

FROM RHETORIC TO ACTION

SEVEN
RECOMMENDATIONS TO
THE 27TH SUMMIT OF
THE AFRICAN UNION
(10-18 JULY 2016)

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2016 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2016

Index: AFR 01/4407/2016
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

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INTRODUCTION

The year 2016 has a particular significance for human rights in Africa. It marks the 35th anniversary of the adoption of the African Charter on Human and Peoples' Rights, the 30th anniversary of its entry into force, and the 10th anniversary of the establishment and operationalization of the African Court on Human and Peoples' Rights. Given the convergence of these auspicious anniversaries, the African Union (AU) Assembly meeting at its 25th ordinary session in June 2015 in Johannesburg, South Africa, declared 2016 the "*African Year of Human Rights with Particular Focus on the Rights of Women*".¹ This declaration was greeted with optimism and celebration amongst human rights actors on the continent as it marked the first time in history that the AU decided to place human rights as a theme of its calendar year. A concept note developed by the AU Commission envisaged that the declaration of 2016 as the year of human rights would offer the opportunity to "*consolidate gains already made over the years, ensure better coordination of human rights bodies on the continent, and move towards the establishment of a true human rights culture on the continent*".

The launch of planned activities in celebration of the year took place on 30 January 2016 in Addis Ababa, Ethiopia. The planned activities include construction of an AU human rights memorial, launch of the Pan-African Human Rights Institute, organization of thematic human rights conferences, and compilation, in a single published volume, the decisions and judgments of the regional human rights treaty bodies. More importantly, African heads of state and government are expected, at their upcoming 27th Ordinary Summit, to be held from 17 to 18 July in Kigali, Rwanda, to adopt a declaration on the theme of the year spelling out their commitments on various aspects of human rights. During the Summit, the heads of state and government are also expected to elect and appoint the chairperson and deputy chairperson of the AU Commission. They are also expected to appoint the commissioners of the AU Commission after they have been elected by the Executive Council.

In advance of the 27th AU Summit, Amnesty International is calling on African leaders to seize the opportunity presented by this year to move from rhetoric or symbolic gestures to concrete actions that will see the continent begin to move more rapidly towards a true human rights culture. In this regard, the organization outlines seven priority recommendations for the AU Assembly and member states. The organization also calls on the next leadership of the AU Commission, who stand to be appointed during a year dedicated to the theme of human rights in Africa, to consider these seven recommendations as priority issues for the AU Commission.

¹ Decision on the Date and Venue of the 26th Ordinary Session of the Assembly of the African Union in January 2016, Assembly/AU/Dec.581(XXV).

RECOMMENDATION 1: THE AFRICAN UNION AND ITS RELEVANT ORGANS SHOULD TAKE URGENT STEPS TO ENSURE HUMAN RIGHTS PROTECTION IS AT THE CENTRE OF CONFLICT PREVENTION AND RESPONSE

Conflict and crisis has plagued the African continent for decades. As at the beginning of 2016, the AU was engaged in efforts to address the security or conflict situations in Burundi, Central African Republic (CAR), Libya, Mali, Nigeria, South Sudan, Sudan, Somalia, amongst other countries.² Despite these efforts, the security situation in many of these countries afflicted by conflict or political crisis remains fragile and serious human rights violations and abuses continue.

In Burundi, new armed opposition groups have emerged, targeted killings including of high-level security officials have almost become routine, and torture and other ill-treatment of perceived government opponents continue. On 18 April, the Office of the UN High Commissioner for Human Rights announced that it had recorded 345 new cases of torture and other ill-treatment since the beginning of the year.³ In South Sudan, despite the creation of the Transitional Government of National Unity, real respite from two years of displacement, death, and destruction is still far off for many. Since the start of the year, violent conflicts have been reported in Jonglei state, Malakal Protection of Civilians (PoC) site, and in Western Bahr el Ghazal state. On 25 April 2016, a rocket-propelled grenade landed inside the perimeter of the United Nations Mission in South Sudan (UNMISS) compound in Bentiu.⁴ According to the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), between January and March 2016 approximately 100,000 South Sudanese fled the country as refugees.⁵

In Libya, abductions, hostage-taking, torture and summary killings have continued despite the formation of a Government of National Accord. In June, 12 former detainees were shot dead shortly after their release from a prison in Tripoli in a killing which appeared to bear the hallmark of extrajudicial execution.⁶ Refugees and migrants, mainly from Sub-Saharan Africa are amongst those most vulnerable to abuses. They face abductions for ransom, sexual violence, exploitation and torture and other ill-treatment by smugglers, traffickers and armed groups and remain at risk of indefinite detention on account of their immigration status.

Despite recent advances towards protecting civilians against deadly attacks by Boko Haram,

² See Decision of the Activities of the Peace and Security Council and the State of Peace and Security in Africa, Assembly/AU/Dec.598(XXVI).

³ OHCHR, 'Torture and illegal detention on the rise in Burundi' available at [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/B95D8F30C034D96BC1257F9900440955?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/B95D8F30C034D96BC1257F9900440955?OpenDocument) (Accessed on 6 July 2016).

⁴ UNOCHA, South Sudan Humanitarian Bulletin, 9 May 2016, available at http://reliefweb.int/sites/reliefweb.int/files/resources/160509_OCHA_SouthSudan_humanitarian_bulletin.pdf (Accessed on 6 July 2016).

⁵ UNOCHA South Sudan Humanitarian Bulletin, 9 May 2016, available at http://reliefweb.int/sites/reliefweb.int/files/resources/160509_OCHA_SouthSudan_humanitarian_bulletin.pdf (Accessed on 6 July 2016).

