

THIRTEENTH ANNUAL ACTIVITY REPORT
OF THE AFRICAN COMMISSION ON HUMAN AND
PEOPLES' RIGHTS
1999 - 2000

I. Organisation of Work

A. Period covered by the Report.

1. The Twelfth annual activity report of the African Commission was adopted by the 35th Ordinary Session of the Assembly of Heads of State and Government of the Organisation of African Unity (OAU), convened from 12 to 14 July 1999 in Algiers, Algeria, by Decision AHG/Dec.215 (XXXV). The Thirteenth annual activity report covers the 26th and 27th Ordinary Sessions of the Commission, held respectively in Kigali, Rwanda, from 1 to 15 November 1999, and Algiers, Algeria from 27 April to 11 May 2000.

B. Status of Ratification.

2. All the OAU Member States have either ratified or acceded to the African Charter on Human and Peoples' Rights. Annex I contains the list of States Parties to the African Charter on Human and Peoples' Rights, stating, among other things, the dates of the signing, the ratification or accession as well as of the depositing of the instruments of ratification or accession with the Secretariat of the OAU.

C. Sessions and Agenda.

3. The Commission held two ordinary sessions since the adoption, in July 1999, of its Twelfth Annual Activity Report:
 - The 26th Ordinary Session held in Kigali, Rwanda, from 1 to 15 November 1999;
 - The 27th Ordinary Session held in Algiers, Algeria, from 27 April to 11 May 2000;

The Agenda of both Sessions is attached as Annex II to the present report.

D. Composition and Attendance.

4. The following members of the Commission participated in the deliberations of the 26th Session:
 - Prof. E.V.O. Dankwa
 - Mrs. Julienne Ondziel-Gnelenga
 - Professor Isaac Nguema;
 - Dr. Ibrahim Ali Badawi El-Sheikh;
 - Dr. Hatem Ben Salem;
 - Chairman;
 - Vice Chairperson;

- Mr. Kamel Rezag-Bara;
- Dr. Nyameko Barney Pityana;
- Mr. Andrew Ranganayi Chigovera;
- Mrs. Florence Butegwa;
- Mrs. Vera Mlangazuwa Chirwa; and
- Mrs. Jainaba Johm.

5. Delegates from the following States Parties participated in the deliberations of the 26th Session and some of them made statements: Burundi, Chad, Egypt, Eritrea, Ethiopia, Libya, Mali, Mauritania, Rwanda, South Africa, Sudan and Togo.

6. The following members of the Commission participated in the deliberations of the 27th Ordinary Session:

- Professor E.V.O. Dankwa - Chairman;
- Mrs. Julienne Ondziel-Gnelenga - Vice-Chairperson;
- Professor Isaac Nguema;
- Dr. Hatem Ben Salem;
- Mr. Kamel Rezag-Bara;
- Dr. Nyameko Barney Pityana;
- Mr. Andrew Ranganayi Chigovera;
- Mrs. Vera Mlangazuwa Chirwa; and
- Mrs. Jainaba Johm.

Commissioners Ibrahim Ali Badawi El-Sheikh and Florence Butegwa were absent, with apologies.

7. Delegates from the following States Parties participated in the deliberations of the 27th Ordinary Session and some of them made statements: Algeria, Angola, Benin, Burkina Faso, Burundi, Chad, Congo Brazzaville, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Gabon, Ghana, Libya, Mali, Mauritania, Namibia, Niger, Nigeria, Rwanda, South Africa, Sudan, Swaziland, Uganda and Zambia.

8. For the very first time, the Commission recorded the participation of 26 States Parties, with 57 delegates. It fully appreciates these new developments, which are both significant and encouraging.

9. The Secretary-General of the Organisation of African Unity (OAU), H.E. Dr. Salim Ahmed Salim, was represented by Ambassador Saïd Djinnit, OAU Assistant Secretary-General for Political Affairs.

10. Many African National Human Rights Institutions and non-Governmental Organisations (NGOs) also participated in the deliberations of the two Ordinary Sessions.

E. Adoption of the 13th Annual Activity Report

11. The Commission considered and adopted the Thirteenth Annual Activity Report at its sitting of 10 May 2000.

II. Activities of the Commission.

A. Consideration of Periodic Reports of States Parties.

12. Under article 62 of the African Charter on Human and Peoples' Rights, each State Party undertakes to submit every two years from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter.
13. It was within that framework that the initial Report of Mali was considered by the Commission at its 26th Session; the Commission expressed its satisfaction at the quality of the Report and thanked the Representative of Mali for the efforts that his Government had made in the field of human rights.
14. The periodic and initial reports of Rwanda, Uganda, Burundi, Libya, and Swaziland, were presented at the 27th Ordinary Session. The Commission thanked and commended the Delegates of the concerned States for their presentations and encouraged the said States to persist in their efforts, to make the fulfilment of their obligations under the Charter a tangible reality.
15. Ghana, Egypt, Benin and Namibia also submitted their reports, which will be considered at the 28th Session.
16. The Commission considers it important to state that this was the first time since its establishment that it received such a high number of States reports and warmly welcomes this.
17. The Initial Report of Seychelles, which was submitted on 21 September 1994, is still yet to be considered due to the absence of a delegate to present it. The Commission once again calls on this State Party to take the appropriate measures to present its report at the 28th Ordinary Session, which is due to take place in Cotonou, Benin, from 23 October to 6 November 2000.
18. The status of submission of periodic reports by the States is contained in Annex III to the present report.

19. The Commission strongly appeals to those States Parties that are still lagging behind to present such reports as soon as possible and if necessary to compile all their overdue reports into a single document.

B. Promotion Activities.

(i) Report of the Chairman of the Commission

20. The Chairman of the Commission presented his activity report, stating that he had participated in workshops, in particular that of the Lawyers Committee for Human Rights in Aburi, Ghana, from 28 November to 3 December 1999; on Health in African Prisons, held in Kampala, Uganda from 12 to 13 December 1999; and that he had undertaken a promotion mission to Ethiopia from 27 February to 4 March 2000. Taking advantage of his presence in Addis Ababa, he attended the 71st Ordinary Session of the Council of Ministers and met with the senior officials in the Legal, Accounts and Protocol Divisions, as well as the Secretary-General of the OAU himself.

21. He also mentioned that he chaired the meeting of the Working Group on the draft Additional Protocol to the African Charter on Women's Rights in Africa, held in Dakar, Senegal, from 14 to 15 June 1999.

(ii) Activities of other Members of the Commission.

22. All members of the Commission presented reports on human rights promotion and/or protection-related activities undertaken by them during the inter-session periods. Highlights of their reports include:

a) Mrs. Julienne Ondziel-Gnelenga, Vice-Chairperson of the Commission, participated in the 13th NGO workshop organised by the International Commission of Jurists, where she made a presentation on the rights of women in Africa. She also undertook promotion missions to Burundi and Rwanda. Following these missions, the Commission made the following recommendations:

- **On Burundi**

Restoration of peace to Burundi is a task that requires the involvement of all sons and daughters of our continent. Consequently, the negotiations that have been taking place in Arusha, Tanzania since 1997 are a challenge to all States Parties to the African Charter on Human and Peoples' Rights. In this regard, the African Commission on Human and Peoples' Rights, while fully appreciating the sacrifices made by Burundi's neighbouring countries in the management of the crisis facing that country, recommends to the Heads of State and Government of the Organisation of African Unity to appeal to the above-mentioned States to involve themselves fraternally, and deploying all means available to them, in the ongoing negotiations process with a view to a speedy restoration of lasting peace to that country.

- **On Rwanda**

The situation of detainees in Rwandan prisons is alarming, from all points of view and deserves special attention. The African Commission on Human and Peoples' Rights, after conducting a human rights promotion mission to the country hereby recommends to the Heads of State and Government of the Organisation of African Unity to take appropriate measures for the provision of assistance with a view to accelerating the hearing of the cases occasioned by the genocide perpetrated in Rwanda and to support the country's efforts especially those directed at improving the prison conditions of the detainees.

- b) Commissioner Kamel Rezag-Bara, among other things, participated in the meeting of Mediterranean National Institutions for human rights protection and promotion, from 3 to 5 June 1999 in Rabat, Morocco; attended the Seminar on Economic, Social and Cultural Rights held in Cairo, Egypt from 6 to 12 June 1999; the United Nations Human Rights Sub-Commission in Geneva, Switzerland from 12 to 17 July 1999; the Seminar on the Right to Fair Trial in Africa, in Dakar, Senegal from 9 to 11 September 1999; the meeting of the Coordinating Committee of African National Human Rights Institutions, in Algiers, Algeria from 26 to 28 October 1999; the 5th International Workshop of National Human Rights Institutions, in Rabat, Morocco from 13 to 15 April 2000; and the 56th Session of the United Nations Human Rights Commission in Geneva, Switzerland, from 17 to 21 April 2000. He also undertook a promotion mission to Djibouti in March 2000.
- c) Commissioner Vera Mlangazuwa Chirwa participated in the workshop organised by Penal Reform International in Malawi, in November 1999 where she gave a presentation on juvenile justice. She also undertook a promotion mission to Sierra Leone with the Chairman of the Commission in February 2000.
- d) Commissioner Isaac Nguema carried out research and engaged in teaching on human rights in the context of the traditional African society. He supervised research on human rights studies at the University of Gabon. He participated in the colloquium on the re-evaluation of the African renaissance, in Yaounde, Cameroun in September 1999; in the UNESCO seminars on the new concepts of the common heritage of mankind in July 1999; and in the seminar on the right to fair trial in Africa, in Dakar, Senegal from 9 to 11 September 1999. He led the OAU observer mission to the Senegalese presidential elections in February-March 2000.
- e) Commissioner Ibrahim Ali Badawi El-Sheikh made a presentation at the Dakar, Senegal, Seminar on the Right to Fair Trial in Africa, and published press articles on human rights.
- f) Commissioner Jainaba Johm granted interviews to the press in The Gambia, where she also participated in the organisation of a workshop on human rights and humanitarian law. She participated in the meeting on racism, racial discrimination, xenophobia and related intolerance in Geneva, Switzerland from 6 to 10 December 1999, as well as in the OAU/UNHCR meeting of government and non-governmental experts marking the 30th anniversary of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, held in Conakry, Guinea from 27 to 29 March 2000.

- g) Commissioner Barney N. Pityana, among other things, undertook a promotion mission to Lesotho and participated in the conference on the rule of law in Africa at the University of Illinois, Urbana-Champaign in June 1999. He also participated in a round-table marking the 30th anniversary of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, in August 1999, in Mbabane, Swaziland, and facilitated a session on the African Charter on Human and Peoples' Rights at the International Training Course on Human Rights and Indigenous Peoples Policy in Africa, in Arusha, Tanzania on 17 September 1999. He participated in a seminar organised by UNDP in Windhoek, Namibia, from 9 to 11 October 1999 on the integration of human rights into their field activities, and participated as an Expert in two seminars organised by the United Nations High Commissioner for Human Rights in the framework of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, respectively in December 1999 and February 2000, in Geneva, Switzerland. He also participated in the OAU/UNHCR meeting marking the 30th anniversary of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, held in Conakry, Guinea from 27 to 29 March 2000. He published press articles on human rights both in 1999 and 2000.

C. Activities of the Special Rapporteurs.

(i) Report of the Special Rapporteur on Extra-judicial, Summary and Arbitrary Executions in Africa

23. Commissioner Mohamed Hatem Ben Salem, Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions informed the Commission that his mission requires support to enable him go on field visits to countries where there have been allegations of extra-judicial executions. He drew attention to the sustained assistance of the Institute for Human Rights and Development, an NGO that has been working in collaboration with him, and the desire expressed by other NGOs to also join the network.
24. He also pointed out that he had received information on extra-judicial executions that allegedly took place in Burundi, Democratic Republic of Congo and Rwanda, and that the communications received from Chad were disturbing and that he thus had the intention to undertake a mission for the verification of the allegations. He drew attention to the urgent need to sensitise States Parties on the importance of responding to his correspondence and collaborating towards the success of his mission.
25. Some delegations called on the Special Rapporteur to meticulously verify the allegations reported to him and, if possible, to undertake field missions and meet with the competent authorities of the concerned States Parties.

ii) Report of the Special Rapporteur on Prisons and Prison Conditions in Africa

26. Chairman E.V.O. Dankwa, Special Rapporteur on Prisons and Conditions of Detention in Africa, informed the Commission that reports on his missions to Mali and The Gambia had been published and that the manuscript of the report on prisons in Benin was ready.

27. He also informed the Commission that he had visited various prisons in Paris, France and held meetings with NGOs working with Penal Reform International, Amnesty International, ACAT, etc...

iii) Report of the Special Rapporteur on the Rights of Women in Africa

28. Barrister Julienne Ondziel-Gnelenga, Vice Chairperson of the African Commission and Special Rapporteur on the Rights of Women in Africa, informed the Commission that the draft protocol on women's rights in Africa as adopted by the 26th Ordinary Session of the Commission, had been forwarded to the Secretariat General by the Chairman of the Commission for continuation of the process of its preparation and adoption by the competent bodies of the OAU.
29. She also presented a report on activities undertaken in the framework of her mandate. In particular, she related her contacts with various partners working in the field of women's rights or having an interest in the issue, for mobilisation of resources necessary for the fulfilment of her mandate.

D. Preparation of the Draft Additional Protocol to the African Charter on Women's Rights in Africa.

30. The Special Rapporteur on the Rights of Women in Africa indicated that following the transmittal of the Draft Protocol on Women's Rights in Africa to the Secretariat General of the OAU, an NGO, Inter-African Committee on Traditional Practices with a Harmful Effect on the Health of Women and the Girl Child, presented to the OAU a draft Convention on the Elimination of all Forms of Harmful Practices Affecting the Fundamental Rights of Women and Girls.
31. The OAU Women's Unit had also prepared a contribution to the said draft protocol.
32. On receipt of the Draft Convention of the Inter-African Committee, the Secretariat-General wrote to the African Commission, forwarding the said document as well as the contribution of the Women's Unit, and requesting the Commission to incorporate the draft convention in the Draft Protocol, to make a single document.
33. At the 27th Session, the Commission considered the request of the Secretariat-General and was of the view that it was not possible to restart the work it had already done and concluded in conformity with its mandate and whose results it had already transmitted to the Secretariat. It therefore decided to suggest to the Secretariat-General that the Draft Protocol should be presented as soon as possible to the Inter-Governmental Experts with all other contributions already received or that may be received.

E. Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Creation of the African Court on Human and Peoples Rights.

34. At its 26th Ordinary Session, the Commission pondered on a strategy for quick ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Creation of the African Court on Human and Peoples' Rights. It decided, in particular, to carry out sensitisation, through the media, on the importance of the protocol and the need to ratify it with minimum delay. Members of the Commission were also requested to do all in their power to bring about the ratification by their respective countries, the countries covered by them, and neighbouring countries in their region. NGOs were also requested to get more involved in this campaign for rapid ratification of the said protocol.
35. At the 27th Ordinary Session, the Commission noted that up till then there were only three ratifications of the protocol – by Senegal, Burkina Faso and The Gambia.
36. The Commission reiterated the decision taken at its 26th Ordinary Session on this matter.

F. Seminars and Conferences.

37. The Commission was represented at the following Meetings, Seminars and Conferences:
- Meeting of Experts organised by the OAU and UNHCR on the 30th anniversary of the OAU Convention Governing Specific Aspects of the Problems of Refugees, Displaced People and Asylum Seekers, from 27 to 29 March 2000, in Conakry, Guinea;
 - 56th Session of the United Nations Human Rights Commission, in Geneva, from 17 to 21 April 2000;
 - Seminar on the Right to Fair Trial, in Dakar, Senegal, from 9 to 11 September 1999;
 - Workshop on Juvenile Justice in Malawi in November 1999;

G. Future Seminars and Conferences.

38. The Commission decided to organise seminars and conferences on the following topics:
- a) Contemporary Forms of Slavery in Africa;
 - b) The Right to Education;
 - c) Freedom of Movement and the Right to Asylum in Africa;
 - d) The Rights of Handicapped People in Africa;
 - e) Economical, Social and Cultural Rights in Africa;

39. The Commission solicited the contribution of States Parties, International Organisations, National Human Rights Institutions and NGOs to the organisation of the above-mentioned seminars and conferences and designated Commissioners to oversee the organisation of the said events.

III. Missions to States Parties.

40. Members of the Commission undertook human rights promotion and/or protection missions to the following States Parties:

- a) Burundi;
- b) Rwanda;
- c) Djibouti;
- d) Ethiopia;
- e) Uganda; and
- f) Sierra-Leone

41. The relevant mission reports were presented to the 27th Ordinary Session, held in Algiers.
42. In conformity with its mandate, the Commission intends to continue to deploy missions to States Parties and would like to count on the cooperation of the States Parties to be visited, whose assistance is indispensable to the smooth conduct and success of the work to be carried out.

IV. Adoption of Resolutions

43. The Commission adopted the following resolutions at its 26th Session:

- ✓ Resolution on the human rights situation in Africa;
- ✓ Resolution on capital punishment;
- ✓ Resolution on the right to fair trial and legal aid in Africa;
- ✓ Resolution on the commemoration of the 30th Anniversary of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

44. At its 27th session, it adopted the following resolutions:

- ✓ Resolution on the peace process in the Democratic Republic of Congo;
- ✓ Resolution on the peace and national reconciliation process in Somalia;
- ✓ Resolution on Western Sahara.

These resolutions are attached as Annex IV.

V. Relations with Observers

45. In furtherance of the effort to coordinate their activities in Africa, and to better contribute to the work of the African Commission, the NGOs organised forums preparatory to the 26th and 27th Ordinary Sessions of the African Commission, held in Kigali, Rwanda, from 1 to 15 November 1999, and Algiers, Algeria, from 27 April to 11 May 2000.
46. These forums were organised at the initiative of and under the coordination of the International Commission of Jurists, and the African Centre for Democracy and Human Rights Studies, in conjunction with the National Human Rights Observatory in the case of the latter one.

47. At these two forums, the NGOs, among other things, recommended to the African Commission on Human and Peoples' Rights to engage in deep reflection on the following subjects:

- Improvement of the working methodology of the Commission, to enhance its efficacy, particularly as regards promotion and protection;
- The reinforcement of the African mechanism for the prevention, management and resolution of conflicts in Africa;
- The establishment within the African Commission on Human and Peoples' Rights of an early warning and rapid intervention mechanism in cases of massive violations of Human Rights;
- The protection of refugees and the guarantee of their rights;
- The intensification of the fight against extreme poverty and illiteracy, which are major sources of human rights violations in Africa;
- Alleviation of the debt burden;
- A campaign against impunity;
- Acceleration of the process of ratification of the Protocol to the African Charter on Human and Peoples' Rights on the creation of the African Court on Human and Peoples' Rights;
- Urging Member States to:
 - unreservedly ratify the Convention on the Elimination of all Forms of Discrimination Against Women and the relevant Optional Protocol; the United Nations Convention on the Rights of the Child; and the African Charter on the Rights and Welfare of the Child;
 - speed up the process of adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
 - support all efforts for the successful conduct of the World Conference on Racism, due to be held in September 2001, in South Africa, especially through the organisation of an African preparatory conference.

48. The Commission took due note of the recommendations and commended the NGOs for the quality of their contribution to its deliberations;

49. For the first time ever, the Commission granted affiliate status to the following African National Human Rights Institutions that had applied for such status:

- 1) National Human Rights Observatory – ONDH (Algiers, Algeria);
- 2) National Human Rights Commission (Kigali, Rwanda);
- 3) National Human Rights Commission (Malawi).

50. The Commission granted observer status to the following NGOs:

- 1) Institute for Human Rights and Development (Banjul, The Gambia);
- 2) Djiboutian Human Rights League (Djibouti);
- 3) Federation of Women's Associations and NGOs of Burundi (Bujumbura, Burundi);
- 4) Burundian Human Rights League – ITEKA (Bujumbura, Burundi);
- 5) Tunisian Association for Children's Rights – ATUDE (Tunis, Tunisia);
- 6) Alliances for Africa (London, United Kingdom).

51. The Commission reiterates its appeal to States Parties that have yet to do so to set up their National Human Rights Institutions.

VI. Protection Activities

52. A total of 151 complaints, including 6 new ones were tabled before the Commission during its 26th and 27th Ordinary Sessions. It examined 130 communications, of which 53 received a final decision. The decisions relating thereto are contained in Annex V.

VII. Administrative and Financial Matters.

53. The African Commission was briefed by the Secretary at the 26th and 27th sessions of the Commission on the new structure of the Secretariat, the additional budget appropriation for promotion activities and the operating funds for members of the Commission, the plan for the reorganisation of the work of members of the Commission and the Secretariat, as well as the démarches being undertaken with partners for the mobilisation of resources for the implementation of activities included in the strategic plan for the period 2000-2002, which was adopted at the 26th session.

54. The African Commission welcomed the additional means provided for its use by the deliberative bodies of the mother Organisation. While it fully appreciates the efforts of the Secretariat-General to improve its working conditions, the Commission would like to appeal to the competent bodies of the OAU to take due account of the vital needs in the area of personnel in the process of restructuring the Secretariat of the Commission. It is essential for the Commission to have a Documentation Centre and a sufficient number of Legal Officers. The current structure, unfortunately, makes no provision for the post of Documentalist, whose creation had been an established principle since 1997; only one additional post of Legal Officer has been created (making a total of two posts of Legal

Officer) while the current volume of work of the Commission demands at least six Legal Officers.

55. Furthermore, the Commission would like to highlight the readiness of its partners to finance its activities that are not covered by the ordinary budget. To this end, the Commission's partners, at meetings held from 11 to 13 January and on 7 September 1999, respectively at Lund, Sweden, and Copenhagen, Denmark, at the initiative of SIDA and the Danish Centre for Human Rights, catalogued the Commission's priority needs and agreed on modalities for the mobilisation of the necessary resources. The Danish Centre for Human Rights was designated to coordinate the mobilisation. The process of allocation of the resources is quite advanced among some partners; with others the bureaucratic procedures are rather involved and the procedure could still take a few months.

56. For the moment, the Commission enjoys diversified support and cooperation from the following organisations and institutions:

1. Assistance from the Danish Centre for Human Rights:

57. The working conditions of the Secretariat of the Commission have improved remarkably thanks to the assistance of the Danish Centre for Human Rights, which has enabled the hiring of supplementary staff (*two Legal Officers, one Documentalist, one Press and Information Officer, one Administrative Officer and one Accounts Assistant*), the acquisition of computer equipment and documents for the Library, and the funding of promotion activities such as the production of documents, field missions by members of the Commission and training attachments for the staff. The Danish Centre for Human Rights has assisted the Secretariat in the planning of its activities and those of the Commissioners over a period of three years (2000-2002), as well as the mobilisation of resources for the implementation of these activities. The strategic plan prepared in this connection was adopted by the Commission at its 26th session.

2. Assistance from the African Society of International and Comparative Law:

58. With the assistance of the African Society for International and Comparative Law, the Secretariat enjoys the services of three Legal Officers for a period of one year, renewable. Publication of the Review of the Commission is also achieved with the technical assistance of the Society, which has assumed responsibility for its printing and distribution. The African Society has provided the Secretariat with the computers and printers utilised by the above-mentioned Legal Officers.

3. Assistance from Raoul Wallenberg Institute

59. The grant provided by the Swedish government through the Raoul Wallenberg Institute has covered the publication of the Review of the Commission to date. Promotion missions to States Parties have also been funded through this grant, supplementing the available budget. Within the framework of the above-mentioned strategic plan, it was decided that the Swedish funds would be directly managed by the Secretariat of the Commission,

leaving Raoul Wallenberg Institute to focus on cooperation of a scientific and technical nature with the Commission.

4. International Commission of Jurists (ICJ):

60. ICJ continues to provide its support to the Commission in the execution of a variety of activities, such as the preparation of the draft protocol on the rights of women, the study on strategies for rapid ratification of the Protocol on the African Court on Human and Peoples' Rights, support to the Special Rapporteur on Women's Rights, mobilisation for the coordination of the activities of NGOs with observer status with the African Commission, organisation of NGO forums in preparation for their contribution to the work of the Commission, etc.

5. Assistance from the European Union:

61. The European Union is determined to continue its support to the African Commission. A meeting was held on 31 March 2000 in Brussels between senior officials from both institutions. Consideration of the requests presented by the African Commission is ongoing.

6. Assistance from the United Nations High Commissioner for Human Rights:

62. The Office of the United Nations High Commissioner for Human Rights, which funded the preparation of the draft protocol on women's rights in Africa, the organisation of the Seminar on the Right to Fair Trial in Africa, and the preparation of the Human Rights training manual, has offered to fund other activities of the Commission, including:
- Preparations for the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance;
 - The activities of the Special Rapporteur on Women's Rights in Africa, and the preparation of the Draft Protocol on Women's Rights in Africa;
 - Sub-regional seminars on drawing up of National Plans for the promotion and protection of human rights;
 - The creation of a rapid intervention mechanism in cases of massive violations of human rights;
 - Follow-up activities to the Dakar seminar on the Right to Fair Trial and Legal Aid in Africa.

7. Assistance from Friedrich Naumann Foundation:

63. Friedrich Naumann Foundation continues to make resource-mobilisation contacts on behalf of the Commission, especially with the European Union and other European partners.

8. African Centre for Democracy and Human Rights Studies

64. The Commission has enjoyed the cooperation of the African Centre, in the preparation of the Draft Protocol on Women's Rights in Africa. Both organisations also cooperated, in close collaboration with the National Human Rights Observatory (Algeria), in the organisation and conduct of the NGO forum that preceded the 27th Ordinary Session of the Commission. The African Centre has offered to co-organise with the Commission a seminar on the Right to Education. Consultations on other matters pertaining to the promotion and protection of human rights have also been maintained.

9. Other Partners:

65. The Commission enjoys many-formed assistance from other African and non-African partners. New partners are joining the list of faithful friends of the Commission.

66. During its 26th Ordinary Session, the African Commission had consultations with officials of the United Nations High Commissioner for Refugees on cooperation between the two institutions for enhanced protection of the rights of refugees in Africa. The contacts are continuing, with a view to putting together a framework for the planned cooperation, and this is being done in collaboration with the OAU Refugee Bureau.

67. The Registrar of the International Penal Tribunal for Rwanda sent a message to the Commission during its 26th Session in Kigali. The Registrar emphasised the similarities between the two institutions' mandates as regards the promotion and protection of human and peoples' rights in Africa. He highlighted the complementary nature of both institutions' missions and the need for the two to cooperate closely in the execution of these mandates.

68. The Commission shares the analysis and point of view of the IPTR Registrar on this subject. Consultations have been initiated to consider and outline the modalities for the proposed cooperation.

69. The Commission plans, in accordance with article 45 of the African Charter on Human and Peoples' Rights, to intensify the existing cooperation with other organisations and to initiate such relations with new partners working in fields of common interest.

VIII. Adoption of the Report by the Assembly of Heads of State and Government of the OAU.

70. The Assembly of Heads of State and Government of the OAU, after due consideration, adopted the present report by a resolution in which it expressed its satisfaction at the Report and authorised its publication.

List of Annexures

- Annex I List of countries who have signed, ratified/adhered to the African Charter on Human and Peoples' Rights
- Annex II Agenda of the 26th Ordinary Session (1-15 November 1999, Kigali, Rwanda)
- Agenda of the 27th Ordinary Session (27 April - 11 May 2000, Algiers, Algeria)
- Annex III Status of Submission of State Periodic Reports to the African Commission on Human and Peoples' Rights (as at 30 March 2000)
- Annex IV Resolutions adopted during the 26th and 27th Ordinary Sessions
- Annex V Decisions on Communications brought before the Commission

Annex I

**List of Countries that have signed, ratified/acceded to the African
Charter on Human and Peoples' Rights
(as at 31 March 1999)**

**LIST OF COUNTRIES WHO HAVE SIGNED, RATIFIED/ADHERED TO
THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

(as at 31st March 1999)

No.	Country	Date of signature	Date of Ratification/ accession	Date deposited
1.	Algeria	10/04/86	01/03/87	20/03/87
2.	Angola		02/03/90	09/10/90
3.	Benin		20/01/86	25/02/86
4.	Botswana		17/07/86	22/07/86
5.	Burkina Faso	05/03/84	06/07/84	21/09/84
6.	Burundi		28/07/89	30/08/89
7.	Cameroon	23/07/87	20/06/89	18/09/89
8.	Cape Verde	31/03/86	02/06/87	06/08/87
9.	Central African Republic		26/04/86	27/07/86
10.	Comoros		01/06/86	18/07/86
11.	Congo	27/11/81	09/12/82	17/01/83
12.	Congo (RD)	23/07/87	20/07/87	28/07/87
13.	Côte d'Ivoire		06/01/92	31/03/92
14.	Djibouti	20/12/91	11/11/91	20/12/91
15.	Egypt	16/11/81	20/03/84	03/04/84
16.	Equatorial Guinea	18/08/86	07/04/86	18/08/86
17.	Eritrea		14/01/99	15/03/99
18.	Ethiopia		15/06/98	22/06/98
19.	Gabon	26/02/82	20/02/86	26/06/86
20.	Gambia	11/02/83	08/06/83	13/06/83
21.	Ghana		24/01/89	01/03/89
22.	Guinea	09/12/81	16/02/82	13/05/82
23.	Guinea Bissau		04/12/85	06/03/86
24.	Kenya		23/01/92	10/02/92
25.	Lesotho	07/03/84	10/02/92	27/02/92
26.	Liberia	31/01/83	04/08/82	29/12/82
27.	Libya	30/05/85	19/07/86	26/03/87
28.	Madagascar		09/03/92	19/03/92
29.	Malawi	23/02/90	17/11/89	23/02/90
30.	Mali	13/11/81	21/12/81	22/01/82
31.	Mauritania	25/02/82	14/06/86	26/06/86
32.	Mauritius	27/02/92	19/06/92	01/07/92
33.	Mozambique		22/02/89	07/03/90
34.	Namibia		30/07/92	16/09/92

35.	Niger	09/07/86	15/07/86	21/07/86
36.	Nigeria	31/08/82	22/06/83	22/07/83
37.	Uganda	18/08/86	10/05/86	27/05/86
38.	Rwanda	11/11/81	15/07/83	22/07/83
39.	Sahrawi Arab Democratic Republic	10/04/86	02/05/86	23/05/86
40.	Sao Tome & Principe		23/05/86	28/07/86
41.	Senegal	23/09/81	13/08/82	25/10/82
42.	Seychelles		13/04/92	30/04/92
43.	Sierra Leone	27/08/81	21/09/83	27/01/84
44.	Somalia	26/02/82	31/07/85	20/03/86
45.	South Africa	09/07/96	09/07/96	09/07/96
46.	Sudan	03/09/82	18/02/86	11/03/86
47.	Swaziland		15/09/95	09/10/95
48.	Tanzania	31/05/82	18/02/84	09/03/84
49.	Chad	29/05/86	09/10/86	11/11/86
50.	Togo	26/02/82	05/11/82	22/11/82
51.	Tunisia		16/03/83	22/04/83
52.	Zambia	17/01/83	10/01/84	02/02/84
53.	Zimbabwe	20/02/86	30/05/86	12/06/86

ADOPTED: - by the eighteenth session of the Assembly of Heads of State and Government, June 1981.

REQUIRES: - ratification/adherence of a simple majority of Member States to come into force.

ENTERED - into force on 21st October, 1986.

Registered with the United Nations on 10/09/1991, No. 26363.

