


<p>AFRICAN UNION</p>		<p>UNION AFRICAINE</p>
<p>الاتحاد الأفريقي <i>African Commission on Human & Peoples' Rights</i></p>		<p>UNIÃO AFRICANA <i>Commission Africaine des Droits de l'Homme & des Peuples</i></p>
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43RD ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

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

PART I: SUMMARY

1. This 43rd Activity Report of the African Commission on Human and Peoples' Rights (the Commission), which is presented to the Heads of State and Government of the African Union (AU) in accordance with Article 54 of the African Charter on Human and Peoples' Rights (the African Charter), covers the period from **June to November 15, 2017**. It highlights, among others: the statutory and other institutional meetings of the Commission; the status of State reporting; Resolutions adopted by the Commission; the human rights complaints before the Commission; the various interventions of the Commission on human rights issues including Urgent Appeal letters, Press Releases and Letters of Appreciation; the inter-session activities of Commissioners; the human rights situation on the continent; financial, staffing and operational matters; implementation of the Recommendations of the Commission; and Recommendations to the Assembly of Heads of State and Government.

PART II: BACKGROUND

2. The Commission was established in terms of Article 30 of the African Charter, which was adopted by the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in 1986. The African Charter has been ratified by all Member States of the AU, except the Kingdom of Morocco, which re-joined the Union in January 2017. The Commission became operational in 1987 and has its headquarters in Banjul, The Gambia.
3. The Commission is composed of eleven (11) members elected by AU Heads of State and Government, who serve in their individual capacities on a part-time basis. Its mandate, as set out in *Article 45* of the African Charter, is to:
 - i. Promote Human and Peoples' Rights;
 - ii. Ensure the protection of human and peoples' rights under conditions laid down by the Charter;
 - iii. Interpret the provisions of the Charter at the request of a State party, an institution of the OAU or an African organisation recognised by the OAU; and
 - iv. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.
4. Within its protective mandate, the Commission is also specifically charged under the Charter with receiving and examining Communications (complaints) submitted to it, and receiving and examining periodic reports from State Parties on the legislative or other measures taken to give effect to the rights and freedoms recognized and guaranteed by the Charter.

5. Under Article 26 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), the Commission is also mandated to monitor measures taken by State Parties in relation to the status and rights of women in their respective countries.

PART III: BODY

A. AU POLICY ORGANS MEETINGS, STATUTORY AND OTHER INSTITUTIONAL MEETINGS DURING REPORTING PERIOD

6. The Commission participated in the AU Policy Organ Meetings that were held in Addis Ababa, Ethiopia from 27th June to 4th July 2017.
7. In addition, four (4) statutory meetings and two (2) other institutional meetings were held during the reporting period, namely:
 - a. The 9th Meeting of the Joint Bureaux of the Commission and the African Court on Human and Peoples' Rights (the Court) held on 2nd July 2017 in Addis Ababa, Ethiopia;
 - b. The 22nd Extra-Ordinary Session of the Commission, held in Dakar, The Republic of Senegal from 29th July to 7th August 2017;
 - c. The Regional Seminar on the Implementation of Decisions of the Commission, held from 12th to 15th August 2017, in Dakar, Senegal;
 - d. The Sixth Joint Annual Meeting between the Commission and the Court held from 8th to 11th August 2017, in Dakar, Senegal;
 - e. Meeting of the AU Peace and Security Council held from 3rd to 5th September 2017, in Addis-Ababa, Ethiopia; and
 - f. The 61st Ordinary Session of the Commission held from 1st to 15th November 2017 in Banjul, The Gambia.

I. 29th African Union Summit, Addis Ababa-Ethiopia on 27th June to 4th July 2017

8. In line with practice, the 42nd Activity Report of the Commission was presented before the 34th Ordinary Session of the Permanent Representatives Committee (PRC). Following discussions at the PRC and Executive Council levels, the Activity Report was authorized for publication through Decision **EX.CL/Dec.974(XXXI)**. The Report has been published together with the observations of the State Parties and the responses of the Commission.
9. The 31st Ordinary Session of the Executive Council re-elected Commissioner Maya Sahli Fadel (Algeria); and elected the following three (3) new members of the Commission: HATEM Essaiem - Tunisia; MANUELA Maria Teresa - Angola; and LUMBU NGOY Rémy - Democratic Republic of Congo (DRC).