⁶ Amnesty International, Libya: Killing of 12 detainees after court orders their release must be investigated (Index: MDE 19/4291/2016), 17 June 2016

the armed group has continued to commit serious human rights abuses and violations of international humanitarian law. At least 480 civilians have been killed since July 2015 when Boko Haram significantly increased its attacks in Cameroon and begun deliberately targeting civilians in suicide bombings.⁷ At the same time, state security forces in Nigeria and Cameroon continued to commit human rights violations and possible crimes under international law in their fight against Boko Haram. In Nigeria, at least 149 people, including 12 children, have died since the start of the year in one military detention alone, most likely as result of starvation, dehydration, disease and overcrowding.⁸ Amnesty International has also collected information during the year on a range of human rights violations and possible crimes under international law committed by Cameroonian security forces, including arbitrary arrests, unlawful killings, excessive use of force, enforced disappearances, deaths in custody and torture.

These recent and ongoing conflict situations in Africa are emblematic examples of the intricate link between human rights and conflict in Africa. The continent has seen a number of instances where violent conflicts have led to gross human rights violations but also result from persistent denial of human rights over a period of time. African leaders have long recognized that human rights violations and abuses have been a cause as well as a consequence, or symptom, of violent conflicts in Africa. The 2003 Kigali Declaration adopted at the end of the First AU Ministerial Conference on Human Rights in Africa reaffirmed respect for human rights as indispensable for the maintenance of peace and security and requested the relevant organs of the AU, in the exercise of their peace building and conflict resolution functions, to ensure the inclusion of human rights, humanitarian principles and other legal protection measures.⁹ Members states have also translated this realisation into various concrete actions through the transformation of the Organisation of the African Union (OAU) into the African Union (AU) including the establishment of the African Peace and Security Architecture (APSA) and the Peace and Security Council (PSC) of the AU.

The PSC, which has emerged as the AU's standing decision-making organ for the prevention, management and resolution of conflicts, has also repeatedly expressed its recognition on the need to have increased focus on root causes and structural prevention of conflict. In its October 2014 Communique for instance, the PSC recognized marginalization and abuse of human rights as potent triggers of conflict.¹⁰ Indeed, the PSC has also taken several measures to address human rights violations committed in the context conflict. It has for instance, deployed human rights monitors to Mali and Burundi,¹¹ established a commission of inquiry to investigate human rights violations and abuses in South Sudan,¹² and requested the African Commission on Human and Peoples' Rights (African Commission) to investigate

⁷ See Amnesty International, "Cameroon: Boko Haram attack brings total killed to nearly 500 in a year" available at <https://www.amnesty.org/en/latest/news/2016/06/cameroon-boko-haram-attack-brings-total-killed-to-nearly-500-in-a-year/> (Accessed on 6 July 2016).

⁸ Amnesty International, "If you see it, you will cry": Life and death in Giwa Barracks, (Index: AFR 44/3998/2016), May 2016.

⁹ Kigali Declaration, 2003, available at <http://www.achpr.org/instruments/kigali/> (Accessed on 6 July 2016).

¹⁰ PSC Communique on Structural Prevention of Conflict, PSC/PR/COMM.(CDLXIII), 27 October 2014. See also Communique of the 589th Meeting of the PSC on Elections in Africa, PSC/PR/COMM.(DLXXXIX), 12 April 2016.

¹¹ PSC Communique on the situation in the Republic of Mali, PSC/AHG/COMM/1.(CCCXXVII), 14 July 2012.

¹² PSC Communique, PSC/AHG/COMM.1(CDXI), 30 December 2013.

human rights violations and abuses or conduct fact-finding missions to Burundi, Cote d'Ivoire, Guinea and Sudan.¹³

Despite these normative and institutional developments, the AU's responses to structural human rights causes or gross violations that emerge out of conflicts have largely been slow, inconsistent and reactive rather than as part of a comprehensive and consistent strategy. Indeed, even when it has shown concern for human rights violations and abuses, the AU has generally lacked the determination and political will to confront them head-on. For instance, in the case of South Sudan, the Commission of Inquiry submitted its report in October 2014, but the PSC postponed the consideration and publication of the report for slightly more than a year. In the case of Burundi, despite the fact that the report of the African Commission's fact-finding mission found that human rights violations committed by Burundian government security officials and affiliated groups were pervasive and systematic, the PSC simply took note of the report and observed that "most of the contents of the Report have been overtaken by many national, regional, continental and international efforts aimed at the promotion of peace, security and stability in Burundi".¹⁴ The PSC neither considered nor committed to implement and/or push for the implementation of any of the recommendations proposed by the African Commission.

In addition, the failure of the AU to respond consistently and comprehensively to human rights violations committed in conflict and crisis also appears to be related to coordination gaps between PSC and the regional human rights institutions. Article 19 of the Protocol Relating to the Establishment of the PSC specifically provides that the PSC shall seek close cooperation with the African Commission.¹⁵ As the primary human rights body on the continent, the African Commission also has the mandate, such as enshrined under Article 58 of the African Charter, to contribute significantly towards dealing with human rights violations leading to or resulting from conflicts. In effect, the provisions of Article 19 of the PSC Protocol and Article 58 of the African Charter envisage a robust and two-way relationship. However, in practice, the interaction between the PSC and the African Commission has been limited and remains *ad hoc*. Similarly, coordination between the PSC and the African Committee of Experts on the Rights of the Child has been limited to interactions during the annual open sessions of the PSC on children and armed conflict.

The PSC has repeatedly acknowledged the need for collaboration and greater involvement of all relevant stakeholders in peace and security matters.¹⁶ Equally, the African Commission have also realized this gap and, in February this year, adopted a resolution in which it decided to "collaborate with the AU Peace and Security Council and other relevant stakeholders working on issues of peace and security, towards enhancing the role of the

¹³ Communique of the 507th Meeting of the PSC on the Situation in Burundi, PSC/PR/COMM(DVII), 14 May 2015; Communique of the Solemn Launching of the Tenth Meeting of the PSC, PSC/AHG/Comm.(X), 25 May 2004; Communique of the 71st Meeting of the PSC on the situation in the Republic of Guinea, PSC/PR/Comm.(LXXI), 16 February 2007.

¹⁴ Communique: The 595th meeting of the AUPSC on the Report of the African Commission on Human and Peoples' Rights on its Fact-finding Mission to Burundi, PSC/PR/COMM/2.(DXCV), 28 April 2016.