Annex II

**Agenda of the Twenty-sixth Ordinary Session
(Kigali, Rwanda, 1-15 November 1999)**

**Agenda of the Twenty-seventh Ordinary Session
(Algiers, Algeria, 27 April - 11 May 2000)**

**African Commission on Human
& Peoples' Rights**

**Kairaba Avenue
P.O. Box 673
BANJUL, The Gambia**



OUA - OUA

**Commission Africaine des Droit
de l'Homme et des Peuples**

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**26th Ordinary Session
1-15 November 1999
Kigali, Rwanda**

**Distribution:
General**

**DOC/OS(XXVI)/112/Rev.7
Original: FRENCH
ENGLISH**

AGENDA

1. Opening Ceremony (public session)
2. Oath by the newly elected members of the Commission (public session)
3. Election of the Chairperson and Vice-Chairperson (private session)
4. Adoption of the Agenda (private session)
5. Organisation of work (private session)
6. Observers : (public session)
 - a. Statements by State Delegates, NGOs and guests.
 - b. Co-operation between the Commission and the National Human Rights Institutions.
 - c. Examination of applications for observer status
7. Consideration of Initial Reports (public session) :
 - i) Seychelles
 - ii) Mali
8. The setting up of an Early intervention Mechanism in cases of massive human rights violations (public session)
9. Promotional Activities (public session).
 - a. Activity report of the Members of the Commission.
 - b. Examination of the report of the Special Rapporteur on summary, arbitrary and extra-judicial executions.

- c. Examination of the report of the Special Rapporteur on prisons and conditions of detention in Africa.
 - d. Examination of the report of the Special Rapporteur on the rights of women in Africa.
 - e. Discussion on the Draft Protocol to the African Charter on the Rights of Women (private session).
 - f. Strategy for a quick ratification of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights.
 - g. Situation of people with disability.
 - h. Organisation of Seminars and Conferences.
 - i. Human Rights situation in Africa.
 - j. Situation of indigenous people.
 - k. World Conference on racism.
 - l. Situation of Human Rights defenders in Africa.
 - m. The humanitarian dimension of armed conflicts in Africa.
 - n. Situation of refugees and displaced persons and human rights in Africa
 - o. Promotion of human rights through teaching materials on human rights.
10. Methods of work of the Commission (private session).
 11. Evaluation and Implementation of the Mauritius Plan of Action and the role of the African Commission on Human and People's Rights in the implementation of the Declaration and Plan of Action of the Grand Baie (Mauritius) (public session).
 12. Review of some provisions of the African Charter in the light of the Protocol establishing the African Court on Human and Peoples' Rights (private session).
 13. Review and Newsletter of the African Commission on Human and Peoples' Rights (public session).
 14. Protective Activities (private session):
Consideration of communications
 15. Administrative and financial matters (private session)
 - a. Introductory note of the Secretary on the Activities of the Commission (public session)
 - b. Financial and administrative situation of the Secretariat
 - c. Geographical Distribution of Member States among Commissioners for Promotional Activities
 - d. The issue of the construction of the headquarters
 - e. Participation of the Commission in certain activities of the OAU
 16. Logo of the Commission (private session).
 17. Adoption of the report of the 25th session of the African Commission (private session).
 18. Adoption of resolutions, recommendations and decisions (private session).
 19. Dates, venue and provisional Agenda for the 27th ordinary session (private session).
 20. Any other business (private session).

21. Preparation of :
 - a. The session Report
 - b. The Final Communiqué
22. Adoption of the Session Report and the Final Communiqué (private session).
23. Reading of the Final Communiqué and Closing ceremony (public session).
24. Press Conference.

*African Commission on Human
& Peoples' Rights*

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*Commission Africaine des
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**27th Ordinary Session
27 April - 11 May 2000
Algiers, Algeria**

**Distribution: General
DOC/OS(XXVII)/149a
Original: FRENCH
ENGLISH**

AGENDA

1. Opening Ceremony (public session)
2. Adoption of the Agenda (private session)
3. Organisation of work (private session)
4. Adoption of the report of the 25th session (private session)
5. Adoption of the report of the 26th session (private session)
6. Observers: (public session)
 - a. Statements by State Delegates and guests
 - b. Co-operation between the Commission and the National Human Rights Institutions
 - c. Examination of Affiliate status
 - d. Relationship and co-operation between the Commission and NGOs
 - e. Examination of applications for observer status
7. Consideration of initial and periodic Reports (public session):
 - a) Initial Report of Swaziland
 - b) Periodic Report of Libya
 - c) Initial Report of Burundi
 - d) Periodic Report of Ghana
 - e) Periodic Report of Rwanda
8. The setting up of an Early intervention Mechanism in cases of massive human rights violations (public session)
9. Promotional Activities (public session)
 - a) Human Rights situation in Africa
 - b) Activity report of the Chairman and the Members of the Commission

- c) Examination of the report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions
 - d) Examination of the report of the Special Rapporteur on Prisons and Conditions of Detention in Africa
 - e) Examination of the report of the Special Rapporteur on the Rights of Women in Africa
 - f) The Drafting process of the Draft Protocol on the Rights of Women in Africa
 - g) Strategy for a quick ratification of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights
 - h) Situation of refugees and displaced persons in Africa
 - i) Situation of people with disability
 - j) Organisation of Seminars and Conferences
 - k) Situation of indigenous people
 - l) World Conference on racism
 - m) Situation of Human Rights defenders in Africa
10. Review of some provisions of the African Charter in the light of the Protocol establishing the African Court on Human and Peoples' Rights (private session)
 11. Review and Newsletter of the African Commission on Human and Peoples' Rights (public session)
 12. Protective Activities (private session): Consideration of communications
 13. Administrative and financial matters (private session)
 - a. Financial and administrative matters (private session)
 - b. The issue of the construction of the headquarters
 - c. Participation of the Commission in certain activities of the OAU
 14. Methods of work of the Commission : Functioning system of the Special Rapporteurs of the Commission (private session)
 15. Logo of the Commission (private session)
 16. Adoption of Resolutions, Recommendations and decisions of the 27th Session (private session)
 17. Dates, venue and provisional Agenda for the 28th ordinary session (private session)
 18. Any other business (private session)
 19. Preparation of :
 - a. The Session Report
 - b. The Final Communique
 - c. The 13th Annual Activity Report
 20. Adoption of the Session Report, the Final Communique and the Annual Activity report (private session)

21. Reading of the Final Communique and Closing ceremony (public session)
21. Press Conference.

Annex III

Status of Submission of Periodic Reports to the African Commission on
Human and Peoples' Rights (as at 30 March 2000)

*African Commission on Human &
Peoples' Rights*

*Kairaba Avenue
P.O. Box 673
BANJUL, The Gambia*



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OAU - OUA

STATUS ON SUBMISSION OF STATE PERIODIC REPORTS TO THE AFRICAN COMMISSION ON HUMAN & PEOPLES' RIGHTS* (as at 30/03/00)

NAME OF COUNTRIES	DATE OF RATIFICATION OF THE CHARTER	DATE WHEN THE REPORTS ARE DUE	DATE OF SUBMISSION OF THE REPORTS	DATE OF CONSIDERATION OF THE REPORTS
1. ALGERIA	01/03/1987	1 st Report 01/03/1989 2 nd Report 01/03/1991 3 rd Report 01/03/1993 4th Report 01/03/1998 5th Report 01/03/2000	1 st Report October 1995 <i>(combining the 1989-1995 overdue Reports)</i>	April 1996 19 th Ordinary Session
2. ANGOLA	02/03/1990	1 st Report 02/03/1992 2 nd Report 02/03/1994 3 rd Report 02/03/1996 4th Report 02/03/2000	1 st Report October 1998 <i>(combining the 1992-1998 overdue Reports)</i>	October 1998 24 th Ordinary Session
3. BENIN	20/01/1986	1 st Report 20/01/1988 2 nd Report 20/01/1990 3 rd Report 20/01/1992 4th Report 20/01/1996 5th Report 20/01/1998	1 st Report February 1993 2 nd Report May 2000 <i>(combining the overdue since 1996)</i>	October 1994 16 th Ordinary Session <i>Scheduled for consideration at the 28th Ordinary Session</i>

4. BOTSWANA	17/07/1986	<i>1st Report 17/07/1988</i> <i>2nd Report 17/07/1990</i> <i>3rd Report 17/07/1992</i> <i>4th Report 17/07/1994</i> <i>5th Report 17/07/1996</i> <i>6th Report 17/07/1998</i> <i>7th Report 17/07/2000</i>		
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- The overdue reports are put into italic and bold. Since the Note Verbale ACHPR/PR/A046 of 30 November 1995, several reports can be combined into one report.

5. BURKINA FASO	06/07/1984	1 st Report 06/07/1988 2 nd Report 06/07/1990 3 rd Report 06/07/1992 4 th Report 06/07/1994 5 th Report 06/07/1996 6 th Report 06/07/1998 7 th Report 06/07/2001	1 st Report October 1998 <i>(combining the 1988-1999 overdue Reports)</i>	May 1999 25 th Ordinary Session
6. BURUNDI	28/07/1989	1 st Report 28/07/1991 2 nd Report 28/07/1993 3 rd Report 28/07/1995 4 th Report 28/07/1997 5 th Report 28/07/1999 6 th Report 28/07/2002	1 st Report March 2000 <i>(combining the 1991 to 1999 overdue Reports)</i>	May 2000 27 th Ordinary Session
7. CAMEROON	20/06/1989	<i>1st Report 20/06/1991</i> <i>2nd Report 20/06/1993</i> <i>3rd Report 20/06/1995</i> <i>4th Report 20/06/1997</i> <i>5th Report 20/06/1999</i> 6 th Report 20/06/2001		

8. CAPE VERDE	02/06/1987	1 st Report 02/06/1989 2 nd Report 02/06/1991 3 rd Report 02/06/1993 4 th Report 02/06/1995 5th Report 02/06/1998 6 th Report 02/06/2000 7 th Report 02/06/2002	1st Report February 1992	October 1996 20 th Ordinary Session
9. CENTRAL AFRICAN REPUBLIC	26/04/1986	1st Report 26/04//1988 2nd Report 26/04/1990 3rd Report 26/04/1992 4th Report 26/04/1994 5th Report 26/04/1996 6th Report 26/04/1998 7 th Report 26/04/2000 8 th Report 26/04/2002		
10. CHAD	09/10/1986	1 st Report 09/10/1988 2 nd Report 09/10/1990 3 rd Report 09/10/1992 4 th Report 09/10/1994 5 th Report 09/10/1996 6 th Report 09/10/1998 7 th Report 09/10/2000	1 st Report August 1997 <i>(combining the 1988-1999 overdue Reports)</i>	May 1999 25 th Ordinary Session
11. COMOROS	01/06/1986	1st Report 01/06/1988 2nd Report 01/06/1990 3rd Report 01/06/1992 4th Report 01/06/1994 5th Report 01/06/1996 6th Report 01/06/1998		

12. CONGO BRAZZAVILLE	09/12/1982	<i>1st Report</i> 09/12/1988 <i>2nd Report</i> 09/12/1990 <i>3rd Report</i> 09/12/1992 <i>4th Report</i> 09/12/1994 <i>5th Report</i> 09/12/1996 <i>6th Report</i> 09/12/1998 <i>7th Report</i> 09/12/2000		
13. CONGO (D.R.C.)	20/07/1987	<i>1st Report</i> 20/07/1989 <i>2nd Report</i> 20/07/1991 <i>3rd Report</i> 20/07/1993 <i>4th Report</i> 20/07/1995 <i>5th Report</i> 20/07/1997 <i>6th Report</i> 20/07/1999 <i>7th Report</i> 20/07/2001		
14. COTE D'IVOIRE	06/01/1992	<i>1st Report</i> 06/01/1994 <i>2nd Report</i> 06/01/1996 <i>3rd Report</i> 06/01/1998 <i>4th Report</i> 06/01/2000		
15. DJIBOUTI	11/11/1991	<i>1st Report</i> 11/11/1993 <i>2nd Report</i> 11/11/1995 <i>3rd Report</i> 11/11/1997 <i>4th Report</i> 11/11/1999 <i>5th Report</i> 11/11/2001		
16. EGYPT	20/03/1984	<i>1st Report</i> 20/03/1988 <i>2nd Report</i> 20/03/1990 <i>3rd Report</i> 20/03/1992 <i>4th Report</i> 20/03/1994 <i>5th Report</i> 20/03/1996 <i>6th Report</i> 20/03/1998 <i>7th Report</i> 20/03/2000	<i>1st Report</i> March 1991 <i>2nd Report</i> April 2000 (combining the overdue since 1994)	March 1992 11 th Ordinary Session <i>Scheduled for consideration at the 28th Ordinary Session</i>

17. EQUATORIAL GUINEA	07/04/1986	<i>1st Report 07/04/1988</i> <i>2nd Report 07/04/1990</i> <i>3rd Report 07/04/1992</i> <i>4th Report 07/04/1994</i> <i>5th Report 07/04/1996</i> <i>6th Report 07/04/1998</i> 7 th Report 07/04/2000 8 th Report 07/04/2002		
18. ETHIOPIA	16/06/1998	1 st Report 16/06/2000 2 nd Report 16/06/2002		
19. ERITREA	14/01/1999	1 st Report 14/01/2001 2 nd Report 14/02/2003		
20. GABON	20/02/1986	<i>1st Report 20/02/1988</i> <i>2nd Report 20/02/1990</i> <i>3rd Report 20/02/1992</i> <i>4th Report 20/02/1994</i> <i>5th Report 20/02/1996</i> <i>6th Report 20/02/1998</i> <i>7th Report 20/02/2000</i> 8 th Report 20/02/2002		
21. GAMBIA	08/06/1983	1 st Report 08/06/1988 2 nd Report 08/06/1990 3 rd Report 08/06/1992 4 th Report 08/06/1994 <i>5th Report 08/06/1996</i> <i>6th Report 08/06/1998</i> 7 th Report 08/06/2000 8 th Report 08/06/2002	1 st Report March 1992 2 nd Report October 1994	October 1992 12 th Ordinary Session 2 nd Report, October 1994 16 th Ordinary Session

22. GHANA	24/01/1989	1 st Report 24/01/1991 2 nd Report 24/01/1993 3 rd Report 24/01/1995 4 th Report 24/01/1997 5 th Report 24/01/1999 6 th Report 24/01/2001	1 st Report September 1992 2 nd Report March 2000 <i>(combining the 1995, 1997 and 1999 overdue reports)</i>	1 st Report December 1993 14 th Ordinary Session <i>Scheduled for consideration during the 28th Ordinary Session</i>
23. GUINEA	16/02/1982	1 st Report 16/02/1988 2 nd Report 16/02/1990 3 rd Report 16/02/1992 4 th Report 16/02/1994 5 th Report 16/02/1996 6 th Report 16/02/1998 7th Report 16/02/2000	1 st Report October 1997 <i>(combining the 1988-1998 overdue Reports)</i>	1 st Report April 1998 23 rd Ordinary Session
24. GUINEA-BISSAU	04/12/1985	1st Report 04/12/1988 2nd Report 04/12/1990 3rd Report 04/12/1992 4th Report 04/12/1994 5th Report 04/12/1996 6th Report 04/12/1998 7 th Report 04/12/2000		
25. KENYA	23/01/1992	1st Report 23/01/1994 2nd Report 23/01/1996 3rd Report 23/01/1998 4th Report 23/01/2000		
26. LESOTHO	10/02/1992	1st Report 10/02/1994 2nd Report 10/02/1996 3rd Report 10/02/1998 4th Report 10/02/2000		

27. LIBERIA	04/08/1982	1st Report 04/08/1988 2nd Report 04/08/1990 3rd Report 04/08/1992 4th Report 04/08/1994 5th Report 04/08/1996 6th Report 04/08/1998 7th Report 04/08/2000		
28. LIBYA	19/07/1986	1st Report 19/07/1988 2nd Report 19/07/1990 3rd Report 19/07/1993 5th Report 19/07/1995 6th Report 19/07/1997 7th Report 19/07/1999 8th Report 19/07/2001	1st Report January 1990 2nd Report March 2000 <i>(combining the 1993, 1995 and 1997 overdue Reports)</i>	March 1991 19 th Ordinary Session 2 nd Report, May 2000 27 th Ordinary Session
29. MADAGASCAR	09/03/1992	1st Report 09/03/1994 2nd Report 09/03/1996 3rd Report 09/03/1998 4th Report 09/03/2000		
30. MALAWI	17/11/1989	1st Report 17/11/1991 2nd Report 17/11/1993 3rd Report 17/11/1995 4th Report 17/11/1997 5th Report 17/11/1999 6th Report 17/11/2001		

31. MALI	21/ 12/ 1981	1 st Report 21/12/1988 2 nd Report 21/12/1990 3 rd Report 21/12/1992 4 th Report 21/12/1994 5 th Report 21/12/1996 6 th Report 21/12/1998 7 th Report 21/11/2001 8 th Report 21/11/2003	1st Report May 1999 (<i>combining the 1988-1988 overdue Reports</i>)	November 1999 26 th Ordinary Session
32. MAURITANIA	14/06/1986	1st Report 14/06/1988 2nd Report 14/06/1990 3rd Report 14/06/1992 4th Report 14/06/1994 5th Report 14/06/1996 6th Report 14/06/1998 7 th Report 14/06/2000		
33. MAURITIUS	19/06/1992	1 st Report 19/06/1994 2nd Report 19/06/1998 4 th Report 19/06/2000 5 th Report 19/06/2002	1 st Report November 1994	October 1996 20 th Ordinary Session
34. MOZAMBIQUE	22/02/1989	1 st Report 22/02/1991 2 nd Report 22/02/1993 3 rd Report 22/02/1995 4th Report 22/02/1998 5th Report 22/02/2000 6 th Report 22/02/2001	1 st Report September 1992 (<i>combining the 1991-1995 overdue Reports</i>)	April 1996 19 th Ordinary Session

35. NAMIBIA	30/07/1992	1 st Report 30/07/1994 2 nd Report 30/07/1996 3 rd Report 30/07/1998 4 th Report 30/07/2000 5 th Report 30/07/2002	1 st Report November 1997 (<i>combining the 1994-1998 overdue Reports</i>) 2 nd Report May 2000	April 1998 23 rd Ordinary Session <i>Scheduled for consideration during the 28th Ordinary Session</i>
36. NIGER	15/07/1986	1st Report 15/07/1988 2nd Report 15/07/1990 3rd Report 15/07/1992 4th Report 15/07/1994 5th Report 15/07/1996 6th Report 15/07/1998 7 th Report 15/07/2000		
37. NIGERIA	22/06/1983	1 st Report 22/06/1988 2 nd Report 22/06/1990 3 rd Report 22/06/1992 4th Report 22/06/1995 5th Report 22/06/1997 6th Report 22/06/1999 7 th Report 22/06/2001	1 st Report August 1990	April 1993 13 th Ordinary Session

38. UGANDA	10/05/1986	<i>1st Report 10/05/1988</i> <i>2nd Report 10/05/1990</i> <i>3rd Report 10/05/1992</i> <i>4th Report 10/05/1994</i> <i>5th Report 10/05/1996</i> <i>6th Report 10/05/1998</i> 7 th Report 10/05/2000 8 th Report 10/05/2002	1 st Report Mai 2000 (<i>combining the overdue since 1988</i>)	1 st Report Mai 2000 27 th Ordinary Session
39. RWANDA	15/07/1983	1 st Report 15/07/1988 2 nd Report 15/07/1990 3 rd Report 15/07/1992 4 th Report 15/07/1994 5 th Report 15/07/1996 6 th Report 15/07/1998 7 th Report 15/07/2000	1 st Report August 1990 2 nd Report April 2000 (<i>combining the overdue since 1992</i>)	1 st Report, March 1991 19 th Ordinary Session 2 nd Report May 2000 27 th Ordinary Session
40. SAHRAWI ARAB DEMOCRATIC REPUBLIC	02/05/1986	<i>1st Report 02/05/1988</i> <i>2nd Report 02/05/1990</i> <i>3rd Report 02/05/1992</i> <i>4th Report 02/05/1994</i> <i>5th Report 02/05/1996</i> <i>6th Report 02/05/1998</i> 7 th Report 02/05/2000		

41. SAO TOME AND PRINCIPE	23/05/1986	1st Report 23/05/1988 2nd Report 23/05/1990 3rd Report 23/05/1992 4th Report 23/05/ 1994 5th Report 23/05/1996 6th Report 23/05/1998 7 th Report 23/05/2000 8 th Report 23/05/2002		
42. SENEGAL	13/08/1982	1 st Report 13/08/1988 2 nd Report 13/08/1990 3 rd Report 13/08/1992 4th Report 13/08/1994 5th Report 13/08/1996 6th Report 13/08/1998 7 th Report 13/08/2000 8 th Report 13/08/2002	1 st Report October 1989 2 nd Report April 1992	1 st & 2 nd Reports October 1992 12 th Ordinary Session
43. SEYCHELLES	13/04/1992	1 st Report 13/04/1994 2nd Report 13/04/1996 3rd Report 13/04/1998 4 th Report 13/04/2000 5 th Report 13/04/2002 6 th Report 13/04/2004	1 st Report September 1994	<i>Scheduled for consideration at the 16th ordinary session and postponed from session to session because the Government of the Seychelles did not send representatives to present the report.</i>

44. SIERRA LEONE	21/09/1983	1st Report 21/09/1988 2nd Report 21/09/1990 3rd Report 21/09/1992 4th Report 21/09/1994 5th Report 21/09/1996 6th Report 21/09/1998 7th Report 21/09/2000		
45. SOMALIA	31/07/1985	1st Report 31/07/1988 2nd Report 31/07/1990 3rd Report 31/07/1992 4th Report 31/07/1994 5th Report 31/07/1996 6th Report 31/07/1998 7th Report 31/07/2000		
46. SOUTH AFRICA	09/07/1996	1st Report 09/07/1998 2nd Report 09/07/2000 3rd Report 09/07/2002	1 st Report 14 October 1998	May 1999 25 th Ordinary Session
47. SUDAN	18/02/1986	1st Report 18/02/1988 2nd Report 18/02/1990 3rd Report 18/02/1992 4th Report 18/02/1994 5th Report 18/02/1996 6th Report 18/02/1999 7th Report 18/02/2001 8th Report 18/02/2003	1 st Report 24 October 1996 (combining the 1988-1996 overdue Reports)	April 1997 21 st Ordinary Session
48. SWAZILAND	15/09/1995	1st Report 15/09/1997 2nd Report 15/09/1999 3rd Report 15/09/2002 4th Report 15/09/2004	1 st Report March 2000 (combining the 1997 and 1999 overdue reports)	May 2000 27 th Ordinary Session

49. TANZANIA	18/02/1984	1 st Report 18/02/1988 2 nd Report 18/02/1990 3 rd Report 18/02/1992 4th Report 18/02/1994 5th Report 18/02/1996 6th Report 18/02/1998 7th Report 18/02/2000	1 st Report July 1991	March 1992 11 th Ordinary Session
50. TOGO	05/11/1982	1 st Report 05/11/1988 2 nd Report 05/11/1990 3 rd Report 05/11/1992 4th Report 05/11/1995 5th Report 05/11/1997 6th Report 05/11/1999 7 th Report 05/11/2001	1 st Report October 1990	March 1993 13 th Ordinary Session
51. TUNISIA	16/03/1983	1 st Report 16/03/1988 2 nd Report 16/03/1990 3 rd Report 16/03/1993 4 th Report 16/03/1995 5th Report 16/03/1997 6th Report 16/03/1999 7 th Report 16/03/2001	1 st Report May 1990 2 nd Report October 1995	1 st Report March 1991 9 th Ordinary Session 2 nd Report October 1995 18 th Ordinary Session
52. ZAMBIA	10/ 01/ 1984	1st Report 10/01/1988 2nd Report 10/01/1990 3rd Report 10/01/1992 4th Report 10/01/1994 5th Report 10/01/1996 6th Report 10/01/1998 7th Report 10/01/2000		

53. ZIMBABWE	30/ 05/ 1986	1 st Report 30/05/1988 2 nd Report 30/05/1990 3 rd Report 30/05/1992 4 th Report 30/05/1994 5 th Report 30/05/1996 6th Report 30/05/1999 7 th Report 30/05/2001 8 th Report 30/05/2003	1 st Report October 1992 2 nd Report March 1996 <i>(combining the 1988-1996 overdue Reports)</i>	1 st Report October 1992 12 th Ordinary Session 2 nd Report April 1997 21 st Ordinary Session
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Annex IV

Resolutions adopted at the 26th and 27th Ordinary Sessions

RESOLUTION ON THE HUMAN RIGHTS SITUATION IN AFRICA

The African Commission on Human & Peoples' Rights, meeting at its 26th Ordinary Session held in Kigali, Rwanda, from 1-15 November 1999:

Inspired by the principles enshrined in the African Charter on Human & Peoples' Rights;

Noting with appreciation that all member states of the OAU are parties to the Charter;

Mindful of the fact that States parties to the Charter undertook to adopt legislative or other measures to give effect to the rights, duties and freedoms enshrined in the Charter:

1. WELCOMES the commitment of States parties to the promotion and observance of human rights obligations as expressed in the Grand Bay (Mauritius) Declaration and Plan of Action, subsequently endorsed by the 35th Ordinary Session of the OAU Assembly of Heads of State and Government and contained in the Algiers Declaration of July 1999;

However noting with regret, that the human rights situation in many States continues to cause concern;

2. WELCOMES the resumption of democracy in Nigeria and urges the new Nigerian government to speed up the process of repealing all decrees and laws enacted by previous regimes, which violated the Charter;
3. DECIDES TO ESTABLISH COOPERATION with the OAU Mechanism for Conflict Prevention, Management and Resolution as well as the OAU Secretary General's special representatives in the countries in conflict;
4. EXPRESSES DEEP CONCERN about the situation in the Great Lakes region, Ethiopia and Eritrea as well as in Sierra Leone;
5. DECIDES TO SEND a mission to Sierra Leone to seek information about the current situation in Sierra Leone, to undertake dialogue with the existing administrative, political and other structures in the country, and to make recommendations as appropriate.
6. CALLS upon the governments of Ethiopia and Eritrea to halt all hostilities, refrain from the tit-for-tat practice of forced deportations, observe the cease-fire agreement and make the necessary efforts at finding a peaceful resolution to the conflict;

7. CALLS for the resumption of the Arusha Peace process on Burundi and urges the belligerents to observe the rights and freedoms enshrined in the African Charter.
8. FURTHERMORE DECIDES TO UNDERTAKE a promotional goodwill visit to Kenya to, among other things, encourage Kenya, which witnessed the adoption of the African Charter in Nairobi on 26 June 1981 and ratified the Charter on 23 January 1992, to submit its initial country report as required by Article 62 of the Charter.
9. INVITES NGOs having observer status with the Commission as well as independent national institutions for the promotion and protection of human rights, to submit regular written reports on human rights situations in Africa in such a manner as would assist the Commission in the execution of its mandate.

Done in Kigali, 15 November 1999

**RESOLUTION ON THE RIGHT TO A FAIR TRIAL AND LEGAL
ASSISTANCE IN AFRICA**

The African Commission on Human and Peoples' Rights meeting at its 26th Ordinary Session, held in Kigali, Rwanda, from 1-15 November 1999;

Considering the provisions of the African Charter on Human and Peoples' Rights relating to the right to a fair trial, in particular Articles 7 and 26;

Recalling the resolution on the Right to Recourse and Fair Trial adopted by the Commission at its 11th Ordinary session in Tunis, Tunisia, in March 1992;

Recalling further the resolution on the Respect and the Strengthening of the Independence of the Judiciary adopted at the 19th Ordinary session held in Ouagadougou, Burkina Faso, in March 1996;

Noting the Recommendations of the Seminar on the Right to a Fair Trial in Africa held in collaboration with the African Society of International and Comparative Law and Interights, in Dakar, Senegal, from 9-11 September 1999;

Recognising the importance of the right to a fair trial and legal assistance and the need to strengthen the provisions of the African Charter relating to this right;

1. **ADOPTS** the attached Dakar Declaration and Recommendations on the Right to a Fair Trial in Africa;
2. **REQUESTS** the Secretariat of the Commission to forward the Dakar Declaration and Recommendations to Ministries of Justice and Chief Justice of all States parties, Bar Associations and law schools in Africa and non-governmental organizations with observer status, and to report to the 27th Ordinary Session in this regard;
3. **DECIDES** to establish a Working Group on Fair Trial under the supervision of Commissioner Kamel Rezag-Bara and consisting of members of the Commission and representatives of non-governmental organizations;
4. **REQUESTS** the Working Group to prepare a draft of general principles and guidelines on the right to a fair trial and legal assistance under the African Charter and submit it to the 27th Ordinary Session of the Commission and for comments and observations by the Members of the Commission during the period between the 27th and the 28th Sessions;

5. **FURTHER REQUESTS** the Working Group to report to the 28th Ordinary Session on the final draft of the general principles and guidelines on fair trial and legal assistance for consideration;
6. **REQUEST** the Secretariat to provide the Working Group with all support and assistance needed to implement this mission.

Done in Kigali, 15 November 1999

**RESOLUTION URGING THE STATES TO ENVISAGE
A MORATORIUM ON THE DEATH PENALTY**

The African Commission on Human and Peoples' Rights meeting at its 26th Ordinary Session held from 1-15 November 1999 in Kigali, Rwanda;

Recalling Article 4 of the African Charter on Human and Peoples' Rights which affirms the right of everyone to life and Article V(3) of the African Charter on the Rights and Welfare of the Child providing that Death Sentence shall not be pronounced for crimes committed by children;

Recalling UN Commission on Human Rights' resolutions 1998/8 and 1999/61, which calls upon all states that still maintain the death penalty to, *inter alia*, establish a moratorium on executions, with a view to abolishing the death penalty;

Recalling UN Sub-Commission on the Promotion and Protection of Human Rights' resolution 1999/4 which calls upon all States that retain the death penalty and do not apply the moratorium on executions, in order to mark the millennium, to commute the sentences of those under sentence of death on 31 December 1999 at least to sentences of life imprisonment and to commit themselves to a moratorium on the imposition of the death penalty throughout the year 2000;

Noting that three States parties to the African Charter have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolition of the death penalty;

Noting further that at least 19 States parties have *de facto* or *de jure* abolished the death penalty;

Considering the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are authorised to impose ;

Concerned that some States parties impose the death penalty under conditions not in conformity with the rights pertaining to a fair trial guaranteed in the African Charter on Human and Peoples' Rights ;

1. **URGES** all States parties to the African Charter on Human and Peoples' Rights that still maintain the death penalty to comply fully with their obligations under the treaty and to ensure that persons accused of crimes for which the death penalty is a competent sentence are afforded all the guarantees in the African Charter;

2. **CALLS** upon all States parties that still maintain the death penalty to :
 - a) limit the imposition of the death penalty only to the most serious crimes ;
 - b) consider establishing a moratorium on executions of death penalty;
 - c) reflect on the possibility of abolishing death penalty.

Done in Kigali, 15 November 1999.

**RESOLUTION ON THE OBSERVANCE OF THE 30TH ANNIVERSARY OF
THE OAU CONVENTION**

The African Commission on Human & Peoples' Rights, meeting at its 26th Ordinary Session held in Kigali, Rwanda, 1-15 November 1999:

Noting that the OAU Convention Governing the Specific Aspects of Refugee problems in Africa was adopted by the Assembly of Heads of State at Addis Ababa on 10 September 1969;

Recalling the principle laid down in the Grand Bay (Mauritius) Declaration and Plan of Action that the high number of refugees, displaced persons and returnees in Africa constitutes an impediment to development as well as the link between human rights violations and population displacement;

Considering that African states bear the brunt of receiving and caring for refugee populations, and

Concerned about the plight of more than 6million refugees, asylum-seekers and internally displaced persons across the Continent;

Aware that current mechanisms for the protection of refugees and asylum-seekers appear to be inadequate and ineffective:

1. **CONGRATULATES** those states, which have spared no effort to honour their obligations under the Convention and continue to uphold solidarity with Africa's refugees and asylum-seekers;
2. **WELCOMES** the efforts by the United Nations High Commissioner for Refugees to integrate issues of refugee protection to human rights across Africa and to establish cooperation between the Commission and the field offices of UNHCR in Africa;
3. **DECIDES TO PARTICIPATE IN THE COMMEMORATION** of the 30th Anniversary of the OAU Convention Concerning Specific Aspects of Refugee Problems in Africa by supporting the proposed OAU/UNHCR Conference to be held in Guinea early 2000;
4. **DECIDES TO ESTABLISH A CLOSER COOPERATION** with the OAU Refugees Bureau in the spirit that violations of human rights are the prime causes of refugee outflows throughout the world.
5. **APPEALS** to state parties to the Charter to:
 - i) take steps to ensure effective implementation of the provisions of the Convention;
 - ii) establish a legal and administrative environment in their countries to ensure the best possible protection of the rights of refugees and asylum-seekers; and
 - iii) by their observance of the Charter, to address the root causes of refugee outflows and population displacement.