II. STATUTORY AND INSTITUTIONAL MEETINGS

**(i) 9th Meeting of the Joint Bureaux of the Commission and the Court
Addis-Ababa, Ethiopia, 2nd July 2017**

10. As mandated by their Rules of Procedure, the Commission and the Court held the 9th Meeting of the Joint Bureaux on the margins of the July Summit, to discuss the status of implementation of the decisions of the 5th Joint Annual Meeting of the two institutions, and to prepare the 6th Joint Annual Meeting of the Commission and the Court.

**(ii) 22nd Extra-Ordinary Session - Dakar, Senegal, 29th July to 7th August
2017**

11. Details of the activities undertaken by the Commission during its 22nd Extra-Ordinary Session are recorded in the relevant Final Communiqué, which is attached to this Report as Annex I. The Final Communiqué is also available on the website of the Commission: www.achpr.org.

**(iii) 6th Joint Annual Meeting between the Commission and the Court -
Dakar, Senegal, 8th to 11th August 2017**

12. The 6th Joint Annual Meeting between the Commission and the Court was held from 8th to 11th August 2017 in Dakar, Senegal. The overall objective of the meeting was to strengthen the complementarity of the two institutions.

**(iv) Regional Seminar on the Implementation of Decisions of the African
Commission on Human and Peoples' Rights - Dakar, Senegal, 12th to
15th August 2017**

13. From 12th to 15th August 2017 in Dakar, Senegal, the Commission organised a Regional Seminar on the Implementation of Decisions of the Commission for countries of Central, North and West Africa, with the financial support of the European Union (EU's) Strengthening the African Human Rights System (PANAF Programme). The overall objective of the Seminar was to reinforce the African human rights system through the strengthening of the Commission's human rights promotion and protection mandates. The Seminar assessed the status of implementation of concluding observations and other decisions of the Commission.

**(v) Meeting of the AU Peace and Security Council: 3rd to 5th September
2017, Addis-Ababa (Ethiopia)**

14. Pursuant to a request of the Commission, the AU Peace and Security Council (PSC) organized a meeting on 5th September to discuss working relations and partnerships between the different AU Organs.
15. The objective of the meeting was to provide an opportunity for exchange between these various organs in order to improve the effectiveness of their work by ensuring consistency, coordination and dissemination of their actions and reflections.

(vi) 61st Ordinary Session - Banjul, The Gambia, 1st to 15th November 2017

16. Details of the activities undertaken by the Commission during its 61st Ordinary Session, which coincided with the 30th Anniversary of the operationalisation of the Commission, are recorded in the Final Communiqué of the Session, which is attached to this Report as Annex II. The Final Communiqué is also available on the website of the Commission: www.achpr.org.
17. The inter-Session Reports presented by Members of the Commission and Special Rapporteurs during the 61st Ordinary Session are also available on the website of the Commission: www.achpr.org.

III. STATE REPORTING UNDER ARTICLE 62 OF THE CHARTER

18. The Commission considered the Combined Periodic Report of the Republic of Rwanda (11th to 13th), the 14th Periodic Report of the Republic of Niger, and the Combined Periodic Report of the Democratic Republic of Congo (DRC) (11th to 13th).
19. The Commission notes with satisfaction that the Republic of Rwanda and the DRC are the 8th and 9th State Parties, respectively, to fulfil their reporting obligations under Article 26 of the Maputo Protocol.
20. With the Initial Periodic Report of the Republic of South Sudan being due in August 2018, the status of Submission of Periodic Reports to the Commission stands as follows:

Status	State Party
Up to date: 12	Angola, Botswana, Côte d'Ivoire, Democratic Republic of Congo, Eritrea, Mali, Mauritius, Namibia, Niger, Nigeria, Rwanda, Togo;
1 Report overdue: 11	Algeria, Burkina Faso, Djibouti, Ethiopia, Kenya, Liberia, Malawi, Mozambique, Senegal, Sierra Leone, and Uganda;
2 Reports overdue: 3	Gabon, The Sudan, Sahrawi Democratic Arab Republic;

3 Reports overdue: 3	Cameroon, Burundi, Libya;
More than 3 Reports overdue: 19	Benin, Cape Verde, Central African Republic, Chad, Congo, Egypt, Ghana, Guinea Republic, Lesotho, Madagascar, Mauritania, Seychelles, South Africa, Swaziland, Tanzania, The Gambia, Tunisia, Zambia, Zimbabwe;
Never submitted a Report: 5	Comoros, Equatorial Guinea, Guinea Bissau, Sao Tome and Principe, Somalia.

21. The Commission wishes to note that Eritrea has submitted its first Report under Article 62 of the Charter; this State Report, together with the latest Periodic Reports of Angola, Botswana, Nigeria and Togo, will be considered at the 62nd Ordinary Session of the Commission.

