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| AFRICAN UNION |  | UNION AFRICAINE |
| الاتحاد الأفريقي African Commission on Human & Peoples' Rights | | UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples |
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Final Communiqué of the 63rd Ordinary Session of the African Commission on Human and Peoples' Rights

Banjul, The Gambia

24 October to 13 November 2018

1. The African Commission on Human and Peoples' Rights (the Commission) held its 63rd Ordinary Session in Banjul, The Gambia, from 24 October to 13 November 2018.
2. The Commission celebrated the 70th anniversary of the adoption of the Universal Declaration of Human Rights (UDHR) on this occasion.
3. The following Members of the Commission participated in the Session:
 - Honourable Commissioner **Soyata Maiga**, Chairperson;
 - Honourable Commissioner **Lawrence Murugu Mute**, Vice-Chairperson;
 - Honourable Commissioner **Yeung Kam John Yeung Sik**;
 - Honourable Commissioner **Kayitesi Zainabo Sylvie**;
 - Honourable Commissioner **Lucy Asuagbor**;
 - Honourable Commissioner **Maya Sahli-Fadel**;
 - Honourable Commissioner **Jamesina Essie L. King**;
 - Honourable Commissioner **Solomon Ayele Dersso**;
 - Honourable Commissioner **Hatem Essaïem**;
 - Honourable Commissioner **Maria Teresa Manuela**; and
 - Honourable Commissioner **Remy Ngoy Lumbu**.
4. The opening ceremony was graced by the presence of **H. E. Mr Ousainou Darboe**, Vice President of the Republic of The Gambia, who declared the 63rd Ordinary Session open.
5. Mrs. Hannah Forster, speaking on behalf of the participants of the NGO Forum, highlighted some of the activities carried out during the Forum, including the 37th African Human Rights Book Fair from 20 to 22 October 2018, celebration of African Human Rights Day on 21 October 2018, and commemoration of the 70th anniversary of the UDHR as well as the 15th anniversary of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol). She also indicated that the Forum held discussions on preventing corruption within the framework of the African Union (AU) theme for 2018 "winning the fight against corruption".
6. Mr Bongani Majola, speaking on behalf of the Network of African National Human Rights Institutions (NANHRI), commended the work of the Commission in continuing to uphold a human rights culture in Africa. He cited armed conflict, terrorism, corruption, migration and human trafficking as challenges which hinder the realisation of human rights targets. Mr Majola mentioned some of the challenges faced by African National Human Rights Institutions (NHRIs) in the independent exercise of their mandates, including budget cuts, irregular

appointment and removal of NHRI members, verbal attack on NHRI members, denial of access to state-owned media coverage, denying immunity to NHRI leadership, and delaying consideration of NHRI findings in parliament. He underscored the importance of strong and independent NHRIs as they are one of the few last forms of defense against unchecked state power. He appealed to the AU and Member States to promote and protect the independence of the Commission as the success of NHRIs depends on the work and leadership provided by the Commission.

7. Speaking on behalf of AU Member States, His Excellency Ambassador Wael Attiya, Director of the Human Rights Department in the Ministry of Foreign Affairs of the Arab Republic of Egypt, recalled the decision of AU Member States to establish the Commission in order to monitor implementation of the African Charter on Human and Peoples' Rights (the African Charter), and provide technical assistance to Member States in the realisation of human rights. He stressed the need to take stock of past achievements and rekindle cooperation between the Commission and AU Policy Organs. In this regard, he recalled a retreat that was held in June 2018, in Nairobi, Kenya, to foster regular consultation between the AU Permanent Representatives Committee (PRC) and the Commission. H. E. Ambassador Attiya indicated that it is essential to continue this collaborative effort to enhance the efficiency of the Commission and to enable it assist Member States in fulfilling their human rights obligations. He concluded by stating that Egypt will continue to support the Commission, and announced that it will host the 64th Ordinary Session of the Commission.
8. In his statement, Mr Dominique Delpuech, speaking on behalf of Organisation internationale de la Francophonie (OIF), congratulated The Gambia on joining OIF in October 2018. He stated that OIF promotes peace, democracy and human rights in accordance with the Bamako Declaration of 3 November 2000 which aims to consolidate the rule of law, human rights and democratic culture. He added that the Declaration affirms the need to intensify cooperation between OIF and international and regional organisations. He indicated that it is within this framework that the OIF and the Commission recently signed a Memorandum of Understanding and agreed on a Roadmap. Mr Delpuech welcomed the celebration of the 70th anniversary of the UDHR, and stated that while progress has been made in the implementation of the UDHR, a lot remains to be done. He expressed OIF's concern regarding challenges to the principles of universality and indivisibility of human rights, under the guise of the fight against terrorism and migration.
9. Mr Mahamane Cisse-Gouro, speaking on behalf of Ms Michelle Bachelet, the UN High Commissioner for Human Rights, remarked on the AU theme for 2018 "winning the fight against corruption" stating that the UN, like the AU is also concerned about issues of corruption. He recalled the 2012 Declaration of the High-level Meeting of the General Assembly on the Rule of Law which alludes to

