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| AFRICAN UNION |  | UNION AFRICAINE |
| الاتحاد الأفريقي <i>African Commission on Human & Peoples' Rights</i> | | UNIÃO AFRICANA <i>Commission Africaine des Droits de l'Homme & des Peuples</i> |
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**FINAL COMMUNIQUE OF THE 48th ORDINARY SESSION OF THE
AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
HELD IN BANJUL, THE GAMBIA
FROM 10 TO 24 NOVEMBER 2010**

1. The African Commission on Human and Peoples' Rights (African Commission), held its 48th Ordinary Session in Banjul, the Republic of The Gambia, from 10 to 24 November 2010.
2. Honourable Commissioner **Reine Alapini Gansou**, Chairperson of the African Commission, presided over the Opening Ceremony of the Session.
3. The following Members attended and participated in the Session:
 - Honourable Commissioner **Mumba Malila – Vice Chairperson;**
 - Honourable Commissioner **Lucy Asuagbor;**
 - Honourable Commissioner **Catherine Dupe Atoki;**
 - Honourable Commissioner **Musa Ngary Bitaye;**
 - Honourable Commissioner **Mohamed Bechir Khalfallah;**
 - Honourable Commissioner **Soyata Maiga;**
 - Honourable Commissioner **Kayitesi Zainabo Sylvie**
 - Honourable Commissioner **Pansy Tlakula;**

- Honourable Commissioner **Yeung Kam John Yeung Sik Yuen**.
 - Honourable Commissioner **Muhamed Fayek** was absent with apologies.
4. Honourable Commissioner **Reine Alapini Gansou**, chaired parts of the deliberations of the Public Session, but had to leave before its conclusion because of a death in her family. In her absence, the Vice-Chairperson, Honourable Commissioner **Mumba Malila** presided over the rest of the Public and Private Sessions. Honourable Musa Ngary Bitaye acted as the Vice-Chairperson.
5. A total of Ninety two (92) delegates representing twenty two (22) States Parties, nine (9) National Human Rights Institutions, five (5) International and Inter-Governmental Organisations and forty one (41) African and International NGOs were represented at the 48th Ordinary Session of the African Commission. Altogether five hundred and twelve (512) delegates participated at the 48th Ordinary Session.
6. A number of parallel meetings were held prior to and during the 48th Ordinary Session. These include the following:
- Meeting Committee to clean up the Rules of Procedure, from 4-5 November 2010;
 - Workshop of Women's Human Rights Defenders, from 4-6 November 2010;
 - Meeting of the Working Group on Indigenous Populations / Communities in Africa, from 6-8 November 2010;
 - Forum of Non-Governmental Organizations (NGOs), from 6-9 November 2010;
 - Meeting of the Committee for the Protection of People living with HIV/Aids, from 6-7 November 2010
 - Meeting with UNAIDS, 7 November 2010;

- Meeting of the Working Group on the Death Penalty, from 7-9 November 2010;
 - Meeting of the Committee for the Prevention of Torture in Africa, 10 November 2010;
 - International Criminal Tribunal for Rwanda Conference/Exhibition on “Challenging Impunity: the Legacy of the International Criminal Tribunal for Rwanda for the African Continent, 11-12 November 2010;
 - Launch of the Commemoration of the 30th Anniversary of the African Charter, 12 November 2010;
 - Brainstorming Meeting on the Relationship between the African Peer Review Mechanism and the African Commission, 12 November 2010.
7. As is customary, the Session was preceded by the Forum of Non-Governmental Organizations (NGOs), organized by the African Centre for Democracy and Human Rights Studies, which was held from 7 to 9 November 2010. The 54 interest groups that attended the NGO Forum examined the human rights situation in many countries in the African region, expressing concern over specific issues such as the situation of the rights of women, children and of human rights defenders on the continent.
8. Following her election to the African Commission by the 15th Assembly of the Heads of State and Government of the African Union, in July 2010, in Kampala, Republic of Uganda, Honourable Justice Mrs. Lucy Asuagbor took her oath of office during the 48th Ordinary Session, in accordance with Rule 9 of the Rules of Procedure of the African Commission.
9. In her welcoming statement, the Chairperson of the African Commission, Honourable **Commissioner Reine Alapini Gansou**,

expressed, on behalf of the Members of the African Commission, and on her own behalf, her profound gratitude to the Government and People of the Republic of The Gambia for once again hosting the Ordinary Session of the African Commission and welcomed the participants to the 48th Session of the African Commission. The Chairperson congratulated Honourable Justice **Mrs. Lucy Asuagbor** on her election as a Member of the African Commission and officially welcomed her to the Commission.

