Opening Speech by the Chairperson of the African Commission on Human and Peoples' Rights, Her Excellency Honourable Commissioner Catherine Dupe Atoki Delivered at the Opening Ceremony of the 52nd Ordinary Session of the African Commission on Human and Peoples' Rights, Yamoussoukro, Côte d'Ivoire

- His Excellency the President of the Republic of Côte d'Ivoire;
- Honourable Minister of Justice and Attorney General of The Republic of Côte d'Ivoire;
- Honourable Minister of Human Rights and Public Freedoms of the Republic of Côte d'Ivoire;
- Honourable Attorney General and Minister of Justice, Republic of The Gambia;
- Honourable Members of the African Commission on Human and Peoples' Rights;
- Honourable Members of the Government of the Republic of Côte d'Ivoire;
- Excellency the Representative of the Commissioner Political Affairs, Commission;
- Excellency the Representative of the African Court on Human and Peoples’ Rights;
- Excellency the UN Special Rapporteur, Extra-judicial, Summary Executions or Arbitrary Executions;
- Excellencies Members of the Diplomatic and Consular Corps accredited to the Republic of Côte d'Ivoire;
- Distinguished Delegates of African Union Member States;
- Distinguished Representatives of International Organizations;
- Distinguished Representatives of National Human Rights Institutions;
- Distinguished Representatives of Non-governmental Organizations;
- Distinguished Invited Guests of different designations;
- Distinguished Ladies and Gentlemen;
Allow me, first and foremost, to, on behalf of the Members and Staff of the African Commission to welcome all of you present to the 52<sup>nd</sup> Ordinary Session held in this beautiful city of Yamoussoukro.

However, before I continue, please allow me to use this platform, on behalf of the African Commission to extend sincere appreciation to the Government and People of the Republic of the Côte d’Ivoire for accepting to host this historic 52<sup>nd</sup> Ordinary Session of the Commission, but for the conducive environment and excellent facilities provided to ensure that the Session is a success.

To His Excellency, the President of the Republic of Côte d’Ivoire, Mr Alassane Ouattara, allow me Your Excellency to express my own heartfelt gratitude for the honour and privilege you have bestowed upon the African Commission, and to me personally, for your graciousness to Open this very Special 52<sup>nd</sup> Ordinary Session, despite your very busy schedule. Your Excellency I am very grateful.

Your Excellencies,

There are moments in history when mankind rises above itself to project a vision of the future that guides and inspires succeeding generations in their search for the true meaning of human dignity. Twenty five years ago, (and that was after decades of campaigns by civil society and other interested groups) the OAU took a step of this kind when, firstly, it adopted the African Charter on Human and Peoples’ Rights and five years later, in 1987, established the African Commission, as the gate keepers of the African Charter and the African human rights system. The Charter and the Commission not only changed the relations between States and individuals, placing the Commission above the powers of institutions and assigning to the Charter responsibilities and obligations with respect to the protection of human rights, it was also meant to reinforce the concept of ‘pax Africana’ - that the peace of Africa is to be assured by Africans themselves.
As we meet in this historic city and imposing architectural structure to commemorate a landmark – the 25th Anniversary of the creation of the African Commission. What and why do we have to recognize 25 years of the existence of the Commission? What is there to commemorate when millions still go hungry every day, made worse by climate change and where conflicts and fear of rape is the daily reality for many more? Well, there are reasons.

Let’s take a walk down ‘Memory Lane’ for a moment. You will agree with me that when the OAU was created in 1963, the question of human rights did not feature prominently on its agenda. It was a dark period in the annals of our history. Freedom from colonial rule did not bring the much anticipated progress and prosperity. Some of us with longer memory expected the new Africa would forge their future together; that we would control our natural resources and join the community of nations as equal partners. Sadly, as history has documented, many of our hopes were soon dashed. Independent African states struggled to contain the impact of arbitrary borders that split ethnic groups and communities, and fuelled tensions. In many countries, the unifying force of independence movements gave way to one-party states as African governments sought to centralize political and economic power. The continent became a land of “big men” and the battle-ground for proxy wars of the Cold War. Development stagnated, deadly conflicts raged, the rule of law and human rights were neglected. Increasing political repression, denial of political choice, restrictions on freedom of association, and other human rights violations met with rare murmurs of dissent from within the OAU.

