

ACHPR/Res.88(XXXVIII)05: 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;

1. **Calls on** all African States to take the necessary measures to reinforce their activities of cooperation in order to prevent and combat terrorism;
2. **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;
3. **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;

4. **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;
5. **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;
6. **Instructs** the Secretariat to follow-up and coordinate this activity.