10. The Chairperson also welcomed the President of the African Court on Human and Peoples' Rights, **Honourable Justice Gerard Niyungeko**, who was attending the Opening Session of the African Commission for the first time. She stated that the presence of Honourable **Justice Gerard Niyungeko** at the African Commission's Opening Session should be seen as a manifestation of the constructive complimentary relationship between the African Court and the African Commission.

11. **Honourable Reine Alapini Gansou** noted that the 48th Ordinary Session should be an occasion for the African Commission to reflect on the difficult situation many African women find themselves in on the continent. Speaking under the theme of *Reflecting on the Human Rights of Women in Africa*, she observed that even though there have been a plethora of legislations enacted by some States in the region to protect women's rights, securing women's rights in Africa remains a challenge.

12. **Honourable Commissioner Reine Alapini Gansou** stated that despite the BEIJING+15 Conference in 2009 that called for an evaluation of the rights of women in Africa, 2010 has shown that there is an urgent need to take positive steps to improve the human rights of women in Africa, particularly on issues such as female genital mutilation, forced marriages, sexual and domestic violence and other

types of human rights violations that affect the dignity and physical integrity of women. The Chairperson stated that at the time when democracy in Africa is facing serious challenges, it is imperative for NGOs and civil society in collaboration with the African Commission to send a clear message of their strong commitment to the rights and freedoms guaranteed in the African Charter.

13. In closing her speech, **Commissioner Honourable Reine Alapini Gansou** stressed the need for States Parties to the African Charter to build a culture of human rights observance and to establish strong mechanisms to protect human rights in Africa. She ended her speech by asking the following question: “Do we want the future generation to inherit an intolerable world, an Africa devastated by wars, an Africa that refuses to move forward”?

14. Speaking on behalf of the African Union Commission, **Her Excellency, Mrs Julia Dolly Joiner**, Commissioner for Political Affairs at the African Union Commission (AUC), assured the African Commission of the continued support of the AUC in the discharge of its mandate and reiterated that the African Commission is an integral part of the human rights dialogue that is taking place right across Africa. **Her Excellency Mrs Julia Dolly Joiner** noted with appreciation the role the African Commission has played and continues to play in promoting and protecting human rights on the continent.

15. She stated that despite some progress, the overall human rights record in Africa remains poor and noted with regret that matters such as gender discrimination remain a concern. **Her Excellency Mrs Commissioner Julia Dolly Joiner** stated that issues such as the right to development and the rights of women and children needed some more focus by Member States. She said that the

deteriorating human rights situation in many African countries has had a negative impact on the lives of women and children and urged Member States to spare no effort to respond progressively and decisively to these issues, in particular to repeal laws that discriminate against women and girls.

16. **Her Excellency, Mrs Julia Dolly Joiner** urged the African Commission, that whilst responding to the complex demands and challenges of the next six months, it must seek ways to ensure that it delivers on all elements of its core mandate particularly in ensuring that Member States submit their Initial and Periodic States Reports in accordance with Article 62 of the African Charter. She stated that even though the obligation to submit Reports rests with Member States, the African Commission is well placed to explore ways of securing more active participation and commitment in this regard.

17. **Her Excellency, Mrs Julia Dolly Joiner** underscored that while the anticipated activities to commemorate the 30th Anniversary of the African Charter are important for advocacy and raising the profile of the African Commission, these activities should be used by the African Commission to reflect on the journey travelled and the challenges that lie ahead.

18. The Executive Director of the African Centre for Democracy and Human Rights Studies, **Mrs Hannah Forster**, made a statement on behalf of the NGOs present at the 48th Ordinary Session of the African Commission and made reference to the NGO Forum which was held prior to the 48th Session to discuss the situation of human rights on the continent. In reviewing the human rights landscape in Africa for the last six months, she noted that Africa still experienced a lot of human rights abuses and called on Member States to ensure better protection

of human rights in their territories. She expressed the concerns of the NGO Forum over homophobic attacks in Burundi, Malawi, Rwanda and Uganda, as well as the extrajudicial killings and enforced disappearances in a number of countries including the Democratic Republic of Congo.

19. **Mrs. Forster** stated that some States Parties to the African Charter have not only enacted harsh laws to suppress free expression and the press, but that some of them continue to harass, intimidate, arbitrarily detain and even kill human rights defenders. **Mrs. Forster** also highlighted the challenges faced by various vulnerable groups and communities in Africa such as migrants, refugees and Internally Displaced Persons, the elderly, the disabled and indigenous populations.

