

RESOLUTION ON THE COMPOSITION AND THE OPERATIONLISATION OF THE WORKING GROUP ON THE DEATH PENALTY

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session held in Banjul, The Gambia, from 21st November to 5th December 2005;

Considering the provisions of the *African Charter on Human and Peoples' Rights* which entrusts it with a treaty monitoring function and a mandate to promote human and peoples' rights and ensure their protection in Africa;

Recalling the Resolution adopted at its 26th Ordinary Session held from 1st to 15th November 1999 in Kigali, Rwanda, urging Member States to envisage a Moratorium on the Death Penalty;

Recalling the decision of the African Commission at its 37th Ordinary Session to appoint two Commissioners to work with the Special Rapporteur on Prisons and Conditions of Detention in Africa to improve the document on the Question of the Death Penalty in Africa;

Considering the trends in international law which encourage the abolition of the death penalty, in particular the *2nd Protocol to the International Covenant on Civil and Political Rights*, the *Statute on the International Criminal Court* and the Resolution of the UN Commission on Human Rights, 2005/59, on the Question of the Death Penalty and the debates and initiatives undertaken by civil society and other stakeholders on the question of the death penalty;

Recognising that 14 African Union Member States have already abolished the death penalty and 13 others are exercising a moratorium on its application;

Calls upon Member States of the African Union that have abolished the death penalty *de jure* to encourage other Member States which still carry out the death penalty about the necessity of abolishing the death penalty;

Resolves to:

- a. Expand the composition of the Working Group to include:
 - two (2) Members of the African Commission on Human and Peoples Rights, namely Commissioner Yasser El Hassan and Commissioner Bahame Tom Nyanduga;
 - Five (5) experts chosen to represent the different legal systems and the different regions in Africa;
- b. Broaden the mandate of the Working Group in the following manner:
 - Elaborate further a Concept Paper on the Death Penalty in Africa;
 - Develop a Strategic Plan(s), including a practical and legal framework on the abolition of the Death Penalty;
 - Collect information and continue to monitor the situation of the application of the Death Penalty in African States;
 - Develop a funding proposal with a view to raising funds to meet the costs of the work of the Working Group;
 - Submit a progress report at each Ordinary Session of the African Commission;
- c. Collaborate with other partners, including International, National, Governmental and Non-Governmental Institutions for the successful fulfilment of its mandate;

Requests the African Union to provide adequate resources, assistance and support in the implementation of this Resolution.

RESOLUTION ON THE COMPOSITION AND RENEWAL OF THE MANDATE OF THE WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session held in Banjul, The Gambia from 21 November to 5 December 2005;

Recalling its Resolution Ref. ACHPR/Res.65 (XXXIV) 03 on the adoption of the Report of the African Commission's Working Group on Indigenous Populations/Communities adopted at its 34th Ordinary Session held in Banjul, The Gambia from 6 to 20 November 2003;

Recalling that the African Commission established a Working Group composed of six members, amongst them, two Members of the African Commission;

Noting that the African Commission entrusted the Working Group with a mandate for an initial period of two years;

Considering that the initial term of two years of the Working Group comes to an end during the 38th Ordinary Session of the African Commission on Human and Peoples' Rights;

Commending the continuous assistance of the International Working Group on Indigenous Affairs (IWGIA) to the activities of the Working Group;

Appreciating the work undertaken by the Working Group during the past two years in the discharge of its mandate;

Recognising further the importance of the work of the Working Group in the promotion and protection of the rights of indigenous populations/communities in Africa and the necessity to allow the Working Group to continue to carry out its mandate;

Decides to:

1. Extend the mandate of the Working Group for a period of two years with effect from 5 December 2005;
2. Designate Commissioner Kamel Rezag Bara as Chairperson of the Working Group; and
3. Appoint Commissioner Musa N Bitaye as Member of the Working Group.

RESOLUTION ON THE APPOINTMENT OF A SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session held from 21st November to 5th December 2005 in Banjul, The Gambia;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the *African Charter on Human and Peoples' Rights*;

Mindful that in the *Grand Bay (Mauritius) Declaration and Plan of Action*, the Organisation of African Unity (African Union) called on Member States "to take appropriate steps to implement the UN *Declaration on Human Rights Defenders in Africa*";

Reaffirming the importance of the observance of the purposes and principles of the *African Charter* for the promotion and protection of all human rights and fundamental freedoms;

Reaffirming the commitment of the African Commission on Human and Peoples' Rights in the promotion and protection of the rights of human rights defenders;

Recognising the crucial contribution of the work of human rights defenders in promoting human rights, democracy and the rule of law in Africa;