6. DECIDES TO MAINTAIN the agenda item on Refugees, Asylum Seekers and Displaced Persons in its ordinary sessions.

Done in Kigali, 15 November 1999.

**RESOLUTION ON THE PEACE PROCESS IN THE DEMOCRATIC
REPUBLIC OF CONGO**

The African Commission on Human and Peoples' Rights, meeting at its 27th Ordinary Session in Algiers, Algeria, from 27 April – 11 May 2000,

Considering the holding in Algiers, Algeria on 30 April 2000, of the Summit on the situation in the Democratic Republic of Congo (DRC) at the invitation of H.E. Mr. Abdelaziz BOUTEFLIKA, President of the Democratic and Popular Republic of Algeria and current Chairman of the Organisation of African Unity (OAU);

Considering that the said Summit provided an opportunity for an exhaustive evaluation of the implementation of the Lusaka Accord, in the light of the latest developments in the peace process;

Noting with satisfaction the efforts of H.E. Mr. Abdelaziz BOUTEFLIKA, President of the Democratic and Popular Republic of Algeria and current Chairman of the OAU as well as those of the African Heads of State who participated at the Algiers Summit for a rapid and peaceful settlement of the conflict ravaging the Democratic Republic of Congo;

Concerned at the persistence of the state of conflict which has caused deep suffering for the civilian populace and grave violations of human rights on the territory of the DRC;

Noting however the significant progress recorded in the Great Lakes Region and in other forums, both regional and international, in the search for a solution to the conflict in the DRC;

1. *Expresses its profound appreciation* to H.E. President Abdelaziz BOUTEFLIKA for all the initiatives taken by him and strongly encourages him to pursue his laudable efforts in the search for a rapid settlement to the conflict in DRC;
2. *Welcomes* the results achieved by the Algiers Summit of 30 April 2000 on the Democratic Republic of Congo and expresses its conviction that these results would represent a qualitative push forward for the peace dynamics in the Democratic Republic of Congo and the Great Lakes region;

3. *Expresses its appreciation* for the encouraging results achieved in the implementation of the Lusaka Accord and calls on the concerned parties to respect the cease-fire and to contribute to a successful outcome to the ongoing peace dynamics;
4. *Urges* all Member States of the OAU to give their full support to the peace process in DRC and to contribute actively to the restoration of peace and security to the Great Lakes Region.

Done in Algiers, 11 May 2000

RESOLUTION ON THE WESTERN SAHARA

The African Commission on Human and Peoples' Rights, at its **27th Ordinary Session held in Algiers, from 27 April to 11 May 2000:**

Considering the preamble to the African Charter on Human and Peoples' Rights which states that the member States reassert their adherence to the human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organisation of African Unity, the Non-Aligned Movement and the United Nations Organisation,

Considering Article 20 of the African Charter on Human and Peoples' Rights which stipulates that:

“All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen”,

Recalling UN Security Council Resolution 658 (1990) by which it approved UN Secretary General's report S/21360 on the situation in the Western Sahara,

Recalling UN Security Council Resolution 690 (1991) in which the UN Security Council approved UN Secretary General's report S/22464 and decided to set up, under the latter's authority, the United Nations Mission on the Western Sahara (MINURSO),

Recalling paragraphs 5, 8, 9 and 10 of the general rules dated 8 November 1991 (S/126185, Appendix III) on the organisation of a referendum in the Western Sahara, which stipulated that the Saharawi people's referendum on self-determination must be free, regularly conducted and free of coercion,

Recalling the Algiers Appeal (adopted at the 35th Summit Meeting of OAU Heads of State and Government from 12 to 14 July 1999) which hails Africa's action in solidarity towards completion of the decolonisation process on the continent, and specifically implementation of the UNO/OAU peace plan for the Western Sahara,

In view of the delay registered in the process for the referendum on self-determination in the Western Sahara,

Calls for the organisation, within the allotted time, of the Saharawi people's referendum on self-determination, in a free, fair and regular manner, as desired by the International Community,

Calls for observance of the agreement concluded on 27 December 1997 at Houston between the two parties, Morocco and the Polisario Front, under the aegis of James Baker, special envoy of the UN Secretary General.

Done in Algiers, 11 May 2000

**RESOLUTION ON THE PEACE PROCESS AND NATIONAL
RECONCILIATION IN SOMALIA**

The African Commission on Human and Peoples' Rights meeting in Algeria at its 27th Ordinary Session from 27 April to 11 May 2000:

Recalling articles 19 through 24 and other articles of the African Charter on Human and Peoples' Rights;

Considering the Charter of the OAU that stipulates that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples;

Concerned at the fluid situation of statelessness prevailing in Somalia;

Convinced that paying attention to the right to development, civil and political rights and the right to national and international peace and security, necessitates the existence of a democratically elected government by all people in Somalia;

Welcoming the meeting of traditional leaders and members of the civil society in Somalia, which started in Djibouti since the 2nd of May 2000;

Appreciating the efforts of the government of Djibouti, the IGAG, the Arab League, the OAU and the UN in their endeavours to maintain and preserve the national unity of the Somali people and the integrity of the State of Somalia;

Welcomes the national reconciliation efforts currently taking place in the Djibouti Conference which started in Djibouti on the 2nd of May 2000, initiated by the government of Djibouti and supported by IGAD, the Arab League, OAU, and United Nations;

Appreciates the efforts of H.E President Ismail Omar GUELLEH and the Government of Djibouti in bringing together the Somali people to in order to consider the future of Somalia, and in guiding the negotiations towards successful results;

- 1. Appeals** to the Somali members of the civil society, the people of Somalia, traditional and political leaders in Somalia to adhere to the peaceful settlement of their differences and to give priority to the national interest of maintaining the unity and integrity of Somalia ;

2. **Encourages** all efforts aiming at achieving national peace and security and promoting and protecting the Human Rights of the Somali people.

3. **Calls upon** all Heads of State and Government of African countries parties to the African Charter on Human and Peoples' Rights and the International Community to support the on-going Somalia reconciliation process.

Done in Algiers, 11 May 2000

Annex V

Decisions on Communications Brought before the Commission

At the 26th and 27th Sessions

140/94, 141/94, 145/95 Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda/Nigeria

Rapporteur: 17th session: Commissioner Badawi
18th session: Commissioner Umozurike
19th session: Commissioner Umozurike
20th session: Commissioner Dankwa
21st session: Commissioner Dankwa
22nd session: Commissioner Dankwa
23rd session: Commissioner Dankwa
24th session: Commissioner Dankwa
25th session: Commissioner Dankwa
26th session: Commissioner Dankwa

Summary of Facts:

1. **Communication 140/94** alleges that decrees issued in 1994 by the military government of Nigeria proscribed The Guardian, Punch and The Concord newspapers from publishing and circulating in Nigeria. The Decrees are titled: The Concord Newspapers and African Concord Weekly Magazine (Proscription and Prohibition from Circulation) Decree No. 6, The Punch Newspapers (Proscription and Prohibition from circulation) Decree No. 7 and the Guardian Newspaper and African Guardian Weekly Magazine (Proscription and Prohibition from Circulation) Decree No. 8, all of 1994. The military government had earlier closed down the Guardian and the Concord publications whose premises were still being occupied and sealed up by armed security personnel and policemen, in defiance of court orders.
2. Furthermore, the military government of Nigeria arrested and detained 6 pro-democracy activists, Chief Enahoro, Prince Adeniji-Adele, Chief Kokori, Chief Abiola, Chief Adebayo and Mr. Eno. At the time the communication was brought, they were in detention and no charges had been brought against them, except Chief Abiola, who was charged with treason and treasonable felony. The health of the detainees was deteriorating in detention.
3. The military government allegedly sent armed gangs to the houses of five leading pro-democracy activists, namely Chief Ajayi, Chief Osoba, Mr. Nwankwo, Chief Fawehinmi, and Commodore Suleiman. The gangs broke into the houses, destroyed inventory and attacked the alleged victims.

4. **Communication 141/94** alleges that the Federal Government of Nigeria, through Decrees Nos. 6, 7, and 8 of 1994, restrained and restricted the right of Nigerians to receive information and to express and disseminate their opinions. The complaint also alleges that the government violated proprietary rights of owners of companies by the said decrees.
5. Further objection to Decrees 6, 7 and 8 of 1994 are that they contain clauses which oust the jurisdiction of the courts, thus prohibiting them from entertaining any action in respect of the Decrees.
6. **Communication 145/95** elaborates on the facts stated above. It alleges that at about 3.00 am on Saturday, 11 June 1994, scores of heavily armed security operatives, agents of the Federal Military Government of Nigeria, stormed Concord House, the premises of Concord Press Nigeria Limited, and African Concord Limited, publishers of, among others, the weekly "African Concord" news magazine; "Weekend Concord", a weekly newspaper; "Sunday Concord", another weekly newspaper, and a community-based weekly published in each state of the Federation, "Community Concord".
7. The security agents stopped production work on various publications, drove out the workers and sealed up the premises. On the same day, at about the same time, the exercise was repeated by other heavily armed security agents of the Federal Military Government at the premises of Punch Nigeria Limited, publishers of the newspapers "The Punch", "Sunday Punch", and "Top life". The security agents also stopped production work on "The Punch", drove out the workers, sealed up the premises and detained the editor, Mr. Bola Bolawole, for several days.
8. On 15 August 1994 at about 12.30 a.m., about 150 armed policemen stormed Rutam House, the premises of Guardian Newspapers Limited and Guardian Magazines Limited, publishers of the newspapers and news magazines "The Guardian", "The Guardian on Sunday", "The African Guardian", "Guardian Express", "Lagos Life", and "Financial Guardian".
9. The policemen ordered that the production of the Monday edition of "The Guardian", which was then in progress, be stopped. They ordered all the workers out and sealed up the premises. Later in the day, 15 journalists in "The Guardian" group were arrested and detained briefly before being released on bail. Security agents were still searching for senior editorial staff of the newspapers.
10. Acting through their solicitor, Gani Fawehinmi, the publishers of all the newspapers instituted separate legal actions before two Federal High Courts in Lagos against the

- Government of Nigeria over illegal invasion of their premises and closure of their newspapers. They challenged the sealing up of the newspapers premises as a violation of the right to freedom of expression guaranteed by Section 36 of the Constitution of Nigeria, 1979, and Article 9 of the African Charter incorporated into Nigerian domestic laws.
11. Both courts gave judgement in favour of the publishers, after considering the evidence and legal submissions from both the Government and the publishers. The courts made monetary awards in damages to the publishers and ordered the security agents to vacate the newspapers' premises. The security men briefly vacated the premises, but returned a few weeks later to re-occupy them. The damages awarded were never paid.
 12. While the suits were pending before the courts, on 5 September 1994, the Government of Nigeria issued three military decrees, Decrees No. 6, 7 and 8, by which it proscribed over 13 newspapers and magazines published by the three media houses from being published and also prohibited them from circulation in Nigeria or any part thereof for a period of six months which may be further extended.
 13. The representative of the complainants, in his oral presentation before the Commission, emphasised that the phrases "previously laid down by law" and "within the law" in Articles 6 and 9(2), respectively, do not permit Nigeria to derogate from its international obligations by making laws at its whim.
 14. The government responded orally that all decrees were necessary due to the "special circumstances" which brought it to power. It maintained that most of the detainees had been released and most newspapers were permitted to circulate. The government stated that it derogated from provisions of the constitution of Nigeria "in view of the situation", justified by public morality, public safety and overriding public interest. With specific regard to Article 9, the government argued that "within the law" must refer to the current law of Nigeria, not to the Nigerian constitution or an international standard.

Complaint:

15. The complainants allege that the following provisions of the African Charter have been violated: Articles 5,6,7, 9, 14 and 26.

Procedure :

16. **Communication 140/94** is dated 7 September 1994 and is submitted by Constitutional Rights Project. The Secretariat acknowledged its receipt on 23 January 1995.

17. At the 16th Session the Commission decided to be seized of the communication and to send notification of it to the Government of Nigeria. In addition, the Commission called upon the Government of Nigeria to ensure that the health of the victims was not in danger. Rule 109 of the Rules of Procedure was therefore invoked.
18. At the 17th session, held in March 1995 in Lomé, Togo, the Commission declared the communication admissible. There was no response from the Nigerian Government.
19. **Communication 141/94** is dated 19 October 1994 and was filed by the Civil Liberties Organisation. It was received at the Secretariat on 24 October 1994.
20. At the 16th Session in October 1994, the Commission was seized of the communication and decided that the State should be notified. It was also decided that the communication be joined with communication 140/94.
21. **Communication 145/95** is dated 7 September 1994 and is filed by Media Rights Agenda, a Nigerian NGO.
22. At the 18th session the Commission was seized of the communication. It was also decided that the communication should be taken up along with the others on the Nigeria mission.
23. The Commission decided to send a mission to Nigeria from 7 to 14 March 1997 and the communications were taken up by the mission. The mission report has been adopted by the Commission.
24. The parties were regularly notified of all the procedure.

LAW

Admissibility

25. Article 56 (5) of the African Charter reads:

Communications ...shall be considered if they:

Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,...

26. This is just one of the 7 conditions specified by Article 56, but it is that which usually requires the most attention. Because Article 56 is necessarily the first considered by the

Commission, before any substantive interpretation; in the jurisprudence of the African Commission, there are several important precedents.

27. Specifically, in four decisions the Commission has already taken concerning Nigeria, Article 56.5 is analysed in terms of the Nigerian context. Communication 60/91 (Decision ACHPR/60/91) concerned the Civil Disturbances Tribunal; Communication 101/93 (Decision ACHPR/101-93) concerned the Legal Practitioners' Decree; and Communication 129/94) concerned the Constitution (Modification and Suspension) Decree and the Political Parties (Dissolution) Decree.
28. All of the Decrees in question in the above communications contain "ouster" clauses. In the case of the special tribunals, these clauses prevent the ordinary courts from taking up cases placed before the special tribunals or from entertaining any appeals from the decisions of the special tribunals. (ACHPR/60/91:23 and ACHPR/87/93:22) The Legal Practitioners Decree specifies that it cannot be challenged in court and that anyone attempting to do so commits a crime (ACHPR/101/93:14-15). The Constitution Suspension and Modification Decree legally prohibited its challenge in Nigerian courts (ACHPR/129/94:14-15).
29. In all of the cases cited above, the Commission found that the ouster clauses render local remedies non-existent, ineffective or illegal. They create a legal situation in which the judiciary can provide no check on the executive branch of the government. A few courts in the Lagos Division have occasionally found that they have jurisdiction; in 1995, the Court of Appeal in Lagos relying on common law, found that courts could examine Decrees notwithstanding their ouster clauses, where the decree is "offensive and utterly hostile to rationality".
30. Prior to the issue of the decree, the publishers affected had brought suits; two of them had already won monetary damages and an order that the security agents should vacate the premises. Neither of these directives was ever complied with.
31. Because there is no legal basis to challenge government action under these decrees, the Commission reiterates its decision on communication 129/93 that "it is reasonable to presume that domestic remedies will not only be prolonged but are certain to yield no results". (ACHPR 129/94:8.). Indeed there is no remedy.

For these reasons and consistent with its earlier decisions, the Commission declared the communications admissible.

Merits

32. Article 7(1) (a) provides:

1. *Every individual shall have the right to have his cause heard. This comprises:*
 - (a) *The right to an appeal to competent national organs against acts violating his fundamental rights...*
33. To have a duly instituted court case in the process of litigation nullified by executive decree forecloses all possibility of jurisdiction being exercised by competent national organs. A civil case in process is itself an asset, one into which the litigants invest resources in the hope of an eventual finding in their favour. The risk of losing the case is one that every litigant accepts, but the risk of having the suit abruptly nullified will seriously discourage litigation, with serious consequence for the protection of individual rights. Citizens who cannot have recourse to the courts of their country are highly vulnerable to violation of their rights. The nullification of the suits in progress thus constitutes a violation of Article 7(1)(a).
34. **Communication 141/94** alleges that the Federal Government of Nigeria, through Decrees Nos. 6, 7, and 8 of 1994, restrained and restricted the right of Nigerians to receive information and to express and disseminate their opinions.
35. Article 9 of the African Charter reads:
 1. *Every individual shall have the right to receive information.*
 2. *Every individual shall have the right to express and disseminate his opinions within the law.*
36. Freedom of expression is a basic human right, vital to an individual's personal development and political consciousness, and participation in the conduct of public affairs in his country. Under the African Charter, this right comprises the right to receive information and express opinion.
37. The proscription of specific newspapers by name and the sealing of their premises, without a hearing at which they could defend themselves, or any accusation of wrongdoing, legal or otherwise, amounts to harassment of the press. Such actions not only have the effect of hindering the directly affected persons in disseminating their opinions, but also poses an immediate risk that journalists and Newspapers not yet affected by any of the Decree will subject themselves to self-censorship in order to be allowed to carry on their work.
38. Decrees like these pose a serious threat to the public of the right to receive information not in accordance with what the government would like the public to know. The right to receive information is important: Article 9 does not seem to permit derogation, no matter what the subject of the information or opinions and no matter the political situation of a country. Therefore, the Commission finds that the proscription of the newspapers is a violation of Article 9 (1).

39. The complainant argues that Article 9(2) must be read as referring to "already existing law". The government argues that the decrees were justified by the special circumstances; the complainant invokes the constancy of international obligations.
40. According to Article 9 (2) of the Charter, dissemination of opinions may be restricted by law. This does not however mean that national law can set aside the right to express and disseminate one's opinions guaranteed at the international level; this would make the protection of the right to express one's opinion ineffective. To permit national law to take precedence over international law would defeat the purpose of codifying certain rights in international law and indeed, the whole essence of treaty making.
41. In contrast to other international human rights instruments, the African Charter does not contain a derogation clause. Therefore limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies or special circumstances. The only legitimate reasons for limitations of the rights and freedoms of the African Charter are found in Article 27(2), that is, that the rights of the Charter "shall be exercised with due regard to the rights of others, collective security, morality and common interest".
42. The justification of limitations must be strictly proportionate with and absolutely necessary for the advantages which follow. Most important, a limitation may not erode a right such that the right itself becomes illusory.
43. The government has provided no concrete evidence that the proscription was for any of the above reasons given in Article 27(2). It has failed to prove that proscription of the newspapers was for any reason but simple criticism of the government. If the newspapers had been guilty of libel, for example, they could have individually been sued and called upon to defend themselves. There was no substantive evidence presented that the newspapers were threatening national security or public order.
44. For the government to proscribe a particular publication, by name, is thus disproportionate and not necessary. Laws made to apply specifically to one individual or legal personality raise the serious danger of discrimination and lack of equal treatment before the law, guaranteed by Article 3. The proscription of these publications cannot therefore be said to be "within the law" and constitutes a violation of Article 9(2)
45. **Communication 140/94** alleges that the government sent armed gangs to attack leading human rights activists and to destroy their homes. The government has made no substantive response to this allegation.
46. Article 5 of the Charter states:
Every individual shall have the right to the respect of the dignity of inherent in a human being and to the recognition of his legal status. All forms of

exploitation and degradation of man particularly ...torture, cruel, inhuman or degrading punishment or treatment shall be prohibited.

47. The African Commission in several previous decisions, has set out the principle that where allegations of human rights abuse go uncontested by the government concerned, even after repeated notifications, the Commission must decide on the facts provided by the complainant and treat those facts as given (See the Commission's decisions in communications 59/91, 60/91, 64/91, 87/93 and 101/93). This principle conforms with the practice of other international human rights adjudicatory bodies and the Commission's duty to protect human rights as provided for in the Charter.

48. In view of the foregoing, the Commission finds a violation of Article 5.

49. The detention of six human rights activists without charges as alleged in **communication 140/94** and the detention of Mr. Bola Bolawole and 15 journalists in "The Guardian" group as alleged in **communication 145/95** has also not been disputed by the government.

50. Article 6 of the Charter reads:

"Every individual shall have the right to liberty and to the security of his person..."

In particular, no one may be arbitrarily arrested or detained."

51. To detain persons on account of their political beliefs, especially where no charges are brought against them renders the deprivation of liberty arbitrary. The government has maintained that no one is presently detained without charge. But this will not excuse past arbitrary detentions. The government has failed to address the specific cases alleged in the communications. The Commission therefore finds that there was a violation of Article 6.

52. The complainants also allege that the government violated proprietary rights of owners of companies by the said Decrees.

53. Article 14 of the Charter reads :

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

54. The government did not offer any explanation for the sealing up of the premises of many publications, but maintained the seizure in violation of direct court orders. Those affected were not previously accused or convicted in court of any wrongdoing. The right to property necessarily includes a right to have access to one's property and the right not to have one's property invaded or encroached upon. The Decrees which permitted the

Newspapers premises to be sealed up and for publications to be seized cannot be said to be "appropriate" or in the interest of the public or the community in general. The Commission finds a violation of Article 14.

For these reasons, the Commission

finds that there have been violations of Articles 5, 6, 7(1)(a), 9(1) and (2), and 14 of the African Charter.

Invites the government to take all necessary steps to comply with its obligations under the Charter.

Done in Kigali, Rwanda on 15 November 1999

143/95, 150/96 Constitutional Rights Project and Civil Liberties Organisation/ Nigeria

Rapporteurs: 18th Session: Commissioner Umozurike
19th Session: Commissioner Umozurike
20th Session: Commissioner Kisanga
21st Session: Commissioner Dankwa
22nd Session : Commissioner Dankwa
23rd Session : Commissioner Dankwa
24th Session : Commissioner Dankwa
25th Session : Commissioner Dankwa
26th Session : Commissioner Dankwa

Summary of Facts:

1. **Communication 143/95** alleges that the Government of Nigeria, through the State Security (Detention of Persons) Amended Decree No. 14 (1994), has prohibited any court in Nigeria from issuing a writ of habeas corpus, or any prerogative order for the production of any person detained under Decree no. 2 (1984). Complainant argues that this law violates the African Charter on Human and Peoples' Rights. The Decrees were applied to detain without trial several human rights and pro-democracy activists and opposition politicians in Nigeria.

The State Party's Response and Observations :

2. The government has presented no written response to this allegation, but in oral statements before the Commission (31 March 1996, 19th Ordinary Session, Ouagadougou, Burkina Faso, Chris Osah, Head of Delegation) maintains that no individual is presently being denied the right to habeas corpus in Nigeria. It has said that the provision of Decree No. 14 suspending the right to habeas corpus applies only to persons detained in respect of state security, and was implemented only between 1993 and 1995, during the period of political insecurity following the annulled elections of June 1993.
3. The government acknowledges that this provision is still on the statute books in Nigeria, but suggested that the right to habeas corpus would be restored in the future by saying, "as the democratisation of society goes on, all these [decrees] will become superfluous. They will have no place in society".
4. **Communication 150/96** complains that the State Security (Detention of Persons) Decree No. 2 of 1984, which enables a person to be detained for a reviewable period

- of three months if he endangers State security, violates Article 6 of the Charter. It also complains of the amended Decree of 1994 prohibiting the writ of habeas corpus.
5. The communication alleges that Mr. Abdul Oroh, Mr. Chima Ubani, Dr. Tunji Abajom, Chief Frank Kokori, Dr. Fred Eno, Honourable Wale Osun and Mr. Osagie Obayunwana were detained under this decree, without charge and also deprived of the right to bring habeas corpus actions. The communication alleges that they are detained in dirty, hidden, sometimes underground security cells; denied access to medical care, to their families and lawyers; and not permitted to have journals, newspapers and books. It is alleged that the detainees are sometimes subjected to torture and rigorous interrogations. The communication alleges that these conditions, combined with the courts' inability to order the production of detained persons even on medical grounds, places the detainees' lives in danger. The communication alleges that these circumstances constitute inhuman and degrading punishment or treatment.
 6. The communication complains that the clauses ousting the jurisdiction of the courts to consider the validity of decrees or acts taken thereunder is a violation to the right to have one's cause heard, protected by Article 7(1)(a) and 7(1)(d) of the Charter, and undermines the independence of the judiciary in contravention of Article 26.
 7. The government has presented no response in respect of this communication.

Complaint:

8. The communications allege violation of Articles 5, 6, 7 and 26 of the Charter.

Procedure:

9. **Communication 143/95** dated 14 December 1994 and filed by the Constitutional Rights Project, was received at the Secretariat on 2 February 1995.
10. In February 1995, the Commission was seized of the communication, and on 7 February 1995, a notification was sent to the Nigerian Government with the attached communication asking the said Government to respond within three months.
11. At the 18th Session in October 1995, the communication was declared admissible, and should be brought up by the proposed mission to Nigeria.
12. **Communication 150/96** is submitted by Civil Liberties Organisation and dated 15 January 1996. It was received at the Secretariat on 29 January 1996.

13. At the 20th session held in Grand Bay, Mauritius in October 1996, the Commission declared the communication admissible, and decided that it would be taken up with the relevant authorities by the planned mission to Nigeria.
14. The mission went to Nigeria from 7 to 14 March 1997 and a report was submitted to the Commission.
15. The parties were duly notified of all the procedures.

LAW

Admissibility

16. Article 56 (5) of the Charter requires that a complainant exhausts local remedies before the Commission can consider the case. Section 4 (1) of the State Security (Detention of Persons) Decree No. 2 of 1984 states:

(1) no suit or other proceedings shall lie against any persons for anything done or intended to be done in pursuance of this Act.

Chapter IV of the Constitution of the Federal Republic of Nigeria is hereby suspended for the purposes of this Act and any question whether any provision thereof has been or is being or would be contravened by anything done or proposed to be done in pursuance of this Act shall not be inquired into in any court of law, and accordingly sections 219 and 259 of that Constitution shall not apply in relation to any such question.

17. In its decision on communication 129/94, the Commission accepted the argument of complainants that the above ouster decrees create a situation in which "it is reasonable to presume that domestic remedies will not only be prolonged but are certain to yield no results." (ACHPR 129/94:8.)

18. The ouster clauses create a legal situation in which the judiciary can provide no check on the executive branch of government. A few courts in the Lagos Division have occasionally found that they have jurisdiction; in 1995, the Court of Appeal in Lagos relying on common law, found that courts should examine some decrees notwithstanding ouster clauses, where the decree is "offensive and utterly hostile to rationality". On their face, ouster clauses remove the right of courts to review decrees.

19. For these reasons, the Commission declared the communications admissible.

Merits

20. Both communications allege that the government has prohibited the issuance by any court of the writ of habeas corpus or any prerogative order for the production of any person detained under Decree No. 2 of 1984. Decree No. 14 denies the right to those detained for acts "prejudicial to State security or the economic adversity of the nation". A panel has the power to review the detentions but this is not a judicial body and its members are appointed by the President.

21. Article 6 of the Charter reads:

Every individual shall have the right to liberty and security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

22. The problem of arbitrary detention has existed for hundreds of years. The writ of habeas corpus was developed as the response of common law to arbitrary detention, permitting detained persons and their representatives to challenge such detention and demand that the authority either release or justify all imprisonment.

23. Habeas corpus has become a fundamental facet of common law legal systems. It permits individuals to challenge their detention proactively and collaterally, rather than waiting for the outcome of whatever legal proceedings may be brought against them. It is especially vital in those instances in which charges have not, or may never be, brought against the detained individual.

24. Deprivation of the right to habeas corpus alone does not automatically violate Article 6. Indeed, if Article 6 were never violated, there would be no need for habeas corpus provisions. However, where violation of Article 6 is widespread, habeas corpus rights are essential in ensuring that individuals' Article 6 rights are respected.

25. The question thus becomes whether the right to habeas corpus, as it has developed in common law systems, is a necessary corollary to the protection of Article 6 and whether its suspension thus violates this Article.

26. The African Charter should be interpreted in a culturally sensitive way, taking into full account the differing legal traditions of Africa and finding its expression through the laws of each country. The government has conceded that the right to habeas corpus is important in Nigeria, and emphasised that it will be reinstated "with the democratisation of society."

27. The importance of habeas corpus is demonstrated by the other dimensions of communication 150/96. The government argued that no one had actually been denied the right to habeas corpus under the Amended Decree. Communication 150/96 provides a list of such

individuals who are detained without charges in very poor conditions, some incommunicado, and are unable to challenge their detention due to the suspension of this right. The government has however made no specific response.

28. First of all, in accordance with its well-established precedent (See the Commission's decisions in communications 59/91, 60/91, 64/91, 87/93 and 101/93), since the government has presented no defence or contrary evidence that the conditions of detention are acceptable, the Commission accepts the allegations that the conditions of detention are a violation of Article 5 of the Charter, which prohibits inhuman and degrading treatment. The detention of individuals without charge or trial is a clear violation of Articles 6 and 7(1)(a) and (d).

29. Furthermore, these individuals are being held incommunicado with no access to lawyers, doctors, friends or family. Preventing a detainee access to his lawyer clearly violates Article 7(1)(c) which provides for the "right to defence, including the right to be defended by a counsel of his choice." It is also a violation of Article 18 to prevent a detainee from communicating with his family.

30. The fact that the government refuses to release Chief Abiola despite the order for his release on bail made by the Court of Appeal is a violation of Article 26 which obliges States parties to ensure the independence of the judiciary. Failing to recognise a grant of bail by the Court of Appeal militates against the independence of the judiciary.

31. These circumstances dramatically illustrate how a deprivation of rights under Articles 6 and 7 is compounded by the deprivation of the right to apply for a writ of habeas corpus. Given the history of habeas corpus in the common law to which Nigeria is an heir, and its acute relevance in modern Nigeria, the amended Decree suspending it must be seen as a further violation of Articles 6 and 7(1)(a) and (d).

32. The government argues that habeas corpus actions are still available to most detainees in Nigeria, and that the right to bring habeas corpus actions is denied only to those detained for state security reasons under Decree No. 2. While this does not create a situation as serious as when all detainees were denied the right to challenge their detention, the limited application of a provision does not guarantee its compatibility with the Charter. To deny a fundamental right to a few is just as much a violation as denying it to many.

33. The government attempts to justify Decree No. 14 with the necessity for state security. While the Commission is sympathetic to all genuine attempts to maintain public peace, it must note that too often extreme measures to curtail rights simply create greater unrest. It is dangerous for the protection of human rights for the executive branch of government to operate without such checks as the judiciary can usefully perform.

34. Finally, as noted in the admissibility section of this decision, there is a persistent practice of ouster clauses in Nigeria, which remove many vital matters from the jurisdiction of the ordinary courts. A provision for habeas corpus is not of much use without an independent judiciary to apply it. The State Security Decree contains a clause forbidding any court from taking up any matter arising under it. In previous decisions on ouster clauses in Nigeria, the Commission has found that they violate Articles 7 and 26 of the Charter, the duty of the government to ensure the independence of the judiciary (See the Commission's decisions in communications 60/91, 87/93 and 129/94).

For these reasons, the Commission

finds that there are violations of Articles 5, 6, 7(1)(a), (c) and (d), 18 and 26 of the Charter and

recommends that the government of Nigeria brings its laws in line with the Charter.

Done at Kigali, Rwanda on 15 November 1999

148/96 Constitutional Rights Project / Nigeria

Rapporteur: 19th Session: Commissioner Dankwa
20th Session: Commissioner Dankwa
21st Session: Commissioner Dankwa
22nd Session: Commissioner Dankwa
23rd Session: Commissioner Dankwa
24th Session: Commissioner Dankwa
25th Session: Commissioner Dankwa
26th Session: Commissioner Dankwa

Summary of Facts:

1. The communication concerns 11 soldiers of the Nigerian army: WO1 Samson Elo, WO2 Jomu James, Ex. WO2 David Umukoro, Sat. Gartue Ortoo, LCPI Pullen Blacky, Ex LCPI Lucky Iviero, PVT Fakolade Taiwo, PVT Adelabi Ojejide, PVT Chris Miebi, Ex PVT Otem Anang, and WO2 Austin Ogbeowe. They were arrested in April 1990 on suspicion of being part of a coup plot and were tried twice, once in 1990 and once in 1991. They were found innocent on both occasions but still have not been freed. On 31 October 1991 they were granted state pardon by the then-Armed Forces Ruling Council. However, they continue to be held at Kirikiri Prison under terrible conditions. The complaint argues that there are no further domestic remedies available, since the jurisdiction of the courts over the matter has now been ousted by military decree.

