

**REPORT OF COMMISSIONER BAHAME TOM NYANDUGA, SPECIAL
RAPPORTEUR ON REFUGEES, ASYLEM SEEKERS, IDPS AND
MIGRANTS IN AFRICA FOR THE PERIOD NOVEMBER 2008 – MAY 2009**

This report will be short on activities because the Special Rapporteur could not undertake missions which had been planned. However, it will address the issues of concern covered by the mechanism, and an overview for the entire period of the mechanism.

FACT FINDING MISSIONS:

1. During the 4th Extra Ordinary Session held in February 2008, the African Commission adopted a decision to conduct a fact finding mission to Kenya, in the wake of the January 2008 post-election violence. It also decided to undertake a fact finding mission to Somalia in the wake of the violence which has affected the country, to inter alia, investigate the human rights of the displaced people in those two countries.

The fact finding missions to the two countries were not undertaken due to the inability to fix mutually agreeable dates with the government of the Republic of Kenya, and the lack of authorization by the Transitional Federal Government of Somalia, (TFG)

I hope that the two governments will facilitate the Special Rapporteur to conduct the fact finding missions and make appropriate recommendations.

SITUATION IN SOMALIA

Let me at this juncture, in particular, state that the situation in Somalia continues to be of grave concern. The continuing armed conflict between the forces of the TFG and Al Shalab in Somalia, coupled with the drought affecting the Horn of Africa has caused massive displacement, of refugees into Kenya and about 1 million IDPs, leading to a serious humanitarian crisis in the country. The city of Mogadishu has not known peace, for many months. Even as we meet here, there is continuous fighting taking place in Mogadishu, notwithstanding the deployment of the African Union Peacekeeping Forces – AMISOM.

I wish to commend Uganda and Burundi for contributing forces to the AMISOM.

I condemn the violation of human rights of the civilian population and the disregard of IHL during the conflict in Somalia. I therefore call upon the international community, in particular the United Nations, to support the TFG and AMISOM in their efforts to stabilize Somalia after two decades of lawlessness and anarchy.

This support should include the enhancement of the peacekeeping forces, humanitarian assistance to the refugees and the internally displaced persons and the rest of the civilian population in Somalia, and the fight against the scourge of piracy on the high seas.

SOUTH AFRICA

2. The Special Rapporteur, could not undertake a fact finding mission to South Africa, during this period to investigate the May 2008 xenophobic attacks on African migrants, in spite of authorization, by the South African government. This was because South Africa was in the midst of the electoral process. The Special Repporteur commends the decision by the South African government, to regularize the stay of Zimbabwean migrants in the country. However, he is concerned that the plight of migrants from other African countries, continues to be precarious.

The Special Rapporteur is concerned that, while the government responded to the xenophobic attacks by providing shelter to the displaced migrants, it has closed these shelters, and encourages integration, while other issues such as the safety and security of migrants is not yet guaranteed. Compensation for the victims of the xenophobic attacks, 60 of whom lost their lives, while thousands of migrants lost property worth millions of dollars, has not been addressed.

It is pertinent that the fact finding mission be carried out at the earliest in order to address these outstanding issues.

DEMOCRATIC REPUBLIC OF CONGO

3. The Special Rapporteur is concerned about developments in the Great Lakes Region, in particular the Democratic Republic of Congo (DRC), where the killing, maiming and displacement of the civilian population has continued, in spite of the presence of the MONUC, and the recent joint operations by the Uganda and DRC forces against the LRA, and the DRC/Rwanda against the Interhamwe/FDLR forces.

The aftermath of these operations has witnessed increased attacks by the LRA and the Interahamwe on the Civilian population in the North East and Kivu provinces respectively.

The Special Rapporteur takes note of the recent arrest of General Laurent Nkunda by Rwanda. After the November 2008 attacks by his CNDP forces in Eastern DRC which inflicted heavy casualties on the civilian population, the Special Rapporteur wrote a letter to General Obasanjo, the UN envoy, to express his concerns.

He calls upon the DRC, the African Union and the United Nations to ensure that all those responsible for violation of human rights, and IHL in DRC are brought to justice.

The Special Rapporteur regrets that, since 1994, when the Interahamwe fled Rwanda to Eastern DRC after the genocide, and following the Civil conflict between 1998 and 2003, the Civilian population in Eastern DRC has suffered grave violations to their human rights. It is estimated that about 5 million people have died, either due to diseases, or as a result of the conflicts. It is unfortunate that this case of massive violation has not attracted the necessary attention it deserves. I urge the international community to continue giving serious attention to the problems affecting the Eastern DRC, in particular;

- (i) the illegal exploitation of DRC's natural resources;
- (ii) the need to disband and demobilize the militia and armed groups operating in the DRC;
- (iii) to conduct an investigation into this holocaust of the Congolese people;
- (iv) to hold accountable members of militia, armed groups and the military who have perpetrated the grave violations of human rights in the DRC;
- (v) Support the bilateral agreements between DRC and Rwanda, and other regional peace processes, which form the basis for a lasting peace in DRC and the region.

SUDAN

4. The Special Rapporteur continued to monitor the human rights situation in The Darfur region of Sudan. The Special Rapporteur notes the effort to consolidate the operation of the Hybrid UNAMID forces. The Special Rapporteur is concerned by the incidences of attacks on the Civilian Population, and peacekeepers, in spite of the deployment of UNAMID.