the negative impact of corruption and stresses the importance of the rule of law in addressing and preventing corruption. Mr Cisse-Gouro noted that corruption can take many forms and can have individual and collective impacts on the enjoyment of human rights. He expressed his hope that the Addis Ababa Roadmap Agreement will be extended to jointly tackle corruption. He reiterated the Commission's motto "human rights: our collective responsibility" and expressed in that regard the support of the Office of the High Commissioner for Human Rights (OHCHR) to the work of the Commission and the AU.

10. Honourable Justice Tujilane Chizumila, speaking on behalf of Justice Sylvian Oré, President of the African Court on Human and Peoples' Rights (the Court), noted that, after three decades of operation, the Commission remains critical to the achievement of the major objectives of the AU. She recalled the decision of the AU and its Member States to establish the Court in order to complement and strengthen the continued and independent operation of the Commission. She added that the Court acknowledged the functional independence of the Commission in the case of *Femi Falana v. the Commission*. Honourable Justice Chizumila shared the concerns of the Court regarding the recent misunderstandings on how human rights institutions and organs set up by the AU should discharge their mandates. She stated that the trend is not in line with the commitments and values of the AU and its Member States enunciated under the AU Constitutive Act and the African Charter on Democracy, Elections and Governance, particularly the rule of law and independence of adjudicatory bodies. She concluded by stating that Africa is a continent of solidarity which is why the AU created the Court but retained the Commission to embed a culture of human rights and justice for all.
11. In her opening statement, the Chairperson of the Commission, Honourable Commissioner Soyata Maiga, welcomed participants to the 63rd Ordinary Session of the Commission and expressed her gratitude to the Government of The Gambia for facilitating the Session. She noted that this year human rights are at the forefront, as the entire world commemorates 70 years of the UDHR, an instrument which is the "first international articulation of the rights and freedoms of all members of the human family."
12. The Chairperson proceeded to share some concerns regarding the human rights situation in the continent, such as the security situation in the Sahel region and its impact on the rights of populations; the migration crisis in Africa; the political turmoil in Togo and post-electoral protests in Mali and Cote d'Ivoire; the situation in English-speaking Cameroon; the political crisis in the DRC particularly attacks on civilians in Béni; the political crisis in Burundi and the suspension of the activities of all foreign NGOs; the arbitrary arrest and detention of human rights defenders in several African countries; restrictions on freedom of expression and assembly in Cameroon, Gabon, Egypt, DRC and Sudan. She also noted with

concern the adverse impact of corruption on human rights, particularly with regards to social and economic rights.

13. The Chairperson also shared some positive developments in the continent, including the ratification by The Gambia 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 to the ICCPR) and the establishment of the Truth, Reconciliation and Reparations Commission; the steps taken by the Federal Democratic Republic of Ethiopia to promote peace-building, democratic change and human rights and the recent establishment of a gender-balanced Cabinet; the reconciliation between Eritrea and Ethiopia and the subsequent opening of borders; the amnesty granted by Ivorian authorities to about 800 individuals; and the political will expressed by the President of Cote d'Ivoire to implement a decision of the African Court.
14. The Chairperson remarked on the Executive Council decision of June 2018, reiterating the Commission's firm commitment to the universality of human rights and its commitment to defend the human rights of all persons in accordance with the principles enshrined in the African Charter. She concluded by calling on all stakeholders, including policy makers to play their role in building democracy, ensuring the rule of law and promoting and protecting human rights in Africa.
15. Mr Calixte Mbari, speaking on behalf of Mrs Minata Samate Cessouma, Commissioner for Political Affairs, noted that the AU human rights system has undergone transformation, with the recent adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons and the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa. Mr Mbari recalled the AU's decision to declare 2019 as the "Year of Refugees, Returnees and Internally Displaced Persons in Africa: Towards Durable Solutions to Forced Displacement". He emphasized the need to work collectively in the promotion and protection of human rights in Africa, and underscored the AU's commitment to the promotion and protection of human rights as elaborated in Agenda 2063. He stated that the AU institutional reform process aims to strengthen the AU human rights institutions, not to weaken them. He called on all stakeholders, including AU Member States, civil society and other actors to engage constructively to realise the aspirations in Agenda 2063.
16. H. E. Mr Ousainou Darboe, Vice President of the Republic of The Gambia, welcomed participants to the 63rd Ordinary Session of the Commission. He indicated that the Government of The Gambia is honoured to host the sessions of the Commission, particularly the 63rd Ordinary Session which coincides with the 70th anniversary of the UDHR. He noted that African states have taken great strides following the adoption of the UDHR, including the adoption of the African