Recalling the Resolution adopted at the 35th Ordinary Session held from 21 May to 4 June 2004 in Banjul, The Gambia by which the African Commission appointed the Special Rapporteur on Human Rights Defenders in Africa;

Considering that the term of Mrs. Jainaba Johm as a Member of the African Commission came to an end along with her mandate as Special Rapporteur on the 21 November 2005;

Appreciating the work that Mrs. Jainaba Johm has done as Special Rapporteur for Human Rights Defenders;

Emphasizing the importance of the work of the Special Rapporteur as regards the search for solutions to the problems arising from the protection of human rights defenders;

Decides to appoint Commissioner Reine Alapini-Gansou as the Special Rapporteur on Human Rights Defenders in Africa for a period of two years effective 5th December 2005.

RESOLUTION ON THE APPOINTMENT OF A SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session held from 21st November to 5th December 2005 in Banjul, The Gambia;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights;

Reaffirming the importance of the observance of the purposes and principles of the *African Charter* for the promotion and protection of the human rights of all, including those of detainees and prisoners;

Recalling its decision to establish the position of and appoint a Special Rapporteur on Prisons and Conditions of Detention in Africa as a prison monitoring mechanism taken at its 20th Ordinary Session held in Grand Bay, Mauritius in October 1996;

Considering that the term of Dr. Vera Mlangazuwa Chirwa as a Member of the African Commission along with her mandate as Special Rapporteur on Prisons and Conditions of Detention in Africa came to an end on 21st November 2005;

Appreciating the work that Dr. Chirwa has done as Special Rapporteur on Prisons and Conditions of Detention in Africa;

Emphasising the importance of the work of the Special Rapporteur as regards the search for solutions to the problems arising from the restriction of the freedom of the individual, in particular;

Decides to appoint Commissioner Mumba Malila as the Special Rapporteur on Prisons and Conditions of Detention in Africa for a period of two years effective 5th December 2005.

RESOLUTION ON THE RENEWAL OF THE TERM OF THE SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session that took place from 21st November to 5th December 2005 in Banjul, The Gambia;

Recalling the Resolution it adopted at its 25th Ordinary Session that took place from 26th April to 5th May 1999 in Bujumbura, Burundi, in which it appointed a Special Rapporteur on the Rights of Women in Africa;

Recalling further the provisions of Article 18(3) of the African Charter on Human and Peoples' Rights;

Referring further the provisions of Article 45(1) a of the African Charter on Human and Peoples' Rights;

Recalling the decision taken at the 30th Ordinary Session which took place in October 2001 in Banjul, the Gambia, regarding nominating Commissioner Angela Melo Special Rapporteur on the Rights of Women in Africa;

Recalling the Resolution it adopted at its 34th Ordinary Session that took place from 27 April to 11th May 2005 in Banjul, The Gambia, to renew the mandate of Commissioner Angela Melo as Special Rapporteur for a period of two (2) years;

Considering the important work done by the Special Rapporteur;

Considering the necessity of allowing the Special Rapporteur on the Rights of Women in Africa to continue her mandate;

Commends Commissioner Angela Melo, Special Rapporteur for the Rights of Women in Africa, for the work done;

Decides to renew the mandate of Commissioner Angela Melo as Special Rapporteur on the Rights of Women in Africa for a period of two (2) years;

Requests the Secretariat of the African Commission to enhance its efforts to mobilise resources that could assist the Special Rapporteur to carry out her mandate.

**RESOLUTION ON THE STATUS OF WOMEN IN AFRICA AND THE ENTRY INTO FORCE OF
THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON
THE RIGHTS OF WOMEN IN AFRICA**

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005;

Recalling the commitments of the Heads of States and Governments in the Solemn Declaration on Gender Equality in Africa made during the 3rd Ordinary Session held in Addis Ababa, Ethiopia, from 6 – 8 July 2004;

Noting with appreciation the election in Liberia of the first female President in Africa;

Further noting with appreciation the Member States of the African Union that have ratified the *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* which entered into force on 25 November 2005, namely Benin, Cape Verde, Comoros, Djibouti, Gambia, Libya, Lesotho, Mali, Malawi, Namibia, Nigeria, Rwanda, the Republic of South Africa, Senegal and Togo;

Recognizing that women in Africa continue to be subject to discriminatory laws and practices;

Reiterating its commitment to continue working to promote the rights of women in Africa;

