

**ACHPR/Res. 402 (LXIII) 2018: Resolution on the interpretive and protective mandates of the African Commission on Human and Peoples' Rights**

*The African Commission on Human and Peoples' Rights ('the Commission' or 'African Commission'), meeting at its 63<sup>rd</sup> Ordinary Session, held in Banjul, The Gambia, from 24 October to 13 November 2018:*

**Recalling** the Commission's functions under Article 45 of the African Charter on Human and Peoples' Rights ('African Charter' or 'Charter'), which provides for the protection, promotion and interpretive mandates of the Commission;

**Recalling** the commitments of all State Parties to ensure the rights and freedoms guaranteed in the African Charter, and noting the central role that the Commission, established under Article 30 of the African Charter, plays in ensuring respect for and the full enjoyment and protection of human and peoples' rights;

**Conscious** that the Assembly of Heads of State and Government showed their commitments to human and peoples' rights by declaring 2017-2027 as the African Human Rights Decade;

**Recalling** that Article 2 of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights (the Court Protocol) establishes the relationship between the African Commission and the African Court on Human and Peoples' Rights (the Court) by providing that the Court shall complement the protective mandate of the Commission;

**Further recalling** the harmonization of the 2010 Rules of Procedure of the Commission and Rules of Court to give effect to this complementarity;

**Confirming** that Article 4 of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (the Malabo Protocol) reiterates the complementarity of the Court to the protective mandate of the Commission;

**Additionally recalling** that the promotion and protection mandates of the Commission involve interpretation of the provisions of the African Charter, including through the formulation of principles and rules for solving legal problems relating to human and peoples' rights;

**Underscoring** that the protection mandate of the Commission is contentious as well as non-contentious, and that it includes a Communications procedure as well as urgent intervention mechanisms for responding on an on-going basis to emerging human rights complaints and situations through Urgent Appeals, resolutions and fact-finding missions;

**Bearing in mind** that the Commission's contentious protective mandate, which involves the submission and consideration of Communications, provides access to justice for citizens of all the 54 State Parties to the Charter, and that no other African institution provides such continent-wide access to justice;

**Welcoming** the ongoing internal reforms process of the African Union (Union) which aims to enhance the overall efficiency of the Union and its Organs;

**Remaining deeply concerned** by Executive Council decision DOC.EX.CL/1089(XXXIII) on the Report on the Joint Retreat of the Permanent Representatives' Committee and the African Commission, which requests State Parties to conduct an analytical review of the interpretative mandate of the

Commission in the light of a similar mandate exercised by the African Court and the potential for conflicting jurisprudence;

**Convinced that** the on-going reforms process of the Union and any decisions of the Union's Policy Organs can strengthen the protective and interpretive functions of the Commission, as well as the overall human rights and governance framework on the continent;

**The Commission:**

1. **Reminds** State Parties of their cardinal obligation under the African Charter to give effect to the rights, freedoms and duties enshrined in the African Charter;
2. **Reiterates** that its interpretive mandate is inherent in its promotion and protection mandates as set out by the Charter;
3. **Further reiterates** that the protective mandate of the Commission applies universally across the continent and that it is contentious as well as non-contentious;
4. **Calls on** State Parties and the Union's Policy Organs to continue supporting the complimentary relationship between the African Commission and the African Court envisaged by the Court's Protocol and the Malabo Protocol, to ensure full access to justice for Africans;
5. **Calls on** State Parties to respect the normative standards and institutional frameworks established by the Charter, including by supporting the Commission which was established to promote, protect and interpret the rights in the Charter;
6. **Calls on** State Parties and Policy Organs of the Union to ensure that the on-going reforms process of the Union preserves and enhances the independent, distinct and specialized mandates of each Organ, while creating frameworks for improving their collaboration and effectiveness, to strengthen the overall human rights and governance framework on the continent; and
7. **Resolves** to continue engagements with all State Parties and the Union's Policy Organs in support of its protective and interpretive mandates.

**Done at the 63<sup>rd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, held from 24 October to 13 November 2018 in Banjul, The Gambia**

## **ACHPR/Res. 403 (LXIII) 2018: Resolution on the Need for a Study on the Situation of Africa's Sacred Natural Sites and Territories**

The African Commission on Human and Peoples' Rights (Commission), meeting at its 63rd Ordinary Session held from 24 October to 13 November 2018 in Banjul, Republic of The Gambia;

Recalling its mandate to promote and protect human and peoples' rights in Africa in accordance with the African Charter on Human and Peoples' Rights (African Charter);

Noting that Article 45(1)(a) of the African Charter gives the Commission the mandate to "collect documents, undertake studies and researches on African problems in the field of human and peoples' rights";

Further noting Article 24 of the African Charter that guarantees peoples rights to a general satisfactory environment favourable to their development;

