

Decision on the Report on the Joint Retreat of the Permanent Representatives' Committee (PRC) and the African Commission on Human and Peoples' Rights (ACHPR) – Doc.EX.CL/1089(XXXIII) I

The Executive Council,

1. RECALLS its Decision EX.CL/Dec.995 (XXXII) on the convening of a Joint Retreat between the Permanent Representatives' Committee (PRC) and the African Commission on Human and Peoples' Rights (ACHPR), to resolve various concerns expressed about the relationship between the ACHPR and the Policy Organs and Member States, and find modalities for enhanced coordination and collaboration between the ACHPR and the Policy Organs and Member States to improve their dialogue and resolve outstanding issues;
2. TAKES NOTE of the holding of the Joint PRC-ACHPR Retreat from 4 to 5 June 2018 in Nairobi, Kenya and EXPRESSES APPRECIATION to the Government of the Republic of Kenya for successfully hosting the Joint Retreat, in collaboration with the AU Commission and the ACHPR;
3. ENDORSES the outcome/recommendations of the Retreat;
4. AWARE of the critical need for the ACHPR and the State Parties through the PRC, to enhance confidence, trust and cooperation between the two organs for the benefit of the continent;
5. UNDERLINES that the independence enjoyed by ACHPR is of a functional nature and not independence from the same organs that created the body, while expressing caution on the tendency of the ACHPR acting as an appellate body, thereby undermining national legal systems;
6. DECIDES accordingly that:
 - i the work of the ACHPR should be aligned with the Constitutive Act, Agenda 2063, African Common Positions, institutional reform of the Union, and decisions of the policy organs taking into consideration the virtues of historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;
 - ii the PRC in collaboration with the AU Commission, should take necessary steps to regularize the status of the ACHPR as an Organ of the AU in line with Decision Assembly/AU/Dec.200 (XI) (Para 8); EX.CL/Dec.1015(XXXIII)

Page 2 33rd Ordinary Session, 28 – 29 June 2018, Nouakchott, MAURITANIA

- iii the PRC and the ACHPR should strengthen communication between them and AU Policy Organs to build greater synergy in the interest of promoting and protecting human rights on the continent;

7. REQUESTS the State Parties, in furtherance of the obligations under the Charter, to:

- i fully provide the ACHPR with both financial and human resources for it to discharge its mandate in accordance with the Constitutive Act and the pertinent decisions of the AU;
- ii take advantage of the various platforms to strengthen the dialogue, cooperation and collaboration between the ACHPR and AU policy organs;
- iii conduct an analytical review of the interpretative mandate of the ACHPR in the light of a similar mandate exercised by the African Court and the potential for conflicting jurisprudence;
- iv operationalize the PRC Sub-Committee on human rights, democracy and governance as previously approved by the Executive Council to follow up on implementation of the ACHPR's decisions and recommendations;
- v invite the ACHPR to conduct Promotion Missions in the respective Member States;
- vi expedite the process of harmonization of the emoluments of the members of the ACHPR in accordance with other AU Organs and institutions as part of the ongoing institutional reform of the Union; (vii) regularly submit their periodic reports to the ACHPR and participate more actively in the sessions of the ACHPR;

8. FURTHER REQUESTS the ACHPR, while underscoring the continued need for ACHPR to fulfil its core mandate of ensuring the promotion and protection of human and peoples' rights, to:

- i address the ambiguity of its status in its Rules of Procedure within the framework of its ongoing revision of these Rules;
- ii consult the Office of the Legal Counsel and other relevant legal bodies within the framework of formulating a code of conduct and the revision of the Rules of Procedure;
- iii pay equal attention to all rights as enshrined in the African Charter;
- iv submit to the policy organs for consideration and adoption the revised criteria for granting and withdrawing observer status for Non-Governmental Organizations (NGOs), which should be in line with the already existing criteria on the accreditation of NGOs to the AU, taking into account African values and traditions;
- v verify all allegations submitted to it and carry out due diligence with concerned State Parties before including such allegations in its activity reports to the Executive Council;

Decision on the Report on the Joint Retreat of the Permanent Representatives' Committee (PRC) and the African Commission on Human and Peoples' Rights (ACHPR) – Doc.EX.CL/1089(XXXIII) I

- vi develop clear Guidelines with regards to its engagement with external actors, in accordance with the relevant AU Rules, Regulations and practices;
- vii withdraw the accreditation of the Coalition for African Lesbians (CAL) NGO latest by 31st December 2018, in accordance with previous decisions of AU Policy Organs;
- viii observe confidentiality at all stages of the work of the ACHPR in line with Article 59 of the Charter;
- ix scrupulously implement provisions related to the conflict of interest in the execution of its functions;
- x strengthen collaboration with the Peace and Security Council (PSC) particularly within the context of promoting transitional justice.

9. URGES the AU human rights organs within the context of African Governance Architecture (AGA) to foster regular interactions towards strengthening collaboration and cooperation with the Policy Organs as a means to ensure a coordinated approach to guarantee human and peoples' rights in the continent;

10. REAFFIRMS that the ACHPR should primarily serve as an audit mechanism, but should be credible, focused and active in ensuring that human and peoples' rights of all Africans are promoted and protected;

11. REQUESTS the ACHPR to report on the implementation of this decision at the February 2019 Summit.