commission, improve the conditions of the population under their jurisdiction, and contribute to the promotion of the rule of law in Africa,

Recognising that the promotion and protection mandate of the African Commission will not be achieved without the co-operation of State Parties:

1. **Congratulates** the following States Parties to the African Charter; which have complied and are up-to-date with their reporting obligations under Article 62 of the African Charter and encourages them to continue in the same way: Algeria, Cameroon, Central African Republic, Libya, Mauritania, Nigeria, Kenya, Rwanda,

Seychelles, South Africa, Uganda, Zambia, and Zimbabwe,

2. **Urges** the following States Parties to the African Charter, which have never submitted any Periodic Report to the African Commission since its inception, to honour their obligations under the African Charter to submit and present their respective Initial and/or Periodic Reports without any further delay: Angola, Botswana, Comoros, Cote d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Guinea Bissau, Liberia, Madagascar, Malawi, Sao Tome and Principe, Sierra Leone, and Somalia,.
3. **Encourages** the following States Parties to the African Charter, which have submitted one or more Periodic Reports but still owe more reports, to submit their respective reports without any delay: Benin, Burkina Faso, Burundi, Cape Verde, Chad, Congo-Brazzaville, Democratic Republic of Congo, Egypt, Gambia, Ghana, Guinea, Lesotho, Mali, Mauritius, Mozambique, Namibia, Niger, Saharawi Arab Democratic Republic, Senegal, Sudan, Swaziland, Tanzania, Togo, and Tunisia,
4. **Decides** to submit, at every session of the Assembly, an updated report and list of States Parties to the African Charter that continue to default in their reporting obligations;
5. **Requests** all States Parties to the African Charter to endeavour to comply with the provisions of the African Charter and the recommendations of the African Commission;
6. **Calls on** the Assembly to urge those Member States who owe reports under Article 62 of the African Charter to submit the same to the African Commission;
7. **Requests** the Assembly to monitor closely the implementation of this Resolution.

109. ACHPR/Res.109(XXXI)07: RESOLUTION ON THE SITUATION IN SOMALIA

The African Commission on Human and Peoples' Rights, (the African Commission), meeting at its 41st Ordinary Session in Accra, Ghana, from 16 to 30 May 2007:-

CONSIDERING that the Democratic Republic of Somalia is party to the African Charter on Human and Peoples' Rights, and has adopted and domesticated the basic international and regional human rights and humanitarian instruments,

BEARING IN MIND Somalia's obligations under the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the UN Declaration on Human Rights Defenders), particularly to ensure the rights of human rights defenders to assemble, associate, express themselves, participate in the government of the country, and the conduct of public affairs,

BEING AWARE of the grave human rights and humanitarian law violations that continue to prevail as a result of the civil war in Somalia for the past 16 years,

NOTING WITH CONCERN the recent human rights violations perpetrated by all parties to the conflict against the civilian populations, internally displaced people in Somalia, women, children, older persons, people with disability, and human rights defenders,

DEEPLY CONCERNED by the recent events in which human rights defenders have been subjected to arbitrary arrests, detention, torture, inhuman and degrading treatment, denial of access to medical treatment and food while in custody, and extra-judicial executions,

DEPLORING the continued human rights and humanitarian crisis caused in the course of the last seventeen (17) years in Somalia by all parties to the conflict,

NOTING that the continued harassment and intimidation of human rights defenders in Somalia, including journalists, affects the free flow of information and has completely silenced the voices of the frontline human rights defenders,

NOTING FURTHER that the closing of borders to Somalia's refugees, displaced people, and asylum seekers constitutes a gross violation of human rights:

1. **WELCOMES** the installation of the internationally recognized Transitional Federal Government of Somalia;
2. **FURTHER WELCOMES** the decision of the African Union Member States to deploy peacekeeping forces to build and maintain peace and security in Somalia;
3. **APPEALS** to neighbouring countries to reopen their borders to asylum seekers from Somalia, to facilitate the humanitarian assistance, and to ensure the protection of refugees;
4. **URGES** all parties to comply with their obligations under the African Charter on Human and Peoples' Rights, the UN Declaration on Human Rights Defenders, and other international human rights and humanitarian law instruments, and **CALLS**

UPON all parties involved in the Somali conflict to desist from harassing, intimidating, arresting and detaining human rights defenders;

5. **APPEALS** to the international community to provide necessary assistance to the refugees, internally displaced persons and asylum seekers;
6. **CALLS UPON** the African Union and the international community to urgently provide required financial and material assistance towards the deployment of the African Union peace keeping forces in Somalia, in order to maintain peace and security in the country and ensure that the withdrawal of the Ethiopian troops--allied to the Transition Federal Government does not create a security vacuum;
7. **FURTHER CALLS UPON** the African Union to encourage the Transitional Federal Government of Somalia to initiate dialogue among all the factions, including the Union of Islamic Courts, taking into account the security concerns of neighbouring countries, with a view to achieve reconciliation and a lasting solution to the problem;
8. **URGES** the Transitional Federal Government to implement the recommendations contained in this resolution.



110. ACHPR/Res.110(XXXXI)07: RESOLUTION ON THE HEALTH AND REPRODUCTIVE RIGHTS OF WOMEN IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 41st Ordinary Session in Accra, Ghana, from 16 to 30 May 2007:-

Recalling the entry into force of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (the Protocol) on 25 November 2005,

Noting that only twenty (20) State Parties to the *African Charter on Human and Peoples' Rights* have ratified the Protocol,

Considering the inherent difficulties in implementing the Protocol, notably those regarding its domestication, as well as harmonisation of national laws with its content,

Recalling that Article 14 of the Protocol specifically protects the health and reproductive rights of women;

Concerned that female genital mutilation is a harmful practice which affects the reproductive health of women and continues to exist in some countries in spite of legislation outlawing it;

Further Concerned about the disproportionate impact of the HIV and AIDS pandemic on women, especially on the African continent;

Concerned Also about the problems relating to reproductive health care and the quality of services available to women in Africa, including the inability of existing healthcare institutions to provide adequate pre post-natal care for mothers and babies (especially in cases of complications), the high rate of maternal mortality in a number of African countries, and the prohibition of abortion except where necessary to save the woman's life:

1. **Congratulates** States which have ratified the Protocol, and urges them to take all the necessary measures to domesticate and harmonize their national laws in order to give full effect to the rights enshrined in the Protocol;
2. **Urges** States which have not yet ratified the Protocol to do so promptly and without reservations;
3. **Further Urges** States to protect the health and reproductive rights of women as stipulated in the Protocol;
4. **Congratulates** States which have adopted laws prohibiting female genital mutilation, and encourages them to implement specific programs to create awareness in all sectors of society and ensure eradication of this harmful traditional practice;
5. **Urges** those States that have not yet outlawed female genital mutilation to do so without delay;
6. **Calls On** States to take appropriate measures to protect women from sexually transmitted diseases, including HIV and AIDS;
7. **Requests** States to reduce the maternal mortality rate and to take adequate measures to provide effective access for women to reproductive health services, including access to lawful medical abortion in accordance with the Protocol.

111. ACHPR/Res.111(XXXII)07: RESOLUTION ON THE RIGHT TO A REMEDY AND REPARATION FOR WOMEN AND GIRLS VICTIMS OF SEXUAL VIOLENCE

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR), meeting at its 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15 - 28 November 2007;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Bearing in mind that the right to a remedy and reparation is notably affirmed by: Article 25 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; Article 8 of the Universal Declaration of Human Rights; Article 2 of the International Covenant on Civil and Political Rights; Article 39 of the Convention on the Rights of the Child; and Articles 68 and 75 of the Rome Statute of the International Criminal Court;

Deploring all forms of sexual violence against women and girls;

Considering that rape in times of conflicts has been categorised as a crime against humanity and as a war crime in the founding statutes of the International Criminal Tribunal for the former Yugoslavia (Art 5 (g)), of the International Criminal Court (Arts 7 and 8) and of the Special Court for Sierra Leone (Art 2(g)); and considering furthermore that the International Criminal Tribunal for Rwanda has qualified rape in conflict situations as an act of genocide case No. ICTR- 96-4-T (Sept 1998) and the International Criminal Tribunal for the former Yugoslavia classified rape as amongst the most serious crimes of war by defining it as a breach of the Geneva Conventions in case No.IT-94-1-T (May 1997);

Reaffirming its Resolution ACHPR/Res.103 (XXXX) 06 on the Situation of Women in the Democratic Republic of Congo, adopted during its 40th Ordinary Session held in Banjul, The Gambia, on 29 November 2006;

Recalling the United Nations' Security Council Resolution 1325 (2000) on Women, Peace and Security;

Recalling also the provisions of the Fourth Geneva Convention on the protection of civilians in armed conflicts;

Recalling furthermore the United Nations' General Assembly Resolution A/RES/60/147 adopting 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' in March 2006;

Noting with great concern the prevailing impunity for the perpetrators and accomplices of crimes of sexual violence and emphasising that a culture of impunity encourages the commission of such crimes;

Taking into consideration the legal and practical obstacles existing in many countries and preventing victims of sexual violence in particular in times of conflict, from accessing their rights to truth, justice and reparation, notably the lack of adequate training on sexual violence issues for actors of the judiciary and the lack of information on services and access to justice for victims;

Concerned by the extent of physical and psychological trauma that women and girls victims face as a result of sexual violence and by the necessity for them to receive adequate and accessible health care, including psychological support;

Acknowledging the civil society initiative creating the 'Nairobi Declaration of the Right to A Remedy and Reparation for Women and Girls Victims of Sexual Violence', which provides guiding principles

for the implementation of programmes intended to achieve reparation for crimes of sexual violence perpetrated in times of conflicts;

Convinced that participation of women at all stages of creation and implementation of reparation programmes is necessary to ensure efficient programmes and to achieve sustainable peace;

The African Commission on Human and Peoples' Rights:

13. **CONDEMNS** all forms of sexual violence against women and girls;

14. **URGES** States Parties to the African Charter on Human and Peoples' Rights to:

- Criminalise all forms of sexual violence, ensure that the perpetrators and accomplices of such crimes are held accountable by the relevant justice system;
- Ensure that police and military forces, as well as all the members of the judiciary receive adequate training on the principles of international humanitarian law, women's rights and the children's rights;
- Identify the causes and consequences of sexual violence and to take all necessary measures to prevent and eradicate it;
- Develop campaigns to raise public awareness on existing remedies for cases of sexual violence;
- Put in place efficient and accessible reparation programmes that ensure information, rehabilitation and compensation for victims of sexual violence;
- Ensure that victims of sexual violence have access to medical assistance and psychological support;
- Ensure participation of women in the elaboration, adoption and implementation of reparation programmes;
- Ratify without reservations and ensure the effective implementation of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* and the *Convention on the Elimination of All Forms of Discrimination against Women* as well as its Optional Protocol;
- Ratify the *Protocol to the African Charter on Human and Peoples' Rights on Establishing an African Court on Human and Peoples' Rights* and make a declaration according to Article 34(6) of this Protocol, and ratify as well the *Rome Statute of the International Criminal Court*.

112. ACHPR/Res.112(XXXII)07: RESOLUTION ON THE RENEWAL OF THE MANDATE AND THE APPOINTMENT OF THE SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN IN AFRICA

The African Commission, meeting at its 42nd Session which was held from 15th to 28th November 2007 in Brazzaville, Republic of Congo:

Recalling its Resolution ACHPR/Res.38 (XXV) 99, adopted at the 25th Ordinary Session, held from 26th April to 5th May 1999 in Bujumbura, Burundi, establishing the special Mechanism on the Rights of Women in Africa and appointing Julienne Ondziel Gnelenga as Special Rapporteur;

Recalling also Article 18(3) of the African Charter on Human and Peoples' Rights; Recalling also Resolutions: ACHPR/Res. (XXX) 01, passed at its 30th Ordinary Session which was held from 17th to 27th October 2001 in Banjul, The Gambia, by which it had appointed Commissioner Angela Melo Special Rapporteur on the Rights of Women in Africa; ACHPR/Res. 63 (XXXIV) 03, adopted at its 34th Ordinary Session held in Banjul, The Gambia, from 6th to 20th November 2003; and ACHPR/Res. 78 (XXXVIII) 05, adopted at its 38th Ordinary Session, held from 21st November to 6th December 2005 in Banjul, The Gambia, renewing Commissioner Melo's mandate for a period of two years;

Appreciative of the major task accomplished by Commissioner Melo as Special Rapporteur on the Rights of Women in Africa;

Considering that Commissioner Melo's mandate has now expired;

Taking into consideration that Commissioner Melo had been elected to the post of Vice-Chairperson of the Commission;

Recognizing the numerous challenges that Women continue to face on the African Continent in the struggle for recognition of their human rights:-

- DECIDE to appoint Commissioner Soyata Maiga as Special Rapporteur on the Rights of Women in Africa for a period of two years;
- CALLS ON the State Parties to the Charter to take the necessary measures to guarantee support for the Special Rapporteur in the execution of her duties.

113. ACHPR/Res.113(XXXII)07: RESOLUTION ON THE RENEWAL OF THE MANDATE AND THE APPOINTMENT OF THE CHAIRPERSON OF THE WORKING GROUP ON THE DEATH PENALTY

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR), meeting at its 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15 - 28 November 2007;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution ACHPR/Res.42 (XXVI) 99, adopted at its 26th Ordinary Session held at Kigali, Rwanda, urging States Parties to envisage a moratorium on the death penalty.

Recalling the decision of African Commission at its 37th Ordinary Session to appoint two Commissioners to work with the Special Rapporteur on Prisons and Conditions of Detention in Africa, to elaborate a concept paper on the Question of the Death Penalty in Africa;

Considering the trends in international law which encourage the abolition of the death penalty, in particular, the 2nd Optional Protocol to the International Covenant on Civil and Political Rights, the Statute on the International Criminal Court and the Resolution of the UN Commission on Human Rights, 2005/59, relating to the Death Penalty, the practices adopted by the States Parties to the UN Charter, and the debates and initiatives undertaken by civil society and other stakeholders on the question of the death penalty;

Recognizing that sixteen (16) State Parties to the African Charter have already abolished the death penalty, and thirteen (13) others have placed a moratorium on its application;

Recalling its Resolution 79/XXXVIII/05 on the Composition and Operationalisation of the Working Group on the Death Penalty adopted at its 38th Ordinary Session to expand the composition of the Working Group to include two members of the Commission and five independent experts and to broaden its mandate;

Noting that the term of office of one of the members of the Commission, Mr. Yasser Sid Ahmed El Hassan, who served as the Chairperson of the group, has come to an end;

Decides to appoint Commissioner Kayitesi Zainabo Sylvie as Chairperson, for a period of two years, starting on 28 November 2007

Appoints Commissioner Bahame Tom Mukirya Nyanduga, as well as the following experts, as members :

- ✓ Ms. Alya Cherif Chammari
- ✓ Ms. Alice Mogwe
- ✓ Mr. Mactar Diallo
- ✓ Prof. Philip Francis Iya
- ✓ Prof. Carlson E Anyangwe
- ✓ Prof. Mohamed S. El-Awa

Requests the African Union to provide adequate resources, assistance and support in the implementation of this Resolution;

Calls upon other partners to provide further assistance to the Working Group to fulfil its mandate.

114. ACHPR/Res.114(XXXII)07: RESOLUTION ON MIGRATION AND HUMAN RIGHTS

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR), meeting at its 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15 - 28 November 2007;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Considering that Sub-Saharan African countries are experiencing population movements by a number of different categories of people: workers, refugees and internally displaced persons (IDPs), of whom one third of the estimated 200 million migrants worldwide are from Africa, a third of all refugees, and about half the IDPs in the world, are within Africa;

Concerned that women constitute 47% of all migrants within sub-Saharan Africa and that women and children constitute 70% of the refugees and IDPs on the continent;

Considering the scope of the violations of the rights guaranteed by the African Charter on Human and Peoples' Rights surrounding the question of migration, namely violation of the right to life, the right to free movement of the person, the obligation to protect civilians, discriminations, etc.;

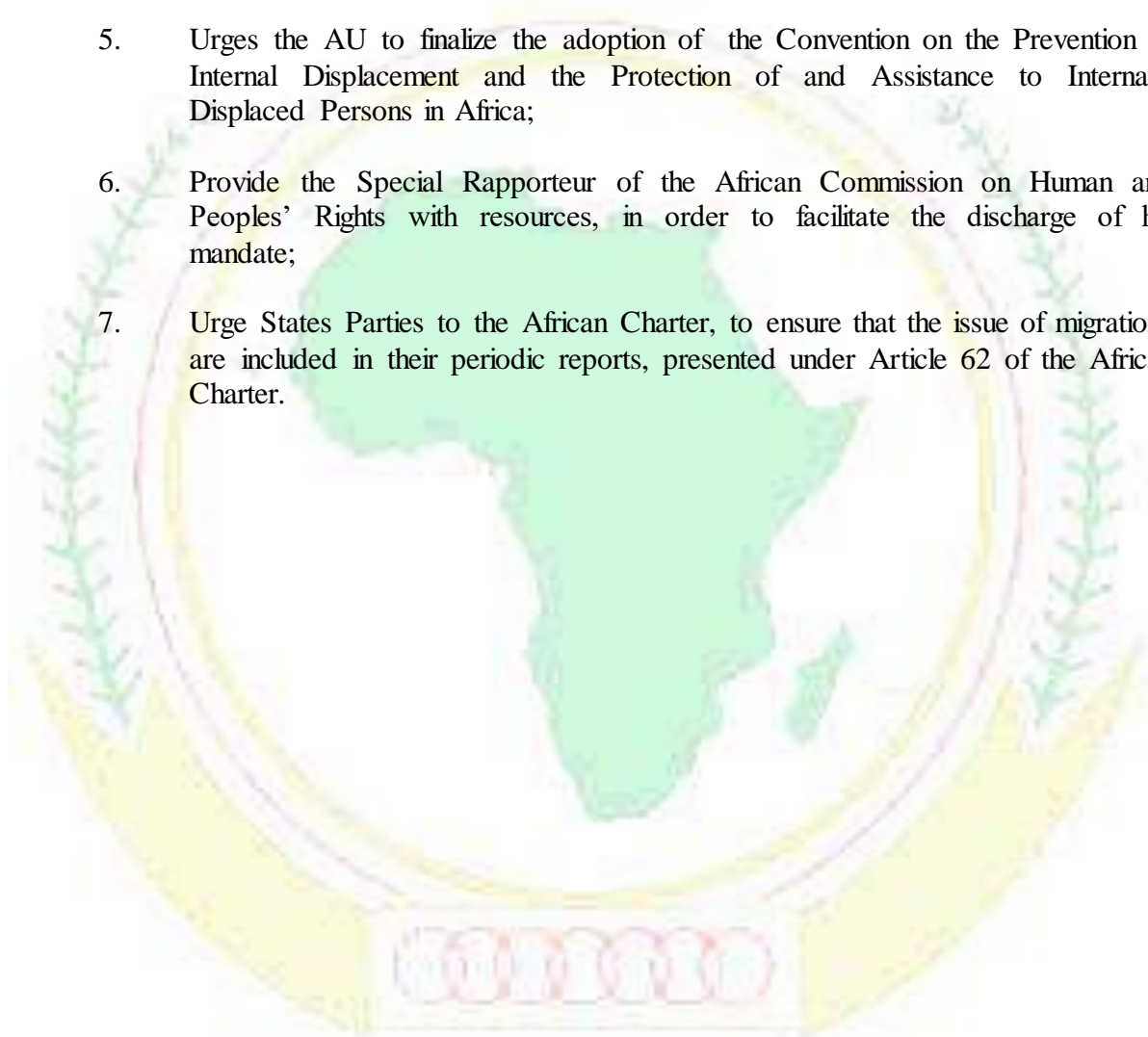
Recalling the appointment during the 34th Ordinary Session of the African Commission on Human and Peoples' Rights, of a Special Rapporteur on Refugees, Asylum Seekers and Internally displaced Persons in Africa, whose mandate was renewed during the 40th session, to cover migrant issues;

Recalling the experts' meeting organised by the African Union (AU), on migration and development in April 2006, in Algiers, and recalling the decision of the AU Executive Council held in January, 2007, calling for the organisation of a Special Summit on Refugees, Repatriated and Internally Displaced Persons in 2008;

Recommends to State Parties to the African Charter on Human and Peoples' Rights:

1. To recognize the importance of the human rights of all migrants, including refugees and IDPs, and to ensure that national legislation relating to migration issues is consistent with and does not conflict with international human rights standards and conventions;
2. Those States which have not done so, to ratify and implement the main regional and international instruments relating to migrants and refugees, in particular, the Geneva Convention relating to the Status of Refugees, the United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their families and the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa; implement the Protocol to the African Charter on the Rights of Women, as well as the UN Convention on the Elimination of All Forms of Discrimination Against Women and its Additional Protocol allowing individual complaints or communications, in order to respect the rights of migrant women;

3. To respect the principle of customary international law of *non-refoulement*, to make legal requirements for entering a territory more flexible, in order to take into account the needs for asylum seekers; to revoke the notion of “safe third country”; to strengthen institutional structures for addressing and managing individual asylum requests; to respect the right of asylum seekers to contest rulings on asylum status; and to improve the reception structures and processes of refugees seeking asylum;
4. Commend the States of the Great Lakes Region, for adopting the Peace Pact in December, 2006, in particular, Burundi, Rwanda and DRC, for ratifying the Peace Pact and urge other State Parties to ratify the Peace Pact;
5. Urges the AU to finalize the adoption of the Convention on the Prevention of Internal Displacement and the Protection of and Assistance to Internally Displaced Persons in Africa;
6. Provide the Special Rapporteur of the African Commission on Human and Peoples’ Rights with resources, in order to facilitate the discharge of his mandate;
7. Urge States Parties to the African Charter, to ensure that the issue of migrations are included in their periodic reports, presented under Article 62 of the African Charter.



115. ACHPR/Res.115 (XXXXII) 07: RESOLUTION ON THE RATIFICATION OF THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR) meeting at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling Article 13(1) of the African Charter which provides that every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law;

Welcoming the adoption, at the 8th Ordinary Session of the Assembly of Heads of State and Government of the African Union (AU), held in Addis Ababa, Ethiopia, of the *African Charter on Democracy, Elections and Governance* (the *Charter on Democracy*), on 30 January 2007;

Noting that, in accordance with Article 2(10) of the *Charter on Democracy*, its objectives include the promotion of "the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs";

Noting that only ten (10) AU Member States have signed the *Charter on Democracy* since its adoption in January 2007, and that there has been no ratification yet, thus delaying the Charter from entering into force;

Appeals to Member States to ratify the *African Charter on Democracy, Elections and Governance* to accelerate its coming into force.

116. ACHPR/Res.116(XXXXII)07: RESOLUTION ON THE RENEWAL OF THE MANDATE OF THE SPECIAL RAPPORTEUR ON REFUGEES, ASYLUM SEEKERS, INTERNALLY DISPLACED PERSONS AND MIGRANTS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR) meeting at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Aware that in the exercise of its mandate, the African Commission has established various thematic mechanisms for the promotion and protection of human and peoples' rights in Africa;

Recalling that at its 35th Ordinary Session held from 21 May - 4 June 2004 in Banjul, The Gambia, the African Commission adopted Resolution ACHPR/Res. 72(XXXV)04 providing for the establishment of the mechanism of Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons in Africa;

Cognisant of Resolution ACHPR/Res.72 (XXXVI) 04 adopted at Dakar during the 36th Ordinary Session which elaborated the mandate of the Special Rapporteur;

Recalling that at its 39th Ordinary Session held from 11 May to 25 2006 in Banjul, The Gambia, the African Commission adopted Resolution ACHPR/Res.95 (XXXIX)06 which extended the mandate of the Special Rapporteur to cover migration issues;

Noting with appreciation the accomplishments of the Special Mechanism's Rapporteur, Commissioner Bahame Tom Mukirya Nyanduga;

Considering the need to enable the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa to continue to carry out his mandate, and address urgent issues falling within this mandate;

1. Decides to renew the appointment of Commissioner Bahame Tom Mukirya Nyanduga as Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa for another period of two years, effective 28 November 2007;

2. Requests States Parties to the African Charter on Human and Peoples' Rights, and the African Union to extend their cooperation to the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, and to provide the Special Rapporteur with adequate resources to enable him to undertake his mandate.

117. ACHPR/Res.117(XXXII)07: RESOLUTION ON STRENGTHENING THE RESPONSIBILITY TO PROTECT IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR), meeting at its 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15 - 28 November 2007;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling the principles under the Constitutive Act of the African Union and the Protocol establishing the Peace and Security Council, which provides that the African Union shall intervene, to prevent, in situation of genocide, war crimes and crimes against humanity, in a Member State of the African Union;

Recalling the report of the International Commission on Intervention and State Sovereignty (ICISS) of 2001, which set the foundation for governmental and civil effort in achieving international consensus on the Responsibility to Protect;

Taking into account the common African position on the proposed reform of the United Nations, otherwise known as the "Ezulwini Consensus", where the African Union at its 7th Extraordinary Session of the Executive Council of 1- 8 March 2005, in Addis Ababa, Ethiopia, adopted the principle of Responsibility to Protect ;

Aware of the United Nations Summit Declaration of September 2005, whereby the international community expressed its determination to act where national authorities are unwilling or unable to protect their population from genocide, war crimes, ethnic cleansing and crimes against humanity;

Re-affirming the call made in the September 2005 United Summit Declaration for cooperation between the United Nations and regional organisations, to help protect populations from those grave threats;

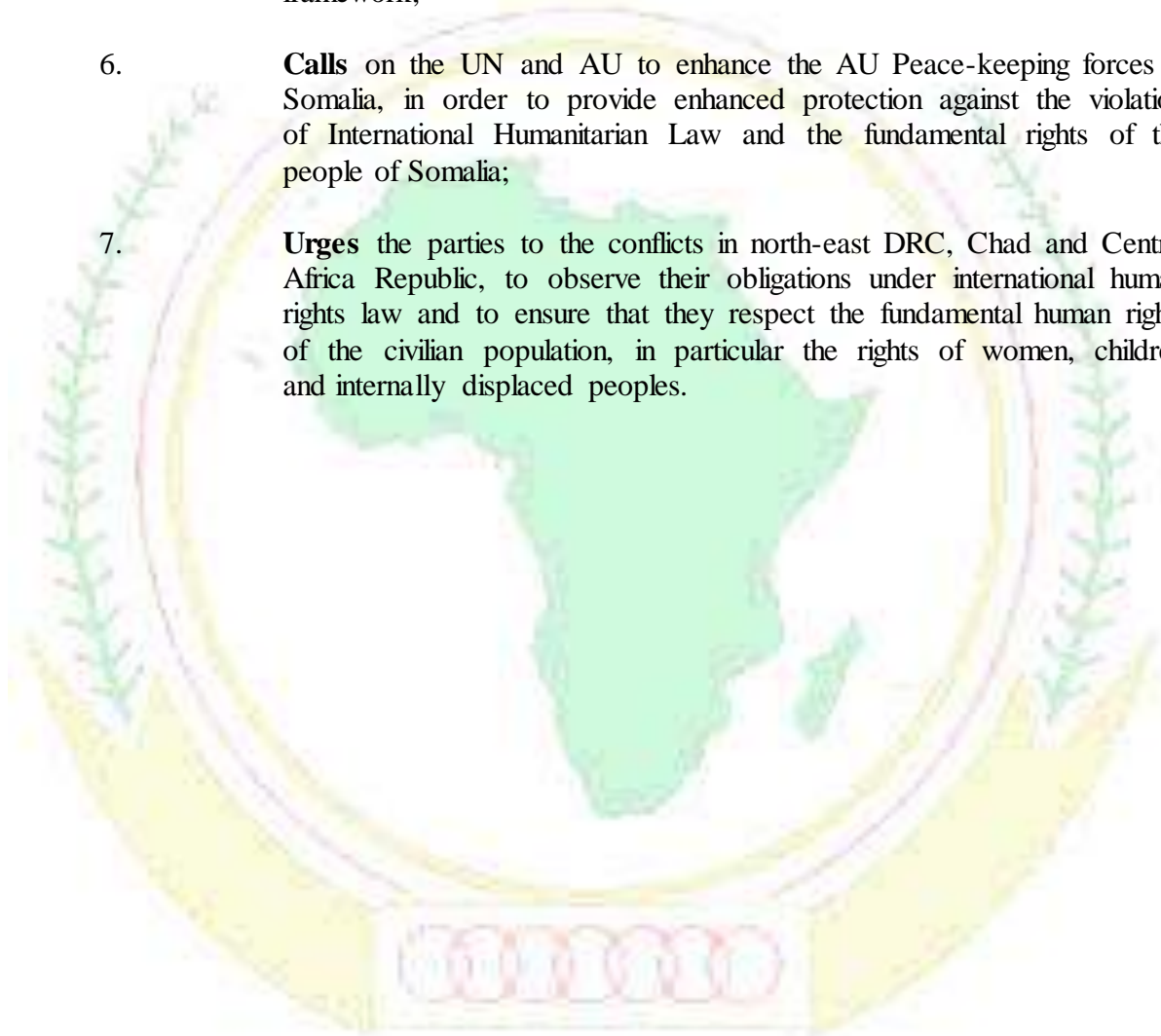
Deeply concerned that in the recent past, the international community has not responded quickly enough to situations of genocide, war crimes and crimes against humanity and the continued slow response to the allegations of genocide and crime against humanity;

Recalling the November 2006 Tripartite Decision between the Government of Sudan, the AU and the UN, in Addis Ababa, Ethiopia, to establish an AU / UN hybrid force operation in Darfur, in order to protect the civilian population in Darfur, Sudan;

Concerned that the re-emergence of the conflict in North East Democratic Republic of Congo and conflicts in Somalia, Chad and Central Africa Republic resulted in the violation of International Human Rights Law and the fundamental rights of the people of those counties:

1. **Commends** the States Parties to the African Charter, which have contributed troops to the African Union Mission in Sudan, AMIS, and the role of AMIS under difficult circumstances;
2. **Condemns** the armed rebel groups in the Darfur conflict for attacks on AMIS troops and the humanitarian relief agencies;

3. **Commends** the UN Security Council for its Resolution 1769 (2007) of 31st July, 2007, to establish the AU/UN Hybrid Operation in Darfur – UNAMID;
4. **Calls** on African States, African Union and the United Nations to expedite the operationalization of the UN-AU Hybrid operation in Darfur - UNAMID, by contributing troops to the said force;
5. **Calls** on all parties to the Darfur conflict to observe an immediate ceasefire and seriously pursue peace negotiation within the UN and AU framework;
6. **Calls** on the UN and AU to enhance the AU Peace-keeping forces in Somalia, in order to provide enhanced protection against the violation of International Humanitarian Law and the fundamental rights of the people of Somalia;
7. **Urges** the parties to the conflicts in north-east DRC, Chad and Central Africa Republic, to observe their obligations under international human rights law and to ensure that they respect the fundamental human rights of the civilian population, in particular the rights of women, children and internally displaced peoples.



118. *ACHPR/Res.118(XXXII)07*: RESOLUTION ON THE ESTABLISHMENT AND APPOINTMENT OF A FOCAL POINT ON THE RIGHTS OF OLDER PERSONS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR) meeting at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution of 30 May 2007 on the Rights of Older Persons in Africa, adopted at its 41st Ordinary Session held from 16-30 May 2007, in Accra Ghana;

Bearing in mind the African Union Policy Framework and Plan of Action on Ageing in which it is recommended that "*Member States recognize the fundamental rights of older persons and commit themselves to abolish all forms of discrimination based on age,*" and "*that they undertake to ensure that the rights of older persons are protected by appropriate legislation, including the right to organize themselves in groups and the right to representation in order to advance their interest*";

Considering Article 18(4) of the African Charter on Human and Peoples' Rights, which stipulates that "*the aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs*";

Recalling Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which highlights the special protection and needs of older women in Africa;

Considering also paragraph 20 of the **Kigali Declaration** adopted at the First African Union Ministerial Conference on Human Rights in Africa which "*calls upon State Parties to develop a Protocol on the Protection of the Rights of People with disabilities and the elderly*";

Convinced that a Protocol to the African Charter on Human and Peoples' Rights on the rights of older persons in Africa, ratified by all African Union Member States, will enhance compliance of State Parties with the recommendations contained in the AU Policy Framework and Plan of Action on Ageing:

Decides to establish a Focal Point on the Rights of Elderly Persons in Africa; and to appoint Commissioner **Yeung Kam John Yeung Sik Yuen** as the **coordinator** of the Focal Point, to be assisted by Commissioner Reine Alapini-Gansou, with Mr. Yaser Ahmad El-Hassan as an Expert.

Further decides that the Focal Point shall be tasked with the following mandate:

5. To liaise with the African Union Commission to convene an Experts Meeting composed of Members of the African Commission on Human and Peoples' Rights, Experts from the African Union Member States and civil society organizations, with a view to drafting a Protocol to the African Charter on the Rights of Older Persons in Africa, bearing in mind the recommendations in the 2002 Policy Framework;
6. To follow up with the African Union Commission, with a view to securing the resources required to enable the elaboration of the said Protocol;
7. To spearhead the process of drafting the Protocol for submission to the AU Policy Organs for, consideration and adoption as soon as possible.

119. ACHPR/Res.119(XXXII)07: RESOLUTION ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR) meeting at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling the human rights protection instruments, particularly the United Nations Declaration on human rights defenders, the Grand Bay Declaration and its plan of action the Kigali Declaration, the Principles and Guidelines on the right to a fair trial and legal aid in Africa;

Cognizant of the obligations of States Parties to the African Charter on Human and Peoples' rights and under other regional and international human rights instruments for the protection of human rights, more especially the obligation to guarantee the security of persons living in their own country, as well as freedoms of assembly, association, of expression of human rights defenders and their rights to take part in the management and conduct of the public affairs of their countries;

Deeply concerned by the situation of Human Rights Defenders in Africa within the States Parties to the African Charter on Human and Peoples Rights, particularly those who, as a result of their activities, suffer multiple violations of their basic rights such as arbitrary arrests, illegal detentions, acts of torture, inhuman and degrading treatments, extra-judicial killings, lack of the right to counsel and the refusal of medical care and food during the period of their detention;

4. **Urges** all States Parties to the African Charter on Human and Peoples Rights to fulfill all their obligations as stipulated in the African Charter on Human and Peoples' Rights, the Principles and Guidelines on the right to a fair trial and legal aid in Africa, the United Nations Declaration on Human Rights Defenders, the Grand Bay Declaration, Kigali Declaration as well as other international and regional instruments to which they are party and are bound to protect;
5. **Urges** States Parties to take all the necessary measures to ensure to all human rights defenders an environment conducive to carrying out their activities without fear of any acts of violence, threats, reprisals, discrimination, pressure and any arbitrary acts by State or non State actors as a result of their human rights activities;
6. **Recommends** that States take specific measures to ensure the physical and moral integrity of their peoples, especially those of human rights defenders, to enable the latter to fully play their role in the promotion and protection of human rights.

120. ACHPR/Res.120(XXXII)07: RESOLUTION ON THE RENEWAL OF MANDATE AND APPOINTMENT OF THE CHAIRPERSON AND MEMBERS OF THE FOLLOW-UP COMMITTEE ON THE IMPLEMENTATION OF THE ROBBEN ISLAND GUIDELINES

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR) meeting at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution ACHPR/Res.61 (XXXII)02 on the creation of the Follow-up Committee on the Implementation of the Robben Island Guidelines, adopted at its 32nd Ordinary Session from 17 - 23 October 2003 which took place in Banjul, The Gambia, and which also defined its mandate;

Recalling the Robben Island Guidelines and Measures for the prohibition and prevention of torture and other cruel, inhuman or degrading treatment or punishment in Africa which were endorsed by the Assembly of Heads of States and Government of the African Union in July 2002;

Further recalling Article 5 of the Universal Declaration of Human Rights (UDHR), Article 7 of the International Covenant on Civil and Political Rights (ICCPR) stipulating that no one shall be subjected to torture, inhuman or degrading treatment or punishment and Article 2 (1) and 16 (1) of the Convention Against Torture (CAT) calling upon each State to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction;

Noting with appreciation the accomplishment of the Follow-up Committee since the establishment of this mechanism;

Considering the necessity to allow the Follow-up Committee to continue to carry out its mandate and address urgent issues falling within this mandate;

Further considering that the mandate of the Chair of the Follow-up Committee, Commissioner Sanji Mmasenono Monageng came to an end on 28 November 2007;

Decides to appoint Commissioner Dupe Catherine Atoki as Chairperson of the Follow-up Committee for a period of two years effective 28 November 2007;

Further appoints the following experts as members for the same period of time:

- ✓ Mr Jean-Baptiste Niyizurugero – Vice Chairperson
- ✓ Mrs. Hannah Forster - member
- ✓ Ms. Leila Zerrougui – member
- ✓ Ms Karen McKenzie – member
- ✓ Mr Malick Sow - member

121. ACHPR/Res.121(XXXII)07: RESOLUTION ON THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR) meeting at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its decision to establish a Working Group to examine the issue of Indigenous Populations and advise it accordingly, at the 28th Ordinary Session, in Benin, Cotonou;

Recalling further its Resolution Ref. ACHPR/Res.65 (XXXIV) 03 on the adoption of the Report of the African Commission's Working Group on Indigenous Populations/Communities adopted at its 34th Ordinary Session held in Banjul, The Gambia from 6 – 20 November 2003;

Noting with appreciation the immense work done by the Working Group in articulating the African Commission's position on the rights of Indigenous Populations/Communities;

Recalling the Advisory Opinion it adopted at the 41st Ordinary Session held in Accra, Ghana in May 2007 calling on Member States of the African Union to adopt the United Nations Declaration on the Rights of Indigenous Peoples;

Noting with satisfaction the adoption of the United Nations Declaration on the Rights of Indigenous Peoples on 13 September 2007 by the UN General Assembly;

Noting further that no State Parties to the African Charter on Human and Peoples' Rights voted against this Declaration;

Recognizing further the importance of enhancing the effort to foster the values and implement the principles enshrined in this Declaration;

Now, therefore, resolves:

1. To adopt the Communiqué annexed hereto on the adoption of the United Nations Declaration on the Rights of Indigenous Peoples;
2. To have this Communiqué read out during the Closing Ceremony of the 42nd Ordinary Session; and
3. To have it widely publicized and distributed to all stakeholders including State Parties during and after the said Session.