¹⁵ The Protocol is available at http://www.au.int/en/sites/default/files/treaties/7781-file-protocol_peace_and_security.pdf (Accessed on 6 July 2016).

¹⁶ See for example Conclusions of the Retreat of the PSC, Dakar, Senegal, 5-6 July 2007, PSC/PR/2(LXXXIII); PSC Communique on Structural Prevention of Conflict, PSC/PR/COMM.(CDLXIII), 27 October 2014.

Commission, as well as its coordination with other continental processes, in addressing human rights issues in conflict situations”.¹⁷ However, concrete steps are yet to be taken to address these institutional synergy and coordination challenges.

At the upcoming 27th AU Summit, African leaders will consider the state of peace and security in Africa. The AU is left with less than four years to realise its aspiration to “silence all guns” on the continent by 2020.¹⁸ Amnesty International believes that it is now more urgent than ever to translate this commitment into tangible and concrete actions to ensure effective response to underlying structural causes of conflict and gross human rights violations being committed in the context of conflicts. Accordingly, the organisation calls on:

- the AU Assembly to request relevant organs of the AU, in the exercise of their conflict prevention mandates, to monitor the existence of patterns of serious or massive violations of human rights as early signs of conflict and crisis;
- the AU Assembly to take urgent measures to stop human rights abuses and violations in all emerging and ongoing conflict situations, including ensuring that its acts and pronouncements are at all times consistent with the international human rights and humanitarian law obligations of its member states;
- the PSC to ensure effective avenues for regular engagement with the regional human rights institutions and specifically the African Commission and the African Committee of Experts on the Rights of the Child including by assessing its working methods and clarifying the modalities of implementing Articles 19 of the PSC Protocol; and
- the African Commission on Human and Peoples’ Rights to make full use of its mandate and its Special Mechanisms, including effective exercise of its duty to bring the existence of “a series of serious or massive violations of human rights” to the attention of the AU Assembly and develop effective follow-up mechanisms to ensure the implementation of its recommendations by member states and relevant organs of the AU.

¹⁷ Resolution on Human Rights in Conflict Situations, ACHPR/Res.332 (EXT.OS/XIX) 2016.

¹⁸ See African Union, Agenda 2063: The Africa we want, available at <http://archive.au.int/assets/images/agenda2063.pdf> (Accessed on 6 July 2016).

RECOMMENDATION 2: THE AFRICAN UNION SHOULD COMMIT TO FIGHT IMPUNITY BY TAKING STEPS TO ENSURE ACCOUNTABILITY FOR PERPETRATORS OF CRIMES UNDER INTERNATIONAL LAW

There have been several watershed moments for accountability and justice for international crimes committed in Africa in the first six months of 2016. On 30 May, Hissène Habré, former Chadian president, was convicted and sentenced to life imprisonment for crimes against humanity, war crimes and torture committed in Chad between 1982 and 1990. The conviction was handed down in Dakar by the Extraordinary African Chambers which was established in 2012 via an agreement between the AU and the government of Senegal. The Hissène Habré case is the first universal jurisdiction case on the continent, and the first time a former African leader has been prosecuted for crimes under international law before a court in another African country.

In addition, the International Criminal Court (ICC) convicted Jean-Pierre Bemba Gombo on 21 March for crimes against humanity and war crimes committed by troops under his effective control in the CAR between 2002 and 2003.¹⁹ In the same month, the ICC also confirmed charges against Uganda's Dominic Ongwen and Mali's Ahmad Al Faqi Al-Mahdi. Dominic Ongwen, a former commander of the Lord's Resistance Army, is facing 70 charges of war crimes and crimes against humanity allegedly committed in Uganda between 2002 and 2005, including murder, rape, sexual slavery, and the conscription and use of child soldiers. Ahmad Al Faqi Al-Mahdi is allegedly a leader of Ansar Eddine, a mainly Tuareg movement associated with Al Qaeda in the Islamic Maghreb, and is charged with the war crime of intentionally directing attacks against buildings dedicated to religion and historic monuments²⁰.

There were also some landmark developments domestically. On 15 March, the South African Supreme Court ruled that the government had violated domestic law when it failed to arrest Sudanese President, Omar Al-Bashir, during his visit to the country in June 2015²¹. In CAR, several important steps have been taken in the last six months towards setting up a Special Criminal Court within the national courts of the country, after a law creating the court was passed in June 2015. Once established, this court, together with ongoing investigations by the ICC, will be a crucial step to ensuring accountability in CAR for crimes under international law committed in the country, and in particular, during the 2012-2013 conflict²².

¹⁹ The case established new precedents on several fronts: it was the first time that the ICC convicted someone for rape as a war crime and crime against humanity; the first time a conviction in international criminal law classified sexual violence against men specifically as rape; and the first time an ICC conviction was based on command responsibility.

²⁰ The charges relate to attacks on several mosques and mausoleums in Timbuktu in 2012. Al Mahdi has indicated that he will plead guilty to the charges.

²¹ President Omar Al-Bashir is facing seven counts of war crimes and crimes against humanity as well as three counts of genocide before the ICC.

²² However, it is of concern that several high-level persons suspected of criminal responsibility for crimes under international law committed during the conflict, continue to travel freely outside of CAR, despite travel bans imposed by the UN Sanctions Committee under SC Resolution 2127.

These positive developments and processes of accountability for crimes under international law in Africa are consistent with the AU Constitutive Act insofar as it enjoins member states to condemn and reject impunity.²³ However, member states' commitment to the principle of rejection of impunity as enshrined in the AU Constitutive Act and in previous commitments including the Kigali Declaration (2003)²⁴ has wavered in recent years. Despite the fact that African states were key stakeholders in the development and adoption of the Rome Statute, the AU has repeatedly called on its members not to cooperate with the ICC and to withdraw from the Rome Statute. It has made this call as recent as January 2016, when the AU Assembly mandated an open-ended committee of ministers to develop a strategy for collective withdrawal from the Rome Statute.²⁵ Taking the cue from the AU, South Africa, Uganda, Kenya and several other countries have failed to enforce two ICC warrants of arrest against President Omar Al-Bashir of Sudan despite his presence on their territory.

