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58th Ordinary Session of the African Commission on Human and Peoples' Rights

INTERSESSION REPORT

of

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Banjul, 6 to 20 April 2016

INTRODUCTION

In accordance with Rule 72 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission), this report highlights the promotion and protection activities undertaken during the inter-session period since the 57th Ordinary Session of the Commission held from 4 to 18 November 2015 in Banjul, The Gambia.

The report includes activities undertaken in my capacity as Member of the Commission, Member of the Working Group on Economic, Social and Cultural Rights, Member of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa, as well as in my capacity as Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa. My mandate as Special Rapporteur is set out in African Commission Resolution ACHPR/Res.203 (L) 11, renewed in Resolution ACHPR/Res.246 (LIV) 2013 and Resolution ACHPR/Res.318 (LVII) 2015.

The report also includes the status of ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, and an analysis of the situation of refugees, asylum seekers, internally displaced persons and migrants in Africa. The last part of the report contains recommendations to the various stakeholders.

I. ACTIVITIES UNDERTAKEN IN MY CAPACITY AS COMMISSIONER, MEMBER OF THE COMMISSION

- *Conference on human rights promotion and protection mechanisms in Africa, 27 November 2015, Aix en Provence, France*
1. At the invitation of the Faculty of Law of the Aix-Marseille University, the *Clinique Doctorale de Droit International des droits de l'homme* organized a series of lectures for PhD students during the 2015 academic year on human rights promotion and protection mechanisms in Africa.
 2. Following a presentation on an overview of the role of the African Court on Human and Peoples' Rights made in June 2015 by Judge Fatsa Ougergouz, it was my turn to make a presentation on the theme: *"The Role of the African Commission:*

Between Realities and Perspectives''. The presentation was followed by discussions and a question and answer session.

3. The conference was graced by the presence of Professor Ahmed Mahiou, former Chairman of the United Nations International Law Commission and Ad hoc Judge at the International Court of Justice.

- *National seminar on human rights and environment, 29 and 30 November 2015, Algiers, Algeria*

4. I participated in a national seminar organized at the initiative of the National Advisory Commission for the Promotion and Protection of Human Rights of Algeria. During the seminar, I was invited to participate in a panel discussion on the theme: "Legal basis of the relationship between human rights, environment and sustainable development". I made a presentation on the African experience in human rights promotion and its relationship with environment.
5. I made an analysis of Article 24 of the African Charter which provides for the right of all peoples to a general satisfactory environment favourable to their development, as well as Articles 18 and 19 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) which provide respectively for the right to a healthy and sustainable environment and the right to sustainable development, and Article 11 of the African Charter on the Rights and Welfare of the Child. During the discussions, participants raised the lack of effectiveness of these provisions in environmental protection.
6. It is important to note that during this seminar which was organized ahead of the Paris Climate Conference (COP 21) participants also discussed climate change and its impact on human rights. A statement was issued at the end of the seminar. It is also worthy to note that the seminar was attended by senior officials from the Algerian Ministry of Foreign Affairs and representatives of WHO, the ICRC and the European Union in Algeria.

- *International Human Rights Day, 9 and 10 December 2015, Algiers, Algeria*

7. Within the framework of the partnership between the National Advisory Commission for the Promotion and Protection of Human Rights of Algeria and the European Union representation in Algeria, I participated in a panel discussion on justice sector reform organized as part of celebrations to mark the International Human Rights Day.
8. I participated in the meeting as a moderator, and during the discussions I underscored the main guiding principles of justice sector reform and the objectives to be attained in order to bring justice closer to the people.
9. I also underscored the provisions and principles of the African Charter on Human and Peoples' Rights (fair trial, equality before the law, access to justice, legal aid, etc.) and some cases of the Commission's jurisprudence in which, in its recommendations, the Commission emphasised the need for some States to conduct judicial and legislative reforms. During the meeting, clarification was provided on the meaning of the independence of the judiciary.
10. I underscored the need, during the presentation of future State periodic reports before the Commission, to address in an objective manner the functioning of the justice system.