20. The Representative of the Network of African National Human Rights Institutions and Chairperson of the Uganda Human Rights Commission, **Mr. Med S. K. Kaggwa**, in his statement expressed appreciation to the African Commission for its relentless efforts to make human rights a reality on the African continent, despite being confronted with multiple challenges. **Mr. Med S. K. Kaggwa**, stated that the Sessions of the African Commission provide the Network of African National Human Rights Institutions the opportunity to exchange information on various human rights challenges and also serve as a platform to debate pertinent human rights issues concerning the African continent.

21. **Mr. Med S. K. Kaggwa** noted that the Session was being held at a time Africa was facing many challenges ranging from issues relating to freedom of expression, the plight of women and children, especially those caught in conflict zones and issues of democracy and good

governance. He stated that, despite some progress made by some African leaders to promote and protect human rights as envisaged in the African Charter and other regional human rights instruments, and the Constitutive Act of the African Union, human rights violations still persist. He underscored, however, that Africans are increasingly becoming aware of their rights and demanding such rights from their governments.

22. **Mr. Med S. K. Kaggwa** said that the Network of African National Human Rights Institutions is happy to collaborate with Member States and the African Union organs, such as the African Commission, the African Court on Human and Peoples' Rights (African Court) and other regional treaty monitoring bodies and civil society organizations to promote and protect the rights of people on the African continent. He noted that the Network of African National Human Rights Institutions complement the already established African human rights institutions, and by the nature of the work they do, are in a good position to make a unique contribution to secure human rights in the region.

23. Speaking on behalf of the African Court, **Honourable Justice Gerard Niyungeko**, President of the African Court reiterated the sentiments expressed by the Chairperson of the African Commission, **Honourable Commissioner Reine Alapini Gansou in her opening remarks** that the collaborative relationship between the African Court and the African Commission is one that is based on mutual respect for the complementary role of both institutions. He added that it is within the spirit of that collaborative relationship that the Rules of Procedure of both organs have been harmonized.

24. **Honourable Justice Gerard Niyungeko** informed the 48th Ordinary Session that the African Court has two roles. Firstly, to look into cases related to the interpretation and the application of the African Charter and secondly, an advisory role, where the African Court gives a legal opinion about any question related to human and peoples' rights.
25. He indicated that the foremost challenge of the African Court is its inability to hear cases due to the small number of countries that have ratified the Protocol Establishing the Court, as well as the small number of States Parties which have made the Declaration allowing individuals and NGOs to submit cases directly to the Court. He informed the Session that of the 53 Member States of the African Union, only 25 have so far ratified the Protocol Establishing the Court. He further stated, that out of those 25 States only four countries, namely Burkina Faso, Mali, Malawi and Tanzania, have made the a declaration accepting the jurisdiction of the Court to examine applications lodged by individuals and NGOs.
26. The Minister for the Promotion of Human Rights in Burkina Faso, **Honourable Salamata Sawadogo**, delivered a statement on behalf of the State Parties present at the 48th Ordinary Session. After expressing her gratitude to the Government and People of The Gambia, the Honourable Minister reminded the participants, that the African Charter places responsibility on States Parties to ensure the promotion and protection of human rights on the continent. She said however, that the protection of human rights in Africa can only be realised with the collaboration of all, including Member States, international partners, National Human Rights Institutions and NGOs.
27. The Honourable Minister stated that the Sessions of the African Commission provide all those who fight for the cause of human rights

with an opportunity to engage in frank and constructive dialogue. The Honourable Minister reminded the African Commission that in order for it to discharge its mandate with success, it is crucial that it cooperates with Member States, who should be encouraged to facilitate and support its work. She urged the African Commission to continue discharging its mandate resolutely and with objectivity.

28. In his opening statement, the **Attorney General and Minister of Justice, Honourable Edward Gomez**, on behalf of his Excellency, Sheikh, Professor, Alhagie, Doctor Yahya A. J. J. Jammeh, President of the Republic of The Gambia welcomed the delegates and participants to the 48th Ordinary Session of the African Commission to Banjul, The Gambia.

29. **Honourable Edward Gomez**, congratulated the African Commission on the successfully convening of the Session and recognised the important role of the African Commission's Sessions which he likened to a mirror through which Africa sees itself, while evaluating its achievements and challenges in the promotion and protection of human rights. He detailed various efforts that have been made by the Government of The Gambia to uphold the rights and liberties of the Gambian people, notably through the constitution and the creation of a Department for Human Rights in the Ministry of Justice. He, however, raised the issue of enjoyment of individual rights, which he argued must be subject to the rights of others and the compelling interests of society as a whole. This, he explained, was the basis for the continued existence of the death penalty in The Gambia and the enactment of legislation to curb corruption.