Partly arising from its deteriorating relations with the ICC, the AU has sought to establish a regional criminal court via the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights adopted in June 2014. While the stipulated principles and values underlying the Protocol are praiseworthy, there are several concerns with this proposal, including those relating to the capacity of the court to deliver on its mandate, the ability of the AU to finance its operations, and the inclusion of a clause in the Protocol guaranteeing immunity to sitting heads of state and senior government officials.

The AU has also shown bias in its condemnation of crimes under international law. For instance, in Nigeria and Cameroon where there is evidence suggesting that both the armed group Boko Haram and state security forces have committed acts which may amount to crimes against humanity and war crimes,²⁶ the AU has focused entirely on violations committed by Boko Haram.²⁷

During this year of human rights, the AU should send a strong message to the continent and the international community as a whole that it is firm in its rejection of impunity and unbiased in bringing perpetrators of crimes under international law to justice. Three opportunities are currently available for the AU to demonstrate that it has the political will to tackle impunity head-on. These are:

- the provision in the South Sudan Peace Agreement signed on 17 August 2015 giving the AU Commission Chairperson the mandate to establish the Hybrid Court for South Sudan

²³ Constitutive Act of the African Union, Article 4(o).

²⁴ In 2003, the AU Ministerial Conference on Human Rights in Africa reiterated in the Kigali Declaration the commitment of member states to reject impunity. The Conference also reaffirmed the commitment of member states to prosecute those responsible for genocide, war crimes and crimes against humanity.

²⁵ Decision on the International Criminal Court, Assembly/AU/Dec.590(XXVI).

²⁶ See Amnesty International, 'Our job is to shoot, slaughter and kill': Boko Haram's reign of terror in north-east Nigeria (Index: AFR 44/1360/2015), April 2015; Amnesty International, Stars on their shoulders, blood on their hands: War crimes committed by the Nigerian military (Index: AFR 44/1657/2015), June 2015; Amnesty International, Human rights under fire: Attacks and violations in Cameroon's struggle with Boko Haram (Index: AFR 17/1991/2015), September 2015.

²⁷ See Communique of the 567th PSC meeting on the Boko Haram terrorist group, PSC/PR/COMM.(DLXVII), 14 January 2016; Communique of the 484th meeting of the PSC on the Boko Haram terrorist group, 29 January 2015.

(HCSS);

- the recommendation by the African Commission on Human and Peoples' Rights that an independent internationally supported special tribunal be established to investigate and prosecute perpetrators of atrocities committed in Burundi since April 2015; and
- the recommendation to the AU by the UN Human Rights Council's Commission of Inquiry on Eritrea that it establishes an accountability mechanism to investigate, prosecute and try individuals reasonably believed to have committed crimes against humanity in Eritrea.

The conviction and sentencing of Hissène Habré and Jean-Pierre Bemba has given hope to victims of crimes under international law in Burundi, Sudan, South Sudan, Nigeria, Cameroon and other parts of Africa that justice can be achieved even in the most unlikely of circumstances. The AU should not dash their hopes. It should not shield any head of state or senior government official from the reach of international justice. Amnesty International calls on the AU Assembly and the AU Commission to:

- ensure the speedy establishment of the Hybrid Court for South Sudan (HCSS) in a format that complies with international law;
- take urgent steps to implement the recommendation of the African Commission calling for the establishment of a special tribunal for Burundi;
- take urgent steps to implement the recommendation for the establishment of a regional accountability mechanism for Eritrea; and
- ensure its acts and pronouncements are at all times consistent with the principle of the rejection of impunity as enshrined in Article 4(o) of the AU Constitutive Act, including by refraining from requesting members who are state parties to the Rome Statute not to fulfil their international obligations and/or withdraw from the Rome Statute.

Amnesty International reminds AU member states who are parties to the Rome Statute that any decision to withdraw from the ICC is a decision for each individual state, and calls upon such states to speak out publicly during the summit against any calls from the AU for mass withdrawal.

RECOMMENDATION 3: AFRICAN UNION MEMBER STATES SHOULD URGENTLY COMPLY WITH THEIR REPORTING AND OTHER OBLIGATIONS UNDER REGIONAL HUMAN RIGHTS TREATIES

Under Article 62 of the African Charter, state parties have undertaken to submit biennial reports to the African Commission describing the measures they have taken to give effect to the rights enshrined in the Charter. A similar obligation is contained under Article 26 of the Protocol on the Rights of Women in Africa. The African Commission has developed guidelines to assist states in the preparation of the periodic reports. It views the examination of state party reports as an opportunity for it to engage in a constructive dialogue with states.²⁸

Amnesty International is concerned that while all AU members states, apart from South Sudan, are parties to the African Charter, only 15 or 28% of the states are up to date in the submission of the periodic report, including Malawi and Sierra Leone which submitted their reports in 2015 after a delay of more than two decades.²⁹ Six states (Comoros, Eritrea, Guinea Bissau, Sao Tome and Principe, and Somalia) have never submitted even the initial report to the African Commission. A total of 16 states have more than 3 reports overdue while 16 other states have at least one report overdue. Despite the fact that it hosts the African Commission, Gambia has 11 overdue reports. Similarly, only a paltry 3 states out of the 37 that have ratified the Protocol on the Rights of Women in Africa have complied with their state reporting obligation. Non-compliance with the state reporting obligation under the Protocol on the Rights of Women in Africa stands at 92%.

Non-compliance with the state reporting obligation is a chronic problem and has persisted since the establishment of the African Commission. Over the years, it has become routine for the African Commission to plead with states to comply with their state reporting obligation. This plea has almost always fallen on deaf ears. The effect is the perpetual frustration of the ability of the African Commission to discharge a crucial aspect of its mandate, that is, the monitoring of the state of human rights in Africa by way of examining state party reports.