122. ACHPR/Res.122(XXXII)07: RESOLUTION ON THE EXPANSION OF THE MANDATE AND RE-APPOINTMENT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Emphasizing that the right to freedom of expression and information is a fundamental human right guaranteed *inter alia* by Article 9 of the African Charter;

Underlining that Article 9 of the *African Charter* provides for every individual's right to express and disseminate his opinions within the law but also encompasses the right to receive information;

Recalling the adoption of the *Declaration of Principles on Freedom of Expression in Africa*, at its 32nd Ordinary Session held from 17 - 23 October 2002, in Banjul, The Gambia, which elaborates on the nature, content and extent of the right to freedom of expression and access to information provided for under Article 9 of the *African Charter*;

Echoing Principle I (1) of the *Declaration of Principles on Freedom of Expression in Africa* which provides that 'freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy';

Recalling Principle IV of the *Declaration* which elaborates on the right to freedom of information and sets a series of principles according to which the right shall be guaranteed by law;

Reaffirming the commitment of the African Commission to promote the right to freedom of expression and access to information and monitor the implementation of the *Declaration of Principles on Freedom of Expression in Africa* within Member States of the African Union;

Recalling the Resolution on the Mandate and Appointment of a Special Rapporteur on Freedom of Expression in Africa adopted at its 36th Ordinary Session held from 23 November - 7 December 2004 in Dakar, Senegal;

Considering that the term of Commissioner Faith Pansy Tlakula as Special Rapporteur on Freedom of Expression in Africa comes to an end on 5 December 2007 and the need for continuity;

Confirming that the right to access to information, which is a component of the fundamental right to freedom of expression, is indeed covered by the mandate of the Special Rapporteur;

Concerned that only a few African States have adopted legislation enabling the public and media access to information held by government and other public institutions or freedom of information laws;

DECIDES to renew the mandate of the Special Rapporteur on Freedom of Expression in Africa with the following amended title: *Special Rapporteur on Freedom of Expression and Access to Information in Africa* and to entrust the Special Rapporteur with the mandate to:

- analyse national media legislation, policies and practice within Member States, monitor their compliance with freedom of expression and access to information standards in general and the *Declaration of Principles on Freedom of Expression in Africa* in particular, and advise Member States accordingly;
- undertake fact-finding missions to Member States from where reports of systemic violations of the right to freedom of expression and denial of access to information have reached the attention of the Special Rapporteur and make appropriate recommendations to the African Commission;
- undertake promotional country Missions and any other activities that would strengthen the full enjoyment of the right to freedom of expression and the promotion of access to information in Africa;
- make public interventions where violations of the right to freedom of expression and access to information have been brought to her attention, including by issuing public statements, press releases, and sending appeals to Member States asking for clarifications;
- keep a proper record of violations of the right to freedom of expression and denial of access to information and publish this in her reports submitted to the African Commission; and
- submit reports at each Ordinary Session of the African Commission on the status of the enjoyment of the right to freedom of expression and access to information in Africa.

DECIDES FURTHER to re-appoint Commissioner **Faith Pansy Tlakula** as the *Special Rapporteur on Freedom of Expression and Access to Information in Africa* for a period of two years effective 28 November 2007.

123. ACHPR/Res.123(XXXII)07: RESOLUTION ON THE COMPOSITION AND RENEWAL OF THE MANDATE OF THE WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR) meeting at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution Ref. ACHPR/Res.65 (XXXIV) 03 on the adoption of the Report of the African Commission's Working Group on Indigenous Populations/Communities adopted at its 34th Ordinary Session held in Banjul, The Gambia from 6 – 20 November 2003;

Recalling that the African Commission established a Working Group composed of six members, amongst them, two Members of the African Commission;

Noting that the African Commission entrusted the Working Group with a mandate for an initial period of two years;

Considering that the term of the Working Group comes to an end on 5th December 2007;

Considering further that the term of Ambassador Mohamed Kamel Rezag-Bara as a Member of the African Commission along with his mandate as a Member and the Chairperson of the Working Group have come to an end on 28 November 2007;

Appreciating the work that Ambassador Mohamed Kamel Rezag-Bara has done as a Member and Chairperson of the Working Group;

Commending the work undertaken by the Working Group during the past two years in the discharge of its mandate;

Recognizing the adoption by the UN General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples on 13 September 2007;

Recognizing further the importance of the work of the Working Group in the promotion and protection of the rights of indigenous populations/communities in Africa and the necessity to allow the Working Group to continue to carry out its mandate;

Decides to:

- Extend the mandate of the Working Group for a period of two years with effect from 28th November 2007;
- Designate Commissioner Musa Ngary Bitaye as Chairperson of the Working Group;
- Designate Commissioner Mumba Malila as a member of the Working Group;
- Designate Commissioner Soyata Maiga as a member of the Working Group;
- Appoint Dr. Albert Barume and Mr. Melakou Tegegn as expert members of the Working Group; and
- Maintain the membership of the following experts:
 - o Mr. Mohammed Khattali;
 - o Ms. Marianne Jensen;
 - o Mr. Mr. Zephyrin Kalimba; and
 - o Dr. Naomi Kipuri.

124.ACHPR/Res.124(XXXII)07: RESOLUTION ON THE APPOINTMENT OF THE CHAIRPERSON AND MEMBERS OF THE WORKING GROUP ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR) meeting at its 42nd Ordinary Session held from 14 – 28 November 2007, in Brazzaville, the Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution ACHPR/Res.73 (XXXVI)04 to establish a Working Group on Economic and Social Rights taken at its 36th Ordinary Session, held from 23 November - 7 December 2004 in Dakar, Senegal, and which also defined its mandate;

Noting with appreciation the work and accomplishment of members of the Working Group: Sanji Mmasenono Monageng, Yasser Sid Ahmed El-Hassan, and Mohamed Abdellahi Ould Babana;

Considering that the term of the Working Group came to an end on 14 November 2007;

DECIDES to appoint Commissioner Angela Melo as Chairperson of the Working Group on Economic and Social Rights in Africa for a period of two years, effective 28 November 2007.

And further appoints the following members for the same period of time,

- Commissioner Dupe Atoki – member
- Mr Ibrahima Kane – member (renewal)

125. ACHPR/Res.125(XXXII)07: RESOLUTION ON THE RENEWAL OF THE MANDATE OF THE SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR), meeting at its 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15 - 28 November 2007;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution **ACHPR/ 69(XXXV) 04** of 4 June 2004 on the protection of human rights defenders in Africa adopted at the 35th Ordinary Session held from 21st May - 4th June 2004, in Banjul, The Gambia;

Recalling its Resolution **83(XXXVIII) 05** of 5 December 2005 on the appointment of a special rapporteur on human rights defenders in Africa; adopted at the 38th Ordinary Session held from 21st November - 5th December 2005 in Banjul, The Gambia;

Bearing in mind its mandate to promote human and peoples' rights and ensure their protection in Africa under the *African Charter on Human and Peoples' Rights*;

Mindful that in the *Grand Bay (Mauritius) Declaration and Plan of Action*, the Organization of African Unity (African Union) called on Member States "to take appropriate steps to implement the UN *Declaration on Human Rights Defenders* in Africa";

Considering that the term of Mme Reine Alapini-Gansou as Special Rapporteur comes to an end on 5 December 2007;

Considering the report of the Special Rapporteur;

Noting with appreciation the work she has done as Special Rapporteur on Human Rights Defenders in Africa since her appointment in 2005,

Emphasizing The importance of the work of the Special Rapporteur as regards the search for solutions to the problems arising from the protection of human rights defenders;

Considering the necessity to allow the Special Rapporteur on Human rights Defenders in Africa to continue to carry out its mandate as contained in resolution **ACHPR/ 69(XXXV) 04**,

Decides to renew Commissioner Reine Alapini-Gansou as Special Rapporteur on Human Rights Defenders in Africa for a period of two (2) years effective 28 November 2007.

126. ACHPR/Res.126(XXXII)07: RESOLUTION ON THE RENEWAL OF THE MANDATE AND APPOINTMENT OF THE SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 42nd Ordinary Session held from 15 – 28 November 2007, in Brazzaville, the Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Reaffirming the importance of observing the objectives and principles of the African Charter for the promotion and protection of the human rights of all, including those of detainees and prisoners;

Recalling its decision taken at its 20th Ordinary Session held in Grand Bay, Mauritius in October 1996 to establish the position of the Mandate, and to appoint a Special Rapporteur on Prisons and Conditions of Detention in Africa, as a prison monitoring mechanism;

Recalling further its decision taken at its 38th Ordinary Session held in Banjul, The Gambia in November/December 2005 to appoint Commissioner Mumba Malila as the Special Rapporteur on Prisons and Conditions of Detention in Africa;

Considering that the term of Commissioner Mumba Malila as the Special Rapporteur on Prisons and Conditions of Detention in Africa comes to an end on 5 December 2007;

Appreciating the work that Commissioner Malila has done as Special Rapporteur on Prisons and Conditions of Detention in Africa;

Emphasising the importance of the work of the Special Rapporteur and *calling on* all its partners to collaborate in his work in the search for solutions to the problems arising from the restriction of the freedom of the individual;

DECIDES to reappoint Commissioner Mumba Malila as the Special Rapporteur on Prisons and Conditions of Detention in Africa for a period of two years, effective 28 November 2007;

127. ACHPR/Res.127(XXXXII) 07: RESOLUTION ON THE RENEWAL OF THE MANDATE AND COMPOSITION OF THE WORKING GROUP ON SPECIFIC ISSUES RELEVANT TO THE WORK OF THE COMMISSION

The African Commission on Human and Peoples' Rights (the African Commission or ACHPR) meeting at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling Its Resolution Ref. **ACHPR/Res.77 (XXXVII)05** on the creation of a Working Group on Specific Issues relevant to the work of the African Commission adopted at its 37th session which took place from 27 April - 11 May 2005 in Banjul, The Gambia;

Noting with appreciation the accomplishments of the Working Group since the renewal of its mandate in 2005,

Considering the interim report of the Working Group;

Considering further the necessity to allow the Working Group to continue to carry out its mandate and address urgent pending issues falling within this mandate;

Decides to renew the mandate of the Working Group for twelve (12) months

Further decides that the composition of the Working Group will be as follows:

- 1) Commissioner **Angela Melo**
- 2) Commissioner **Pansy Faith Tlakula**
- 3) Commissioner **Kayitesi Zainabou Sylvie**
- 4) One (1) representative from each of the following Non Governmental Organizations
 - a) The Institute for Human Rights and Development in Africa
 - b) INTERIGHTS; and
 - c) Open Society Justice Initiative.

Request the Working Group to deal as a matter of priority with the following matters and to report accordingly to the African Commission at its **NEXT** Ordinary Session:

- a) The Relationship between the African Commission and the African Court on Human and Peoples' Rights
- b) The Relationship between the Bureau of the African Commission and the Secretariat of the Commission
- c) The Relationship between the African Commission and the different organs and institutions of the African Union

Further requests the Secretariat of the African Commission to intensify its efforts to mobilize resources that could assist the Working Group to carry out its mandate:

128. ACHPR/Res.128(XXXII)07: RESOLUTION ON FREEDOM OF EXPRESSION AND THE UPCOMING ELECTIONS IN ZIMBABWE

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 42nd Ordinary Session held from 15 - 28 of November 2007, in Brazzaville, the Republic of Congo;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling further Article 9 of the African Charter which provides that every individual shall have the right to receive information and to express and disseminate his opinions within the law;

Reaffirming the fundamental importance of freedom of expression and information as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms;

Emphasising that respect for the right to freedom of expression includes respect for a free press, freedom of association and access to information, which are pre-requisite for free, fair and credible elections;

Recalling the *OAU/AU Declaration on the Principles Governing Democratic Elections in Africa*, adopted on 8 July 2002 at the 38th Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Durban, South Africa,

Recalling the recommendations issued by the African Commission following its fact-finding mission to Zimbabwe in June 2002, in particular those underlining the need to create an environment conducive to democracy and human rights;

Noting with appreciation the statement made by the Zimbabwean delegate, on 16 November 2007, at the 42nd Ordinary Session of the African Commission, held in Brazzaville, Republic of Congo, that, as a result of the ongoing dialogue between the Government of Zimbabwe and opposition political parties, a number of laws are in the process of being amended;

Welcoming the adoption of the African Charter on Democracy, Elections and Governance (the Charter on Democracy), at the 8th Ordinary Session of the Assembly of Heads of State and Government of the African Union, held in Addis Ababa, Ethiopia, on 30 January 2007,

Noting that, in accordance with Article 2(10) of the Charter on Democracy, its objectives include the promotion of "the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs";

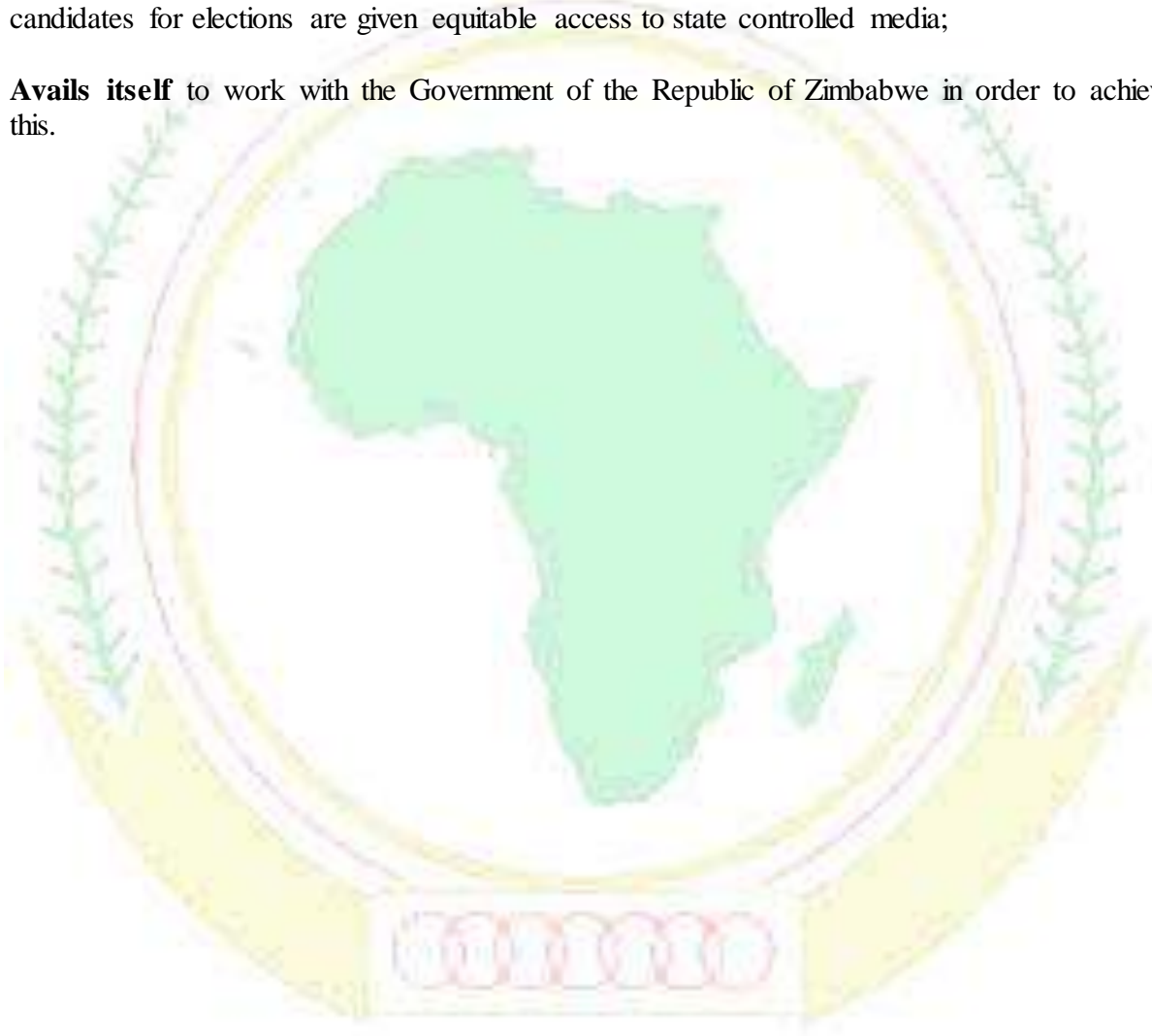
Underlining that, according to Article 17 (3) of the Charter on Democracy, by ratifying the latter, States Parties re-affirm their commitment to regularly hold transparent, free and fair elections in accordance with the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa and, to this end, shall *inter alia* "Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections";

Underlining further that Article 27 (7) and (8) of the Charter on Democracy provide that, in order to advance political, economic and social governance, States Parties shall commit themselves to the “Development and utilisation of information and communication technologies” and to “Promoting freedom of expression, in particular freedom of the press and fostering a professional media”;

Encourages the Government of the Republic of Zimbabwe to ensure that it creates conditions conducive to free, fair and credible elections, through, *inter alia*, pursuing the ongoing dialogue with opposition political parties on a number of laws that are in the process of being amended;

Requests the Government of the Republic of Zimbabwe to ensure that contesting parties and candidates for elections are given equitable access to state controlled media;

Avails itself to work with the Government of the Republic of Zimbabwe in order to achieve this.



129. ACHPR/Res.129(EXT.OS/IV)08: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN THE REPUBLIC OF SOMALIA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 4th Extra-ordinary Session in Banjul, The Gambia, from 17th to 23rd February 2008:

Pursuant to its mandate under Articles 30 and 45 of the African Charter on Human and Peoples' Rights (the African Charter), to promote and protect human and peoples' rights in Africa;

Taking into account Article 46 of the African Charter which allows the Commission to use any appropriate method of investigation in the execution of its mandate;

Considering that the Republic of Somalia is a party to the African Charter, and has thereunder committed itself to the promotion and protection of human and peoples' rights;

Considering further its Resolution ACHPR/Res.109 (XXXXI)07 on the Human Rights Situation in Somalia, adopted at the 41st Ordinary Session of the Commission, held in Accra, Ghana from 16th to 30th May 2007;

Deeply concerned that in spite of the deployment of the African Union Peacekeeping mission in Somalia, the human rights situation in the country continues to deteriorate;

The African Commission:

1. **Condemns** the violations of human rights that have been perpetrated during almost two decades of civil war in the country;
2. **Calls** on the parties to the conflict to observe their obligations under the African Charter, international humanitarian law and international human rights norms;
3. **Urges** the African Union (AU) and the international community to continue their support to the government and people of Somalia in the restoration of peace and democracy;

4. **Decides** to send a Fact-Finding Mission to the Republic of Somalia to investigate violations of human and peoples' rights in the country;
5. **Calls upon** all stakeholders including the Transitional Federal Government to cooperate with and extend all assistance to the Fact-finding Mission, to enable it to effectively undertake its work.



130. ACHPR/Res.130(EXT.OS/IV)08: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN KENYA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 4th Extra-ordinary Session in Banjul, The Gambia, from 17th to 23rd February 2008:

Pursuant to its mandate under Articles 30 and 45 of the African Charter on Human and Peoples' Rights (the African Charter), to promote and protect human and peoples' rights in Africa;

Taking into account Article 46 of the African Charter which allows the Commission to use any appropriate method of investigation in the execution of its mandate;

Considering that the Republic of Kenya is a party to the African Charter, and has thereunder committed itself to the promotion and protection of human and peoples' rights;

Considering further that, at the 41st Ordinary Session of the African Commission, held in Accra, Ghana from 16 to 30 May 2007, the Republic of Kenya submitted its Periodic Report in accordance with Article 62 of the African Charter in which it indicated the legislative and other measures taken to give effect to the African Charter in Kenya;

Recalling the Concluding Observations adopted by the African Commission pursuant to the examination of the said Periodic Report of Kenya;

Deeply concerned by the violence that followed the December 2007 Presidential and Legislative Elections in Kenya, and the deteriorating human rights situation resulting therefrom;

Welcoming the cessation of violence and the ongoing dialogue between the Government and the Orange Democratic Movement (ODM) facilitated by the African Union (AU) Envoy, the former United Nations Secretary General, H.E.Koffi Annan;

The African Commission:

1. **Condemns** the violations of human rights that have been perpetrated in the wake of the 27 December 2007 Presidential and Legislative Elections in Kenya;
2. **Expresses** its support to the mediation process facilitated by H.E.Koffi Attah Annan and his team;
3. **Calls** on the parties in the on-going dialogue to put the interest of the country above any other interest;
4. **Calls upon** the people of Kenya to exercise patience and give dialogue a chance;
5. **Decides** to send a Fact-Finding Mission to the Republic of Kenya, to among other things, investigate allegations of violations of human and peoples' rights that have occurred following the December 2007 elections;
6. **Urges** all stakeholders including the Government and the ODM, to cooperate with and extend all assistance to the Fact-finding Mission, to enable it to effectively undertake its work.



131. ACHPR/Res.131(XXXIII)08: RESOLUTION ON THE SITUATION OF MIGRANTS IN SOUTH AFRICA

The African Commission on Human and People's Rights 43rd Ordinary Session held in Ezulwini, Kingdom of Swaziland, on 7-22 May 2008.

Aware of its mandate under the African Charter on Human and Peoples' Rights to promote and protect human and peoples' rights in Africa,

Recalling its **Resolutions ACHPR/Res.95 (XXXIX)06** and **ACHPR/Res.116 (XLII)07**, which extended the mandate of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons in Africa to be responsible for migration issues,

Recognizing that the human rights of migrants are covered under general regional and international human rights instruments, unless they qualify for protection under national, regional and international refugee laws and instruments.

Being further concerned that the vast number of migrants in Africa originate from African states which are experiencing political instability and armed conflicts, which have in turn, undermined peace and economic conditions in those states.

Alarmed, by the attacks and violence against migrants from African countries in a number of townships in South Africa, which negate the principles of African Solidarity, The African Renaissance and African Charter on Human and Peoples' Rights.

1. **Condemns** the attacks and violence perpetrated against migrants in various townships in South Africa.
2. **Calls** on the South African government to investigate and prosecute those responsible for the attacks, and to institute further measures to ensure the protection of foreign migrants in South Africa, and their property.
3. **Urges** the South African government to which the African Commission had sought authorization for the Special Rapporteur to conduct a fact finding mission on the situation of migrants in that country, to grant the said authorization.

132. ACHPR/Res.132(XXXIII)08: RESOLUTION ON THE FORTHCOMING RUN OFF ELECTION IN ZIMBABWE

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 43rd Ordinary Session in Ezulwini, the Kingdom of Swaziland from 7 – 22 May 2008;

Recognizing its mandate under the African Charter on Human and Peoples' Rights (the African Charter) to promote and protect human and peoples' rights in Africa;

Mindful of the important progress made by the African Union through its adoption in 2002 of the Declaration on the Principles Governing Democratic Elections in Africa which provides therein that 'the holding of democratic elections is an important dimension in conflict prevention, management and resolution';

Recalling its Resolution on Freedom of Expression and the Upcoming Elections in Zimbabwe adopted at its 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15 – 28 November 2007;

Recalling further the Statement on the Election Impasse in Zimbabwe, issued by the African Commission in April 2008 addressed to the government of the Republic of Zimbabwe, the leadership of the Zimbabwe African National Congress – Patriotic Front (ZANU/PF) and the Movement for Democratic Change (MDC);

Noting the release by the Zimbabwe Electoral Commission (ZEC) of the results of the Presidential elections held on 29 March 2008, which necessitated a second round run-off in terms of Zimbabwe law;

Noting the setting of dates for the second round run-off of the Presidential election;

Deeply Concerned by the human rights violations occasioned by the violence that followed the March 29 elections;

The African Commission hereby:

Calls on the government to take all necessary measures to ensure that Zimbabweans exercise their right to vote in a peaceful environment free of intimidation and violence;

Appeals to all political parties and their supporters to exercise tolerance and observe democratic rules during the campaign and after the elections;

Calls on the government to ensure that all contesting candidates have access to the state-owned media, in particular, the State broadcaster;

Further calls on the government to ensure that the media is allowed to cover all electoral processes;

Calls on the government to guarantee the protection of the rights of human rights defenders during the election process;

Requests the government to allow both national and international election observers to observe the entire electoral process, so as to enhance the credibility of the electoral process, and acceptance of the results of the elections by all contesting parties;

Requests the government to authorize a pre-election mission of the African Commission to Zimbabwe to discuss with government and other relevant stakeholders measures to be put in place to ensure the protection of human rights in the run up to and during the election;



133. ACHPR/Res.133 (XXXIV)08: RESOLUTION ON ELECTIONS IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 44th Ordinary Session held in Abuja, Federal Republic of Nigeria, from 10 to 24 November 2008;

RECALLING the obligation contained in the African Charter on Human and Peoples' Rights to take the sub-regional, regional and international human rights instruments into account;

CONSCIOUS of the important progress made by the African Union through the adoption in 2002 of the declaration on the principles governing democratic elections in Africa which stipulates that « *the holding of democratic elections constitutes an important dimension in the prevention, management and resolution of conflicts* »;

ENCOURAGED by the adoption of the African Charter on democracy, elections and governance in January 2007;

CONCERNED that only one country has ratified the African Charter on democracy, elections and governance to ensure its urgent entry into force;

PREOCCUPIED by the recent developments which culminated in the failure of the electoral and transitional process in several countries of the Continent;

DEEPLY CONCERNED by the serious deterioration of the human rights situation in certain African countries before, during, and after the election periods especially in respect of the humanitarian situation;

NOTING of the escalation of political violence and internal population displacements and their negative effects on the elections;

1. **CALLS** on the States Parties to:

- **Ratify** the African Charter on democracy, election and governance; and conform to their obligations under the terms of the African Charter on Human and Peoples' Rights, the African Charter on democracy, elections and governance, the AU declaration on the principles governing democratic elections in Africa and the other regional and national guidelines in the area of elections;
- **Recognise** the right to existence of the various political parties and the right to **multiparty** democracy;
- **Guarantee** the independence of the Institution responsible for the management of elections before, during and after the holding of any election;
- **Provide** sufficient resources for the strengthening of the national institutions responsible for elections management so as to guarantee their independence

and their **ability** to exercise their mandate without fear or favour;

- **Respect** the Rule of Law and the independence of the **judiciary** which is essential for the realization of free and fair elections in Africa.
2. **Urges** all political parties and candidates at every level of electoral process to respect the election laws and regulations including the legal process for challenging any election results.
 3. **Deplores** the emerging trends in establishing government of national unity, which in certain cases legitimize undemocratic elections.
 4. **Recommends** that, where necessary, the establishment of a government of national unity must be inclusive and reflective of the elections results.
 5. **Urges** leaders of political parties and candidates to put the general interest of the people at the center of the electoral process.



134. ACHPR/Res.134(XXXIV)08: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN THE GAMBIA

The African Commission on Human and Peoples' Rights, meeting at its 44th Ordinary Session held in Abuja, Federal Republic of Nigeria, from the 10 – 24 November 2008;

Recognising its mandate under the African Charter on Human and Peoples' Rights (The African Charter) to promote and to protect human and peoples' rights in Africa;

Considering the provisions of the Constitutive Act of the African Union, the African Charter, as well as the provisions of other regional and international human rights instruments to which The Gambia is a State Party;

Strongly Condemning the attempted Coup d' etat of March 2006 in The Gambia and calling on all Africans to respect the provisions of the Constitutive Act of the African Union which in Article 4 (p) states as one of its principles, "condemnation and rejection of unconstitutional changes of government";

Deeply concerned by the **deterioration of the human rights situation** in the country owing to routine allegations of unlawful arrests and detentions, torture in detention, unfair trials, extrajudicial executions and enforced disappearances by State Security Forces, which target human rights defenders, journalists, and all persons suspected of involvement in the attempted coup to overthrow the Government of The Gambia

Recalling that since the March 2006 attempted Coup d' etat in The Gambia, there has been a severe deterioration in the **enjoyment of the right to freedom of expression** particularly **involving** attacks on the independent media which has led to several journalists **being arrested** or fleeing the country, thereby, violating the right of the people of The Gambia to the freedom of expression and access to information;

The African Commission hereby:

Condemns the continued human rights violations in the Republic of The Gambia and requests for the immediate and unconditional release of Chief Ebrima Manneh and Kanyie Kanyiba and all prisoners of conscience;

Calls on the Republic of The Gambia to immediately and fully comply with the 5 June 2008 judgement of the ECOWAS Community Court of Justice in respect of **the release of Chief Ebrima Manneh** from unlawful detention and pay the **damages** awarded by the Court.

Further Calls on the Government of The Gambia to investigate all allegations of acts of torture in detention and extrajudicial executions.

Urges the Government of The Gambia to provide organizations, families and friends of persons in detention, access to the detainees to enable an assessment of their health and living conditions;

Calls on the Government of The Gambia to **bring to an immediate end** the harassment and intimidation of independent media institutions and respect the rights of journalists and other

human rights defenders;

Urges the Government of The Gambia to fully comply with its obligations under the African Charter with regard to the right to liberty, freedom from torture, right to fair trial, freedom of expression and of association and to take all necessary measures to ensure its accountability for reported cases of human rights violations in the country;

Further Calls on the Government of The Gambia to immediately implement this Resolution.



135. ACHPR/Res.135 (XXXIV)08: RESOLUTION ON MATERNAL MORTALITY IN AFRICA

The African Commission on Human and Peoples' Rights Meeting at its 44th Ordinary session held in Abuja, Federal Republic of Nigeria, from 10 - 24 November 2008

RECALLING that women's rights and the principle of non discrimination have been recognised and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, and all other international and regional conventions and covenants such as the African Charter on Human and Peoples' Rights relating to the rights of women;

RECALLING that women's rights to maternal health have been recognised and reaffirmed by the United Nations Plans of Action on Population and Development in 1994 and on Social Development in 1995 and have been enshrined in the Beijing Declaration and Platform for Action in 1995;

RECOGNISING that improving maternal and reproductive health is both a regional and international obligation enshrined in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the Millennium Development Goals;

FURTHER RECALLING the commitments of the Heads of State and Governments in the Solemn Declaration on Gender Equality in Africa adopted during the 3rd Ordinary Session held in Addis Ababa, Ethiopia from 6-8 July 2004;

NOTING the commitments of the Heads of State and Governments in the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases made during the African Summit on HIV/AIDS, Tuberculosis and Other Infectious Diseases in Abuja, Nigeria from 24-27 April 2001 to allocate 15% of their national budgets to health ;

STANDING by our Declaration on Economic, Social and Cultural Rights in Pretoria during our 36th Session in December 2004 that lack of political will, privatisation of essential services, failure to allocate sufficient resources and brain drain amongst other factors are at the centre of the non-realisation of economic, social and cultural rights in Africa including the right to enjoy the best attainable state of physical and mental health;

DEEPLY disturbed that Africa currently has the worst records of maternal deaths in the world accounting for more than two hundred and fifty thousand deaths annually;

CONCERNED that most member states of the African Union are not making progress in reducing the maternal mortality rates in their respective countries;

NOTING with concern that maternal mortality destroys the very foundation of the African family which according to article 18 of the African Charter on Human and Peoples' Rights is the "natural unit and basis of the society" and "the custodian of morals and traditional values recognised by the community";

CONSIDERING that the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa makes provision in article 14 for health and reproductive rights and in particular, obliges states to "establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding";

APPRECIATING the great role women play in securing the future of the society and that pregnancy being a natural occurrence, every society should seek to protect the life of the mother and the child from conception, to delivery and beyond;

CONVINCED that preventable maternal mortality is a violation of the rights to life, health and dignity of women in Africa;

FIRMLY convinced that only through effective health institutions as well as strategic and sustained funding to the health sector that the problem of maternal mortality will be managed and finally reduced in Africa;

1. **DECLARES** that preventable maternal mortality in Africa is a violation of women's right to life, dignity and equality enshrined in the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;

2. **CALLS UPON** African Governments to individually and collectively address the issue of maternal mortality in accordance with the recommendations attached to this resolution.

136. ACHPR/Res.136 (XXXIV)08: RESOLUTION CALLING ON STATE PARTIES TO OBSERVE THE MORATORIUM ON THE DEATH PENALTY

The African Commission on Human and Peoples' Rights, meeting at its 44th Ordinary Session held from 10th to 24th November 2008 in Abuja, Federal Republic of Nigeria:

RECALLING Article 4 of the African Charter on Human and Peoples' Rights, which recognises the right of everyone to life, and Article 5(3) of the African Charter on the Rights and the Welfare of the Child which guarantees the non-application of death penalty for crimes committed by children;

CONSIDERING ACHPR/Res 42 (XXVI) calling on States to consider observing a moratorium on the death penalty, adopted at the 26th Ordinary Session of the African Commission on Human and Peoples' Rights held from 1st to 15th November 1999 in Kigali, Rwanda;

RECALLING Resolution 62/149 of the General Assembly of the United Nations, adopted in 2007 calling on all States that still retain the death penalty to, *inter alia*, observe a moratorium on executions with a view to abolishing the death penalty;

BEARING IN MIND Resolution 2005/59 adopted on 20 April 2005 by the United Nations Human Rights Commission calling on all States that still retain the death penalty to totally abolish the death penalty and, in the meantime, to observe a moratorium on executions;

CONSIDERING Resolution 1999/4 of the United Nations Sub-Commission on the Promotion and the Protection of Human Rights calling on all States that still retain the death penalty and are not observing a moratorium on executions, as part of the celebration of the millennium, to at least commute death penalty sentences into life imprisonment by 31st December 1999, and to commit themselves to observe a moratorium on the execution of death sentences throughout the year 2000;

CONSIDERING the exclusion of the death penalty from the sentences that can be pronounced by the International Criminal Court, the Extraordinary Chambers of the Tribunals of Cambodia, the Special Court of Sierra Leone, the Special Juries for serious crimes in East Timor, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda; and

NOTING that at least 27 State Parties to the African Charter on Human and Peoples' Rights have abolished the death penalty in law or *de facto*;

NOTING also that only six out of 53 State Parties to the African Charter on Human and Peoples' Rights have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty;

NOTING further that some State Parties have so far failed to give effect to all the above resolutions relating to the observation of a moratorium on the death penalty, and others have observe the moratorium but have resumed the execution of death sentences or have expressed their intention to resume the execution of such sentences;

CONCERNED by the fact that some State Parties to the African Charter on Human and Peoples' Rights apply the death penalty under conditions not respectful of the right to a fair trial guaranteed under the African Charter on Human and Peoples' Rights and other relevant international norms:

1. **EXHORTS** State Parties to the African Charter on Human and Peoples' Rights that still retain the death penalty to:
 - a) Fully comply with their obligations under this treaty; and
 - B)** Guarantee that every person accused of crimes for which capital punishment is applicable, benefits from all the guarantees of a fair trial included in the African Charter and in other relevant regional and international norms and treaties.
2. **URGES** State Parties that still retain the death penalty to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty in conformity with Resolutions ACHPR/Res 42 (XXVI) of the African Commission and 62/149 of the General Assembly of the United Nations;
3. **CALLS ON** all State Parties that have not yet done so, to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty;
4. **CALLS ON** State Parties to the African Charter to include in their periodic reports information on the steps they are taking to move towards the abolition of the death penalty in their countries; and
5. **IMPLORES** all State Parties to give their full support to the Working Group on the Death Penalty of the African Commission on Human and Peoples' Rights in its endeavour to work towards the abolition of the death penalty in Africa.

137. ACHPR/Res.137(XXXIV)08: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN SOMALIA

The African Commission on Human and Peoples' Rights meeting at its 44th Ordinary Session held from 10th to 24th November, 2008 in Abuja, Federal Republic of Nigeria:

Concerned that the Human rights situation in Somalia has since 1991 remained precarious following the years of conflict, notwithstanding the establishment of the Transitional Federal Government in 2005,

Recalling its Resolutions ACHPR/Res.117 (XLII) 07 on Strengthening on the Responsibility to Protect in Africa, adopted during the 42nd Ordinary Session held in Brazzaville Republic of Congo and; **ACHPR/Res.129(Ext.OS/IV) 08** on the Human Rights situation in the Republic of Somalia adopted during its Extra Ordinary Session in Banjul , The Gambia from 17th to 23rd February 2008,

Recalling further its resolution ACHPR/Res.129(Ext. OS/IV) 08 of 23rd February 2008 on the decision to undertake fact finding mission to Somalia which has, hitherto not been authorized;

Being aware that various initiatives have been deployed by the African Union to find lasting peace in Somalia,

Taking note of the African Union Assembly Declaration on the Situation in Somalia, **Assembly/AU/DECL.2 (VII)** adopted on 2nd July, 2006 Banjul, The Gambia and decision **Assembly AU/Dec.142(VIII)** which *inter alia*, recognized the deployment of the military forces of Ethiopia in Somalia under African Union mandate,

Recalling that the Assembly's decision called on Member States of the African Union to contribute troops and material resources to AMISOM under the leadership of Inter-Governmental Authority on Development (IGAD) in order to avoid a security vacuum should Ethiopia troops withdraw,

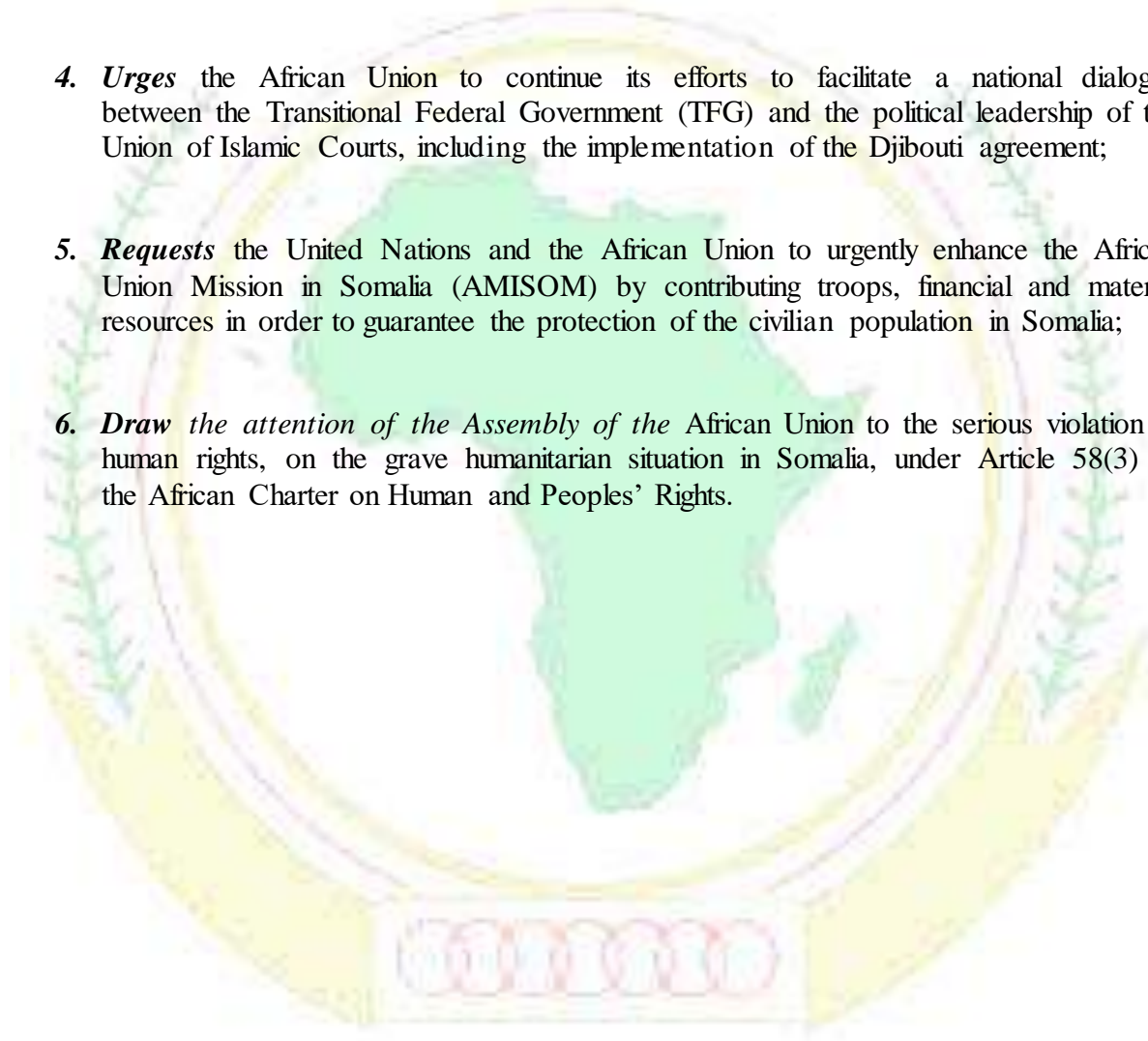
Commending the Republic of Uganda and the Republic of Burundi for contributing troops to AMISOM,

Being concerned that the African Union Member States and the International Community have not fully supported AMISOM as urged by the Assembly.

