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REPORT OF THE AFRICAN COMMISSION
ON HUMAN AND PEOPLES' RIGHTS
(ACHPR)

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African Commission on Human & Peoples'
Rights



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Commission Africaine des Droits de l'Homme & des
Peuples

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**25th ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND
PEOPLES' RIGHTS (ACHPR)**

INTRODUCTION

1. This is the Twenty-fifth Activity Report of the African Commission on Human and Peoples' Rights (the "African Commission", the "Commission," the "ACHPR").
2. The Report covers the period May – November 2008, including activities undertaken during the 44th Ordinary Session of the Commission which was held from 10-24 November 2008, in Abuja, the Federal Republic of Nigeria.

Attendance at the Session

3. The following members of the African Commission attended the 44th Ordinary Session:

- Commissioner **Sanji Mmasenono Monageng**, Chairperson
- Commissioner **Angela Melo**, Vice-Chairperson;
- Commissioner **Catherine Dupe Atoki**;
- Commissioner **Musa Ngary Bitaye**;
- Commissioner **Reine Alapini-Gansou**;
- Commissioner **Soyata Maiga**;
- Commissioner **Mumba Malila**;
- Commissioner **Bahame Tom Mukirya Nyanduga**;
- Commissioner **Kayitesi Zainabou Sylvie**;
- Commissioner **Pansy Tlakula**; and
- Commissioner **Yeung Kam John Yeung Sik Yuen**.

Events preceding the Session

4. The African Commission organised a series of activities preceding the Session. These were:
 - i. Consultative Meeting on Theatre as a Vehicle for Human Rights Education in Africa: 4 – 5 November 2008;
 - ii. Meeting of the Working Group on ECOSOCC: 5-6 November 2008;
 - iii. Diplomatic Training: 6 November, 2008;
 - iv. Meeting of the Working Group on Indigenous Populations/Communities in Africa: 7 – 9 November, 2008;
 - v. Meeting of the Working Group on the Death Penalty: 9 – 10 May, 2008;

Events on the margins of the Session

5. Members of the Commission participated in a number of activities organised on the margins of the Session. These activities include the following:

- i. NGO Forum: 7 – 9 November, 2008, organised by the African Centre for Democracy and Human Rights Studies (ACDHRS);
- ii. Round Table Discussion on “Upholding Women’s Rights to High Standard of Living, Health, Housing and Wellbeing,” organized by the African Commission in partnership with the Centre on Housing Rights and Evictions (COHRE) and Women’s Aid Collective (WACOL), on 14 November 2008, in Abuja, Nigeria;
- iii. Consultative Seminar on; “The relations between the African Human Rights Protection Institutions” jointly organised by Interights and the MacArthur Foundation from 8-9 November 2008.

6. The purpose of these events was, inter alia, to advocate, disseminate information, and to enhance the promotion and protection of human and peoples’ rights in the continent.

Agenda of the Session

7. The Agenda of the Session is attached to this report as **Annex I**.

The opening ceremony

8. A total of four hundred and ninety seven (497) participants attended the 44th Ordinary Session, including thirty one (31) States Parties to the African Charter, nine (9) National Human Rights Institutions, seven (7) International and Inter-Governmental Organizations, and two hundred and seventy five (275) African and International NGOs.

9. Speeches were delivered by the following:

- i. Honourable A.A Yola, the Solicitor General of the Federal Republic of Nigeria, on behalf of Chief Michael Kaase Aondoaka, Honourable Attorney General of the Federal Republic of Nigeria.
- ii. Mrs. Hannah Foster, Executive Director of the African Centre for Democracy and Human Rights Studies, on behalf of NGOs;
- iii. Mr. Gilbert Sebihogo, the Executive Director of the Network of

African National Human Rights Institutions (NHRIs), on behalf of National Human Rights Institutions (NHRIs);

- iv. H.E. Hosni Alwiheshe, Minister of Legal Affairs and Human Rights at the Arab Great Congress, Socialist Peoples' Jamahiriya in Libya, addressed the opening Session on behalf of States Parties to the African Charter;
- v. The Chairperson of the African Commission, Justice Sanji Mmasenono Monageng,
- vi. Honourable Chief Odein Ajumogobia (SAN) Minister of State for Energy and Petroleum Resources, on behalf of the President of the Federal Republic of Nigeria, H.E. President Umaru Musa Yar' Adua.