Complaint:

2. The communication alleges violation of Article 6 of the Charter.

Procedure:

3. The communication is dated 22 August 1995 and was received at the Secretariat on 18 September 1995.

4. At the 20th session held in Grand Bay, Mauritius, the Commission declared the communication admissible, and decided that it would be taken up with the relevant authorities by the planned mission to Nigeria. The mission was undertaken between 7 and 14 March 1997 and the report was submitted to the Commission.

5. The parties were kept informed of all the procedures.

LAW

Admissibility

6. Article 56 of the Charter reads:

"Communications... shall be considered if they:

...

(5) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged."

7. This is just one of the seven conditions specified by Article 56, but it is the one that usually requires the most attention. Because Article 56 is necessarily the first considered by the Commission, before any substantive consideration of communications, it has already been the subject of substantial interpretation; in the jurisprudence of the African Commission, there are several important precedents.

8. Specifically, in the four decisions the Commission has already taken concerning Nigeria, Article 56 (5) is analysed in terms of the Nigerian context. Communication 60/91 (Decision ACHPR/60/91) concerned the Robbery and Firearms Tribunal; Communication 87/93 (Decision ACHPR/87/93) concerned the Civil Disturbances Tribunal; Communication 101/93 (Decision ACHPR/101/93) concerned the Legal Practitioners Decree; and Communication 129/94 (ACHPR/129/94) concerned the Constitution (Modification and Suspension) Decree and the Political Parties (Dissolution) Decree.

9. All of the Decrees in question in the above communications contain "ouster" clauses. In the case of the special tribunals, these clauses prevent the ordinary courts from taking up cases placed before the special tribunals or from entertaining any appeals from the decisions of the special tribunals. (ACHPR/60/91:23 and ACHPR/87/93:22). The Legal Practitioners Decree specifies that it cannot not be challenged in the courts and that anyone attempting to do so commits a crime (ACHPR/101/93:14-15). The Constitution Suspension and Modification legal prohibited their challenge in the Nigerian Courts (ACHPR/129/94:14-15).

10. In all of the cases cited above, the Commission found that the ouster clauses render local remedies non-existent or ineffective. They create a legal situation in which the judiciary can provide no check on the executive branch of government. A few courts in the Lagos Division have occasionally found that they have jurisdiction. For instance, in 1995 the Court of Appeal, Lagos Division, relying on common law, concluded that courts should examine some decrees notwithstanding ouster clauses, where the decree is "offensive and utterly hostile to rationality". But this decision has not been followed by any subsequent case.

11. In the instant communication, the jurisdiction of the courts was ousted. Thus, no matter how meritorious the victims' case for freedom may be, it cannot be entertained by the courts. Accordingly, the case was declared admissible.

Merits

12. Article 6 of the African Charter provides:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

13. The government has not disputed any of the facts as presented by Constitutional Rights Project.

14. The African Commission, in several previous decisions, has set out the principle that where allegations of human rights abuses go uncontested by the government concerned, especially after repeated notification, the Commission must decide on the facts provided by the complainant and treat those facts as given¹.

15. As the government has offered no other explanation for the detention of the 11 soldiers, the Commission has to assume that they are still being detained for the acts for which they were found innocent in two previous trials. This is a clear violation of Article 6, and shows disrespect by the Nigerian government for the judgements of its own courts.

16. Later, (although it was unnecessary because they were found innocent of any crime), the soldiers were granted state pardons, but still not freed. This constitutes a further violation of Article 6 of the Charter.

For these reasons, the Commission

finds that Article 6 of the African Charter has been violated

urges the Government of Nigeria to respect the judgements of its courts and free the 11 soldiers.

Done in Kigali, Rwanda on 15 November 1999

¹ See the Commission's decisions on *communications 59/91- Embga Mekong Louis vs. Cameroon*, *60/91- Constitutional Rights Project vs. Nigeria (in respect of Wahab Akamu, G. Adegba and oers*, *64/91 - Krishna Achuthan (on behalf of Aleke Banda)*, *87/93- Constitutional Rights Project vs. Nigeria (in respect of Zamani Lekwot and 6 oers) vs. Nigeria and 101/93 - Civil Liberties Organisation (in respect of the Nigerian Bar Association) vs. Nigeria*

151/96 Civil Liberties Organisation / Nigeria

Rapporteur: 20th Session: Commissioner Kisanga
21st Session: Commissioner Dankwa
22nd Session: Commissioner Dankwa
23rd Session: Commissioner Dankwa
24th Session: Commissioner Dankwa
25th Session: Commissioner Dankwa
26th Session: Commissioner Dankwa

Summary of Facts:

1. In March 1995, the Federal Military Government of Nigeria announced that it had discovered a plot to overthrow it by force. By the end of the month, several persons including civilians and serving and retired military personnel had been arrested in connection with the alleged plot.
2. A Special Military Tribunal was established under the Treason and Teasonable Offences (Special Military Tribunal) Decree, which precluded the jurisdiction of the ordinary courts. The Military Tribunal was headed by Major-General Aziza, and composed of five serving military officers. The tribunal used the rules and procedures of a Court-Martial, and no appeal lay from its judgement. The tribunal's decision was only subject to confirmation by the Provisional Ruling Council, the highest decision making body of the military government.
3. The trials were conducted in secret, and the suspects were not given the opportunity to state their defence or have access to lawyers or their families. They were not made aware of the charges against them until their trial. The suspects were defended by military lawyers who were appointed by the Federal Military Government.
4. Thirteen civilians tried by the Tribunal were convicted for being accessories to treason and sentenced to life imprisonment. These were: Dr. Beko Ransome-Kuti, Mallan Shehu Sanni, Mr. Ben Charles Obi, Mrs. Chris Anyanwu, Mr. George Mba, Mr. Kunle Ajibade, Alhaji Sanusi Mato, Mr. Julius Badejo, Mr. Matthew Popoola, Mr. Felix Mdamagida, Miss Rebecca Onyabi Ikpe, and Mr. Moses Ayegba. Miss Queenette Lewis Alagoe was convicted as an accessory after the fact and sentenced to 6 months imprisonment. The life sentences were later reduced to 15 years imprisonment.

5. The communication alleges that since their arrest, the accused have been held under inhuman and degrading conditions. They are held in military detention places, not in the regular prisons, and are still deprived of access to their lawyers and families. They are held in dark cells, given insufficient food and no medicine or medical attention.

Complaint:

6. The complainant alleges violations of Articles 5, 7(1)(a), (c) and (d) and 26 of the African Charter.

Procedure:

7. The communication is dated 19 January 1996 and was received at the Secretariat on 29 January 1996.
8. At the 20th session held in Grand Bay, Mauritius October 1996, the Commission declared the communication admissible, and decided that it would be taken up with the relevant authorities by the planned mission to Nigeria. The Mission took place between 7 and 14 March 1997 and the report was submitted to the Commission.
9. The parties were kept informed of all the procedures.

LAW

Admissibility

10. Article 56 of the Charter reads:

Communications... shall be considered if they:...

(5) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.

11. This is just one of the seven conditions specified by Article 56, but it is the one that usually requires the most attention. Because Article 56 is necessarily the first to be considered by the Commission, before any substantive consideration of communications, it has already been the subject of substantial interpretation; in the jurisprudence of the African Commission, there are several important precedents.

12. Specifically, in four decisions the Commission has already taken concerning Nigeria, Article 56(5) is analysed in terms of the Nigerian context. Communication 60/91 (Decision ACHPR/60/91) concerned the Robbery and Firearms Tribunal; Communication 87/93

(Decision ACHPR/87/93) concerned the Civil Disturbances Tribunal; Communication 101/93 (Decision ACHPR/101/93) concerned the Legal Practitioners Decree; and Communication 129/94 (ACHPR/129/94) concerned the Constitution (Modification and Suspension) Decree and the Political Parties (Dissolution) Decree.

13. All of the Decrees in question in the above communications contain "ouster" clauses. In the case of the special tribunals, these clauses prevent the ordinary courts from taking up cases placed before the special tribunals or from entertaining any appeals from the decisions of the special tribunals. (ACHPR/60/91:23 and ACHPR/87/93:22). The Legal Practitioners Decree specifies that it cannot be challenged in the courts and that anyone attempting to do so commits a crime (ACHPR/101/93:14-15). The Constitution Modification and Suspension prohibited their challenge in the Nigerian Courts (ACHPR/129/94:14-15).

14. In all of the cases cited above, the Commission found that the ouster clauses render local remedies non-existent, ineffective or illegal. They create a legal situation in which the judiciary can provide no check on the executive branch of government. A few courts in the Lagos district have occasionally found that they have jurisdiction; in 1995 the Court of Appeal in Lagos, relying on common law, found that courts should examine some decrees notwithstanding ouster clauses, where the decree is "offensive and utterly hostile to rationality".

15. In the instant communication, the jurisdiction of the ordinary courts was ousted and the case against the accused persons was brought before a special tribunal. From this tribunal there is no appeal to the ordinary courts.

16. Thus, as dictated both by the available facts and the precedent of the African Commission, the communication was declared admissible.

Merits

17. In all of the above-cited cases, the ouster clauses in addition to being prima facie evidence of admissibility, were found to constitute violations of Article 7. The Commission must take this opportunity, not only to reiterate the conclusions made before, that the constitution and procedures of the special tribunals violate Articles 7 (1)(a) and (c) and 26, but to recommend an end to the practice of removing entire areas of law from the jurisdiction of the ordinary courts.

18. In oral statements before the Commission, the Nigerian Government has claimed that "as a developing nation, we do not have enough resources to man these law courts very well." (Examination of State Reports, 13th Session, April 1993, Nigeria-Togo, p.35) This was given as a justification of "special" tribunals. Another justification given was that a breakdown of law and order had caused a high volume of cases (Id. pp. 37 and 39)

19. The Government denied that there is anything special at all about these extraordinarily constituted courts and maintained that they respected all the procedures of the regular courts; however, the government did concede that they include military officers, and that from the special tribunals there is no means of appeal to the regular courts.

20. Although the government argues that the procedure before special tribunals offers the same protections for rights as the regular courts (See *Id.* at 38), this assertion is belied by the very reasons the government gives for the tribunals, as well as the evidence submitted by the complainants.

21. The Commission's previous decisions found that the special tribunals violated the Charter because their judges were specially appointed for each case by the executive branch, and would include on the panel at least one, and often a majority, of military or law enforcement officers, in addition to a sitting or retired judge. The Commission here reiterates its previous decisions and declares that the trial of these persons before a special tribunal violates Article 7(1)(d) and Article 26.

22. The system of executive confirmation, as opposed to appeal, provided for in the institution of special tribunals, violates Article 7(1)(a).

23. If the domestic courts are overburdened, which the Commission does not doubt, the Commission recommends that Government consider allocating more resources to them. The setting up of a parallel system has the danger of undermining the court system and creates the likelihood of unequal application of the laws.

24. The complainants have alleged that the accused were not permitted to choose their own counsel. This is a question of fact. The government has not responded to this case specifically, neither has it contradicted this accusation. Therefore, in accordance with its established practice, (See the Commission's decisions in communications 59/91, 60/91, 64/91, 87/93 and 101/93) the Commission must take the word of the complainant as proven and thus finds a violation of Article 7(1)(c).

25. Finally, the complaint alleges that the conditions of detention of the convicted persons constitute inhuman and degrading treatment, in violation of Article 5. The government has not made any specific response to any of the accusations in the communication, and has not provided any information to contradict the allegations of inhuman and degrading treatment.

26. While being held in a military detention camp is not necessarily inhuman, there is the obvious danger that normal safeguards on the treatment of prisoners will be lacking. Being deprived of access to one's lawyer, even after trial and conviction, is a violation of Article 7(1)(c).

27. Being deprived of the right to see one's family is a psychological trauma difficult to justify, and may constitute inhuman treatment. Deprivation of light, insufficient food and lack of access to medicine or medical care also constitute violations of Article 5.

For the above reasons, the Commission

finds a violation of Articles 5, 7(1)(a), (c) and (d) and 26.

appeals to the Government of Nigeria to permit the accused persons a civil re-trial with full access to lawyers of their choice; and improve their conditions of detention.

Done in Kigali, Rwanda on 15 November 1999

153/96 Constitutional Rights Project / Nigeria

Rapporteur: 20th Session: Commissioner Dankwa
21st Session: Commissioner Dankwa
22nd Session: Commissioner Dankwa
23rd Session : Commissioner Dankwa
24th Session : Commissioner Dankwa
25th Session : Commissioner Dankwa
26th Session : Commissioner Dankwa

Summary of Facts:

1. Between May and June 1995 the Nigerian police in the city of Owerri arrested Vincent Obidior Duru, Nnemeka Sydney Onyecheaghe, Patrick Okoroafor, Collins Ndulaka and Amanze Onuoha. They were accused of serious offences ranging from armed robbery to kidnapping.
2. The police completed its case and submitted a report on 25 July 1995. In this report the police linked the suspects to various robberies and kidnapping of young children which had occurred and for which ransoms were demanded. One of the kidnapped children escaped but the whereabouts of the others are still unknown, although the ransoms have been paid. The report concluded that the suspects should be detained under Decree No. 2 of 1984 (which permits detainees to be held for three months without charge) in order to permit further investigations and for the suspects to be charged with armed robbery and kidnapping. At present the suspects are imprisoned and no charges have been brought against them.

Complaint:

3. The communication alleges violations of Articles 6 and 7 of the Charter.

Procedure:

4. The communication is dated 5 February 1996 and was received at the Secretariat on 28 February 1996.
5. At the 20th session held in Grand Bay, Mauritius, in October 1996, the Commission declared the communication admissible, and decided that it would be taken up with the relevant authorities by the planned mission to Nigeria. The mission was undertaken between 7 and 14 March 1997 and the report submitted to the Commission.

6. The parties were duly notified of all the procedures.

LAW

Admissibility

7. *Prima facie*, the communication satisfies all of the requirements for admissibility contained in Article 56. The only question that might be raised is with regard to the exhaustion of local remedies required by Article 56(5). Article 56(5) requires that the complainants must have exhausted all available local remedies, or else prove that such remedies are unduly prolonged.
8. The very violation alleged in this case is that the victims are detained without charge or trial, thus constituting an arbitrary detention. The normal remedy in such instances is for the victims to bring an application for a writ of habeas corpus, a collateral action in which the court may order the police to produce an individual and justify his imprisonment.
9. However, the police report contained in the file recommends that the suspects be detained under Decree No. 2 of 1984 (Document Ref. No. CR:3000/IMS/Y/Vol. 33/172, p. 10 para.). By the State Security (Detention of Persons) Amended Decree No. 14 (1994), the government has prohibited any court in Nigeria from issuing a writ of habeas corpus, or any prerogative order for the production of any person detained under Decree No. 2 (1984).
10. Thus, even the remedy of habeas corpus does not exist in this situation. There are consequently no remedies for the victims to resort to, and the communication was therefore declared admissible.

Merits

11. Article 6 of the African Charter reads:

...No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

12. The State Security (Detention of Persons) Act provides that the Chief of General Staff may order that a person be detained if he is

satisfied that any person is or recently has been concerned in acts prejudicial to State security or has contributed to the economic adversity of the nation, or in the

preparation or instigation of such acts.

13. Persons may be detained indefinitely if the detention is reviewed every six weeks by a panel of nine persons, six of whom are appointed by the President, the other three being the Attorney-General, the Director of the Prison Service, and a representative appointed by the Inspector-General of Police. The panel does not have to agree that continued detention is necessary: the detention will be renewed unless the Panel is satisfied that the circumstances no longer require the continued detention of the person.
14. The detainees were arrested between May and June 1995, nearly two years ago. There is no evidence that they have been tried or even charged.
15. Even if the required reviews of detention as provided for by the Act, are being held, the Panel which conducts the review cannot be said to meet judicial standards as majority of its members are appointed by the President (the Executive) and the other three are also representatives of the executive branch. The Panel does not have to justify the continued detention of individuals, but only issue orders in the case of release.
16. This Panel cannot thus be considered impartial. Consequently, even if recommendations from the meetings of this Panel are responsible for the detainees' continued detention, this detention must be considered arbitrary, and therefore in violation of Article 6.
17. Furthermore, Article 7(1) of the Charter provides that every individual shall have the right to an appeal to competent national organs against acts violating his fundamental rights, and the right to be tried within a reasonable time by an impartial court or tribunal.
18. The meetings of the Review Panel cannot be considered a competent national organ. Since it appears that the right to file for habeas corpus is also closed to the accused individuals, they have been denied their rights under Article 7(1)(a).
19. A subsidiary issue is the length of time that has elapsed since their arrest. In a criminal case, especially one in which the accused is detained until trial, the trial must be held with all possible speed to minimise the negative effects on the life of a person who, after all, may be innocent.
20. That nearly two years can pass without even charges being filed is an unreasonable delay. Thus, the detainees' rights under Article 7(1)(d) have also been violated.

For these reasons, the Commission,

finds violations of Articles 6, 7(1)(a) and (d) of the Charter

appeals to the Government of Nigeria to charge the detainees, or release them.

Done in Kigali, Rwanda on 15 November 1999

206/97 Centre For Free Speech / Nigeria**Rapporteur:**

23rd Session: Commissioner Dankwa

24th Session: Commissioner Dankwa

25th Session: Commissioner Dankwa

26th Session: Commissioner Dankwa

Summary of Facts:

1. The complainant alleges the unlawful arrest, detention, trial and conviction of four Nigerian journalists, by a Military Tribunal presided over by one Patrick Aziza.
2. The journalists were convicted for reporting stories on the alleged 1995 coup attempt in their various newspapers and magazines. The journalists are: Mr. George Mba of *TELL* magazine, Mr. Kunle Ajibade of *THE NEWS magazine*, Mr. Ben Charles Obi of *CLASSIQUE Magazine* and Mrs. Chris Anyanwu of *TSM Magazine*.
3. The journalists were tried in secret and were not allowed access to counsel of their choice.
4. The journalists were sentenced to various terms of imprisonment.
5. The convicted journalists could not appeal against their sentences because of the various Decrees promulgated by the Military Regime that ousts the jurisdiction of regular courts from hearing appeals on cases decided by a Military Tribunal.

Complaint:

The complainant asserts that the following Articles of the African Charter have been violated:

Articles 6, 7 and 24 and Principle 5 of the U. N. Basic Principles on the Independence of the Judiciary

Procedure:

6. The communication is dated 14 July 1997 and the Secretariat acknowledged receipt on 23 September 1997.

7. Correspondences were exchanged between the Secretariat and the parties for additional information and to keep the latter informed of the procedures.

LAW

Admissibility

8. For a communication submitted under Article 55 of the Charter to be declared admissible, it must satisfy all the conditions stipulated under Article 56 of the Charter. Such conditions must be assessed based on the circumstances of each particular case. In this case, the communication *prima facie* is in accordance with these requirements. The only issue that might be raised is with regard to the exhaustion of local remedies as provided for under Article 56(5) of the Charter.

9. Article 56(5) states:

Communications relating to the human and peoples' rights referred to in Article 55 received by the Commission, shall be considered if they:

... are sent after exhausting local remedies if any, unless it is obvious that this procedure is unduly prolonged.

10. The jurisdiction of the courts are ousted by Treason and Treasonable Offences (Special Military Tribunal) Decree. Applying the decisions of the Commission in communication 60/91, which concerned the Robbery and Firearms Tribunal, communication 87/93 on the Civil Disturbances Tribunal, communication 101/92 on the Legal Practitioners Decree and communication 129/94 relating to the Constitution (Suspension and Modification) Decree and the Political Parties (Dissolution), the Commission finds that local remedies in the instant communication were non-existent or ineffective.

For the above reasons, the Commission declared the communication admissible.

Merits:

11. The complainant alleges the illegal arrest and detention of the Journalists as being in violation of their right to liberty and security of person as provided for in Article 6 of the Charter.

Article 6 of the Charter provides:

Every individual shall have the right to liberty and the security of person..

No One may be deprived of his freedom except for the reasons and conditions laid down by law. In particular, no one may be arbitrarily arrested or detained.

12. The complainant also alleges violation of Article 7 of the Charter and Principle 5 of the United Nations Basic Principles on the Independence of the Judiciary in that the Journalists were tried in secret, were denied access to counsel of their choice and later sentenced to various terms of imprisonment. Further, that the convicted Journalists could not appeal against their sentences because of the various Decrees promulgated by the Military government that ousts the jurisdiction of the regular courts from hearing such cases.

Article 7 (1) of the Charter provides:

***Every individual shall have the right to have his cause heard.
This comprises: (a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;***

Principle 5 of the UN Basic Principles stipulates:

Everyone shall have the right to be tried by the ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

13. It is alleged that the convicted persons were not allowed access to their lawyers, neither were they given the opportunity to be represented and defended by lawyers of their own choice at the trial. Article 7 (1) (c) of the Charter provides:

Every individual shall have the right to defence, including the right to be defended by counsel of his choice.

14. In its Resolution on the Right to Recourse Procedure and Fair Trial, the Commission in re-enforcing this right observed in paragraph 2 (e) (i) thus:

In the determination of charges against individuals, the individual shall be entitled in particular to:

- (i) ... communicate in confidence with counsel of their choice***

The denial of this right therefore is in contravention of Article 7(1)(c) of the Charter.

15. The issue of the arraignment and trial of the Journalists must also be addressed here. The complainant alleges that the Journalists were arraigned, tried and convicted by a Special Military Tribunal, presided over by a serving military officer and whose membership also included some serving military officers. This is in violation of the provisions of Article 7 of the Charter and Principle 5 of the UN Basic Principles.
16. It could not be said that the trial and conviction of the four Journalists by a Special Military tribunal presided over by a serving military officer who is also a member of the PRC, the body empowered to confirm the sentence, took place under conditions which genuinely afforded the full guarantees of fair hearing as provided for in article 7 of the Charter. The above act is also in contravention of Article 26 of the Charter.

Article 26 of the Charter states:

State parties to the present Charter shall have the duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

17. Unfortunately, the government of Nigeria has not responded to the several requests from the Commission for the former's reaction to the communication. The African Commission on several previous decisions has set out the principle that where allegations of human rights violations go uncontested by the government concerned, particularly after repeated notifications or request for information on the case, the Commission must decide on the facts provided by the complainant and treat those facts as given (see communications Nos. 59/91, 60/91, 64/91, 87/93 and 101/93).
18. In the circumstances, the Commission finds itself compelled to adopt the position that the facts alleged by the complainant are true.

For the above reasons, the Commission:

concludes that the violations of Articles 6 and 7 (1)(a) and (c) and 26 occurred in this case.

urges the government of Nigeria to order for the release of the four Journalists.

Done in Kigali, Rwanda on 15 November 1999

215/98 Rights International / Nigeria**Rapporteur:**

23rd session: Commissioner Dankwa

24th session: Commissioner Dankwa

25th session: Commissioner Dankwa

26th Session: Commissioner Dankwa

Summary of facts:

1. Complainant is an NGO based in the United States.
2. Complainant alleges that Mr. Charles Baridorn Wiwa a Nigerian student in Chicago was arrested and tortured at a Nigerian Military Detention Camp in Gokana.
3. Complainant alleges that Mr. Wiwa was arrested on 3 January 1996 by unknown armed soldiers in the presence of his mother and other members of his family.
4. It is alleged that Mr. Wiwa remained in the said Military detention camp from 2-9 January 1996.
5. While in detention, Mr. Wiwa was horsewhipped and placed in a cell with forty-five other detainees.
6. After Mr. Wiwa was identified as a relative of Mr. Ken Saro - Wiwa he was subjected to various forms of torture.
7. Enclosed in the communication is medical evidence of Mr. Wiwa's physical torture.
8. After 5 days in the detention camp in Gokana, Mr. Wiwa was transferred to the State Intelligence Bureau (SIB) in Port Harcourt.
9. Mr. Wiwa was held from 9-11 January 1996, without access to a legal counsel or relatives, except for a five minutes discussion with his grandfather.
10. Mr. Wiwa, it is alleged was not informed of the charges against him nor was he provided with an explanation for his prolonged detention until 11 January 1996

11. On 9 January 1996, Mr. Wiwa was finally allowed to prepare a statement in his own defence but without a legal counsel, and he did not know what to write.
12. On 11 January 1996, Mr. Wiwa and 21 other Ogonis were brought before the Magistrate Court 2 in Port-Harcourt, charged with unlawful assembly in violation of Section 70 of the Criminal Code Laws of Eastern Nigeria 1963.
13. The charging instrument states that Mr. Wiwa participated in the said unlawful assembly on 4 January 1996 which happens to be a day after he was arrested.
14. Mr. Wiwa however was granted bail.
15. While Mr. Wiwa was out on bail some un-known people believed to be government agents abducted him and threatened his life by forcing him into a car in Port-Harcourt.
16. On the advice of Human rights lawyers, Mr. Wiwa fled Nigeria on 18 March 1996 to Cotonou, Republic of Benin where the UN High Commissioner for Refugees declared him a refugee.
17. On September 17 1996, the US government granted him refugee status and he has been residing in the United States since then.

Complaint:

18. The complainant alleges that the following Articles of the African Charter on Human and Peoples' Rights have been violated: Articles 5, 6, 7 (1)(c) and 12 (1) and (2).

Procedure:

19. The Communication is dated 17 February 1998 and was received at the Secretariat on 19 March 1998.
20. At its 23rd ordinary session held in Banjul, The Gambia from 20-29 April 1998, the Commission decided to be seized of this communication and to notify the state concerned to send its comments on admissibility.
21. At its 24th ordinary session held in Banjul, The Gambia from 22 to 31 October 1998, the Commission declared the communication admissible and invited submissions on the merits of the case during the 25th ordinary session. The Commission also requested the Secretariat to study this communication and communication No. 205/ 97 with a view to consolidating them.

LAW

Admissibility

22. Article 56 (5) of the Charter provides:

***Communications...shall be considered if they:
are sent after exhausting local remedies, if any, unless it is obvious that
this procedure is unduly prolonged***

23. The Commission declared the communication admissible on grounds that there was lack of available and effective domestic remedies for human rights violations in Nigeria under the military regime.

24. Relying on its precedents in *communications 87/93 and 101/93*, (the former was brought on behalf of seven men sentenced to death under a Decree which prohibits the courts from reviewing any aspect of the trial, while the latter was brought on behalf of the Nigerian Bar Association based on a Decree which infringed upon Nigerian lawyers' freedom of association and also precluded the courts from hearing cases relating to the said decree) the Commission interpreted the standard for constructive exhaustion of domestic remedies to be satisfied where there is no adequate or effective remedy available to the individual. In this particular case, the Commission found that Mr. Wiwa was unable to pursue any domestic remedy following his flight for fear of his life to the Republic of Benin and the subsequent granting of refugee status to him by the United States of America.

25. On the issue of consolidation of the communication with No. 205/97, the Commission decided that since it is a stage behind and since a decision on admissibility is yet to be taken on communication 205/97, it should not, therefore, delay decision on the merits of communication 215/98.

Merits

26. The complainant alleges that while in detention, he was horsewhipped and subjected to various forms of torture. Article 5 of the Charter states:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly...torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

27. The complainant also alleges the illegal arrest and detention of Mr. Wiwa as being in contravention of his rights to liberty and security of person as guaranteed under Article 6 of the Charter, which provides:

Every individual shall have the right to liberty and the security of person.. No one may be deprived of his freedom except for the reasons and conditions laid down by law. In particular, no one may be arbitrarily arrested or detained.

28. It is alleged further that except for the five minutes discussion Mr. Wiwa had with his grandfather, he was not allowed access to his relatives or a counsel and was also neither informed of the nature of the offence nor the reasons for his arrest and detention in violation of Article 7 (1)(c) of the Charter, which provides:

Every individual shall have the right to have his cause heard. This comprises: (c) the right to defence, including the right to be defended by counsel of his choice;

29. In its Resolution expounding on the components of the right to fair trial, the Commission had observed that:

***...the right to fair trial includes, among other things, the following:
(b) persons who are arrested shall be informed at the time of the arrest, in a language which they understand of the reason for their arrest and shall be informed promptly of any charges against them;
(e) the determination of charges against individuals, the individual shall be entitled in particular to:...i)Have adequate time and facilities for the presentation of their defence and to communicate in confidence with counsel of their choice***

30. The complainant alleged that he was abducted and threatened by persons believed to be agents of the government, an action which led to his fleeing the country for safety. He attests that his flight, as evidenced by the granting of refugee status to him by two countries (Republic of Benin and the U. S.) was based on well-founded fear of persecution by the Nigerian government. He attests further that since then, he has been living in the U. S. as a refugee. The above acts are in violation of Mr. Wiwa's rights to freedom of movement and residence and his right to leave and to return to his country guaranteed under Article 12(1) and (2) of the Charter, which state:

(1) Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

(2) Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions provided for by law for the protection of national security, law

and order, public health or morality.

31. Despite invitations to the Government of Nigeria for its response to the allegations in this communication, the Commission has received none. The Commission is, therefore, compelled to conclude the complaint on the facts in its possession, which are the allegations of the complainant.

For the above reasons, the Commission

finds the government of Nigeria in violation of Articles 5, 6, 7(1) (c) and 12(1) and (2) of the Charter

Done in Kigali, Rwanda on 15 November 1999

73/92 Mohammed Lamine Diakité/Gabon

Rapporteur: 17th Session: Commissioner Nguema
18th Session: Commissioner Nguema
19th Session: Commissioner Nguema
20th Session: Commissioner Nguema
21st Session: Commissioner Nguema
22ND Session: Commissioner Nguema
23rd Session: Commissioner Nguema
24th Session: Commissioner Nguema
25th Session : Commissioner Nguema
26th Session: Commissioner Nguema
27th Session: Commissioner Nguema

Summary of Facts:

1. The complainant is a citizen of Mali who lived in Gabon for 17 years, and was expelled on 4 November 1987, leaving his wife and 5 children who were all born in Gabon. According to the complainant, the reason for his expulsion is that his friend (a certain Mr. Coulibaly Hamidou) was accused of having a sexual relationship with the first wife of a Gabonese Government Minister, Mr. Mba Eyoghe, former member of government. Consequently, the latter using his connections with certain Gabonese administration humiliated the complainant, his family and friend. The complainant also claims that Mr. Mba Ejoghe owes him money. The complainant and his friend were expelled from Gabon and on 27 August 1989 following expulsion order No. 182/MATCLI-DGAT-DDF-SF. A second order No. 126/MAT/CLD/SE/SG/DGAT/DDF/SF of 22 June 1992 nullified the first order, therefore the complainant and his friend were authorised to come back to Gabon.

Complaint:

2. Though the complainant does not indicate specific violations of the provisions of the Charter to substantiate his communication, it appears that Articles 12(4), 14 and 18 (1) and (2) have been violated.

Procedure

3. The communication is dated 10 April 1992. The Commission was seized of it at its 12th session.
4. The Secretariat of the Commission exchanged many correspondences with the parties on the issue of exhaustion of local remedies and reparation by the Gabonese authorities to the complainant for the prejudice suffered.
5. The complainant responded and indicated that he had exhausted local remedies and that the Gabonese authorities were yet to remedy the violations occasioned.
6. At its 14th Session held in Banjul, the Gambia from 25 October to 3 November 1994, the communication was declared admissible.
7. At its 16th session held in October 1995, the Commission directed that a letter be sent to the Government of Gabon to find out what steps had been taken to deal with the complainant's case.
8. At the 17th session in March 1996, it was decided that Commissioner Nguema would take the matter up with the Foreign Minister of Gabon.
9. On 30 March 1995, a Note Verbale was received from the Ministry of Foreign Affairs of Gabon stating that Commissioner Nguema had met the Minister of Foreign Affairs for discussions. The case of M. Diakite had been discussed but a resolution had not been reached. However the Gabon authorities promised to work on a solution.
10. The case was deferred on many occasions to allow parties to settle the matter amicably with the assistance of Commissioner Isaac Nguema. Unfortunately, these attempts did not succeed.
11. On 11 May 1999, the Secretariat received a letter sent by the complainant and addressed to the Chairman of the Commission. The said letter was soliciting his intervention *ex qualite* to the Gabonese Head of State. The content of the letter was brought to the attention of the Chairman. He then wrote to the President of Gabon, on 10 June 1999, requesting him to help find a lasting solution to the matter. The latter is yet to react.