22. With specific reference to Article 26 of the Maputo Protocol, only nine (9) countries are up to date with their reporting obligations thus far, namely: Burkina Faso, DRC, Malawi, Nigeria, Namibia, Mauritania, Rwanda, Senegal, and South Africa.

IV. HUMAN RIGHTS COMPLAINTS BEFORE THE COMMISSION

a) Communications

23. Of the **232** (Two Hundred and Thirty-Two) Communications currently pending before the Commission, the following were considered during the reporting period:

Session	Communication - Name, Phase
22nd Extra-ordinary Session	<p>I. Seizure</p> <p>a. Seized</p> <p>i. <i>Communication 660/17- Jenny Naluwa Cherubala v. Democratic Republic of Congo.</i></p> <p>b. Seized and Provisional Measures Issued</p> <p>i. <i>Communication 658/17 - Shereen Said Hamd Bakhet v. Arab Republic of Egypt;</i></p> <p>ii. <i>Communication 659/17 - Ahmed Mustafa & 5 Others (Represented by Justice for Human Rights-& AMAN Organisation) v. Arab Republic of Egypt;</i></p> <p>II. Non-Seizures</p> <p>i. <i>Communication 657/17 - Jean Marie Atangana Mebara v. Republic of Cameroon;</i></p>

- ii. *Communication 661/17 – Amir Fam & 141 Others v. Arab Republic of Egypt*
- iii. *Communication 663/17- Abdullahi Ali Ismail v. Federal Republic of Somalia*

III. Admissibility

a. Admissible

- i. *Communication 473/14- Family of the late Jackson Ndikuriyo v. Republic of Burundi;*
- ii. *Communication 506/15- Gouamba Ninon Pachel (represented by IHRDA) v. Republic of Congo; and*
- iii. *Communication 573/15 – Blaise Jean Joseph Migolet v. Gabonese Republic*

b. Inadmissible

- i. *Communication 436/12 – L'Union Nationale v. Republic of Gabon*
- ii. *Communication 596/16: Romy Goornah (represented by Dev Hurnam) v. Republic of Mauritius*

IV. Struck-Out for Lack of Diligent Prosecution

- i. *Communication 617/16 – Dr Hazem Mohammed Farouk Abdul Khaliq Mansour v. Arab Republic of Egypt.*
- ii. *Communication 619/16 – Tariq Ibrahim El-Sabie v. Arab Republic of Egypt.*

V. Merits

- i. *Communication 339/2007 – Patrick Okiring and Agupio Samson (represented by Human Rights Network and ISIS-WICCE) v. Republic of Uganda*

VI. Deferred

- i. *Communication 574/15 – Mr. Ammar Muhammad Badee Abdel-Magied Sami and Dr. Muhammad Badee Abdel-Magied Sami (Represented by European Alliance for Human Rights) v. Arab Republic of Egypt;*
- ii. *Communication 561/15 – Ibrahim Ahmed Mahmoud Mohammed Yamani (Represented by European Alliance for Human Rights) v. Arab Republic of Egypt;*
- iii. *Communication 562/15 – Mohammed Aly Abdel Raouf Aly (Represented by European Entente for Human Rights) v. Arab Republic*

	<p><i>of Egypt.</i></p> <p><i>iv. Communication 454/13 – Nde Ningo v. Republic of Cameroon</i></p> <p><i>v. Communication 290/2004 – Open Society Justice Initiative (on behalf of Pius Njawe Noumeni) v. Republic of Cameroon</i></p> <p><i>vi. Communication 431/12 – Kwoyelo Thomas v. Republic of Uganda</i></p> <p><i>vii. Communication 348/07- Collectif des familles de disparu (e) s en Algérie v. People’s Democratic Republic of Algeria</i></p>
61st Ordinary Session	<p>I. Seizure</p> <p>a. Seized</p> <p><i>i. Communication 668/17 - Peter Odiwuor Ngoge, O.P Ngoge & Associates Advocates v The Republic of Kenya</i></p>

24. The above tables show that during the period under review, the Commission was seized of four (4) Communications; decided not to be seized of three (3); issued two (2) Provisional Measures; declared three (3) admissible and two (2) inadmissible; decided one (1) on the Merits; struck out two (2) Communications for lack of diligent prosecution; and deferred seven (7) Communications at various stages. The Commission also provided the Secretariat with guidance on nine (9) Communications.