Charter, although more needs to be done to fully realise the values enshrined in the African Charter.

17. The Vice President proceeded to share some positive developments in the human rights situation in The Gambia following the last Ordinary Session held in The Gambia in October 2017, including the ratification by The Gambia of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention for the Protection of All Persons from Enforced Disappearance; the Second Optional Protocol to the ICCPR; the African Charter on Democracy, Elections and Governance; and the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (the Court Protocol). He further stated that The Gambia is in the process of making a Declaration pursuant to Article 34 (6) of the Court Protocol to allow individuals and NGOs to have direct access to the Court. Regarding ratification of the Second Optional Protocol to the ICCPR, he indicated that The Gambia has adopted a moratorium on the application of the death penalty as a first step towards abolition.
18. The Vice President highlighted other areas of progress including improved freedom of expression; the dramatic decline in arbitrary arrests and detention; increased public engagement and participation; commencement of a process to review repressive laws and establishment of Media Law Review Committee; steps taken to reform various governance areas; establishment of a Constitutional Review Commission; establishment of a Truth, Reconciliation and Reparations Commission; steps taken to establish a National Human Rights Commission; the drafting of an anti-corruption bill; improved prison conditions and review of the Prison Act to ensure compliance with international standards; development of various national policies such as the National Development Plan 2018 – 2021; and submission by The Gambia of its combined periodic report to the Commission covering a period of 24 years.
19. The Vice President concluded by extending his appreciation to all participants for attending the Session, and declared the 63rd Ordinary Session of the Commission open.
20. Honourable Commissioner **Soyata Maiga** chaired the 63rd Ordinary Session of the Commission.
21. The 63rd Ordinary Session was attended by a total of six hundred and ninety (690) delegates, including:
 - i. one hundred fifty-four (154) delegates representing twenty-seven (27) State Parties, namely Algeria, Angola, Botswana, Burkina Faso, Cameroon, Cote d'Ivoire, Democratic Republic of Congo, Egypt, Eswatini, Ethiopia, The Gambia, Guinea Bissau, Kenya, Lesotho, Libya, Malawi, Mauritania, Nigeria, Rwanda, Saharawi Arab Democratic Republic, Senegal, Sierra Leone, South Africa, South Sudan, Sudan, Togo, and Uganda;

- ii. eleven (11) representatives of AU Institutions;
 - iii. thirty-four (34) representatives of NHRIs;
 - iv. five (5) representatives of international and inter-governmental organisations;
 - v. three hundred and forty-six (346) representatives of NGOs;
 - vi. seventeen (17) representatives of the media;
 - vii. twenty-nine (29) other observers; and
 - viii. ninety-four (94) representing Members of the Commission, the Secretariat, interpreters, translators, and support staff.
22. The Commission launched the following documents and instruments during the 63rd Ordinary Session:
- i. Principles on Decriminalisation of Petty Offences in Africa;
 - ii. Compendium on the Legal Protection of Human Rights Defenders in Africa;
 - iii. Arabic and Portuguese versions of the Guidelines on Access to Information and Elections in Africa;
 - iv. State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment; and
 - v. Newsletter of the Working Group on Extractive Industries, Human Rights and the Environment in Africa.
23. The Commission also organised the following panel discussions during the 63rd Ordinary Session:
- i. Panel on the 70th Anniversary of the Universal Declaration of Human Rights and the state of play in Africa;
 - ii. Panel on Implementation of the Decisions of the Commission;
 - iii. Panel on the Situation of Migrants at Risk of Torture and other Ill-treatment in Africa: Alternative Approaches;
 - iv. Panel on the 20th Anniversary of the UN Declaration on Human Rights Defenders and the 5th Anniversary of the UN General Assembly Resolution 68/81 on Women Human Rights Defenders;
 - v. Panel on the State Reporting Obligation and Guidelines to Reporting under the Maputo Protocol;
 - vi. Panel on Extrajudicial Killings in Africa;
 - vii. Panel on Persons with Albinism; and
 - viii. Panel on the Guidelines on Access to Information and Elections.
24. Representatives of the following eighteen (18) State Parties made statements on the human rights situation in their respective countries: Algeria, Angola, Burkina Faso, Cameroon, Cote d'Ivoire, Democratic Republic of Congo, Eswatini, Ethiopia, Kenya, Kingdom of Lesotho, Malawi, Islamic Republic of Mauritania, Rwanda,