12. On 30 March 2000, the Secretariat received a letter from the complainant acknowledging receipt of the letter conveying the decision of the Commission to postpone consideration of the communication to the 27th session. But at the same time expressed his wishes that a final decision will be taken at the said session.
13. On 30 April 2000, the Respondent State submitted fresh evidence thereby throwing more light on the matter and the way the complainant and his friend returned to Gabon

Law

Admissibility:

14. According to the provisions of Article 56(5) and (6) of the African Charter on Human and Peoples' Rights, communications received at the Commission, concerning human and Peoples' rights shall, in order to be considered, necessarily fulfil the following conditions – they must be:
 - (5) “sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged”;
 - (6) “submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter”.
15. Mr Mohamed Lamine Diakité, was expelled from Gabonese territory on 22 August 1989, pursuant to a warrant issued by the administrative authority of the State. Though he had returned to his country of origin, Mali, he undertook démarches with a view to causing the revocation of his warrant of expulsion, as well as obtaining compensation for the injury suffered due to the expulsion. He was later on authorised to return to Gabon where he is residing since 9 December 1997.
16. However, the focus of the Commission's attention is really on the fact that the condition regarding the exhaustion of internal remedies before seizing an international forum is based on the principle that the defendant State should have had the opportunity to redress the injury caused to the victim by its own means, within the framework of its own judicial system. This principle does not however mean that the complainant should necessarily exhaust remedies, which, in practical terms, are not available.
17. The Respondent State by correspondence dated 30 April 2000 has submitted fresh evidence from which it essentially appears that Mr. Mohammed Lamin Diakite had never contested the decision of expulsion No. 182/MATCLL-DGAT-DDF-SF issued against him. His return to the Gabonese territory is

based on a political decision by the Gabonese Head of State following talks with his Malian counterpart during an official visit to Mali.

For the above reasons, the Commission

declares the communication brought by Mr. Mohammed Lamin Diakite inadmissible for non-exhaustion of local remedies.

Done in Algiers, Algeria on 11 May 2000.

**133/94 Association pour la Defense des Droits de l'Homme et des Libertés /
Djibouti**

Rapporteur: 17th session: Commissioner Amega
18th session: Commissioner Ndiaye
19th session: Commissioner Ndiaye
20th session: Commissioner Beye
21st session: Commissioner Beye
22nd session: Commissioner Ben-Salem
23rd session: Commissioner Ben-Salem
24th session : Commissioner Ben-Salem
25th session : Commissioner Ben-Salem
26th session : Commissioner Ben-Salem
27th session : Commissioner Ben-Salem

Summary of Facts:

1. The Communication is filed by “Association Pour la Defense des Droits de l'Homme et des Libertés”, an NGO from Djibouti. The communication complains that there has been a series of human rights abuses against members of the Afar ethnic group committed by government troops in areas of renewed fighting with the FRUD, “Front pour la Restauration de l'Unité et de la Démocratie”. The FRUD draws its support mainly from the Afar ethnic group. There are reports on extra-judicial

executions, torture and rape. The communication names 26 people who have been executed, jailed without trial or tortured.

Complaint:

2. The complainant alleges the violation of Articles 2, 3, 4, 5, 6, 7, 9, 10, 11, 12 and 13 of the African Charter by the government of Djibouti.

Procedure:

3. The communication is dated 7th April 1994 and was received on 19 April 1994 at the Secretariat.

4. The Commission was seized of the communication at its 15th ordinary session, and the Ministries of External Affairs Justice of Djibouti were notified on the 29th of July 1994. The complainant was also notified of this decision.

5. On 26th of August 1994, the Secretariat invoked Rule 109 of the Rules of Procedure, i.e. asking the Government to avoid irreparable prejudice to the complainant or the victims.

6. On 21 October 1996, at the 20th session, the Commission received a letter from the complainant which demanded that the consideration of the communication be postponed to during negotiations with the government. The Commission agreed to this demand, particularly in the light of the fact that the communication had been given a new Rapporteur, who would like more time to study the file.

7. At the 22nd session held in Banjul, The Gambia from 2-11 November 1997, the communication was declared admissible.

8. On 11th February 1998, the Secretariat received a faxed Note Verbale from the Ministry of External Affairs and International Co-operation, with a declaration of the General Assembly of the Association pour la Défense des Droit de l'Homme et des Libertés, dated 25 May 1996, in which it decided to withdraw the communication due to the signing of a protocol with the government which objective was to bring about a lasting settlement to the demands of the civilian victims, refugees and displaced persons. The Secretariat acknowledged receipt of this Note Verbale on 20 February 1998.

9. The Secretariat contacted the complainant to confirm the veracity of the claimed compromise and the subsequent withdrawal of its complaint. This was done by letter dated 1 June 1998, which was never replied.

10. At its 25th session, the Commission mandated Commissioner Rezag-Bara to go to Djibouti and find an amicable solution to the dispute. At the same time, it deferred its decision on the merit to its 26th session, awaiting the outcome of the efforts of Commissioner Rezag-Bara.

11. During his mission from 26 February to 5 March 2000, Commissioner Rezag-Bara met with the of Djiboutian authorities and the complainant, which confirmed that an amicable settlement has already been concluded.

12. On 30 March 2000, the Secretariat received a letter signed by the President of the *Association pour la Défense des Droits de l'Homme et des Libertés* (Association for the Defence of Human Rights and Freedoms), Mr. Mohamed Moumed Soulleh, indicating that the disagreement which formed the basis for the communication under consideration had been amicably resolved between the parties. Mr. Houmed Soulleh concludes by requesting the Commission to take note of this settlement.

Law

Admissibility

13. Article 56(5) of the African Charter on Human and Peoples' Rights requires of any recourse to the Commission that the communications be sent "...after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged".

14. At its 20th session, the Commission declared the communication admissible on grounds, among others, that the material content and effectiveness of the arrangements struck by between the parties remained unknown to it, as well as the results of the enquiries and judicial proceedings mentioned by the Respondent State in its correspondence dated 8 March 1995.

15. The case brought by the complainant is aimed at causing the Commission to declare and consider that the facts hereunder imputed to the Djiboutian armed forces and certain other agencies of the State constitute a series of violations by the Respondent State of various provisions of the Charter. The alleged wrongful acts are: the perpetration of attacks against unarmed civilians and who were thus no participants in the combats between the forces and the rebel movement *Front pour la Restauration de l'Unité et de la Démocratie* (in particular, summary and arbitrary executions, acts of mass rape, forced displacement and regrouping) arrests and preventive detention for periods exceeding the legal limit, etc.

16. For its part, the Respondent State transmitted to the Commission documents strongly suggesting that arrangements aimed at obtaining a lasting settlement of the demands of the victims of the violations blamed on the armed forces had been established, and consequently calls on the Commission to declare the communication inadmissible.

17. The meeting between the complainant and Commissioner Rezag-Bara while on mission to Djibouti, as well as the complainant's letter, received at the Secretariat on 30 March 2000, have clarified the situation and also confirmed the existence of the settlement reached between the two parties.

For these reasons, the Commission

decides to close the case on the basis of the amicable settlement reached by the parties.

Done in Algiers, Algeria on 11 May 2000.

147/95 and 149/96 - Sir Dawda K Jawara / The Gambia

Rapporteur: 19th Session: Commissioner Kisanga
20th Session: Commissioner Umozurike
21st Session: Commissioner Umozurike
22nd Session: Commissioner Dankwa
23rd Session: Commissioner Dankwa
24th Session: Commissioner Dankwa
25th Session: Commissioner Dankwa
26th Session: Commissioner Dankwa
27th Session: Commissioner Dankwa

Summary of Facts:

Communication 147/95:

1. The complainant is the former Head of State of the Republic of The Gambia. He alleges that after the Military coup of July 1994, that overthrew his government, there has been

“blatant abuse of power by ... the military junta”. The military government is alleged to have initiated a reign of terror, intimidation and arbitrary detention.

2. The complainant further alleges the abolition of the Bill of Rights as contained in the 1970 Gambia Constitution by Military Decree No. 30/31, ousting the competence of the courts to examine or question the validity of any such Decree.
3. The communication alleges the banning of political parties and of Ministers of the former civilian government from taking part in any political activity. The communication alleges restrictions on freedom of expression, movement and religion. These restrictions were manifested, according to the complainant, by the arrest and detention of people without charge, kidnappings, torture and the burning of a mosque.
4. He further alleges that two former Ministers of the Armed Forces Provisional Ruling Council (AFPRC) were killed by the regime, asserting that the restoration of the death penalty through Decree No. 52 means, "the arsenal of the AFPRC is now complete".
5. He also alleges that not less than fifty soldiers were killed in cold blood and buried in mass graves by the military government during what the complainant terms “a staged-managed attempted coup”. Several members of the armed forces are alleged to have been detained some for up to six months without trial following the introduction of Decree No. 3 of July 1994. This Decree gives the Minister of Interior the power to detain and to extend the period of detention *ad infinitum*. The Decree further prohibits the proceedings of *Habeas Corpus* on any detention issued under it.
6. The complainant alleges further that Decree No. 45 of June 1995, the National Intelligence Agency (NIA) Decree empowers the Minister of Interior or his designate to issue search warrants, authorise interference with correspondence, be it wireless or electronic.
7. Finally, the communication alleges disregard for the judiciary and contempt of court following the regime’s disregard of a court order; the imposition of retroactive legislation following the Economic Crimes (Specified Offences) Decree of 25th November 1994, thus infringing on the rule and the due process of law.

Communication 149/96

8. *Communication 149/96* alleges violation of the right to life, freedom from torture and the right to a fair trial. The complainant alleges that not less than fifty soldiers have been summarily executed by the Gambian Military Government and buried in mass graves following an alleged attempted coup on 11th November 1994.

9. The complainant attaches the names of thirteen of the fifty soldiers alleged to have been killed and further alleges that a former Finance Minister, Mr. Koro Ceesay was killed by the government. He attaches a document from a former member of the AFPRC, Captain Sadibu Hydara, to support this allegation.
10. He went further to state that a former AFPRC member and former Interior Minister did not die from high blood pressure as claimed by the government but was tortured to death.

Government's Response:

11. In its submission on the question of admissibility, the Government raised the following objections:
12. The first point raised is what the government called lack of 'proofs in support', claiming that a communication should only be received by the Commission if the individual alleges, 'with proofs in support' a serious or massive cases of violations of human and peoples' rights.
13. The government asserts that the decrees complained of may on their face value be seen to be contrary to the provisions in the Charter, but claims that they must be "studied and placed in the context of the changed circumstances in The Gambia". Commenting on the freedom of liberty, the government claimed it was acting in conformity with laws previously laid down by domestic legislation. The government claims that the decrees do not prohibit the enjoyment of freedoms they are merely there to secure peace and stability and only those who want to disrupt the peace will be arrested and detained.
14. The submission further claims that since the take-over, not a single individual has been deliberately killed; and that during the counter - coup of 11th November 1994, soldiers of both sides lost their lives due mainly to the fact that the rebels were fighting back with soldiers loyal to the government.
15. The Government also claims that Mr. Koro Ceesay and Mr. Sadibu Hydara alleged to have been killed by the government died from an accident and natural causes respectively. Post-mortem reports on the two deaths are attached.
16. The Government further pointed out that the communication does not fulfil some of the conditions laid down in Article 56 of the Charter. Specifically, that the communications fails to meet the conditions set down in grounds 4 and 5 which states that: 56(4) }*are not based exclusively on news disseminated through the mass media~*; and 56(5) }*are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged~*.

Complaint:

17. The complainant alleges violation of the following Articles of the Charter:

Articles 1, 2, 4, 5, 6, 7 (1)(d) and (2), 9(1) and (2), 10(1), 11, 12 (1) and (2), 20(1) and 26

Procedure

18. **Communication 147/95** is dated 6 September 1995 and was received on 30 November 1995 at the Secretariat of the Commission.

19. **Communication 149/96** was received on 12 January 1996 at the Secretariat of the Commission.

20. At the 19th session in March 1996, the Commission decided to be seized of the communication and to notify the government accordingly and stated that decision on admissibility would be taken at the 20th session in October 1996.

21. At its 21st session in April 1997, the Commission decided to renumber the communication as **147/95** to reflect the length of time it has been with the Commission, it also decided to join the communication with **149/96** and declare both of them **admissible**. The Commission also requested further information from both sides and stated that a decision on the merits would be taken at its 22nd session.

LAW

Admissibility:

22. The admissibility of communications by the Commission is governed by Article 56 of the African Charter.

This article lays down seven conditions that, under normal circumstances must be fulfilled for a communication to be admissible. Of the seven, the Government claims that two conditions have not been fulfilled; namely; Article 56(4) and 56(5).

23. Article 56(4) of the Charter provides that ‘... are not based exclusively on news disseminated through the mass media’.

24. The Government claims that the communication should be declared inadmissible because it is based exclusively on news disseminated through the mass media, and specifically made reference to the attached letter of Captain Ebou Jallow. While it would be dangerous to rely exclusively on news disseminated from the mass media, it would be equally damaging if the Commission were to reject a communication because some aspects of it are based

on news disseminated through the mass media. This is borne out of the fact that the Charter makes use of the word "exclusively"

25. There is no doubt that the media remains the most important and if not the only source of information. It is common knowledge that information on human rights violations is always gotten from the media. The Genocide in Rwanda, the human rights abuses in Burundi, Zaire, Congo, to name but a few, were revealed by the media.
26. The issue therefore should not be whether the information was gotten from the media, but whether the information is correct. Did the complainant try to verify the truth about these allegations? Did he have the means or was it possible for him to do so, given the circumstances of his case?
27. The communication under consideration cannot be said to be based exclusively on news disseminated through the mass media because the communication is not exclusively based on Captain Jallow's letter. The complainant alleges extra-judicial execution and has attached the names of some of those he alleges have been killed. Captain Jallow's letter made no mention of this fact.
28. Article 56(5) of the Charter states that '... are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged'.
29. The government also claims that the author has not attempted to exhaust local remedies. The government claims that the author should have sent his complaint to the police who would in turn have investigated the allegations and prosecuted the offenders 'in a court of law'.
30. This rule is one of the most important conditions for admissibility of communications, no doubt therefore, in almost all the cases, the first requirement looked at by both the Commission and the state concerned is the exhaustion of local remedies.
31. The rationale of the local remedies rule both in the Charter and other international instruments is to ensure that before proceedings are brought before an international body, the State concerned must have had the opportunity to remedy the matters through its own local system. This prevents the Commission from acting as a court of first instance rather than a body of last resort.¹ Three major criteria could be deduced from the practice of the Commission in determining this rule, namely: the remedy must be available, effective and sufficient.

¹ See Communications 25/89, 74/92 and 83/92 all joint

32. A remedy is considered *available* if the petitioner can pursue it without impediment, it is deemed *effective* if it offers a prospect of success, and it is found *sufficient* if it is capable of redressing the complaint.
33. The Government's assertion of non-exhaustion of local remedies will therefore be looked at in this light. As aforementioned, a remedy is considered available only if the applicant can make use of it in the circumstance of his case. The applicants in cases Nos. ACHPR/60/91, ACHPR/87/93, ACHPR/101/93 and ACHPR/129/94 had their communications declared admissible by the Commission because the competence of the ordinary courts had been ousted either by decrees or the establishment of special tribunals.
34. The Commission has stressed that, remedies, the availability of which is not evident, cannot be invoked by the State to the detriment of the complainant. Therefore, in a situation where the jurisdiction of the courts have been ousted by decrees whose validity cannot be challenged or questioned, as is the position with the case under consideration, local remedies are deemed not only to be unavailable but also non-existent.
35. The existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which, it will lack the requisite accessibility and effectiveness. Therefore, if the applicant cannot turn to the judiciary of his country because of generalised fear for his life (or even those of his relatives), local remedies would be considered to be unavailable to him.
36. The complainant in this case had been overthrown by the military, he was tried in absentia, former Ministers and Members of Parliament of his government have been detained and there was terror and fear for lives in the country. It would be an affront to common sense and logic to require the complainant to return to his country to exhaust local remedies.
37. There is no doubt that there was a generalised fear perpetrated by the regime as alleged by the complainant. This created an atmosphere not only in the mind of the author but also in the minds of right thinking people that returning to his country at that material moment, for whatever reason, would be risky to his life. Under such circumstances, domestic remedies cannot be said to have been available to the complainant.
38. According to the established case law of the Commission, a remedy that has no prospect of success does not constitute an effective remedy. The prospect of seizing the national courts, whose jurisdiction have been ousted by decrees, in order to seek redress is nil. This fact is reinforced by the Government's response of 8th March 1996, Note Verbale No. PA 203/232/01/(97-ADJ) in which it stated that '*The Gambian Government...does not intend to spend valuable time responding to baseless and frivolous allegations by a deposed despot...*'

39. As to whether there were sufficient remedies, one can deduce from the above analysis that there were no remedies capable of redressing the complaints of the authors.
40. Considering the fact that the regime at that material time controlled all the arms of government and had little regard for the judiciary, as was demonstrated by its disregard of a court order in the **T. K Motors' case**, and considering further that the Court of Appeal of The Gambia in the case of **Pa Salla Jagne v The State**, ruled that '*Now there is no human rights laws or goals and objective laws in the country*', it would be reversing the clock of justice to request the complainant to attempt local remedies.
41. It should also be noted that the government also claims that the communication lacks 'proofs in support'. The position of the Commission has always been that a communication must establish a *prima facie* evidence of violation. It must specify the provisions of the Charter alleged to have been violated. The State also claims that the Commission is allowed under the Charter to take action only on cases which reveal a series of serious or massive violations of human rights.
42. This is an erroneous proposition. Apart from Articles 47 and 49 of the Charter, which empower the Commission to consider inter-state complaints, Article 55 of the Charter provides for the consideration of "communications other than those of States Parties". Further to this, Article 56 of the Charter stipulates the conditions for consideration of such communications (see also Chapter XVII of the Rules of Procedure entitled "Procedure for the Consideration of The Communications Received in Conformity with Article 55 of the Charter"). In any event, the practice of the Commission has been to consider communications even if they do not reveal a series of serious or massive violations. It is out of such useful exercise that the Commission has, over the years, been able to build up its case law and jurisprudence.
43. The argument that the action of the Government is in conformity with regulations *previously laid down by law* is unfounded: the Commission decided in its decision on communication 101/93, with respect to freedom of association, that, "**competent authorities should not enact provisions which limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards**". And more importantly, the Commission in its Resolution on the Right to Freedom of Association had also reiterated that: "**The regulation of the exercise of the right to freedom of association should be consistent with States' obligations under the African Charter on Human and Peoples' Rights**". It follows that any law which is pleaded for curtailing the enjoyment of any of the rights provided for in the Charter must meet this requirement.

For these reasons, the Commission declared the communications admissible.

Merits

44. The complainant alleges that by suspending the Bill of Rights in the 1970 Gambian Constitution, the government violated Articles 1 and 2 of the African Charter.
45. **Article 1** of the Charter provides that “The member States ... parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Charter...”, while **Article 2** reads: “Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter...”
46. **Article 1** gives the Charter the legally binding character always attributed to international treaties of this sort. Therefore a violation of any provision of the Charter, automatically means a violation of **Article 1**. If a State party to the Charter fails to recognise the provisions of the same, there is no doubt that it is in violation of this Article. Its violation, therefore, goes to the root of the Charter.
47. The Republic of the Gambia ratified the Charter on 6 June 1983. In its first periodic report to the Commission in 1992, the Gambian government asserted that “*Most of the rights set out in the Charter have been provided for in Chapter 3, Sections 13 to 30 of the 1970 Constitution...The Constitution predicts the Gambian accession to the covenants, but in fact gave legal effect to some of the provisions of the Charter*”. This therefore means that the Gambian government gave recognition to some of the provisions of the Charter (i.e. those contained in chapter 3 of its Constitution), and incorporated them into its domestic law.
48. By suspending Chapter 3,(the Bill of Rights), the government therefore restricted the enjoyment of the rights guaranteed therein, and, by implication, the rights enshrined in the Charter.
49. It should however be stated that the suspension of the Bill of Rights does not *ipso facto* means the suspension of the domestic effect of the Charter. In Communication 129/94, the Commission held that “*the obligation of ... a government remains unaffected by the purported revocation of the domestic effect of the Charter*”
50. The suspension of the Bill of Rights and consequently the application of the Charter was not only a violation of Article 1 but also a restriction on the enjoyment of the rights and freedoms enshrined in the Charter, thus violating Article 2 of the Charter as well.
51. Article 4 of the Charter states that “Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”.
52. While the complainant alleges that there have been extra-judicial killings, no concrete evidence was adduced to support this allegation. The Military government has provided official post-mortem reports on the causes of the deaths of Messrs. Koro Ceesay and Sadibu Hydara. The government does not dispute the fact that soldiers died during the counter coup in November 1994, but claims that “soldiers

of both sides lost their lives due mainly to the fact that the rebels were fighting back with soldiers loyal to the government". It also claims that since the take-over, not a single individual has been deliberately killed.

53. It is not for the Commission to verify the authenticity of the post-mortem reports or the truth of the government's defence. The burden is on the complainant to furnish the Commission with evidence of his allegations. In the absence of concrete proof, the Commission cannot hold the latter to be in violation of Article 4 of the Charter.
54. **Article 5** of the Charter reads: "... All forms of ... torture, cruel, inhuman or degrading punishment and treatment shall be prohibited".
55. The complainant alleges that the Military perpetrated a reign of terror, intimidation and torture when it seized power. While there is evidence of intimidation, arrests and detentions, there is no independent report of torture.
56. The complainant further alleges that detention of persons *incommunicado* and preventing them from seeing their relatives constitutes torture. The State has refuted this claim and has challenged the complainant to verify the truth from those who were detained. To date, the Commission has received no evidence from the complainant. In the absence of proof therefore, the Commission cannot hold the government to be in violation of Article 5. In this regard, the Commission is relying on its decision in communication ACHPR/60/91: 27 where it held that " without specific information as to the nature of the acts themselves, the Commission is thus unable to find a violation of Article 5".
57. **Article 6** of the Charter reads: "***Every individual shall have the right to liberty and to the security of his person. No one may be deprived of this freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested***".
58. The Military government has not refuted the allegations of arbitrary arrests and detentions, but has defended its position by stating that, its action must be "studied and placed in the context of the changed circumstances in The Gambia". It also claims that it is acting within the confines of legislation 'previously laid down by law', as required by the wordings of Article 6 of the Charter.
59. The Commission in its decision on communication 101/93 laid down a general principle with respect to freedom of association that "competent authorities should not enact provisions which limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution or international human rights standards". This principle therefore applies not only to freedom of association but also to all other rights and freedoms. For a State to avail itself of this plea, it must show that such a law is **consistent with its obligations under the Charter**. The Commission finds the arrests and *incommunicado* detention of the aforementioned persons inconsistent with Gambia's obligations under the Charter. They constitute arbitrary deprivation of their liberty and thus a violation of Article 6 of the Charter. Decree No. 3 is, therefore, contrary to the spirit of Article 6.

60. Article 7(1) (d) of the Charter reads:

Every individual shall have the right to have his cause heard. This comprises:

... the right to be tried within a reasonable period of time by an impartial court or tribunal.

61. Given that the Minister of Interior could detain anyone without trial for up to six months, and could extend the period *ad infinitum*, his powers in this case, is analogous to that of a court, and with all intents and purposes, he is more likely to use his discretion at the detriment of the detainees, who are already in a disadvantaged position. The victims will be at the mercy of the Minister who, in this case, will render favour rather than vindicating a right. This power granted to the Minister renders valueless the provision enshrined in Article 7(1) (d) of the Charter.

62. Article 7(2) of the Charter reads:

No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed.

63. This provision is a general prohibition on retroactivity. It is to ensure that, citizens at all times are fully aware of the state of the law under which they are living. The Economic Crimes (Specified Offences) Decree of 25th November 1994 which was deemed to have come into force in July 1994, is therefore, a serious violation of this right.

64. Article 9 of the Charter reads:

(1). Every individual shall have the right to receive information”.

(2). Every individual shall have the right to express and disseminate his opinion within the law.

65. The government did not provide any defence to the allegations of arrests, detentions, expulsions and intimidation of journalists, made by the complainant. The intimidation and arrest or detention of journalists for articles published and questions asked deprives not only the journalists of their rights to freely express and disseminate their opinions, but also the public, of the right to information. This action is clearly a breach of the provisions of Article 9 of the Charter.

66. The complainant alleges that political parties have been banned, and that an Independent Member of Parliament and his supporters were arrested for planning a peaceful demonstration. In addition, Ministers and Members of Parliament in the former regime have been banned from taking part in any political activity and some of them restricted from travelling out of the country; with a maximum sentence of three years for any default.

67. The imposition of the ban on former Ministers and Members of Parliament is in contravention of their rights to participate freely in the government of their country provided for under Article 13(1) of the Charter. Article 13(1) reads:

Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

68. Also, the banning of political parties is a violation of the complainants' rights to freedom of association guaranteed under Article 10(1) of the Charter. In its decision on communication 101/93, the Commission stated a general principle on this right, to the effect that "***competent authorities should not enact provisions which limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards***". And more importantly, the Commission in its Resolution on the Right to Freedom of Association had also reiterated that: "***The regulation of the exercise of the right to freedom of association should be consistent with States' obligations under the African Charter on Human and Peoples' Rights***". This principle does not apply to freedom of association alone but to all other rights and freedoms enshrined in the Charter, including, the right to freedom of assembly. Article 10(1) provides:

Every individual shall have the right to free association provided that he abides by the law.

69. The Commission also finds the ban an encroachment on the right to freedom of assembly guaranteed by Article 11 of the Charter. Article 11 reads:

Every individual shall have the right to assemble freely with others

70. The restrictions to travel placed on the former Ministers and Members of Parliament is also a violation of their right to freedom of movement and the right of ingress and egress provided for under Article 12 of the Charter. Article 12 provides:

(1) Every individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law.

(2) Every individual shall have the right to leave any country, including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

71. Section 62 of the Gambian Constitution of 1970 provides for elections based on universal suffrage, and Section 85(4) made it mandatory for elections to be held within at most five years. Since independence in 1965, The Gambia has always had a plurality of parties participating in elections. This was temporarily halted in 1994 when the Military seized power.

72. The complainant alleges that the Gambian peoples' right to self-determination have been violated. He claims that the policy that the people freely choose to determine their political status, since independence has been "hijacked" by the military. That the military has imposed itself on the people.
73. It is true that the military regime came to power by force, albeit, peacefully. This was not through the will of the people who have known only the ballot box since independence, as a means of choosing their political leaders.

The military coup was therefore a grave violation of the right of Gambian people to freely choose their government as entrenched in Article 20(1) of the Charter. Article 20(1) provides:

All peoples shall ... freely determine their political status... according to the policy they have freely chosen.²

74. The rights and freedoms of individuals enshrined in the Charter can only be fully realised if governments provide structures which enable them to seek redress if they are violated. By ousting the competence of the ordinary courts to handle human rights cases, and ignoring court judgements, the Gambian military government demonstrated clearly that the courts were not independent. This is a violation of Article 26 of the Charter. **Article 26** of the Charter reads:

States Parties to the Charter shall have the duty to guarantee the independence of the Courts...and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

For the above reasons, the Commission:

finds the government of the Gambia in violation of the following provisions of the Charter: Articles: 1, 2, 6, 7(1)(d) and 7(2), 9(1) and (2), 10(1), 11, 12(1) and (2), 13(1), 20(1) and 26 of the Charter, for the period within which the violations occurred

urges the government of the Gambia to bring its laws in conformity with the provisions of the Charter

Done in Algiers, Algeria on 11 May 2000.

² See also Resolution ACHPR/RPT/8TH : Annex VII, Rev. 1994

201/97 - Egyptian Organisation for Human Rights/ Egypt

Rapporteur:	22 nd Session:	Commissioner Nyameko Pityana
	23 rd Session:	Commissioner Nyameko Pityana
	24 th Session:	Commissioner Nyameko Pityana
	25 th Session:	Commissioner Nyameko Pityana
	26 th Session:	Commissioner Nyameko Pityana
	27 th Session:	Commissioner Nyameko Pityana

Summary of Facts:

1. On June 17, 1997, a State Security Investigation force arrested eight people for peacefully opposing the implementation of Law 96 of 1992, which regulates the relation between landowners and tenants of agricultural land. The individuals arrested were Hamdien Sabbahi, a journalist; Mohamed Abdu, a veterinarian; Mohamed Soliman Fayad and Harudi Heikal, lawyers; Mahmoud Soliman Abu-Rayya, Mahmoud Al-Sayid Abu-Rayya and Sabe Hamid Ibrahim, farmers; and Al-Tokhi Ahmed Al-Tokhi, who was taken hostage pending the surrender of his brother to the authorities.
2. Mahmoud Soliman Abu-Rayya, Mahmoud Al-Sayid Abu-Rayya and Sabe Hamid Ibrahim were arrested for hanging black banners on their houses in protest of Law 96. Mohamed Abdu, Mohamed Soliman Fayad and Harudi Heikal were arrested shortly after participating in a rally held in Banha to protest Law 96.
3. Hamdien Sabbahi was apparently arrested for promoting a signature petition meant to be sent to the President in protest of Law 96.
4. When the SSI force arrested Hamdien Sabbahi, they broke into his office, searched it, and confiscated some documents. The arrest and search were carried out without a warrant or the presence of a public prosecution representative, which contradicts state law.
5. Hamdien Sabbahi, Mohamed Abdu, Mohamed Soliman Fayad and Harudi Heikal have all been charged with violations of Article 86 (bis) and 86 (bis) (A) of the Penal Code introduced as part of an anti-terrorist law. Specifically, these individuals were charged with;
 - A. Promoting – orally – ideas that oppose the basic foundations of the present regime and inciting hatred and contempt against it; encouraging the breakdown of the Constitutional principles; opposing the implementation of laws and promoting resistance against the authorities (including terrorist activities), and

- B. Possession of printed materials and publications that encourage the aforementioned ideas.
6. It is not clear that Mahmoud Soliman Abu-Rayya, Mahmoud Al-Sayid Abu-Rayya and Sabe Hamid Ibrahim have been charged with any crime yet.
 7. Following the imprisonment of Hamdien Sabbahi, Mohamed Abdu, Mohamed Soliman Fayad and Harudi Heikal, a prison officer ordered them into a cell, stripped off their clothes and made them stand with their faces against the wall and ordered soldiers to beat them. They were beaten until they suffered temporary paralysis. Their personal belongings and medicines were confiscated, their heads were shaved, and they were forced to wear prison uniforms.

Complaint:

8. The author alleges violation by the government of the Arab Republic of Egypt of Articles 2, 3, 4, 5, 6, 7, 9, and 11 of the Charter.

Procedure:

9. Communication 201/97, sent by the Egyptian Organisation for Human Rights was received at the Secretariat on June 22, 1997.
10. An addendum to the communication regarding measures taken by the Public Prosecutor's office was received at the Secretariat on June 26, 1997.
11. At the 22nd ordinary session, the Commission decided to be seized of the communication and postponed taking a decision on admissibility to the 23rd session.
12. At subsequent sessions, the Commission reviewed the issue of exhaustion of local remedies by the complainant. To this end, parties were requested to submit all the information at their disposal to the Secretariat.
13. At the 27th session, the Commission took a decision on the admissibility of the communication.