Welcome address by Chief Michael Kaase Aondoaka, Honourable Attorney General of the Federal Republic of Nigeria (represented by the Honourable Solicitor General, Mr. A.A Yola)

10. The Honourable Solicitor General of the Federal Republic of Nigeria, Mr. A. A. Yola, representing the Attorney General and Minister of Justice of the Federal Republic of Nigeria, Chief Michael Kaase Aondoaka SAN, welcomed all participants to the Session of the African Commission. He thanked Members and staff of the African Commission for accepting the invitation of the Federal Government of Nigeria to host the 44th Ordinary Session of the African Commission.

11. He said that the Nigerian Government is committed to the promotion of human rights, peace and stability across the region, and that President Alhaji Umaru Musa Yar'Adua, GCFR, has pledged the commitment of his administration to democratic and open society based on the rule of law, and a country that is fair to all persons living in it. He added that the Government has recently developed a Federal Action Plan for the protection and promotion of human rights in Nigeria, and is also taking steps to ensure the entrenchment of the culture of human rights.

Speech of the Representative of Non-Governmental Organisations

12. In her speech, the Executive Director of the African Centre for Democracy and Human Rights Studies, Mrs. Hannah Forster, representative of Non-governmental Organisations, expressed concern at the continuous human rights violations in some African countries, caused or aggravated by poverty, conflicts, and bad governance. She expressed the concern of the NGO Forum regarding the persistence of conflicts in the Great Lakes Region of Africa and flow of refugees.

13. Mrs. Forster called on African Governments affected by armed conflicts to ensure that all parties involved in conflicts respect international humanitarian law, and that those who commit war crimes be brought before competent courts for trial. She requested the African Commission to adopt a Resolution on the violation of human rights and international humanitarian law committed by all persons in conflicts in Africa. Mrs. Forster also expressed concern about human rights violations against women and children, in particular, the practice of harmful traditional practices and trafficking in women.

Speech of the Representative of National Human Rights Institutions

14. Mr. Gilbert Sebihogo, The Executive Director of the Network of African National Human Rights Institutions said that the Network was a strategic partner of the African Commission in the promotion and protection of human rights in Africa.

15. On the general human rights situation, he lamented that after several years, human rights issues on the African continent still remain critical. Underscoring the alarming human rights situation in many parts of the continent, especially the ongoing conflict in the Great Lakes Region, he called on all the parties involved in the conflict for an immediate cessation of hostilities. He emphasised that democracy can only be realised through transparency, good governance, peace and respect for human rights, and urged governments to support their work.

Speech of the Representative of State Parties to the African Charter

16. Speaking on behalf of State Parties to the African Charter, the Minister of Legal Affairs and Human Rights of the Great Peoples' Congress, Socialist Peoples' Jamahiriya, Libya, Mr Hosni Alwiheshe, stated that the 44th Ordinary Session is taking place at a time when the question of human rights has become a concern for State Parties, and regarded as an important issue for the global agenda. He noted that armed conflicts continue to be the main cause of human rights violations in Africa.

17. Mr. Hosni Alwiheshe highlighted Libya's contribution in the settlement of conflicts in the region by engaging belligerents in a process of constructive dialogue, and through the provision of humanitarian assistance to victims.

***Speech of the Chairperson of the African Commission, Justice Sanji
Mmasenono Monageng***

18. In her opening statement, the Chairperson of the African Commission, speaking on behalf of the Members and Staff of the Commission, and on her own behalf, expressed gratitude to His Excellency Alhaji Umaru Musa Yar'Adua, GCFR, President of the Federal Republic of Nigeria, for inviting the Commission to Abuja, Federal Republic of Nigeria. She welcomed all participants and thanked the Government and People of Nigeria for hosting the Session.

19. The Chairperson noted that since the last Session a lot of developments have taken place in the field of human rights. She indicated that the African Commission had organised a number of consultations and meetings to improve its working methods, and to forge closer collaboration with its various partners. She stated that despite some progress, the overall human rights situation remains unsatisfactory.

20. She deplored the conflicts in a number of African countries where human rights and humanitarian laws are violated. In that regard, she said the African Commission is concerned about the escalating violence in the Democratic Republic of Congo and the related deteriorating human rights abuses, especially in the North Kivu Province.

21. She also highlighted the need to build a culture of human rights observance and to establish strong mechanisms to protect human rights in Africa. She noted that economic and social rights are still beyond the reach of most Africans who continue to lack access to clean water, food, adequate housing, and called on State Parties to ensure the enjoyment of these rights. She expressed concern that the situation of women remains a very serious concern, especially in Somalia.

22. She deplored the deterioration of the human rights situation in some African countries, making specific reference to the Democratic Republic of Congo. She also deplored the brutal assassination of Aisha Ibrahim Duhulow, a 13-year old little girl, found guilty of adultery by an Islamic court in Somalia.