It took another twenty years after the adoption of the OAU Charter to establish an explicit human rights instrument for the region. Proposals to establish an African Charter on Human and Peoples’ and a Commission to enforce such rights were first mooted in 1961 at the African Conference on the Rule of Law in Lagos, Nigeria. The Conference, organized by the International Commission of Jurists (ICJ), convened almost two hundred judges, lawyers, and scholars from twenty-three countries to discuss enforcement mechanisms for the protection of human rights in the newly independent states of Africa. At the end of the Conference, the participants adopted the ‘Law of Lagos’, which agreed to work for the establishment of an African Convention of Human Rights and a body to police that Convention. Five years later in 1966, the U.N., in cooperation with the Government of Senegal, organized a Seminar on Human
Rights in Developing Countries, which culminated in a call for an African Convention on Human Rights.

Due to the vociferous campaigns of African civil society and with the urging of several African States, the U.N. Commission on Human Rights sponsored several meetings for the establishment of regional human rights machinery for the African continent throughout the late 1960s and 1970s, sponsoring additional conferences on the topic in Cairo (1969), Addis Ababa (1971), Dar-es-Salaam (1973), and Dakar (1978). 1977 proved to be a decisive year. In a Special Appeal the U.N. General Assembly called on Africa and other regions without a human rights enforcement machinery to establish one. The grant of loans and aid were slowly being tied to human rights observance. However, when the history of the African Commission is being written, I think September 1979 was a watershed. The U.N. convened conference in Monrovia, Liberia, produced the “Monrovia Proposals for the Setting-up of an African Commission on Human Rights.”

As the campaigns for the establishment of both an African Convention on Human Rights and a Commission heated up, the OAU set up a Working Group chaired by Justice E.K. Wiredu of Ghana to make further proposals for the establishment of an African Human Rights Charter and an African Commission. The Wiredu proposals formed the basis, in part, of the Draft Charter prepared by the Keba M’baya Committee at the request of the OAU Secretary-General and discussed at three OAU Ministerial Conferences in Dakar in 1979 and in Banjul in 1980 and 1981. In 1981, the OAU finally adopted the African Charter on Human and Peoples’ Rights (Banjul Charter). You will agree with me that it was indeed a milestone in the evolution of human rights protection in Africa. The Commission was later established in 1987, after the entry into force of the African Charter in 1986 pursuant to Article 64 of the Charter. That was twenty five years ago!

As you would expect, the formative years of the Commission were quite difficult as it struggled for its independence, credibility and effectiveness. Some of us sitting in this hall know the story. Even though the Charter in Article 31 clearly spelt out who should be a Commissioner, the early years saw the Commission being dominated by politicians and diplomats, with the obvious
implication of compromise to their neutrality and independence. Some of the Commissioners did not fully understand their roles and what the Commission was supposed to be doing. Some even had no background in human rights. Fortunately, that is behind us now. There were other more serious challenges though. For example, Article 62 of the Charter, obligates each State Party to the Charter to cooperate with the Commission and to submit to it a Report once every two years, in which the State explains the measures it has taken and needs to take to ensure its citizens the rights and freedoms guaranteed by the Charter. As of 1998, thirty of the fifty-one States Parties to the Charter had failed to submit a single Report, and all other states, except Zimbabwe, were in arrears. In addition to failing to fulfill their reporting obligations, many refuse to respond to the Commission's requests for information or to conduct Promotion Missions.

There were also cases in which States Parties refused to admit the Commission on missions into their territories to investigate complaints of human rights violations. It was not uncommon that in a Commissioner’s six-year tenure to have never conducted a Promotion Mission. And of course there was the perennial problem of the O/AU failing to support the Commission with an adequate budget. Even though it was one of the oldest organs of the Union, its budget was linked to the Political Affairs Department, which meant that all its activities and programs were drawn up and approved from Addis. Even Commissioners travels had to be cleared from Addis. The Commission had to rely on grants from West European countries for basic operating expenses. As a matter of fact up till 2005, the Commission had only two full time AU paid Legal Officers and only in 2007 was it able to submit and defend its own budget before the AU policy organs.

The first decade and more also saw very limited Complaints being submitted to the Commission by individuals and NGOs, partly because the Commission was largely unknown and for those who knew it, felt it was ineffective and no point in approaching it. The Charter allows for an inter-state Complaint procedure whereby one State can charge another State with human rights violations before the Commission, but even as of now, only a couple of states have filed a Complaint against another, despite the plethora of abuse in the continent. Another issue that haunted the Commission for a long time was once the Commission reaches a decision
on the Merits of a case, it has no effective mechanism to enforce its judgment. Actually, the situation has not improved much. Consequently, some African states have ignored the Commission with impunity.