Amnesty International is conscious of the fact that preparation of state party reports is resource intensive partly because all the countries across the continent have multiple reports to present to regional and global human rights treaty bodies. However, the failure of African states to honour their obligation under the African Charter and its Protocol on the Rights of Women in Africa appears to be related more to the lack of political will rather than the shortage of capacity to prepare the reports. In this regard, it is quite telling that all the 53 African states submitted without fail their reports under the first cycle of the UN Human Rights Council's Universal Periodic Review (UPR).

Failure of AU member states to honour their state reporting obligation reflects even a more serious concern: the general disposition of states to disregard decisions and resolutions of the

²⁸ See 'Guidelines for National Periodic Reports': http://www.achpr.org/files/instruments/guidelines_national_periodic_reports/achpr_guide_periodic_reportng_1989_eng.pdf (Accessed 23 June 2016).

²⁹ See 39th Activity Report of the African Commission on Human and Peoples' Rights, available at http://www.achpr.org/files/activity-reports/39/actrep39_2015_eng.pdf (Accessed on 6 July 2016).

regional human rights treaty bodies. Since its establishment, the African Commission has decided hundreds of cases and found states to be in violation of the Charter in a good percentage of them. However, recommendations directed to states have been generally ignored. Research on the rate of compliance with recommendations issued by the African Commission in cases decided between 1993 and 2004 found full compliance in 14% of the cases only.³⁰ Anecdotal evidence shows that the rate of compliance has not improved in any meaningful way since 2004. In January 2013, the African Commission lamented that:³¹

Member States generally do not comply with the decisions of the Commission or implement its recommendations. They also do not respect provisional measures issued by the Commission to prevent irreparable harm to victims.

In 2014, the African Commission requested all states against whom a finding of violations has been made to provide information to it regarding steps taken to implement its decisions and recommendations. The African Commission is also increasingly bringing cases of non-compliance to the attention of the AU Executive Council. It reported Botswana to the Executive Council in January 2013 for openly refusing to comply with a decision of the Commission in which the country was found to have violated the African Charter.³² In January 2014, the Commission notified the Executive Council that Ethiopia had failed to respect an order for provisional measures.³³ In June 2015, the Commission brought to the attention of the Executive Council that Egypt had failed to stay an execution despite the fact that the Commission had requested the country to do so.³⁴ In all of these cases, the Executive Council has not taken any action whatsoever.

Ten years ago, the African Court was inaugurated to complement the protective mandate of the African Commission. As at the end of June 2016, the Court had received 101 cases and finalized 27 of these and transferred four to the African Commission. Like the African Commission, the Court is increasingly confronted with non-compliance with its decisions. For instance, despite repeated reminders from the Court and the AU Executive Council, Libya has failed to comply with an order issued in respect of a matter against it. Tanzania has also not fully complied with a decision of the Court issued about three years ago.

Amnesty International believes that a fitting celebration of the year of human rights will be incomplete unless states rededicate themselves to complying with the obligations enshrined in the regional human rights treaties. In order to set states towards the path of compliance, the organization recommends that the AU Assembly should, in its declaration on the theme

³⁰ Frans Viljoen & Lurette Louw 'State compliance with the recommendations of the African Commission on Human and Peoples' Rights, 1993-2004' (2007) 101 *American Journal of International Law* 1-34.

³¹ Combined 32nd and 33rd Activity Report of the African Commission on Human and Peoples' Rights, available at http://www.achpr.org/files/activity-reports/32-and-33/achpr5152_actrep32and33_eng.pdf (Accessed on 6 July 2016).

³² Combined 32nd and 33rd Activity Report of the African Commission on Human and Peoples' Rights, available at http://www.achpr.org/files/activity-reports/32-and-33/achpr5152_actrep32and33_eng.pdf (Accessed on 6 July 2016).

³³ 35th Activity Report of the African Commission on Human and Peoples' Rights, available at http://www.achpr.org/files/activity-reports/35/achpr54eos14_actrep35_2014_eng.pdf (Accessed on 6 July 2016).

³⁴ 38th Activity Report of the African Commission on Human and Peoples' Rights, available at http://www.achpr.org/files/activity-reports/38/actrep38_2015_eng.pdf (Accessed on 6 July 2016).

of the year, call upon:

- all state parties which are late in the submission of their periodic or initial reports to, within the next six months, indicate in writing to the AU Executive Council and the African Commission when they would submit their reports;
- all states parties against whom a violation of the African Charter has been found to submit information to the Executive Council and the African Commission within the next six months indicating the steps they have taken to implement the recommendations of the African Commission or the orders of the African Court as the case may be; and
- the AU Executive Council to review, at every ordinary session, member states' compliance with their reporting obligations as well as with decisions, resolutions and judgments of the regional human rights institutions.

RECOMMENDATION 4: THE AFRICAN UNION SHOULD STRENGTHEN AND ENSURE THE INDEPENDENCE OF REGIONAL HUMAN RIGHTS INSTITUTIONS

The declaration of 2016 as the year of human rights presents an opportune time for AU member states and the AU to renew their commitment to the strengthening of the regional human rights system. Amnesty International believes that to make the African human rights system adequate for its task, states must provide necessary support for the system itself. In this regard, Amnesty International calls on member states and the relevant AU political organs to refrain from actions that undermine the system such as interference with the independence of or withdrawal of support from the African regional human rights institutions.

This call is informed by two recent actions with potential to weaken the system of human rights protection in Africa. The first action involve the Executive Council and relates to the independence and autonomy of the African Commission. The second action relates to the capability of the African Court to hear cases lodged by individuals and NGOs.

INDEPENDENCE AND AUTONOMY OF THE AFRICAN COMMISSION

African regional human rights institutions have traditionally enjoyed some level of independence from the political organs of the AU. The headquarters of the African Commission and the African Court are deliberately located outside the seat of the AU to serve as a symbol of the independence of these twin institutions from political pressure and interference. For the same reason, the process of relocating the African Children's Committee from Addis Ababa has commenced. The AU political organs have in a number of occasions recognized the independence of the human rights institutions.