LAW

Admissibility

14. Article 56(5) of the Charter provides:

*Communications...shall be considered if they:
... are sent after exhausting local remedies, if any, unless it is obvious*

that this procedure is unduly prolonged.

15. The Commission observed that on the surface of the communication, the complainant did not exhaust domestic remedies. It noted further that despite repeated demands, parties have not responded to its requests for additional information on the issue of exhaustion of local remedies and that the complaint had been pending for a long time. In the absence of such information, the Commission declared the case closed because conditions for admissibility have not been satisfied.

For the above reasons, the Commission

declares the communication inadmissible

Done in Algiers, Algeria on 11 May 2000

205/97 Kazeem Aminu / Nigeria

Rapporteur: 22nd session: Commissioner Dankwa
23rd session: Commissioner Dankwa
24th session: Commissioner Dankwa
25th session: Commissioner Dankwa
26th session: Commissioner Dankwa
27th session: Commissioner Dankwa

Summary of Facts:

1. The complainant alleges that Mr. Ayodele Ameen (hereinafter referred to as “client”), a citizen of Nigeria was arbitrarily arrested, detained and tortured by Nigerian Security officials on several occasions between 1995 and the date of the complaint.
2. The complainant alleges that Mr. Ayodele Ameen while in detention on one occasion was denied medical treatment and also subjected to inhuman treatment.
3. The complainant alleges that his client is being sought after by the Nigerian Security Agents as a result of his political inclination which manifested itself in his role and involvement in agitation within the Nigerian society for a validation of the previously annulled June 12 1994 elections by the Nigerian Military Government.
4. The complainant alleges that his client has resorted to the courts for protection but to no avail by virtue of the provisions of Decree No. 2 of 1984 as amended.
5. As of the date of the communication, the complainant alleges that his client is in hiding after escaping arrest at the Aminu Kano International airport, Kano on his way to Sudan.
6. The complainant states that the matter is not pending in any court of law.

Complaint:

7. The complainant asserts that the following articles of the African Charter have been violated:

Articles 3(2), 4, 6 and 10(1).

Procedure:

8. The communication is dated 11 July 1997, and was received at the Secretariat of the Commission on 18 August 1997.
9. At its 23rd ordinary session held in Banjul, The Gambia, the Commission decided to be seized of the matter and to notify the Government of Nigeria accordingly. Further information was requested regarding the current situation of the victim.
10. At its 26th ordinary session of the Commission held in Kigali, Rwanda, the Commission declared the communication admissible and requested parties to submit their arguments on the merits of the case.

LAW

Admissibility

11. The condition for the admissibility of this case was based on Article 56(5) of the Charter. This provision requires the exhaustion of local remedies before its consideration by the Commission.
12. The complainant alleged that his client had resorted to the courts for protection but to no avail, because of the operation of Decree No. 2 of 1984, as amended. This decree, it is alleged contains an ouster clause, which like most other decrees promulgated by the military government of Nigeria excludes the courts from entertaining any matter or proceedings relating to it.
13. Relying on its case law, (see Communications 87/93, 101/93 and 129/94) the Commission held that local remedies would not only be ineffective, but are sure to yield no positive result. Secondly, the Commission noted that the complainant's client is in hiding and still fears for his life. In this regard, the Commission calls in aid the statement of the representative of Nigeria in Communication 102/93 about the "chaotic" situation that had transpired after the annulment of the elections (see paragraph 57), the validation which the complainant's client is agitating for. Given the above situation and the constructive notice the Commission has about the prevailing situation under the Nigerian military regime, decided that it would not be proper to insist on the fulfilment of this requirement.

For the above reasons, the Commission declared the case admissible.

Merits

14. The complainant alleges a violation of Article 3(2) of the Charter by the Respondent State. Article 3(2) provides:

Every individual shall be entitled to equal protection of the law

15. The Commission finds that the rampant arrests and detention of Mr. Kazeem Aminu by the Nigerian Security officials, which eventually led to his going into hiding for fear of his life has deprived him of his right to equal protection of the law guaranteed under Article 3 of the Charter.
16. The complainant had alleged that his client was tortured and subjected to inhuman treatment on several occasions by the Nigerian Security operatives. The allegation has not been substantiated. In the absence of specific information on the nature of the acts complained of, the Commission is unable to find a violation as alleged.
17. The complainant alleged that the series of arrests and detention suffered by his client, and his subsequent going into hiding is in violation of his right to life under Article 4 of the Charter.
18. The Commission notes that the complainant's client (victim) is still alive but in hiding for fear of his life. It would be a narrow interpretation to this right to think that it can only be violated when one is deprived of it. It cannot be said that the right to respect for one's life and the dignity of his person, which this article guarantees would be protected in a state of constant fear and/or threats, as experienced by Mr. Kazeem Aminu. The Commission therefore finds the above acts of the security agents of the Respondent State in violation of Article 4 of the Charter. Article 4 provides:

***Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person.
No one may be arbitrarily deprived of this right.***

19. It is alleged that Mr. Kazeem Aminu was arbitrarily arrested and detained on several occasions between 1995 and the date of filing this communication (11 July 1997). In his explanation, the complainant asserts that he has resorted to the courts for protection but to no avail, because of the provisions of Decree No. 2 of 1984 as amended. The Decree, it is alleged, like other decrees promulgated by the military regime, contains an ouster clause barring courts from entertaining proceedings relating to it.
20. It is the duty of the State Party to apprehend persons whom it reasonably believes have committed or are in the process of committing offences recognised by its laws. However, such arrests and or detention must be in accordance with known laws, which in turn must be in accordance with the provisions of the Charter.
21. In the instant case, the Commission finds the above situation where the complainant's client is constantly arrested and detained, without charge and any recourse to the courts for

redress arbitrary and in contravention of Article 6 of the Charter. Article 6 provides:

*Every individual shall have the right to liberty and the security of person..
No One may be deprived of his freedom except for the reasons and
conditions laid down by law. In particular, no one may be arbitrarily
arrested or detained.*

22. The complainant further alleged that the Respondent State is in violation of Article 10(1) of the Charter, in that his client is being sought after by the Nigerian security agents as a result of his political belief which manifested itself in his involvement in the agitation for the validation of the annulled June 12 elections. Article 10(1) provides:

*Every individual shall have the right to free association provided
that he abides by the law.*

23. In considering the above, the Commission duly takes cognisance of the problem created as a result of the annulment of the elections in Nigeria and its earlier decision thereof (see decision on Communication 102/93). In the circumstance, the Commission finds the acts of the security agents towards Mr. Kazeem Aminu in contravention of his right to free association guaranteed under Article 10(1) of the Charter.
24. Unfortunately, the government of Nigeria has not responded to the several requests from the Commission for its reaction to the communication.
25. The African Commission in several previous decisions has set out the principle that where allegations of human rights violations go uncontested by the government concerned, particularly after repeated notification or request for information on the case, the Commission must decide on the facts provided by the complainant and treat those facts as given (see communications Nos. 59/91, 60/91, 64/91, 87/93 and 101/93).
26. In the circumstances, the Commission finds itself compelled to adopt the position that the facts alleged by the complainant are true.

For the above reasons, the Commission

finds the Federal Republic of Nigeria in violation of Articles 3(2), 4, 5, 6 and 10(1) of the Charter.

requests the government of Nigeria to take necessary measures to comply with its obligations under the Charter.

Done in Algiers, Algeria on 11 May 2000.

209/97 - Africa Legal Aid / The Gambia

Rapporteur:

- 23rd Ordinary Session: Commissioner Badawi
- 24th Ordinary Session: Commissioner Badawi
- 25th Ordinary Session: Commissioner Badawi
- 26th Ordinary Session: Commissioner Pityana
- 27th Ordinary Session: Commissioner Chigovera

Summary of Facts:

1. The communication was submitted by Africa Legal Aid, an NGO that has observer status with the Commission, on behalf of Mr Lamin Waa Juwara, a Gambian national.
2. The Complainant alleges that Mr Juwara left his house on 1st of February 1996, but did not return home that day.
3. On the following day, that is 2nd February 1996, Mrs Juwara, the Complainant's wife, learnt through newspaper reports that her husband had been detained. Mrs Juwara went to the Regional Administrative Office where her husband was reportedly detained and was told by the Officer in Charge of the police station that Mr Juwara had been transferred to the Upper River Division Prison.
4. The complainant also states that Mr Juwara had been an independent candidate during the legislative elections which had taken place before the 1994 military coup in The Gambia and that he had been arrested several times since the coup d'etat.

Complaint:

5. The complainant alleges that the following provisions of the African Charter on Human and Peoples' Rights have been violated:

Articles 6, 9 (1), (2), (3) and 4 of the Charter, as well as Article 5 of the International Covenant on Civil and Political Rights.

Procedure:

6. The Communication was sent to the Secretariat of the Commission by fax dated 23rd October 1997 and by post.
7. The Secretariat acknowledged receipt of the communication on 27th October 1997 and requested the complainant to provide additional information.

8. On 30th January 1998, the complainant replied, highlighting the allegations that Mr Juwara who had been arrested and was probably detained at the Upper River Division prison had not been charged or brought before a court of law. Furthermore, no one knew for sure the whereabouts or the condition of Mr Juwara.
9. The complainant therefore argues that the provisions of Article 56(5) of the Charter concerning the exhaustion of local remedies is inapplicable in this case since no charges had been brought against the detainee and, consequently, he could not have access to any remedy.
10. At its 23rd Session held from 20 – 29 April 1998, in Banjul (The Gambia), the Commission, having been informed by the Respondent State that Mr Lamin Waa Juwara had been released, decided to suspend a decision to be seized of the communication until the 24th Session. It further requested the Secretariat to inquire as to the veracity of the statement of the State Party, as well as find out as to whether the petitioner would like to pursue the case, in the event that Mr Juwara's release were to be confirmed.
11. The Secretariat complied with the directives given by the Commission sitting at its 23rd ordinary session.
12. Consideration of the communication was successively deferred at the 24th, 25th and 26th ordinary sessions and the parties informed accordingly.
13. The matter was taken up by the Secretariat of the Commission in a meeting on 10 March 2000, with the State Counsel in the Department of State for Justice, The Gambia. The State Counsel promised to meet the State Party's obligation as requested.

LAW

Admissibility

14. Article 56(5) of the Charter provides:

*Communications...shall be considered if they:
... are sent after exhausting local remedies, if any, unless it is obvious
that this procedure is unduly prolonged.*

15. The Commission reviewed the case and noted that the complainant has not satisfied the requirement for exhaustion of local remedies as stipulated in the aforementioned provision.

For the above reason, the Commission **declares** the communication inadmissible

Done in Algiers, Algeria on 11 May 2000

219/98 - Legal Defence Centre / Gambia

Rapporteur: 24th Session: Commissioner Badawi
25th Session: Commissioner Badawi
26th Session: Commissioner Pityana
27th Session: Commissioner Chigovera

Summary of Facts:

1. The complainant is an NGO based in Nigeria and has observer status with the African Commission on Human and Peoples' Rights.
2. The complainant alleges the illegal deportation of a Nigerian National from The Gambia.
3. It is alleged that the deportee, Mr. Sule Musa, was a journalist with the *Daily Observer* a Gambian newspaper.
4. It is alleged that Mr. Sule Musa was arrested within the premises of his office by Corporal Nyang. After his arrest he was taken to the Bakau Police Station from where he was directed to surrender his International Passport. He was then driven home to pick his passport and afterwards taken to the Police headquarters in Banjul, and from there to the Immigration Department, where he was told he was being deported to go and face trials for crimes he committed in Nigeria.
5. It is alleged that on arrival at the airport on 9 June 1998, Mr. Sule Musa was neither allowed food, water or a bath until 10 June 1998 after he had been served with his deportation order for being an "undesirable alien".
6. Complainant alleges that Mr. Sule Musa was being deported for his writings in the *Daily Observer* on certain diverse issues concerning Nigeria, under the Military regime of General Sani Abacha.
7. It is alleged that upon his arrival in Nigeria there was no immigration or police officer to arrest him for the purported crimes he had committed in Nigeria.
8. Furthermore, the complainant alleges that Mr. Sule Musa was not allowed to take any of his personal effects before he was deported. Inevitably his property is in the Gambia while he is in Nigeria and cannot return as the deportation order still subsists.

Complaint:

9. The complainant alleges that the following Articles of the African Charter on Human and Peoples' Rights have been violated:

Articles 7, 9, 12(4), 2, 4, 5 and 15.

Procedure:

10. The complaint is dated 27 July 1998 and was received at the Secretariat of the Commission on 9 September 1998.
11. At the 24th ordinary session, the Commission decided to be seized of the complaint and parties were informed accordingly.
12. The Commission at its 25th ordinary session held in Bujumbura, Burundi, postponed consideration of the communication to the next session while requesting the Secretariat to investigate whether the complainant could have recourse to the local courts in the Gambia.
13. Letters were sent to the parties by the Secretariat requesting for additional information on the availability of local remedies but no response has been received.
14. Furthermore, the Secretariat established contact with the Attorney General of the Gambia and solicited her assistance. This resulted in a meeting on 10 March 2000, at the Secretariat of the Commission between the State Counsel in the Department of State for Justice and the Legal Officer at the Secretariat. The State Counsel promised to send their submissions on all the complaints but the submissions promised were not sent.

LAW**Admissibility**

15. Article 56(5) of the Charter provides:

*Communications...shall be considered if they:
... are sent after exhausting local remedies, if any, unless it is obvious
that this procedure is unduly prolonged.*

16. The complainant had argued that no domestic remedies are available for Mr. Musa inside the Gambia as the deportation order was still subsisting. And in consequence that Mr. Musa is disabled in seeking redress by invoking any legal or administrative process.

17. The Commission observed that the victim does not need to be physically in a country to avail himself of available domestic remedies, such could be done through his counsel. In the instant case, it noted that the complaint was filed by a Human Rights NGO based in Lagos, Nigeria. Rather than approach the Commission first, the complainant ought to have exhausted available local remedies in the Gambia. The Commission therefore concludes that the complainant has failed to comply with the provision of Article 56(5) of the Charter.

For the above reasons, the Commission

declares the communication inadmissible

Done in Algiers, Algeria on 11 May 2000

ADDENDUM

ANNEX V :

DECISIONS OF THE 26TH AND 27TH ORDINARY SESSIONS OF THE AFRICAN COMMISSION

ADDENDUM

1. 48/90 Amnesty International vs/Sudan
 2. 50/91 *Comité Loosli Bachelard* vs/Sudan
 3. 52/91 Lawyers Committee for Human Rights vs/Sudan
 4. 89/93 Association of Members of the Episcopal Conference of East Africa vs/Sudan
-

Rapporteur : 17th Session: Commissioner Kisanga
 18th Session: Commissioner Kisanga
 19th Session: Commissioner Kisanga
 20th Session: Commissioner Kisanga
 21st Session: Commissioner Rezag-Bara
 22nd Session: Commissioner Rezag-Bara
 23rd Session: Commissioner Rezag-Bara
 24th Session: Commissioner Rezag-Bara
 25th Session: Commissioner Rezag-Bara
 26th Session: Commissioner Rezag-Bara

All of these communications pertain to the situation prevailing in Sudan between 1989 and 1993.

Summary of Facts:

1. Communication 48/90, submitted by Amnesty International, and communication 50/91, submitted by *Comité Loosli Bachelard*, deal with the arbitrary arrests and detentions that took place following the coup of 30 July 1989 in Sudan. It is alleged therein that hundreds of prisoners were detained without trial or charge.
2. Communication 50/91 alleges that since June 1990 members of opposition groups, among them Abdal-Qadir, Mohammed Salman and Babiker Yahya, have been arrested, detained, and subjected to torture. Other detainees include lawyers, members of opposition groups and human rights activists. The allegations are based on information from a wide variety of sources including interviews with eyewitnesses.

3. According to the plaintiff, Decree No. 2 of 1989 permits the detention of anyone "suspected of being a threat to political or economic security" under a state of emergency; the right to personal liberty and security was protected under the 1985 Transitional Constitution, Article 21, but the Constitution was suspended in 1989. Complainant further claims that the President can order the arrest of anyone without the need to give reasons for such detention. No judicial challenge of such decisions is permissible. Decree No. 2 also provides for the creation of special courts to try those arrested under the state of emergency legislation. Section 9 of the Decree ousts the jurisdiction of the ordinary courts in cases arising from its enforcement. It is further alleged that the 1990 National Security Act created a National Security Council and Bureau. Under this Act, the security forces have powers of arrest, entry and search. Persons can be detained under this Act, without access to family, or lawyers for up to 72 hours, renewable for up to one month. Detention can be for up to three months if for the "maintenance of public security" and on approval of the Security Council and a magistrate. Appeal to a magistrate is permitted. In 1994 this Act was amended, enabling the National Security Council to renew a three-month order without reference to any persons. Further renewals require approval by a judge. There is no right to challenge detention under this Act and no reasons need be given for such detention.
4. The communications additionally allege that political prisoners are kept in secret detention centres known as "ghost houses". One of these was closed in 1995 and prisoners transferred to the main civil prison in Khartoum.
5. The communications also allege widespread torture and ill treatment in the prisons and "ghost houses" in Sudan. These allegations are supported by doctor's testimonies, personal accounts of alleged victims and a report by the UN Special Rapporteur. A number of individual victims are named. Additionally, it is alleged that many individuals were tortured after being arrested at army checkpoints or in military or war zones. Acts of torture include forcing detainees to lie on the floor and being soaked with cold water; confining four groups of individuals in cells 1.8 metres wide and one metre deep, deliberately flooding cells to prevent detainees from lying down, forcing individuals to face mock executions, and prohibiting them from washing. Other accounts describe burning with cigarettes and the deliberate banging of doors at frequent intervals throughout the night to prevent sleeping. Individuals were bound with rope such that circulation was cut off to parts of their bodies, beaten severely with sticks, and had battery acid poured onto open wounds.
6. The communications allege extra-judicial executions. Thousands of civilians have been killed in southern Sudan in the course of the civil war, and the government is alleged to have executed suspected members of the SPLA without trial and there has been no investigation into or prosecution for such incidents. In the course of counter-insurgency attacks civilians in the Nuba Mountains area and northern Bahr al-Ghazal have been killed when their villages were destroyed. These occurred in 1987-1989 but events are still continuing to this day.
7. In addition, detainees suspected of being supporters of the SPLA were alleged to have been arrested and then immediately executed in areas in southern Sudan.

8. Executions are also alleged to have been carried out by militia groups which are believed to have close connections with and the support of the government. No independent inquiry has been conducted into their activities nor have any persons been prosecuted in connection with such killings. These allegations are supported by evidence collected by the UN Special Rapporteur.
9. According to the complainant, an investigation was conducted in December 1987 by Abdel Latif District magistrate, Osamn Suleiman, into executions. A Provincial Judge ordered the investigation and the resulting report was believed to have been sent to the High Court in December 1988. No conclusions were ever made public.
10. In 1987 Dr Abdel Nabi Ali Ahmed, the Governor of South Darfur, announced the creation of a Commission of enquiry into the massacres that occurred in the region in 1987. It was to be composed of the District Prosecutor and police and security officials. A Second Commission was also said to have been set up to look into the background of the disturbances. The Commission of Enquiry sent a report to the Prime Minister in September 1987 but this was never made public. A National Committee of Investigation was set up by the Prime Minister but it is unclear if this was ever convened.
11. The complainant also claims that the 1983 Penal Code permits the use of the death penalty for a number of offences: murder-where it is mandatory; mutiny by a member of the armed forces; political offences-such as subversion, war against the state, treason, espionage, upsetting the national economy. Death sentences for murder can be set aside if the victim's relatives agree and compensation is paid to them by the accused. Section 47 creates an offence of attempt, abatement, causing or conspiring with others to facilitate mutiny, with a maximum penalty of death. The penalty also applies to those present at a mutiny without doing their utmost to suppress it; having knowledge or information or intention to go on a mutiny and failure to report such state of affairs.
12. Communication 48/90 describes how calling and organising a strike, possession of undeclared foreign currency, illegal production of and trading in drugs can also result in the death sentence. Individuals sentenced to death were not allowed to appeal against their conviction to a high court, or permitted to have legal representation at new trials.
13. Communication 48/90 alleges that the 28 army officers executed on 24 April 1990 were allowed no legal representation. It adds that in July 1989, the Constitution of Special Tribunals Act was passed, dealing exclusively with the establishment of such tribunals. Under section 3 of that Act, the President, his deputies or senior army officers may appoint 3 military officers or "any other competent persons" as judges. All sentences were to be confirmed by the Head of State and appeal is only allowed against the death penalty or imprisonment terms of more than one year.
14. In September 1989 these special tribunals were abolished and replaced by the so-called Revolutionary Security Courts. The presiding judge and two others were to be chosen by the RCC for their competence and expertise. Appeal was to a Revolutionary Security High Court but only against sentences of death and for those of imprisonment for more than 30

- years. The September Laws were required to be applied in these courts from December 1989.
15. In December 1989 the government created more special courts in which lawyers, while being permitted to consult the accused prior to trial, are not allowed to address the court. Appeal is to the Chief Justice alone, not to any higher court.
 16. Communication 52/91 provides evidence that over one hundred judges have been dismissed in order to systematically dismantle the judiciary who were opposed to the formation of special courts and military tribunals.
 17. Information contained in communications 48/90 and 52/91, presented by the Lawyers Committee for Human Rights, describes government efforts to undermine the independence of the judiciary and the rule of law. It is alleged, in particular, that the government established special tribunals, which are not independent. The ordinary courts are precluded from hearing cases that are of the exclusive competence of the special tribunals. It is further alleged that the right to defence before these special tribunals is restricted. The communications also indicate that people brought before these tribunals were denied the right to contest the grounds for their detention under emergency legislation.
 18. Communication 89/93, submitted by the Association of Members of the Episcopal Conference of East Africa alleges oppression of Sudanese Christians and religious leaders, expulsion of all missionaries from Juba, arbitrary arrests and detention of priests, the closure and destruction of Church buildings, the constant harassment of religious figures, and prevention of non-Muslims from receiving aid.
 19. The people of the southern part of Sudan are predominantly Christian or of traditional beliefs, whereas the religion in the north of the country and the regime imposed by the government are Islamic. Shari'a is the national law.
 20. The said communication alleges that non-Muslims are persecuted in order to ensure their conversion to Islam. Non-Muslims are prevented from preaching or building churches, and the freedom of expression of the national press is restricted. Members of Christian clergy are harassed, and there are arbitrary arrests of Christians, expulsions and denial of access to work and food aid.

II – The government's contention:

21. The government confirms the situation claimed by the complainants in respect of the composition of the Special Courts. National legislation indeed permits the President, his deputies and senior military officers to constitute these courts to consist of "three military officers or any other persons or integrity and competence".
22. The Government states in its submission of 1 January 1991 that the Military Courts are not extraordinary because trial is preceded by enquiry; evidence is taken on oath; information

obtained during inquiry is not considered as evidence; decisions are taken after listening to the prosecution and defence; right of appeal is ensured as provision is made for a Military Court of Appeal to be constituted by the assent of the head of state. It consists of three army officers whose ranks are not less than that of Colonel, and shall include an officer from the Judicial Branch of the military; the accused may be accompanied by an advocate or friend. The government further states that the law establishing these tribunals permits the accused to be assisted by an advocate or any other person of his choice, and that the accused has the right to be defended before the special tribunals by a friend agreed to by the court. As regards the military tribunals, the national legislation allows the accused to be accompanied by a friend or lawyer.

23. In the remarks on these communications submitted to the Commission by the Sudanese Ministry of External Relations, dated 25 April 1999, the Sudanese government attributes a number of the alleged facts to the existence of a rebellion in the southern part of the country and claims that over 90 per cent of the alleged violations took place in areas currently under the control of the Sudanese People's Liberation Army (SPLA), led by rebel John Garang. It also refers to significant progress achieved in the eradication of the harmful effects of the war since the signing on 10 April 1996 of the Peace Charter and of the Khartoum peace agreement of 21 April 1997. The Sudanese government indicates that all persons cited in communication 50/91 have been released. As regards the allegations in communication 89/93, the government reiterates its adherence to article 24 of the Sudanese constitution which guarantees freedom of faith and worship, and recalls Pope John Paul II's pastoral visit to Sudan on 10 February 1993, as well as the conduct in Khartoum of the International Conference on Religions in October 1994.

Procedure :

24. The Commission undertook an antipodal examination of the four communications. Communication 48/90, filed by Amnesty International, was received by the Secretariat in October 1990. On 20 October 1990, at its 8th Ordinary Session, was seized of the communication, and the decision on admissibility was passed on 12 October 1991 at the 10th Ordinary Session. Communication 50/91 was received on 30 November 1991. The Commission was seized of it at its 12th Session, held in October 1992. At the 13th Session, held in March 1993, the Commission (after declaring it admissible) decided to combine its procedure with that of communication 48/90. As for communication 52/91, it was received on 19 March 1991, the Commission was seized of it on 22 October 1991, and at the 13th Session held in March 1993, the communication was declared admissible and its procedure combined with that of communication 48/90. Communication 89/93 was received on 27 August 1992. The Commission was seized of it at the 13th Ordinary Session in March 1993, and its procedure was combined with that of the three preceding communications.
25. The parties were regularly notified of all the submissions and had the opportunity to present their conclusions and material evidence at all stages of the procedure.

26. The Commission deployed a mission to Sudan, comprising three Commissioners (E.V.O. Dankwa, Robert H. Kisanga and Mohamed Kamel Rezag-Bara) from 1 – 7 December 1996. The mission was able to verify on the ground elements of the four communications under consideration. The mission report was presented to the Commission, which adopted it and decided to publish it.
27. The Communication ruled on the merit of the four communications at its 26th Ordinary Session.

LAW

Admissibility:

28. Admissibility of communications under the African Charter is governed by Article 56, which sets out conditions that all communications must meet before they can be decided upon. These criteria must be applied bearing in mind the character of each communication. The case at hand is a combination of four different communications, which the Commission decided to consider together, in accordance with its jurisprudence. (Cf. communications 16/88, 17/88, 18/88, 25/89, *Legal Assistance Group vs/ Zaire* and 27/89, 46/91, 49/91, 99/93 *World Organisation Against Torture, International Association of Democratic Lawyers, International Commission of Jurists and Inter-African Human Rights Union vs/ Rwanda*). This decision was based on the similarity of the allegations presented, on the one hand, and the human rights situation prevailing in Sudan during the period covered by these allegations of violations, on the other. The communications were submitted by NGOs and allege many overlapping and inter-related details.
29. Article 56.5 of the African Charter requires, as a condition for admissibility, that communications must be:

“submitted after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged”.
30. In applying this provision, the Commission has elaborated through its jurisprudence criteria on which to base its conviction as to the exhaustion of internal remedies, if any. The Commission has drawn a distinction between cases in which the complaint deals with violations against victims identified or named and those cases of serious and massive violations in which it may be impossible for the complainants to identify all the victims.
31. In a case of violations against identified victims, the Commission demands the exhaustion of all internal remedies, if any, if they are of a judicial nature, are effective and are not subordinated to the discretionary power of public authorities. The Commission is of the view that this provision must be applied concomitantly with article 7, which establishes and protects the right to fair trial.
32. The Commission has stated that one of the justifications for this requirement is that a government should be aware of a human rights violation in order to have the chance to remedy such violation, thus protecting its reputation which would inevitably be tarnished by

- being called to plead its case before an international body. This condition also precludes the African Commission from becoming a tribunal of first instance, a function that it cannot, either as a legal or practical matter, fulfil (See ACHPR/25/89: 53-54).
33. In the cases under consideration, the government of Sudan has not been unaware of the serious human rights situation existing in that country. For nearly a decade the domestic situation has focused national and international attention on Sudan. Many of the alleged violations are directly connected to the new national laws in force in the country in the period covered by these communications. Even where no domestic legal action has been brought by the alleged victims, the Government has been sufficiently aware to the extent that it can be presumed to know the situation prevailing within its own territory as well as the content of its international obligations.
 34. Furthermore, the Commission is of the view that the internal remedies that could have been available to the complainants do not fulfil its conditions or are simply non-existent. In these communications, section 9 of decree no. 2, promulgated in 1989, suspends the jurisdiction of the regular courts in favour of the special tribunals as regards any action undertaken in application of the said decree. In addition, it outlaws any legal action taken against any action undertaken in application of the same decree. Further, the remedies provided for under the 1990 national security law do not conform to the demands of protection of the right to a good administration of justice, to the extent that the appeals provided for in this law cannot be brought before a judge. It is evident that this appeal procedure, as provided for in the 1990 national security law, cannot be considered as fulfilling the criteria of effectiveness.
 35. The 1994 law, which repeals and replaces that of 1990, brings up the principle of the inexistence of remedies, as well as the retroactivity of its provisions. Indeed, under the 1990 law, accused persons could always file an appeal before a judge. This new law stipulates that “no legal action, no appeal is provided for against any decision issued under this law”. This manifestly makes the procedure less protective of the accused and is tantamount to inexistence of appeal procedure.
 36. The Commission also holds the view that the appeal before the High Court, as provided for, against verdicts passed by the revolutionary security courts (which replaced the special tribunals) does not fulfil the demands of effectiveness and existence contained in the African Charter. Indeed, appeals to this court are only permissible in the event of a death penalty or prison terms over thirty years. This implies that no other sentence can be appealed before the High Court, which consequently renders the appeal procedure inexistent for the complainants.
 37. In the Commission’s view, the right to appeal, being a general and non-derogable principle of international law must, where it exists, satisfy the conditions of effectiveness. An effective appeal is one that, subsequent to the hearing by the competent tribunal of first instance, may reasonably lead to a reconsideration of the case by a superior jurisdiction, which requires that the latter should, in this regard, provide all necessary guarantees of good administration of justice.

38. In cases of serious and massive, the Commission reads Article 56.5 in the light of its duty to protect human and peoples' rights as provided for by the Charter. Consequently, the Commission does not hold the requirement of exhaustion of local remedies to apply literally, especially in cases where it is "impractical or undesirable" for the complainants or victims to seize the domestic courts.
39. The seriousness of the human rights situation in Sudan and the great numbers of people involved render such remedies unavailable in fact, or, in the words of the Charter, their procedure would probably be "unduly prolonged".

For these reasons, the Commission declared the communications admissible.

Merits:

40. Sudan ratified the African Charter on Human and Peoples' Rights on 18 February 1986. Prior to that, though Sudan had other obligations under international law, it was not bound by the Africa Charter, to the extent that the Charter only came into force there on 21 October 1986. It follows that the Commission can only take up violations that occurred after 21 October 1986. Continuing violations, as in the case of a law adopted prior to 1986, but that remains in force, fall within the competence of the Commission. This is because the effect of such laws extends beyond that date. Furthermore, ratification obliges a State to diligently undertake the harmonisation of its legislation to the provisions of the ratified instrument.
41. This decision does not encompass all human rights violations that may have occurred in Sudan after the period covered by the communications. In general, the Commission takes up only violations that are brought before it by complainants. Other violations can be discussed in the Commission's report on its mission to Sudan, which is not confined to the subjects of the communications.
42. Article 1 of the Charter confirms that the government has bound itself legally to respect the rights and freedoms enshrined in the Charter and to adopt legislation to give effect to them. Whilst the Commission is aware that states may face difficult situations the Charter does not contain a general provision permitting states to derogate from their responsibilities in times of emergency, especially for what is generally referred to as non-derogable rights.
43. The Commission is faced with the difficulty of deciding upon multifaceted allegations, some involving legal provisions that have changed over time. Since the communications were submitted, the situation in Sudan has not been static. And, as the government states, it has evolved in a direction that is more protective of human rights.
44. Confirming its willingness to cooperate with the Commission, the government replied in writing to the communications on 1 January 1991, 10 July 1997, 14 September 1997 and 25 April 1999, and received a mission of the Commission from 1-7 December 1996.