V. APPLICATIONS FOR OBSERVER AND AFFILIATE STATUS

25. The Commission granted Observer Status to the following four (4) non-governmental organisations (NGOs): (i) African Child Policy Forum; (ii) The Gender, Health & Justice Research Unit; (iii) Reprieve; and (iv) The Centre for Citizen’s Participation on the African Union, thus bringing the number of NGOs with Observer Status as at the 61st Ordinary Session of the Commission to **five hundred and fifteen (515)**.

26. The Commission did not consider any application for Affiliate Status from national human rights institutions (NHRIs) in accordance with the Resolution on the Granting of Affiliate Status to NHRIs in Africa. Thus, the total number of NHRIs with Affiliate Status with the Commission remains at twenty-four (24) as at the end of the reporting period.

VI. STATE COMPLIANCE WITH THE COMMISSION’S DECISIONS, REQUESTS FOR PROVISIONAL MEASURES AND LETTERS OF URGENT APPEAL

27. The level of compliance by State Parties with the Commission’s Decisions, Requests for Provisional Measures and Letters of Urgent Appeal is relatively low, as evidenced by the following information:

a) Implementation of the Commission's Decisions

28. During the reporting period, the Commission did not receive any information regarding the implementation of its decisions in accordance with Rule 112 of its Rules of Procedure of 2010.

b) Requests for Provisional Measures

29. During the reporting period, the Commission did not receive any responses on the two (2) Requests for Provisional Measures which it issued to State Parties as indicated in the table on Communications in paragraph 23 above. Also, during this period, the Commission received information from the Complainant in *Communication 507/15 - Andargachew Tsege and Others (Represented by Reprieve and REDRESS) v. The Federal Democratic Republic of Ethiopia*, on 10 August 2017, indicating that the State has still not complied with the Provisional Measures requested by the Commission in this matter.

c) Letters of Urgent Appeal

30. During the period under review, **8 (eight)** Letters of Urgent Appeal were sent to State Parties, regarding allegations of human rights violations in States, as reflected in the table below:

State	Date of Letter	Issue warranting Urgent Letter of Appeal	Status of Implementation
1. Republic of Kenya	26 May 2017	This letter concerned allegations of widespread patterns of extra-judicial killings implicating the police in Kenya and the lack of investigation and prosecution of such cases of extra-judicial killings.	The State is yet to respond.

2. Arab Republic of Egypt	27 June 2017	This letter concerned allegations relating to the sentencing of Ten (10) individuals to death by the Egyptian Courts.	The State is yet to respond.
3. United Republic of Tanzania	03 August 2017	This letter, which was issued jointly with the Chairperson of the African Committee of Experts on the Rights and Welfare of the Child, concerned the statement made by the Tanzanian authorities on 22 June 2017 to the effect that pregnant girls and teen mothers would no longer be allowed to attend school and continue their education.	The State is yet to respond.
4. Republic of Congo	6 September 2017	This letter concerned the situation of Rwandan refugees in Congo who did not benefit from the exemption for those still in need of international protection following the signing of the cessation of refugee status clause, and who risk losing their refugee status and finding themselves in an irregular situation by the end of December 2017.	The State is yet to respond.

5. United Republic of Tanzania	25 October 2017	This letter concerned allegations of arbitrary arrest and detention of thirteen (13) lawyers and activists on 17 October 2017, while consulting on how to institute a case in Court to challenge the decision by the Tanzanian Government to limit the provision of certain essential health care services for HIV prevention to key populations at risk of HIV.	The State is yet to respond.
6. Federal Republic of Nigeria	17 July 2017	This letter concerned allegations of premeditated attacks on Fulani villages between 17 and 23 June 2017 by militiamen from the Mambilla community in Taraba State of Nigeria, resulting in numerous loss of lives including those of pregnant women, children, elderly people as well as the killing and rustling of thousands of cattle and destruction of property, causing the forced displacement of thousands of members of the Fulani community to neighbouring Cameroon.	The State is yet to respond.

7. United Republic of Tanzania	8 September 2017	This letter concerned allegations of illegal evictions and serious human rights violations which occurred on 13 and 14 August 2017 against Maasai pastoralists in the Loliondo Division of the Ngorongoro District, in the Arusha Region, by rangers from the Serengeti National Park (SENAP) and the Ngorongoro Conservation Area Authority (NCAA), with support from Loliondo police officers, resulting in thousands of residents including women and children being rendered homeless.	The State is yet to respond.
8. Federal Republic of Nigeria	06 October 2017	This letter of appeal related to a Bill in parliament to establish an agency which would monitor, supervise, de-register, and pre-approve all activities by civil society, labour and community-based organizations in the country, which would have the effect of limiting the rights to freedom of association and assembly.	The State is yet to respond in writing (however the matter was addressed in the State's oral intervention during the 61 st Ordinary Session.)