1. **Congratulates** all women in Africa on the occasion of the historic and speedy entry into force of the *Protocol*;
2. **Congratulates** the Liberian people on the election, in November 2005, of the first female President in Africa, Ms. Ellen Johnson Sirleaf;
3. **Urges** Member States of the African Union that have not already done so to urgently ratify the *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* without reservations and to remove reservations where these have been included;
4. **Further urges** Member States that have already ratified this *Protocol* to immediately undertake measures for domestication, including the amendment of internal laws to conform with the provisions of the Protocol;
5. **Encourages** Member States to increase the participation of women in peacekeeping initiatives in the continent;
6. **Calls** on Member States to implement strategies, including affirmative action, to ensure that women can attain the highest levels of education and leadership in governance;
7. **Urges** Member States to respect their commitments under the CEDAW and the Beijing Platform of Action and urgently repeal or amend all laws and policies and eradicate all practices that are discriminatory against women;
8. **Urges** Member States, the African Union and international organisations to provide more support to the work of the Special Rapporteur on the Rights of Women.

**RESOLUTION ON THE RENEWAL OF THE MANDATE AND COMPOSITION OF THE
WORKING GROUP ON SPECIFIC ISSUES RELATING TO THE WORK OF THE AFRICAN
COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session from 21st November to 5th December 2005 in Banjul, The Gambia,

Recalling the Resolution adopted at its 37th Ordinary Session that took place from 27th April to 11th May 2005 in Banjul, The Gambia, by which it created the Working Group on Specific Issues Relating to the Work of the African Commission on Human and Peoples' Rights;

Appreciating the work that the Working Group has done over the intersession period;

Considering the interim report of the Working Group;

Considering further the necessity to allow the Working Group to continue to carry out its mandate and address urgent pending issues failing within the said mandate;

Decides to renew the mandate of the Working Group for twelve (12) months;

Further decides that the composition of the Working Group will be as follows:

- b. Commissioner Mohamed Abdellahi Ould Babana;
- c. Commissioner Angela Melo;
- d. Commissioner Pansy Tlakula; and
- e. One (1) representative from each of the following Non Governmental Organisations:
- d. The Institute for Human Rights and Development in Africa (IHRDA);
- e. INTERIGHTS; and
- f. Open Society Justice Initiative.

Requests the Working Group to deal as a matter of priority with the following matters and to report accordingly to the African Commission at its 39th Ordinary Session:

9. The relationship between the African Commission and the African Court on Human and Peoples' Rights ;
10. The relationship between the Bureau of the African Commission and the Secretariat of the Commission ;
11. The relationship between the African Commission and the different organs and institutions of the African Union.

Further requests the Secretariat of the African Commission to intensify its efforts to mobilise resources that could assist the Working Group to carry out its mandate.

RESOLUTION ON THE APPOINTMENT OF A SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION IN AFRICA

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session held from 21st November to 5th December 2005 in Banjul, The Gambia;

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights;

Recalling the Resolution on Freedom of Expression adopted at its 29th Ordinary Session held from 23rd April to 7th May 2001 in Tripoli, Libya, to initiate an appropriate mechanism to assist it in reviewing and monitoring adherence to standards of freedom of expression and to investigate violations and make appropriate recommendations to the African Commission;

Recalling the Declaration of Principles on Freedom of Expression in Africa adopted at its 32nd Ordinary Session held from 17th to 23rd October 2002 in Banjul, The Gambia;

Recalling further the Resolution on the Mandate and Appointment of a Special Rapporteur on Freedom of Expression in Africa adopted at its 36th Ordinary Session held from 23rd November to 7th December 2004 in Dakar, Senegal;

Reaffirming the commitment of the African Commission on Human and Peoples' Rights to promote the right to freedom of expression and monitor the implementation of the Declaration of Principles on Freedom of Expression in Africa within Member States of the African Union;

Considering that the term of Mr. Andrew Chigovera as a Member of the African Commission came to an end along with his mandate as Special Rapporteur on 21 November 2005;

Appreciating the work that Mr. Andrew Chigovera has done as Special Rapporteur on Freedom of Expression;

Decides to appoint Commissioner Faith Pansy Tlakula as the Special Rapporteur on Human Rights Defenders in Africa for a period of two years effective 5th December 2005.

**RESOLUTION ON ENDING IMPUNITY IN AFRICA AND ON THE DOMESTICATION AND
IMPLEMENTATION OF THE ROME STATUTE OF THE
INTERNATIONAL CRIMINAL COURT**

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session held in Banjul, The Gambia from 21 November to 5 December 2005;

Recalling the *Resolution on the Ratification of the Treaty on the International Criminal Court* (the Rome Statute) by the African Commission on Human and Peoples' Rights, Banjul, 31st October 1998 and the *Resolution on the Ratification of the Statute of the International Criminal Court* by OAU Member States, Pretoria, 16 May 2002;