Conscious of the regional and international commitments made by African states particularly under the 1968 African Convention on the Conservation of Nature and Natural Resources; and the 1976 Cultural Charter for Africa that, inter alia, provides for the enactment of national laws for the protection of African cultural heritage and property; the 2007 UN Declaration on the Rights of Indigenous Peoples'; 1992 Convention on Biological Diversity; and the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage;

Noting international treaties and policy instruments that support the protection of sacred natural sites, and the contribution these sites of ecological, cultural and spiritual importance can make to achieving the vision of an integrated, prosperous and peaceful Africa by 2063, Sustainable Development Goals, Aichi Biodiversity Targets, and the 2015 Paris Agreement on Climate Change;

Recalling its Resolution ACHPR/Res.372 (LX) 2017 on the Protection of Sacred Natural Sites and Territories, which calls on State Parties to recognise sacred natural sites and territories and their customary governance systems, as contributing to the protection of human and peoples' rights;

Recognising the critical role sacred natural sites play in the protection of African ecosystems and the realisation of African peoples' rights to economic, social and cultural development, and to a satisfactory environment favourable to their development;

Acknowledging that sacred natural sites are one of the oldest forms of culture-based conservation, contributing to connectivity, resilience and

adaptability of valuable landscapes and ecosystems, and having special spiritual significance to peoples and communities;

Aware that adequate recognition and respect for the intrinsic value of sacred natural sites in Africa will foster the vision of the Commission to eradicate the vestiges of colonialism and other systems of oppression, and to ensure the well-being of Africa's peoples and their heritages;

Concerned that sacred natural sites and territories have been significantly eroded during the past decades, and currently face dangers from climate change and environmentally damaging industrial activities and development projects;

Concerned that many governments do not have laws, policies or appropriate mechanisms to protect sacred natural sites and territories and comply with Resolution ACHPR/Res.372 (LX) 2017;

Decides:

I. To task the Working Group on Indigenous Populations/Communities to conduct a study on the situation of sacred natural sites, related customary governance systems, and the existing laws, policies and programmes in Africa;

II. That the Report and findings of the Study be submitted for consideration by the Commission within a period of 1 (one) year; and

III. To call on all stakeholders to support the work of the Working Group in undertaking the Study.

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

**ACHPR/Res. 404 (LXIII) 2018: Resolution on the Need to Conduct a Study on Violations of the Human Rights of Migrants**

The African Commission on Human and Peoples' Rights (Commission), meeting at its 63rd Ordinary Session held from 24 October to 13 November 2018 in Banjul, Republic of The Gambia;

Recalling its mandate to promote and protect human and peoples' rights in Africa under the African Charter on Human and Peoples' Rights (African Charter);

Considering Article 45(1) (a) of the African Charter which mandates the African Commission to "collect documents, undertake studies and researches on African problems in the field of human and peoples' rights";

Considering Article 12 of the African Charter which recognises, among others, the right of every individual to move freely in accordance with the laws;

Considering Article 5 of the African Charter which guarantees the right of every individual to dignity and the right not to be subjected to torture or cruel, inhuman or degrading treatment;

Considering Articles 6, 7, 14, 16, 17 and 18 of the African Charter which, respectively, guarantee the right to liberty and the security of persons, the right to a fair trial, the right to property, the right to enjoy the best attainable state of physical and mental health, the right to education, and the right to the protection of the family and vulnerable groups;

Conscious of the increasing number of migrants as a result of security, socio-political and economic crises;

Extremely concerned by the continuous serious human rights violations suffered by migrants in the course of their migration journey;

Underscoring the crucial role of law enforcement officers in the respect and protection of the rights of migrants;

Bearing in mind its Resolutions 114, 333, 317 and 398 in which the Commission emphasised the existence of serious violations of the human rights of migrants and the deteriorating situation of African migrants in the Mediterranean, and urged the relevant stakeholders to take the necessary measures to put an end to violations;

Concerned by the fact that vulnerable groups, including women and children, are more exposed to serious human rights violations in the course of their migration journey;

Determined to work effectively and on the basis of reliable information that reflects the realities on the ground;

Convinced of the need to increase awareness about the human rights violations suffered by migrants in the various regions of Africa in the

course of their migration journey and on their return, while paying particular attention to the role of law enforcement officers in the area of migration;

Further convinced that the preparation of a continental study on violations of the rights of migrants in Africa will help to improve the situation of their rights;

Conscious of the need, for practical reasons, for the field study to focus on violations of the rights of migrants in some countries that are representative of the various regions of Africa;

Recalling its Resolution ACHPR/Res. 379(LXI) 17 on the renewal of the mandate of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;

Recalling its Resolution ACHPR/Res. 378(LXI) 17 on the appointment of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa;

The African Commission:

- Decides to conduct a study on violations of the human rights of migrants;
- Decides to adopt a progressive approach in conducting the study;
- Decides that the study will be conducted by the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants and the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa;
- Calls upon state and non-state actors to contribute to the conduct of the study.

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