VII. LETTERS OF APPRECIATION

31. During the reporting period four (4) letters of appreciation were sent to Heads of State and Government as follows:

State	Date of Letter	Positive development warranting Letter of Appreciation
1. Republic of Burkina Faso	4 July 2017	This letter commended the Government of the Republic of Burkina-Faso for the adoption of a law on the protection on human rights defenders.
2. Federal Democratic Republic of Ethiopia	30 August 2017	This letter welcomed the lifting by the Government of the Federal Democratic Republic of Ethiopia of the state of emergency which had been imposed by the Government on 09 October 2016.
3. Republic of The Gambia	16 October 2017	This letter commended the Government of the Republic of The Gambia on signing the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty (Second Optional Protocol) on the 22 September 2017.
4. Republic of Madagascar	18 October 2017	This letter commended the Government of the Republic of Madagascar for ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty (Second Optional Protocol) on the 21 September 2017.

VIII. PRESS STATEMENTS

32. In addition to the various Press Releases issued by the Commission and its Special Mechanisms regarding promotion missions conducted and meetings organized, during the reporting period, the Commission also issued nine (9) Press Releases relating to various human rights issues. The Press Releases are available on the website of the Commission: www.achpr.org.

IX. PROMOTION MISSIONS AND ADVOCACY VISITS

33. The Commission did not undertake any Promotion Missions during the reporting period as it was awaiting the responses of the various State Parties to which requests for authorization to undertake Promotion Missions had been sent. However, during this period, authorization was received from the People's Democratic Republic of Algeria, for a Promotion Mission to be undertaken from 15 to 24 January 2018.

X. THE HUMAN RIGHTS SITUATION ON THE CONTINENT

34. This section was introduced pursuant to Executive Council Decision EX.CL/Dec.639 (XVIII) calling upon the Commission to brief the Policy Organs on the human rights situation on the continent. The practice of the Commission is to draw the content of this section from the interactions of the Commission with State Parties and NGOs with Observer Status with the Commission during Ordinary Sessions of the Commission, supplemented by information collected as part of its monitoring of the human rights situation in the various States Parties during the intersession period.

a) Positive developments

35. The Commission notes with appreciation the following major positive human rights developments observed during the reporting period:
- i. The ratification of the Maputo Protocol by the Republic of Mauritius in June 2017, which increased the number of States Parties to the Protocol to thirty-nine (39);
 - ii. The ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) by the Republic of Sao Tome and Principe on 10 January 2017;
 - iii. The ratification by the Republic of Madagascar of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty (Second Optional Protocol) and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 21 September 2017;
 - iv. The accession by the Republic of Benin to the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Prevention and Punishment of the Crime of Genocide and the Vienna Convention on the law of treaties;

- v. The ratification by the Central African Republic of the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict;
- vi. The accession by the Republic of Cote d'Ivoire to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;
- vii. The Republic of The Gambia's signing of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, and the International Convention for the Protection of all Persons from Enforced Disappearance, on 20 September 2017;
- viii. The signing of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons by the Republic of Ghana, the Republic of Sierra-Leone and the Republic of Zambia in July 2017;
- ix. The increase in the number of State Parties reporting periodically under the Maputo Protocol, in compliance with Article 26 of the Maputo Protocol to nine (9), following the State Reports of Rwanda and DRC;
- x. The adoption by the Republic of Burkina Faso of a law on the protection of Human Rights Defenders;
- xi. The adoption by The United Republic of Tanzania of three laws aimed at increasing accountability of companies and increasing national revenues from extractive industries, namely the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act, 2017; the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017; and the Written Laws (Miscellaneous Amendments) Act, 2017 amending the Mining Act of 2010;
- xii. The decision of the High Court of the Republic of Kenya declaring as unconstitutional Section 194 of the Penal Code of Kenya, which creates the offence of criminal defamation, thus contributing to the protection of the right to freedom of expression;
- xiii. The commutation of death sentences to life imprisonments in Tanzania, Nigeria, Mauritania and Sudan;
- xiv. The publication of the electoral calendar in the DRC which sets 23 December 2018 as the date for the holding of Presidential, legislative and provincial elections; and
- xv. The show of respect for the rule of law in the Republic of Kenya, as demonstrated by the Supreme Court's decisions relating to the presidential elections, and the government's expression of respect for the decision of the Court despite not agreeing with the ruling annulling the 8 August election.

b) Areas of concern

36. The Commission notes with concern some of the following human rights challenges observed during the reporting period:

- i. Reports on the auctioning of African migrants in Libya as slaves;
- ii. Continued delays in the ratification of the Maputo Protocol by States that have not yet done so;
- iii. Prohibition of the continued education of pregnant girls and teen mothers in Tanzania, which amounts to gender discrimination and a violation of both the African Charter and the Maputo Protocol;
- iv. The socio-political crisis in Togo following demonstrations to call for constitutional reforms, which led to loss of lives and other human rights violations;
- v. The deterioration of the human rights situation in the DRC, particularly in the South Kivu where about 37 Burundian refugees were reportedly found dead on 15 September 2017, and in the Kasai region where human rights violations and abuses against the civilian population have been perpetrated by militia and other armed groups;
- vi. The eviction of indigenous pastoralists in Kilosa, Mvomero and Morogoro Vijijini districts of the Morogoro Region and from Loliondo in Tanzania;
- vii. The deteriorating political situation in South Sudan which is destabilizing the Gambella Regional State and causing inter-ethnic conflict between the Nuer and Anuak communities;
- viii. The conflict between the Batwa and their Bantu neighbours in the Kantaga Region, DRC, which has been ongoing for the last four decades;
- ix. Attacks in Mogadishu, Somalia, including the horrific bomb attack in Mogadishu on 14 October 2017;
- x. Recurrent terrorist attacks against the armed forces and members of peacekeeping operations in the Sahel countries, particularly in Niger, Mali and Burkina Faso;
- xi. The impact of natural disasters and climate change on the population, including loss of lives and destruction of property, in particular landslides in Sierra Leone and floods in Niger;
- xii. The impact of epidemics on the health of populations, including the ravages of cholera in the Democratic Republic of the Congo;
- xiii. Reports of persistence of discrimination and stigma against persons living with HIV and those at risk or affected by HIV in health facilities in some countries, including Tanzania; and
- xiv. The continued existence of laws criminalising abortion in State Parties that have ratified the Maputo Protocol, despite the high rates of maternal mortality resulting from unsafe abortion.

XI. ADMINISTRATIVE AND FINANCIAL SITUATION

a) Construction of the Commission's Headquarters

37. The Host Government established an Inter-Ministerial Task Team to spearhead the construction of the Headquarters of the Commission. The Task Team, which includes a focal person from the Commission, decided that the building design earlier cleared for the Headquarters of the Commission had been overtaken by the passage of time and developments over the years, and that therefore a new structural design would be required. This new design is under preparation by experts designated by the Host Government, who have obtained relevant information from the Secretariat of the Commission regarding the Commission.
38. In addition, H.E. Mr. Adama Barrow, the President of the Republic of The Gambia, who graced the opening of the 61st Ordinary Session of the Commission, affirmed his government's commitment to construct for the Commission a Headquarters befitting of its status as the continent's oldest and premier human rights body.

b) Staffing

39. During the reporting period, the staffing situation at the Secretariat retrogressed. The position of Deputy Secretary is now vacant again, following the redeployment of the Deputy Secretary to serve elsewhere in the AU. The appointment of an Acting Deputy Secretary in the interim is welcomed and appreciated. However, the Commission currently has a staff deficit of twenty-five (25) out of the forty-six (46) approved Regular positions in its structure, the details of which are herewith attached as Annex III.
40. To enable the Commission to deliver effectively on its mandate, it is necessary that Legal Officers be urgently recruited for the Secretariat, as the Legal Unit is extremely understaffed, with only nine (9) out of the approved fourteen (14) Legal Officers recruited. Most pressing in this regard is the need to recruit Legal Officers that have the capacity to work in either Arabic or Portuguese, as the Secretariat currently has none and this area of lack is being felt particularly now because one of the newly sworn in Commissioners works in Portuguese, and also because the Secretariat currently has several Communications (complaints) before it that require proficiency in Arabic.
41. The referenced under-resourcing cuts across the whole Secretariat. The Finance Department has just two staff, a Finance Officer and an Accounts Assistant, and finds it difficult to handle the volume of activities and the attendant expenditures and reporting requirements.
42. Regarding interpretation and translation which is a key component of its work, the Commission relies on just one short-term staff who is designated as Translator/Interpreter, and therefore continues to experience acute challenges in this area, daily.