Noting with concern the numerous human rights abuses in parts of the African continent, most notably that men, women and children have been the victims of genocide, war crimes, crimes against humanity and other crimes recognised under international human rights law and international humanitarian law;

Noting that the perpetrators of these crimes are rarely brought to justice, while the victims are frequently denied an effective remedy;

Noting that the *Constitutive Act of the African Union*, Art. 3(h) and 4(o), expressly condemns and rejects impunity;

Further noting that 27 African states have ratified the Rome statute and that some of them have made efforts to give legal effect to the application of the Rome Statute nationally;

Deeply Concerned that some African governments that have ratified the Rome Statute have not taken the necessary measures to incorporate it at the national level;

Considering that, under the Rome Statute, the International Criminal Court has jurisdiction to try individuals suspected of having committed genocide, war crimes and crimes against humanity;

1. **Urges** the Member States of the African Union to ensure that the perpetrators of crimes under international human rights law and international humanitarian law should not benefit from impunity;
2. **Urges** Member States of the African Union that have not yet done so to ratify the Rome Statute and to adopt a national action plan for the effective implementation of the Rome Statute at the national level;
3. **Urges** African governments to withdraw from the Article 98 Bilateral Immunity Agreements and refrain from engaging in acts that would weaken the effectiveness of the Court in line with their international obligations;
4. **Calls** on civil society organizations in Africa to work in collaboration and develop partnerships in order to further respect for the rule of law internationally and to strengthen the Rome Statute;
5. **Encourages** the Assembly of Heads of State and Government of the African Union to urge its Members States to condemn and reject impunity.

**RESOLUTION RELATING TO THE OPERATIONALISATION OF AN INDEPENDENT AND
EFFECTIVE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS.**

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session from 21st November to 5th December 2005 in Banjul, The Gambia;

Considering the terms of its *Resolution* of the 11th May 2005 on the creation of an effective African Court on Human and Peoples' Rights;

Favorably receiving the recommendations of the Executive Council of the African Union requesting its Member States that have not yet ratified the *Protocol* on the establishment of the African Court to do so;

Noting with appreciation the decision of the Assembly of Heads of State and Government of the African Union to elect Judges for the African Court on Human and Peoples' Rights;

1. **Urges** the Assembly of Heads of State and Government to operationalise the African Court on Human and Peoples' Rights by electing judges and allocating adequate resources to the African Court on Human and Peoples' Rights for its functioning;
2. **Urges** the African Union to include the African Commission on Human and Peoples Rights in the work and operationalisation process of the African Court on Human and Peoples' Rights;
3. **Urges** the Assembly of Heads of State and Government to consider putting in place a mechanism that will allow direct access for individuals to the African Court on Human and Peoples' Rights;
4. **Urges** the Member States of the African Union to take measures for the settlement of their financial obligations towards the African Union and to take concrete measures for eliciting voluntary contributions to the Human Rights Fund.

RESOLUTION ON THE HUMAN RIGHTS SITUATION IN UGANDA

Bearing in mind Article 45 of the African Charter on Human and Peoples' Rights which stipulates the mandate of the African Commission on Human and Peoples' Rights;

Considering that conflicts in many African countries, including the Republic of Uganda have been responsible for the violation of the Human Rights of civilian population, in particular vulnerable groups such as the elderly, women and children;

Concerned that the said conflict has been responsible for insecurity in Northern Uganda leading to displacement of an estimated 1.8 million people; among whom are young children who are constantly trekking between their villages and towns at night to avoid abduction;

Taking note of the previous concerted efforts by the Government of the Republic of Uganda to bring this conflict to an end;

Welcoming the investigations by the Office of the Prosecutor of the International Criminal Court and the subsequent issuance of arrest warrants in respect of the top leaders and commanders of the Lord Resistance Army (LRA);

Aware that the Republic of Uganda is committed to the independence of the Judiciary and legal profession in that country, as stipulated under Article 26 of the African Charter on Human and Peoples' Rights;

Recalling Article 7 of the African Charter and the Guidelines and Principles on the Rights to Fair Trial and to Judicial Assistance developed by the African Commission on Human and Peoples' Rights;

Deeply concerned and disturbed that the LRA has committed grave Human Rights violations against the civilian population in particular, the mutilation of their victims, abduction of young boys into its rebel forces as child soldiers and forces the young girls into sexual slavery;

Disturbed by recent events on 16th November 2005 threatening the judiciary and lawyers in Uganda;