Sahrawi Arab Democratic Republic, South Africa, South Sudan, The Sudan, and Uganda.

25. Representatives of the following six (6) NHRIs also made statements on the human rights situation in their respective countries:
 - i. National Commission for Human Rights and Freedoms of Cameroon;
 - ii. National Preventive Mechanism of Mauritania;
 - iii. Saharawi National Commission for Human Rights;
 - iv. National Human Rights Commission of Niger;
 - v. National Commission for Human Rights of Rwanda; and
 - vi. Commission for Gender Equality of South Africa.
26. A total of sixty-one (61) NGOs with Observer Status with the Commission made statements on the human rights situation in Africa.
27. A representative of the International Committee of the Red Cross (ICRC) also made a statement on the vulnerabilities of women and girls in situations of armed conflict and other situations of violence, underscoring the importance of adhering to the Maputo Protocol and international humanitarian law to better protect women and girls.
28. The Commission reported on the status of its relationship and cooperation with NHRIs and NGOs. It gave an update on the status of submission of activity reports by NHRIs and NGOs respectively.
29. In accordance with its Resolution on the Granting of Affiliate Status to NHRIs in Africa, the Commission granted Affiliate Status to one (1) NHRI, the South Sudan Human Rights Commission, bringing the total number of NHRIs with Affiliate Status with the Commission to twenty-nine (29).
30. In accordance with its Resolution on the Criteria for Granting and Maintaining Observer Status to NGOs working on Human and Peoples' Rights in Africa, the Commission granted Observer Status to one (1) NGO, HAKI Africa, bringing the total number of NGOs with Observer Status with the Commission to five hundred and eighteen (518).
31. The Commission gave an update on the status of submission of State Parties' periodic reports.
32. In accordance with Article 62 of the African Charter and Article 26 of the Maputo Protocol, the Commission considered the periodic reports of the following three (3) State Parties:
 - i. Sixth and Seventh Combined Periodic Reports of the Republic of Angola on the African Charter, and Report on the Maputo Protocol;
 - ii. Sixth, Seventh and Eighth Combined Periodic Reports of the Republic of Togo on the African Charter, and Report on the Maputo Protocol; and

- iii. Second and Third Combined Periodic Reports of the Republic of Botswana on the African Charter.
33. In accordance with paragraph 25 of the African Peer Review Mechanism (APRM) Base Document NEPAD/HSGIC/03-2003/APRM/MOU/Annex II, the - Chairperson of the APRM Panel of Eminent Persons presented the APRM Reports of the Republic of Chad, the Republic of Djibouti, and the Republic of Senegal.
 34. The following Members of the Commission presented their inter-session reports highlighting activities undertaken in their capacities as Commissioners, and Special Mechanisms mandate holders:
 - i. Chairperson of the Commission and Chairperson of the Working Group on Indigenous Populations/Communities in Africa;
 - ii. Vice-Chairperson of the Commission and Special Rapporteur on Freedom of Expression and Access to Information in Africa;
 - iii. Special Rapporteur on the Rights of Women in Africa;
 - iv. Special Rapporteur on the Situation of Human Rights Defenders in Africa;
 - v. Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa;
 - vi. Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;
 - vii. Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa;
 - viii. Chairperson of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa;
 - ix. Chairperson of the Committee for the Prevention of Torture in Africa;
 - x. Chairperson of the Committee on the Protection of the Rights of People Living with HIV and those at Risk, Vulnerable to and Affected by HIV;
 - xi. Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa;
 - xii. Chairperson of the Working Group on the Rights of Older Persons and Peoples with Disabilities in Africa; and
 - xiii. Chairperson of the Working Group on Communications.
 35. The Commission adopted the reports of three (3) human rights promotion missions undertaken to the Republic of Angola, the Democratic Republic of Congo, and the Islamic Republic of Mauritania.