Expressing deep concern that the escalation in the armed conflict in Somalia continues to inflict massive and serious human rights violations on the civilian population which also constitute a violation of international humanitarian law;

Alarmed by the breakdown of the rule of law and the fragility of State institutions in Somalia, which have, inter alia, resulted in incidences of piracy in the territorial waters of Somalia, thereby, affecting vessels, including those carrying humanitarian assistance to the vulnerable Somali population

1. **Condemns** the massive violations of the human rights of the civilian population in Somalia, particularly in Mogadishu;
2. **Condemns** the killing of Ms. Aisha Ibrahim Duhulow, a 13 years old girl by stoning, as cruel, inhuman and degrading punishment, and calls for the punishment of those who were responsible;
3. **Calls** on the parties to the conflict in Somalia to respect the human rights of the civilian population, and their obligation under International Humanitarian Law;
4. **Urges** the African Union to continue its efforts to facilitate a national dialogue between the Transitional Federal Government (TFG) and the political leadership of the Union of Islamic Courts, including the implementation of the Djibouti agreement;
5. **Requests** the United Nations and the African Union to urgently enhance the African Union Mission in Somalia (AMISOM) by contributing troops, financial and material resources in order to guarantee the protection of the civilian population in Somalia;
6. **Draw the attention of the Assembly of the African Union** to the serious violation of human rights, on the grave humanitarian situation in Somalia, under Article 58(3) of the African Charter on Human and Peoples' Rights.



138. ACHPR/Res.138(XXXIV)08: RESOLUTION ON THE HUMAN RIGHTS AND HUMANITARIAN SITUATION IN ZIMBABWE

The African Commission on Human and Peoples' Rights meeting at its 44th Ordinary Session in Abuja in the Federal Republic of Nigeria from 10 to 24 November 2008 ;

RECALLING the provisions of the African Charter on Human and Peoples' Rights;

NOTING Resolution **ACHPR/Res.89(XXXVIII)05**, **ACHPR/Res.128(XXXII)07** and others, on different human rights and humanitarian law violations in Zimbabwe ;

RECALLING the provisions of the African Charter on Democracy and Good Governance in Africa;

NOTING that to date the political crisis in Zimbabwe continues and thereby impacting negatively to the lives of civilian population;

OBSERVING that the Global Political agreement signed on the 15th of September 2008 between the political parties namely, ZANU PF, and the MDC has not been fully implemented in spite of efforts made by regional organs to put an end to the situation;

CONCERNED about the repeated human rights violations, in particular those against human rights defenders, women defenders and journalists;

CALLS on political parties in Zimbabwe to give their full commitment with the view to implement the Global Political agreement without any further delay;

REQUESTS the African Union, and SADC to take appropriate measures with the view to ensure the resumption of humanitarian assistance by the international community in Zimbabwe and to cease all forms of violence against the media and human rights defenders, including women defenders;

URGES the Government of Zimbabwe to take all appropriate measures to ensure the effective implementation of economic, social and cultural rights in Zimbabwe, in particular the right to food, basic education, health and hygiene, the right to freedom of expression, freedom of movement and association.

139. ACHPR/Res.139(XXXIV)08: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN DEMOCRATIC REPUBLIC OF CONGO

The African Commission on Human and Peoples' Rights , meeting at its 44th Ordinary Session held in Abuja in the Federal Republic of Nigeria from 10 to 24 November 2008 ;

RECALLING Resolution 1325 of the United Nations Security Council adopted on 31st October 2000 on Women, Peace and Security as well as Sexual Crimes in the DRC;

NOTING the Goma Peace Accord of January 2008;

BEARING IN MIND the Goma Declaration of 18 June 2008 against Sexual Violence and ending Impunity in the Great Lakes Region;

RECALLING the resolution adopted at the 42nd ordinary session in Brazzaville, Republic of Congo on sexual crimes against women in the DRC;

APPRECIATING the commitment of the DRC to respect the provisions of the African Charter on Human and Peoples' Rights;

CONCERNED about the renewal of hostilities in the East of DRC in particular in the Kivu regions since August 2008, and in particular the fighting currently going on in Goma between the Armed Forces of DRC (FARDC) and the militia acting under their control on the one hand, and the armed groups, particularly the National Congress for the Defence of the People (CNDP), on the other

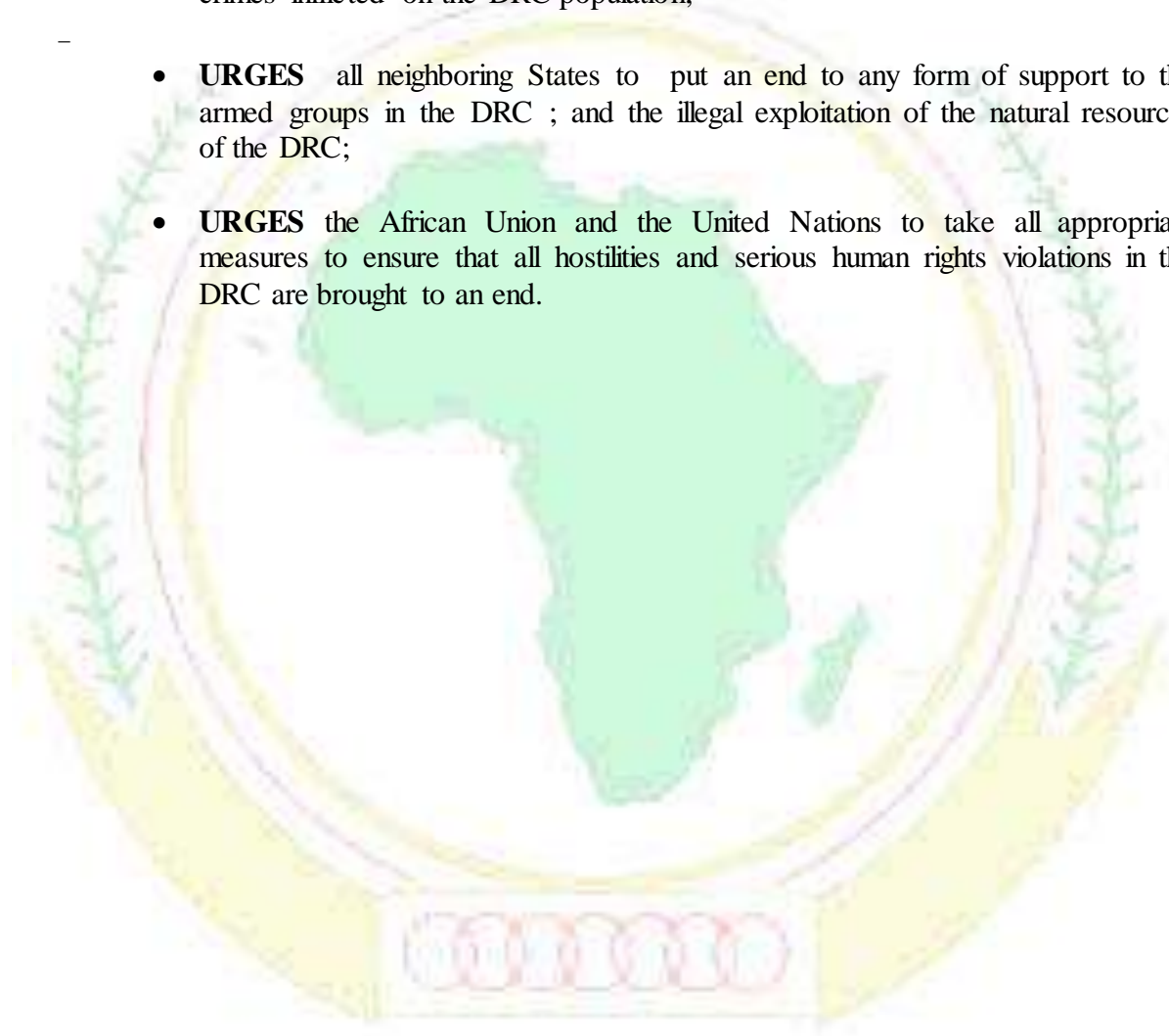
CONCERNED FURTHER about the serious violations of the rights of human rights defenders, in particular women defenders working in North and South Kivu Province;

DEPLORING the serious human rights violations committed by all parties to the conflict against the civilian population, in particular summary executions, extra judicial killings, arbitrary detentions, torture, sexual crimes, the conscription of child soldiers, which constitute violation of International humanitarian Law ;

- **CONDEMNS** the serious violations of rights guaranteed by the African Charter on Human and Peoples Rights and acts that constitute international crimes ;
- **CALLS ON** all parties to the conflict to cease hostilities with immediate effect and end all human rights violations and violations against international humanitarian law;
- **CALLS ON** all parties to guarantee the physical integrity of the civilian population, their freedom of movement and access to humanitarian assistance;
- **CALLS ON** all parties to ensure that human rights Defenders and organizations working in the field of human rights are able to carry out their legitimate activities without fear of reprisals and free of all restrictions,

including harassment;

- **COMMENDS** the United Nations Security Council for adopting a Resolution S/RES/1843(2008) on 20 November 2008, to enhance the capacity of MONUC to deal with the insecurity in the conflict in DRC;
- **CALLS ON** the government of the DRC to take all necessary measures to investigate and institute legal proceedings against the perpetrators of the crimes inflicted on the DRC population;
- **URGES** all neighboring States to put an end to any form of support to the armed groups in the DRC ; and the illegal exploitation of the natural resources of the DRC;
- **URGES** the African Union and the United Nations to take all appropriate measures to ensure that all hostilities and serious human rights violations in the DRC are brought to an end.



140. ACHPR/Res.140(XXXIV)08: RESOLUTION ON JOINT PROMOTIONAL MISSIONS

The African Commission on Human and Peoples' Rights, meeting in its 44th Ordinary Session held in Abuja, Federal Republic of Nigeria from 10 to 24 November 2008;

CONSIDERING the African Charter on Human and Peoples' Rights and the mandate of promotion and protection which it has entrusted to the African Commission;

RECALLING the Declaration on the political and socio-economic situation in Africa and the fundamental changes taking place in the world, adopted by the Assembly of Heads of State and Government of the OAU in 1990;

RECALLING the Declaration establishing, within the OAU, the Mechanism for the prevention, management and settlement of conflicts adopted by the Assembly of Heads of State and Government of the OAU in June 1993 in Cairo, (Egypt);

RE-AFFIRMING the principles dedicated in the Constitutive Act of the African Union, in particular the prohibition of genocide, of war crimes and crimes against humanity and determined to combat the ideology of genocide and all its symptoms;

ACKNOWLEDGING that observance of human rights is a key tool for promoting collective security, durable peace and sustainable development as enunciated in the Cairo Agenda for Action on re-launching Africa's socio-economic formation adopted by the extraordinary session of the Council of Ministers held in Cairo, Egypt, from 25 to 28 March, 1995;

RECALLING the Grand Bay Declaration and Plan of Action adopted by the OAU Ministerial Conference on Human Rights in Africa held in Grand Bay, Mauritius, from 12 to 16 April 1999, and reaffirming its commitment to the purposes and principles therein;

RECALLING the Kigali Declaration made at the end of the first Ministerial Conference of the African Union on Human Rights in Africa meeting on the 8th May 2003 in Kigali (Rwanda);

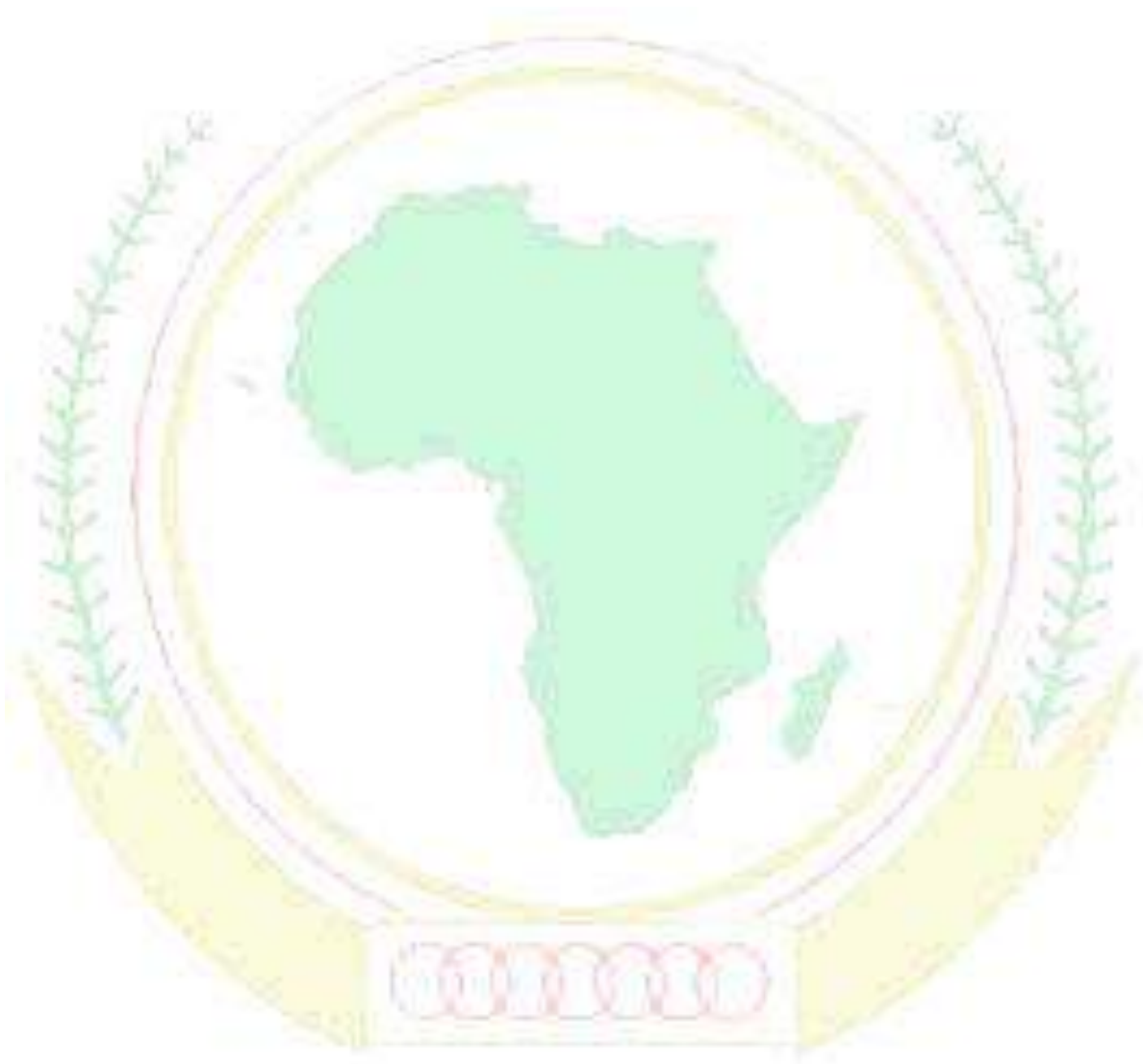
CONSIDERING that in the execution of the mission of promotion and protection of human rights, the African Charter imposes on the African Commission in its Article 45 to « *Cooperate with the other African or International Institutions which are involved in the promotion and protection of human and peoples' rights* ».

DECIDES that there is need to adopt a multi-pronged approach for the elimination of the causes of human rights violations in Africa through joint missions with other African or International Institutions working in the area of promotion and protection of human rights;

DECIDES to develop guidelines on the conduct of joint missions between African organizations, regional and international organs;

DECIDES that pending the drawing up of the guidelines, the joint missions can be fielded under the conditions agreed by the members of the Bureau.

REQUESTS that the terms of reference drawn by the African Union Commission be developed in the strict respect of the A.U rules.



141. ACHPR/Res.141(XXXIV)08: RESOLUTION ON ACCESS TO HEALTH AND NEEDED MEDICINES IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 44th Ordinary Session held in Abuja, Federal Republic of Nigeria, from the 10th to 24th November 2008;

REAFFIRMING that Article 16 of the African Charter on Human and Peoples' Rights guarantees the right to enjoy the best attainable state of physical and mental health and that States must ensure that everyone has access to medical care;

ALARMED that essential medicines, were available in only 38% of all public and private health care facilities in Africa between 2001 and 2007;

STRESSING that the right to health is not confined to a right to health care but embraces all underlying aspects of health;

RECOGNIZING that access to needed medicines for treatment, prevention and palliative care is a necessary condition for leading a healthy and dignified life;

RECOGNIZING that access to needed medicines is a fundamental component of the right to health and that States parties to the African Charter have an obligation to provide where appropriate needed medicines, or facilitate access to them;

RECOGNIZING FURTHER that the United Nations Special Rapporteur on the Right to Health has explained that "access to medicines forms an indispensable part of the right to the highest attainable standard of health" and that, therefore, the right to health mandates that State promote "the realization of the right to medicines for all";

URGES States to guarantee the full scope of access to needed medicines, including:

- a. The *availability* in sufficient quantities of needed medicines, including existing medicines and the development of new medicines needed for the highest attainable level of health;
- b. The *accessibility* of needed medicines to everyone without discrimination, including
 - i. Physical accessibility of needed medicines to all;
 - ii. Economic accessibility (affordability) of needed medicines to all;
 - iii. Information accessibility about the availability and efficacy of medicines;

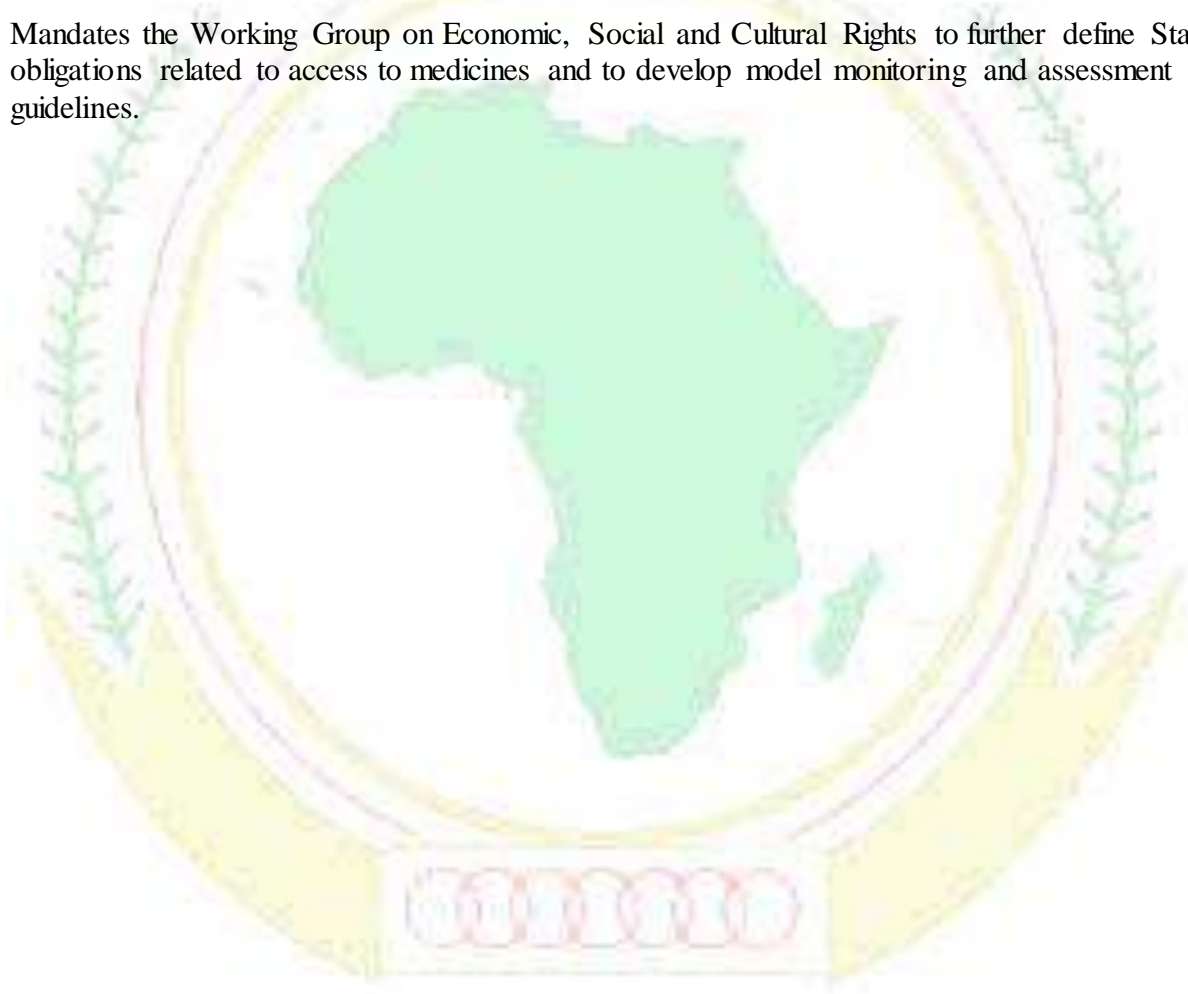
- c. The *acceptability* of medicine supplies, being respectful of cultural norms and medical ethics;
- d. The *quality* of medicine supplies, ensuring that available medicines are safe, effective and medically appropriate;

CALLING ON State to fulfill their duties with respect to access to medicines, in particular:

- a. **To promote** access to medicines by *refraining* from measures that negatively affect access, such as:
 - i. denying or limiting equal access to medicines for marginalized individuals or communities;
 - ii. prohibiting or impeding the use of traditional medicines and healing practices that are scientifically sound and medically appropriate;
 - iii. interfering with the provision of humanitarian aid that facilitates the supply of necessary medicines;
 - iv. implementing intellectual property policies that do not take full advantage of all flexibilities in the WTO Agreement on Trade Related Aspects of Intellectual Property that promote access to affordable medicines, including entering “TRIPS Plus” free trade agreements;
- b. **To protect** access to needed medicines from actions by third parties through regulatory systems that:
 - i. ensure that only medicines that have met scientifically appropriate standards for quality, safety and efficacy are available;
 - ii. promote the rational use of medicines, through treatment guidelines based on the best available evidence;
 - iii. prevent unreasonably high prices for needed medicines in both the public and private sectors, through promotion of equity pricing in which the poor are not required to pay a disproportionate amount of their income for access;
 - iv. ensure that medical practitioners and patients have ready access to reliable, complete and unbiased information on the safety and efficacy of medicines;
 - v. stimulate and Promote competition, intellectual property, consumer protection and other laws to promote access to medicines;
- c. **To fulfill** access to medicines by adopting all necessary and appropriate *positive measures* to the maximum of its available resources to promote, provide and facilitate access to needed medicines, including:
 - i. immediately meeting the minimum core obligations of ensuring availability and affordability to all of essential medicines as defined by the country’s essential medicines list and the WHO Action Programme on Essential Drugs;
 - ii. immediately creating a national medicine strategy monitoring systems to ensure compliance with human rights obligations;

- iii. promoting meaningful participation by affected individuals and groups in decisions that affect access to medicines, including regulatory, pricing and patent decisions;
- iv. creating systems in which patent information and registration status for medicines is readily and publicly accessible;
- v. expediting the regulatory review and registration of needed medicines and creating incentives for companies to register needed medicines expeditiously;
- vi. individually and together with other States and non-governmental entities, developing and implementing need-based research and development programmes to address currently neglected diseases and conditions;

Mandates the Working Group on Economic, Social and Cultural Rights to further define State obligations related to access to medicines and to develop model monitoring and assessment guidelines.



142. ACHPR/Res.142 (XXXXV) 09: RESOLUTION ON THE ESTABLISHMENT OF AN ADVISORY COMMITTEE ON BUDGETARY AND STAFF MATTERS

The African Commission on Human Peoples' Rights (the African Commission) meeting at its 45th Ordinary Session in Banjul, The Gambia from 13 – 27 May 2009:

Conscious of its mandate under the African Charter on Human and Peoples' Rights (the Charter) to promote and protect human & peoples' rights in Africa;

Aware of the vital role of its Secretariat in ensuring the effective discharge of its mandate and the importance of having an effective Secretariat;

Further conscious of the difficulties the Commission has had in the preparation, presentation and execution of its budget, and desirous of facilitating its budgetary preparation process;

Welcoming the decision of the Executive Council of the African Union to strengthen the human resources capacity of the Commission through the recruitment of 33 more staff over the next five years;

Recalling the decision at its 6th Extra Ordinary Session to establish an Advisory Committee to work with the Secretariat to prepare and present the Programs budget of the Commission;

Hereby resolves to:

- a) Establish an Advisory Committee entitled "Advisory Committee on Budgetary and Staff Matters", with the following mandate:
 - (i) To work with the Secretariat to identify activities from the 2008 – 2012 Strategic Plan of the ACHPR that would feature in the Commission's budget proposals;
 - (ii) To work with the Secretariat to prepare the programs budget of the Commission for presentation to the relevant Organs of the African Union;
 - (iii) To work with the Secretariat to ensure proper execution of the programs; and
 - (iv) To work with the Secretariat on the implementation of the approved new structure of the Secretariat of the Commission

- b) Appoint the following to the Committee:
 - (i) Commissioner Musa Ngary Bitaye
 - (ii) Commissioner Kaytesi Zainabou Sylvie
 - (iii) Commissioner Reine Alapini-Gansou
 - (iv) the Secretary to the Commission (ex-officio)
 - (v) 1 Senior Legal Officer (ex-officio)
 - (vi) the Admin and Finance Officer (ex-officio)

Further resolves that:

- a) The Advisory Committee shall work in conformity with these terms of reference, the Rules of Procedure of the African Commission, the provisions of the African Charter on Human and Peoples' Rights and the relevant African Union Rules and Regulations;
- b) The Advisory Committee shall report at the Ordinary Sessions of the Commission on the implementation of this Resolution;
- c) The Advisory Committee is established for an initial period of two years.



143. ACHPR/Res.143 (XXXXV) 09: RESOLUTION ON THE TRANSFORMATION OF THE FOCAL POINT ON THE RIGHTS OF OLDER PERSONS IN AFRICA INTO A WORKING GROUP ON THE RIGHTS OF OLDER PERSONS AND PEOPLE WITH DISABILITIES IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 45th Ordinary Session in Banjul, The Gambia, from 13 to 27 May, 2009:

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Bearing in mind the African Union Policy Framework and Plan of Action on Ageing in which "*States Parties recognized the fundamental rights of older persons and committed themselves to abolish all forms of discrimination based on age,*" and also committed themselves "*To ensure that the rights of older persons are protected by appropriate legislation, including the right to organize themselves in groups and the right to representation in order to advance their interest;*"

Recalling the Resolution of the African Commission of 30 May 2007 on the Rights of Older Persons in Africa, adopted at its 41st Ordinary Session held from 16-30 May 2007, in Accra, Ghana;

Recalling further its Resolution on the Appointment of a Focal Point on the Rights of Older Persons in Africa, that was adopted at the 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Considering that its Resolution **ACHPR/Res.118(XXXXII)07: on the establishment and appointment of a focal point on the rights of older persons in Africa**, adopted during its 42nd Ordinary Session did not take into consideration people with disabilities;

Considering that the African Charter makes specific provisions for the protection of these rights, under **Article 18(4)**, which stipulates that "*The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs;*"

Considering further paragraph 20 of the Kigali Declaration, which "*calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and people with disabilities;*"

Bearing in mind the mandate of the Focal Point which includes, among others, "*Spearheading the process of drafting a Protocol on the Rights of Older Persons for submission to the AU Policy Organs for consideration and adoption as soon as possible;*"

Appreciating the work of the Focal Point in advocating for a rights-based approach towards protecting the rights of older persons;

Underscoring the need for a Working Group on the Rights of Older Persons and People with Disabilities, as recommended by the members of the Focal Point, to facilitate the process of drafting the Protocol on Ageing, and ensuring compliance by States Parties with the recommendations contained in the AU Policy Framework and Plan of Action on Ageing:

Hereby resolves to:

(a) Establish a Working Group on the Rights of Older Persons and People with Disabilities to replace the Focal Point for a two year period. The mandate of the Working Group shall be:

- i. To hold comprehensive brainstorming sessions to articulate the rights of older persons and people with disabilities;
- ii. To draft a Concept Paper for consideration by the African Commission that will serve as a basis for the adoption of the Draft Protocol on Ageing and People with Disabilities;
- iii. To facilitate and expedite comparative research on the various aspects of human rights of older persons and people with disabilities on the continent, including their socio-economic rights;
- iv. To collect data on older persons and people with disabilities to ensure proper mainstreaming of their rights in the policies and development programmes of Member States;
- v. Identify good practices to be replicated in Member States;

Submit a detailed Report to the African Commission at each Ordinary Session.

(b) Appoint the following persons as members of the Working Group:

- i. Commissioner Yeung Kam John Yeung Sik Yuen (Chairperson);**
- ii. Commissioner Reine-Alapini Gansou (Member);**
- iii. Mr. Tavengwa Machekano Nhongo (Member);**
- iv. Mr. Papa Malick Fall (Member); and**
- v. Ms. Nadia Abdel-Wahab El-Afify (Member)**

144. ACHPR/Res.144 (XXXV) 09: RESOLUTION ON COOPERATION BETWEEN THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 45th Ordinary Session held in Banjul, The Gambia, from 13 to 27 May 2009;

Considering Article 18(3) of the African Charter on Human and Peoples' Rights; the Protocol to the African Charter on the Rights of Women in Africa, in particular Articles 5,6,12, 13, 20 and 24; the African Charter on the Rights and Welfare of the Child; the AU Declaration on an Africa Fit for Children, and the Solemn Declaration on Gender Equality in Africa;

Recalling its Resolution No. **ACHPR/Res.38 (XXV) 99**, adopted at its 25th Ordinary Session held from 26th April to 5th May 1999, in Bujumbura, Burundi, on the Establishment of the Mechanism of the Special Rapporteur on the Rights of Women in Africa;

Taking note of the important work achieved by this Mechanism since its establishment;

Considering that the Protocol to the African Charter on the Rights of Women in Africa takes the situation of the girl child into account and complements the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child;

Being aware that to date, the Special Mechanism on the Rights of Women in Africa does not cover the Rights of the Child;

Concerned about the unremitting increase of serious violations against the rights of the child in Africa;

Given the need to promote and protect the fundamental rights of the child in Africa through enhanced cooperation between the African Commission and the African Committee of Experts on the Rights and Welfare of the Child:

Hereby resolves to:

(a) Establish a formal relationship between the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child, with the view to enhancing cooperation between the two mechanisms;

(b) Designate the Special Rapporteur on the Rights of Women in Africa to collaborate closely with the States parties, Intergovernmental organisations, and Non Governmental Organisations working on the rights of the child in Africa;

Calls upon the Special Rapporteur on the Rights of Women in Africa to Report on the status of this cooperation during its Ordinary Sessions.

145. ACHPR/Res.145 (EXT.VII) 09: RESOLUTION ON THE DETERIORATING HUMAN RIGHTS SITUATION IN THE REPUBLIC OF THE GAMBIA

The African Commission on Human and Peoples' Rights (African Commission), meeting at its 7th Extraordinary Session in Dakar, Senegal, from 5 to 11 October 2009;

Conscious that the African Charter on Human and Peoples' Rights guarantees the basic rights and freedoms enshrined therein, and confers the African Commission with the mandate to monitor, promote and protect human and peoples' rights on the continent;

Recalling its Resolution, No. ACHPR/Res.13 (XVI)1994 adopted at its 16th Ordinary Session held in Banjul, The Gambia, from 25 October to 3 November 1994; Resolution No. ACHPR/Res. 17(VII)1995 adopted at its 17th Ordinary Session held in Lome, Togo, from 13 to 22 March 1995, and Resolution No. ACHPR/Res. 134(XXXXIV)2008 adopted at its 44th Ordinary Session held in Abuja, Nigeria, from 10 to 24 November 2008; all of which relate to the human rights situation in the Republic of The Gambia;

Considering that the African Commission has on several occasions brought to the attention of the Government of the Republic of The Gambia, concerns on human rights violations in The Gambia, in particular the right to life and the right to freedom of expression. These concerns relate to the alleged murder, unlawful arrest and detention, harassment, intimidation, prosecutions and disappearances of journalists and human rights defenders deemed to be critical of the Government;

Deeply concerned by allegations that on 21 September 2009, H.E. President Sheikh Professor Alhaji Dr. Yahya A.J.J. Jammeh allegedly stated in a national television broadcast that he would kill anyone, especially human rights defenders and their supporters, whom he considered to be sabotaging or destabilizing his Government;

Considering that the alleged threats undermine the safety and security of members and staff of the African Commission, and human rights defenders who participate in the activities of the African Commission, including in the 46th Ordinary Session scheduled to take place from 11 to 25 November 2009 in Banjul, The Gambia, whose Agenda will address the human rights situation in Africa;

Convinced that the alleged statement calls into question the commitment of the Republic of The Gambia to the fundamental principles and objectives of the Constitutive Act of the African Union, the African Charter and other regional and international human rights instruments;

Recalling that the Headquarters Agreement between the African Union and the Republic of The Gambia on the establishment of the Headquarters of the African Commission on Human and Peoples' Rights in The Gambia guarantees the inviolability of the members and staff of the African Commission and participants in the activities organized by the African Commission:

- (i) **CALLS** on the African Union to intervene with immediate effect to ensure that H.E. President Sheikh Professor Alhaji Dr. Yahya A.J.J. Jammeh withdraws the threats made in his statement;
- (ii) **FURTHER CALLS** on the African Union to ensure that the Republic of The Gambia guarantees the safety and security of the members and staff of the African Commission, human rights defenders, including journalists in The Gambia, and all participants in the activities of the African Commission taking place in The Gambia;
- (iii) **REQUESTS** the African Union to authorize and provide extra-budgetary resources to the African Commission to ensure that the 46th Ordinary Session is convened and held in Addis Ababa, Ethiopia, or any other Member State of the African Union, in the event that His Excellency the President of The Republic of The Gambia does not withdraw his threats and the Government cannot guarantee the safety and security of the members and staff of the African Commission and the participants of the 46th Ordinary Session;
- (iv) **REQUESTS** the African Union to consider relocating the Secretariat of the African Commission in the event that the human rights situation in the Republic of The Gambia does not improve;

- (v) **URGES** the Government of the Republic of The Gambia to implement the recommendations of its previous Resolutions, in particular, Resolution No. ACHPR/Res. 134(XXXXIV)2008, adopted during the 44th Ordinary Session held in Abuja, Nigeria, from 10 to 24 November 2008, and to investigate the disappearance and/or killing of prominent journalists Deyda Hy dara and Ebrima Chief Manneh.