Unsurprisingly some critics called it a ‘toothless bull dog’ and a ‘façade’, a yoke that African leaders have put around our necks. But as I said a moment ago, that was some time ago. Although a quarter of a century measured in comparison with the length of human experience is but a short time, yet measured in the life of institutions especially in our continent, where institutions have a short life span, ranks as a very commendable period. These days it is a very rare occasion to even see marriages lasting for that long. Certainly enough time has elapsed to demonstrate with a great deal of thoroughness the value of the Commission and its dependability as one of the independent institutions of the African Union, that has been able to stand the battering waves of political upheavals – to defend robustly human freedoms and dignity.

Your Excellencies, Ladies and Gentlemen;
You will be forgiven to think that it has been all doom and gloom in the 25 years of its existence. And if you read some critical authors, it is quite easy to believe so. That is not the case. I think one of the challenges has been that the Commission has not been able to articulate its success and achievements properly. Again, realizing the deficiency in that respect that having exited for over two decades, with many of its key constituents hardly knowing what the Commission is doing, it was only in 2006/2007 that the AU appointed a senior officer to some media related work.

The Commission’s jurisprudence has been acclaimed as one of the richest within the various human rights system. Its Complaint/Communications procedure has contributed immensely to human rights protection in Africa. This is because the Commission, over the years, and in the process of examining Communications, has developed a system of norm-clarification and standard-setting, which can otherwise be referred to as “quasi-judicial activism”. I wish to emphasize here the continued growth in the acceptance and legitimacy of the African human rights system, evidenced by the consistent increase in the number of people presenting
petitions, the diversity of issues presented and of the organizations attending the hearings, the high level of state and civil society representation at these hearings, the increased use of the system’s jurisprudence by many courts in our region, and significant results achieved in defense of human rights.

Particular emphasis should be placed on the good faith and political will of some States in the region as manifest in friendly settlement agreements reached, the recognition of international responsibility in cases before the Commission and increasing compliance with Recommendations, as well as open invitations extended by countries for the Commission to conduct visits to observe the human rights situation therein. In this way, the Commission represents a particularly important regional forum for discussing the challenges Member States face in meeting their obligation to ensure the observance of human rights in their territories. Under the Charter as I mentioned earlier, States Parties are required to submit Reports to Commission every two years, on the legislative or other measures they have taken to give effect to the rights to the Charter-guaranteed rights. Even though the Charter does not specify what to be done with these Reports, the Commission has developed the progressive practice of having these Reports presented to it in its public sessions. The Commission then examines these Reports and engages in dialogue with representatives from the States, and makes recommendations, if necessary. More interesting is the fact that within the last fifteen years, the Commission has further opened up this exercise to members of civil society. It receives “shadow reports” prepared by accredited NGOs and National Human Rights Institutions, which are taken into consideration when examining the State Reports, questioning the State representatives, and drawing up Concluding Observations.

Another area in which the Commission has demonstrated commendable innovativeness is in its resolutions on diverse human rights issues and situations, sometimes, as they affect specific countries. These are formal expressions of the Commission’s opinion in relation to the relevant human rights issues. Similar to the practices in the UN, the EU and the African Union itself its resolutions are adopted, and released to the public.
The Commission has also improved its working relations with NGOs, National Human Rights Institutions, and more of these groups now take part in its sessions. As at its 51st Ordinary Session in April 2012, the African Commission had granted observer status to 435 NGOs and over 25 National Human Rights Institutions. As you would have noticed, the commission will be giving awards to NGOs and NHRIs in recognition of their work on the African Commission at this very special 25th Anniversary. The number of international organizations, intergovernmental organizations and other interest groups attending the sessions of the Commission has increased considerably over the years. I could spend the next one-hour relating the tremendous achievements of the Commission, including increased financial independence and support from the Member States, though it is still quite inadequate to given its increased programmes and activities.

The broader question for the 25th Anniversary that I want us to think about during this Commemoration is what are the policy implications of a renewed Commission? I hinted earlier that the OAU was conceived within the cauldron of the yoke of colonialism. Understandably the new states guarded their newfound freedom and sovereign independence jealously. The principle of the reserve domain came to define the organization and its members. ‘Freedom’ came to mean a rigid application of the principles of non-interference. It also meant that promoting and protecting human rights took a less important role. Over the last 25 years, however, the Commission has attempted to project a picture of the moral and legal controversy of protecting human rights as a dialectic of international law and politics, a balance for order and justice, arguing that there is an emerging moral and even legal rule of international law to save other human beings from serious violations of human rights. The challenge for organisations like the Commission is to reconcile the traditional norms disfavouring international projections of force with emerging norms that respect human rights and human dignity and democracy. The rejection of unconstitutional forms of government for example, is on its way to being customary international law in Africa.