45. The Commission would like to commend and encourage the Sudanese government for its efforts to improve the human rights situation, with the adoption of a new constitution and the repeal of the emergency laws which seriously jeopardised the rights guaranteed in the Charter. It however maintains that these new changes have no effect on the past violations, which it is required, by virtue of its mandate to protect and promote human rights, to rule upon.
46. The Commission indeed undertook a mission to Sudan; but this mission must be considered as part of its human-rights promotion activities and does not constitute a part of the procedure of the communications, even if it did enable it to obtain information on the human rights situation in that country. Consequently, this decision is essentially based on the allegations presented in the communications and analysed by the African Commission.
47. Article 4 of the Charter reads:

“... Every individual shall be entitled to respect for his life ... No one may be arbitrarily deprived of this right”.
48. It is alleged that prisoners were executed after summary and arbitrary trials and that unarmed civilians were also victims of extra-judicial executions. These allegations are upheld by evidence taken from the report of the United Nations Special Rapporteur.
49. The government provides copies of the laws governing the executions alleged in the communications, but provides no specific information on the said executions. Neither was the Commission’s delegation able to obtain this information.
50. In addition to the individuals named in the communications, there are thousands of other executions in Sudan. Even if these are not all the work of forces of the government, the government has a responsibility to protect all people residing under its jurisdiction (See ACHPR/74/91: 93, *Union des Jeunes Avocats vs/Chad*). Even if Sudan is going through a civil war, civilians in areas of strife are especially vulnerable and the state must take all possible measures to ensure that they are treated in accordance with international humanitarian law.
51. The investigations undertaken by the Government are a positive step, but their scope and depth fall short of what is required to prevent and punish extra-judicial executions. Investigations must be carried out by entirely independent individuals, provided with the necessary resources, and their findings should be made public and prosecutions initiated in accordance with the information uncovered. Constituting a commission of the District Prosecutor and police and security officials, as was the case in the 1987 Commission of Enquiry set up by the Governor of South Darfur, overlooks the possibility that police and security forces may be implicated in the very massacres they are charged to investigate. This commission of enquiry, in the Commission’s view, by its very composition, does not provide the required guarantees of impartiality and independence.

52. According to the Commission's long-standing practice, in cases of human rights violations, the burden of proof rests on the government (See, ACHPR/59/91, ACHPR/60/91, ACHPR/64/91, ACHPR/87/93 ACHPR/101/93). If the government provides no evidence contradict an allegation of human rights allegation made against it, the Commission will take it as proven, or at the least probable or plausible. On the information available the Commission considers that there was a violation of Article 4 of the African Charter on Human and Peoples' Rights.

53. Article 5 of the Charter reads:

“Every individual shall have the right to the respect and dignity inherent in a human being...All forms of...degradation of man particularly...torture, cruel, inhuman or degrading treatment and punishment, shall be prohibited”.

54. There is substantial evidence produced by the complainants to the effect that torture is practised. All of the alleged acts of physical abuses, if they occurred, constitute violations of Article 5. Additionally, holding an individual without permitting him or her to have any contact with his or her family, and refusing to inform the family if and where the individual is being held, is inhuman treatment of both the detainee and the family concerned.

55. Torture is prohibited by the Sudanese Penal Code and perpetrators punishable with up to 3 months imprisonment or a fine.

56. The government does not deal with these allegations in its report. The Commission appreciates the fact that the government's has brought some officials to trial for torture, but the scale of the government's measures is not commensurate with the magnitude of the abuses. Punishment of torturers is important, but so also are preventive measures such as halting of incommunicado detention, effective remedies under a transparent, independent and efficient legal system, and ongoing investigations into allegations of torture.

57. Since the acts of torture alleged have not been refuted or explained by the government, the Commission finds that such acts illustrate, jointly and severally, government responsibility for violations of the provisions of article 5 of the African Charter.

58. Article 6 of the Charter reads:

“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained”.

59. In its written submission to the Commission on 1 January 1991, in reply to the allegations of arbitrary arrests made by the complainants, the government described the powers given to President of the Revolutionary Command Council to issue orders and take measures in a state of emergency. Simply because an arrest is carried out under a written provision in force does not amount to a violation of Article 6. This article must be interpreted in such a way as to permit arrests only in the exercise of powers normally granted to the security

forces in a democratic society. In these cases, the wording of this decree allows for individuals to be arrested for vague reasons, and upon suspicion, not proven acts, which conditions are not in conformity with the spirit of the African Charter.

60. Furthermore, appeal in the case of arrest lies to the body whose president orders the arrests. Such a remedy provides no guarantee of good administration of justice and is more akin to an appeal for clemency than a judicial appeal. Additionally, numerous arrests have been effected in disregard of this decree. The Commission is constrained to find that in Sudan there have been serious and continuing violations of Article 6 during the period under consideration.
61. Article 7.1 of the Charter reads:
- “Every individual shall have the right to have his case heard. This comprises:
- (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;
 - (b) the right to be presumed innocent until proved guilty by a competent court of tribunal;
 - (c) the right to defence, including the right to be defended by counsel of his choice;
 - (d) the right to be tried within a reasonable time by an impartial court or tribunal”.
62. All of these provisions are mutually dependent, and where the right to be heard is infringed, other violations may occur, such as detentions being rendered arbitrary. Especially sensitive is the definition of "competent," which encompasses facets such as the expertise of the judges and the inherent justice of the laws under which they operate.
63. At the level of procedure, the complaints allege extensive interference with due process, including the institution of numerous special courts and trial of individuals who were denied the assistance of counsel. Some individuals were denied the right to challenge the legal grounds for their detention.
64. The government's submission is only in respect of Decree no. 2, which establishes the right of individuals to appeal to the Revolutionary Command Council. However, the government does not present evidence that this right was afforded to the persons in these cases. It is also unclear if accused persons have in all cases been permitted to select their own advocates without interference, or if the tribunal reserves the right to bar certain advocates from court. The right to freely choose one's counsel is essential to the assurance of a fair trial. To give the tribunal the power to veto the choice of counsel of defendants is an unacceptable

- infringement of this right. There should be an objective system for licensing advocates, so that qualified advocates cannot be barred from appearing in particular cases. It is essential that the national bar be an independent body which regulates legal practitioners, and that the tribunals themselves not adopt this role, which will infringe the right to defence.
65. The communications allege that the 28 army officers executed on 24 April 1990 were allowed no legal representation. The government states that its national legislation permits the accused to be assisted in his defence during the trial by a legal advisor or any other of his choice. Before the Special Courts the accused have the right to be defended by a friend to be approved by the Court. The government argues that the court procedures were strictly followed in the case of these officers.
66. While there is a simple contradiction of testimony between the government and the complainant, the Commission must admit that in the case of the 28 executed army officers basic standards of fair trial have not been met. Indeed, the Sudanese government has not given the Commission any convincing reply as to the fair nature of the cases that resulted in the execution of 28 officers. It is not sufficient for the government to state that these executions were carried out in conformity with its legislation. The government should provide proof that its laws are in accordance with the provisions of the African Charter, and that in the conduct of the trials the accused's right to defence was scrupulously respected. In this case, the very fact that the accused's choice is subject to the assent of the Court before which he is to appear constitutes a violation of the right to be represented by counsel of one's choice, as provided for in article 7 of the African Charter, cited above.
67. Article 7 is closely related to Article 26 of the Charter, which provides that:
- “States parties to the present Charter shall have the duty to guarantee the independence of the courts...”.
68. The government confirms the situation alleged by the complainants in respect of the composition of the Special Courts. National legislation permits the President, his deputies and senior military officers to appoint these courts to consist of "three military officers or any other persons of integrity and competence". The composition alone creates the impression, if not the reality, of lack of impartiality and as a consequence, violates Article 7.1(d). The government has a duty to provide the structures necessary for the exercise of this right. By providing for courts whose impartiality is not guaranteed, it has violated Article 26.
69. The dismissal of over one hundred judges who were opposed to the formation of special courts and military tribunals is not contested by the government. To deprive courts of the personnel qualified to ensure that they operate impartially thus denies the right to individuals to have their case heard by such bodies. Such actions by the government against the judiciary constitute violations of Articles 7.1(d) and 26 of the Charter.

70. The government provided no contrary element in refutation of the allegations made against it, and the laws that it cites are deficient. Accordingly the Commission holds a violation of Article 7.1(c).
71. Article 8 of the Charter reads:
- “Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms”.*
72. These issues should be considered in relation to article 2 of the Charter, which provides for equal protection under the laws, and Article 8, on religious freedom, which will be treated below. While fully respecting the religious freedom of Muslims in Sudan, the Commission cannot countenance the application of law in such a way as to cause discrimination and distress to others.
73. Another matter is the application of Shari'a law. There is no controversy as to Shari'a being based upon the interpretation of the Muslim religion. When Sudanese tribunals apply Shari'a, they must do so in accordance with the other obligations undertaken by the State of Sudan. Trials must always accord with international fair-trial standards. Also, it is fundamentally unjust that religious laws should be applied against non-adherents of the religion. Tribunals that apply only Shari'a are thus not competent to judge non-Muslims, and everyone should have the right to be tried by a secular court if they wish.
74. It is alleged that non-Muslims were persecuted in order to cause their conversion to Islam. They do not have the right to preach or build their Churches; there are restrictions on freedom of expression in the national press. Members of the Christian clergy are harassed; Christians are subjected to arbitrary arrests, expulsions and denial of access to work and food aid.
75. In its various oral and written submissions to the African Commission, the government has not responded in any convincing manner to all the allegations of human made against it. The Commission reiterates the principle that in such cases where the government does not respect its obligation to provide the Commission with a response on the allegations of which it is notified, it shall consider the facts probable.
76. Other allegations refer to the oppression of Christian civilians and religious leaders and the expulsion of missionaries. It is alleged that non-Muslims suffer persecution in the form of denial of work, food aid and education. A serious allegation is that of unequal food distribution in prisons, subjecting Christian prisoners to blackmail in order obtain food. These attacks on individuals on account of their religious persuasion considerably restrict their ability to practice freely the religion to which they subscribe. The government provides no evidence or justifications that would mitigate this conclusion. Accordingly, the Commission holds a violation of Article 8.

77. Article 9 of the Charter reads:
- “2. Every individual shall have the right to express and disseminate his opinions within the law”.
78. The communications under consideration allege that persons were detained for belonging to opposition parties or trade unions. The government confirmed that the “Decree on Process and Transitional Powers Act 1989”, promulgated on 30 June 1989, stipulates in section 7 that during a state of emergency any form of political opposition by any means to the regime of the Revolution for National Salvation is prohibited where there is “imminent and grave threat to the security of the country, public safety, independence of the State or territorial integrity and economic stability.
79. As stated above, the Charter contains no derogation clause, which can be seen as an expression of the principle that the restriction of human rights is not a solution to national difficulties: the legitimate exercise of human rights does not pose dangers to a democratic state governed by the rule of law.
80. The Commission has established the principle that where it is necessary to restrict rights, the restriction should be as minimal as possible and not undermine fundamental rights guaranteed under international law (ACHPR/101/93: 25, Civil Liberties Organisation vs/Nigeria). Any restrictions on rights should be the exception. The Government here has imposed a blanket restriction on the freedom of expression. This constitutes a violation of the spirit of article 9.2.
81. Article 10 of the Charter reads:
- “Every individual shall have the right to free association provided he abides by the law”.
82. The Process and Transitional Powers Act 1989 prohibits, in section 7, effecting, without special permission, any assembly for a political purpose in a public or private place. This general prohibition on the right to associate in all places is disproportionate to the measures required by the Government to maintain public order, security and safety. In addition, there is evidence from the complainants, which is not contested by the government, that the powers were abused. In the absence of information from the government the Commission must give weight to the facts submitted by the complainant. Accordingly, the Commission holds a violation of Article 10(1).
83. The Commission is cognisant of the fact that it has found many violations of the Charter on the part of the Government. In concrete terms, this shows that the citizens of Sudan have endured a lot of suffering. To change so many laws, policies and practices will of course not be a simple matter. However, the Commission must emphasise that the people of Sudan deserve no less. The government is bound by its international obligations and the Commission's findings are specific enough to permit their implementation. This decision does

not constitute the Commission's viewpoint on the overall human rights situation in Sudan. It is based on the allegations of violations committed by Sudan after its ratification of the African Charter on Human and Peoples' Rights and on verifications carried out in this regard, while not failing to note that the situation has improved significantly.

FOR THE ABOVE REASONS, THE COMMISSION:

- Declares that there has been a violation of Articles 2, 4, 5, 6, 7.1(a), (c), (d), 8, 9, 10 and 26;
- Recommends strongly to the Government of Sudan to put an end to these violations in order to abide by its obligations under the African Charter on Human and Peoples' Rights.

Communications filed against the Islamic Republic of Mauritania

54/91: Malawi African Association vs/Mauritania;

61/91: Amnesty International vs/Mauritania;

98/93: Ms. Sarr Diop, *Union Interafricaine des Droits de l'Homme* and RADDHO vs/Mauritania;

164/97 à 196/97: *Collectif des Veuves et Ayants-droit* vs/Mauritania;

210/98: *Association Mauritanienne des Droits de l'Homme* vs/Mauritania

Rapporteur: 17th session: Commissioner Blondin Beye

18th session: Commissioner Ondziel-Gnelenga

19th session: Commissioner Ondziel-Gnelenga

20th session: Commissioner Ondziel-Gnelenga

21st session: Commissioner Ondziel-Gnelenga

22nd session: Commissioner Ondziel-Gnelenga

23rd session: Commissioner Ondziel-Gnelenga

24th session: Commissioner Ondziel-Gnelenga

25th session: Commissioner Ondziel-Gnelenga

26th session: Commissioner Ondziel-Gnelenga

27th session: Commissioner Ondziel-Gnelenga

Summary of facts:

1. These communications relate to the situation prevailing in Mauritania between 1986 and 1992. The Mauritanian population, it should be remarked, is composed essentially of Moors (also known as 'Beidanes') who live in the North of the country, and various black ethnic groups, including the Soninke, Wolofs and the Hal-Pulaar in the South. The Haratines (freed slaves) are closely associated with the Moors, though they physically resemble the Black population of the South.

2. Following a coup d'état that took place in 1984, and which brought Colonel Maaouya Ould Sid Ahmed Taya to power, the government was criticised by members of the Black ethnic groups for marginalising Black Mauritians. It was also criticised by a group of Beidanes who favoured closer ties with the Arab world.

3. **Communication 61/91** alleges that in early September 1986, over 30 persons were arrested in the aftermath of the distribution of a document entitled “*Le Manifeste des negro - mauritaniens opprimés*” (Manifesto of the Oppressed Black Mauritians). The document provided evidence of the racial discrimination to which the Black Mauritians were subjected and demanded the opening of a dialogue with the government. Twenty-one persons were found guilty of holding unauthorised meetings and pasting and distributing publications that were injurious to the national interest, and of engaging in racial and ethnic propaganda. They were convicted and imprisoned, after series of trials that took place in September and October 1986. The accused had been held in custody for a period that was longer than provided for in the Mauritanian law. They did not have access to their lawyers before the trials started. The lawyers, therefore, did not have time to prepare the cases, for which reason they withdrew, leaving the accused without defence counsel. The president of the tribunal considered that the refusal of the accused to defend themselves was tacit acknowledgement of their guilt. The trial was conducted in Arabic, even though only three of the accused were fluent in the language. The accused were thus found guilty on the basis of statements made to the police during their time in custody. They however pointed out to the tribunal that some of these statements had been given under duress. The sentences ranged from six months to five years imprisonment with fines, and five – ten years of house arrest.
4. The accused filed an appeal, claiming unfair trial, stating that they were not charged in due time; and that they did not have the opportunity to be defended. On 13 October 1986, the Court of Appeal upheld the sentences, even though the public prosecutor had not contested the appeal.
5. In September 1986, another trial against Captain Abdoulaye Kébé took place before a special tribunal presided by a military officer; and no appeal was permitted. Captain Kébé was charged with violating military regulations by providing statistics on the racial composition of the army command, which were then quoted in the “*Manifeste des negro - mauritaniens opprimés*”. He was held in solitary confinement before his trial, with no access to lawyers, and did not have sufficient time to prepare his defence. He was sentenced to two years imprisonment and twelve years house arrest.
6. In October 1986, a third trial relating to the Manifesto was brought against 15 persons. They were charged with belonging to a secret movement, holding unauthorised meetings and distributing tracts. Three of them were given suspended sentences and the others acquitted.
7. After the 1986 trial, there were protests against the conviction of the authors of the Manifesto. These brought about further arrests and trials.
8. In March 1987, 18 persons were charged before a criminal court for arson. They were not allowed family visits during the five months that their detention lasted. Many of them were alleged to be members of the support committee, established after the first trial relating to the Manifesto, to provide material and moral support to the families of the detainees. Most of the detainees were beaten during their detention. After the trial, nine accused were found guilty and sentenced to prison terms ranging from four to five years. The evidence was based almost exclusively on statements made to the police during their time in custody. They tried in court to retract these

statements, arguing that they had been given under duress. Apparently, the tribunal did not try to clarify these facts.

9. At the end of April 1987, six persons were charged with distribution of tracts. Just before their trial, arson charges were added to the list of offences with which they were being accused. The lawyers, once again, did not have sufficient time to prepare the defence of their clients. All of the accused were found guilty by the court and sentenced to four years imprisonment. The Supreme Court later confirmed the sentences, regardless of the irregularities that occurred during the course of the trial.
10. On 28 October 1987, the Mauritanian Minister of Interior announced the discovery of a plot against the government. In reality, all those accused of taking part in this plot belonged to the Black ethnic groups from the South of the country. Over 50 persons were tried for conspiracy by the special tribunal presided by a senior army officer who was not known to have a legal training. He was assisted by two assessors, both of them army officers. No appeal was provided for. The accused were kept in solitary confinement in military camps, deprived of sleep during their interrogation. They were charged with “endangering State security by participating in a plot aimed at deposing the government and provoking massacres and looting among the country’s inhabitants”. A special summary procedure was applied, under the pretext that they had been caught *in flagrante delicto*. This procedure provides for a trial without any prior investigation by an investigating magistrate. It restricts the rights of the defence as well as access to lawyers and allows the court to pass judgement without any obligation on the part of the judges to indicate the legal bases for their conclusions. Such a procedure is not normally applied in cases relating to a conspiracy or an attempted crime. It is applicable to an already consummated crime. Those who were convicted on 3 December 1987 did not have the right to file appeal. Three lieutenants were sentenced to death and executed three days after. The executions were said to have been stretched out in a manner as to subject the convicts to a slow and cruel death. To put an end to their suffering, they had to provoke the executioners to kill them as quickly as possible. The other accused were sentenced to life imprisonment.
11. Some presumed members of the Ba’ath Arab Socialist Party were also imprisoned for political cause. In September 1987, 17 supposed members of the party were arrested and charged with belonging to a criminal association, participating in unauthorised meetings and abduction of children. Seven of the accused were sentenced to a seven-month suspended term of imprisonment. On 10 September 1988, in another trial before the State security section of the special tribunal, 16 presumed Ba’athists were charged with disturbing the internal security of the State, having contacts with foreign powers and recruiting military personnel in a time of peace. Thirteen of them were found guilty, mainly on the basis of statements that they sought to withdraw during the trial, on the basis that they had been made under duress. The accused were held in solitary confinement in a police camp and did not have the right to consult their lawyers until three or four days before the trial. Communication 61/91 avers that the accused were arrested and imprisoned for their non-violent political opinions and activities.
12. Communication 61/91 also alleges that their conditions of detention were the worst and cites many examples to prove these allegations. Thus, from December 1987 to September 1988

those detained at Ouatala prison only received a small amount of rice per day, without any meat or salt. Some of them had to eat leaves and grass. The prisoners were forced to carry out very hard labour day and night, they were chained up in pairs in windowless cells. They only received one set of clothes and lived in very bad conditions of hygiene. As from February 1988, they were regularly beaten by their guards. From the time of their arrival in the detention camp, they only received one visit. Only the guards and prison authorities were authorised to approach them. Between August and September 1988, four prisoners died of malnutrition and lack of medical attention. After the fourth death, the civilian prisoners in Ouatala were transferred to the Aïoun-el Atrouss prison, which had medical infrastructure. Some of them were so weak that they could only move on all fours. In the Nouakchott prisons, the cells were overcrowded. The prisoners slept on the floor without any blankets, even during the cold season. The cells were infested with lice, bedbugs and cockroaches, and nothing was done to ensure hygiene and provision of health care. The Black prisoners, from the South of the country, complained of discrimination by the guards and security forces, who were mainly of the Beidane or Moorish ethnic group, supposedly Whites. They could not receive visits from their families, doctors or lawyers, except when the Ba'ath party supporters, all of them Beidanes, were in the same prison.

13. All these communications describe the events that took place in April 1989, simultaneously with the crisis that nearly caused a war between Senegal and Mauritania. The crisis was caused by Mauritania's expulsion of almost 50,000 people to Senegal and Mali. The government claimed that those expelled were Senegalese, while many of them were bearers of Mauritanian identity cards, which were torn up by the authorities when they were arrested or expelled. Some of them seemed to have been expelled mainly because of their relationship with the political prisoners or due to their political activities. Many of those who were not expelled were on the run to escape the massacres. Though the borders were later reopened, no security was assured those who desired to return, and they had no means by which to prove their Mauritanian citizenship. Many had been living in refugee camps since 1989, in extremely difficult conditions.
14. The main victims were Black Mauritanian government employees suspected of belonging to the Black opposition, and Black villagers from the South, mainly from the Hal-Pulaar or Peul ethnic group. The Haal-Pulaars traditionally live in the River Senegal valley where the land is fertile.
15. The complainants allege that thousands of people were arbitrarily detained. They state that the detentions were followed by expulsion, such as in the case of political opponents, people who had resisted the confiscation of their property, not to mention the cases that followed the incursions of [returning] refugee groups. This last category of arrests seems to have been carried out as a generalised reprisal, to the extent that there was no evidence of contacts between the detainees and the refugees who were returning to Mauritania. This type of retaliation and reprisal is contrary to Mauritanian law. Some of the detainees were released in early July 1990.
16. The communications allege also that there was daily persecution of villagers in the South between 1989 and 1990. Many identity-card checkpoints where the Hal-Pulaar had to show their identity cards and prove they were of Mauritanian origin. Their goats and sheep were confiscated by the security forces. Sometimes the villagers had to obtain military authorisation to take out their

livestock to pasture, to go fishing or to work their fields. Nevertheless, such authorisation did not protect them from arrest.

17. The security forces are accused of surrounding the villages, confiscating land and livestock belonging to the Black Mauritians and forcing the inhabitants to flee towards Senegal, leaving their property for the Haratines to take or to be destroyed. The Haratines who possessed the land of those who had been expelled were armed by the authorities and were expected to arrange their own defence. So they formed their own militia, which had no foundation in law, but which seemed to work in close collaboration or under the supervision of the army and internal security forces. Communication 96/93 provides a list of villages all or almost all of whose inhabitants were expelled to Senegal. Communication 98/93 provides a list of villages that were destroyed.
18. These communications also point to various incidents and extra-judicial executions of Black Mauritians in the South of the country. Following the mass expulsions, some refugees in Senegal carried out incursions into the villages inhabited by the Haratines. Generally, after these raids, the Mauritanian army, the security forces and the Haratine militia would invade the villages reoccupied by the original inhabitants, and identified victims, generally Hal-Pulaar. The communications mention many cases of summary executions. On 10 and 20 April, for instance, military and Haratine patrols arrested 22 people. They were later found dead, with their arms tied up. Some of them had been shot, others had their skulls smashed with stones. On 7 May 1990, Dia Bocar Hamadi, for example, was killed while he was searching for livestock taken from him by Haratines. When his brothers protested to the police, they were arrested and detained until early July. On 12 April 1990, Thierno Saibatou Bâ, a religious leader, was shot dead, on his way to meet his pupils.
19. A curfew was imposed on all villages in the South. Anyone who broke it was shot at sight, even if there was not proof that they were engaged in acts that endangered the lives of other inhabitants. Communication 61/81 mentions a specific case where the victims were arrested, tied up, and taken to a location where they were executed. According to the complainants, the army, security forces and Haratines enjoy total impunity. Many villagers who were not expelled had to flee in order to escape the massacres.
20. Whenever the villagers protested, they were beaten and forced to flee to Senegal or simply killed. Many villagers were arrested and tortured. A common form of torture was known as "Jaguar". The victim's wrists are tied to his feet. He is then suspended from a bar and thus kept upside down, sometimes over a fire, and is beaten on the soles of his feet. Other methods of torture involved beating the victims, burning them with cigarette stubs or with a hot metal. As for the women, they were simply raped.
21. In September 1990, a wave of arrests took place, ending between November and December 1990. Thousands of people were arrested. These were essentially Hal-Pulaar members of the armed forces or civil servants. All those arrested were from the South of the country. Later, the authorities alleged that there had been an attempt to unseat the government; but no proof was

ever given. The accused were never put on trial, but were kept in what communication 96/93 describes as “death camps”, in extremely harsh conditions.

22. Communication 61/91 contains a list of 339 persons believed to have died in detention. Some detainees were said to have been executed without trial. Thirty-three soldiers were hung, without trial, on 27 and 28 November 1990. Others were buried in sand to their necks and left to die a slow death. Many however died as a result of the torture they underwent. The methods used include the so-called ‘Jaguar’ mentioned above, electric shocks to the genital organs, as well as burns all over their bodies.
23. In February 1991, detainees in the J’Reida military camp were undressed, hands tied behind their backs, sprayed with cold water and beaten with iron bars. The ‘Jaguar’ torture was also utilised. The detainees were burned with coal embers, or they had some powder spread on their eyes, causing a terrible burning sensation. Their heads were plunged in dirty water to the point of suffocation; some were buried in sand to their necks. They were permanently chained in their cells, without toilet facilities. Some were kept in underground cells or dark cells where it got very cold at night.
24. In March 1991, the government announced the release of a number of political prisoners who had been convicted, as well as of other persons detained since November and December 1990. In April, other detainees were released, and President Maaouya Ould Taya announced that all those arrested had been released. However, there was never any response to the reports referring to people who had been killed in detention. Nor on the unknown fate of many detainees. Communication 61/91 provides a list of 142 peoples whose deaths are confirmed and another 197 who were not released and are probably dead.
25. According to communication 61/91, the government set up a commission of inquiry, but did not indicate either its prerogatives or the extent of its field of action. It is essentially composed of military men. And even if one were to believe that the commission has finished its work, no report ever made its conclusions public.
26. Communication 54/91 alleges that there are over 100,000 Black slaves serving in Beidane houses. And that though 300,000 had bought their freedom, they remain second-class citizens. Besides, Blacks do not have the right to speak their own languages. According to communication 98/93, a quarter of the population (500,000 out of 2,000,000 inhabitants in the country) are either slaves or Haratines (freed slaves). The freed slaves maintain many traditional and social links with their former masters, which constitutes a more subtle form of exploitation.
27. Amnesty International, *Union Interafricaine des Droits de l’Homme* and *Rencontre Africaine pour la Défense des Droits de l’Homme* made statements at the 19th session, reiterating the facts already presented. Amnesty International stated in writing that an amicable settlement could only be possible if the government set up an independent commission of inquiry to shed light on these violations, brought the authors to justice according to the internationally respected rules regarding fair trial, without using the death penalty; tried all other political

prisoners according to international norms, and compensated the victims in a satisfactory manner.

The Government's Response:

28. The government's response to these allegations was that Amnesty International had taken sides in the conflict between Senegal and Mauritania. The government admits that there had been what it calls "incidents" in late 1990, but that the "necessary measures had been taken to restore order as soon as possible and to limit the damage". It also declares that administrative sanctions were imposed on some army officers. The government maintains that a new pluralist Constitution was adopted, and that Mauritania is now a democratic State that respects the norms of the African Charter on Human and Peoples' Rights.

29. At the 19th session of the Commission, the Mauritanian government representative in attendance did not contest the complainants' allegations, claiming that graves and massive human rights violations had been committed between 1989 and 1991. He expressed his government's wish to work together with the Commission to assist the victims, making it clear that the country's economic could not allow them all to be compensated. He further declared that it would be difficult to verify the situation of each one prior to the 1989 events, which would make their resettlement impossible. He continued, saying that all those displaced could return to their native villages. Besides, the Mauritanian government representative categorically denied that the Black ethnic groups did not have the right to speak their languages. He reiterated his government's official position, that slavery had been abolished in Mauritania during French colonial days.

Provisions of the Charter Alleged to have been Violated:

The communications allege violation of articles 2, 4, 5, 6, 7, 9, 10, 11, 12, 14, 16, 18, 19 and 26 of the African Charter on Human and Peoples' Rights.

Procedure:

30. **Communication 54/91** is dated 16 July 1991 and was submitted by Malawi African Association, a non-governmental organisation.

31. The Commission was seized of it on 14 November 1991 and the Mauritanian government was notified and called upon to make its observations known. No response was received from it.

32. At the 19th session held in March 1996, the Commission heard Mr. Ahmed Motala, representative of Amnesty International, Mr. Halidou Ouédraogo of UIDH, Mr. Alioune Tine and Mr. C. Faye of RADDHO, as well as the representative of the Mauritanian government. Mr. Ahmed Motala then sent the Commission a letter dated 31 March 1996.

33. At the end of the hearings, the Commission held the view that the government did not seriously contest the allegations brought against it. The Mauritanian delegate admitted that human rights violations had indeed been committed. He did not try to explain the circumstances in which they

had taken place. He requested the Commission to give its assistance in finding a solution to the problem. He further added that his government was ready to receive a delegation from the Commission to that end. Following this, the Commission reiterated its decision to send a mission to Mauritania to try and obtain an amicable settlement. It was also decided that the mission would be composed of the Chairman of the Commission and Commissioners Rezag-Bara and Ondziel-Gnelenga, as well as the Secretary to the Commission.

34. The mission was effected from 20 to 27 June 1996.
35. At the 20th session held in Grand Baie, Mauritius, the Commission considered the mission's report and deferred the decisions on the communications to its 21st session.
36. On 7 February 1997, the Secretariat wrote to the complainants explaining to them that the mission report would be sent to the government for its observations by the end of February and that they would subsequently have the chance to make comments on the said report.
37. At the 21st session held in Nouakchott in April 1997, the Commission deferred its decision on this communication to the 22nd session, pending its receipt of the Mauritanian government's reaction to the mission report.
38. **Communication 61/91** was submitted by Amnesty International on 21 August 1991.
39. The Commission was seized of it at its 10th session, held in October 1991.
40. The Mauritanian government was notified about it by the Secretariat on 14 November 1991.
41. At the 15th session, the Commission decided to compile all the communications filed against Mauritania.
42. From that date, the procedure for the present communication became identical to that for communication 54/91.
43. **Communication 96/93** was submitted on 12 March 1993 by Ms. Sarr Diop on behalf of the victims.
44. The Commission was seized of it at its 13th session held in April 1993. Notification of it was sent to the accused State, asking it to forward its observations to the Secretariat. No response was received.
45. At the 15th session held in March 1994, it was decided to combine all the communications filed against Mauritania.
46. From that date, the procedure for the present communication became identical to that for the above-mentioned communication 54/91.