146. ACHPR/Res.146 (EXT.VII) 09: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN THE REPUBLIC OF GUINEA

The African Commission on Human and Peoples' Rights (African Commission), meeting in its 7th Extraordinary Session in Dakar, Senegal, from 5 to 11 October 2009;

CONSIDERING the relevant provisions of the African Charter on Human and Peoples' Rights (the African Charter), which guarantee the right to life, the dignity inherent in a human being; the security of the person; the right to free association; the right to freedom of Assembly; and the right to information and freedom of expression;

MINDFUL of the Declaration No. AHG/Decl.5(XXXVI) of 12 July 2000, on the Framework for an Organization of African Unity (OAU) Response to Unconstitutional Changes of Government;

RECALLING the relevant provisions of the African Charter on Democracy, Elections and Governance adopted in Addis Ababa on the 30th January 2007, which emphasize the significance of good governance, popular participation, the rule of law and human rights;

CONSIDERING the Constitutive Act of the African Union adopted in Lomé on the 11th July 2000 and in particular its Articles 3(h), 4(m)(p) and 30 on the promotion and the protection of human and peoples' rights, on the respect for democratic principles, on the condemnation and rejection of unconstitutional changes respectively;

CONSIDERING further the obligations of the States Parties to the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Protocol)*, guaranteeing the right to non discrimination against women, the right to dignity, life, integrity and security and, in particular, the right to special protection of elderly women;

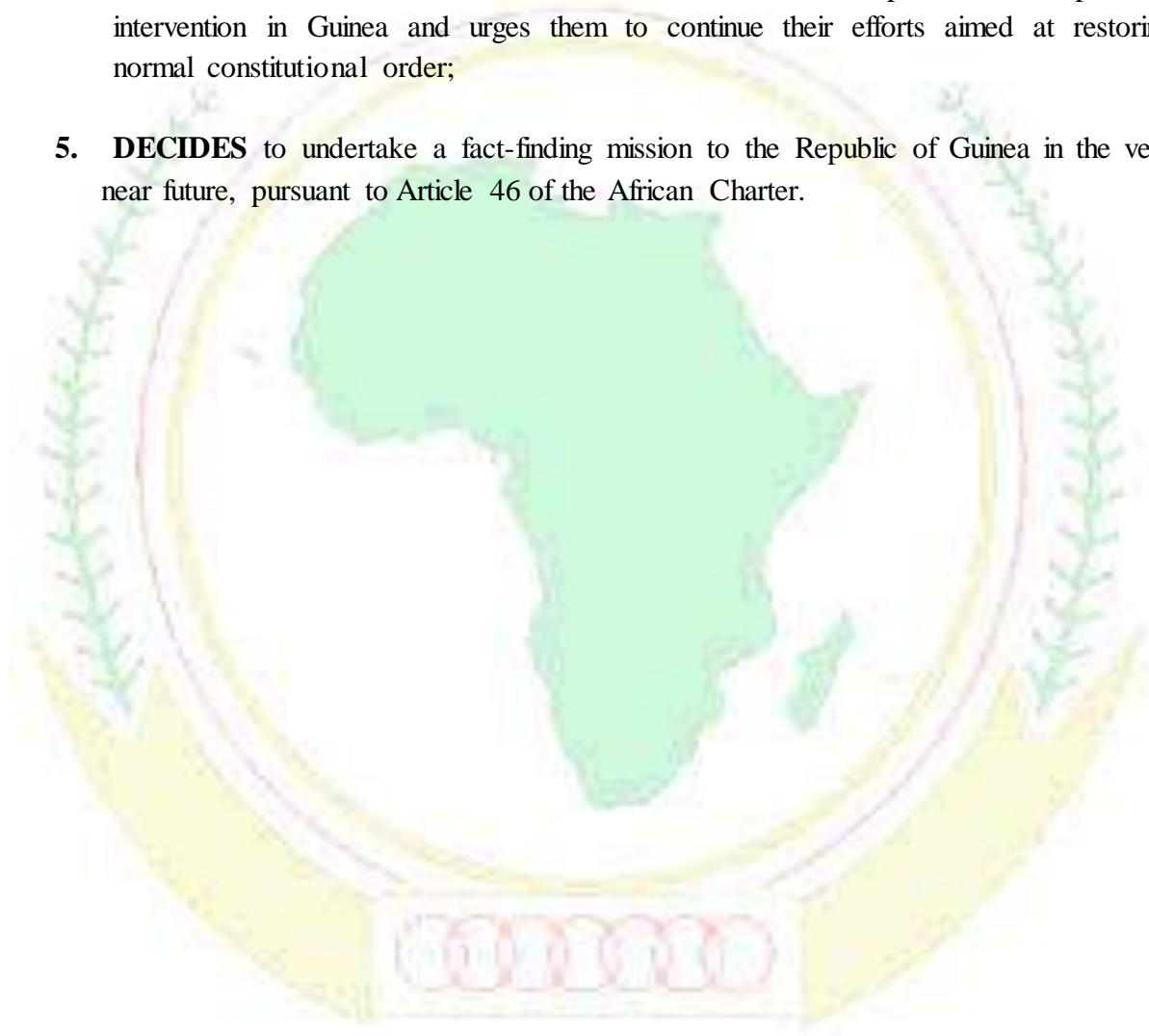
CONCERNED about the allegations of repression, by some members of the security forces, of a peaceful and legitimate assembly of Guinean citizens in the stadium, on 28 September 2009, culminating in the alleged deaths of more than 150 people and more than 1000 wounded, including the principal leaders of the political opposition parties;

CONSIDERING that the allegations further state that some members of the security forces publicly gang raped women inside the stadium and in some police stations in the capital city;

CONVINCED that such alleged acts constitute serious violations of the African Charter, (the Protocol) and other regional and international legal instruments officially ratified by the Republic of Guinea;

- 1. EXPRESSES** grave concern and regret regarding the loss of lives, the injuries sustained, and the raping of women, which, if confirmed, constitute serious and massive violations of human rights enshrined within the African Charter;

2. **URGES** the authorities of the Republic of Guinea to conduct an impartial investigation on the alleged violations and to prosecute the perpetrators;
3. **REQUESTS** the authorities of the Republic of Guinea **to guarantee the security, the physical and psychological integrity of the citizens**, in particular the women and children, and the free exercise of the rights and freedoms as guaranteed by the African Charter;
4. **COMMENDS** the African Union and ECOWAS for their political and diplomatic intervention in Guinea and urges them to continue their efforts aimed at restoring normal constitutional order;
5. **DECIDES** to undertake a fact-finding mission to the Republic of Guinea in the very near future, pursuant to Article 46 of the African Charter.



147. ACHPR/Res.147 (XLVI) 09: RESOLUTION ON THE APPOINTMENT OF THE CHAIRPERSON AND THE RENEWAL OF MEMBERSHIP OF THE WORKING GROUP ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 46th Ordinary Session held from 11 – 25 November 2009, in Banjul, The Gambia;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution ACHPR/Res.73 (XXXVI)04 to establish a Working Group on Economic and Social Rights taken at its 36th Ordinary Session, held from 23 November - 7 December 2004 in Dakar, Senegal, and which also defined its mandate;

Recalling further Resolution ACHPR/Res.124(XXXVII)07 adopted at its 42nd Ordinary Session held from 14 – 28 November 2007, in Brazzaville, the Republic of Congo to renew the mandate of the Working Group;

Bearing in mind that Commissioner Catherine Dupe Atoki led the Working Group from 2008 to 2009 as Acting Chairperson;

Noting with appreciation the work and accomplishment of members of the Working Group through the finalization of the Principles and Guidelines on Economic, Social and Cultural Rights in Africa, which is the first part of its mandate;

Considering that the term of the Acting Chairperson of the Working Group Commissioner Catherine Dupe Atoki came to an end on 25 November 2009;

DECIDES to appoint Commissioners Mohamed Bechir KhalFallah and Commissioner Soyata Maiga respectively as Chairperson and member of the Working Group on Economic, Social and Cultural Rights in Africa for a period of two years, effective 25 November 2009;

And further reappoints the following members for the same period of time:

1. Mr Ibrahima Kane (OSISA)-----Member
2. INTERIGHT-----Member
3. Institute for Human Rights and Development in Africa-----Member
4. Centre for Human Rights of the University of Pretoria-----Member

148. ACHPR/Res.148 (XLVI) 09: RESOLUTION ON THE ESTABLISHMENT OF A WORKING GROUP ON EXTRACTIVE INDUSTRIES, ENVIRONMENT AND HUMAN RIGHTS VIOLATIONS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 46th Ordinary Session held in Banjul, The Gambia from 11th to 25th November 2009

RECALLING all relevant regional and international human rights instruments and, specifically Articles 21 and 24 of the African Charter on Human and Peoples' Rights, on the right of all peoples to freely dispose of their wealth and natural resources and to a general satisfactory environment favorable to their development;

RECALLING the unconditional responsibility of States Parties to prevent all forms of violations of human and peoples' rights including the violations of human and peoples' rights by Non-State Actors;

BEARING IN MIND the 2003 report of the African Commission's Working Group of Experts on Indigenous Populations/Communities and specifically the findings on the various violations of the rights of indigenous populations/communities;

DEEPLY CONCERNED by human rights violations by non-state actors in particular the sector of extractive industries, including mining, oil, gas, and timber extraction;

CONCERNED by the increasing rate of the destruction of the African environment and ecosystem by extractive industrial activities with impunity;

CONVINCED of the necessity of an improved protection of human rights through development of jurisprudence on holding non-state actors accountable for human rights violation in Africa;

HAVING authorized and considered a report on the preliminary study on: The Role of Non-State Actors in the Violation of Human and Peoples' Rights in Africa: The Quest for a New Paradigm;

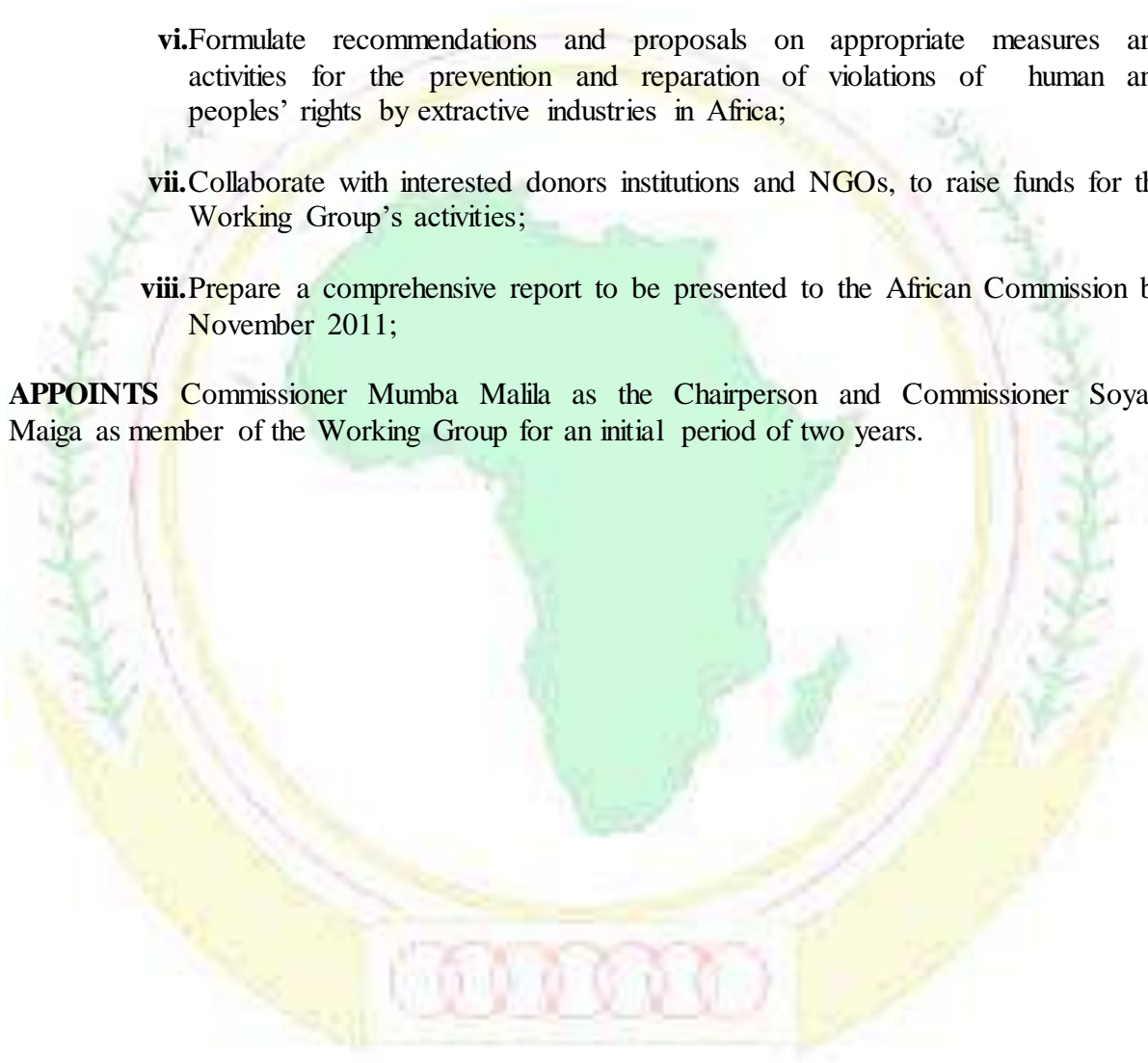
HAVING CONSIDERED ALSO a review of international law and jurisprudence on the violations of the rights of indigenous peoples by transnational and other business enterprises;

DECIDES to establish a Working Group on Extractive Industries and Human Rights Abuse in Africa with the following mandate:

- i. Examine the impact of extractive industries in Africa within the context of the African Charter on Human and Peoples' Rights;
- ii. Research the specific issues pertaining to the right of all peoples to freely dispose of their wealth and natural resources and to a general satisfactory environment favorable to their development;

- iii. Undertake research on the violations of human and peoples' rights by non-state actors in Africa;
- iv. Request, gather, receive and exchange information and materials from all relevant sources, including Governments, communities and organizations, on violations of human and peoples' rights by non-state actors in Africa;
- v. To inform the African Commission on the possible liability of non-state actors for human and peoples' rights violations under its protective mandate;
- vi. Formulate recommendations and proposals on appropriate measures and activities for the prevention and reparation of violations of human and peoples' rights by extractive industries in Africa;
- vii. Collaborate with interested donors institutions and NGOs, to raise funds for the Working Group's activities;
- viii. Prepare a comprehensive report to be presented to the African Commission by November 2011;

APPOINTS Commissioner Mumba Malila as the Chairperson and Commissioner Soyata Maiga as member of the Working Group for an initial period of two years.



149. ACHPR/Res.149 (XLVI) 09: RESOLUTION ON THE APPOINTMENT OF THE SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 46th Ordinary Session held from 11 – 25 November 2009, in Banjul, The Gambia;

CONSIDERING its mandate to promote human and peoples' rights in Africa and to ensure their protection in accordance with the African Charter on Human and Peoples' Rights;

RECALLING its Resolution **ACHPR/ 69(XXXV) 04** of 4 June 2004 on the protection of human rights defenders in Africa adopted at the 35th Ordinary Session held from 21st May to 4th June 2004, in Banjul, The Gambia;

BEARING IN MIND its resolution **83(XXXVIII) 05** of 5 December 2005 on the appointment of a Special Rapporteur on Human Rights Defenders in Africa; adopted at the 38th Ordinary Session held from 21st November to 5th December 2005 in Banjul, The Gambia;

CONSIDERING its Resolution **ACHPR/Res.125 (XXXXII) 07** on the renewal of the mandate of the Special Rapporteur on Human Rights Defenders in Africa, adopted at its 42nd Ordinary Session held in Brazzaville, Republic of Congo from 13 to 28 November 2007;

BEARING IN MIND that in the *Grand Bay (Mauritius) Declaration and Plan of Action*, the Organization of African Unity (African Union) called on Member States "to take appropriate steps to implement the UN *Declaration on Human Rights Defenders in Africa*";

CONSIDERING that the term of **Commissioner Reine Alapini-Gansou** as Special Rapporteur comes to an end on 5 December 2009;

NOTING with appreciation the work and accomplishment of Commissioner **Reine Alapini-Gansou** as Special Rapporteur on Human Rights Defenders in Africa since her re-appointment in 2007;

CONSIDERING the end of the mandate report of the Special Rapporteur;

EMPHASIZING the importance of the work of the Special Rapporteur regarding the search for solutions to the problems arising from the protection of human rights defenders;

CONSIDERING the necessity to allow the Special Rapporteur on Human Rights Defenders in Africa to continue to carry out its mandate as contained in resolution **ACHPR/ 69(XXXV) 04**;

DECIDES to appoint Commissioner **Mohamed Bechir Khalfallah** as Special Rapporteur on Human Rights Defenders in Africa for a period of two (2) years, with effect from 5th December 2009.

150. ACHPR/Res.150 (XLVI) 09: RESOLUTION ON THE APPOINTMENT AND COMPOSITION OF THE WORKING GROUP ON SPECIFIC ISSUES RELEVANT TO THE WORK OF THE COMMISSION

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 46th Ordinary Session held from 11 – 25 November 2009, in Banjul, The Gambia;

RECALLING its Resolution **ACHPR/Res 77 (XXXVII)05** on the creation of a Working Group on Specific Issues Relevant to the Work of the African Commission adopted at its 37th Ordinary Session held from 27 April to 11 May 2005 in Banjul, The Gambia;

BEARING IN MIND Resolution **ACHPR/Res.127(XXXXII) 07** on the renewal of the mandate of the Working Group adopted at the 42nd Ordinary Session held in Brazzaville, Republic of Congo from 13-28 November 2007;

CONSIDERING the report of the Chairperson of the Working Group;

NOTING with appreciation the work and accomplishment of the Working Group since the renewal of its mandate in 2007;

CONSIDERING the importance of allowing the Working Group to continue to carry out the remaining part of its mandate and address pending issues falling within this mandate;

CONSIDERING that the term of the Acting Chairperson of the Working Group, Commissioner Pansy Tlakula, comes to an end on 25 November 2009;

DECIDES to appoint Commissioner **Pansy Tlakula** as the **Chairperson** of the Working Group for two years, effective 25 November 2009;

FURTHER DECIDES that the composition of the Working Group will be as follows:

- 5) Commissioner **Kayitesi Zainabo Sylvie**
- 6) One (1) representative from each of the following Nongovernmental Organizations:
 - a) The Institute for Human Rights and Development in Africa
 - b) INTERIGHTS; and
 - c) Open Society Justice Initiative.

REQUESTS the Working Group to deal with the following remaining pending issues falling within its mandate as spelled out in the above Resolution **ACHPR/Res.77 (XXXVII) 05**:

- a. The finalization of the Rules of Procedure taking into consideration comments received from States Parties, National Human Rights Institutions, Non-Governmental Organizations and other stakeholders;
- b. The mechanism and procedure on the follow-up on decisions and recommendations of the African Commission;
- c. The structure of different reports of the African Commission;
- d. The modalities for the establishment of a Voluntary Fund for Human Rights in Africa; and

- e. The follow-up on the implementation of the recommendations of the Retreat of the African Commission in Addis Ababa of September 2003, the evaluation report on the work of the African Commission and the UPPSALA consultation of June 2004.

REQUESTS the Working Group to submit a progress report at each session of the Commission;

FURTHER REQUESTS the Secretariat of the African Commission to intensify its efforts to mobilize resources that will assist the Working Group to carry out its mandates:



151. ACHPR/Res.151 (XLVI) 09: RESOLUTION ON THE NEED FOR THE CONDUCT OF A STUDY ON THE FREEDOM OF ASSOCIATION IN AFRICA

The African Commission on Human and Peoples' Rights (the Commission), meeting at its 46th Ordinary Session from 11 to 25 November 2009, in Banjul, the Gambia

CONSIDERING the provisions of Article 9 of the African Charter on Human and Peoples' Rights on the acknowledgement to all persons the right to express and disseminate their opinions in accordance with the laws and regulations;

CONSIDERING that Article 10 of the African Charter recognizes that every person has the right to free association with other persons;

RECALLING that Article 25 of the African Charter makes it a binding duty of the States to promote and ensure the respect of the rights and freedoms contained in the Charter;

NOTING that Article 45(a) of the African Charter mandates the African Commission "to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights" with a view to promote human and peoples' rights on the continent;

BEARING IN MIND the « Grand Bay Declaration and Action Plan » adopted by the first Ministerial Conference of the Organization of African Unity on Human Rights in Africa held from 12 to 16 April 1999 in Grand Bay (Mauritius) ;

RECALLING the « Kigali Declaration » adopted by the first Ministerial Conference of the African Union on Human Rights in Africa, held on 8th May 2003 in Kigali (Rwanda);

CONSCIOUS of the fact that the guarantee of the right to free association is the security for democracy and development for African countries;

REAFFIRMING that the guarantee of the freedom of association is intrinsically related to the right to assemble freely with others as stipulated in Article 11 of the African Charter and in other international and regional human rights instruments;

CONVINCED of the crucial role of human rights defenders in ensuring the maintenance of the principles of equality, peace, liberty, dignity, justice, solidarity and democracy in African societies;

CONVINCED ALSO that violations of the freedom of association of human rights defenders put democratic values at risk in our African societies, in particular the guarantee of the respect for the promotion and protection of human rights and fundamental freedoms in Africa;

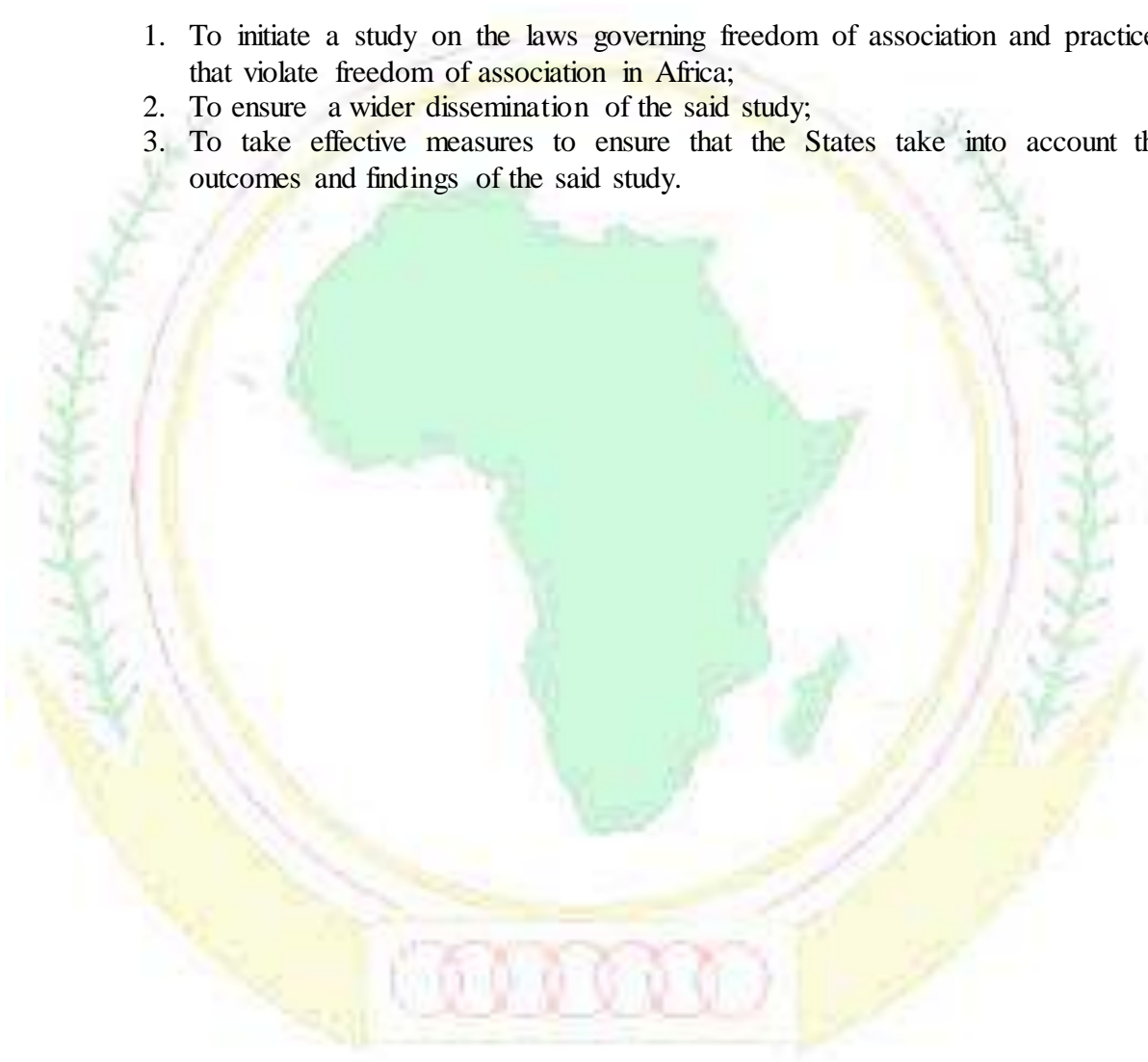
DETERMINED to ensure the promotion, the realization and protection of human rights with the view to safeguarding full and free enjoyment of human rights on the African continent;

UNDERSCORING the obligation of every African State to ensure the protection of all persons living under their jurisdiction;

CONVINCED that the conduct of a continent-wide study on the freedom of association in Africa shall contribute to the improvement of the precarious human rights situation on the continent;

DECIDES :

1. To initiate a study on the laws governing freedom of association and practices that violate freedom of association in Africa;
2. To ensure a wider dissemination of the said study;
3. To take effective measures to ensure that the States take into account the outcomes and findings of the said study.



152. ACHPR/Res.152 (XLVI) 09: RESOLUTION ON THE RENEWAL OF THE MANDATE OF THE CHAIRPERSON AND THE MEMBERS OF THE WORKING GROUP ON THE DEATH PENALTY IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 46th Ordinary Session held in Banjul, The Gambia, from 11 - 25 November 2009;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution ACHPR/Res.42 (XXVI) 99, adopted at its 26th Ordinary Session held in Kigali, Rwanda, urging States Parties to envisage a moratorium on the death penalty.

Recalling further the decision of the African Commission at its 37th Ordinary Session to appoint two Commissioners to work with the Special Rapporteur on Prisons and Conditions of Detention in Africa, to elaborate a concept paper on the Question of the Death Penalty in Africa;

Considering the trends in international law which encourage the abolition of the death penalty, in particular, the 2nd Optional Protocol to the International Covenant on Civil and Political Rights, the Statute on the International Criminal Court, the Resolution of the UN Commission on Human Rights, 2005/59, relating to the Death Penalty and the practices adopted by the States Parties to the UN Charter, and the debates and initiatives undertaken by civil society and other stakeholders on the question of the death penalty;

Bearing in mind Resolution 62/149 of the General Assembly of the United Nations, adopted in 2007 calling on all states that still retain the death penalty to, *inter alia*, observe a moratorium on executions with a view to abolishing the death penalty;

Recalling its Resolution No. ACHPR/Res.136(XXXVIII).08, calling on State Parties to observe the moratorium on the death penalty adopted at its 44th Ordinary Session held in Abuja, Federal Republic of Nigeria from 10 – 24 November 2008.

Recognizing that sixteen (16) State Parties to the African Charter have already abolished the death penalty, and thirteen (13) others have placed a moratorium on its application;

Recalling its Resolution 79/XXXVIII/05 on the Composition and Odenationalization of the Working Group on the Death Penalty adopted at its 38th Ordinary Session to expand the composition of the Working Group to include two members of the Commission and five independent experts and to broaden its mandate;

Bearing in mind Resolution ACHPR/Res.113 (XXXII)07 on the Renewal of the Mandate and the Appointment of Commissioner Kayitesi Zainabo Sylvie as the Chairperson of the Working Group on the Death Penalty adopted at the 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15 - 28 November 2007;

Reaffirming the commitment of the African Commission to promote the right to life and to encourage State Parties to abolish the death penalty ;

Considering that the mandate of the Chairperson comes to an end on 25 November 2009 and;

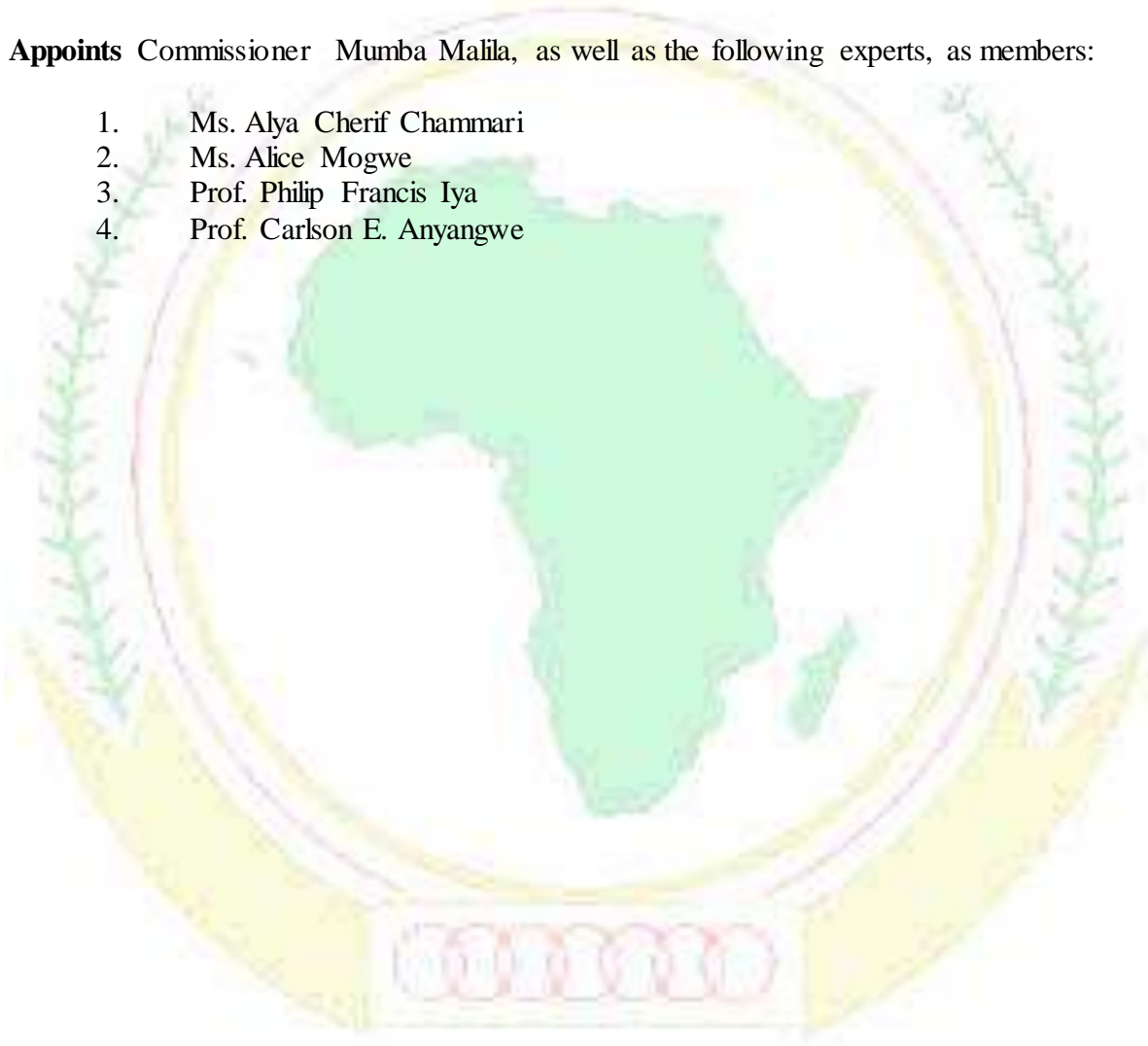
Noting with appreciation the work and accomplishment of the Chairperson of the Working Group, Commissioner Kayitesi Zainabo Sylvie ;

Considering the necessity to allow the Working Group to continue its mandate ;

Decides to re-appoint Commissioner Kayitesi Zainabo Sylvie as Chairperson of the Working Group for a period of two years, starting on 25 November 2009.

Appoints Commissioner Mumba Malila, as well as the following experts, as members:

1. Ms. Alya Cherif Chammari
2. Ms. Alice Mogwe
3. Prof. Philip Francis Iya
4. Prof. Carlson E. Anyangwe



153. ACHPR/Res.153 (XLVI) 09: RESOLUTION ON CLIMATE CHANGE AND HUMAN RIGHTS AND THE NEED TO STUDY ITS IMPACT IN AFRICA

The African Commission on Human and Peoples' Rights, (African Commission), meeting at its 46th Ordinary Session held from 11 to 25 November 2009 in Banjul, The Gambia,

Bearing in mind its mandate to promote human and peoples rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Considering the provisions of Articles 22 and 24 of the African Charter relating to the right of peoples to economic, social and cultural development and the right of peoples to a satisfactory environment favourable to their development;

Considering the provisions of the United Nations Declarations on the Rights of Indigenous Peoples, which recognises the rights of indigenous peoples and communities to their ancestral lands, cultures, lifestyles and a safe satisfactory environment;

Noting Article II of the African Convention on the Conservation of Nature and Natural Resources (Maputo Convention) of 11 July 2003, which among other things, provides for "socially acceptable development policies and programmes" guided by human rights principles, including the right to development and the right of all peoples to a satisfactory environment favourable to their development;

Recalling that the Convention on Biological Diversity urges states Parties thereto to "... *respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities...protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements*";

Noting further that African regional standards for the protection of the environment, management of natural resources and human rights are consistent with provisions of the Convention on Biological Diversity of 5 June 1992, to which more than 40 African States are parties;

Taking note that climate change is principally the result of emissions of greenhouse gases, which remain relatively high in developed countries;

Concerned that the negotiations on climate change leading to the Copenhagen Conference in December 2009, make no clear reference to human rights principles, such as the rights to traditional knowledge and intellectual property of local and indigenous communities, as well as the principle of free, prior and informed consent by communities, as enshrined in the Maputo Convention and other relevant African human rights instruments;

Concerned further that the lack of human rights safeguards in various draft texts of the conventions under negotiation could put at risk the life, physical integrity and livelihood of the most vulnerable members of society notably isolated indigenous and local communities,

women, and other vulnerable social groups;

The African Commission hereby:

1. **Urges** the Assembly of Heads of State and Government of the African Union to ensure that human rights standards safeguards, such as the principle of free, prior and informed consent, be included into any adopted legal text on climate change as preventive measures against forced relocation, unfair dispossession of properties, loss of livelihoods and similar human rights violations;
2. **Urges** the Assembly of Heads of State and Government to ensure that special measure of protection for vulnerable groups such as children, women, the elderly, indigenous communities and victims of natural disasters and conflicts are included in any international agreement or instruments on climate change;
3. **Calls on** the Assembly of Heads of State and Government to take all necessary measures to ensure that the African Commission on Human and Peoples' Rights is included in the African Union's negotiating team on climate change;
4. **Decides** to carry out a study on the impact of climate change on human rights in Africa.



154. ACHPR/Res.154 (XLVI) 09: RESOLUTION ON THE APPOINTMENT OF THE SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN IN AFRICA

The African Commission, meeting at its 46th Ordinary Session held from 11th to 25th November 2009 in Banjul, The Gambia:

Recalling its Resolution ACHPR/Res.38(XXXVIII)99, adopted at the 25th Ordinary Session, held from 26 April to 5 May 1999 in Bujumbura, Burundi, establishing the Special Mechanism on the Rights of Women in Africa and appointing Commissioner Julienne Ondziel Gnelenga as Special Rapporteur;

Recalling also Article 18(3) of the African Charter on Human and Peoples' Rights;

Further Recalling the Commission's decision passed at its 30th Ordinary Session which was held from 17th to 27th October 2001 in Banjul, The Gambia, by which it appointed Commissioner Angela Melo as Special Rapporteur on the Rights of Women in Africa; ACHPR/Res.63(XXXIV) 03, adopted at its 34th Ordinary Session held in Banjul, The Gambia, from 6th to 20th November 2003; and ACHPR/Res.78(XXXVIII) 05, adopted at its 38th Ordinary Session, held from 21st November to 6th December 2005 in Banjul, The Gambia, renewing Commissioner Melo's mandate for a period of two years and Resolution No. ACHPR/Res.112(XXXII)07 adopted at the 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15th to 28th November 2007 on the renewal of the mandate of the Special Rapporteur on the Rights of Women in Africa for a period of two years;

Bearing in mind the adoption and entry into force of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;

Considering the need to pursue the advocacy towards the ratification of the Protocol and its effective implementation by the States Parties and all other parties involved in the promotion and protection of human rights of women;

Recognizing the numerous challenges that women continue to face on the African Continent for the recognition, exercise and the enjoyment of their human rights;

Recognizing the considerable amount of work accomplished by Commissioner Soyata Maiga as Special Rapporteur on the Rights of Women in Africa;

Considering that the mandate of Commissioner Soyata Maiga has come to an end 25 November 2009;

DECIDES to renew the mandate of Commissioner Soyata Maiga as Special Rapporteur on the Rights of Women in Africa for a period of two years, effective 25 November 2009.

155. ACHPR/Res.155 (XLVI) 09: RESOLUTION ON THE RENEWAL OF THE MANDATE OF THE WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 46th Ordinary Session held from 11 - 25 November 2009, in Banjul, The Gambia;

Considering its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution Ref. ACHPR/Res.65 (XXXIV) 03 on the Report of the African Commission's Working Group on Indigenous Populations/Communities adopted at its 34th Ordinary Session held in Banjul, The Gambia from 6 – 20 November 2003;

Bearing in mind Resolution ACHPR/Res.123 (XXXXII) 07 on the Composition and Renewal for a period of two years the Mandate of the Working Group on Indigenous Populations/Communities in Africa adopted at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling that the African Commission established a Working Group composed of nine members, amongst them, three Members of the African Commission;

Noting with Appreciation the work that Commissioner Musa Ngary Bitaye has done as a Member and Chairperson of the Working Group;

Further Noting that the term of the Chairperson and members of the Working Group comes to an end on 5 December 2009;

Commending the work undertaken by the Working Group during the past two years in the discharge of its mandate;

Recognizing further the importance of the work of the Working Group in the promotion and protection of the rights of indigenous populations/communities in Africa and the necessity to allow the Working Group to continue to carry out its mandate;

Decides to:

- i. Renew the mandate of Commissioner Musa Ngary Bitaye as Chairperson of the Working Group;
- ii. Renew the mandate of Commissioner Soyata Maiga as a member of the Working Group;
- iii. Renew the mandate of Commissioner Mumba Malila as a member of the Working Group;
- iv. Maintain the membership of the following experts:
 - o Mr. Mohammed Khattali;

- Ms. Marianne Jensen;
- Mr. Zephyrin Kalimba;
- Mr. Melakou Tegegn
- Dr. Naomi Kipuri.
- Dr. Albert Barume



156. ACHPR/Res.146 (XLVI) 09: RESOLUTION ON THE APPOINTMENT OF THE SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 46th Ordinary Session held from 11 – 25 November 2009, in Banjul, The Gambia;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Reaffirming the importance of observing the objectives and principles of the African Charter for the promotion and protection of the human rights of all, including those of detainees and prisoners;

Recalling its decision taken at its 20th Ordinary Session held in Grand Bay, Mauritius in October 1996 to establish the office and to appoint a Special Rapporteur on Prisons and Conditions of Detention in Africa, as a prison monitoring mechanism;

Recalling further its decision taken at its 38th Ordinary Session held in Banjul, The Gambia in November/December 2005 to appoint Commissioner Mumba Malila as the Special Rapporteur on Prisons and Conditions of Detention in Africa;

Bearing in mind Resolution ACHPR/Res.126 (XXXXII) 07 on the Appointment of the Special Rapporteur on Prisons and Conditions of Detention in Africa adopted at the 42nd Ordinary Session held from 15 – 28 November 2007, in Brazzaville, the Republic of Congo;

Considering that the term of Commissioner Mumba Malila as the Special Rapporteur on Prisons and Conditions of Detention in Africa comes to an end on 5 December 2009;

Noting with Appreciation the work that Commissioner Mumba Malila has done as Special Rapporteur on Prisons and Conditions of Detention in Africa;

Emphasising the importance of the work of the Special Rapporteur and calling on all its partners to collaborate in the search for solutions to the problems arising from the restriction of the freedom of the individual;

DECIDES to appoint Commissioner Catherine Dupe Atoki as the Special Rapporteur on Prisons and Conditions of Detention in Africa for a period of two years, effective 5 December 2009;

CONSIDERING its mandate to promote human and peoples' rights in Africa and to ensure their protection in accordance with the African Charter on Human and Peoples' Rights;

RECALLING its Resolution **ACHPR/ 69(XXXV) 04** of 4 June 2004 on the protection of human rights defenders in Africa adopted at the 35th Ordinary Session held from 21st May to 4th June 2004, in Banjul, The Gambia;

BEARING IN MIND its resolution **83(XXXVIII) 05** of 5 December 2005 on the appointment of a Special Rapporteur on Human Rights Defenders in Africa; adopted at the 38th Ordinary Session held from 21st November to 5th December 2005 in Banjul, The Gambia;

CONSIDERING its Resolution **ACHPR/Res.125 (XXXXII) 07** on the renewal of the mandate of the Special Rapporteur on Human Rights Defenders in Africa, adopted at its 42nd Ordinary Session held in Brazzaville, Republic of Congo from 13 to 28 November 2007;

BEARING IN MIND that in the *Grand Bay (Mauritius) Declaration and Plan of Action*, the Organization of African Unity (African Union) called on Member States “to take appropriate steps to implement the UN *Declaration on Human Rights Defenders in Africa*”;

CONSIDERING that the term of **Commissioner Reine Alapini-Gansou** as Special Rapporteur comes to an end on 5 December 2009;

NOTING with appreciation the work and accomplishment of Commissioner **Reine Alapini-Gansou** as Special Rapporteur on Human Rights Defenders in Africa since her re-appointment in 2007;

CONSIDERING the end of the mandate report of the Special Rapporteur;

EMPHASIZING the importance of the work of the Special Rapporteur regarding the search for solutions to the problems arising from the protection of human rights defenders;

CONSIDERING the necessity to allow the Special Rapporteur on Human Rights Defenders in Africa to continue to carry out its mandate as contained in resolution **ACHPR/ 69(XXXV) 04**;

DECIDES to appoint Commissioner **Mohamed Bechir Khalfallah** as Special Rapporteur on Human Rights Defenders in Africa for a period of two (2) years, with effect from 5th December 2009.

