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2021 AFRICA HUMAN RIGHTS DAY HIGH-LEVEL EVENT

**AFRICA HUMAN RIGHTS 40 YEARS AFTER ADOPTION OF THE AFRICAN
CHARTER ON HUMAN AND PEOPLES' RIGHTS**

21 OCTOBER 2021

**STATEMENT BY HON. LADY JUSTICE IMANI D ABOUD, PRESIDENT OF THE
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS, DELIVERED ON HER
BEHALF BY DR ROBERT ENO, REGISTRAR, AFRICAN COURT ON HUMAN
AND PEOPLES' RIGHTS**

[VIRTUAL]

[Salutations]

His Excellency, Mamadou Saliou Sow, Secretary of State at the Ministry of Justice in charge of the Promotion of Human Rights and Good Governance, Representing His Excellency Macky Sall, President of the Republic of Senegal (Guest of Honour)

Representatives of Member States of the African Union

Representative of the Chairperson of the African Union Commission, H.E. Mr Moussa Faki Mahamat

The Chairperson of the African Commission on Human and Peoples' Rights, Dr Solomon Dersso

The Chairperson of the African Committee of Experts on the Rights and Welfare of the Child, Hon. Joseph Ndayisenga

The Chairperson of the African Union Advisory Board on Corruption,

Representatives of Regional Economic Communities

Representatives of other AU Organs

The Acting Executive Secretary of the African Commission on Human and Peoples' Rights, Ms. Lindiwe Khumalo

Representatives of NHRIs, CSOs, the Academia, THE Media

Distinguished ladies and gentlemen

Last year, we celebrated African Human Rights Day under the theme "Africa Human Rights Day: Building Back Better". It was one of the most challenging year for promotion and protection of human rights as governments around the world experimented with measures to tackle the COVID-19 pandemic, some of the measures seriously undermining the enjoyment of basic rights and freedoms. The Chairperson of the Commission, Dr. Solomon Dersso noted that the pandemic "... disrupted the living of our societies with huge consequences. The Pandemic highlights pervasive poverty and inequalities", adding that "the virus exposed deep

structural weaknesses of the societies”. The then Commissioner for Political Affairs, H. E. Cessouma Minata Samate for her part noted that “the continent has displayed resilience and prevented the worst manifestation of the pandemic”.

This spirit of resilience is firmly embedded in our Africanness as demonstrated in our history. The same spirit of resilience is reflected throughout the preamble and body of the African Charter adopted 40 years ago. So, as we commemorate African Human Rights Day today, under the theme “Africa Human Rights – 40 years after the adoption of the African Charter on Human and Peoples’ Rights”, it is an opportunity to reflect on where we came from, where we are and where we are going to, in the promotion and protection of human and peoples’ rights on the continent.

I am thus particularly delighted to be part of today’s commemoration of both the 35th anniversary of the declaration of African Human Rights Day and the 40th anniversary of the adoption of the African Charter on Human and Peoples’ Rights (the Charter). This milestone is even more remarkable given the socio-economic and political transition that Africa has undergone since 1981 when the Charter was adopted, or even from 1986 when it entered into force, up to now. The fact that the Charter, on the one hand, remains a pivotal component of the African Human Rights System and, on the other hand, a beacon of global inspiration is testament to the intellectual investment and foresight of its framers as well as the versatility of its provisions.

Looked at from a historical perspective, the adoption of the Charter was a momentous occasion in the history of the Organisation of the African Unity (OAU). It should not be forgotten that at the time the OAU initiated processes towards the adoption of the Charter, much of Africa was still under authoritarian rule. Human rights, therefore, were not deemed a priority by many African States at the time. As a matter of fact, even at continental level, the Charter of the OAU itself did not explicitly make provision for human rights. It is fair, in the circumstances, to posit that the processes towards the adoption of the Charter proceeded in a context that was, generally, not very receptive to human rights. That notwithstanding, I believe the framers of the Charter scored a remarkable milestone with the adoption of the Charter. I wish not to belabour the point here, but simply to remind you distinguished participants that the text of the Charter stood quite apart from the other regional

human rights instruments already in place at the time of its adoption. For one, the Charter's provision for all the three generations of rights in one instrument, coming at a time when, globally, there was still contestation and debate about third generation rights, remains an enduring contribution from Africa towards the acceptability, not only of third generation rights, but also of the notion that human rights are interdependent and indivisible. The uniqueness of the Charter has been the subject of plenty scholarly analyses and like I pointed out earlier, I will not dwell on this save to point out that the Charter's place in global human history, as a pioneering human rights instrument, is unlikely to be ever taken away.