1. **Calls on** the parties to the conflict to immediately open negotiation with a view to a conclusion of a ceasefire and peace agreement;
2. **Calls on** the LRA to free immediately all the child soldiers, young girls and women held by them and demobilize all combatants;
3. **Supports** the efforts of the Office of the Prosecutor of the International Criminal Court in its investigations against conduct and activities by the parties to the conflict deemed to be violations of the Rome Statute and to bring those responsible for war crimes in Northern Uganda to justice;
4. **Calls on** the international community to urge the parties to the conflict in Northern Uganda to find a peaceful and lasting resolution to the conflict;
5. **Urges** the international community to offer material support to take steps to demobilize the combatants of the LRA, and to assist the people of Northern Uganda in their rehabilitation after 19 years of conflict;
6. **Condemns** the recent incidents of violence in Uganda, which threatens the peace and stability of the country, in particular the threats to the independence of the judiciary and the legal profession in Uganda;
7. **Calls on** the Government of the Republic of Uganda to guarantee the independence of the Judiciary and the integrity of the members of the legal profession, in order to ensure impartiality in rendering justice, without intimidation or interference;

8. **Calls on** the Government of Uganda to undertake amendments to its laws and abolish the practice of bringing civilians before the Court Martial, and reserve its exclusive jurisdiction to matters affecting serving members of the military in Uganda;
9. **Urges** the Government of the Republic of Uganda to ensure that it guarantees the respect, promotion and protection of human and peoples' rights in Uganda.

RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN THE DARFUR REGION OF SUDAN

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005;

Considering the provisions of the *Constitutive Act of the African Union* (AU) and the *Charter of the United Nations Organisation* (UN), as well as those of the *African Charter on Human and Peoples' Rights* and other regional and international human rights instruments to which the Sudan is a State Party;

Recalling relevant Decisions and Communiqués adopted by the AU Assembly of Heads of State and Government and those of the Peace and Security Council on the situation in Darfur, most notably Decisions AU/Dec.54(III) and Assembly/AU/Dec.68 (IV) adopted at the 3rd and 4th Ordinary Sessions of the AU Assembly of Heads of State and Government respectively, as well as Communiqués PSC/PR/Comm.(XIII) and PSC/PR/Comm.(XVII) adopted by the AU Peace and Security Council at their 13th and 17th Meetings respectively;

Recalling Resolutions 1556/2004 of 30 July 2004 and 1590/2005, 1591/2005 and 1593/2005 adopted by the UN Security Council on the situation in Darfur, Sudan in March 2005;

Recalling also Resolution ACHPR /Res.74 (XXXVII) 05 adopted by the 37th Ordinary Session of the African Commission on Human and Peoples' Rights on 11th May 2005 on the situation in the Darfur region of Sudan and Resolution ACHPR/Res.68 (XXXV) 04 adopted by the 35th Ordinary Session on 4th June 2004, as well as Resolution E/CN.4/RES/2005/82 adopted by the UN Commission on Human Rights on 21st April 2005 on the situation of human rights in Sudan;

Deeply concerned about the continuing grave violations of human rights and international humanitarian law in Darfur committed by parties to the conflict, in particular the continued depopulation of vast areas in the region of their indigenous owners, threats of violence, intimidation and assault against UN agencies and humanitarian organizations, the targeting and killing of AU troops in Darfur, and the killing and abduction of staff members of national and international humanitarian organisations;

Concerned that the African Commission undertook a Fact-Finding Mission to the Darfur region of Sudan in July 2004 and dispatched its report to the government of Sudan but has not yet received a response;

1. Calls on the government of Sudan to submit its comments to the African Commission with respect to its report on the 2004 Fact-Finding Mission to Sudan;
2. Calls on the government of Sudan to comply with its obligations under the *African Charter on Human and Peoples' Rights*, the *AU Constitutive Act*, the *UN Charter* and other relevant instruments to which the Sudan is a State Party, and comply with the following:
 - a. Cease, with immediate effect, all attacks against civilians in Darfur and end the grave violations of human and peoples' rights, in particular the forced de-population of entire areas in the region, rape and sexual violence against women and girls, abduction of women and children, and to cease all support to the *Janjaweed* militiamen, including the provision of supplies.
 - b. Provide the necessary support to all international agencies and humanitarian organisations in order to ensure effective and full access to the war affected areas of Darfur and to facilitate delivery of humanitarian assistance to civilian populations.

c. Fully and unconditionally cooperate with the Office of the Prosecutor of the International Criminal Court in his efforts to investigate and bring to justice all persons suspected of perpetrating war crimes and crimes against humanity as prescribed in the report of the International Commission of Inquiry on Darfur.

d. Take all appropriate measures to ensure the effective implementation of the Resolutions 1556/2004 of 30 July 2004 and 1590/2005, 1591/2005 and 1593/2005 adopted on 29 and 31 March 2005 by the United Nations Security Council;

3. Calls on all parties to the conflict to return to negotiations and to cooperate with the international organs and humanitarian organisations.