43. Also, despite the vital role played by the Registry in an organization such as the Commission where management of correspondences is so critical, the Secretariat has only one (1) Registry Clerk, while it does not have an Information Technology (IT) Department or Unit, but relies on one short-term staff for all its IT needs, notwithstanding the centrality of IT to its work, which is often urgent and sensitive.
44. Indeed, many Units either do not have staff at all or are one-person Units – including Protocol, as the Secretariat operates with just one Protocol Assistant to meet all its many protocol needs. These constraints mean that staff work at all sorts of odd hours, and that when one staff falls sick or goes on leave the absence is felt across the entire breadth of the operations of the Commission and its Secretariat. Staff are also thus obliged to continue working even when on leave.
45. There is therefore need, not only to expedite recruitment to all the vacant positions, but also to review the current structure of the Secretariat of the Commission to better align its composition and organogram with the mandate entrusted to it and the expansion in its work over the years, particularly in the last decade.
46. While awaiting the review of the structure, in the immediate term, expedited recruitment is requested for the positions of Deputy Secretary, five (5) Legal Officers (especially Portuguese and Arabic-speaking Legal Officers, and Legal Officers for Protection), three (3) Translators/Interpreters, one (1) Senior Human Resource Officer, one (1) Public Relations and Information Officer, one (1) Information Communication and Technology Officer, one (1) Administrative Assistant, one (1) Communication and Database Expert and one (1) Assistant Documentation Officer.

e). Sessions of the Commission

47. The volume of matters coming to the attention of the Commission has increased greatly in recent times, making it difficult for the Commission to process that work within scheduled sessions. This situation has led to an accumulated work back-clog including in relation to the handling of complaints of human rights violations (Communications).
48. It has therefore become imperative for the Commission to dedicate additional time to its work. In this regard, pursuant to Article 42(2) of the African Charter, as well as Rules 26 and 27 of its Rules of Procedure, the Commission has decided to increase the number of days for its Ordinary Sessions from **fifteen (15)** to **twenty-one (21)** days, and for its Extra-Ordinary Sessions from **ten (10)** to **fifteen (15)** days. The Commission will therefore be seeking the requisite extra budgetary support.

XII. IMPLEMENTATION OF DECISIONS

a) Grant of observer status to the NGO called Coalition of African Lesbians (CAL)

49. Further to Executive Council Decision EX.CL/887(XXVII) which requested the Commission to withdraw the observer status granted to CAL and to review its criteria for granting observer status, it will be recalled that during the discussions of the Commission's Activity Report in January 2017, the Commission indicated that the criteria for granting observer status to NGOs had indeed been reviewed.
50. Regarding the request that the Commission should withdraw the observer status of CAL, the request for an Advisory Opinion that was before the African Court on Human and Peoples' Rights has now been dispensed with, through the decision of the Court in which it was held that the entities that had sought an Advisory Opinion from the Court had no capacity to do so.
51. Consequently, the matter is no longer *sub judice*, and the Commission would now like to indicate and clarify the following:
- a. The decision on the grant of the Observer Status was properly taken in terms of the Commission's established processes and criteria.
 - b. The Commission is mandated to give effect to the African Charter under which everyone is entitled to the rights and subject to the duties spelt out in the Charter, and it is the duty of the Commission to protect those rights in line with the mandate entrusted to it under Article 45 of the Charter, without any discrimination because of status or other circumstances.
 - c. While fulfilling this mandate, the Commission remains alive to and mindful of the imperative not to encroach on domestic policy matters that fall outside its purview.
 - d. The Commission will continue to scrutinize the notion of 'African Values' within the framework of its mandate to interpret the African Charter.

b) Harmonization of emoluments of elected officials

52. A number of Executive Council Decisions call upon the African Union Commission (AUC) to harmonize the emoluments of elected officials of the Union. In particular, decisions EX.CL/Dec.974(XXXI) and Ext/EX.CL/Dec.1(XIII) request the AUC to come up with a proposal to harmonize the remuneration of elected Officials of AU Organs for consideration and adoption. Further to these Decisions, a meeting was convened by the AUC together with the AU Organs, and various recommendations made. The Commission participated in those discussions, and feedback is still awaited.
53. Members of the Commission undertake a lot of work, both during the Sessions of the Commission, and during the intersession period, as this is when most of the work to promote human rights with various stakeholders in the different State Parties takes place. This work goes largely unrecognized and unrecompensed. The Commission therefore trusts that the matter of Commissioners' emoluments will be considered and a decision expeditiously adopted.

c) AU Commission Mission to Banjul

54. Executive Council Ex. CL/Decision EX.CL/Dec.974(XXXI) on the Forty-Second Activity Report of the African Commission on Human and Peoples' Rights "requests the AU Commission to conduct a mission to assess governance and accountability issues in the ACHPR to facilitate a subsequent meeting between the leaderships of the Commission and the ACHPR to address the findings". The said mission is yet to take place.