The Special Rapporteur hopes that the Darfur peace process re-launched with the Doha talks will provide a firm basis for finding a lasting solution to the Darfur conflict which continues to account for internal displacement of more than 2 million people and thousands of refugees in Eastern Chad. He calls upon all the armed groups, to engage in these talks, for a lasting peace in Darfur.

In the light of this background, and the recent ICC indictment of President Omar El Bashir, the Special Rapporteur issued a press statement concerning the indictment, and the subsequent decision by the Government of the Republic of Sudan to expel 13 international and national NGOs providing humanitarian assistance to the displaced people in Darfur. The Statement can be accessed on the African Commission Website.

Madam Chairperson, Commissioners, Distinguished Participants,

AU IDP CONVENTION

5. The Special Rapporteur wishes to recall his report to the 44th Ordinary Session, on the adoption of a draft the African Union Convention on IDPs, by Ministers responsible for Refugees and Displacement Issues in Africa, in November 2008.

A special summit of the African Union on Refugees and Displacement Issues, to adopt the convention, is due to be held later this year.

I urge all member states to ratify the convention, once it is adopted by the Assembly.

6. The problem of Displacement in Africa is set to increase, due to various factors. Apart from the conflict related displacement, which is being addressed by AU political organs, displacement caused by development projects, the natural resources extractive industry, and the worsening climatic and weather conditions, such as witnessed recently in Southern Africa, and elsewhere on the continent, due to heavy rains and drought, continues to cause suffering to millions at a time of lack of capacity by states and decreasing international humanitarian assistance. The legal framework in many African

countries, i.e. compensation for development induced displacement is inadequate in as far as addressing long term concerns of the livelihood of populations, which are uprooted by mining companies and foreign investors, notwithstanding their contribution to our economies.

Africa continues to host more than half the estimated 25 million IDPs worldwide. We therefore will need to pay particular attention to displacement issues more than before.

MIGRANTS

7. Let me address myself to the plight of migrants on the continent. Migration is an international phenomenon. I am referring to the movement of peoples due to various reasons. Causes of migration in Africa have been associated with conflict, lack of economic opportunity, diminishing resources, and human trafficking.

During the period under review, the Special Rapporteur noted the continued emigration of hundreds of African youths, including women from their countries, under hazardous conditions. Lives have been lost by migrants crossing the Mediterranean Sea, the Red Sea, the Atlantic Ocean, and the Sahara desert. Conditions in transit countries for migrants i.e. in Libya, and those who survive to reach Italy and Malta, or those who are held at Lampedusa, continue to be desperate.

I call upon State parties to give greater attention to the issues of migration. Asylum Laws and policies do not recognise migrants fleeing economic, climatic and environmental conditions. Yet migration is on the increase. The protection provided by the International Convention on the Protection of the Rights of All Migrant Workers and their Families, ratified by only 36 States worldwide(as of March 2007), and 14 African States, applies in any case to States Parties, does not apply to migrants unless they are employed in the host state parties. The framework of The African Charter, which recognizes freedom of movement within the territory of state parties, is therefore the only instrument which protects the migrants in African countries.

The adhoc arrangements addressing migration issues adopted between a number of EU states and African states fall short of addressing the root causes of migration.

I therefore urge State parties to:

- (i) adopt policies which provide gainful employment opportunities to African Youth, that means, allocating more resources to economic development and employment;
 - (ii) criminalize human trafficking;
 - (iii) adopt measures for mutual assistance in addressing migration issues;
 - (iv) provide diplomatic protection to African migrants in both African and European countries;
 - (v) ratify the International Convention on the Protection of Migrant Workers and their Families
8. Finally, Madame Chairperson, let me take this opportunity to express my sincere gratitude to all the State Parties, NHRIs and all Civil Society Organizations for the support extended to me during my six year tenure as a member of the African Commission.

The challenges posed by the demands of the mechanism, which was introduced at the 35th Ordinary Session, were immense and will continue to exercise our collective attention, for sometime to come.

I was privileged to operationalise this mechanism. The support given to me by all the State Parties, The African Union Commission, NHRIs of Tanzania, South Africa, Rwanda and Kenya, the Offices of the RSG of UN on the Human Rights of IDPs, UNHCR, Brookings Institute University of Berne IDP Project, ICRC, IDMC, Open Society Justice Initiative, the Legal and Human Rights Centre in Tanzania, the Centre for Human Rights, University of Pretoria, ACHRDS and IHRDA both of which are based in Banjul and many other NGOs within and outside the Continent is greatly appreciated. The Secretariat of the African Commission enabled me to address all of these challenges. I wish to thank staff past and present.

I wish to highlight a few achievements of this mechanism: These include;

- (i) the participation in the drafting of The draft AU Convention on IDPs;
- (ii) the establishment of the African Policing Oversight Forum (APCOF),
- (iii) the investigation of the situation of Mauritanian Refugees in Senegal and Mali, which eventually lead to the repatriation under UNHCR framework, of these refugees, though affected by the recent coup. I wish to thank Senegal and Mali for their support.
- (iv) continued engagement with the Darfur Crisis – including the 2004 Mission. Let me thank Sudan for facilitating that mission.

I believe that my successor will continue where I leave. I urge all of you to afford him/her the same support you accorded me. It was an honour and privilege to serve Africa, and I wish to thank all of you for making this possible.

Banjul, The Gambia
45th Ordinary Session