23. The Chairperson recalled that the drafters of the African Charter recognised that the promotion and protection of human rights should be our collective responsibility. She further noted that although the primary responsibility for human rights protection is on governments, other stakeholders have to play their own role. She, therefore, called on all stakeholders to reflect on how best they can continue to uphold human rights and human dignity in Africa.

***Opening Statement by the President of the Federal Republic of Nigeria,
President Umaru Musa Yar' Adua (represented by Minister of Energy and
Petroleum Resources Chief Ajumogobia SAN)***

24. Honourable Chief Odein Ajumogobia, SAN, Minister of Energy and Petroleum Resources, speaking on behalf of the President of the Federal Republic of Nigeria, His Excellency Alhaji Umaru Musa Yar'Adua, GCFR, officially opened the 44th Ordinary Session of the African Commission.

25. Honourable Chief Odein Ajumogobia, SAN, welcomed the Members of the African Commission and the participants to the Federal Republic of Nigeria. He thanked the Members of the Commission for choosing Nigeria to hold the Session of the African Commission.

26. He noted that Nigeria has had a long and proud relationship with the African Commission and is among the first African States to sign, ratify and domesticate the African Charter, reaffirming the commitment and unshaken resolve of Nigeria to live up to its obligations to uphold human rights and fundamental freedoms. Chief Ajumogobia pointed out that the 1999 Constitution of Nigeria provides a good foundation for human rights, and that the Nigerian judiciary has earned a reputation of protecting human rights in Nigeria. He stated that since the current President came to power in 2007, his administration has been working on issues such as the rule of law and due process that are necessary for human rights protection.

27. Chief Ajumogobia observed that the African continent is still beset with several human rights problems and the general lack of access to basic needs for dignified living. He stated that Africa cannot continue to be the object of pity by the rest of the world, and that self-reliance and the achievement of the Millennium Development Goals must be a priority of African States. Chief Ajumogobia emphasized that in order for Africa to achieve the Millennium Development Goals, it is important for all to realize that society is about empowering people to change their material conditions. He went on to state that the rights of Africans must be respected if they are expected to contribute to the crusade for Africa's economic and social rebirth.

28. Noting the importance of the mandate of the African Commission to promote and protect human rights in Africa, he implored African Governments to work with the African Commission to do away with the culture of impunity in Africa, and to demonstrate that Africa and her people will have no tolerance for violators of human rights on the Continent. He urged the African Commission to re-dedicate itself to a programme of human rights education, to foster the attitudes and behaviours needed to uphold human rights for all members of society.

The Public Session

29. The Commission held its Public Session for six (6) days, i.e. from 10 -16 November 2008. The following items were discussed:

Human Rights Situation in Africa

30. On the human rights situation in Africa, statements were made by State Delegates from, Cameroon, Central African Republic, Chad, Cote D'Ivoire, Egypt, Ethiopia, Republic of Guinea, Mali, Mozambique, Rwanda, the Saharawi Arab Democratic Republic (SADR), Senegal, South Africa, Sudan, Tunisia, and Zimbabwe. The State Delegates reported on the human rights situations in their respective countries and called on the African Commission and other stakeholders to intervene in curbing some of the challenges facing the enjoyment of human rights.

31. The Representative of the **Republic of Cameroon** reported that food riots and civil unrest had erupted due to rise in the cost of living. He mentioned that the government has taken several measures to improve the lives of its citizens which includes; salary adjustments, replacement of the national election observatory with a new body, and granting of authorisation to four new media houses.

32. The Representative from **Central African Republic (CAR)** informed the African Commission that due to the human rights situation in the country, the government of the CAR has signed several peace agreements with rebel groups, and an amnesty law was adopted in August 2008. Furthermore, that the government, together with other stakeholders, is currently preparing an inclusive national dialogue aimed at improving the current human rights challenges.

33. The Representative from the **Republic of Chad** highlighted the measures made by the government to promote and protect human rights. He expressed concern about the insecurity caused by armed rebellions in the Eastern part of the country, indicating that Refugees in Eastern and Southern Chad are taken care of by the government.

34. The Representative from the **Republic of Cote d'Ivoire** underscored the measures taken by the government to fight discrimination and to combat corruption in Cote d'Ivoire, including the measures put in place to ensure that the forthcoming presidential election is free and fair.

35. The **Egyptian** Representative stated that Egypt is committed to strengthening its national human rights mechanisms. He further drew the attention of the ACHPR on some shortcomings in its Communications Procedure, including the poor quality of translation, interpretation, delay in the transmission

of documents, incoherence in the convening of its private Sessions and expressed hopes that these shortcomings will be redressed.