157. ACHPR/Res.157 (XLVI) 09: RESOLUTION ON THE GENERAL HUMAN RIGHTS SITUATION IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting in its 46th Ordinary Session, in Banjul, the Gambia, from 11-25 November, 2009;

CONSIDERING the provisions of the African Charter on Human and Peoples' Rights, the Constitutive Act of the African Union, and other regional and international legal human rights instruments;

RECALLING the mandate of the African Commission on Human and Peoples' Rights to promote and protect human rights in Africa;

CONSIDERING the objectives of the African Union, inter alia:

1. To promote peace, security, and stability on the continent;
2. To promote democratic principles and institutions, popular participation and good governance;
3. To promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;
4. To establish the necessary conditions which enable the continent to play its rightful role in the global economy and international negotiations;

CONCERNED at the climate of insecurity reigning in some African countries as a result of the persistent armed conflicts and the resurgence of fighting in others especially between rebel groups and armed forces, in Sudan, Chad, Central African Republic, Somalia, Eritrea, and in the Democratic Republic of Congo;

AWARE OF the political instability prevailing in certain parts of Africa as a result of the unconstitutional regime changes such as in the Republic of Guinea and in Guinea Bissau;

CONSIDERING that post election violence has led to human rights violations even in conflict free areas and that arbitrary and extrajudicial executions have persisted long after the elections in some countries;

CONCERNED at the crisis situation in the wake of the overthrow of constitutional rule leading to untoward situations in countries such as the Republic of Guinea and Guinea Bissau;

NOTING that in Kenya, despite the recommendations made by the Kriegler Commission of Enquiry on Elections and the Judge Waki Commission of Enquiry on post-election violence, the Government of National Unity is yet to implement the totality of the recommendations, to wit, the creation of a Special Court in Kenya to try perpetrators of the serious human rights violations committed during the post election violence;

DEEPLY CONCERNED at the situation in Eritrea where several cases of arbitrary arrests and protracted detentions without trial of former ministers, soldiers, members of the Government, members of opposition parties, journalists and media personnel have

been noted, in violation of the provisions of the African Charter on Human and Peoples' Rights;

CONDEMNING the persistent and serious human rights violations in conflict zones affecting the most vulnerable segments of society, women and children;

STRONGLY CONDEMNING human rights violations committed by rebel forces against the population in areas under their control, as well as the execution of civilians on the basis of summary judgements passed by special courts, the plundering of population's property and the practice of kidnapping ;

CONCERNED at the threats and harassment of human rights defenders and journalists are subjected to for denouncing human rights violations committed during conflicts, as well as the continued infringements on the freedom of expression ;

CONCERNED at the impunity reigning in these countries:

1. **CALLS ON** Member States to take legislative, material measures and provide human resources to put an end to the practice of impunity, as soon as possible;
2. **CONDEMNS** the human rights violations committed by all parties against the civilian population in times of peace and in times of war;
3. **URGES** the parties to the conflict to abide by principles of international humanitarian law and those enshrined in the African Charter on Human and Peoples' Rights and to immediately desist from launching attacks against the civilian population;
4. **URGES** the parties to the conflict to allow humanitarian organisations and United Nations Agencies to move around and to engage in their activities freely ;
5. **URGES** the Government of Kenya to implement the recommendations of the Kriegler Commission, the Waki Commission and the United Nations Special Rapporteur for Summary and Extrajudicial Executions ;
6. **CALLS ON** the National Council for Democracy and Development in Guinea (NCDD) to follow the mutually agreed timetable for the return to constitutional rule by the end of 2009 and to take measures to ease tensions in the country;
7. **CALLS ON** the Republic of Guinea authorities to pursue their collaboration with the African Union, ECOWAS, the European Union, and the international community at large to ease the tension in the country;
8. **URGES** the Government of Eritrea to fulfil its obligations under the African Charter on Human and Peoples' Rights, the Constitutive Act of the African Union and other relevant human rights instruments to which Eritrea is a party;

CALLS ON all the warring parties in Sudan, Chad, DRC, and in Somalia to cooperate with the international community in order to find a lasting solution to the conflict raging in these areas.



158. ACHPR/Res.158 (XLVI) 09: RESOLUTION ON THE CHANGE OF NAME OF THE “ROBBEN ISLAND GUIDELINES FOLLOW-UP COMMITTEE” TO THE “COMMITTEE FOR THE PREVENTION OF TORTURE IN AFRICA” AND THE REAPPOINTMENT OF THE CHAIRPERSON AND MEMBERS OF THE COMMITTEE

The African Commission on Human and Peoples’ Rights (THE African Commission), meeting at its 46th Ordinary Session, held in Banjul, The Gambia, from 11 to 25 November 2009;

Recalling the mandate to promote and protect human and peoples’ rights in Africa entrusted to the African Commission on Human and Peoples’ Rights in Article 45 of the African Charter on Human and Peoples’ Rights;

Considering the recognition by African States of the absolute and irrevocable nature of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in Article 5 of the African Charter on Human and Peoples’ Rights;

Further recalling its Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) adopted during its 32nd Ordinary Session, held in Banjul, The Gambia, from 17th to 23rd October 2002;

Recalling the establishment of the Robben Island Guidelines Follow-Up Committee in 2004 with the mandate to give effect to the promotion of Article 5 of the Charter;

Mindful of the difficulty of national, regional and international stakeholders and partners in associating the name “Robben Island Guidelines Follow-Up Committee” with its torture prevention mandate;

Recognising the need for all stakeholders to easily identify with the name of the Committee as a torture prevention mechanism;

Decides:

1. to change the name of the “Robben Island Guidelines Follow-Up Committee” to the “Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Committee for the Prevention of Torture in Africa)”;
2. **Assigns** to the Committee for the Prevention of Torture in Africa the same mandate as the one assigned to the Robben Island Guidelines Follow-Up Committee.

Noting with appreciation the work and the accomplishment of the Chairperson of the Committee for the Prevention of Torture in Africa, Commissioner Catherine Dupe Atoki, since her appointment in 28 November 2007;

Considering the necessity to allow the Committee for the Prevention of Torture in Africa to continue carrying out its mandate and address urgent issues falling within its mandate;

Bearing in mind Resolution ACHPR/Res.120 (XXXXII) 07 on the Appointment of the Chairperson and Members of the Committee for the Prevention of Torture in Africa adopted at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Considering that the mandate of the Chair of the Committee for the Prevention of Torture in Africa, Commissioner Catherine Dupe Atoki, comes to an end on 28 November 2009;

Decides to re-appoint Commissioner Catherine Dupe Atoki as Chairperson and to appoint Commissioner Musa Ngary Bitaye as member of the Committee for the Prevention of Torture in Africa for a period of two years, effective 28 November 2009;

Further reappoints the following Experts as Members for the same period:

- i. Mr Jean-Baptiste Niyizurugero – Vice Chairperson
- ii. Mrs. Hannah Forster - Member
- iii. Mr Malick Sow - Member



159. ACHPR/Res.159(XLVI) 09: RESOLUTION ON THE IMPACT OF THE ONGOING GLOBAL FINANCIAL CRISIS ON THE ENJOYMENT OF SOCIAL AND ECONOMIC RIGHTS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 46th Ordinary Session held from 11 to 25 November 2009, in Banjul, The Gambia;

Reaffirming that States Parties to the African Charter on Human and Peoples' Rights (the African Charter), have an obligation to recognise the rights enshrined therein, including social and economic rights as provided in Articles 14 to 22, and to adopt legislative or other measures to give effect to them;

Reaffirming the *Pretoria Declaration on Economic, Social and Cultural Rights in Africa*, adopted at the 36th Ordinary Session of the African Commission in Dakar, Senegal on 7 December 2004;

Considering that the objectives and principles of the Constitutive Act of the African Union include: a commitment to the promotion and protection of human and peoples' rights, respect for democratic principles, human rights, rule of law and good governance and the promotion of social justice, to ensure balanced economic development; the promotion of sustainable development at the economic, social and cultural levels as well as the integration of African economies;

Recognising the existence of regional and international human rights instruments which emphasise the indivisibility, interdependence and universality of all human rights;

Conscious that the realisation of economic and social rights *vis a vis* civil and political rights remain elusive to many on the African continent as a result of several factors such as persistent conflicts, lack of human and food security due to poverty and underdevelopment, corruption and lack of good governance;

Concerned by the ongoing global financial crisis which has the potential of decreasing global demand of basic commodities produced in Africa, reduce the volume of private and public capital flow into Africa and diminish the competitiveness of the economies of Member States;

Deeply Concerned that the ongoing global financial crisis has exacerbated the already poor enjoyment of social and economic rights, in particular, food security by vulnerable and marginalised groups in Africa such as the poor, women, children, refugees and displaced persons, indigenous peoples, the disabled and people living with HIV/AIDS;

Further Concerned about the impact of the international financial crisis in slowing down the achievement of the United Nations Millennium Declaration (Millennium Development Goals) adopted by the Heads of State and Government on 8 September 2000 in New York;

Recalling the *Declaration of the Abuja Food Security Summit* by the Assembly of Heads of State and Government, held on 7 November 2006, in Abuja, Nigeria, which *inter alia* affirmed the commitment of Member States to: take urgent measures to accelerate the development of strategic commodities and also to construct and maintain critical

infrastructure to facilitate the movement of strategic agricultural products across national boundaries at minimal cost;

Noting the establishment of the Extraordinary Conference of African Ministers of Economy and Finance (CAMEF) on the financial crisis and its impact on African Economies, during the Extraordinary Conference of African Ministers held in Tunis, Tunisia on 12 November 2008;

Noting also the *Addis Ababa Declaration on the International Financial Crisis* of the Assembly of Heads of States and Governments (**Assembly/AU/Decl.2(XII)**) of 3 February 2009;

Convinced that through the implementation of holistic policies, African States can alleviate the negative effects of the international financial crisis on individuals and vulnerable groups within its borders with due regard to their obligation to respect, protect, promote and fulfil social and economic rights in the African Charter;

Calls on States Parties to the African Charter to:

1. **Take steps** to ensure implementation of national policies aimed at tackling the peculiar effects of the global financial crisis on their economies within the framework of realising economic and social rights provided for and recognised by the African Charter, and to guarantee transparency and the participation of all relevant stakeholders in the process;
2. **Continuously** monitor the impact of the global financial crises on vulnerable groups like the poor, women, children, refugees and displaced persons, indigenous peoples, the disabled and persons living with HIV/AIDS;
3. **Strengthen** efforts to eradicate corruption, mismanagement of financial resources and all other similar vices in order to afford much needed transparency and accountability necessary for economic growth and external investment and to create a conducive environment for the reduction of poverty and underdevelopment through the adoption of principles of good governance;
4. **Intensify** existing cooperation efforts between Member States through the harmonisation of macro-economic policies, acceleration of economic integration within regional economic communities and strengthening of financial regulatory mechanisms and to ensure that the improvement in the enjoyment of economic and social rights by its citizens is central to any bilateral or multilateral trade and economic agreements entered into.

160. ACHPR/Res.160 (XLVI)09 : RESOLUTION ON THE APPOINTMENT OF THE SPECIAL RAPPORTEUR ON REFUGEES , ASYLUM SEEKERS, INTERNALLY DISPLACED PERSONS AND MIGRANTS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 46th Ordinary Session held from 11 - 25 November 2009, in Banjul, The Gambia

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Aware that in the exercise of its mandate, the African Commission has established various thematic mechanisms for the promotion and protection of human and peoples' rights in Africa;

Recalling that at its 35th Ordinary Session held from 21 May - 4 June 2004 in Banjul, The Gambia, the African Commission adopted Resolution ACHPR/Res.72(XXXV)04 providing for the establishment of the mechanism of Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons in Africa;

Cognisant of Resolution ACHPR/Res.72(XXXVI)04 adopted at Dakar during the 36th Ordinary Session which elaborated the mandate of the Special Rapporteur;

Recalling that at its 39th Ordinary Session held from 11- 25 May 2006 in Banjul, The Gambia, the African Commission adopted Resolution ACHPR/Res.95(XXXIX)06 which extended the mandate of the Special Rapporteur to cover migration issues;

Bearing in mind Resolution No. ACHPR/Res. 116(XXXXII) 07: adopted at the 42nd Ordinary Session held in Brazzaville, the Republic of Congo on the renewal of the Mandate of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;

Noting with appreciation the accomplishment of the Special Rapporteur, Commissioner Bahame Tom Mukirya Nyanduga;

Considering the need to enable the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa to continue to carry out its mandate, and address urgent issues falling within this mandate;

Decides to appoint Commissioner Mohamed Fayek as Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa for a period of two years, effective 25 November 2009;

161. ACHPR/Res.161 (XLVI)09 : RESOLUTION ON THE REAPPOINTMENT OF THE SPECIAL RAPPOREUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 46th Ordinary Session held from 11 - 25 November 2009, in Banjul, The Gambia:

Recalling its mandate to promote human and peoples rights and ensure their protection in Africa under the African Charter on Human and Peoples Rights (the African Charter);

Aware that in the exercise of its mandate, the African Commission has established various mechanisms for the promotion and protection of human and peoples' rights in Africa;

Recalling the Resolution on the Mandate and Appointment of the Special Rapporteur on Freedom of Expression in Africa adopted at its 36th Ordinary Session held from 23 November - 7 December 2004 in Dakar, Senegal;

Emphasizing that the right to freedom of expression and access to information is a fundamental human right guaranteed inter alia by Article 9 of the African Charter.

Recalling the adoption of the Declaration of Principles on Freedom of Expression in Africa, at its 32nd Ordinary Session held from 17 - 23 October 2002, in Banjul, The Gambia, which elaborates the nature, content and extent of the right to freedom of expression and access to information provided for under Article 9 of the African Charter;

Reaffirming the commitment of the African Commission to promote the right to freedom of expression and access to information and monitor the implementation of the Declaration of Principles on Freedom of Expression in Africa within Member States of the African Union;

Recalling Resolution *ACHPR/Res.84(XXXV)05*, appointing Commissioner Faith Pansy Tlakula, as Special Rapporteur on Freedom of Expression in Africa adopted at the 38th Ordinary Session held from 21 November to 5 December 2005, in Banjul, The Gambia;

Further recalling Resolution *ACHPR/Res.122(XXXII)07*: on the Expansion of the Mandate and Re-appointment of the Special Rapporteur on Freedom of Expression and Access to Information in Africa adopted at the 42nd Ordinary Session held from 15 to 28 November 2007, in Brazzaville, Republic of Congo;

Considering that the term of Commissioner Faith Pansy Tlakula as Special Rapporteur on Freedom of Expression and Access to Information in Africa comes to an end on 5 December 2009 and the need for continuity;

Decides to renew the term of office of the Special Rapporteur on Freedom of Expression and Access to Information in Africa for a period of two years, effective 5 December 2009.

162. ACHPR/Res.162 (EXT.OSVIII)10: RESOLUTION ON THE POLITICAL SITUATION IN NIGER

The African Commission on Human and Peoples' Rights, meeting at its 8th Extra-Ordinary Session held in Banjul, The Gambia, from 22 February to 3 March 2010

Recalling its mandate under the African Charter on Human and Peoples' Rights (African Charter) to promote and protect human and peoples' rights in Africa, and the other relevant legal instruments such as the African Charter on Democracy, Elections and Governance (African Charter on Democracy);

Recalling its Resolution (ACHPR/Res.14 (XVI) 94) on the Situation of Human Rights in Africa adopted at its 16th Ordinary Session held from 25 October to 3 November, 1994 in Banjul, The Gambia, which condemned the planning or execution of coup d'états and any attempt to seize power by undemocratic means, as well its Resolution on Military Regimes in Africa, adopted during the same Session;

Reaffirming its commitment to the development of democracy in Africa, and recognizing that the principles of good governance, transparency and human rights are critical elements that contribute to the prevention of conflict, and build representative governments;

Recalling the ouster of the President of Niger, Mamadou Tandja, through a bloody coup d'état by the country's military junta on 18 February 2010 ;

Aware that coups d'état are, in essence, human rights violations, characterized by denial of civil and political rights as well as economic stagnation in the countries;

Considering that the State of Niger is a State Party to the African Charter;

Recalling that the enjoyment of rights and freedoms are fundamental human rights enshrined in international instruments ratified by Niger, and notably Article 2 of the African Charter;

Recalling the provisions of Article 4(p) of the Constitutive Act of the AU which condemns and rejects unconstitutional change of government;

Considering Article 13(1) of the African Charter which stipulates that "every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law";

Recalling Articles 2(4) and 25(5) of the African Charter on Democracy adopted by the Assembly of Heads of State and Governments of the AU during its 8th Summit meeting in Addis Ababa, Ethiopia from 29 to 30 January 2007;

Commends the Communiqué of the Chairperson of the AU Commission, Honourable Jean Ping on 19 February 2010 in Addis Ababa condemning the coups in Niger, and the sanctions imposed on the Republic of Niger by the Peace and Security Council of the AU;

Noting that 2010 was declared the Year of Peace and Security in Africa during the 14 th Ordinary Session of the Assembly on 3 February 2010 in Addis Ababa, Ethiopia;

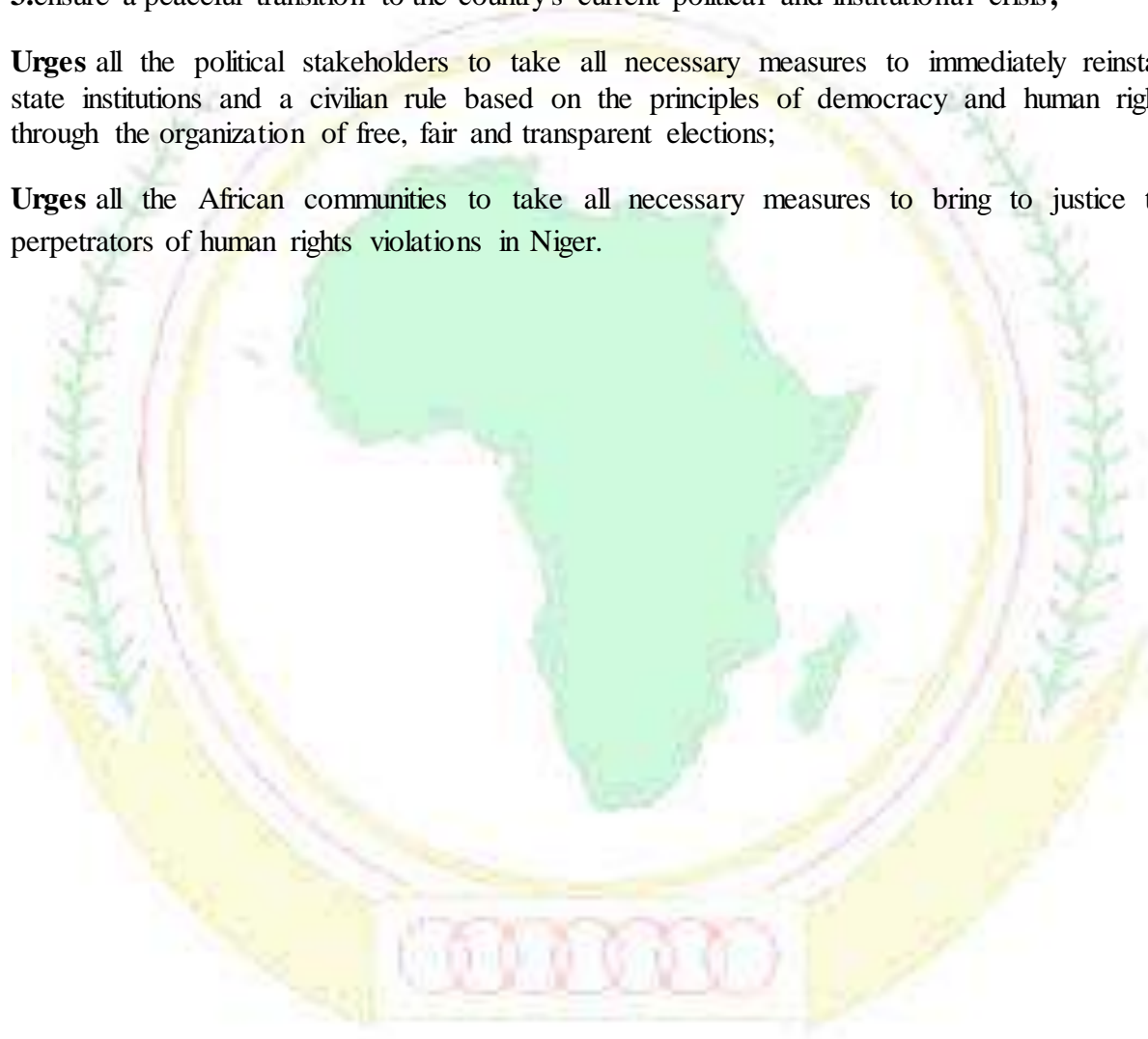
Condemns the military coup d'état in Niger which is a serious violation of the provisions of the Charter and other subsequent legal instruments;

Calls on the Military Junta in Niger to:

1. comply with the international and regional human rights instruments ratified by the country;
2. re-establish the Constitution of 9 August 1999 and respect the fundamental rights and freedoms contained therein;
3. ensure a peaceful transition to the country's current political and institutional crisis;

Urges all the political stakeholders to take all necessary measures to immediately reinstate state institutions and a civilian rule based on the principles of democracy and human rights through the organization of free, fair and transparent elections;

Urges all the African communities to take all necessary measures to bring to justice the perpetrators of human rights violations in Niger.



The logo of the African Commission on Human and Peoples' Rights (ACHPR) is centered on the page. It features a map of the African continent in green, set against a white background. This is enclosed within a circular border with a yellow outer ring and a purple inner ring. A laurel wreath is positioned at the bottom of the circle. The text 'Section E' is superimposed on the map.

Section E

Resolutions adopted during the 47th - 49th Ordinary Sessions

2010 - 2011

163. ACHPR/Res.163 (XLV11) 10: RESOLUTION ON THE ESTABLISHMENT OF A COMMITTEE ON THE PROTECTION OF THE RIGHTS OF PEOPLE LIVING WITH HIV (PLHIV) AND THOSE AT RISK, VULNERABLE TO AND AFFECTED BY HIV

The African Commission on Human and People's Rights, meeting at its 47th Ordinary Session held in Banjul, The Gambia, from 12 to 26 May 2010

1. **Recognising** that the African Commission on Human and People's Rights has a fundamental role to protect the most vulnerable groups in Africa against human rights abuses;
2. **Recognising** also that a unique feature of the HIV pandemic is the overwhelming nature of the accompanying stigma;
3. **Nothing** that in circumstances where the rule of law and human rights are not respected as an integrated part of society, the most vulnerable groups within that society are often denied the level of protection they require and hence, are exposed to increased vulnerability;
4. **Recognising** that people living with HIV and those at risk are currently one of the most vulnerable groups exposed to serious violations of human rights in Africa.
5. **Recalling** the Resolution on the HIV/AIDS Pandemic – Threat against Human Rights and Humanity (2001) calling upon African governments, state parties to the African Charter to allocate national resources that reflect a determination to fight the spread of HIV/AIDS, to ensure human rights protection of those living with HIV/AIDS against discrimination and to take appropriate actions so that international pharmaceutical industries make affordable and comprehensive health care available for African governments;
6. **Recalling** commitments of the African Union Heads of States and Governments in the Tunis Declaration on AIDS and the Child in Africa (1994); Grand Bay (Mauritius) Declaration and Plan of Action (1999); Lome Declaration on HIV/AIDS in Africa (2000); Abuja Declaration on HIV/AIDS, Tuberculosis and Other Infections Diseases (2001); Maputo Declaration on HIV/AIDS, Tuberculosis, Malaria and Other Infections Diseases)2003); Gaborone Declaration on a Roadmap Towards Universal Access to Prevention, Treatment and Care (2005); Continental Framework for Harmonisation of Approaches among Member State and Integration of Policies on Human Rights and People Infected and Affected by HIV/AIDS in Africa (2005); Brazzaville Commitment on Scaling Up Towards Universal Access to HIV and AIDS Prevention, Treatment, Care and Support in Africa by 2010 (2006); Abuja Call for Accelerated Action Towards Universal Access to HIV and AIDS, Tuberculosis and Malaria Services in Africa (2006); and Africa's Common Position to the UN General Assembly Special Session on AIDS (2006).;

7. **Noting with deep concern** that of 33.4 million people living with HIV in the world 22.4 million are living in Sub-Saharan Africa and of 2 million AIDS related deaths 1.4 million occurred in Sub-Saharan Africa in 2008;
8. **Concerned** that AIDS related deaths result in an increase number of orphans and vulnerable children in Sub-Saharan Africa;
9. **Concerned further** that despite commitments undertaken by state parties and regional bodies, PLHIV and those at risk continue to face serious violations of their basic human rights;
10. **Deeply disturbed** by the growing trend by various state parties across Africa toward criminalisation and mandatory testing of PLHIV which leads to greater stigmatisation and discrimination.

Decides to establish a committee on the protection of PLHIV and those at risk for a period of 2 years with the following mandate:

- a) To seek, request, receive, analyse and respond to reliable information from a credible sources including individuals, community based organisations, non-governmental organisations, specialised agencies, inter-governmental organisations, and state parties, on the situation and rights of PLHIV and those at risk;
- b) To undertake fact-finding missions, where necessary, to investigate, verify and make conclusions and recommendations regarding allegations of human rights violations;
- c) To engage state parties and non- state actors on their responsibilities to respect the rights of people living with HIV and those proven to be vulnerable to these infections;
- d) To engage state parties on their responsibilities to respect, protect and fulfil the rights of people living HIV and those at risk;
- e) To recommend concrete and effective strategies to better protect the rights of people living HIV and those at risk;
- f) To integrate a gender perspective and give special attention to persons belonging to vulnerable groups including, women, children, sex workers, migrants, men having sex with men, intravenous drugs users and prisoners; and
- g) To report regularly to the African Commission on Human and Peoples' Rights.

164. ACHPR/Res.164 (XLVII) 10: RESOLUTION ON THE 2010 ELECTIONS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 47th Ordinary Session, held in Banjul, The Gambia, from 12 – 26 May 2010;

Recalling its mandate under *the African Charter on Human and Peoples' Rights* (African Charter) to promote and protect human and peoples' rights in Africa;

Considering Article 13(1) of the *African Charter* which stipulates that “every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law”;

Considering relevant provisions of article 9 of the Protocol to the African Charter on the rights of Women in Africa which exhorts States Parties to take positive measures to ensure that “women participate without any discrimination in all elections”;

Reaffirming its commitment to the development of democracy in Africa, and recognising that the principles of good governance, transparency, and human rights are critical elements that contribute to the achievement of peace and sustainable development in Africa;

Welcoming the adoption of *the African Charter on Democracy, Elections and Governance* (the African Charter on Democracy), at the 8th Ordinary Session of the Assembly of Heads of State and Government of the African Union(AU), held in Addis Ababa, Ethiopia, on 30 January 2007;

Recalling its Resolution *ACHPR/Res.133 (XXXXIII) 08* on Elections in Africa, adopted at its 44th Ordinary Session held in Abuja, Federal Republic of Nigeria, from 10 - 24 November 2008, which amongst others things, called on the ratification of the African Charter on Democracy by States Parties to the African Charter;

Noting with concern that though the African Charter on Democracy lays down principles aimed at achieving a democratic continent free from unconstitutional change of government and conflict, only four countries (Burkina-Faso, Ethiopia, Mauritania, and Sierra Leone) have ratified the said instrument;

Further aware that military *coups d'état* constitute unconstitutional change of government, which is a serious threat to peace, stability, and development, and also breach the provisions of Article 4(p) of the Constitutive Act of the AU, which condemns and rejects unconstitutional change of government;

Recalling the *AU Declaration on the Principles Governing Democratic Elections in Africa*, adopted on 8 July 2002 at the 38th Ordinary Session of the Assembly of Heads of State and Government of the AU, held in Durban, South Africa;

Noting that many countries on the continent are embracing multi-party systems of Government and other political and economic reforms, making it increasingly imperative that

the objectives and principles set out in the African Charter on Democracy should be respected and implemented;

Noting that the following countries will be holding elections in the later part of 2010; Burkina Faso, Burundi, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, Ethiopia, Guinea, Madagascar, Mauritius, Namibia, Rwanda and Tanzania;

Concerned about the recurrent situation of election-related violence and other human rights violations in Africa, and stressing that the primary purpose of elections is to achieve participatory governance without violence;

Noting that 2010 was declared *the Year of Peace and Security in Africa* during the 14th Ordinary Session of the Assembly of Heads of State and Government of the AU on 3 February 2010 in Addis Ababa, Ethiopia;

Calls on States Parties to the African Charter holding elections in 2010 to:

1. Ensure that they create conditions conducive for free, fair and credible elections, and that contesting parties in particular opposition are given equitable access to state controlled media and resources;
2. Ensure that all participatory parties, in particular the opposition parties, are allowed to conduct their campaign freely without any violence and intimidation;
3. Ensure the participation of all citizens in the election processes without fear and intimidation;
4. Establish impartial and non-discriminatory procedures with respect to all voting processes;
5. Take all necessary measures to prevent, investigate and prosecute elections-related human rights violations and provide adequate redress to victims;
6. Ensure the protection of journalists, human rights defenders, election observers and monitors, before, during and after the elections from intimidation and other human rights abuses.

Reiterates its appeal to all States Parties to the African Charter who have not yet done so, to ratify the African Charter on Democracy and ensure its implementation without delay, as it contains the foundation upon which, free and fair elections can be achieved in Africa.

165. ACHPR/Res.165 (XLVII) 10: RESOLUTION ON THE PREVENTION OF WOMEN AND CHILD TRAFFICKING IN SOUTH AFRICA DURING THE 2010 WORLD CUP TOURNAMENT

The African Commission on Human and Peoples' Rights, meeting at its 47th Ordinary session held in Banjul, the Gambia, from 12 - 26 May 2010;

RECALLING that the right of women and children to be protected from trafficking has been explicitly recognized in Section 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Section 29 of the African Charter on the Rights and Welfare of the Child, Section 6 of the Convention on the Elimination of All Forms of Discrimination Against Women, and Section 35 of the Convention on the Rights of the Child;

RECALLING that the United Nations Convention against Transnational Organized Crime was adopted in 2000 and entered into force in 2003 to promote cooperation, as well as prevent and combat transnational organized crime more effectively and that, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, was adopted in 2000 and entered into force in 2003 to address all aspects of trafficking in women and children specifically;

RECOGNIZING that human trafficking is a global challenge that necessitates a global response and that the right to be protected from trafficking is also protected by other international and regional Conventions and Covenants which protect the rights to life, integrity and security of the person, and offer protection against slavery and forced labour;

CONCERNED that the 2010 World Cup in South Africa may increase the trafficking in women and children for sexual purposes and other forms of human rights abuses in South Africa and the neighboring countries;

RECALLING that South Africa ratified the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2004;

WELCOMING the introduction of the Prevention and Combating of Trafficking in Persons Bill before the South African Parliament to combat trafficking in persons by prosecuting those involved in trafficking, providing appropriate sentences and measures for the prevention of trafficking and assistance of its victims;

NOTING that the South African law could be relied upon to prosecute trafficking in persons, including the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007, the Children's Act of 2005, the Immigration Act of 2002, the Domestic Violence Act of 1998, the Prevention of Organized Crime of 1998, the Basic Conditions of Employment Act of 1997, the Intimidation Act of 1982, and common law prohibitions against rape, kidnapping,

indecent assault, abduction, murder, assault with intent to cause grievous bodily harm, common assault, and extortion;

URGES the Parliament of South Africa to expedite the enactment of the Prevention and Combating of Trafficking in Persons Bill and implement its provisions, in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

URGES the Government of South Africa to increase awareness among all levels of government of their obligations under the provisions under domestic and international law;

CALLS ON the Government of South Africa to put into place mechanisms and prevention strategies to address commercial sexual exploitation and human trafficking of women and children;

CALLS ON the Government of South Africa to put into place and support initiatives aimed at assisting victims of trafficking and commercial sexual exploitation;

URGES the Government of South Africa to intensify cross-border cooperation with the neighboring countries and to ensure an integrated and efficient approach to prosecute traffickers.



166. ACHPR/Res.166 (XLVII) 10: RESOLUTION ON THE DETORATING SITUATION OF FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 47th Ordinary Session, held in Banjul, The Gambia, from 12 – 26 May 2010,

Recalling its mandate to promote and protect human and peoples' rights under *the African Charter on Human and Peoples' Rights* (the African Charter);

Underscoring that freedom of expression and access to information are fundamental human rights guaranteed by Article 9 of the *African Charter*, and other international and regional human rights treaties, with particular reference to Article 19 of the *Universal Declaration of Human Rights*, and Article 19 of the *International Covenant on Civil and Political Right*;

Recalling ACHPR/Res.62 (XXXII) 02 on the adoption of the *Declaration of Principles on Freedom of Expression in Africa* (2002) which elaborates on the scope of Article 9 of the *African Charter*;

Recalling further Resolutions on the Situation of Freedom of Expression in Africa: ACHPR/Res.54 (XXIX) 01, adopted at its 29th Ordinary Session in Tripoli, the Great Socialist People's Libyan Arab Jamahiriya, from 23 April to 7 May 2001; and ACHPR/Res.99 (XXXX) 06, adopted at its 40th Ordinary Session held in Banjul, The Gambia, from 15 to 29 November 2006, respectively;

Noting that freedom of expression and access to information are not only fundamental human rights, but also important components for the promotion of participation, accountability and democracy on the continent;

Concerned by the continuous violations of the right to freedom of expression and access to information on the continent, including: arbitrary arrests and detention, prosecution, kidnapping, imprisonment, harassment, intimidation, extra-judicial killings, disappearance, death threats, physical attacks and suspension of journalists and media practitioners; banning or destruction of media houses, and unlawful closure of newspapers that criticise the government;

Further concerned that many States Parties to the African Charter adopt repressive laws which impose unwarranted restrictions to publish materials, and encourage government interference with the Media. Consequently limiting the enjoyment of freedom of expression and access to information;

Deeply concerned about the deteriorating state of freedom of expression and access to information in Africa;

1. **Calls** on AU Members States, to take all necessary measures to uphold their obligations under the *African Charter* and other international instruments, including the *Universal Declaration of Human Rights* and the *International*

Covenant on Civil and Political Rights providing for the right to freedom of expression and access to information;

2. **Urges** AU Member States, to implement the *Declaration of Principles on Freedom of Expression in Africa*;
3. **Urges** AU Member States to adopt legislations that promote and protect the rights to freedom of expression and access to information, guided by international and regional standards which would act as a check to curtail undue violations of these rights;
4. **Appeals** to AU Member States to investigate allegations on violations of the rights of freedom of expression and access to information, particularly in relation to the death of detained journalists, and bring perpetrators to justice;
5. **Calls** on journalists and Media Practitioners to be professional, ethical, and accountable for their actions, so as to ensure credibility in their reporting and to avoid irreparable harm to the State and individuals;
6. **Ultimately urges** AU Member States, to collaborate with the Special Rapporteur on Freedom of Expression and Access to Information in Africa, to address and prevent restrictions to the right to freedom of expression and access to information, and realise a concerted move towards a continent, free from repressive media laws and conflict;
7. **Urges** AU Member States and Media Practitioners to engage in a dialogue, aimed at improving the situation of freedom of expression and access to information on the continent.

167. ACHPR/Res.167 (XLVIII) 10: RESOLUTION ON SECURING THE EFFECTIVE REALISATION OF ACCESS TO INFORMATION IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 48th Ordinary Session, held in Banjul, The Gambia, from 10 – 24 November 2010;

Recalling its mandate to promote and protect human and peoples' rights under *the African Charter on Human and Peoples' Rights* (the African Charter);

Underscoring that the right of access to information is enshrined in Article 9 of the *African Charter*, and other international human rights instruments, including Article 19 of the *Universal Declaration of Human Rights(UDHR)*, and the *International Covenant on Civil and Political Rights(ICCPR)*;

Recognising that the right of access to information is an important tool for promoting accountability and transparency in Africa, and ensuring the effective realisation of all rights, in particular, socio-economic rights;

Aware that existing legislative provisions on the continent are used by governments, either directly or indirectly, to restrict the right of access to information in their countries;

Recalling ACHPR/Res.62 (XXXII) 02 on the adoption of the *Declaration of Principles on Freedom of Expression in Africa (the Declaration)* of 2002, which elaborates on the scope of Article 9 of the *African Charter*;

Underscoring Principle IV (1) of the Declaration, which provides that “*public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law,*” and Principle IV (2) which stipulates that “*the right to information shall be guaranteed by law in accordance with the principles*” set out in the Declaration;

Recalling Resolution ACHPR/Res.122 (XXXXII) 07, adopted during its 42nd Ordinary Session held from 15 to 28 November 2007, in Brazzaville, Republic of Congo, which expanded the mandate of the Special Rapporteur on Freedom of Expression in Africa, to include access to information;

Noting Article 9 of the AU Convention on Preventing and Combating Corruption (AU Convention on Preventing Corruption), adopted in Maputo, Mozambique on 11 July 2003 which provides that “*each State Party shall adopt such legislative and other measures to give effect to the right to access to any information that is required to assist in the fight against corruption and related offences*”;

Recalling that one of the objectives of the *African Charter on Democracy, Elections and Governance (the African Charter on Democracy)* adopted on 30 January 2007 is the “*establishment of the necessary conditions to foster citizen participation, transparency,*

access to information, freedom of the press and accountability in the management of public affairs”;

Cognizant of the absence of a model law in Africa, to guide States Parties in the development or revision of their access to information legislation;

Recognizing the need for such a model law, including guidelines on implementation, taking into consideration institutional, legal and structural differences in various States Parties;

Mindful of the constraints that may hamper the ability of States Parties to draft access to information legislation that meets with the global best practice;

Deeply concerned that of all the fifty-three (53) AU Member States in the continent, only a few have adopted access to information laws;

Commending countries that have adopted access to information laws, namely: the Republic of Angola; Republic of Ethiopia; Republic of Liberia; Republic of South Africa; Republic of Uganda; and Republic of Zimbabwe;

1. **Decides** to start the process of developing a model access to information legislation for Africa, including guidelines for its effective implementation through its Special Rapporteur on Freedom of Expression and Access to Information (the Special Rapporteur);
2. **Urges** States Parties, civil society and other stakeholders, to collaborate with the Special Rapporteur by contributing to the process of drafting the model law;
3. **Requests** the Special Rapporteur to report the progress made on the model law at its next Ordinary Session.