- *Panel on pre-trial detention, 20 and 21 December 2015, Algiers, Algeria*

11. I participated in a panel discussion on detention, organized by the National Advisory Commission for the Promotion and Protection of Human Rights of Algeria and the NGO Penal Reform International for law enforcement officers.
12. During the panel discussion, I made a presentation on the crucial issue of pre-trial detention in Africa and presented the Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, commonly referred to as the Luanda Guidelines, adopted by the Commission at its 55th Ordinary Session.

- *19th Extraordinary Session, 16 to 25 February 2016, Banjul, The Gambia*

13. I participated in the 19th Extraordinary Session of the Commission held from 16 to 25 February 2015 in Banjul, Islamic Republic of The Gambia. The Session was

convened to consider Communications submitted to the Commission, adopt concluding observations on periodic reports presented at the 57th Ordinary Session of the Commission, consider and adopt reports of promotion missions undertaken in Sudan and Seychelles, as well as the report of the fact-finding mission to Burundi. Legal issues requiring the Commission's guidance were also considered.

- **Participation in the mission of the United Nations Independent Investigation on Burundi (UNIIB), 1 to 8 March 2016**

14. On the proposal of the Office of the United Nations High Commissioner for Human Rights, I participated in an investigation mission on the assessment of the human rights situation in Burundi, conducted from 1 to 8 March 2016 within the framework of the implementation of Human Rights Council Resolution A/HRC/S-24/L.1 of 17 December 2015, during a special session on the human rights situation in Burundi.
15. The mission of the United Nations Independent Investigation on Burundi (UNIIB) was composed of three experts, including two United Nations special procedures mandate holders, Mr Christof Heyns, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution, and Mr Pablo de Greiff, UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence; and myself in my capacity as Member of the African Commission and Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa. UNIIB is mandated to investigate allegations of human rights violations and abuses towards preventing a deterioration of the situation in the country. For further information, consult: <http://www.ohchr.org/EN/HRBodies/HRC/UNIIB/Pages/UNIIB.aspx>
16. During the mission, the experts met with various stakeholders, in particular Government representatives, including one of the two Vice-Presidents of the country, political leaders, United Nations specialised agencies and civil society organizations. We also visited the Gitega prison and held discussions with prisoners accused of involvement in the failed coup attempt of May 2015.
17. During an interactive session, the preliminary conclusions of the visit, which is part of the first phase, were presented by Prof. Christof Heyns before the Human

Rights Council on 23 March 2016. The second phase, which should normally commence in April 2016, will include the presentation of the final report by the three experts before the Human Rights Council in September 2016.

18. It should be noted that the collaboration is part of the Addis Ababa Roadmap that was adopted following a dialogue, held on 17 and 18 January 2012 in Addis Ababa, Ethiopia, between UN Human Rights Council special procedures mandate holders and members of the African Commission on Human and Peoples' Rights.

- *Participation in the NGO Forum, 3 to 5 April 2016, Banjul, The Gambia*

19. I participated in the NGO Forum and the 32nd African Human Rights Book Fair organised from 3 to 5 April 2016 on the margins of the 58th Ordinary Session of the Commission. On this occasion, I delivered the opening address on behalf of the Chairperson who was unable to attend due to circumstances beyond her control.

- *Notes Verbales*

20. During the period under review, I sent a Note Verbale to the Government of the Islamic Republic of Mauritania requesting authorization to undertake a human rights promotion and follow-up mission to Mauritania. I would like to seize this opportunity to express my appreciation to the Mauritanian authorities for authorising a promotion mission which is scheduled for the last quarter of 2016.

II. ACTIVITIES UNDERTAKEN IN MY CAPACITY AS MEMBER OF THE WORKING GROUP ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN AFRICA

- *Meeting of the Working Group on Economic, Social and Cultural Rights in Africa, 5 April 2016, Banjul, The Gambia*

21. I participated in the meeting of Members of the Working Group on ESCR. The meeting was convened to consider the status of implementation of the 2015 – 2018 Plan of Action, and to consider the draft Guidelines on the Right to Water in Africa pursuant to Resolution ACHPR/Res.300 (EXT.OS / XVI) 2015.