30. **Honourable Edward Gomez** regretted the deplorable conditions of women in Africa, particularly rural women and the girl-child, whom,

he said, continue to be victims of harmful customary practices. He appealed to States Parties and members of civil society to devise more creative ways and means of protecting the African woman and the girl-child.

31. Honourable Edward Gomez, congratulated Honourable Justice Mrs Lucy Asuagbor on her election as a Member of the African Commission, before officially declaring the 48th Ordinary Session open.

32. During the Session, statements were made by State Delegates from the Republic of Algeria, Republic of Burkina Faso, Arab Republic of Egypt, Federal Democratic Republic of Ethiopia, Republic of Kenya, Kingdom of Lesotho, Great Socialist People's Libyan Arab Jamahiriya, Federal Republic of Nigeria, Sahrawi Arab Democratic Republic, Republic of Senegal, Republic of South Africa, Republic of Sudan, Republic of Tunisia, Republic of Uganda, Republic of Zimbabwe and Saharaoui Arab Republic on the human rights situations in their respective countries.

33. Statements were also heard from the National Human Rights Commission of Burkina Faso, National Human Rights Commission of Guinea Bissau and the Human Rights Commission of Kenya.

34. Statements were also made by the representatives of Intergovernmental and International Organisations, including Organisation Internationale de la Francophonie (OIF), as well as the National Human Rights Institutions in Africa and Non-governmental organisations.

35. A total of forty-four (44) NGOs enjoying Observer Status with the African Commission also made statements on the human rights situation in Africa.

36. In conformity with Article 62 of the African Charter, the Periodic Report of the Democratic Republic of Congo (DRC) was presented to the African Commission.
37. Members of the African Commission presented Reports of the activities they undertook during the inter-session as Members of the Commission, as well as Reports of activities undertaken by their various special mechanisms. The Reports of the various Special Rapporteurs, Committees and Working Groups, namely the Special Rapporteurs on the: Rights of Women in Africa; Human Rights Defenders in Africa; Prisons and Places of Detention in Africa; Freedom of Expression and Access to Information in Africa were presented, as were the Reports from the: Chairpersons of the Committee for the Prevention of Torture in Africa; Working Group on the Death Penalty in Africa; Working Group on Indigenous Populations and Communities in Africa; Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risks, Vulnerable to and Affected by HIV; Working Group on the Rights of Older Persons and People with Disabilities in Africa and Working Group on Extractive Industries, Environment and Human Rights in Africa.
38. The Report of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa could not be presented as the Commissioner Rapporteur did not attend the Session.
39. The African Commission considered applications for Observer Status from six (6) NGOs. It granted the said Status to the six (6) NGOs in accordance with Resolution ACHPR/Res.33 (XXV) 99 on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the Field of Human and Peoples' Rights.

40. The following NGOs were granted Observer Status:

- Dimension Sociale Benin;
- Consortium for Refugees and Migrants in South Africa;
- Eastern Africa Journalists Association – EAJA;
- Network of African Human Rights Institutions (NANHRI);
- Open Society Initiative of South Africa (OSISA); and
- Secretariat of the African Decade of Persons with Disabilities.

41. This brings the total number of NGOs with Observer Status before the African Commission to four hundred and eighteen (418).

42. The African Commission examined and adopted the following Reports and documents:

- a) Progress Report of the Working Group on the Death Penalty;
- b) Draft State Reporting Guidelines on Economic, Social and Cultural Rights in Africa;
- c) Budget Proposals for 2011;
- d) The Report of the Committee on the Rules of Procedure.

43. The African Commission directed that:

- a) The nomination of an Expert from North Africa to join the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa be re-advertised;
- b) The Secretariat intensifies its efforts in inviting States Parties to attend the Ordinary Sessions of the Commission and in ensuring that States Parties submit their Reports in terms of Article 62 of the Charter;
- c) The Secretariat makes available to the Coalition of African Lesbians its reasons for not granting it Observer Status.

44. The African Commission appointed the following six persons as Independent Experts for the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV:

- Ms Atim Agnes, HRDI;
- Mr Patrick Michael Eba, UNAIDS;
- Mr Alain Patrick le Doux Fouge Dzutue (Cameroonian);
- Ms Nicolette Merle Naylor (South African)
- Mr Christian Garuka Nsabimana (Rwandan);
- Mr Durojaye Ebenezer Tope (Nigerian).