168. ACHPR/Res.168 (XLVIII) 10: RESOLUTION ON THE COOPERATION BETWEEN THE AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS AND THE AFRICAN PEER REVIEW MECHANISM

The African Commission on Human and Peoples' Rights meeting at its 48th Ordinary Session, held in Banjul, The Gambia, from 10 – 24 November 2010;

Recalling its mandate to promote and protect human and peoples' rights under *the African Charter on Human and Peoples' Rights* (the African Charter);

Considering Article 45 (c) of the African Charter which requires the African Commission to co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights;

Considering further the *New Partnership for Africa Development (NEPAD) Framework Document* and the *NEPAD Declaration on Democracy, Political, Economic and Corporate Governance*, which among other things, reaffirm the commitment of African states to the respect of various fundamental rights and freedoms enshrined in the African Charter;

Recalling that one of the key Indicators of the African Peer Review Mechanism of NEPAD (APRM) 'peer review' process is the respect for and protection of fundamental rights and freedoms;

Noting that Stage Five, requires that after the Report of the APRM has been considered by the Heads of State and Government of the participating countries, it should formally and publicly be tabled in key regional and sub regional structures, one of which is the African Commission;

Noting also that the African Commission mentioned as one of the Partner Institutions of the African Peer Review institutions that has the capacity to conduct technical assessment on matters relating to human rights, democracy and political governance during the peer review process;

Underscoring the need to pursue areas of cooperation between the APRM and the African Commission and its Special Mechanisms;

Emphasizing the need to explore ways and means of ensuring that these areas of cooperation are effectively utilised for purposes of synergizing human rights promotion and protection on the African continent;

Decides that the cooperation between the APRM, and the African Commission should be institutionalised through the appointment of a focal person within the African Commission to coordinate activities between the latter and the APRM;

Hereby appoints Commissioner Pansy Tlakula, as the focal point between the African Commission and the APRM for a period of one year to coordinate and enhance cooperation between the APRM and the ACHPR

169. ACHPR/Res.169 (XLVIII) 10: RESOLUTION ON REPEALING CRIMINAL DEFAMATION LAWS IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 48th Ordinary Session, held in Banjul, The Gambia, from 10 – 24 November 2010;

Reaffirming its mandate to promote and protect human and peoples' rights under *the African Charter on Human and Peoples' Rights* (the African Charter);

Noting that freedom of expression is a fundamental human right enshrined in regional and international instruments, including Article 9 of the *African Charter*, Article 19 of both the *Universal Declaration of Human Rights (UDHR)*, and the *International Covenant on Civil and Political Rights (ICCPR)*, Article 13 of the *American Convention on Human Rights (the American Convention)*; and Article 10 of the *European Convention on Human Rights (the European Convention)*;

Recalling the Resolution on Freedom of Expression adopted at its 29th Ordinary Session held from 23 April to 7 May 2001 in Tripoli, Libya, to initiate a mechanism to review and monitor adherence to standards of freedom of expression, investigate violations and make appropriate recommendations;

Aware of ACHPR/Res.62 (XXXII) 02, on the *Declaration of Principles on Freedom of Expression in Africa* of 2002 (the Declaration) which elaborates on the scope of Article 9 of the *African Charter*, in particular Principle II (1) of the Declaration which provides that “no one shall be subject to arbitrary interference with his or her freedom of expression;”

Noting Principle XII (1) of the Declaration which protects reputation by providing that “states should ensure that their laws relating to defamation conform to certain standards, including no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;”

Recalling the Resolution on the Mandate and Appointment of a Special Rapporteur on Freedom of Expression in Africa adopted at its 36th Ordinary Session held from 23 November to 7 December 2004 in Dakar, Senegal;

Noting the *Declaration of Table Mountain*, adopted by World Association of Newspapers and News Publishers and the World Editors Forum in 2007, which *inter alia* “calls on States Parties to repeal insult and criminal defamation laws, so as to promote the highest standards of press freedom in Africa;”

Noting further, the *Addis Ababa Declaration on Safety and Protection of Journalists*, adopted by the Regional Workshop on Safety and Protection of African Journalists on 3 September 2010;

Underlining that criminal defamation laws constitute a serious interference with freedom of expression and impedes on the role of the media as a watchdog, preventing journalists and media practitioners to practice their profession without fear and in good faith;

Expressing concern at the deteriorating press freedom in some parts of Africa, and in particular: restrictive legislations that censor the public's right to access information; direct attacks on journalists; their arrest and detention; physical assault and killings, due to statements or materials published against government officials;

Commending States Parties to the African Charter (States Parties) that do not have, or have completely repealed insult and criminal defamation laws;

1. **Calls** on States Parties to repeal criminal defamation laws or insult laws which impede freedom of speech, and to adhere to the provisions of freedom of expression, articulated in the African Charter, the Declaration, and other regional and international instruments;
2. **Also Calls** on States Parties to refrain from imposing general restrictions that are in violation of the right to freedom of expression;
3. **Urges** journalists and media practitioners to respect the principles of ethical journalism and standards in gathering, reporting, and interpreting accurate information, so as to avoid restriction to freedom of expression, and to guide against risk of prosecution.
4. **Further Urges** States Parties to implement the recommendations and appeals of the Special Rapporteur.



170. ACHPR/Res.170 (XLVIII) 10: RESOLUTION TO INCREASE MEMBERS OF THE WORKING GROUP ON OLDER PERSONS AND PEOPLE WITH DISABILITIES IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 48th Ordinary Session in Banjul, The Gambia, from 10 to 24 November, 2010:

Underscoring its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling the Resolution **ACHPR/Res.106 (XXXXI) 07** of 30 May 2007 on the Rights of Older Persons in Africa, adopted at its 41st Ordinary Session held from 16-30 May 2007, in Accra, Ghana;

Recalling the Resolution **ACHPR/Res.118 (XXXXII)** on the Appointment of a Focal Point on the Rights of Older Persons in Africa, that was adopted at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling further the Resolution **ACHPR/Res.143(XXXXV)09** on the Transformation of the Focal Point on the Rights of Older Persons in Africa, into a Working Group on The Rights of Older Persons and People with Disabilities in Africa(the Working Group), adopted at its 45th Ordinary Session held from 13 to 27 May 2009;

Considering the mandate assigned to the Working Group;

Seeking the efficiency required for the Working Group to successfully accomplish the mandate assigned to it;

Recognizing that the success of the Working Group depends on significant support from its members, including their expertise to achieve its specific mandate;

Noting the insufficient number of the members of the Working Group;

Decides to take all the necessary steps to appoint three more members to be part of the Working Group.

171. *ACHPR/Res.171 (XLVIII) 10: RESOLUTION ON THE APPOINTMENT OF A SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS IN AFRICA*

The African Commission on Human and Peoples' Rights, meeting at its 48th Ordinary Session, held from 10 to 24 November 2010, in Banjul, in The Gambia;

Considering its mandate on the promotion of human and peoples rights and their protection in Africa pursuant to the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution ACHPR/69(XXXV) 04 of 4th June 2004 on the protection of human rights defenders in Africa, its Resolution 83(XXXVIII) 05 of 5th December 2005 on the appointment of a Special Rapporteur on Human Rights Defenders, and its Resolution CADHP/ 125(XXXXII) 07 of 28th November 2007 on the renewal of the mandate of the Special Rapporteur on Human Rights Defenders in Africa;

Considering its Resolution CADHP/Res149(XLVI)09 of 25th November 2009 on the appointment of the Special Rapporteur on the situation of Human Rights Defenders in Africa adopted during its 46th Ordinary Session held in Banjul in the Republic of The Gambia from 11 to 25 November 2009;

Mindful of the fact that in the Grand Bay Declaration and Action Plan (Mauritius), the Organization of African Unity (AU) urges the Member States « to take necessary measures to implement the *United Nations Declaration on Human Rights Defenders in Africa* »;

Considering the need to split the dual mandate of Commissioner **Béchir Khalfallah**, in his capacity as Chairperson of the Working Group on Economic, Social and Cultural Rights and Special Rapporteur on Human Rights Defenders in Africa;

Noting with satisfaction the work accomplished by Commissioner **Béchir Khalfallah** in his capacity as Special Rapporteur on Human Rights Defenders in Africa;

Underscoring however the magnitude of the work of the Special Rapporteur in the quest for solutions to problems arising in the context of the protection of human rights defenders in Africa and to the challenges facing human rights defenders in Africa;

Considering the need to make the mechanism of Special Rapporteur on Human Rights Defenders in Africa more efficient, this in conformity with Resolution ACHPR/69(XXXV) 04;

DECIDES to appoint Commissioner **Lucy AYUK ASUAGBOR** as Special Rapporteur on Human Rights Defenders in Africa for a period of two (2) years with effect from 24 November 2010.

172. ACHPR/Res.172 (XLVIII) 10: RESOLUTION ON THE APPOINTMENT OF MEMBERS OF THE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF PEOPLE LIVING WITH HIV (PLHIV) AND THOSE AT RISK, VULNERABLE TO AND AFFECTED BY HIV

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 48th Ordinary Session held in Banjul, The Gambia, from 10 - 24 November 2010;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Bearing in mind its Resolution *ACHPR/Res163 (XLVII) 2010* adopted at its 47th Ordinary Session on the Establishment of a Committee on the Protection of the Rights of People Living With HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV;

Recognizing that the success of the Committee depends on the strong commitment of its members, including their expertise to carry out its specific milestones and address urgent issues falling within this mandate

Decides to appoint the following experts, as members of the Committee for a period of two years effective 24 November 2010:

- | | |
|--|--------------------|
| 1) M. Alain Patrick Le Doux Fogue Dzutue ; | Cameroun |
| 2) Mme Agnès Atim ; | HRDI |
| 3) M. Christian Garuka Nsabimana ; | Rwanda |
| 4) M. Tope Ebenezer Durojaye ; | Nigeria |
| 5) Mme Nicolette Naylor Merle ; | SouthAfrica |
| 6) M. Patrick Eba Michel ; | UNAIDS |

Requests the Committee to present its activity report at each Ordinary Session.

173. ACHPR/Res.173 (XLV111) 10: RESOLUTION ON THE CRIMES COMMITTED AGAINST WOMEN IN THE DEMOCRATIC REPUBLIC OF CONGO (DRC)

The African Commission on Human and Peoples' Rights, meeting at its 48th Ordinary Session held in Banjul, (Republic of The Gambia) from 10 to 24 November 2010;

Recalling the relevant provisions of the African Charter on Human and Peoples' Rights (African Charter), and those of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol);

Recalling also its Resolutions; Res.103(XXXX)06 of 29th November 2006, on the situation of women's rights in DRC; Res.111(XXXXII)07, on the right to appeal and to compensation for the victims of sexual abuses; and Res.139(XXXXIII)08 of 24th November 2008 on the human rights situation in DRC;

Paying tribute to the process of the ratification of the Protocol to the African Charter on the Rights of Women in Africa;

Paying tribute to the passing of two laws against sexual abuses by the DRC Government (Laws no 06/018 and 06/019) which criminalize various forms of sexual abuses which formerly had not been criminalized in the Criminal Code;

Bearing in mind the aims and objectives of the Constitutive Act of the African Union and the authority conferred on the Peace and Security Council (PSC);

Recalling Resolution 1325 of the United Nations Security Council of the 31st October 2000 on women, peace and security as well as the Goma Declaration of 18th June 2008 on the elimination of sexual abuse and the combat against impunity in the Great Lakes region;

Considering the Decision of the Assembly of Heads of State and Government of the African Union to declare the year 2010 « Year of peace and security in Africa » adopted during its 14th Ordinary Session;

Concerned by the persistence of the systematic and highly widespread practice of rape by armed groups against women and young girls in particular in the Eastern region of the DRC and the incapacity of the Congolese Authorities, to put an end to the impunity being enjoyed by the perpetrators of these odious crimes despite the existence of two laws on sexual abuse;

Mindful of the need to strengthen cooperation between the Organs and Institutions of the African Union in the combat against impunity and to coordinate our activities with those of the Peace and Security Council (PSC) of the African Union;

Strongly condemns the persistence of the serious human rights violations perpetrated against the civilian population in the context of the on-going armed conflict in Eastern DRC;

Calls on all the armed groups active in Eastern DRC to immediately put a end to the rape and all kinds of violence against women and children;

Urges the DRC Government to take all necessary steps for the effective implementation of the 2006 laws on sexual abuse, including the pursuit and punishment of the perpetrators of rape and other acts of violence against women;

Urges the DRC Government to accelerate the process of the ratification of the Maputo Protocol and also the establishment of a Compensation Fund for the victims of sexual abuse currently being created within the Ministry of Justice and human rights;

Decides to enter into immediate consultations with the Peace and Security Council (PSC) of the African Union to collaborate and send, in the very near future, an investigation mission on the sexual abuse being perpetrated against women in DRC in which the Special Rapporteur on the Rights of Women in Africa will participate and which will seek, among other objectives, to:

- Draw up an exhaustive inventory of the sexual abuse to which Congolese women in Eastern DRC are subjected;
- Identify the armed groups guilty of these serious violations of the African Charter on Human and Peoples' Rights and of international humanitarian law;

Also decides that the conclusions of this Investigation Report be carried forward jointly by the Peace and Security Council (PSC) of the African Union and the ACHPR so that appropriate and urgents measures can be taken to bring the actors of these odious crimes before the national, regional or/and international Courts;

Decides finally to submit report to the Assembly of Heads of State and Government of the African Union.

174. ACHPR/Res.174 (XLVIII) 10: RESOLUTION ON ELECTIONS IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 48th Ordinary Session, held in Banjul, The Gambia, from 10 to 24 November 2010;

Considering Article 13(1) of the *African Charter on Human and Peoples' Rights* (African Charter) which stipulates that “*every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law*”;

Recalling its mandate under Article 45 of the *African Charter* to promote and protect human and peoples' rights in Africa, as well as other relevant Articles of the African Charter;

Welcoming the adoption of the *African Charter on Democracy, Elections and Governance* at the 8th Ordinary Session of the Assembly of Heads of State and Government of the African Union (AU), held in Addis Ababa, Ethiopia, on 30 January 2007;

Considering relevant provisions of Article 9 of the Protocol to the African Charter on the Rights of Women in Africa which exhorts States Parties to take positive measures to ensure that “*women participate without any discrimination in all elections*”;

Further considering its commitment to take measures of affirmative action, in order to guarantee a better representation of women in elective positions;

Recalling its Resolutions on the matter of Elections; Resolution *ACHPR/Res.23 (XIX) 96* on Electoral Process and Participatory Governance; Resolution *ACHPR/Res.115 (XXXXII) 07* on the Ratification of the African Charter on Democracy, Elections and Governance; Resolution *ACHPR/Res.128 (XXXXII) 07* on Freedom of Expression and the Upcoming Elections in Zimbabwe; Resolution *ACHPR/Res.133 (XXXXIII) 08* on Elections in Africa, and Resolution *ACHPR/Res.164 (XLVII) 2010* on Elections in Africa;

Expressing concern that, despite the number of Resolutions adopted by the African Commission on Elections, the conduct of free and fair elections in some parts of the African continent remains a challenge;

Noting that the year 2010 is the year of Peace and Security in Africa (*SP/ASSEMBLY/PS/DECL.(I)*), and that the year 2011 will mark the 30th Anniversary of the *African Charter*.

Emphasizing the importance of the organization of peaceful, free, fair, and transparent elections and referenda and consequently the full respect of their results to maintain peace and security in the region;

Reaffirming its commitment to the development of democracy in Africa, and recognizing that the principles of good governance, transparency, and human rights are critical elements that contribute to the achievement of peace and sustainable development in Africa;

Expressing concern that though the *African Charter on Democracy, Elections and Governance* lays down principles aimed at achieving a democratic continent free from unconstitutional changes of government and conflict, the slow rate of its ratification still persists, and only four countries have ratified the said instrument;

Congratulate African countries that have held successful elections;

CALLS on States Parties to the African Charter (States Parties) holding elections and other forms of political participation processes to:

1. **Ensure** that they create conditions conducive for peaceful, free, fair, and transparent elections or referenda;
2. **Ensure** that contesting parties in particular opposition parties are given equitable access to state controlled media and resources;
3. **Ensure** that all participating parties, in particular, the opposition parties, are allowed to conduct their campaigns freely without any violence and intimidation;
4. **Ensure** the participation of all citizens in the election or referendum processes without fear or intimidation;
5. Take positive measures to guarantee a better representation of women in elective positions
6. **Establish** impartial and non-discriminatory procedures with respect to all voting processes;
7. **Take** all necessary measures to prevent, investigate and prosecute elections-related human rights violations and provide adequate redress to victims;
8. **Ensure** the freedom of movement and physical integrity of human rights defenders, journalists and other media practitioners in the run-up to and during, and after elections or referenda;
9. **Request** the authorities in all countries that will hold elections to invite and allow national and international monitors and observers for the duration of the elections or referenda processes.

REITERATES its appeal to all States Parties, who have not yet done so, to ratify the *African Charter on Democracy, Elections and Governance*, and ensure its effective implementation without delay, as it contains the foundation upon which free and fair elections can be achieved in Africa.

175. ACHPR/Res.175 (XLVIII) 10: RESOLUTION TO INCREASE THE MEMBERSHIP OF THE WORKING GROUP ON EXTRACTIVE INDUSTRIES, ENVIRONMENT AND HUMAN RIGHTS VIOLATIONS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 48th Ordinary Session held in Banjul, The Gambia from 10th to 25th November 2010

RECALLING its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (African Charter);

RECALLING ALSO its Resolution *ACHPR/Res148(XLVI)09*: adopted at its 46th Ordinary Session, held in Banjul, The Gambia, from 11 to 25 November 2009, on the Establishment of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa;

CONSIDERING all relevant regional and international human rights instruments and, specifically Articles 21 and 24 of the African Charter, on the right of all peoples to freely dispose of their wealth and natural resources and to a general satisfactory environment favorable to their development;

MINDFUL OF the 2003 report of the African Commission's Working Group of Experts on Indigenous Populations/Communities and specifically the findings on the various violations of the rights of Indigenous Populations/Communities;

CONVINCED of the necessity of an improved protection of human rights through development of jurisprudence on holding non-state actors accountable for human rights violations in Africa;

RECOGNISING that the success of the Working Group depends on the commitment of its members including their expertise to carry out its mandate and the importance for research, knowledge and capacity building to the Working Group;

DECIDES to appoint a representative of the Centre for Human Rights, University of Pretoria, as a member of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa.

176. ACHPR/Res.176 (XLVIII) 10: RESOLUTION ON THE DETERIORATING SITUATION OF INDIGENOUS PEOPLE IN SOME PARTS OF AFRICA

The African Commission on Human and Peoples' Rights meeting at its 48th Ordinary Session held in Banjul, The Gambia, from 10 to 24 November 2010

Recalling its mandate under the African Charter on Human and Peoples' Rights (African Charter) to promote and protect human and peoples' rights in Africa;

Underscoring the principle of non-discrimination recognized under Article 2 of the African Charter and other international human rights instruments particularly the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;

Underscoring further that peoples' rights, including indigenous peoples rights, are recognized and protected under Articles 19, 20(1), 21 and 22 of the African Charter and the UN Declaration on the Rights of Indigenous Peoples;

Recalling ACHPR/Res.121 (XXXXII) 07: Resolution on the United Nations Declaration on the Rights of Indigenous Peoples adopted during the 42nd Ordinary Session of the African Commission held from 15 to 28 November 2007; (include NUE)

Concerned with the increased and continued killings of the Batwa in Burundi and the intended eviction of the Ogiek in Kenya;

Deeply concerned with the decision (add the number of the decision) of the HIGH Court of Botswana that have denied the San Bushmen of the Central Kalahari Game Reserve their right to access water within their ancestral lands;

Further concerned with the displacement of indigenous pastoralists in Tanzania from their ancestral lands;

Noting with concern the harassment, intimidation, arbitrary arrest, illegal detention and the killing of indigenous communities and their advocates in Burundi and Tanzania:

- I. **Urges** the Governments of Burundi and Botswana to investigate the violation of human rights committed against indigenous people within their respective territories and bring those responsible to justice;
- II. **Urges** the Government of Kenya to stop the intended eviction of the Ogiek community from Mau Forest and to facilitate the mapping of Ogiek territories;
- III. **Calls** upon the Government of Tanzania to recognize and respect the rights of indigenous communities in Tanzania.

177. ACHPR/Res.177 (XLVIII) 10: RESOLUTION ON THE RATIFICATION OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE ESTABLISHMENT OF AN AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights meeting at its 48th Ordinary Session, held in Banjul, The Gambia, from 10 – 24 November, 2010,

Recalling its mandate to promote and protect human and peoples' rights under *the African Charter on Human and Peoples' Rights* (the African Charter),

Considering Article 2 of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (the Court Protocol), which provides that the Court shall complement the Protective mandate of the African Commission;

Recalling ACHPR/Res.29 (XXIV) 98, ACHPR/Res.60 (XXXI) 02 and ACHPR/Res.74 (XXXVII) 05, which among other things call on States Parties to ratify the Court Protocol and make the Declaration under article 36(4) of the Court Protocol to enable individuals and NGOs to have direct access to the Court;

Concerned about the perceived slowness on the part of some state parties to ratify the court protocol and make the Declaration under article 34 (6); which result that , only 25 states parties have ratified the Court protocol and that only four states have made the Declaration under article 36(4) of the Court Protocol;

Underscoring the importance of an effective and accessible human rights court to the protection of human rights in the African continent;

Appeals all states parties that have not done so to **ratify as is the case with the African Charter**, the Court Protocol;

Urges African states that have not done so, to make the Declaration under article 34 (6) of the Court Protocol in order to give due recognition and Competence to the African Court to receive petitions directly, from individuals and NGOs.

178. ACHPR/Res.178 (EXT.XIX) 11: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN TUNISIA

The African Commission on Human and Peoples' Rights, meeting at its 9th Extra-Ordinary Session, held in Banjul, The Gambia, from 23 February to 3 March 2011;

Recalling its mandate to promote and protect human and peoples' rights pursuant to the African Charter on Human and Peoples' Rights (the African Charter);

Recalling further the Resolutions on the Human Rights Situation in the Republic of Tunisia: *Resolution ACHPR/Res: 56 (XXIV) 01*, on the Situation of Human Rights Defenders in Tunisia, adopted during the its 29th Ordinary Session held from 23 April to 7 May 2001, in Tripoli, Great Socialist People's Libyan Arab Jamahiriya;

Considering the protests of the Tunisian Citizens which led to the establishment of a political transition process;

Nonetheless concerned by the persistent pockets of conflict which result in human rights violations and retaliatory attacks;

Concerned by the large scale displacements and migration of the population who fear for their lives and the social and humanitarian consequences of this state of affairs;

Urges the transitional Government and all the political actors to guarantee respect for the human rights and fundamental freedoms of the Tunisian citizens and to direct a peaceful political transition towards the establishment of democratic institutions responding to the aspirations of the Tunisian people;

Invites the African Union and the International Community to support the transitional Government and the Tunisian People in the realization of their common objectives and in their search for lasting peace.

179. ACHPR/Res.179 (EXT.XIX) 11: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN THE ARAB REPUBLIC OF EGYPT

The African Commission on Human and Peoples' Rights (The African Commission), meeting at its 9th Extra-Ordinary Session held in Banjul, The Gambia, from 23 February to 3 March 2011;

Recalling its mandate to promote and protect human and peoples' rights on the African Continent pursuant to the African Charter on Human and Peoples' Rights (the African Charter);

Considering that the Arab Republic of Egypt is a Party to the African Charter, and has committed itself to the promotion and protection of human and peoples' rights;

Recalling Resolution ACHPR/Res.14 (XVI) 94: **Resolution on the Situation of Human Rights in Africa**, adopted during its 16th Ordinary Session held in Banjul, The Gambia from 25 October to 3 November 1994;

Recognising the rights of citizens to participate in public affairs of the State, and to freely determine their political leaders;

Considering the peoples' claims in the Arab Republic of Egypt demanding the establishment of a political and democratic regime and the improvement of the social, economic and political conditions of the populations;

Deeply concerned by the human rights violations resulting from these events, in particular the arrests, the disappearances, and the arbitrary detentions, as well as the conduct of the political transition process by the Army;

Affirms its commitment to the principles of democracy, of good governance, transparency and respect for human rights, as essential elements for the prevention of conflict and the establishment of representative governments;

Calls upon the Transitional Authorities to accelerate the establishment of the Republican Institutions and to embark on appropriate reforms for the institution of constructive and inclusive dialogue towards the realization of sustainable peace in the Arab Republic of Egypt;

Invites the African Union and the International Community to continue to support all the efforts being deployed by all the political and civil society activists for the institution of genuine democracy in the Arab Republic of Egypt.

180. ACHPR/Res.180 (EXT.XIX) 11: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN ALGERIA

The African Commission on Human and Peoples' Rights, meeting in Extraordinary Session from 23 February to 3 March 2011 in Banjul, The Gambia;

Recalling its mandate of promotion and protection of human rights on the African Continent pursuant to the African Charter on Human and Peoples' Rights (the African Charter);

Recalling further its Resolutions: *ACHPR/RES.14 (XVI) 94* on the Human Rights Situation in Africa, adopted during its 16th Ordinary Session held in Banjul, The Gambia from 25 October to 3 November 1994; and *ACHPR/Res 55(XXIX) 01* on the Violence in Kabylie, Algeria, adopted at its 29th Ordinary Session held in Tripoli, Libya, from 23 April to 7 May 2001;

Deeply concerned by the human rights violations in North Africa in general and the deterioration of the political and human rights situation in Algeria in particular, following legitimate claims of the population, for greater freedom and better democratic governance;

Concerned by the arbitrary arrests and unconscionable detentions, the sustained suppression of the demonstrations and popular protest movements, the establishment of the curfew and the upsurge of violence in Algeria which gave rise to loss in human lives;

Strongly condemns the excessive and disproportionate use of force to suppress the will for reform and the aspirations to democracy and good governance legitimately expressed by the People of Algeria;

Reminds the Algerian Government that such acts constitute serious violations of the provisions of the African Charter and calls on it to immediately take the necessary measures to guarantee the inalienable rights of Algerian citizens;

Invites the Algerian Government to refrain from all excessive and disproportionate use of force during popular demonstrations and protest movements;

Sanctions the legitimate will and aspiration of the Algerian people for greater democracy, good governance and respect for human rights and fundamental freedoms;

Invites the Algerian Government to embark on appropriate reforms leading to constructive dialogue comprising of all the major actors in Algerian political life.

181. ACHPR/Res.181 (EXT.XIX) 11: ACHPR/Res.161(XLVI) 11: RESOLUTION ON THE HUMAN RIGHTS SITUATION IN THE GREAT SOCIALIST PEOPLES' LIBYAN ARAB JAMAHIRIYA

The African Commission on Human and Peoples' Rights, meeting at its 9th Extra-Ordinary Session, in Banjul, The Gambia, from 23 February to 3 March 2011;

Recalling its mandate to promote and protect human and peoples' rights in Africa pursuant to the African Charter on Human and Peoples' Rights (the African Charter);

Recalling Resolution ACHPR/Res. (XVI) 94 on the Human Rights Situation in Africa adopted at its 16th Ordinary Session held in Banjul, The Gambia from 25 October to 3 November 1994;

Considering the grave events which are currently taking place in the Great Socialist Peoples' Libyan Arab Jamahiriya;

Deeply concerned about the alarming human rights situation that these events have engendered, characterized by serious and massive human rights violations resulting from the blind and indiscriminate use of force, in particular through aerial bombings, the recourse to mercenaries to suppress peaceful demonstrations and the legitimate protests of the citizens;

Concerned by the huge loss of lives and the wanton destruction of buildings and property in violation of the African Charter and other relevant judicial, regional, international human rights instruments and humanitarian law;

Further concerned about the massive displacement of the population afraid for their lives, and the humanitarian consequences on women, children and other vulnerable groups;

Strongly condemns the divisionist speeches of the Head of State, Mouammar El Kadhafi and the bloody reprisal by the Government of the Great Socialist Peoples' Libyan Arab Jamahiriya against its own population;

Invites the Government of the Great Socialist Peoples' Libyan Arab Jamahiriya to put an immediate end to the acts of violence and to all the forms of suppression perpetrated against the population and the destruction of property;

Calls on the responsibility of the African Union, the Peace and Security Council of the African Union, and the International Community to take all the necessary political and legal measures for the protection of the Libyan population and for the establishment of genuine democratic governance in the State Party.

182. ACHPR/182(EXT.OS/IX)11 :RESOLUTION ON THE HUMAN RIGHTS SITUATION IN CÔTE D'IVOIRE

The African Commission on Human and Peoples' Rights, meeting at its 9th Extra-Ordinary Session, held in Banjul, The Gambia, from 23 February to 03 March 2011

Recalling its mandate of promoting and protecting human and peoples' rights on the African Continent pursuant to the *African Charter on Human and Peoples' Rights* (the African Charter);

Considering the provisions of the *United Nations Charter*, the *Constitutive Act of the African Union*, and those of the African Charter and of other regional and international human rights and international humanitarian law Conventions to which the Republic of Cote d'Ivoire is signatory;

Recalling its Resolution ACHPR/Res.14 (XVI) 94 on the human rights situation in Africa adopted during its 16th Ordinary Session held in Banjul, The Gambia, from 25 October to 3 November 1994 and ACHPR/Res. 67(XXXV)04 on the situation In Coted'Ivoire adopted during its 35th Ordinary Session held from 21 May to 4 June 2004 in Banjul, The Gambia;

Deeply concerned about the political deadlock following the proclamation of the results of the 28 November 2010 Presidential Elections and about the worsening of the violence marked by clashes between the civilian populations and the defence and security forces which, to date, have given rise to hundreds of deaths;

Recalling recommendations from the Peace and Security Council of the 27 December 2010 on the situation in Cote d'Ivoire, which calls for the search for an immediate and peaceful solution to the Ivorian crisis;

Acknowledging the noteworthy role played by ECOWAS in the effort to restore peace and stability in Cote d'Ivoire;

Appreciating the efforts deployed by the African Union to facilitate the restoration of peace in Cote d'Ivoire, as well as the decision taken to set up a panel comprising five Heads of State for the purpose of finding a peaceful solution to the crisis;

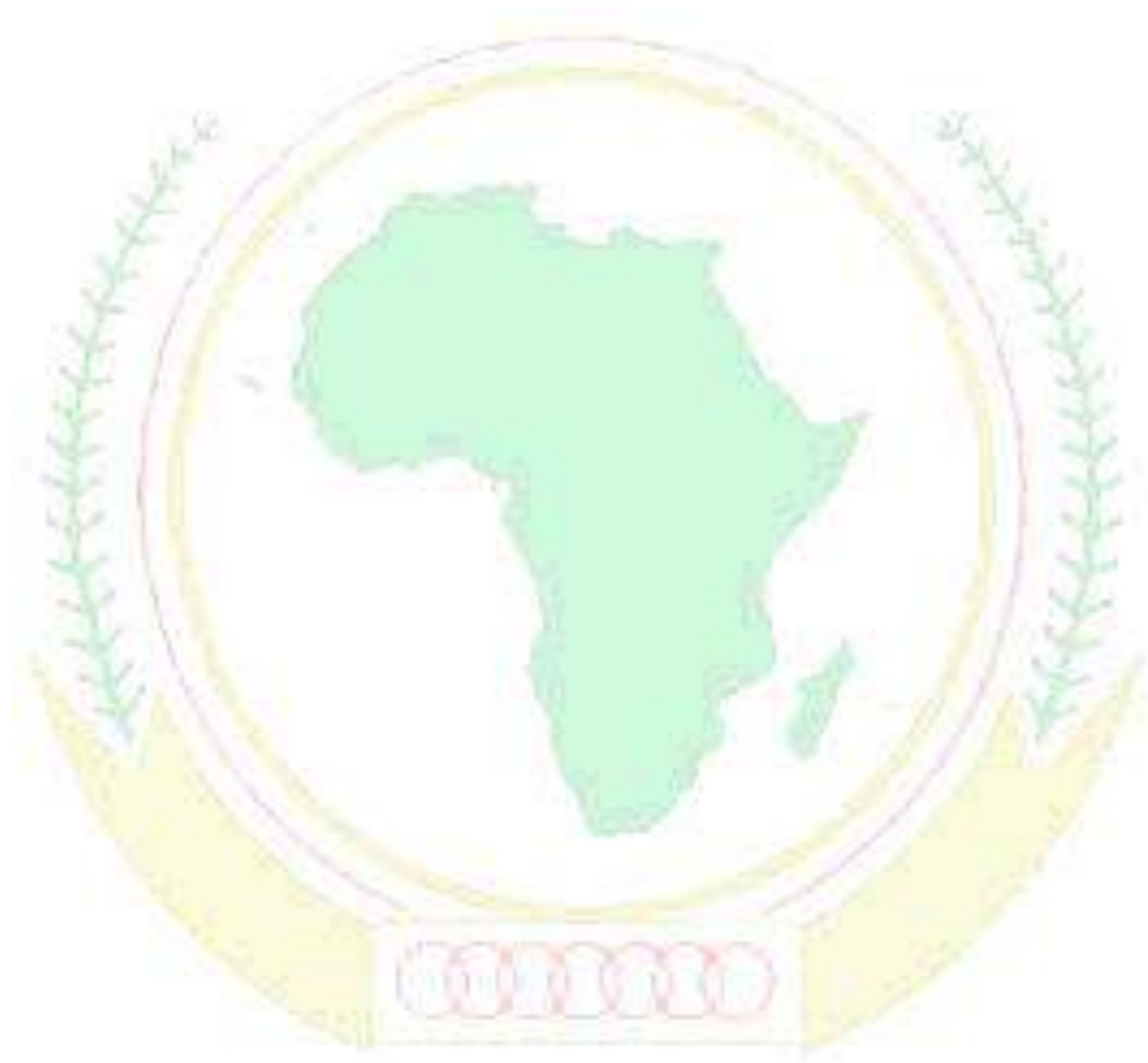
Deploring the humanitarian consequences of the conflict linked to the flood of Ivorian refugees to neighbouring States and the particularly disquieting situation of women and children;

Strongly condemns all threats and attempts at intimidation directed against the impartial Forces in Cote d'Ivoire, in particular the Forces of the United Nations Mission in Cote d'Ivoire (ONUCI), and strongly opposes the deliberate obstructions intended to hinder the fulfilment of its mission;

Calls on all Parties concerned to work towards the restoration of peace and security, and on the political actors to respect the verdict of the ballot box in the supreme interest of the country;

Urges the Panel of the Five Heads of State designated by the AU Heads of State and Governments, to reach a solution, as quickly as possible to put an end to the suffering of the Ivorian population;

Urgently Invites all the opposing Forces to respect the established cease fire and to refrain from all acts that seek to violate the arms embargo



183. ACHPR/Res.183 (EXT.XIX) 11: RESOLUTION ON THE ELECTORAL PROCESS AND PARTICIPATIVE GOVERNANCE IN THE REPUBLIC OF BENIN

The African Commission on Human and Peoples' Rights, (the African Commission), meeting in its 9th Extraordinary Session held from 23 February to 3 March 2011, in Banjul, The Gambia;

Recalling its mandate to promote and protect human and peoples' rights on the African continent pursuant to the African Charter on Human and Peoples' Rights (the African Charter);

Considering that elections represent the sole means by which every citizen can democratically express himself in conformity with the provisions of Article 13 of the African Charter which stipulates that: *Every citizen shall have the right to participate freely in the Government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law;*

Recalling its Resolutions: *ACHPR/Res.23(XIX)96* on the Electoral Process and Participative Governance in Africa, adopted at its 19th Ordinary Session, held from 26 March to 4 April 1996 in Ouagadougou, Burkina Faso; *ACHPR/Res.133 (XXXXVIII) 08* on Elections in the African Countries adopted at its 44th Ordinary Session held from 10 to 24 May 2008 in Abuja, Nigeria; and *ACHPR/Res.164 (XLVII) 2010* on Elections in Africa, adopted at its 47th Ordinary Session held from 12 to 26 May 2008 in Banjul, The Gambia;

Considering the AU/OAU Declaration on the Principles Governing Democratic Elections in Africa, adopted on 8 July 2002 within the framework of the 38th Ordinary Session of the Assembly of Heads of State and Government of the OAU which was held in Durban, in South Africa;

Having taken note of the situation which prevails in the Republic of Benin regarding the current electoral process and the danger of the democratic achievements being called into question with the spectre of social conflicts;

Concerned about the restrictions noted by the citizens on their political rights and the current reluctance of the Authorities to embark on appropriate measures to remedy this situation;

Further concerned about the lack of collaboration between the political actors in the establishment of the institutions responsible for directing and supervising the next elections;

Invites the Government of Benin to guarantee the political right to vote and elect the leaders of their choice for all Beninese citizens;

Further invites the Government of Benin to take appropriate measures to preserve the credibility of the electoral process and social peace;

Invites all the political actors to show restraint and to engage constructive dialogue aimed at creating a conducive environment for credible, transparent and peaceful elections;

Calls on ECOWAS and the African Union to monitor the development of the political situation in Benin and to support the Government and other Beninese political actors in the successful organization of the elections.