36. The Commission considered and adopted the following documents with amendments:
 - i. Concluding Observations on the Initial State Report of Eritrea;
 - ii. Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security;
 - iii. Communication and Media Strategy of the Commission;
 - iv. Audit of Communications; and
 - v. Report of the Second Regional Seminar on Implementation.
37. The Commission also considered and made observations on the following documents:
 - i. Draft General Comment on Article 12 (1) of the African Charter on Human and Peoples' Rights;
 - ii. Report of the Secretary to the Commission;
 - iii. 2019 Annual Work Plan of the Commission;
 - iv. Report on Staff, Budgetary and Related Matters;
 - v. ACHPR's Study on Human Rights in Conflict Situations in Africa;
 - vi. Draft Guidelines for Referral of Cases to the Court;
 - vii. Report of the Meeting on the Validation of the AUC's Study on Policy Coherence between the AUC and AU Organs;
 - viii. Proposals on the operationalisation of the recommendation on Code of Conduct of the Commission;
 - ix. Paper on Recusal;
 - x. Concept Note for Regional Consultation on Combatting Racial Discrimination/Xenophobia and Other Related Intolerances;
 - xi. Correspondence from the Coalition of African Lesbians (CAL) on the request for the legal basis of the withdrawal of its observer status; and
 - xii. Proposal by NANHRI on the establishment of an online information centre on the implementation of the Commission's decisions.
38. The Commission deferred consideration of the Draft Guidelines on the Right to Water.
39. The Commission adopted the following eleven (11) Resolutions:
 - i. Resolution on the Interpretative and Protective Mandates of the African Commission on Human and Peoples' Rights;
 - ii. Resolution on the Human Rights Situation in the Federal Republic of Somalia;

- iii. Resolution on the Human Rights Situation in the Republic of Burundi;
 - iv. Resolution on the Continuing Human Rights Violations in the Republic of Cameroon;
 - v. Resolution on the Human Rights Situation in the Democratic Republic of Congo;
 - vi. Resolution on the Need for a Study on the Situation of Africa's Sacred Natural Sites and Territories;
 - vii. Resolution on the need to undertake a study on human rights violations against migrants;
 - viii. Resolution on the situation of women human rights defenders in Africa;
 - ix. Resolution on the establishment of a support group for the Special Rapporteur on Human Rights Defenders and focal point on reprisals in Africa for the promotion and monitoring of the effective implementation of the Guidelines on Freedom of Assembly and Association in Africa;
 - x. Resolution on the Elaboration of a General Comment on Article 12 (1) of the African Charter on Human and Peoples' Rights; and
 - xi. Resolution on the Expansion of the Mandate and Composition of the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa.
40. The Commission considered fifteen (15) Communications:
- i. Three (3) Communications on Admissibility, of which one (1) was declared admissible and two (2) were deferred;
 - ii. Nine (9) Communications on Seizure, all of which were seized, three (3) with Provisional Measures;
 - iii. Two (2) Communications were struck-out; and
 - iv. One (1) Communication on request for withdrawal, which was granted.
41. The Commission further considered and provided guidance on three (3) Communications.
42. Representatives of the APRM briefed the Commission on the expansion of APRM's mandate to track the state of governance in Africa, and proposed collaborative activities between the APRM and the Commission.
43. The Advisory Committee on Budgetary and Staff Matters (ACBSM) and the Working Group on Specific Issues (WGSi) met to consider the Performance and Recruitment Audit Report, after which the Commission provided guidance.
44. The Commission considered its 45th Activity Report, which will be submitted to the 34th Ordinary Session of the AU Executive Council and the 32nd Ordinary Session of the AU Assembly of Heads of State and Government.

45. The Commission decided to hold its 25th Extra-Ordinary Session from 19 February to 5 March 2019, in Banjul, The Gambia.
46. The Commission decided to hold its 64th Ordinary Session from 24 April to 14 May 2019 in Cairo, Egypt.
47. The Commission expresses its sincere gratitude to the Government and people of The Gambia for the warm welcome and hospitality extended to participants, and for providing the necessary facilities which contributed to the successful conduct of the Session.
48. The closing ceremony of the 63rd Ordinary Session was held on 13 November 2018, in Banjul, The Gambia.

Done in Banjul, Republic of The Gambia, on 13 November 2018