d) Mission to the territory of the Sahrawi Arab Democratic Republic or Western Sahara under the control of the Kingdom of Morocco

55. It will be recalled that Executive Council Decision EX.CL/Dec.689(XX) requested the Commission to carry out a mission to the territory referred to by the AU as the Sahrawi Arab Democratic Republic (SADR) and the United Nations as Western Sahara, under the control of the Kingdom of Morocco (Morocco), with a view to investigating human rights violations and to report to the Executive Council in January 2013. The Commission was not authorized to visit the territory under the control of Morocco, and therefore undertook a mission to the territories under the government of SADR only. Following consideration of its report, the Commission was requested through EX/CL/Dec.775(XXIII) to carry out the fact-finding mission as specified, further to which the Commission repeated its request for authorization from Morocco to undertake the mission to the occupied territories, which was denied. The subsequent Decision EX.CL/Dec.887(XXVII) repeated the request for the mission to be undertaken, and the Commission again sought authorization from Morocco to undertake the mission but no response was received.

56. Most recently, during the 34th Ordinary Session of the PRC and the 31st Ordinary Session of the Executive Council, the Commission was requested to engage in a dialogue with Morocco, to facilitate the implementation of Executive Council Decision EX.CL/Dec. 689(XX). Following this, a request for authorization to undertake the mission was sent in October 2017, and a response is still being awaited.

XIII. DATES AND VENUE OF THE 62ND ORDINARY SESSION OF THE COMMISSION

57. The 23rd Extra-Ordinary Session of the Commission will take place from 13 to 22 February 2018, in Banjul, Republic of The Gambia; and the 62nd Ordinary Session will take place from 25 April to 09 May 2018, in Nouakchott, Islamic Republic of Mauritania.

58. The Commission expresses its appreciation to the Republic of The Gambia for hosting the 61st Ordinary Session and the 30th anniversary celebrations of the operationalization of the Commission. It also appreciates State Parties that have already hosted Sessions of the Commission, and to the Islamic Republic of Mauritania for offering to host the 62nd Ordinary Session of the Commission. The Commission also takes this opportunity to urge other States Parties to consider hosting Ordinary Sessions of the Commission.

XIV. RECOMMENDATIONS

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

To State Parties:

- i) Acknowledge receipt of the Commission's correspondences, implement its decisions on Communications and provide it with all relevant information on the measures taken to implement its decisions in accordance with Rule 112 of its Rules of Procedure;
- ii) Respect and implement the Provisional Measures issued by the Commission, and provide the Commission with information on the steps taken to implement them;
- iii) Respond to Urgent Letters of Appeal send by the Commission;
- iv) Accede to the Commission's requests to undertake missions in their countries ;
- v) Take all necessary measures to address the various areas of concern highlighted by the Commission; and
- vi) Consider hosting one of the Sessions of the Commission, in compliance with Executive Council Decision EX.CL/856(XXV).

To the Permanent Representatives Committee (PRC):

- i) Hold Retreats with the Commission to better understand its work and foster mutual understanding;
- ii) Attend Ordinary Sessions of the Commission;
- iii) Expedite consideration of the harmonization of the emoluments of elected officials;
- iv) Approve the requisite budgetary increment following the decision of the Commission to increase the number of days for its Ordinary Sessions from **fifteen (15)** to **twenty-one (21)** days, and for its Extra-Ordinary Sessions, from **ten (10)** to **fifteen (15)**; and
- v) Review and augment the structure of the Commission's Secretariat.

To the Kingdom of Morocco:

- i) Ratify the African Charter; and
- ii) Grant the Commission authorization to undertake the mission mandated by Executive Council Decision EX.CL/Dec. 689(XX).

To the AUC:

- i) Give due consideration to the operational and governance challenges confronting the Commission and its Secretariat; and
- ii) Implement various Executive Council Decisions calling for expedited recruitment to the vacant positions in the Secretariat, and more particularly recruitment of Arabic and Portuguese Legal Officers and Translators as per Executive Council Decision EX.CL/Dec.974(XXXI).

To the Host Government/Government of The Gambia:

- i) Resolve the operational challenges confronting the Commission and its Secretariat, especially by addressing the incessant power outages experienced by the Secretariat through provision of an appropriate generator and standby generator; and
- ii) Expedite the construction of an appropriate permanent Headquarters of the Commission, including through the adoption of timelines for its completion.

To the Assembly of Heads of State and Government:

- i) Assist the Commission get authorization from the Kingdom of Morocco to undertake the requested mission.