22. The Working Group also considered the progress made regarding activities to be conducted within the framework of its participation in celebrations to mark 2016 which has been declared African Year of Human Rights with particular focus on the Rights of Women.

III. ACTIVITIES UNDERTAKEN IN MY CAPACITY AS MEMBER OF THE WORKING GROUP ON DEATH PENALTY AND EXTRAJUDICIAL, SUMMARY OR ARBITRARY KILLINGS IN AFRICA

- *Meeting of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa, 10 April 2016, Banjul, The Gambia*

23. I participated in a meeting of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa organized in collaboration with partners, notably FIDH and FIACAT, to consider in particular the strategy for the adoption of the draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty.

24. During the meeting, participants also discussed the Working Group's participation in the 6th World Congress against the Death Penalty to be held from 21 to 23 June 2016 in Oslo, Norway.

25. Members of the Working Group also discussed about the Panel on Death Penalty in Africa held on 11 April 2016 which I also attended.

IV. ACTIVITIES UNDERTAKEN IN MY CAPACITY AS SPECIAL RAPPORTEUR ON REFUGEES, ASYLUM SEEKERS, INTERNALLY DISPLACED PERSONS AND MIGRANTS IN AFRICA

- *Workshop on the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 30 November to 2 December 2015, Addis Ababa, Ethiopia*

26. I participated in a workshop jointly organised by the African Union Commission, UNHCR, Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council within the framework of the commemoration of the third anniversary of the entry into force of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention).
27. The workshop was organised for government authorities, civil society actors, professionals and experts in laws and policies on displaced persons and other stakeholders from six countries, including Cameroon, CAR, Mali, Nigeria, South Sudan and Zambia.
28. The objectives of the workshop were to raise awareness about the Kampala Convention towards promoting the domestication and implementation of the Convention; promote national responsibility and experience sharing among countries; and strengthen the role of the African Union and other inter-governmental and non-governmental stakeholders in promoting the domestication and implementation of the Convention.
29. During the workshop, recommendations were made to the various stakeholders, taking into account the challenges in the effective implementation of the Kampala Convention.
 - *Consultation on consolidating Africa's common position on humanitarian effectiveness, 16 to 20 November 2015, Addis Ababa, Ethiopia*
30. I participated in a consultation of experts and ministers of African Union Member States in charge of issues relating to forced displacement with the objective to finalise the African common humanitarian position which will be presented during the World Humanitarian Summit to be held on 23 and 24 May 2016 in Istanbul, Turkey.
31. The meeting was a follow-up to the previous sub-regional consultative meetings which helped to identify views on the new world humanitarian edifice.
32. Africa is expected to participate as an active stakeholder and not as a mere beneficiary of constant assistance.

- *Follow-up on the draft Protocol to the African Charter on Human and Peoples' Rights on the specific aspects of the right to nationality and the eradication of statelessness in Africa, , 15 to 16 February 2016, Dakar, Senegal*

33. I participated in a citizen coordination meeting on the question of nationality. The meeting was attended by twelve NGOs, including three from West Africa, UNHCR Dakar Office and the NGO Open Society. Participants indicated the need to create a network of NGOs in the East African sub-region on the question of nationality with the objective to advocate for the eradication of statelessness and conduct awareness-raising campaigns to promote the draft Protocol to the African Charter on Human and Peoples' Rights on the specific aspects of the right to nationality and the eradication of statelessness in Africa (the draft Protocol).

34. During the meeting, in consultation with partners, we identified ten "champion" countries that can support us in advocating for the promotion of the draft Protocol. It should be noted that the Arabic version of the draft Protocol has been finalized and that the Portuguese translation will be completed soon.

35. It should be noted that on 18 February 2016, the first anniversary of the Abidjan Declaration on the Eradication of Statelessness adopted in February 2015 by ECOWAS Member States, a panel was held in Dakar to discuss the Declaration.