RESOLUTION ON THE SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005;

Considering the two wars of 1996 and 1998 experienced by the Democratic Republic of Congo and their consequences in terms of serious violations of human rights and international humanitarian law;

Considering that the International Criminal Court has opened an inquiry into the crimes committed in the Democratic Republic of Congo from the 1st July 2002;

Recalling the Resolution 1592 (2005) adopted by the United Nations Security Council on the 30th March 2005 and its preceding Resolutions;

Disturbed by the continuing violence in the East of the Democratic Republic of Congo, in particular in the Provinces of the Northern and Southern Kivu and in the Ituri District, and by the serious human rights and international humanitarian law violations accompanying it;

1. **Calls on** the Government of National Unity and Transition to guarantee the security of civilians, including humanitarian personnel, by extending the authority of the State effectively over the entire national territory of the Democratic Republic of Congo;
2. **Requests** the Congolese government to bring to justice the perpetrators of crimes committed in Congolese territory and to cooperate fully with the organs of the International Criminal Court, most notably by adopting a law adapting the Statute of the International Criminal Court;
3. **Requests** the coordinators of the various transitional institutions in the Democratic Republic of Congo to achieve concrete progress for the effective holding of the elections, most notably by promoting the constitutional referendum and the adoption of an electoral law, as well as the registration of voters on electoral lists;
4. **Requests** MONUC to enforce its mandate relating to the enforcement of the process of disarmament, demobilisation, repatriation and reintegration of the rebel Congolese Armed Groups, as well as the protection of the civilian population;
5. **Calls** on the entire international community, in particular the countries of the Great Lakes region, to strictly implement the Arms Embargo in conformity with the various relevant Resolutions of the Security Council.

RESOLUTION ON THE HUMAN RIGHTS SITUATION IN ERITREA

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session held in Banjul, The Gambia, from 21 November to 5 December 2005;

Considering that the State of Eritrea is a State Party to the *African Charter on Human and Peoples' Rights*;

Recalling that freedom of opinion and expression as well as the right to assembly are fundamental rights enshrined in international instruments ratified by Eritrea, and notably Articles 9 and 11 of the *African Charter on Human and Peoples' Rights*;

Recalling Article 7 of the *African Charter on Human and Peoples' Rights* which ensures the right to a fair trial and the *Guidelines and Principles on the Right to a Fair Trial and to Judicial Assistance in Africa* developed by the African Commission on Human and Peoples' Rights;

Considering Article 1 of the *African Charter on Human and Peoples' Rights* which stipulates that "the State Parties recognise the rights, duties, and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them";

Considering the provisions of the *Constitutive Act of the African Union*, the *United Nations Charter*, as well as the *African Charter on Human and Peoples' Rights* and other international human rights instruments to which Eritrea is a party and, consequently, that the State is legally bound to fully and effectively implement these same instruments without any discrimination whatsoever;

Deeply concerned about the arbitrary arrests and continued detention without trial for many years of several former cabinet ministers and government officials, members of opposition groups, journalists and media practitioners in violation of the provisions of the *African Charter on Human and Peoples' Rights*;

Recalling the decision of the African Commission, under Communication no. 250/2002, and the call addressed to the Government to comply with the recommendation of the former for the release of the detainees;

1. **Condemns** the continued detention of the former cabinet ministers, government officials, members of Parliament, journalists, media practitioners and others for many years;
2. **Calls** on the Government of Eritrea to fulfil its obligations in line with the *Constitutive Act of the African Union*, the *African Charter on Human and Peoples' Rights* and other pertinent instruments to which Eritrea is a party;
3. **Calls** on the Government of Eritrea to guarantee, at all times, the right to a fair trial, freedom of opinion and expression as well as the right to peaceful assembly;
4. **Calls** on the Government of Eritrea to immediately free the former cabinet ministers, government officials, members of Parliament, journalists, media practitioners and other individuals who have been arrested and detained without trial for many years;
5. **Calls** on the Eritrean Government to comply with the international instruments ratified by Eritrea, most notably the *African Charter on Human and Peoples Rights* (ACHPR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and to cooperate with the African Commission on Human and Peoples' Rights.

RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN ETHIOPIA

The African Commission on Human and Peoples' Rights meeting at its 38th Ordinary Session held in Banjul, The Gambia from 21 November to 5 December 2005;

Considering that the Democratic Federal Republic of Ethiopia is a State Party to the *African Charter on Human and Peoples' Rights*;

Recalling that freedom of opinion and expression as well as the right to assembly are fundamental rights enshrined in international instruments ratified by Ethiopia, and notably Articles 9 and 11 of the African Charter on Human and Peoples' Rights;

Recalling Article 7 of the *Charter* which ensures the right to a fair trial and the Guidelines and Principles on the Right to a Fair Trial and to Judicial Assistance in Africa developed by the African Commission on Human and Peoples' Rights;

Deeply concerned about the situation going on in Ethiopia since June 2005 and notably the arbitrary arrests and other serious human rights violations directed at suspected members and supporters of opposition groups, students and human rights defenders;

Recalling that on 8th June and 1st November 2005 security forces killed and injured demonstrators during a demonstration protesting the results of the parliamentary elections in Addis Ababa and other towns;

Concerned by the arbitrary detention of opposition leaders and journalists in Ethiopia;

Noting the creation by the government of Ethiopia of a National Parliamentary Commission to investigate the facts concerning the acts of violence in the country;

1. **Deplores** the killing of civilians during confrontations with security forces;
2. **Requests** that the Ethiopian authorities release arbitrarily detained political prisoners, human rights defenders and journalists;
3. **Calls** on the Ethiopian government to guarantee, for any accused individual, the right to a fair trial as provided by the *African Charter on Human and Peoples' Rights* and other relevant international human rights instruments, including the right to seek pardon or commutation of sentence;
4. **Calls** on the Ethiopian government to ensure the impartiality, independence and integrity of the National Parliamentary Commission investigating the recent acts of violence in the country and to bring the perpetrators of human rights violations to justice;
5. **Urges** the Ethiopian government to guarantee, at all times, freedom of opinion and expression as well as the right to hold peaceful demonstration and political assembly;
6. **Requests** that the Ethiopian government guarantees, in all circumstances, the physical and psychological integrity of human rights defenders in compliance with international instruments especially the *Declaration of Human Rights Defenders* adopted by the U.N. General Assembly in December 1998;
7. **Calls** on the Ethiopian government to comply with the international instruments ratified by Ethiopia, most notably the *African Charter on Human and Peoples' Rights* (ACHPR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN ZIMBABWE

Considering that Zimbabwe is a Party to the *African Charter on Human and Peoples' Rights* and other international human rights instruments;

Recalling the recommendations to the government of Zimbabwe contained in the African Commission Report of the Fact-Finding Mission to Zimbabwe in June 2002;

Further recalling the recommendations to the government of Zimbabwe by the United Nations Special Envoy on Human Settlement Issues in Zimbabwe contained in her Report published on 22 July 2005;

Deeply concerned by the continued undermining of the independence of the judiciary through defiance of court orders, harassment and intimidation of independent judges and the executive ouster of the jurisdiction of the courts;

Further concerned by the continuing human rights violations and the deterioration of the human rights situation in Zimbabwe, the lack of respect for the rule of law and the growing culture of impunity;

Alarmed by the number of internally displaced persons and the violations of fundamental individual and collective rights resulting from the forced evictions being carried out by the government of Zimbabwe;

1. **Condemns** the human rights violations currently being perpetrated in Zimbabwe;
2. **Urges** the government of Zimbabwe to cease the practice of forced evictions throughout the country, and to adhere to its obligations under the *African Charter on Human and Peoples' Rights* and other international human rights instruments to which Zimbabwe is a party;
3. **Urges** the government of Zimbabwe to implement without further delay the recommendations contained in the African Commission Report of the 2002 Fact-Finding Mission to Zimbabwe and the recommendations in the July 2005 Report of the UN Special Envoy on Human Settlement Issues, in particular to ensure full and unimpeded access for the provision of aid and protection to the victims of the forced evictions and demolitions by impartial national and international humanitarian agencies and human rights monitors, and to ensure that those responsible for the violations are brought to justice without delay;
4. **Calls** on the government of Zimbabwe to respect the fundamental rights and freedoms of expression, association and assembly by repealing or amending repressive legislation, such as the *Access to Information and Protection of Privacy Act*, the *Broadcasting Services Act* and the *Public Order and Security Act*;
5. **Calls** on the government of Zimbabwe to uphold the principle of separation of powers and the independence of the judiciary and urges the government of Zimbabwe to repeal or amend Constitutional Amendment (No.17) and provide an environment conducive to constitutional reform based on fundamental rights;
6. **Calls** on the government of Zimbabwe to cooperate with the African Commission Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa and other African Commission Special Mechanisms, including allowing a Fact-Finding Mission to investigate the current situation of internally displaced persons in Zimbabwe;
7. **Urges** the African Union to renew the mandate of the African Union Envoy to Zimbabwe to investigate the human rights implications and humanitarian consequences of the mass evictions and demolitions.