Distinguished participants, as I earlier alluded to, the Charter remains the central plank in the African Human Rights System. Two of the human rights supervisory institutions of the African Human Rights System, being the African Commission and the African Court owe their existence directly or indirectly to the Charter - The Commission 'directly' through the Charter and the Court 'indirectly' through a protocol to the Charter. In my view, it is again credit to the framers of the Charter that Article 66 was included in the Charter. This provision, as may be recalled, permits member states of the African Union to adopt additional protocols or agreements as may be necessary to supplement the provisions of the Charter. The foresight embedded in Article 66 of the Charter has permitted the African Union to respond to topical human rights issues that may not have been thoroughly addressed in the Charter. It is under the aegis of Article 66, for example, that separate protocols covering the rights of women; the rights of persons with disabilities; and also the rights of the elderly have been adopted. The additional protocols have served to enrich the human rights protective umbrella available on the continent. Just to note also that protocol establishing the Court has served to bolster the mechanism for promoting and protecting human rights on the continent. Overall, therefore, forty (40) years after its adoption the Charter remains as relevant and responsive to African challenges as it was when it was adopted.

Distinguished participants, in the same celebratory spirit, it would be remiss of me not to speak candidly to the question of the complementarity of African human rights

institutions. It is commonly accepted that the African Human Rights System has three supervisory institutions being the African Commission, the African Court and the Committee of Experts. A small note here, given the cross-cutting nature of human rights, it should also be accepted that other AU organs also do have roles in the promotion and protection of human rights except that the three earlier mentioned supervisory institutions perhaps have an exclusive and primary human rights focus.

A convenient starting point, in assessing the complementarity, is to note that the Court and the African Commission are, by design, built to be in a complementary relationship. The text of the Protocol, right from the Preamble, makes this very clear. Complementarity between the Court and the African Commission, therefore, is not optional. While others may argue that the Protocol is thin on the details in respect of the forms that this complementarity must take, I join with those that have argued that this lack of detail is a blessing in disguise since it gives both the African Commission and the Court, through their respective rules of procedure, room to configure complementarity in a fashion that works for the two institutions. Against this background, it is regrettable that the Commission and the Court have not made significant progress in terms of realising the complementarity envisaged in the Protocol. Admittedly, both institutions have recently revised their rules of procedures and with that attempted to clarify aspects of their complementarity but there is clearly more work to be done so as to give the complementarity full meaning.

At the moment, there is no statutory prescription suggesting complementarity among the Commission, the Court and the Committee of Experts on the Rights of the Child. Does this suggest, therefore that complementarity should be limited to the Commission and the Court? In my view, the three institutions are part of the same system which is administered under the African Union. I would contend, therefore, that a purposive interpretation of the various founding instruments, including the Charter, supports the conclusion that there must be complementarity among all AU human rights organs, not just the Court and the Commission. Given the prominence that the Constitutive Act of the AU places on human rights it is only natural, to conclude that all human rights institutions and AU organs and institutions with human

rights related mandates must work together towards the fulfilment of these goals. The Commission, the Court and the Committee of experts must, therefore, each contribute positively towards the realisation of complementarity. This would serve to support the broader continental human rights agenda – the attainment of which is a collective responsibility.

Distinguished participants and colleagues allow me to wind up with one or two observations about the Charter given the context that has been shaped by the Agenda 2063. In my view, the African Union's Agenda 2063 confirms rather than diminishes the continued relevance of the Charter in Africa's pursuit of its developmental agenda. This is all very clear from the overtly human rights language of the aspirations and priority areas identified in Agenda 2063. By way of illustration, achieving a prosperous Africa, based on inclusive growth and sustainable development and also realising good governance and democracy require, of necessity, progress in the promotion and protection of human rights. This intrinsic relationship between human rights, development and peace has been universally established. Kofi Annan noted *that "... development, security and human rights are not only ends in themselves - they reinforce each other, and depend on each other. In our interconnected world, the human family will not enjoy development without security, it will not enjoy security without development, and it will not enjoy either without respect for human rights..."*

There is therefore no way the aspirations of Agenda 2063 will be fulfilled in a context that does not respect, protect and fulfil human rights.

As we celebrate the Charter's 40th Anniversary, therefore, let us keep in mind that the Charter will remain a statutory beacon of hope for the full realisation of human rights on the African continent.

I thank you for your attention.