In the Kigali Declaration, the First AU Ministerial Conference on Human Rights in Africa called on AU policy organs to review the operation and composition of the African Commission with the aim of "strengthening its independence and operational integrity". In 2007, the Executive Council directed that the African Commission should henceforth defend its budget proposals independently of the Department of Political Affairs of the AU Commission. In May 2007, the African Commission held a meeting with the Permanent Representative Committee of the AU during which the two institutions discussed ways of strengthening and ensuring the independence of the African Commission.

In recent times, however, AU political organs have issued directions whose effect is to erode and undermine the independence and autonomy of the African Commission. In particular, two directions issued by the Executive Council in 2015 seek to vary and second-guess decisions taken by the African Commission in the discharge of its mandate to interpret the African Charter. In the first instance, the Executive Council ordered that two decisions issued against Rwanda be expunged from the 37th activity report of the African Commission.³⁵ Despite the fact that Rwanda had taken part in the procedure leading to the two decisions, the Executive Council directed that Rwanda should be given yet another opportunity to make

³⁵ Decision on the Thirty-Seventh Activity Report of the African Commission on Human and Peoples' Rights, EX.CL/Dec.864(XXVI).

oral submissions in the two cases. In the second instance, the Executive Council directed the African Commission to withdraw the observer status that it had granted to the Coalition of African Lesbians (CAL).³⁶ The Executive Council also asked the African Commission to review its criteria for granting observer status to NGOs.

Amnesty International is concerned that these two decisions amount to blatant interference with and disregard for the independence and autonomy of the African Commission. The organization calls on the AU Assembly to:

- reverse the directive of the Executive Council requiring the African Commission to withdraw the observer status granted to CAL and to review its criteria for granting observer status to NGOs; and
- call upon the political organs of the AU, and mainly the Executive Council and the Permanent Representative Committee, to refrain from interfering with the independence of the regional human rights institutions;

DIRECT ACCESS TO THE AFRICAN COURT

The Protocol on the Establishment of the African Court was adopted on 10 June 1998. Close to two decades later, only 30 AU member states have ratified the Protocol. Under Article 5(3) of the Protocol, NGOs and individuals are entitled to directly lodge cases before the African Court but only in respect of states that have made the declaration stipulated in Article 34(6). Article 34(6) provides that:

At the time of the ratification of this Protocol or any time thereafter, the state shall make a declaration accepting the competence of the court to receive petitions under article 5(3) of this Protocol. The Court shall not receive any petition under Article 5(3) involving a state party which has not made such a declaration.

Out of the 30 states that have ratified the Protocol, only a handful have made a declaration under Article 34(6). In particular, the following seven states, representing 23% of the states that have ratified the Protocol, have made the declaration: Benin, Burkina Faso, Cote d'Ivoire, Ghana, Malawi, Mali, and Tanzania. This means that citizens of 47 African countries are unable to directly access the Court. Rwanda made the declaration in January 2013 but withdrew it in February this year. Rwanda's action is a huge setback for the protection of human rights in the country and undermines efforts to strengthen the Court. The withdrawal sets a bad precedent and sends a wrong message to state parties that are yet to make the declaration.

As the African Court celebrates the 10th anniversary of its establishment, Amnesty International is calling on:

- the 24 AU member states that are yet to ratify the Court Protocol to do so as a matter of

³⁶ Decision on the Thirty-Eighth Activity Report of the African Commission on Human and Peoples' Rights, EX.CL/Dec.887(XXVII).

urgency. At the upcoming 27th AU Summit, the leaders of the 24 member states should commit to immediately commence the relevant domestic process that will see their respective instruments of ratification deposited with the AU Commission Chairperson before or during the 28th AU Summit in Addis Ababa, Ethiopia. At the time of ratification, these states should also make the declaration contemplated in Article 34(6).

- the 23 states which have ratified the Court Protocol but are yet to make the declaration to do so before the end of the year.

As the Court itself has observed: “Universal ratification of the Protocol establishing the Court and depositing of the declaration, during this auspicious celebration will further manifest the commitment of AU Member States to the theme of 2016 as African Year of Human Rights, as well as to the importance of human rights as a critical pillar in the socio-economic and political development of the continent”.

RECOMMENDATION 5: AFRICAN UNION MEMBER STATES SHOULD ENSURE UNIVERSAL RATIFICATION OF THE MAPUTO PROTOCOL AND TAKE STEPS TO DECRIMINALIZE ABORTION

The AU has made significant efforts towards the realization of women rights in Africa. In 2004, the AU Assembly adopted the Solemn Declaration on Gender Equality in Africa in which African leaders committed to tackle gender inequality and address violations of women's rights including discrimination against women living with HIV/AIDS, gender based violence, trafficking in women and girls, and harmful traditional practices such as early and forced marriages. In 2010, the AU Assembly declared 2010-2020 the "African Women's Decade".³⁷ As part of the Africa's Women's Decade, 2015 marked the "Year of Women's Empowerment towards Africa's Agenda 2063"³⁸ while this year marks the "African Year of Human Rights *with Particular Focus on the Rights of Women*".³⁹

All these declarations are anchored in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which came into force in 2005. In the years following the adoption of the Maputo Protocol, the AU has adopted a number of action plans and programme of work aimed at the implementation of commitments to the rights of women, including towards reducing maternal mortality and morbidity. These include the 2005 Continental Policy Framework on Sexual and Reproductive Health and Rights, 2006 Maputo Plan of Action on Sexual and Reproductive Rights, and the Campaign for the Accelerated Reduction of Maternal Mortality in Africa (CARMA) launched in 2009. Despite repeated calls, the Maputo Protocol has not received universal ratification on the continent 13 years after its adoption. As at the end of June 2016, 17 African states are yet to ratify the Protocol.

One of the main issues that the Maputo Protocol envisions to address is the protection of reproductive rights of women, including safeguarding the right to safe abortion. It is the first treaty in the world to place medical abortion in a legally binding normative framework. Article 14(2)(c) of the Protocol provides that states have an obligation to "protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus". It is a matter of concern that most state parties to the Maputo Protocol have not aligned their laws to this provision. Indeed, Africa is one of the regions in the world with comparatively the most restrictive laws on abortion. As of 2015, an estimated 90% of women of childbearing age in Africa live in countries with restrictive abortion laws.⁴⁰ Abortion is not permitted for any reason in 12 out of 54 African countries. Five countries in Africa have relatively liberal abortion laws. However, even where the law

³⁷ Decision on the African Women's Decade, Assembly/AU/Dec.228(XII).