47. **Communication 98/93** was submitted on 30 March 1993 by two NGOs, *Rencontre Africaine pour la Défense des Droits de l'Homme* (RADDHO, African Association for the Defence of Human Rights) and *Union Interafricaine des Droits de l'Homme* (UIDH, Inter-African Human Rights Union). The Commission was seized of them at its 13th session.
48. The Commission was seized of them at its 13th session.
49. On 12 April 1993, notification of it was sent to the accused State, asking it to address its observations to the Secretariat of the Commission.
50. At the 15th session held in March 1994, it was decided to combine all the communications filed against Mauritania.
51. From that date, the procedure for the present communication became identical to that for the above-mentioned communication 54/91.
52. At the 22nd session held in Banjul from 2 – 11 November 1997, the representative of Mauritania pointed out that his government was in the process of considering the mission report of the Commission and expected to have its observations ready before the 23rd session. The Commission thus decided to defer consideration of all the communications filed against Mauritania to its following session, while bearing in mind that they had been pending before the Commission for quite a long time now.
53. At the 23rd session held in Banjul (The Gambia) from 20 – 29 April 1998, the Commission decided to combine it with the procedure ongoing for communications 164/97 to 196/97 as well as n° 210/98. In addition, three notes verbales were addressed on 25 April, 9 and 10 July 1998 respectively to the Mauritanian Ministry of Foreign Affairs to inquire about the government's reaction. They have remained without reply to date.
54. **Communications no. 164/97 – 196/97** allege that between September and December 1990, there was a wave of arrests in Mauritania directed at specific sectors of the population. Those arrested were mostly military men and public servants belonging to the Hal-Pulaar ethnic group and other ethnic groups from the South of the country. Some time after this wave of arrests, the government announced, without providing any proof, that there had been an attempted coup d'état.
55. The accused were never brought before a court of law according to communications 164/97 – 196/97, about a dozen of the accused were tortured and executed in the military camps of Inal, J'réida, Tiguint and Aleg between November and December 1990. Most remarkably, most of the communications allege that the victims were beaten to death.
56. The widows and mothers behind the present communications, have previously brought their complaints before the Mauritanian national authorities, both civilian and military, in particular the Minister of Interior, the head of the national army, the National Assembly, the Senate, the

Special Court of Justice, the Nouakchott Criminal Court, the President and the Minister of National Defence. In all these cases they were either ignored or chased away.

57. On 14 June 1993, the Mauritanian government issued an enactment, no. 023 93, granting amnesty to those accused of perpetrating the series of murders for which the beneficiaries of the victims are hereby claiming compensation of injuries suffered.

Provisions of the Charter Alleged to have been Violated:

58. The communications allege a series of grave and massive violations of articles 2, 3, 4, 5, 6, 7, 16 and 26 of the African Charter.

Procedure:

59. **Communications 164/97 – 196/97** were received by the Secretariat in April 1997. They were all submitted by the beneficiaries of the alleged victims.
60. On 6 October 1997, the Secretariat received a note verbale dated the 1st of the same month, with reference number 075/MAEC communicating the Mauritanian government's reaction to the accusations made against it. The gist was that Mauritania called on the Commission not to be seized of the said communications for the reason that they "deal with a naturally deplorable, but peculiar and exceptional situation [...] that has in any case since been surmounted...".
61. On 9 October 1997, the Secretariat acknowledged receipt of the said note, pointing out that the fact that the Mauritanian State had paid compensation to the beneficiaries of the victim of the alleged violations (which are in any case not denied by the State) cannot invalidate the Commission's deliberations.
62. At the 23rd session, the Commission adjudged on the admissibility of the communications, decided to combine the procedure followed for the present communications with those for communications 54/91, 61/91, 96/93, 98/93, 198/97 and 210/98 and referred the dossiers for consideration as to merit at its 24th session.
63. Communication **210/98** was submitted by the **Association Mauritanienne des Droits de l'Homme (AMDH, Mauritanian Human Rights Association), on behalf of the Collectif des Rescapés, Anciens Détenus Civils Torturé (CRADPOCIT, Collective of Survivors, Ex-Civilian Detainees and the Tortured) vs/Mauritania**. It alleges that during the bloody political events that troubled Mauritania between 1986 and 1991, those who have now joined together under the umbrella of CRADPOCIT were arrested, along with other Mauritanian citizens of black African stock and detained in the Nouakchott civil prison, and later transferred to various gaols where they were subjected to torture and other inhuman and degrading forms of treatment; this is alleged to have led to the death of some of their co-detainees.

64. After more than fifteen days of detention, some of them were released, while others were charged to court and held in the civilian prisons.
65. Following a number of court cases, some of those on remands were released, others given suspended sentences, while others were sentenced to prison terms varying from three months to five years. These verdicts were aggravated with loss of civic rights, heavy fines and banishment after release.
66. In 1993, members of the armed forces who had been subjected to the same treatment as those who came together under CRADPOCIT were granted pension benefit coupons. Imbued with the hope raised by this measure, they addressed a letter to the President of the Republic on 3 November 1993 in which they demanded their rehabilitation, in line with what had been provided to their compatriots of Arabo-Berber origin and the military personnel of black African origin. This move yielded no results.
67. Two years later, they addressed a second letter to the Head of State, with the same demands, without achieving any better results than in 1993. It was after this second failure that they decided to constitute themselves into a collective in order to better defend their rights. Application for the official recognition of the said collective (CRADPOCIT) was addressed to the Ministry of Interior. At the same time, its founding documents were sent to the Head of State, the Presidents of the Senate and the National Assembly, as well as the Mediator of the Republic, with the same demands annexed in all cases.
68. The complainant claims that as of the time of the arrest of the members of CRADPOCIT, the majority of them were civil servant who had each accumulated ten to twenty years of service. And that at present they are subject to the most precarious living conditions, aggravated by unemployment and onerous family responsibilities; some of them have seen their homes broken following divorces that they were unable to prevent!

Procedure

69. The communication was received by the Secretariat of the Commission on 26 January 1998.
70. At the 23rd ordinary session, held from 20 – 29 April 1998 in Banjul (The Gambia), the Commission decided :
 - a) – to notify the Mauritanian government representative at the session of the communication (with signed acknowledgement);
 - b) – to combine it with the ongoing procedure for communications 54/91, 61/91, 96/93, 98/93 and 164/97 to 196/97. It took the view that the reaction of the Mauritanian government to the various Notes Verbales from the Secretariat, as contained in note n° 075/MAEC, dated 1st October 1997, was valid for the case under consideration.

c) – to defer the communication to its 24th session for consideration of its merit.

71. At the 24th session held in Banjul, The Gambia, from 22 – 31 October 1998, it was decided that the members of the Commission who had undertaken the mission to Mauritania should consider the communications, taking into account the response of the Government of Mauritania to their mission report. Consideration of these communications was thus deferred to the 25th session.

Provisions of the Charter Alleged to have been Violated:

72. Members of CRADPOCIT are complaining of discriminatory practices on the part of the Mauritanian government, which they accuse of operating “a policy of double standards”, since the officials of Arabo-Berber origin who had been subjected to the same situation had been reintegrated into their various workplaces, while the members of the collective who are of Black African origin saw their pleas rejected.

73. They further point out that while they were in detention, in September 1987, when about fifteen pro-Iraqi Ba’athist Arabo-Berber military men (charged for belonging to a criminal organisation, participation in unauthorised meetings and kidnapping of children) joined them in the same prison, their arrival led to a notable improvement in their conditions of detention. They claim that they were then allowed to take walks within the prison courtyard, a “privilege” that was previously denied to them. However, they were still denied visits as a policy, while their Arabo-Berber compatriots had the right to receive anyone, including their spouses.

74. Immediately after the release of the Arabo-Berbers, the black Africans were thrust back to the difficult gaol conditions to which they had previously been subjected, which consisted, remarkably, of keeping them chained in pairs during the whole day, with all inconveniences arising from such a situation, hard labour, fetching water, etc. These inhuman prison conditions, coupled with poor alimentation and lack of hygiene are said to be the cause of the above-mentioned deaths of four of their co-detainees (two military and two civilians).

75. The Mauritanian Human Rights Association claims violation of the following provisions of the African Charter of Human and Peoples’ Rights:

a - article 2: “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status”;

b - article 4: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”;

c - article 5: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”;

d - article 15: “Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work”;

e - article 16: 1. “Every individual shall have the right to enjoy the best attainable state of physical and mental health;

2. “States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick”;

f - article 19: “All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another”.

LAW:

Admissibility

76. Communications 54/91, 61/91, 98/93, 96/93, 164/97 – 196/97 and 210/98 allege cases of grave and massive violations of human rights attributed to the Mauritanian State.

77. In the African Charter on Human and Peoples’ Rights, admissibility is governed by article 56, which defines all the conditions that communications must meet in order to be considered. These criteria are applied with due regard to the specificity of each communication. The case under consideration, of which the Commission was seized through the present procedure, is a combination of four communications which it decided to consider together in view of the similarity of the facts related. The Commission had previously taken the same decision regarding communications submitted against Benin, Zaïre and Rwanda (Cf. decisions on communications 16/88, 17/88, 18/88, 25/89, Legal Assistance Group vs/ Zaïre, and 27/89, 46/91, 49/91, 99/93 World Organisation against Torture, International Association of Democratic Jurists, International Commission of Jurists and Inter-African Human Rights Union vs/ Rwanda. All these communications were submitted by non-governmental organisation and they all allege various violations that are inter-related and similar.

78. Article 56,1 of the Charter demands that anyone submitting communications to the Commission relating to human and peoples’ rights must reveal their identity. They do not necessarily have to be the victims of such violations or members of their families. This characteristic of the African Charter reflects sensitivity to the practical difficulties that individuals can face in countries where human rights are violated. The national or international channels of remedy may not be accessible to the victims themselves or may be dangerous to pursue.

79. In the above-mentioned decisions, the Commission recognised that in a situation of grave and massive violations, it may be impossible to give a complete list of names of all the victims. It will be noted that article 56,1 demands simply that communications should indicate the names of those submitting and not those of all the victims of the alleged violations.

80. Article 56,5 of the Charter demands that the complainants must have exhausted internal remedies, where these exist, before the Commission can be seized of a communication. The Commission maintains that one of the justifications for this demand is that the accused State should be informed of the human rights violations it is being accused of, to provide it with an opportunity to redress them and save its reputation, which would be inevitably tarnished if it were brought before an international jurisdiction. This provision also enables the African Commission on Human and Peoples' Rights to avoid playing the role of a court of first instance, a role that it can not under any circumstances arrogate to itself.
81. The Mauritanian State was informed of the worrying human rights situation prevailing in the country. Particular attention, both within the national and international communities, was paid to the events of 1989 and succeeding years. Even if it were to be assumed that the victims had instituted no internal judicial action, the government was sufficiently informed of the situation and its representative, on various occasions, stressed before the Commission that a law known as the "general amnesty" law, dealing with the facts arraigned was adopted by his country's parliament in 1993. The Mauritanian government justified the said law with the argument that "the civilians had benefited from an amnesty law in 1991, and consequently the military wanted to obtain the same benefits; especially as they had given up power after allowing the holding of presidential (1992) and legislative (1993) elections".
82. The Commission notes that the amnesty law adopted by the Mauritanian legislature had the effect of annulling the penal nature of the precise facts and violations of which the plaintiffs are complaining; and that the said law also had the effect of leading to the foreclosure of any judicial actions that may be brought before local jurisdictions by the victims of the alleged violations.
83. The Commission recalls that its role consists precisely in pronouncing on allegations of violations of the human rights protected by the Charter of which it is seized in conformity with the relevant provisions of that instrument. It is of the view that an amnesty law adopted with the aim of nullifying suits or other actions seeking redress that may be filed by the victims or their beneficiaries, while having force within Mauritanian national territory, cannot shield that country from fulfilling its international obligations under the Charter.
84. Also, the Islamic Republic of Mauritania, being a party to the African Charter on Human and Peoples' Rights, has no basis to deny its citizens those rights that are guaranteed and protected by an international convention, which represents the minimum on which the States Parties agreed, to guarantee fundamental human freedoms. The entry into force of the Charter in Mauritania created for that country an obligation of consequence, deriving from the customary principle *pacta sunt servanda*. It consequently has the duty to adjust its legislation to harmonise it with its international obligations. And, as this Commission has previously had to emphasise, "contrary to other human rights instruments, the African Charter does not allow for derogation from obligations due to emergency situations. Thus, even a situation of civil war [...] cannot be cited as justification for the violation by the State or its authority to violate the African Charter" (cf. communication 74/92, para. 36).

85. Finally, the Commission interprets the provisions of article 56,5 in the light of its duty to protect human and people's rights as stipulated in the Charter. The Commission does not believe that the condition that internal remedies must have been exhausted can be applied literally to those cases in which it is "neither practicable nor desirable" for the complainants or the victims to pursue such internal channels of remedy in every case of violation of human rights. Such is the case where there are many victims. The gravity of the human rights situation in Mauritania and the great number of victims involved renders the channels of remedy unavailable in practical terms, and, according to the terms of the Charter, their process is "unduly prolonged". In addition, the amnesty law adopted by the Mauritanian parliament rendered obsolete all internal remedies.

For these reasons, the Commission declares the communications admissible.

Merits:

86. In June 1996, the Commission sent a good-offices mission to Mauritania. The delegation met with members of the government and non-governmental organisations to discuss the overall human rights situation in the country.

87. The mission was undertaken at the initiative of the Commission in its capacity as promoter of human and peoples' rights. It was not an enquiry mission; and while it permitted to the Commission to get a better grasp of the prevailing situation in Mauritania, the mission did not gather any additional specific information on the alleged violations, except on the issue of slavery. The present decision is therefore based on the written and oral declarations made before the Commission over the past six years.

88. In the case under consideration, no indication from the government, with the exception of the issue of slavery, seeks to refute the facts adduced in the communications. The representative of the government, who appeared before the Commission at the 19th session and subsequent sessions, admitted that the communications of which the Commission was seized "deal with a naturally deplorable, but peculiar and exceptional situation [...] that has in any case since been surmounted...". And according to the government, "most of the issues raised have already been resolved, others are in the process of being settled". It claims, as regards the ex-prisoner civil servants that "the démarches undertaken by those who have constituted themselves into a collective are the result of manipulations of the opposition..." with the aim of countering government action.

89. Though the above-mentioned declaration by the government representative could have constituted a basis for an amicable solution, such a solution could only take place with the agreement of the parties. However at least one of the complainants has clearly indicated that a resolution can only be reached on the basis of some specific conditions, of which none has so far been met to its satisfaction. While it appreciates the government's good will, and hopes to collaborate with it in future to ensure the effectiveness of the settlement of the damages suffered by all the victims of the events described above, the Commission has an obligation to adjudge on the clearly stated facts contained in the various communications. More so as it does not consider acceptable the position of the government that the atrocities and other assassinations committed within the military

institution were “an internal affair of the army; that the army had conducted its own inquiry, following which appropriate sanctions were meted out to those military men who were found guilty”.

90. Article 7 of the Charter stipulates that:

Every individual shall have the right to have his cause heard. This comprises:

- a) The right to appeal to competent national organs against acts violating his fundamental rights...;*
- b) the right to be presumed innocent until proved guilty by a competent court or tribunal;*
- c) the right to defence, including the right to be defended by counsel of his choice;*
- d) the right to be tried within a reasonable time by an impartial court or tribunal.*

91. Mauritania ratified the African Charter on 14 June 1986, and it came into force on 21 October 1986. The September trials, thus, took place prior to the entry into force of the Charter. These trials led to the imprisonment of various persons. The Commission can only consider a violation that took place prior to the entry into force of the Charter if such a violation continues or has effects which themselves constitute violations after the entry into force of the Charter (cf. decision taken on communication 59/91, p. 28). The Commission should therefore have the competence to consider these trials with a view to ascertaining whether the incarcerations that resulted from them constitute a violation of article 6 of the Charter.

92. The government did not give any substantial response to the allegations that the said trials were arbitrary. Consequently, in conformity with its well-established jurisprudence, the Commission (cf. decisions taken on communications 59/91, 60/91, 64/91, 87/93 and 101/93), shall adjudge based on the elements provided by the complainants.

93. The State Security Section of the Special Tribunal does not provide for any appeal procedure. Two specific cases mentioned in the communications took place in September and October 1987 (see paras. 10 and 11) and no appeals were authorised. One of the trials ended in the execution of 3 army lieutenants.

94. Furthermore, even when an appeal was allowed, as in the first case in the "Manifesto" (paras. 3 and 4), on 13 October 1986, the Court of Appeal confirmed the verdicts, even though the accused had contested the procedure of the initial trial, and the Public Prosecutor's office did not contest the complaints of the accused. From all indications, the Court of Appeal simply confirmed the sentences without considering all the elements of fact and law. Such a practice can not be considered a genuine appeal procedure. For an appeal to be effective, the appellate jurisdiction must, objectively and impartially, consider both the elements of fact and of law that are brought before it. Since this approach was not followed in the cases under consideration, **the**

Commission considers, consequently, that there was a violation of article 7,1 (a) of the Charter.

95. In the judgement of early September 1986 (para. 3), the presiding judge declared that the refusal of the accused persons to defend themselves was tantamount to an admission of guilt. In addition, the tribunal based itself, in reaching the verdicts it handed down, on the statements made by the accused during their detention in police cells, which statements were obtained from them by force. **This constitutes a violation of article 7,1 (b).**
96. In most of the cases brought up in these communications (paras. 3,4,5,9,10,11), the accused either had no access or had restricted access to lawyers, and the latter had insufficient time to prepare the defence of their clients. **This constitutes a violation of article 7,1(c) on the right to defence.**
97. The right to defence should also be interpreted as including the right to understand the charges being brought against oneself. In the trial on the September Manifesto (para. 3), only 3 of the 21 accused persons spoke Arabic fluently, and this was the language used during the trial. This means that the 18 others did not have the right to defend themselves; **this also constitutes a violation of article 7,1(c).**
98. The Section responsible for matters relating to State Security in the Special Tribunal is headed by a senior military officer who is not required to have a legal training. He is assisted by two assessors, both military men. The Special Tribunal is itself presided by an army officer. In the joint procedure on communications 139/94, 154/96 and 161/97 (International Pen, Constitutional Rights Project, Interights and Civil Liberties Organisation vs/ Nigeria), the Commission reached the conclusion that the “Special Military Tribunals ...constituted a violation of article 7,1 (d) of the Charter by the very virtue of their composition, which is reserved to the discretion of the executive organ”. Withdrawing criminal procedure from the competence of the Courts established within the judicial order and conferring onto an extension of the executive necessarily compromises the impartiality of the Courts, to which the African Charter refers. **Independent of the qualities of the persons sitting in such jurisdictions, their very existence constitutes a violation of the principles of impartiality and independence of the judiciary and, thereby, of article 7,1 (d).**
99. Article 26 of the Charter states that:
- States parties to the present Charter shall have the duty to guarantee the independence of the Courts...
100. By establishing a section responsible for matters relating to State security within the Special Tribunal, the Mauritanian State was reneging on its duty to guarantee the independence of the courts. The Commission therefore concludes that **there has been violation of article 26.**
101. Article 9,2 of the Charter stipulates that:

Every individual shall have the right to express and disseminate his opinions within the law.

102. Communication 61/91 alleges that the trials on the Manifesto (paras. 3,4,5,6) and the other related cases (paras. 8 and 9) violate the right to freedom of expression and dissemination of ones' opinions, to the extent that the accused were charged with distributing a manifesto which provided statistics on racial discrimination and were calling for a dialogue with the government. The expression "within the laws" must be interpreted as reference to the international norms. To the extent that the Manifesto did not contain any incitement to violence, it should be protected under international law.
103. Once again, the government did not contest the facts adduced by the complainants. In view of the foregoing, the Commission shall base its argumentation on the elements provided by the complainants. (Cf. decisions 59/91 et al, cited in para. 89).
104. Considering that the trials in question in paragraphs 3, 4 and 5 took place prior to the entry into force of the African Charter, the Commission finds no violation of article 9,2 as regards these cases. However if the indictments constituted a violation of the African Charter, the detention which ensued from them would be arbitrary and **violates article 6**. The Commission is of the view that these cases would have led to violation of article 9,2 had they taken place after the entry into force of the Charter, and consequently the detention of the accused would have been a violation of article 6.
105. The cases mentioned in paragraphs 8, 9 and 10, which were heard after the entry into force of the Charter, **are a violation of the rights stated and protected in article 9,2.**
106. Article 10,1 of the Charter stipulates that::
- Every individual shall have the right to free association provided that he abides by the law...*
107. Some presumed supporters of the Ba'ath Arab Socialist Party were imprisoned for belonging to a criminal association. The accused in the 3rd case relating to the Manifesto (para. 6) were charged for belonging to a secret movement. The government did not provide any argument to establish the criminal nature or character of these groups. The Commission is of the view that any law on associations should include an objective description that makes it possible to determine the criminal nature of a fact or organisation. In the case under consideration, the Commission considers that none of these simply rational requirements was met and that **there was violation of article 10,2.**
108. Article 11 of the Charter stipulates that:
- Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular*

those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

109. The accused in the Manifesto case were charged for holding unauthorised meetings (paras. 3 and 6). The trial in question in para. 3 took place before the entry into force of the African Charter. Consequently, the Commission cannot consider that there was a violation of article 11 as regards this particular case. However, had the indictments constituted a violation of article 11, the detention that ensued from it would have been a violation of article 6, which prohibits arbitrary detention.
110. The presumed supporters of the Ba'ath Arab Socialist Party are equally accused of holding unauthorised meetings.
111. The government did not come up with any element to show that these accusations had any foundation in the “interest of national security, the safety, health, ethics and rights and freedoms of others”, as specified in article 11. Consequently, the Commission considers **that there was violation of article 11 in the cases in question in paragraphs 3 and 11.**
112. Article 6 of the Charter stipulates that:
- Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.*
113. **There were recurring violations of this article.** The indictments and trials of September 1986 (paras. 3,4 and 5) were not in conformity with the provisions of the Charter. All those who were incarcerated in its wake were denied their rights as guaranteed in article 6. The imprisonment resulting from the other cases (paras. 6 and 8), and the two cases from November 1987 (para. 10) as well as the cases against the presumed members of the Ba'ath Arab Socialist Party (para. 11) are arbitrary, for the fact that they were not in conformity with international norms relating to fair trial.
114. The complainants allege that hundreds of people were detained in connection with the 1989 events (para. 15). They allege, further, that a wave of arrests at the end of 1990 resulted in the detention of hundreds of people without charge or trial. According to the complainants, some, and not all, of the detainees were released, adding however that the fate of many people remains unknown. The government did not deny that these arrests and detentions took place, but it maintained that such arbitrary detentions no longer exist. Even if that were the case, it would not annul the previous violations. The Commission considers, therefore, that **there was massive violation of article 6.**
115. Article 5 of the African Charter prohibits torture, cruel, inhuman or degrading punishment and treatment. This article also stipulates that “*Every individual shall have the right to the respect of the dignity inherent in a human being*”. All the communications detail instances of torture, and cruel, inhuman and degrading treatments. During their time in custody, the

detainees were beaten (para 8), they were forced to make statements (paras 8 and 11), and they were denied the opportunity of sleeping (para 10). Both during the trial as well as the period of arbitrary detention, some of the prisoners were held in solitary confinement (paras. 5, 8, 10, 11 and 12).

116. The conditions of detention were, at the very least, bad. The prisoners were not fed; they were kept in chains, locked up in overpopulated cells lacking in hygiene and access to medical care (para. 12). They were burnt and buried in sand and left to die a slow death. Electrical shocks were administered to their genital organs and they had weights tied on to them. Their heads were plunged into water to the point of provoking suffocation; pepper was smeared on their eyes and some were permanently kept in small, dark or underground cells which got very cold at night (para 23).
117. Both within and outside the prisons, the so-called “Jaguar” position was the form of torture utilised, (see paras 20 and 22). The prisoners were beaten (paras 12 and 20) and their bodies burnt using various instruments (paras 20 and 22). The women were raped (para 20).
118. The government did not produce any argument to counter these facts. Taken together or in isolation, these acts are proof of widespread utilisation of torture and of cruel, inhuman and degrading forms of treatment and constitute a violation of article 5. The fact that prisoners were left to die slow deaths (para 10) equally constitutes cruel, inhuman and degrading forms of treatment prohibited by **article 5 of the Charter**.
119. Article 4 of the Charter stipulates that:
- Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*
120. Following the November 1987 trial, which already violated the provisions of article 7, three army lieutenants were sentenced to death and executed (para 10). The trial itself constituted a violation of the African Charter. Furthermore, the Commission is of the view that **the executions that followed the said trial constitute a violation of article 4** Denying people food and medical attention, burning them in sand and subjecting them to torture to the point of death point to a shocking lack of respect for life, and constitutes a violation of article 4 (see para 12). Other communications provide evidence of various arbitrary executions that took place in the villages of the River Senegal valley (see paras 18 and 19) and stress that people were arbitrarily detained between September and December 1990 (see para 22). The Commission considers that there were repeated violations of article 4.
121. Article 16 of the Charter states that:
- 1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.*

2. *States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.*

122. The State's responsibility in the event of detention is even more evident to the extent that detention centres are of its exclusive preserve, hence the physical integrity and welfare of detainees is the responsibility of the competent public authorities. Some prisoners died as a result of the lack of medical attention. The general state of health of the prisoners deteriorated due to the lack of sufficient food; they had neither blankets nor adequate hygiene. The Mauritanian State is directly responsible for this state of affairs and the government has not denied these facts. Consequently, the Commission considers that **there was violation of article 16.**

123. Article 18(1) states that:

The family shall be the natural unit and basis of society. It shall be protected by the State...

124. Holding people in solitary confinement both before and during the trial, and during such detention, which is, on top of it all, arbitrary, (paras 5,8,10, 11 and 12) depriving them their right to a family life constitutes **a violation of article 18,1.**

125. Article 12,1 states that:

Every individual shall have the right to freedom of movement and residence within the borders of the State provided he abides by the law.

126. Evicting Black Mauritians from their houses and depriving them of their Mauritanian citizenship constitutes **a violation of article 12,1.** The representative of the Mauritanian government described the efforts made to ensure the security of all those who returned to Mauritania after having been expelled. He claimed that all those who so desired could cross the border, or present themselves to the Mauritanian Embassy in Dakar and obtain authorisation to return to their village of birth. He affirmed that his government had established a department responsible for their resettlement. The Commission adopts the view that while these efforts are laudable, they do not annul the violation committed by the State.

127. Article 14 of the Charter reads as follows:

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

128. The confiscation and looting of the property of black Mauritians and the expropriation or destruction of their land and houses before forcing them to go abroad constitute **a violation of the right to property as guaranteed in article 14.**

129. Article 2 of the Charter states that:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour...

130. The representative of the government as well as the authors of the communications declared that many Black Mauritians were forced to flee or were detained, tortured or killed because of the colour of their skin, and that the situation in Mauritania became explosive due to the extreme positions adopted by the francophone and arabophone factions that were in opposition to each other in the country.

131. Article 2 of the Charter lays down a principle that is essential to the spirit of this convention, one of whose goals is the elimination of all forms of discrimination and to ensure equality among all human beings. The same objective under-pins the Declaration of the Rights of People Belonging to National, Ethnic, Religious or Linguistic Minorities adopted by the General Assembly of the United Nations in resolution 47/135 of 18 December 1992. Article 1,1 of this document indeed stipulates that “States shall protect the existence and national or ethnic, cultural, religious or linguistic identity of the minorities within their respective territories and shall stimulate the establishment of conditions conducive to the promotion of such identity.” From the foregoing, it is apparent that international human rights law and the community of States accord a certain importance to the eradication of discrimination in all its guises. Various texts adopted at the global and regional levels have indeed affirmed this repeatedly. Consequently, for a country **to subject its own indigenes to discriminatory treatment only because of the colour of their skin is an unacceptable discriminatory attitude and a violation of the very spirit of the African Charter and of the letter of its article 2.**

132. Article 5 of the Charter states that:

All forms of exploitation and degradation of man particularly slavery ... shall be prohibited.

133. Communications 54/91 and 98/93 allege that a majority of the Mauritanian population is composed of slaves. The government states that slavery had been abolished under the French colonial regime. The communications also allege that freed slaves maintain traditional and close links with their former masters and that this constitutes another form of exploitation.

134. During its mission to Mauritania in June 1996, the Commission’s delegation noted that it was still possible to find people considered as slaves in certain parts of the country. Though Edict N° 81-234 of 9 November had officially abolished slavery in Mauritania, it was not followed by effective measures aimed at the eradication of the practice. This is why, in many cases, the descendants of slaves find themselves in the service of the masters, without any remuneration. This is due either to the lack of alternative opportunities or because they had not understood that they had been freed of all forms of servitude for many years. From all appearances, some freed slaves chose to return to their former masters. From the Commission’s point of view, the

State has the responsibility to ensure the effective application of the Edict and thus ensure the freedom of its citizens, to carry our inquiries and initiate judicial action against the perpetrators of violations of the national legislation.

135. Independently from the justification given, by the defendant State, the Commission considers, in line with the provisions of article 23,3 of the Universal Declaration of Human Rights, that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. These provisions are complemented by those of article 7 of the International Covenant on Economic, Social and Cultural Rights. In view of the foregoing, the Commission **deems that there was a violation of article 5 of the Charter due to practices analogous to slavery**, and emphasises that unremunerated work is tantamount to a violation of the right to respect for the dignity inherent in the human being. It furthermore considers that the conditions to which the descendants of slaves are subjected clearly constitute exploitation and degradation of man; both practices condemned by the African Charter. However, the African Commission cannot conclude that there is a practice of slavery based on these evidences before it.

136. Article 17 of the Charter stipulates that:

2. Every individual may freely take part in the cultural life of his community.

3. The promotion and protection of morals and traditional values recognised by the Community shall be the duty of the State...

137. Language is an integral part of the structure of culture; it in fact constitutes its pillar and means of expression par excellence. Its usage enriches the individual and enables him to take an active part in the community and in its activities. To deprive a man of such participation amounts to depriving him of his identity.

138. The government made it known that there exists in the country an institute of national languages, for over ten years now, and that this institute teaches those languages. However, a persisting problem is the fact that many of these languages are exclusively spoken in small parts of the country and that they are not written. Communication 54/91 alleges the violation of linguistic rights but does not provide any further evidence as to how the government denies the black groups the right to speak their own languages. Information available to the Commission does not provide it a sufficient basis to determine if there has been violation of article 17.

139. Article 23 of the Charter states that:

All peoples shall have the right to national and international peace and security.

140. As advanced by the Mauritanian government, the conflict through which the country passed is the result of the actions of certain groups, for which it is not responsible. But in the case in question, it was indeed the Mauritanian public forces that attacked Mauritanian villages. And even if they were rebel forces, the responsibility for protection

is incumbent on the Mauritanian State, which is a party to the Charter (cf. Commission's decision in communication 74/92). The unprovoked attacks on villages constitute a denial of the right to live in peace and security.

141. Article 19 provides that:

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another...

142. At the heart of the abuses alleged in the different communications is the question of the domination of one section of the population by another. The resultant discrimination against Black Mauritians is, according to the complainants (cf. Especially communication 54/91) the result of a negation of the fundamental principle of the equality of peoples as stipulated in the African Charter and constitutes a violation of its article 19. The Commission must however admit that the information made available to it do not allow it to establish with certainty that there has been a violation of article 19 of the Charter along the lines alleged here. It has nevertheless identified and condemned the existence of discriminatory practices against certain sectors of the Mauritanian population (cf. especially paragraph 164).

FOR THESE REASONS, THE COMMISSION:

Declares that, during the period 1989 – 1992, there were grave or massive violations of human rights as proclaimed in the African Charter; and in particular of articles 2, 4, 5 (constituting cruel, inhuman and degrading treatments), 6, 7.1(a),(b),(c) and (d), 9.2, 10.1, 11, 12.1, 14, 16.1, 18.1, and 26

Recommends to the government:

- To arrange for the commencement of an independent enquiry in order to clarify the fate of persons considered as disappeared, identify and bring to book the authors of the violations perpetrated at the time of the facts arraigned.
- To take diligent measures to replace the national identity documents of those Mauritanian citizens, which were taken from them at the time of their expulsion and ensure their return without delay to Mauritania as well as the restitution of the belongings looted from them at the time of the said expulsion; and to take the necessary steps for the reparation of the deprivations of the victims of the above-cited events.
- To take appropriate measures to ensure payment of a compensatory benefit to the widows and beneficiaries of the victims of the above-cited violations.
- To reinstate the rights due to the unduly dismissed and/or forcibly retired workers, with all the legal consequences appertaining thereto.

- As regards the victims of degrading practices, carry out an assessment of the status of such practices in the country with a view to identify with precision the deep-rooted causes for their persistence and to put in place a strategy aimed at their total and definitive eradication.
- To take appropriate administrative measures for the effective enforcement of Ordinance n° 81-234 of 9 November 1981, on the abolition of slavery in Mauritania.

The Commission assures the Mauritanian State of its full cooperation and support in the application of the above-mentioned measures.

Done at Algiers, 11 May 2000.

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