184. ACHPR/Res.184 (EXT.XIX) 11: RESOLUTION ON ELECTORAL PROCESSES AND PARTICIPATORY GOVERNANCE IN AFRICA

The African Commission on Human and Peoples' Right (the African Commission) meeting at its 9th Extra-ordinary Session held in Banjul, The Gambia, from 23 February to 3 March 2011;

RECALLING its mandate under the African Charter on Human and Peoples' Rights (African Charter) to promote and protect human and peoples' rights in Africa;

CONSIDERING Article 13(1) of the African Charter which stipulates that *“every citizen shall have the right to participate freely in the government of his/her country, either directly or through freely chosen representatives in accordance with the provisions of the law”*;

MINDFUL of the significant progress made by the African Union through the adoption in 2002 of the Declaration on the Principles Governing Democratic Elections in Africa which stipulates that *“the holding of democratic elections constitutes an important dimension in the prevention, management and resolution of conflicts”* and also by the adoption of the African Charter on Democracy, Elections and Governance in January 2007;

AWARE OF the decisions of the African Union on unconstitutional changes of government, notably the decisions of the Assembly: Assembly/AU/Dec.220 (XII); and Assembly/AU/Dec.253 (XIII), adopted during its twelfth and thirteenth Sessions held respectively in Addis Ababa from 1 to 4 February 2009, and in Sirte from 1 to 4 July 2009;

RECALLING Resolutions: *ACHPR/Res.133 (XXXXVIII) 08 on Elections in Africa* adopted at its 44th Ordinary Session held in Abuja, Federal Republic of Nigeria, from 10 to 24 November 2008; and Resolution *ACHPR/Res.164(XLVII) 10 on 2010 Elections in Africa*, adopted at its 47th Ordinary Session held in Banjul, the Gambia from 12 to 26 May 2010,

NOTING that the primary purpose of elections is to achieve participatory governance without violence;

NOTING that many countries on the continent are embracing multi-party systems of government and other political and economic reforms, making it increasingly imperative that the objectives and principles set out in the African Charter on Democracy, Elections and Governance should be respected and implemented;

DEEPLY CONCERNED by the resurgence of electoral fraud, unconstitutional changes of government and violence related to the electoral irregularities, and violence that have led to enormous loss of lives, as well as the intransigence of incumbent regimes to relinquish power in some countries in sub-Saharan Africa;

BEARING IN MIND that presidential elections are due in Benin, Cameroon, Chad, The Gambia, Liberia, Madagascar, Nigeria, Niger, Zambia and Zimbabwe;

CONDEMNS the unconstitutional changes of government which undermine the progress made in the democratization process on the continent and constitutes a threat to peace and security in Africa;

FURTHER CONDEMNS the irregularities surrounding electoral processes that can lead to the breakdown of democracy;

DEPLORES the new trends in the development of national unity governments, which in some cases, legitimise undemocratic elections and paralyze political life;

URGES States Parties to ratify the African Charter on Democracy, Elections and Governance and to respect its provisions and especially:

- **Recognize** the right of existence of various political parties and the right to a pluralist democracy in accordance with international protection of human rights instruments;
- **Ensure** the independence of the body responsible for the management of elections before, during and after the holding of any election;
- **Take** necessary measures to enable courts to respond independently to the right to justice and reparation for victims of violence related to elections;
- **Ensure** the independence of the judiciary bodies responsible for monitoring the legality of electoral processes;
- **Ensure** that they create conditions conducive for free, fair, transparent, democratic and credible elections, and that contesting parties in particular, opposition parties are given equitable access to state controlled media and resources.
-

FURTHER CALLS on States Parties of the African Union to condemn African leaders who lose elections and refuse to concede defeat and hand over power peacefully;

APPEALS to the authorities of the African Union, including the AU Peace and Security Council, and the Regional Economic Communities, to strengthen their ability to anticipate violations of democratic principles through more dynamic direct preventive action, with appropriate sanctions against any person departing from these principles.

185. (XLIX) 2011: RESOLUTION ON THE SAFETY OF JOURNALISTS AND MEDIA PRACTITIONERS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 49th Ordinary Session, held in Banjul, The Gambia, from 28 April – 12 May 2011;

Recalling its mandate to promote and protect human and peoples' rights pursuant to the African Charter on Human and Peoples' Rights (the African Charter);

Underscoring that freedom of expression and access to information are fundamental human rights guaranteed by Article 9 of the *African Charter*, and other international and regional human rights treaties;

Reaffirming its commitment to promote the rights of all peoples "to national and international peace and security" in line with Article 23 of the African Charter;

Further Reaffirming its commitment to protect the rights of journalists and media practitioners in Africa to freedom of expression and access to information;

Recalling Resolution ACHPR/Res.62 (XXXII) 02 on the adoption of the *Declaration of Principles on Freedom of Expression in Africa*, which elaborates on the scope of Article 9 of the *African Charter*; **Resolution ACHPR/Res.54 (XXIX) 01** on the Situation of Freedom of Expression in Africa; **Resolution ACHPR/Res.99 (XXXX) 06** on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa;

Recalling the United Nations Security Council's Resolution 1738 (2006), which condemns attacks against journalists in conflict situations, and UNESCO Resolution 29(1997) on "Condemnation of Violence Against Journalists" adopted by the UNESCO General Conference ;

Noting that freedom of expression, press freedom and access to information can only be enjoyed when journalists and media practitioners are free from intimidation, pressure and coercion;

Concerned by the declining safety and security situation of journalists and media practitioners in some African countries;

Noting that killings, attacks and kidnapping of journalists, which are contrary to international humanitarian and human rights law, are often committed in an environment of impunity;

Deeply concerned about the frequency of allegations of the violations of killings and injury against journalists and media practitioners;

1. **Calls** on States Parties to the African Charter, to take all necessary measures to uphold their obligations under the *African Charter* and other international and regional instruments, providing for the right to freedom of expression and access to information;

2. **Urges** States Parties to the African Charter, to implement the principles enshrined in the *Declaration of Principles on Freedom of Expression in Africa*;
3. **Calls on** States Parties to the African Charter and concerned authorities to fulfil their obligation on preventing and investigating all crimes allegedly committed against journalists and media practitioners and also to bring the perpetrators to justice;
4. **Urges** all parties involved in situations of armed conflicts to respect the independence and freedom of journalists and media practitioners to exercise their profession and guarantee their safety and security in accordance with international humanitarian law;
5. **Finally urges** States Parties to African Charter, to cooperate with the Special Rapporteur on Freedom of Expression and Access to Information in Africa of the African Commission, in the execution of its mandate.



186. ACHPR/Res.186 (XLIX) 2011: RESOLUTION ON THE APPOINTMENT OF MEMBERS FOR A STUDY GROUP ON FREEDOM OF ASSOCIATION IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 49th Ordinary Session held from 28 May to 12 June 2011, in Banjul, The Gambia;

Recalling its mandate to promote and protect human and peoples' rights in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling the Principles and Guidelines on the right to a fair trial and legal aid in Africa (1996) the United Nations Declaration on Human Rights Defenders(1998), the Grand Bay Declaration(1999) and its plan of action, the Kigali Declaration(2003);

Bearing in mind the commitment of the States Members of the African Union in the Grand Bay (Mauritius) Declaration to implement the provisions of the United Nations Declaration on Human Rights Defenders, and the decision of the 33rd Ordinary Session of the African Commission (May 2003) which considers that interference to the work of human rights defenders amounts to a violation of the African Charter on Human and Peoples' Rights;

Recalling Resolution **ACHPR/69(XXXV) 04** on the protection of human rights defenders in Africa, Resolution ACHPR/Res.119 (XXXXII) 07 on the Situation of Human Rights Defenders in Africa;

Recalling further Resolution *ACHPR/Res151 (XLVI) 09* on the need for the conduct of a study on the freedom of association in Africa;

DECIDES to appoint the following organisations to conduct, under the supervision of the Special Rapporteur on Human Rights Defenders in Africa , a study on the laws governing freedom of association and practices that violate freedom of association in Africa:

- 1. International Service for Human Rights;**
- 2. Institute for Human Rights and Development in Africa;**
- 3. West Africa Human Rights Defenders Network;**
- 4. East and Horn of Africa Human Rights Defenders Project;**
- 5. African Centre for Democracy and Human Rights Studies;**
- 6. Cairo Institute for Human Rights studies;**
- 7. Central Africa Human Rights Defenders Network;**
- 8. HURISA.**

Further decides that the Report of the study be submitted to the African Commission within a period of one (1) year.

187. ACHPR/Res.187 (XLIX) 2011: RESOLUTION ON THE APPOINTMENT OF THE SPECIAL RAPPORTEUR ON REFUGEES, ASYLUM SEEKERS, INTERNALLY DISPLACED PERSONS AND MIGRANTS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 49th Ordinary Session, held in Banjul, The Gambia, from 28 April – 12 May 2011

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Bearing in mind Resolution ACHPR/Res. 72(XXXV)04 on the establishment of the mechanism of Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons in Africa; Resolution ACHPR/Res. 72(XXXVI) 04 on elaborating the mandate of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons in Africa; and Resolution *ACHPR/Res160(XLVI)09* which appointed **Honourable Commissioner Mohamed Fayek** as Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;

Noting with appreciation the accomplishment of **Honourable Commissioner Mohamed Fayek** and acknowledging his resignation as a Member of the African Commission and Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons in Africa by a letter dated 7 April 2011;

Considering the need of the Special Mechanism on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa to continue to carry out its mandate;

Decides to appoint **Honourable Commissioner Kayitesi Zainabo Sylvie** as Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa for a period of two years, effective 12 May 2011;

188. ACHPR/Res.188 (XLIX) 2011: RESOLUTION ON THE RENEWAL AND EXTENSION OF THE MANDATE OF THE ADVISORY COMMITTEE ON BUDGETARY AND STAFF MATTERS

The African Commission on Human Peoples' Rights (the African Commission) meeting at its 49th Ordinary Session in Banjul, The Gambia from 28 April to 12 May 2011;

Recalling its mandate to promote and protect human and peoples' rights pursuant to the African Charter on Human and Peoples' Rights (the African Charter);

Aware of the vital role of its Secretariat in ensuring the effective discharge of the Commission's mandate and the importance of having an effective Secretariat;

Further conscious of the difficulties the African Commission faces in the preparation, presentation and execution of its budget, and desirous of facilitating its budgetary preparation process;

Welcoming the decision of the Executive Council of the African Union to strengthen the human resources capacity of the African Commission through the recruitment of 33 more staff over a period of five years, from 2010 to 2014;

Recalling its decision during the 6th Extra-Ordinary Session to establish an Advisory Committee on Budgetary and Staff Matters to work with the Secretariat to prepare the Programs budget of the Commission;

Recalling further Decision EX.CL/Dec.529 (XV) of the Executive Council which state that the African Union (AU) Commission, in consultation with the Permanent Representatives Committee (PRC), expedite the review of the honorarium and allowances of the Members of ACHPR in accordance with the Financial Rules and Regulations of the African Union;

Recalling further its **Resolution ACHPR/Res 142(XXXXV) 09**, adopted at its 45th Ordinary Session, Establishing an Advisory Committee on Budgetary and Staff Matters; with the following mandate:

- (i) To work with the Secretariat to identify activities from the 2008 – 2012; Strategic Plan of the ACHPR that would feature in the Commission's budget Proposals;
- (ii) To work with the Secretariat to prepare the programs budget of the African Commission for presentation to the relevant Organs of the African Union;
- (iii) To work with the Secretariat to ensure proper execution of the programs; and
- (iv) To work with the Secretariat on the implementation of the approved new structure of the Secretariat of the African Commission;

Appreciating the work undertaken by the Advisory Committee during the past two years in the discharge of its mandate;

Recognizing the importance of the work of the Committee and the necessity to allow the Committee to continue to carry out its mandate;

Decides to:

- Renew the mandate of the Committee for a period of two years with effect from 12 May 2011;
- Review and follow up on issues relating to the working conditions of members of the Commission, including emoluments and honorariums.
- Renew the appointment of the following Members of the Committee:
 - i. Honourable Commissioner Musa Ngary Bitaye (Chairperson)**
 - ii. Honourable Commissioner Reine Alapini-Gansou (Member)**
 - iii. Honourable Commissioner Kayitesi Zainabo Sylvie (Member)**
 - iv. The Secretary to the Commission (ex-officio)**
 - v. 1 Senior Legal Officer (ex-officio)**
 - vi. The Administrative and Finance Officer (ex-officio)**
- Appoints **Honourable Commissioner Soyata Maiga** as a Member of the Committee.



189. ACHPR/Res.189 (XLIX) 2011: RESOLUTION ON THE NOMINATION OF EXPERTS AS MEMBERS OF THE WORKING GROUP ON THE RIGHTS OF OLDER PERSONS AND PEOPLE WITH DISABILITIES IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 49th Ordinary Session held in Banjul, The Gambia from 28th April to 12th May 2011

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Considering that the African Charter makes specific provisions under **Article 18(4)**, for the protection of the rights of older persons and people with disabilities, which stipulates that *"The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs;"*

Considering further paragraph 20 of the Kigali Declaration, which *"calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and people with disabilities;"*

Recalling its Resolution **ACHPR/Res.106 (XXXXI) 07** on the Rights of Older Persons; Resolution **ACHPR/Res.118 (XXXXII) 07** on the Appointment of a Focal Point on the Rights of Older Persons in Africa; Resolution **ACHPR/Res.143 (XXXXV) 09**, transforming the Focal Point on the Rights of Older Persons in Africa into a Working Group on the Rights of Older Persons and People with Disabilities;

Bearing in mind the mandate of the Working Group on the Rights of Older Persons and People with Disabilities, in particular to facilitate the process of drafting the Protocol on Ageing, ensuring compliance by States Parties with the recommendations contained in the AU Policy Framework and Plan of Action on Ageing;

Noting with appreciation the work already undertaken by the Working Group in elaborating a first Draft Protocol on the Rights of Older Persons which was submitted to the African Commission at its 49th Ordinary Session;

Recognizing the need to increase the number of experts of the Working Group to implement more efficiently its mandate;

Decides to appoint the following as Experts as the Members of the Working Group on Older Persons and People with Disabilities in Africa, for a period of two years, effective 12 May 2011:

- I. Dr. Isabella Anika Gbemisola ABODERIN**
- II. Mr. Kudakwashe Dube; and**
- III. Mr. Lawrence Murugu Mute**

190. ACHPR/Res.190 (XLIX) 2011: RESOLUTION ON THE PROTECTION OF THE RIGHTS OF INDIGENOUS WOMEN IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 49th Ordinary Session, held in Banjul, The Gambia, from 28 April to 12 May 2011;

Recalling its mandate to promote and protect human and peoples' rights pursuant to the African Charter on Human and Peoples' Rights (the African Charter);

Considering the relevant provisions of Articles 2 and 3 of the African Charter on Human and Peoples' Rights (the African Charter), which proclaims equality and prohibits all forms of discrimination;

Recalling the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which prohibits discrimination against women, and the right to a positive cultural environment, whereby the States undertake to ensure protection for women from marginalized populations and to guarantee them a framework adapted to their conditions in relation with their physical, economic and social requirements;

Further recalling the international instruments which prohibit all forms of discrimination, in particular on the basis of race, ethnic grouping, colour, gender, language, religion, national or social opinion or origin, and specifically the United Nations Declaration on the Rights of Indigenous Populations, in its Articles 21 and 22 which calls on the States to pay particular attention to the Rights of Indigenous Women in the application of the said Declaration;

Considering the 1995 Beijing Declaration on Indigenous Women which urged the Governments and non-Government actors to adopt concrete measures to promote and strengthen national policies and programmes for the benefit of indigenous women pertaining specifically to their rights to good health, education and economic development;

Noting the indivisibility of the rights of indigenous women and those of the populations to which they belong and the fact that the respect for the rights of indigenous women passes necessarily through the respect for the collective rights of indigenous populations;

Recognizing the crucial role played by indigenous women in the protection and preservation of natural resources and in the protection, development and transmission of indigenous knowledge and culture;

Recalling that the rights of indigenous populations to property, to freely dispose of their wealth and natural resources, to practice their culture and their right to development as guaranteed in the African Charter and other pertinent international instruments;

Noting the persistence of violence and various forms of discrimination and marginalization faced by indigenous women in all areas of society;

Concerned by the fact that the expropriation of indigenous populations' ancestral lands and the prohibition of their access to the natural resources on these lands has a particularly serious impact on the lives of indigenous women;

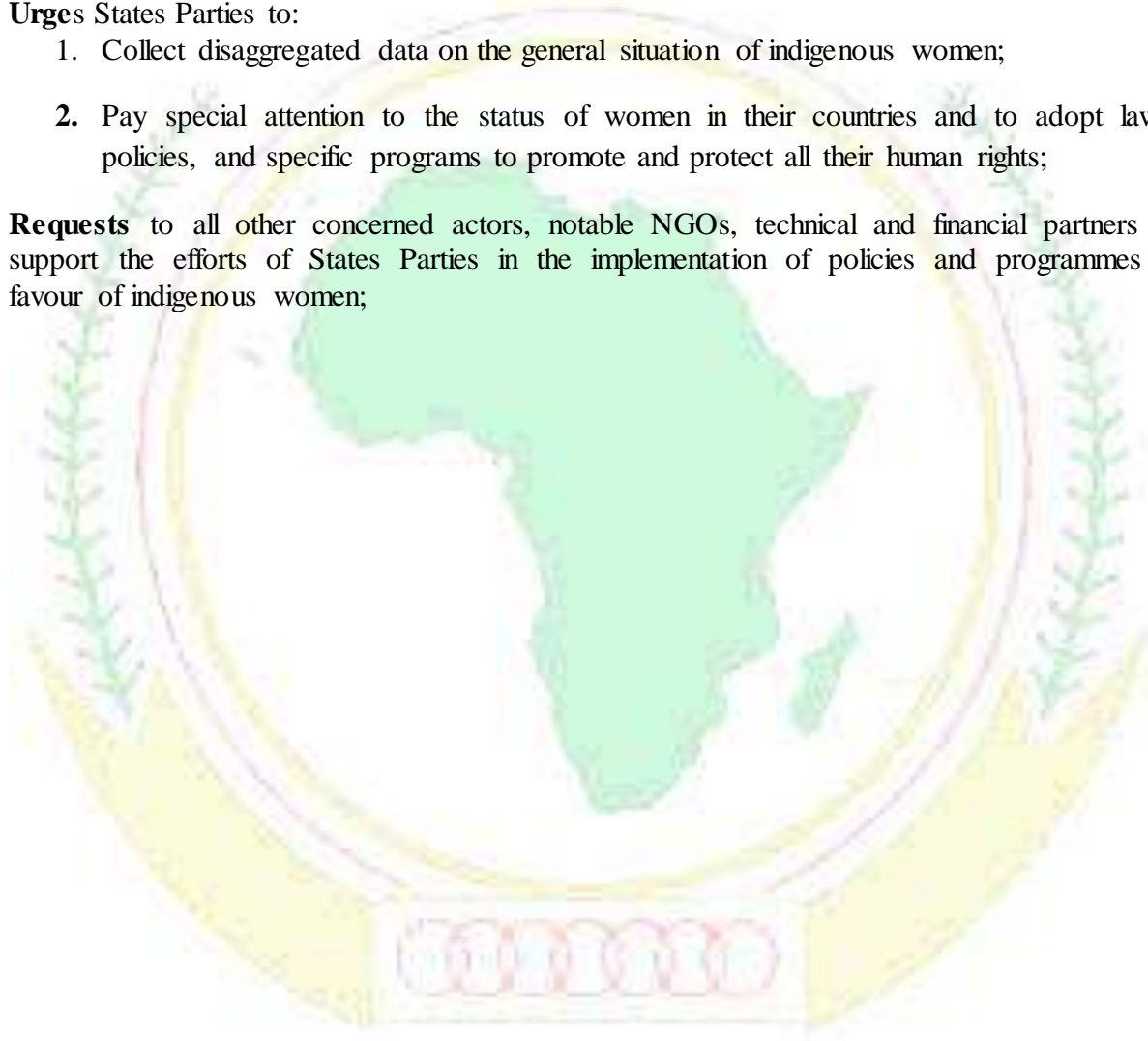
Preoccupied by the high rate of maternal mortality of indigenous women and cases of illnesses affecting them, which could have been prevented if they had proper health care facilities;

Concerned by the absence of disaggregated data in several countries, which are important in the determination of required measures to develop adapted policies;

Urges States Parties to:

1. Collect disaggregated data on the general situation of indigenous women;
2. Pay special attention to the status of women in their countries and to adopt laws, policies, and specific programs to promote and protect all their human rights;

Requests to all other concerned actors, notable NGOs, technical and financial partners to support the efforts of States Parties in the implementation of policies and programmes in favour of indigenous women;



191. ACHPR/Res.191 (L) 11: RESOLUTION ON THE APPOINTMENT OF THE CHAIRPERSON AND RENEWAL AND EXTENSION OF MEMBERS OF THE ADVISORY COMMITTEE ON BUDGETARY AND STAFF MATTERS

The African Commission on Human Peoples' Rights (the African Commission) meeting at its 50th Ordinary Session in Banjul, The Gambia from 24th October to 5th November 2011:

Recalling its mandate to promote and protect human and peoples' rights pursuant to the African Charter on Human and Peoples' Rights (the African Charter);

Aware of the vital role of its Secretariat in ensuring the effective discharge of the Commission's mandate and the importance of having an effective Secretariat;

Further conscious of the difficulties the African Commission faces in the preparation, presentation and execution of its budget, and desirous of facilitating its budgetary preparation process;

Welcoming the decision of the Executive Council of the African Union to strengthen the human resources capacity of the African Commission through the recruitment of 33 more staff over a period of five years, from 2010 to 2014;

Recalling its decision during the 6th Extra-Ordinary Session to establish an Advisory Committee on Budgetary and Staff Matters to work with the Secretariat to prepare the programs budget of the Commission;

Recalling further Decision EX.CL/Dec.529 (XV) of the Executive Council which states that the African Union Commission (AUC), in consultation with the Permanent Representatives Committee (PRC), expedite the review of the honorarium and allowances of the Members of the Commission in accordance with the Financial Rules and Regulations of the African Union;

Recalling further its **Resolution ACHPR/Res.188 (XLIX) 2011**, adopted at its 49th Ordinary Session, renewing the mandate of the Advisory Committee on Budgetary and Staff Matters;

Appreciating the work good undertaken by the Commissioner Musa Ngary Bitaye as Chairperson of this Committee during the past two years;

Recognizing the importance of the work of the Committee and the necessity to allow the Committee to continue to carry out its mandate;

Decides to appoint the following for a period of 2 years:

- Commissioner Reine Alapini Gansou----- Chairperson,
- Commissioner Kayitesi Zainabo Sylvie-----Member;
- Commissioner Soyata Maiga-----Member; and
- Commissioner Med Kaggwa-----Member.

192. ACHPR/Res.192 (L) 11: RESOLUTION RE-APPOINTING THE CHAIRPERSON AND EXPERT MEMBERS OF THE COMMITTEE FOR THE PREVENTION OF TORTURE IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 50th Ordinary Session, held in Banjul, The Gambia, from 24th October to 5th November 2011;

Recalling the mandate to promote and protect human and peoples' rights in Africa entrusted to it in Article 45 of the African Charter on Human and Peoples' Rights (African Charter);

Considering the recognition by African States of the absolute and irrevocable nature of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in Article 5 of the African Charter;

Further recalling its Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) adopted during its 32nd Ordinary Session, held in Banjul, The Gambia, from 17th to 23rd October 2002;

Recalling the establishment of the Robben Island Guidelines Follow-Up Committee in 2004 with the mandate to give effect to the promotion of Article 5 of the Charter;

Further recalling resolution **ACHPR/Res158(XLVI)09**, that changes the name of the Robben Island Follow-up Committee to the **Committee for the Prevention of Torture in Africa (CPTA)**.

Noting with appreciation the work and the accomplishment of the Chairperson of the Committee for the Prevention of Torture in Africa, Commissioner Catherine Dupe Atoki, since her appointment in 28 November 2007;

Considering the necessity to allow the Committee for the Prevention of Torture in Africa to continue carrying out its mandate and address urgent issues falling within its mandate;

Bearing in mind Resolution ACHPR/Res.120(XXXXII)07 on the Appointment of the Chairperson and Members of the Committee for the Prevention of Torture in Africa adopted at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

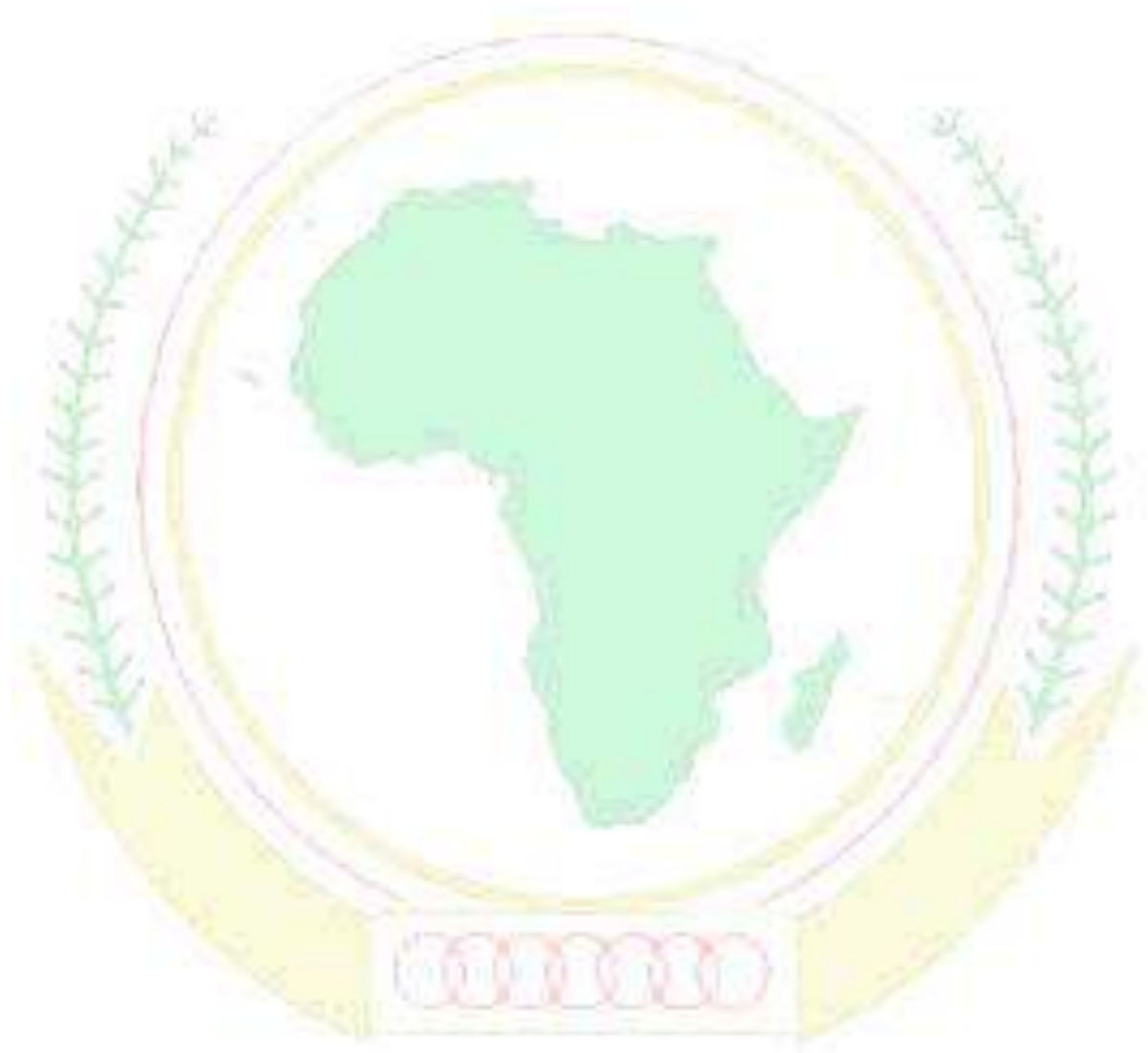
Considering that the mandate of the Chairperson of the Committee for the Prevention of Torture in Africa, Commissioner Catherine Dupe Atoki, comes to an end on 05 November 2011;

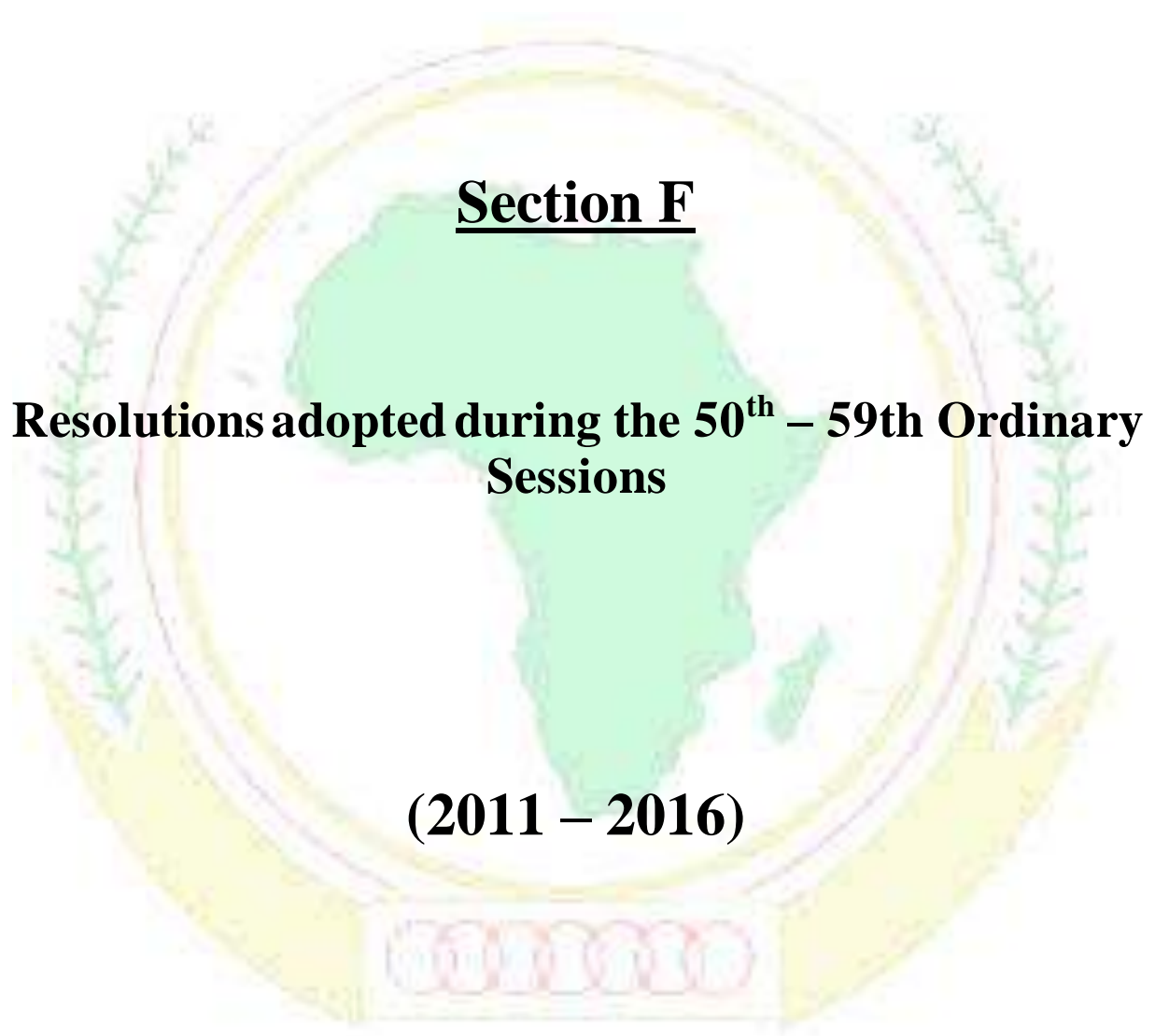
Decides to reappoint Commissioner **Dupe Atoki** as Chairperson and to appoint Commissioner **Med Kaggwa** as member of the Committee for the Prevention of Torture in Africa for a period of two years, effective 05 November 2011;

Further reappoints the following Experts as Members for the same period:

- Mr Jean-Baptiste Niyizurugero – Vice Chairperson
- Mrs. Hannah Forster - Member
- Mr Malick Sow – Member

Done In Banjul, The Gambia On 05 November 2011





193. ACHPR/Res.193 (L) 11: RESOLUTION ON THE RENEWAL OF THE MANDATE OF THE WORKING GROUP ON ECONOMIC SOCIAL AND CULTURAL RIGHTS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 50th Ordinary Session held from 24th October to 5th November 2011, in Banjul, the Gambia:

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution ACHPR/Res.73 (XXXVI)04 to establish a Working Group on Economic and Social Rights taken at its 36th Ordinary Session, held from 23 November - 7 December 2004 in Dakar, Senegal, and which also defined its mandate;

Recalling further Resolution ACHPR/Res.124 (XXXVII) 07 adopted at its 42nd Ordinary Session held from 14 – 28 November 2007, in Brazzaville, the Republic of Congo to renew the mandate of the Working Group;

Bearing in mind that Commissioner Bechir Khalfallah M. led the Working Group from 2009 to 2011 as Chairperson;

Noting with appreciation the work and accomplishment of members of the Working Group through the finalization, and adoption of the Principles and Guidelines on the implementation of economic, social and cultural rights in the African Charter (Nairobi Principles) and the State Party Reporting Guidelines for economic, social and cultural rights (Tunis Guidelines) which is the first part of the Working Group's mandate;

Considering the launching at the Commission's 50th Ordinary Session of the Principles and Guidelines on the implementation of economic, social and cultural rights in the African Charter and the State Party Reporting Guidelines on Economic, Social and Cultural Rights in Africa;

DECIDES to renew the mandate of the Working Group to:

- i. Continue the remaining tasks assigned to it in Resolution 78. ACHPR/Res.73(XXXVI)04 of 7th December 2004 consisting in undertaking, under the supervision of the African Commission on Human and Peoples' Rights, studies and research on specific economic, social and cultural rights;
- ii. Perform any other tasks as arising from the consideration by the Working Group of the Principles(Nairobi) and state reporting guidelines(Tunis) on ESCR which includes but not limited to the Right to sustainable Development in Africa;

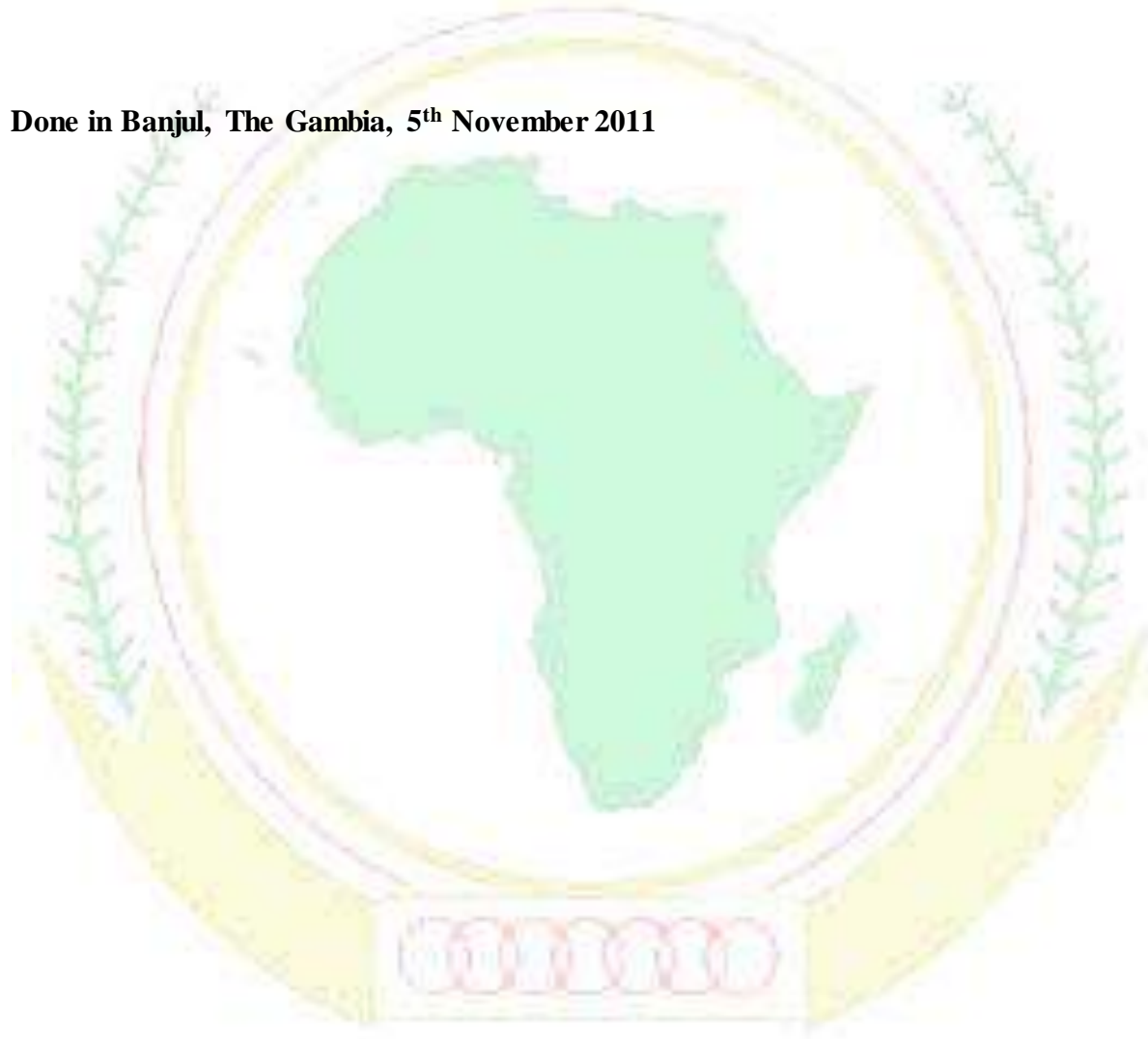
DECIDES to reappoint Commissioner **Mohammed Bechir Khalfallah** as Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa for a period of two years,

effective 5 November 2011, and to appoint Commissioners **Soyata Maiga** and Maya Sahli - Fadel as members of the Group, for the same period;

FURTHER DECIDES TO APPOINT the following members for the same period of time:

- A Representative of the UNOHCHR
- A Representative of the UNECA –GPAD
- A Representative of the INTERIGHTS
- A Representative of the Institute for Human Rights and Development in Africa
- A Representative of the Centre for Human Rights of the University of Pretoria

Done in Banjul, The Gambia, 5th November 2011



194. ACHPR/Res.194 (L) 11: RESOLUTION ESTABLISHING A WORKING GROUP ON COMMUNICATIONS AND APPOINTMENT OF MEMBERS

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 50th Ordinary Session held in Banjul, The Gambia, from 24th October to 5th November 2011;

Recognising its mandate to promote and protect human and peoples' rights pursuant to the *African Charter on Human and Peoples' Rights (the African Charter)*;

Noting its protective mandate which involves the consideration of Communications alleging human rights violations against Member States to the *African Charter* in terms of Articles 47 and 55 of the *African Charter*;

Considering Rule 23(1) of its Rules of Procedure which requires "*The Commission to create subsidiary mechanisms such as special rapporteurs, committees and working groups;*"

Further Considering Rule 97(2) of its Rules of Procedure which states that "*The African Commission may establish one or more working groups to consider questions of seizure, admissibility and the merits of any communication(s) and to make recommendations to the Commission;*"

1. **Decides** to establish a Working Group on Communications to meet twice a year during the intersession, and may also meet prior to the Sessions of the African Commission;
2. **Appoints** Commissioner Kayitesi Zainabo Sylvie as Chairperson of the Working Group for a period of two years, effective from 5 November 2011;
3. **Further appoints** Commissioner Reine Alapini-Gansou, and Commissioner Pacifique Manirakiza as Members of the Working Group;
4. **Decides** that paragraph three (3) notwithstanding, other Commissioners can participate in the activity of the Working Group subject to their availability;
5. **Appoints** the Secretary to the African Commission as a Member of the Working Group;
6. **Further appoints** Dr. Feyi Ogunade, Ms. Irene Desiree Mbengue Eleke and Mrs. Anita Bagona as the focal team of the Working Group at the level of its Secretariat;
7. **Requires** all Legal Officers at its Secretariat to provide assistance to the Working Group.