³⁸ Decision on the Theme, Date and Venue of the Twenty Fourth Ordinary Session of the Assembly of the African Union, Assembly/AU/Dec.539(XXIII).

³⁹ Decision on the Date and Venue of the 26th Ordinary Session of the Assembly of the African Union in January 2016, Assembly/AU/Dec.581(XXV)

⁴⁰ Guttmacher Institute, Fact Sheet: Abortion in Africa, 2016, p.1, available at: https://www.guttmacher.org/sites/default/files/factsheet/ib_auw-africa.pdf (Accessed on 30 June 2016).

allows abortion under limited circumstances, women often face barriers to access a safe and legal procedure.⁴¹ The World Health Organization (WHO) has noted that restrictive abortion laws “lead many women to seek services in other countries, or from unskilled providers or under unhygienic conditions, exposing them to a significant risk of death or disability. The maternal mortality ratio per 100 000 live births due to unsafe abortion is generally higher in countries with major restrictions and lower in countries where abortion is available on request or under broad conditions”.⁴²

According to estimates by WHO, unsafe abortion contributes to an average of 14% of maternal deaths in Africa.⁴³ Young women below the age of 25 years account for nearly two thirds of all unsafe abortions in Africa.⁴⁴ A recent report by Amnesty International highlights how the lack of information about and access to sexual and reproductive health services contributes to unwanted pregnancies, which coupled with the lack of safe abortion services, contribute to the high rates of unsafe abortions and maternal mortality and morbidity.⁴⁵

Amnesty International believes that decriminalization of abortion will significantly contribute to the rapid realization of the goals enshrined in AU’s declarations and action plans. In January this year, the African Commission’s Special Rapporteur on the Rights of Women in Africa launched a continental campaign for the decriminalization of abortion. Amnesty International calls for AU member states to support this campaign both in words and action by immediately taking legislative measures to decriminalize abortion. In addition, AU member states must take measures to remove all other barriers to legal abortion and ensure women and girls can access sexual and reproductive health services, information and education in order to prevent unwanted pregnancies.

Amnesty International believes that this year presents a unique opportunity for the AU and its member states to build on gains achieved towards the realization of the rights of women in Africa and calls for the following measures:

- The AU Assembly should call on those states that have not ratified the Maputo Protocol to do so without further delay. This is a call that the AU has repeatedly made and member states should heed to this call once and for all;
- In line with the call from the African Commission Special Rapporteur on the Rights of Women in Africa, AU member states should review their laws with a view to decriminalizing abortion.

⁴¹ Ibid.

⁴² World Health Organization *Safe Abortion: Technical and policy guide for health systems, second edition*, (2012), p.23, available at:

http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf?ua=1

⁴³ World Health Organization *Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008* (2011) 19.

⁴⁴ World Health Organization *Safe Abortion: Technical and policy guide for health systems, second edition*, (2012), p.24, available at:

http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf?ua=1

⁴⁵ Amnesty International, *Coerced and denied: Forced marriages and barriers to contraception in Burkina Faso*, (Index: AFR 60/3851/2016), April 2016.

- AU member states should take steps to remove all economic, geographic, social, and cultural barriers to accessing abortion services including third party authorization and abortion related stigma, and to enhance the capacity of the health systems to provide safe abortion.
- AU member states should ensure that women and girls can access sexual and reproductive health services, information and education in order to prevent unwanted pregnancies and guarantee women's reproductive rights.

RECOMMENDATION 6: AFRICAN UNION MEMBER STATES SHOULD COMMIT TO CREATE AN ENVIRONMENT CONDUCTIVE FOR CIVIL SOCIETY AND HUMAN RIGHTS DEFENDERS TO CARRY OUT THEIR WORK FREE OF UNWARRANTED RESTRICTIONS AND HARRASSMENT

In 2003, the First AU Ministerial Conference on Human Rights in Africa adopted the Kigali Declaration in which they not only recognized the “important role” of civil society organizations (CSOs) and human rights defenders (HRDs) but they also called on state parties and regional institutions to “protect them and encourage the participation of CSOs in decision-making processes with the aim of consolidating participatory democracy and sustainable development”. However, Instead of offering the promised protection, many AU member states have shown serious regression by imposing severe restrictions on the activities of civil society and human rights defenders. Recent years have seen the rise of the proposal to enact legislation whose purpose is to restrict the space for civil society or create barriers to HRDs effectively doing their work. Ethiopia, Uganda, amongst other countries, have successfully enacted such laws. In countries, such as Angola and Egypt, HRDs have been subjected to unfounded criminal proceedings, arbitrary detention, and judicial harassment.

The trends show that civic space in Africa is under attack. According to the Report of the African Commission’s Study Group on Freedom of Association and Assembly in Africa, there is “a visible trend of shrinking space for civil society and the persistent targeting of human rights defenders in Africa in their work”.⁴⁶ There are active government efforts to stifle dissent and muzzle the exercise of the right to freedoms of expression, assembly, and association, especially in the context of elections and transitions. In a wide spectrum of countries, including Burundi, DRC, Egypt, Ethiopia, Gambia, Kenya, and Nigeria, violent crackdowns on assemblies have resulted in the death and serious injury to peaceful demonstrators. For this reason, the African Commission in its May 2014 Resolution on the Right to Peaceful Demonstrations called on AU member states to refrain from conducting arbitrary arrests and detentions of demonstrators as well as from using excessive and disproportionate force against demonstrators.

The space for civil society is also closing at the AU level. Recent decisions by the AU Assembly to lock civil society out of the mid-year summits is indicative of an emerging pattern of hostility against CSOs.⁴⁷ The directive of the AU Executive Council to the African Commission to withdraw the observer status granted to CAL and to review its criteria for granting observer status to NGOs is also evidence of this pattern.