- *Participation in two panel discussions on the right to nationality and on the reduction of statelessness organised on the margins of the 58th Ordinary Session*

36. On 5 April 2016, the NGO Forum organised a panel discussion on the question of nationality and the role of the Commission in following up on the adoption of the draft Protocol by African Union organs.

37. On 7 April 2016, I participated in a second panel discussion during which we heard vivid and poignant testimonies from stateless persons regarding their situation and daily challenges.

- *Participation in two panel discussions on the human rights situation in Burundi and in South Sudan, 6 and 7 April 2016*

38. I participated in two panel discussions on the human rights situation in Africa, with special emphasis on South Sudan and Burundi.

V. STATUS OF RATIFICATION OF THE AFRICAN UNION CONVENTION FOR THE PROTECTION AND ASSISTANCE OF INTERNALLY DISPLACED PERSONS IN AFRICA

39. During the intersession, I continued to monitor the status of ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention). I am concerned by the lack of ratification of the Convention during the period under review. Djibouti was the last country to ratify the Convention on 15 July 2015.

40. It should be noted that to date, the Kampala Convention has been ratified/acceded to by a total of twenty five (25) States, which include: Angola, Benin, Burkina Faso, Central African Republic, Chad, Congo, Côte d'Ivoire, Djibouti, Gabon, Guinea-Bissau, Lesotho, Mali, Malawi, Mauritania, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, Sierra Leone, Swaziland, The Gambia, Togo, Uganda, Zambia and Zimbabwe

41. Eighteen (18) States have only signed the Kampala Convention, including: Burundi, Comoros, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Ethiopia, Ghana, Guinea-Conakry, Liberia, Madagascar, Mozambique, Namibia, Senegal, Somalia, Sao Tomé and Príncipe, South Sudan, Tanzania and Tunisia.

42. Lastly, there are eleven (11) States that have neither signed nor ratified the Convention, including: Algeria, Botswana, Cameroon, Cabo Verde, Egypt, Kenya, Libya, Mauritius, Seychelles, South Africa and Sudan.

VI. ANALYSIS OF THE SITUATION OF REFUGEES, ASYLUM SEEKERS, INTERNALLY DISPLACED PERSONS AND MIGRANTS DURING THE INTERSESSION

43. During the intersession, I continued to monitor the situation of refugees, asylum seekers, internally displaced persons and migrants in Africa.
44. Regarding refugees, I would like to mention the following three situations:
- The increasing number of Burundians fleeing their country to seek refuge in neighbouring countries, in particular Rwanda, DRC, Uganda, Tanzania and in Zambia and Kenya. Since the beginning of the political crisis, more than 178,000 people have fled the country and the displacement is ongoing;
 - Sahrawi refugee camps in Tindouf, Algeria, for the category of long-term refugees, received for the first time the visit of the UN Secretary-General, Mr Ban Ki Moon, on 6 March 2016, who expressed the need to mobilise more resources to assist these refugees whose humanitarian dimension is completely ignored by the international community and called for a solution to the conflict;
 - Following attacks by Boko Haram in northern Nigeria, violence and insecurity continued to force the displacement of populations to neighbouring countries such as Cameroon, Niger and Chad. I would like to seize this opportunity to express my gratitude to these countries for hosting these refugees and to appeal to other African countries, as part of African solidarity, to also participate in bearing the cost of hosting these refugees.
45. Regarding the situation of internally displaced persons, conflicts, natural disasters, major development projects and the impact of climate change continue to be the cause of internal displacement in many countries, particularly in Burundi where the current political crisis has, since April 2015, led to the internal displacement of thousands of people whose situation is difficult to assess.
46. It is worth mentioning the situation in Sudan where there are thousands of internally displaced persons as a result of conflict and the economic sanctions imposed by some countries since 1997 in order to resolve the conflict and ensure respect for human rights. Unfortunately, these sanctions are affecting the economic and social rights of populations who are forced to flee their places of residence and find themselves in increasingly precarious situations of food insecurity and malnutrition.