RESOLUTION ON THE PROTECTION OF HUMAN RIGHTS AND THE RULE OF LAW IN THE FIGHT AGAINST TERRORISM

The African Commission on Human and Peoples' Rights, meeting at its 37th Ordinary Session held in from 21st November to 5th December 2005, Banjul, The Gambia,

Considering the preamble to the African Charter on Human and Peoples' Rights requesting Member States to re-affirm their support to human and peoples' rights and liberties contained in the Declarations, Treaties and other Instruments adopted within the framework of the United Nations and of the African Union;

Bearing in mind the provisions of the Constitutive Act of the African Union in Article 3(h), which enshrines the objective of the African Union to promote and protect human rights, and Article 4(o), which requires respect for the sanctity of human life, condemns impunity, political assassinations, acts of terrorism and subversive activities;

Taking into consideration Article 23 of the African Charter on Human and Peoples' Rights which guarantees the right of people to peace and security and prohibits States from allowing their territories to be used as bases for subversive or terrorist activities;

Considering also the fundamental importance of guaranteeing respect of all human and peoples' rights and the standards of the rule of law when legislating and implementing anti-terrorism laws;

Bearing in mind Articles 45 (1) and (2) of the African Charter on Human and Peoples' Rights mandating the African Commission on Human and Peoples' Rights to formulate and lay down principles on human rights issues upon which African Governments may base their legislation and requiring it to ensure the protection of human and peoples' rights as well as Article 60 permitting the African Commission on Human and Peoples' Rights to draw inspiration from international law on human and peoples' rights;

Recalling Article 22(1) of the Convention of the Organisation African Unity (OAU) on the Prevention and Combating of Terrorism that stipulates that no provisions of the Convention may be interpreted in a manner that derogates from the general principles of international law, particularly the principles of international humanitarian law and the African Charter on Human and Peoples' Rights;

Further recalling Article 3(k) of the Protocol to the OAU Convention on the Prevention and Combating of Terrorism under which States Parties commit themselves to outlaw torture and other degrading and inhuman treatment, including, discriminatory and racist treatment of terrorist suspects, which are inconsistent with international law;

Considering the role of the Peace and Security Council of the African Union as enshrined in the Protocol relating to the Establishment of the Peace and Security Council to coordinate and harmonise continental efforts in the prevention and combating of terrorism;

Considering further the role assigned to the African Commission on Human and Peoples' Rights in the Protocol relating to the Establishment of the Peace and Security Council of the African Union: *"to seek close cooperation with the Peace and Security Council and to draw the attention of the Peace and Security Council to all issues of relevance to its mandate"*;

Recalling Resolutions 1373 and 1456 of the United Nations Security Council, Resolutions 57/219 and 58/187 of the General Assembly, Resolutions 2003/68 and 2004/87 of the Human Rights Commission, Resolutions 2003/15 and 2004/14 of the Sub-Committee on the Promotion and Protection of Human Rights re-affirming that States should ensure that all measures taken to combat terrorism conform to their obligations under the

terms of international law in general, and international human rights law, international humanitarian law and the rights of refugees in particular;

Deeply concerned by the increase in the number of terrorist acts perpetrated on the continent and legislations, measures and practices of States Parties, that may be inconsistent with the provisions of the African Charter on Human and Peoples' Rights;

Reaffirming the role of the African Commission on Human and Peoples' Rights in the implementation and monitoring of the respect for the provisions of the African Charter on Human and Peoples' Rights;

Recognising that the acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental liberties and democracy, constitute a threat to territorial integrity, the security of States and seek to destabilise legally constituted Governments;

- f. **Calls on** all African States to take the necessary measures to reinforce their activities of cooperation in order to prevent and combat terrorism;
- g. **Reaffirms** that African States should ensure that the measures taken to combat terrorism fully comply with their obligations under the African Charter on Human and Peoples' Rights and other international human rights treaties, including the right to life, the prohibition of arbitrary arrests and detention, the right to a fair hearing, the prohibition of torture and other cruel, inhuman and degrading penalties and treatment and the right to seek asylum;
- h. **Undertakes to ensure** that all the special procedures and mechanisms of the African Commission on Human and Peoples' Rights consider within the framework of their mandates, the protection of human rights and fundamental freedoms in the context of measures aimed at preventing and combating terrorism and to coordinate their efforts, as appropriate, in order to promote a coherent approach in this regard;
- i. **Decides** to organise a meeting of experts on the protection of human rights and the rule of law within the framework of the fight against terrorism in Africa;
- j. **Appeals** to the relevant organs of the African Union and requests its other partners to provide the required assistance in the quest for resources and modalities to organise this experts' meeting;
- k. **Instructs** the Secretariat to follow-up and coordinate this activity.