As African leaders convene in Kigali, they should recall the commitments made 13 years ago for protection of civil society organisations and human rights defenders. In the declaration on the theme of the year, the AU Assembly should:

- explicitly recognize the legitimacy of human rights defenders and publicly support their

⁴⁶ African Commission on Human and Peoples’ Rights *Report of the Study Group on Freedom of Association and Assembly in Africa* (2014) 11. See also African Commission on Human and Peoples’ Rights *Report of the Study on the Situation of Women Human Rights Defenders in Africa* (2015).

⁴⁷ See for example, Decision on Streamlining of the AU Summits and Working Methods of the African Union, Assembly/AU/Dec.582(XXV).

work, acknowledging their contribution to the advancement of human rights;

- call on member states to ensure a safe and enabling environment in which it is possible to defend human rights without fear of reprisal or intimidation;
- recognise the particular challenges faced by women human rights Defenders who are more at risk of suffering certain forms of violence and other violations, and ensure they receive the protection they need against gender-based threats and violence they may face due to their work;
- call on member states to establish national protection mechanisms for human rights defenders at risk in consultation with human rights defenders and civil society organizations;
- call on member states to thoroughly, promptly and independently investigate threats, attacks, harassment and intimidation against human rights defenders; bring their perpetrators to justice in fair trials without recourse to the death penalty; and ensure effective remedies and adequate reparations to the victims; and
- call on member states to ensure that the criminal justice system is not misused to target or harass human rights defenders.

RECOMMENDATION 7: AFRICAN UNION MEMBER STATES SHOULD PUSH FOR A NEW GLOBAL SYSTEM OF RESPONSIBILITY-SHARING FOR REFUGEES

The AU has adopted a relatively robust normative framework for the protection of refugees and internally displaced persons. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the 2009 Kampala Convention for the Protection and Assistance of Internally Displaced Persons lie at the core of this framework. Both of these instruments have regrettably not received universal ratification on the continent. Nine countries (Djibouti, Eritrea, Madagascar, Mauritius, Namibia, Sao Tome and Principe, Somalia, and South Sudan) are yet to ratify the OAU Refugee Convention while 29 countries are yet to ratify the Kampala Convention.

Conflict and crisis has displaced millions of people in Africa. Sub-Saharan Africa had a total of 4.4 million refugees as at the end of 2015.⁴⁸ Five countries (CAR, DRC, Somalia, South Sudan, and Sudan) accounted for 80% of the refugees on the continent. Five of the 10 countries hosting the largest number of refugees in the world are in Sub-Saharan Africa.⁴⁹ These are: Chad, DRC, Ethiopia, Kenya and Uganda. Some of these countries, such as Kenya and Ethiopia, have hosted thousands of refugees for decades. The burden that these two countries shoulder is significant. However, Amnesty International is alarmed by the recent decision of the Kenyan government to close down two large refugee camps: Dadaab and Kakuma. This move will put thousands of lives at risk.

There was also large movements of refugees through North Africa in 2015. Some countries in the region, such as Libya, served as transit route for refugees. Despite the violence and lawlessness pervading Libya, hundreds of thousands of refugees and migrants, mostly from Sub-Saharan Africa, travel to Libya fleeing war, persecution or extreme poverty, often in the hope of settling in Europe. The International Organization for Migration (IOM) estimates there are over 264,000 migrants and refugees currently in Libya. According to UNHCR, there are around 37,500 registered refugees and asylum-seekers, half of them Syrians.

The refugee problem in Africa is part of a global crisis that has revealed the failure of countries to take their fair share of responsibility. The AU position on humanitarian financing and partnerships, as enshrined in the Common African Position on Humanitarian Effectiveness adopted by the AU Assembly in January 2016, also affirms the failures of the global system of responsibility sharing. The Common African Position acknowledges the primary responsibility of member states for the protection of populations in need of humanitarian assistance and urges international community to share the burden imposed on host countries in Africa and ensure a much fairer means of burden sharing globally.⁵⁰

Amnesty International welcomes this firm and bold call by the AU and believes that radical changes must be introduced if the global refugee crisis is to be adequately addressed. In

⁴⁸ UNHCR *Global Trends: Forced Displacement in 2015* (2016) 14.

⁴⁹ UNHCR *Global Trends: Forced Displacement in 2015* (2016) 15.

⁵⁰ African Union, Common African Position (CAP) on Humanitarian Effectiveness, available at http://www.au.int/en/sites/default/files/newsevents/workingdocuments/29553-wd-cap_rev-final_version_as_of_13_april_2016.pdf (Accessed on 29 January 2016).

advance of the UN General Assembly high level plenary meeting on addressing large movements of refugees and migrants to be held on 19 September in New York, USA, Amnesty International is calling for states to effectively share responsibility for hosting and supporting the world's refugees. Amongst other things, the organization is calling for UN member states' contributions to addressing the global refugee crisis to be based on an agreed, objective and relevant criteria.

In this regard, and as the AU member states prepare for the UNGA meeting in September, Amnesty International is calling on African leaders and the AU to support bold proposals for a new global system of responsibility-sharing to be established. Specifically, Amnesty International calls on the AU Assembly to adopt a resolution calling for:

- the establishment of a new global mechanism to resettle refugees who meet UNHCR's vulnerability criteria, whereby all countries would be required to accept a proportion of the global vulnerable refugee population, with the proportion each country takes being based on objective criteria that reflect the country's capacity to host refugees. The criteria could include GDP/GNI, population, unemployment rate, existing refugee population and/or number of asylum applications received;
- the establishment of a new mechanism, additional to the one for the resettlement of vulnerable refugees, to transfer refugees from countries where the refugee population has reached a certain threshold, with the threshold defined using objective criteria that reflect the country's capacity to host refugees.
- guaranteed full, flexible and predictable funding for refugee protection and meaningful financial support to countries hosting large numbers of refugees;
- strengthened refugee status determination systems and increased use of prima facie recognition of refugee status; and
- all countries to put in place policies and systems that ensure effective protection of refugees and asylum-seekers and that enable them to meet their basic needs in a manner consistent with human rights and dignity.

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