47. Regarding migrants, 2015 is considered the worst year for migrants who left their countries for Europe through the Mediterranean Sea, even though the percentage of migrants of African origin is not very significant compared to migrants from other continents.
48. It should be noted that migration as a result of climate change has become a concrete reality in Africa. As such, for the first time, the international community included migration in the 2030 Agenda for Sustainable Development and it should be underscored that the term “migrant” was included in the preamble of the Paris Agreement on climate change.
49. Deeply concerned by these situations, the Commission, meeting at its 19th Extraordinary Session held from 16 to 25 February 2016, adopted two resolutions, notably Resolution ACHPR/Res.333 (EXT.OS/XIX) 2016 on the Situation of Migrants in Africa, and Resolution ACHPR/Res. 335 (EXT.OS/XIX) 2016 on the Situation of Internally Displaced Persons in Africa. In these resolutions, the Commission expressed deep concern at the forced displacements and migratory flows, as well as their disastrous consequences on the lives of populations. The Commission called on African countries to take their responsibility towards finding lasting solutions to these problems which lead to an uncertain future for these populations.

VII. RECOMMENDATIONS

50. Following this report, I would like to make the following recommendations to the various stakeholders:

a) States Parties to the African Charter:

- Be more involved in preventing the forced displacement of populations in and outside their countries, irrespective of the cause of displacement (armed conflict, climate change, major development project, natural disaster, etc.); and protect populations in the event where prevention measures fail;
- For States that have not yet done so, ratify and/or expedite the ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; and for States that have ratified it, ensure its domestication and operationalisation through laws, policies and programmes

in favour of internally displaced persons and to report in their periodic reports;

- Continue efforts towards ensuring greater protection and assistance for refugees, asylum seekers, internally displaced persons and migrants in their countries, in collaboration with UN agencies and other humanitarian organisations working in the area of the promotion and protection of the rights of this group of people;
- Take measures towards finding appropriate solutions to the situation of long-term refugees;
- Support the campaign for the eradication of statelessness launched by UNHCR for the decade 2014-2024;
- Support the adoption of the draft Protocol to the African Charter on Human and Peoples' Rights on the specific aspects of the right to nationality and the eradication of statelessness in Africa;
- Organise, within the framework of the celebration of 2016 declared African Year of Human Rights with particular focus on the Rights of Women, activities on the theme of refugees, asylum seekers, internally displaced persons and migrants in Africa.

b) African Union:

- Handle diligently the issue of migrants and refugees by dealing with the root causes of population movement which has tragic consequences at a time when humanitarian response is insufficient and uncertain;
- Take measures to facilitate the adoption of the draft Protocol to the African Charter on Human and Peoples' Rights on the specific aspects of the right to nationality and the eradication of statelessness in Africa.

c) UNHCR, other UN agencies and international organisations:

- Work in a proactive manner with States in order to find solutions to the situation of refugees, asylum seekers and IDPs, and in particular long-term refugees;

- Continue to support the Mechanism in implementing its mandate;
- Strengthen collaboration with the African Commission on Human and Peoples' Rights on themes of common interest, in accordance with the MOU signed between the two institutions;
- Continue to support the Mechanism in advocating for the eradication of statelessness in Africa.

d) Civil society and other partners:

- Continue advocacy for the ratification of the Kampala Convention;
- Disseminate and popularise the study on nationality and continue advocacy for the eradication of statelessness;
- Continue activities on the ground in order to provide information on refugees, asylum seekers, internally displaced persons and migrants in Africa;
- Provide support and assistance to the Special Rapporteur to enable her to effectively implement her mandate.

e) African Commission on Human and Peoples' Rights:

- Commence and continue the process for the adoption of the draft Protocol to the African Charter on Human and Peoples' Rights before the AU organs in accordance with the procedure for processing AU legal instruments.

I would like to conclude by expressing my profound appreciation to our partners, in particular the AU Department of Political Affairs, UNHCR and the NGO Open Society, for their continuous support to the work of my mechanism.