45. The African Commission considered a document on the referral of cases to the African Court and agreed that the Secretariat should identify such cases and report to the African Commission at its next Session.

46. The African Commission considered and deferred the following Reports and Papers:

- a) Paper on AU Human Rights Strategy;
- b) Paper on the Right to Citizenship;
- c) Draft Protocol on the Rights of Older Persons in Africa.

47. The African Commission adopted Concluding Observations on the 8th 9th and 10th Combined Periodic Report of the Democratic Republic of Congo (DRC).

48. The African Commission adopted the following Resolutions:

- Resolution on the Appointment of a Special Rapporteur on Human Rights Defenders in Africa;
- Resolution on the Cooperation between the African Commission on Human and Peoples' Rights and the African Peer Review Mechanism;

- Resolution to Increase Members of the Working Group on Older Persons and People with Disabilities in Africa;
- Resolution on Securing the Effective Realization of Access to Information in Africa;
- Resolution on Elections in Africa;
- Resolution on Repealing Criminal Defamation Laws in Africa;
- Resolution on the Deteriorating Situation of Indigenous People /Communities in Some Parts of Africa;
- Resolution on the Appointment of Members of the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV;
- Resolution on the Ratification of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights;
- Resolution on the Crimes Committed against Women in the Democratic Republic of Congo (DRC);
- Resolution to Increase the Membership of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa;

49. The African Commission appointed Honourable **Commissioner Lucy Asuagbor** as Special Rapporteur on Human Rights Defenders in Africa, effective 24 November 2010 for a period of two years.

50. Following the election of Commissioner **Lucy Asuagbor** as a Member of the African Commission, a reallocation of countries of responsibility for carrying out Promotion Missions was made by the African Commission as follows:

- Honourable Commissioner **Reine Alapini-Gansou**: Cameroon, Cape Verde; Democratic Republic of Congo, Mali, Tunisia and Togo;
- Honourable **Commissioner Lucy Asuagbor**: Benin; Guinea Bissau and Rwanda;
- Honourable Commissioner **Mumba Malila**: Kenya, Malawi, Mozambique Uganda and Tanzania;
- Honourable Commissioner **Pansy Tlakula**: The Gambia, Lesotho, Namibia, Swaziland and Zambia;
- Honourable Commissioner **Catherine Dupe Atoki**: Egypt, Ethiopia, Equatorial Guinea, Liberia and Sudan;
- Honourable Commissioner **Musa Ngary Bitaye**: Ghana, Mauritius, Nigeria, Sierra Leone and Zimbabwe;
- Honourable Commissioner **Mohamed Bechir Khafallah**: Chad, Central African Republic, Guinea Conakry, Mauritania, Sahrawi Arab Democratic Republic and Senegal;
- Honourable Commissioner **Zainabo Sylvie Kayitesi**: Algeria, Burkina Faso, Burundi and Cote d'Ivoire,
- Honourable Commissioner **Mohamed Fayek**: Botswana, Eritrea, South Africa and Somalia;
- Honourable Commissioner **Soyata Maiga**: Angola, Gabon, Republic of Congo, Niger and Libya;
- Honourable Commissioner **Yeung Kam John Yeung Sik Yuen**: Comoros, Djibouti, Madagascar, Sao Tome and Principe, and Seychelles.

51. The African Commission considered 82 Communications: it was seized with 5 and considered 3 on Admissibility. 74 Communications were deferred to the 49th Ordinary Session, for various reasons, including time constraints and lack of response from one or both parties.

52. The African Commission adopted its 29th Activity Report which will be submitted to the 19th Ordinary Session of the Executive Council of

the AU and the 16th Summit of the Assembly of Heads of State and Government of the AU, which is scheduled to take place in Addis Ababa in January 2011.

53. The African Commission decided to hold an Extra-ordinary Session from 23 February to 3 March 2011 in Banjul, The Gambia, to discuss urgent and outstanding Communications.

54. The African Commission decided to hold its 49th Ordinary Session from 28 April to 12 May 2011 at a venue to be decided.

55. The African Commission expresses its sincere appreciation and profound gratitude to the Government and People of the Republic of The Gambia for the facilities placed at its disposal, and for the warm welcome and hospitality accorded to the participants, all of which contributed to the excellent outcome and successful deliberations of its 48th Ordinary Session.

56. The closing ceremony of the 48th Ordinary Session took place on 24 November 2010 in Banjul, The Gambia.

57. The Vice-Chairperson of the African Commission, Honourable Commissioner **Mumba Malila** held a Press Conference after the closing ceremony.

Done in Banjul, Republic of The Gambia, 24 November 2010