The point being made is Africa and indeed the Commission is contributing to what appears to be new norms of customary international law and relations, specifically with regard to the promotion and protection of human rights, the doctrine of sovereignty and even the use of force
to protect such rights. This is one of the new developments in international law and relations which the AU is now championing - a change in the law de lege ferenda - permitting the AU to interfere in the internal affairs of a state to protect human rights. The question then becomes, if the social purpose of the state is tied to the social purpose of regional organizations of which states are members, who should protect the human rights and security of Africans, when their own ‘government’ becomes complicit in committing egregious human rights? ‘The Commission thus takes a cosmopolitanist position that human rights are universal and approaches rights, and subsequently, the promotion of such rights from a ‘deontological’ moral perspective. That it is the individual, and not the state, that lie at the centre of international law. States receive their legitimacy from the will of the people. Hence, sovereignty is not an inherent right of states but, rather, derives from individual rights. This is new approach to understanding the work of the Commission and indeed the promotion of human rights in Africa.

However, the weakness or strength of any human rights institution revolves around its normative and procedural scope, its implementation machinery and above all the practice of all the relevant actors. As aforementioned, the Commission has for the past quarter of a century not been very successful in convincing the African people that it can be relied upon for the promotion and protection of human rights on the continent. Like many inter-governmental institutions in Africa, the Commission is handicapped financially, materially and lacks human resources. The ineffectiveness of the African Commission has also been attributed to many other factors including in particular, lack of political will by States Parties, inadequate follow-up mechanisms on decisions or recommendations and lack of sufficient publicity and awareness. The Commission is still unknown to millions of Africans it is supposed to be working for, and even those who do know it, some still approach it with scepticism. Also, the procedure is not widely used by the ordinary man given the fact that about three-quarter of the Communications filed before the Commission were filed by NGOs, usually, foreign-based ones.

I had earlier on referred to the judicial activism of the Commission and its developed practice of issuing Recommendations pursuant to its consideration of Communications. However, this innovativeness falls short of a measure for ensuring compliance with these Recommendations. I concede that a human rights guarantee is only as good as its system of enforcement, and in this light, I wish to note that the weakest point of the Commission is its inability to enforce its
decisions. One State recently even put it in writing that it will not enforce our Decision. But maybe, we should not be too overly critical of ourselves, because lack of enforcement powers, something common to other regional and international human rights bodies.

Closely allied with that concern is the work load of the part-time Commissioners. Those familiar with our work know that because of the increased funding from Member States, the amount of work and traveling Commissioners put in is simply not sustainable. It is a known fact that these part-time Commissioners take on three times the load as their counterparts in the UN, European and Inter-American system. There’s need to address that concern by Member States urgently.

Your Excellencies, Ladies and Gentlemen;

You will recall that I posed a question when I started this delivery. Why and what are we celebrating? Has the vision of the founding fathers of the then OAU in adopting the Charter and establishing the Commission been met? Well, I suppose you should tell us. When the OAU created the Commission, I would want to believe that they believed in the values of equality, justice and the rule of law that the Commission was supposed to promote and protect. Hard as it is to imagine, they dreamed of a better world for all of Africa. And over the last quarter of a century, the Commission faith in the universality of human rights, recognizing that man born free has the collective responsibility to uphold human rights. We today that have taken up that mantle understand that our collective security depend upon our collective will and desire to uphold human dignity. We are hoping that together the participants at this 52nd Session and millions more around the world who taking part in our live on line broadcast of the entire Public Session will be able to discuss the direction of our collective journey for next twenty five years.

We want therefore to make this act of celebration also an act of reflection, and to think that perhaps we are, not only as members of communities or institutions, but as individuals -- professionals, politicians, intellectuals, civil servants -- not doing everything that is within our power to contribute to improving the situation of those suffering today, in so many parts of the continent, from loss of their rights and freedoms. So, we want to commemorate the quarter of
century of a testament to human hope at the end of a century of wars, famine and human misery. We want to pay tribute to the spirit of idealism and the faith in humanity that made our forebears of the Charter believe in Africa, when all around was evidence of the worst our continent can offer.

I therefore call on the 52nd Ordinary Session to address in the colloquium the human rights challenges facing the continent, remembering that people who continue to be denied the respect to which they are entitled as human beings will not acquiesce forever in such denial. It will require courage, imagination, determination and concerted effort on all of our parts to find collective solutions. So may this 52nd Ordinary Session be one for us all to renew, in ideas and action, our constant commitment to the cause of human rights.

I, for one, have confidence that you are up to the task.