195. ACHPR/Res.195(L)11: RESOLUTION ON THE APPOINTMENT OF THE CHAIRPERSON AND MEMBERS OF THE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF PEOPLE LIVING WITH HIV (PLHIV) AND THOSE AT RISK, VULNERABLE TO AND AFFECTED BY HIV

The African Commission on Human and Peoples' Rights, meeting at its 50th Ordinary Session held in Banjul, The Gambia, from 24th October to 5th November 2011

1. **Recognising** that the African Commission on Human and Peoples' Rights has a fundamental role to protect the most vulnerable groups in Africa against human rights abuses;
2. **Recognising** also that a unique feature of the HIV pandemic is the overwhelming nature of the accompanying stigma;
3. **Nothing** that in circumstances where the rule of law and human rights are not respected as an integrated part of society, the most vulnerable groups within that society are often denied the level of protection they require and hence, are exposed to increased vulnerability;
4. **Recognising** that people living with HIV and those at risk are currently one of the most vulnerable groups exposed to serious violations of human rights in Africa.
5. **Recalling** the Resolution on the HIV/AIDS Pandemic – Threat against Human Rights and Humanity (2001) calling upon African governments, state parties to the African Charter to allocate national resources that reflect a determination to fight the spread of HIV/AIDS, to ensure human rights protection of those living with HIV/AIDS against discrimination and to take appropriate actions so that international pharmaceutical industries make affordable and comprehensive health care available for African governments;
6. **Recalling** commitments of the African Union Heads of States and Governments in the Tunis Declaration on AIDS and the Child in Africa (1994); Grand Bay (Mauritius) Declaration and Plan of Action (1999); Lome Declaration on HIV/AIDS in Africa (2000); Abuja Declaration on HIV/AIDS, Tuberculosis and Other Infectious Diseases (2001); Maputo Declaration on HIV/AIDS, Tuberculosis, Malaria and Other Infectious Diseases (2003); Gaborone Declaration on a Roadmap Towards Universal Access to Prevention, Treatment and Care (2005); Continental Framework for Harmonisation of Approaches among Member State and Integration of Policies on Human Rights and People Infected and Affected by HIV/AIDS in Africa (2005); Brazzaville Commitment on Scaling Up Towards Universal Access to HIV and AIDS Prevention, Treatment, Care and Support in Africa by 2010 (2006); Abuja Call for Accelerated Action Towards Universal Access to HIV and AIDS, Tuberculosis and Malaria Services in Africa (2006); and Africa's Common Position to the UN General Assembly Special Session on AIDS (2006);
7. **Concerned** that AIDS related deaths result in an increase number of orphans and vulnerable children in Sub-Saharan Africa;

8. **Concerned further** that despite commitments undertaken by state parties and regional bodies, PLHIV and those at risk continue to face serious violations of their basic human rights;
9. **Deeply disturbed** by the growing trend of various State Parties across Africa toward criminalisation and mandatory testing of PLHIV which leads to greater stigmatisation and discrimination;
10. **Recalling** further resolution ACHPR/Res.163 (XLV11) 10, adopted during the 47th Ordinary Session, establishing and appointing the Chairperson and members of the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV;
11. **Recognising** the considerable amount of work done by Commissioner Reine Alapini Gansou in her capacity as the Chairperson of the Committee;
12. **Decides** to appoint Commissioner Lucy Asuagbor as Chairperson of the Committee, Commissioner Reine Alapini Gansou and Commissioner Soyata MAIGA as Members of the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV for a period of two years, effective 5 November 2011.

DONE IN BANJUL, THE GAMBIA ON 05 NOVEMBER 2011

196. ACHPR/Res.196 (L) 11: RESOLUTION ON HUMAN RIGHTS DEFENDERS IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 50th Ordinary Session held from 24th October to 5th November 2011, in Banjul, The Gambia;

Recalling its Resolutions ACHPR/69(XXXV) on the protection of human rights defenders in Africa, **Resolution ACHPR/Res.119 (XXXXII) 07 on the Situation of Human Rights Defenders in Africa;**

Recalling the human rights protection instruments, particularly the United Nations [Declaration on Human Rights Defenders](#) in 1998, the Grand Bay Declaration and its plan of action adopted by the OAU Ministerial Conference on the promotion and protection of Human Rights in Africa in 1999, the Kigali Declaration African adopted by the African Union (AU) Ministerial Conference on Human Rights in Africa meeting in 2003;

Recalling the decision of the 33rd Ordinary Session of the African Commission (May 2003) which ruled such interference with human rights defenders' human rights work to be an express violation of the African Charter on Human and Peoples' Rights;

Bearing in mind the commitment of the States parties of the African Union in the Grand Bay (Mauritius) Declaration to implement the provisions of the United Nations Declaration on Human Rights Defenders;

Cognizant of the obligations of States Parties to the African Charter on Human and Peoples' Rights and under other regional and international human rights instruments for the protection of human rights, more especially the obligation to guarantee the security of persons living in their own country, as well as freedoms of assembly, of association, of expression of human rights defenders;

Deeply concerned about the difficult environment in which those who cooperate with african human rights system including human rights defenders in Africa are working in Africa which is characterized in several countries by the persistence of arbitrary arrests and detentions, acts of harassment including judicial harassment, threats and other forms of intimidation, of summary and extra-judicial executions and even acts of torture as a result of their activities;

Concerned by the impunity that the perpetrators of these acts of violence and reprisal against those who cooperate with african human rights system including human rights defenders continue to enjoy in a large number of African countries;

Recognizing the crucial contribution of the work of those who cooperate with african human rights system including human rights defenders in promoting human rights, democracy and the rule of law in Africa;

Strongly condemns all acts of violence against the activities of those who cooperate with african human rights system, including human rights defenders and condemns also all form of violence and reprisal against them;

Reminds all States parties of the African Charter of Human and Peoples' Rights of their commitment to the fundamental rights and freedoms as recognised by the African Charter and other regional and international instruments;

Calls on States to recognize the role of human rights defenders in the promotion and protection of rights and freedoms as recognised by the African Charter and other regional and international instruments;

Encourages States to adopt specific legislation on the protection of human rights defenders;

Urges the States to release the human rights defenders who are arbitrarily detained and to put an end to the judicial harassment and other acts of intimidation against human rights defenders;

Encourages the States to take all necessary measures to initiate independent investigations on cases of violations of the rights of human rights defenders so as to prosecute and judge the perpetrators.

Urges all States to prevent and refrain from all acts of intimidation or reprisal against individuals or groups who seize the African Commission on Human and Peoples' Rights.

Done at Banjul, 05 November 2011



197. ACHPR/Res.197 (L) 11: RESOLUTION ON THE PROTECTION OF INDIGENOUS PEOPLE'S RIGHTS IN THE CONTEXT OF THE WORLD HERITAGE CONVENTION AND THE DESIGNATION OF LAKE BOGORIA AS A WORLD HERITAGE SITE

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 50th Ordinary Session held from 24th October to 5th November 2011 in Banjul, The Gambia:

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Considering Article 22 of the African Charter which recognizes that all peoples have the right to their economic, social and cultural development and that States have the duty, individually or collectively, to ensure the exercise of the right to development;

Recalling its Decision on Communication 276 / 2003 - *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (Endorois Decision), adopted at the 46th Ordinary Session held from 11 – 25 November 2009 in Banjul, The Gambia;

Noting that this decision affirms the rights of ownership of the Endorois to their ancestral lands around Lake Bogoria and that these rights are protected by Art. 14 of the African Charter;

Noting Article 1 of the Constitution of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) on the purposes and functions of the Organization, according to which UNESCO shall “further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations”;

Recalling the United Nations Declaration on the Rights of Indigenous Peoples, a universal international human rights instrument that has attained consensus among UN Member States, and reaffirming the African Commission's commitment to fostering the values and implementing the principles enshrined in this Declaration;

Bearing in mind Advice No. 2 (2011) of the UN Expert Mechanism on the Rights of Indigenous Peoples, which calls on UNESCO and the World Heritage Committee to establish robust procedures and mechanisms to ensure that indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites;

Noting with concern that there are numerous World Heritage sites in Africa that have been inscribed without the free, prior and informed consent of the indigenous peoples in whose

territories they are located and whose management frameworks are not consistent with the principles of the UN Declaration on the Rights of Indigenous Peoples;

Deeply concerned that the World Heritage Committee at its 35th session, on the recommendation of International Union for the Conservation of Nature (IUCN), inscribed Lake Bogoria National Reserve on the World Heritage List, without obtaining the free, prior and informed consent of the Endorois through their own representative institutions, and despite the fact that the Endorois Welfare Council had urged the Committee to defer the nomination because of the lack of meaningful involvement and consultation with the Endorois;

- 1. Emphasizes** that the inscription of Lake Bogoria on the World Heritage List without involving the Endorois in the decision-making process and without obtaining their free, prior and informed consent contravenes the African Commission's Endorois Decision and constitutes a violation of the Endorois' right to development under Article 22 of the African Charter;
- 2. Urges** the World Heritage Committee and UNESCO to review and revise current procedures and Operational Guidelines, in consultation and cooperation with the UN Permanent Forum on Indigenous Issues and indigenous peoples, in order to ensure that the implementation of the World Heritage Convention is consistent with the UN Declaration on the Rights of Indigenous Peoples and that indigenous peoples' rights, and human rights generally, are respected, protected and fulfilled in World Heritage areas;
- 3. Calls on** the World Heritage Committee to consider establishing an appropriate mechanism through which indigenous peoples can provide advice to the World Heritage Committee and effectively participate in its decision-making processes;
- 4. Urges** IUCN to review and revise its procedures for evaluating World Heritage nominations as well as the state of conservation of World Heritage sites, with a view to ensuring that indigenous peoples are fully involved in these processes, and that their rights are respected, protected and fulfilled in these processes and in the management of World Heritage areas;
- 5. Urges** the Government of Kenya, the World Heritage Committee and UNESCO to ensure the full and effective participation of the Endorois in the decision-making regarding the "Kenya Lake System" World Heritage area, through their own representative institutions;

Done in Banjul, The Gambia, 5 November 2011

198. ACHPR/Res.198 (L) 11: RESOLUTION APPOINTING THE CHAIRPERSON AND MEMBERS OF THE WORKING GROUP ON EXTRACTIVE INDUSTRIES, ENVIRONMENT AND HUMAN RIGHTS VIOLATIONS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 50th Ordinary Session held in Banjul, The Gambia from 24th October to 5th November 2011

RECALLING all relevant regional and international human rights instruments and, specifically Articles 21 and 24 of the African Charter on Human and Peoples' Rights, on the right of all peoples to freely dispose of their wealth and natural resources and to a general satisfactory environment favorable to their development;

RECALLING the unconditional responsibility of States Parties to prevent all forms of violations of human and peoples' rights including the violations of human and peoples' rights by Non-State Actors;

DEEPLY CONCERNED by human rights violations by non-state actors in particular the sector of extractive industries, including mining, oil, gas, and timber extraction;

CONCERNED by the increasing rate of the destruction of the African environment and ecosystem by extractive industrial activities with impunity;

CONVINCED of the necessity of an improved protection of human rights through development of jurisprudence on holding non-state actors accountable for human rights violation in Africa;

HAVING authorized and considered a report on the preliminary study on: The Role of Non-State Actors in the Violation of Human and Peoples' Rights in Africa: The Quest for a New Paradigm;

HAVING CONSIDERED ALSO a review of international law and jurisprudence on the violations of the rights of indigenous peoples by transnational and other business enterprises;

RECALLING Resolution ACHPR/Res.148 (XLVI) 09, establishing the Working Group on extractive Industries, Environment and Human Rights Violations in Africa, adopted during the 46th Ordinary Session held in Banjul, The Gambia from 11th to 25 November 2009;

RECALLING Resolution ACHPR/Res148(XLVI)09, adopted during the 46th Ordinary Session held from 11 to 25 November 2009 in Banjul The Gambia, establishing and appointing the Chairperson and members of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa;

RECOGNISING the considerable amount of work accomplished by Commissioner Mumba Malila as Chairperson and Members of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa;

CONSIDERING the mandate of the Chairperson and Members of the Working Group will end on 05 November 2011;

DECIDES to appoint the following for an initial period of two years:

- Commissioner Pacifique Manirakiza----- Chairperson;
- Commissioner Y K J Yeung Sik Yuen-----Member; and
- Commissioner Kayitesi Zainabo Sylvie--- Member.

Done in Banjul, The Gambia, 05 November 2011



199. ACHPR/Res.199 (L) 11: RESOLUTION ON THE RE-APPOINTMENT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 50th Ordinary Session held from 24th October to 5th November 2011, in Banjul, The Gambia:

Recalling its mandate to promote human and peoples rights and ensure their protection in Africa under the African Charter on Human and Peoples Rights (the African Charter);

Aware that in the exercise of its mandate, the African Commission has established various mechanisms for the promotion and protection of human and peoples' rights in Africa;

Recalling the Resolution on the Mandate and Appointment of the Special Rapporteur on Freedom of Expression in Africa adopted at its 36th Ordinary Session held from 23 November - 7 December 2004 in Dakar, Senegal;

Emphasizing that the right to freedom of expression and access to information is a fundamental human right guaranteed *inter alia* by Article 9 of the African Charter;

Recalling the adoption of *the Declaration of Principles on Freedom of Expression in Africa*, at its 32nd Ordinary Session held from 17 - 23 October 2002, in Banjul, The Gambia, which elaborates the nature, content and extent of the right to freedom of expression and access to information provided for under Article 9 of the African Charter;

Reaffirming the commitment of the African Commission to promote the right to freedom of expression and access to information and monitor the implementation of *the Declaration of Principles on Freedom of Expression in Africa* within Member States of the African Union;

Recalling Resolution ACHPR/Res.84 (XXXXV) 05, appointing Commissioner Faith Pansy Tlakula, as Special Rapporteur on Freedom of Expression in Africa adopted at the 38th Ordinary Session held from 21 November to 5 December 2005, in Banjul, The Gambia;

Recalling Resolution ACHPR/Res.122 (XXXXII) 07 on the Expansion of the Mandate and Re-appointment of the Special Rapporteur on Freedom of Expression and Access to Information in Africa adopted at the 42nd Ordinary Session held from 15 to 28 November 2007, in Brazzaville, Republic of Congo;

Further recalling Resolution ACHPR/Res161(XLVI) 09, renewing the mandate of the Commissioner Faith Pansy Tlakula, as Special Rapporteur, adopted during the 46th Ordinary Session held from 11 to 24 November 2009 in Banjul, The Gambia;

Noting with appreciation the work and accomplishment of Commissioner Faith Pansy Tlakula as Special Rapporteur of Freedom of Expression and Access to Information in Africa;

Considering the term of Commissioner Faith Pansy Tlakula as Special Rapporteur on Freedom of Expression and Access to Information in Africa will end on 5 November 2011;

Considering further the necessity to allow the Special Rapporteur on Freedom of Expression and Access to Information in Africa to carry out its mandate as contained in resolution ACHPR/Res.122 (XXXII) 07;

Decides to re-appoint Commissioner Faith Pansy Tlakula as Special Rapporteur on Freedom of Expression and Access to Information in Africa for a period of two years, effective 5 November 2011.

Done in Banjul, The Gambia, 05 November 2011



200. ACHPR/Res.200 (L) 11: RESOLUTION RE-APPOINTING AND APPOINTING THE CHAIRPERSON AND OTHER MEMBERS OF THE WORKING GROUP ON THE RIGHTS OF OLDER PERSONS AND PEOPLE WITH DISABILITIES IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 50th Ordinary Session held in Banjul, The Gambia from 24th October to 5th November 2011;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Bearing in mind the African Union Policy Framework and Plan of Action on Ageing in which "*States Parties recognized the fundamental rights of older persons and committed themselves to abolish all forms of discrimination based on age,*" and also committed themselves "*To ensure that the rights of older persons are protected by appropriate legislation, including the right to organize themselves in groups and the right to representation in order to advance their interest;*"

Recalling its Resolution **ACHPR/Res.106 (XXXXI) 07** of 30 May 2007, on the Rights of Older Persons in Africa, adopted at its 41st Ordinary Session held from 16-30 May 2007, in Accra, Ghana;

Recalling its Resolution **ACHPR/Res.118 (XXXXII)**, on the Appointment of a Focal Point on the Rights of Older Persons in Africa, that was adopted at the 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling further its Resolution **ACHPR/Res.143 (XXXXV) 09**, transforming the Focal Point on the Rights of Older Persons in Africa into a Working Group on the Rights of Older Persons and People with Disabilities;

Considering that the African Charter makes specific provisions for the protection of these rights, under **Article 18(4)**, which stipulates that "*The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs;*"

Considering further paragraph 20 of the Kigali Declaration, which "*calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and people with disabilities;*"

Bearing in mind the mandate of the Focal Point which includes, among others, "*Spearheading the process of drafting a Protocol on the Rights of Older Persons for submission to the AU Policy Organs for consideration and adoption as soon as possible;*"

Appreciating the work of the Focal Point in advocating for a rights-based approach towards protecting the rights of older persons;

Considering the mandate assigned to the Working Group on the Rights of Older Persons and People with Disabilities, and to facilitate the process of drafting the Protocol on Ageing,

ensuring compliance by States Parties with the recommendations contained in the AU Policy Framework and Plan of Action on Ageing;

Considering the Draft Protocol on the Rights of Older Persons presented by the Working Group on the Rights of Older Person and People With Disabilities in Africa to the African Commission during the 48th Ordinary Session held from 10 to 28 November 2010, in Banjul The Gambia;

Considering further the ongoing review work on the Draft Protocol on the Rights of Older Persons and the work undertaken so far on the rights of people with disabilities in Africa;

Recalling Resolution *ACHPR/Res.189 (XLIX) 2011* adopted during the 49th Ordinary Session held in Banjul, The Gambia from 28th April to 12th May 2011 increasing the number of experts of the Working Group to effectively implement its mandate;

Recognising the good work and achievement of the Chairperson and members of the Working Group, especially with regards to the Draft Protocol on Older Persons which is nearing completion;

Considering that the two year mandate of the Chairperson and other expert members of the Working Group on Older Persons and People With Disabilities in Africa has come to an end;

Considering the necessity to allow the Working Group on Older Persons and People With Disabilities in Africa to continue to carrying out its mandate and address the urgent issues falling within its mandate;

Decides the following;

- I. Re-appoints Commissioner Yeung Kam John Sik Yuen ----- Chairperson;
- II. Re-appoints Commissioner Reine Alapini Gansou -----Member;
- III. Appoints Commissioner Faith Pansy Tlakula-----Member;
- IV. Re-appoints Tavengwa Machezano Nhongo-----Member;
- V. Re-appoints Mr. Papa Malick Fall-----Member; and
- VI. Re-appoints Ms Nadia Abdel-Wahab El-Afify-----Member.

Done In Banjul, The Gambia On 05th NOVEMBER 2011

201. ACHPR/Res.201 (L) 11: RESOLUTION ON THE RE-APPOINTMENT OF THE CHAIRPERSON AND MEMBERS OF THE WORKING GROUP ON THE DEATH PENALTY IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 50th Ordinary Session held in Banjul, The Gambia, from 24th October to 5th November 2011;

Recalling its mandate to promote human and peoples' rights and to ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution ACHPR/Res.42 (XXVI) 99, adopted at its 26th Ordinary Session held in Kigali, Rwanda urging States Parties to envisage a moratorium on the death penalty.

Recalling further the decision of the African Commission adopted at its 37th Ordinary Session to appoint two Commissioners to work with the Special Rapporteur on Prisons and Conditions of Detention in Africa, to prepare a concept paper on the Issue of the Death Penalty in Africa;

Considering the trends in international law which encourage the abolition of the death penalty, in particular, the 2nd Optional Protocol to the International Convention on Civil and Political Rights relating to the abolition of the death penalty, the Statute on the International Criminal Court, the Resolution 2005/59 of the United Nations Human Rights Commission on the death penalty and the practices adopted by the States Parties to the United Nations Charter, and the debates and initiatives undertaken by civil society and other stakeholders concerned by the issue of the death penalty;

Bearing in mind Resolution 62/149 of the United Nations General Assembly adopted in 2007 calling on, in particular all States that still retain the death penalty to observe a moratorium on executions with a view to abolishing the death penalty;

Recalling its Resolution 79/XXXVIII/05 on the composition and operationalization of the Working Group on the Death Penalty adopted at its 38th Ordinary Session to expand the composition of the Working Group to include two members of the Commission and five independent experts so as to broaden its mandate;

Bearing in mind Resolution ACHPR/Res.113 (XXXXII)07 on the Renewal of the Mandate and the Appointment of Commissioner Kayitesi Zainabo Sylvie as Chairperson of the Working Group on the Death Penalty adopted at the 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15 - 28 November 2007;

Recalling its Resolution No. ACHPR/Res.136(XXXXIII).08, calling on State Parties to observe the moratorium on the death penalty adopted at its 44th Ordinary Session held in Abuja, Federal Republic of Nigeria, from 10 – 24 November 2008.

Recognizing that seventeen (17) State Parties to the African Charter have already abolished the death penalty, and thirteen (13) others have placed a moratorium on its application;

Reaffirming the commitment of the African Commission to promote the right to life and to encourage State Parties to abolish the death penalty;

Noting with appreciation the work and accomplishment of the Chairperson of the Working Group, Commissioner Kayitesi Zainabo Sylvie, and considering the need to ensure the continuity of the Working Group;

Recognizing further the importance of the activities of the Working Group on the death penalty and the need to allow it to continue executing its mandate;

Noting also that the mandate of the Chairperson and the members of the Group has expired;

Decides to:

- i. Re-appoint Commissioner Kayitesi Zainabo Sylvie as Chairperson of the Working Group;
- ii. Appoint Commissioner Maya Sahli Fadel as member of the Working Group;
- iii. Appoint Commissioner Med Kaggwa as member of the Working Group;
- iv. Renew the mandate of the following Experts:
 - Mrs. Alya Cherif Chammari
 - Mrs. Alice Mogwe
 - Prof. Philip Francis Iya
 - Prof. Carlson E. Anyangwe
 - Moctar Diallo

The mandate of the Working Group is 2 years and shall take effect on 5 November 2011.

Done in Banjul, The Gambia, 5 November 2011

202.ACHPR/Res. 202 (L) 11: RESOLUTION APPOINTING SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 50th Ordinary Session held from 24th October to 5th November 2011, in Banjul, The Gambia;

CONSIDERING its mandate to promote human and peoples' rights in Africa and to ensure their protection in accordance with the African Charter on Human and Peoples' Rights;

RECALLING its Resolution ACHPR/ 69(XXXV) 04 of 4 June 2004 on the protection of human rights defenders in Africa adopted at the 35th Ordinary Session held from 21st May to 4th June 2004, in Banjul, The Gambia;

BEARING IN MIND its resolution 83(XXXVIII) 05 of 5 December 2005 on the appointment of a Special Rapporteur on Human Rights Defenders in Africa; adopted at the 38th Ordinary Session held from 21st November to 5th December 2005 in Banjul, The Gambia;

CONSIDERING its Resolution ACHPR/Res.125 (XXXXII) 07 on the renewal of the mandate of the Special Rapporteur on Human Rights Defenders in Africa, adopted at its 42nd Ordinary Session held in Brazzaville, Republic of Congo from 13 to 28 November 2007;

BEARING IN MIND that in the *Grand Bay (Mauritius) Declaration and Plan of Action*, the Organization of African Unity (African Union) called on Member States "to take appropriate steps to implement the UN *Declaration on Human Rights Defenders* in Africa";

Recalling Resolution ACHPR/Res149(XLVI)09, appointing Commissioner Lucy Asuagbor as Special Rapporteur on Human Rights defenders in Africa;

Noting with satisfaction the work accomplished by Commissioner **Lucy Asuagbor** in her capacity as Special Rapporteur of Human Rights Defenders in Africa;

Considering the needs of the mandate;

DECIDES to appoint Commissioner Reine Alapini Gansou as Special Rapporteur on Human Rights Defenders in Africa for a period of two (2) years, with effect from 5th November 2011.

Done in Banjul, The Gambia, 05 November 2011

203. ACHPR/Res.203 (L) 11: RESOLUTION APPOINTING THE SPECIAL RAPPOREUR ON REFUGEES, ASYLUM SEEKERS, INTERNALLY DISPLACED PERSONS AND MIGRANTS IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 50th Ordinary Session held from 24th October to 5th November, 2011 in Banjul, The Gambia,

Recalling its mission to promote and protect human and peoples' rights in Africa in accordance with the African Charter on Human and Peoples Rights (the African Charter);

Bearing in mind the adoption and entry into force of the 1951 Convention relating to the status of refugees and its 1967 Protocol and the 1969 OAU Convention governing specific aspects of refugee problems in Africa;

Recalling Resolution ACHPR/Res. 72(XXXV)04 adopted at its 35th Ordinary Session held from 21st May to 4th June 2004 in Banjul, The Gambia, to establish a Special Rapporteur for the Mechanism in respect of Refugees, Asylum Seekers and Internally Displaced Persons in Africa;

Bearing in mind its resolution ACHPR/Res. 72(XXXVI)04 adopted at its 36th Ordinary Session held from 23rd November to 7th December 2004 in Dakar, Senegal, by which it delineated the mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa;

Recalling its Resolution ACHPR/Res. 95(XXXIX) 06 which broadens the terms of reference of the Special Rapporteur to cover problems of migrants;

Alarmed by the increase in the number of migrants seeking to leave the territories of their State Parties, travelling through hazardous, dangerous and inhuman means;

Considering the worsening situation of Refugees, Asylum Seekers and Internally Displaced Persons;

Bearing in mind the adoption of the Convention on Internally Displaced Persons, Repatriated Persons and Refugees adopted by the African Union in Kampala in 2009;

Considering the necessity of continuing with advocacy for the signing and ratification of the Kampala Convention to ensure its entry into force and its implementation by the States Parties on the Continent;

Recalling Resolution ACHPR/Res.180 (XLIX)2011 relating to the appointment of Commissioner KAYITESI Zainabou Sylvie as Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa ;

Noting with satisfaction the work accomplished by Commissioner KAYITESI Zainabou Sylvie, Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;

Reaffirming the importance of the Mechanism of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;

Considering the necessity of allowing the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa to continue executing its mandate;

Decides to appoint **Commissioner Maya Sahli-Fadel** as Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, for an initial period of two years with effect from 05 November, 2011.

DONE IN BANJUL, THE GAMBIA ON 05 NOVEMBER 2011



204. ACHPR/Res.204 (L) 11: RESOLUTION ON THE APPOINTMENT OF THE CHAIRPERSON AND MEMBERS OF THE WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 50th Ordinary Session held from 24th October to 5th November 2011, in Banjul, The Gambia;

Considering its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling that the African Commission established a Working Group composed of nine members, amongst them, three Members of the African Commission;

Recalling its Resolution Ref. ACHPR/Res.65 (XXXIV) 03 on the Report of the African Commission's Working Group on Indigenous Populations/Communities adopted at its 34th Ordinary Session held in Banjul, The Gambia from 6 – 20 November 2003;

Bearing in mind Resolution ACHPR/Res.123 (XXXXII) 07 on the Composition and Renewal for a period of two years the Mandate of the Working Group on Indigenous Populations/Communities in Africa adopted at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Recalling further ACHPR/Res.155 (XLV1) 09, adopted during the 46th Ordinary session of the African Commission held in Banjul, The Gambia, from 11th 25th November 2009, renewing the mandate the Working Group on Indigenous Population/Communities in Africa;

Noting with appreciation the work undertaken by the Working Group under the leadership of Commissioner Musa Ngary Bitaye during the past two years in the discharge of its mandate;

Noting further that the term of the Chairperson and members of the Working Group has come to an end;

Recognizing further the importance of the work of the Working Group in the promotion and protection of the rights of indigenous populations/communities in Africa and the necessity to allow the Working Group to continue to carry out its mandate;

Decides to:

- v. Appoint Commissioner Soyata Maiga as Chairperson of the Working Group;
- vi. Appoint Commissioner Lucy Aswagbor as a member of the Working Group;
- vii. Appoint Commissioner Pacifique Manirakiza as a member of the Working Group;
- viii. Maintain the membership of the following experts:

- Mr. Mohammed Khattali;
- Ms. Marianne Jensen;
- Mr. Zephyrin Kalimba;
- Mr. Melakou Tegegn
- Dr. Naomi Kipuri.
- Dr. Albert Barume

The mandate of the Working Group is 2 years and shall take effect on 5 November 2011

Done in Banjul, The Gambia, 05 November 2011



205. ACHPR/Res.205 (L) 11: RESOLUTION ON THE APPOINTMENT OF THE SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN IN AFRICA

The African Commission, meeting at its 50th Ordinary Session held from 24th October to 5th November 2011 in Banjul, The Gambia:

Recalling its Resolution ACHPR/Res.38(XXXVIII)99, adopted at the 25th Ordinary Session, held from 26 April to 5 May 1999 in Bujumbura, Burundi, establishing the Special Mechanism on the Rights of Women in Africa and appointing Commissioner Julienne Ondziel Gnelenga as Special Rapporteur;

Recalling also Article 18(3) of the African Charter on Human and Peoples' Rights;

Further Recalling the Commission's decision passed at its 30th Ordinary Session which was held from 17th to 27th October 2001 in Banjul, The Gambia, by which it appointed Commissioner Angela Melo as Special Rapporteur on the Rights of Women in Africa; ACHPR/Res.63(XXXIV) 03, adopted at its 34th Ordinary Session held in Banjul, The Gambia, from 6th to 20th November 2003; and ACHPR/Res.78(XXXVIII) 05, adopted at its 38th Ordinary Session, held from 21st November to 6th December 2005 in Banjul, The Gambia, renewing Commissioner Melo's mandate for a period of two years and Resolution No. ACHPR/Res.112(XXXII)07 adopted at the 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15th to 28th November 2007 on the renewal of the mandate of the Special Rapporteur on the Rights of Women in Africa for a period of two years;

Bearing in mind the adoption and entry into force of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;

Considering the need to pursue the advocacy towards the ratification of the Protocol and its effective implementation by the States Parties and all other parties involved in the promotion and protection of human rights of women;

Recognizing the numerous challenges that women continue to face on the African Continent for the recognition, exercise and the enjoyment of their human rights;

Recognizing the considerable amount of work accomplished by Commissioner Soyata Maiga as Special Rapporteur on the Rights of Women in Africa;

Recalling Resolution ACHPR/Res154(XLVI)09, renewing the Mandate of the Commissioner Soyata Maiga, as Special Rapporteur, adopted during the 46th Ordinary Session held from 11 to 24 November 2009 in Banjul, The Gambia;

Considering that the mandate of Commissioner Soyata Maiga has come to an end;

DECIDES to renew the mandate of Commissioner Soyata Maiga as Special Rapporteur on the Rights of Women in Africa for a period of two years, effective 05 November 2011.

Done in Banjul, the Republic of Gambia, 05 November 2011

206.ACHPR/Res.206 (L) 11: RESOLUTION ON THE APPOINTMENT OF THE SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 50th Ordinary Session held from 24th October to 5th November 2011, in Banjul, The Gambia;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Reaffirming the importance of observing the objectives and principles of the African Charter for the promotion and protection of the human rights of all, including those of detainees and prisoners;

Recalling its decision taken at its 20th Ordinary Session held in Grand Bay, Mauritius in October 1996 to establish the office and to appoint a Special Rapporteur on Prisons and Conditions of Detention in Africa, as a prison monitoring mechanism;

Recalling further its decision taken at its 38th Ordinary Session held in Banjul, The Gambia in November/December 2005 to appoint Commissioner Mumba Malila as the Special Rapporteur on Prisons and Conditions of Detention in Africa;

Bearing in mind Resolution ACHPR/Res.126 (XXXXII) 07 on the Appointment of the Special Rapporteur on Prisons and Conditions of Detention in Africa adopted at the 42nd Ordinary Session held from 15 – 28 November 2007, in Brazzaville, the Republic of Congo;

Considering that the term of Commissioner Mumba Malila as the Special Rapporteur on Prisons and Conditions of Detention in Africa comes to an end on 5 December 2009;

Considering further Resolution ACHPR/Res156(XLVI)09, adopted during the 46th Ordinary Session held from 11 to 25 November 2011 appointing Commissioner Catherine Dupe Atoki Special Rapporteur of Prisons and Conditions of Detention in Africa;

Noting with appreciation the work Commissioners Mumba Malila and Catherine Dupe Atoki have done as Special Rapporteur on Prisons and Conditions of Detention in Africa;

Considering that the mandate of Commissioner Catherine Dupe Atoki has come to an end;

DECIDES to appoint Commissioner Med Kaggwa as the Special Rapporteur on Prisons and Conditions of Detention in Africa for a period of two years, effective 5 December 2011.

Done in Banjul, The Gambia, 05 November 2011

207. ACHPR/Res.207 (L) 11: RESOLUTION ON THE GENERAL HUMAN RIGHTS SITUATION IN AFRICA

The African Commission on Human and Peoples' Rights (the African Commission), meeting in its 50th Ordinary Session, in Banjul, the Gambia, from 24th October to 5th November 2011;

CONSIDERING the Constitutive Act of the African Union, the provisions of the African Charter on Human and Peoples' Rights, and other regional and international legal human rights instruments;

RECALLING the mandate of the Commission on Human and Peoples' Rights to promote human rights in Africa;

CONSIDERING among others, Article 1 of the African Charter which stipulates, «the member States of the Organization of African Unity, Parties to the African Charter, recognize the rights, responsibilities and freedoms enshrined in this Charter and undertake to adopt legislative or other measures to implement them»;

CONCERNED *deeply* by the impact of a climate of insecurity reigning in some African countries as a result of the persistent armed conflicts and the resurgence of fighting in others, in particular between rebel groups and Government armed forces, in Sudan, Chad, Central African Republic, Somalia, Eritrea, Mauritania and the Democratic Republic of Congo;

AWARE of severe infringements on the freedom of assembly, the arresting and intimidation of Journalists and human rights defenders as well as the extra-judicial killings and acts of violence against protesters demanding rights in several parts of Africa;

CONSIDERING that post election violence has led to human rights violations even in conflict free areas and that arbitrary arrests and detentions have persisted long after the elections in some countries like Guinea;

CONCERNED at the proliferation of conflicts and internal violence in the Nubian Mountains, in the Kordofan and Blue Nile regions in Southern Sudan, resulting in the indiscriminate aerial bombardment of civilian targets, and causing death among the populations, destruction of houses and the systematic displacement of civilian populations, destruction of habitat and purposeful displacement of civilian populations, extrajudicial killings and forced disappearances of members of the indigenous tribes of these regions;

CONCERNED further at the continuing grave violations of human rights and humanitarian law in Darfur despite numerous regional and international efforts;

NOTING the serious violations of international humanitarian law by the parties to the conflict, in particular the indiscriminate shelling of civilian areas, the arbitrary arrests and detentions, and the summary killings;

CONCERNED at the serious famine raging in the Horn of Africa and the humanitarian crisis resulting from the large scale displacement of thousands of Somalis including women and children compelled to flee their homes and their country;

DEEPLY CONCERNED at the situation in Eritrea where several cases of arbitrary arrests and protracted detentions without trial of former Ministers, members of the security service, members of opposition parties, Journalists and other media personnel, etc. have been noted, in violation of the provisions of the African Charter on Human and Peoples' Rights;

CONDEMNING the persistent and serious human rights violations affecting the most vulnerable segments of society, namely women and children;

STRONGLY CONDEMNING the human rights violations committed by the warring forces against the population living in the areas under their control, as well as the execution of civilians on the basis of summary judgements, the plundering and destruction of the population's property and the practice of kidnapping ;

1. **CALLS ON** Member States to take legislative and material measures and provide the required human resources to put an end, as soon as possible, to the practice of impunity;
2. **URGES** the parties to the conflict to abide by the principles of international humanitarian law and those enshrined in the African Charter on Human and Peoples' Rights and to immediately desist from launching attacks against the civilian population;
3. **URGES** the parties to the conflict, in particular in Darfur, to allow humanitarian organisations and United Nations Agencies to move around and to engage in their activities freely ;
4. **URGES** the Government of Malawi to respect its obligations under the African Charter and the international and regional human rights instruments to put an end to all acts of intimidation and harassment against civil society leaders, and human rights defenders;
5. **URGES** the Government of the State of Eritrea to release the political dissidents, human rights defenders and Journalists and all persons arbitrarily detained and to guarantee at all times, the right to a fair trial, to the exercise of the freedom of opinion and of expression as well as the right to assembly;
6. **CALLS ON** the Republic of Guinea to fulfil its obligations under the African Charter, particularly in its provisions on the principle of non-discrimination, to the right to security, the right to a fair trial the right to exercise the freedom of expression and of assembly;
7. **URGES** the Government of Eritrea to fulfil its obligations under the African Charter on Human and Peoples' Rights, the Constitutive Act of the African Union and other relevant human rights instruments to which Eritrea is a party;
8. **CALLS ON** the Government of Mauritania to strictly observe the provisions of the African Charter in particular, Article 2 on the principles of non-

discrimination and take all necessary measures to end all discriminatory practices;

9. **CALLS ON** the Government of Democratic Republic of Congo to take all necessary measures to end impunity and ensure that all perpetrators of crimes are brought before the courts and to ensure the physical and mental integrity of Human Rights Defenders in the country.
10. **CALLS ON** all the parties in situations of armed conflict in Sudan, Chad, DRC, the Central African Republic, Eritrea and in Somalia to cooperate with the international community in order to find a lasting solution to the conflict raging in these areas.

DONE IN BANJUL, THE GAMBIA, 5 NOVEMBER 2011