36. The Representative from **Ethiopia** indicated that the Ethiopian Government and the Ethiopian Human Rights Commission have initiated and implemented a project that will enable the government to prepare and submit its overdue reports, and also reiterated the commitment of Ethiopia to cooperate with the ACHPR.

37. The Representative from the **Republic of Guinea** on her part described the structures put in place by Guinea to promote human rights, especially the Human Rights Directorate in the Ministry of Justice.

38. The Representative from **Mali** indicated that the Malian government has established an Inter-Ministerial Committee for the drafting of State Reports to UN and African treaty monitoring bodies, and has set up a Committee for the preparation of a national conference on corruption. He further stated that the government has taken measures to combat female circumcision, child trafficking, and training of law enforcement officers and judges in human rights.

39. The Representative from the **Republic of Mozambique** mentioned various measures taken by the government of Mozambique in the area of human rights, especially through the enactment of new laws. While indicating that Mozambique has submitted two periodic reports to the United Nations System in 2007 and one in 2008. He added that the State Report to the African Commission is being drafted. He further stated the measures put in place to promote socio-economic and cultural rights, as well as access to justice.

40. The Representative from the **Republic of Rwanda** stated that Rwanda is determined to reinforce the rule of law, combat impunity, and promote human rights, Rwanda had recently held legislative elections, as a result of which a woman was elected the Speaker of the National Assembly.

41. The Representative from the **Saharawi Arab Democratic Republic (SADR)** indicated that efforts have been made to empower women in the country and to guarantee their political participation. He also urged the Moroccan government to give the Polisario Front the opportunity to organise a referendum for the SADR people so as to exercise the right to self-determination. He concluded by inviting the ACHPR to undertake a mission to the SADR.

42. The Representative from **Senegal** indicated that there have been some developments in the area of human rights in Senegal. He gave an example of the Workshop which brought together stakeholders to finalise the initial and periodic reports to various human rights treaty bodies. He also highlighted measures that have been taken by the government to realise certain categories of human rights in Senegal.

43. The **South African** Representative declared that the South African Constitution provides a framework for the promotion and protection of human rights, and also expressed the human rights challenges faced by the same, such as gap between the rich and the poor, xenophobia attacks against foreigners.

44. The Representative from the **Republic of Sudan** stated that measures have been taken to guarantee fundamental human rights which have been incorporated in the Sudanese Constitution, the Constitution of Southern Sudan and other Legislation.

45. The **Tunisian** Representative commended the work of the Commission and expressed the country's willingness to welcome human rights institutions who want to assess its human rights situation.

46. Statements were also made by representatives of Intergovernmental and International Organisations, notably, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Office of the UN High Commissioner for Human Rights (OHCHR), International Organisations of the Francophonie (OIF) and the Inter-American Commission on Human Rights (IACHR). They dealt with crosscutting issues and suggested measures to improve their relationship with the Commission.

47. In her statement, the Chairperson of the ACERWC, Mrs. Seynabou Ndiaye Diakhate, lamented the deterioration of human rights observance in the continent. She recalled that at the 12th Summit of Heads of State and Government, the Executive Council adopted a Resolution requesting the African Commission and the Committee to work in close partnership. She said that time has now come for the two organisations to cooperate more closely through, among other things, the organisation of periodic meetings, joint missions, and experience sharing.

48. The Representative of the OHCHR, Ms. Samia Slimane in her statement, informed the Session that twenty one years on, the situation of human rights on the African continent remains generally grave. She indicated that the combination of corruption and impunity jeopardizes the efforts being deployed in many parts of the continent to alleviate poverty and strengthen peace building.

49. The representative of the OIF, Mr. Tigri Alassani, expressed his appreciation for the Commission's work in advancing human rights in Africa, and for its support to the work of national and regional mechanisms in protecting and promoting human rights. In this context, he confirmed his organisation's commitment to support further the various initiatives undertaken by the Commission in raising awareness and respect for human rights in Member States, and assisting them to meet their human rights obligations.

50. The representative of the IACHR, Ms. Elizabeth Abi Mershed, indicated that the IACHR is the counterpart of the ACHPR in the Americas. She said that both Institutions share the same objectives and face similar challenges. She indicated that the collaboration between the two organisations will help each of them to learn how to address challenges in the future. She concluded by stating that the Inter-American Commission is willing to strengthen its relationship with the African Commission.

51. A National Human Rights Institution (NHRI), the Algerian *Permanent National Consultative Council for the Promotion and Protection of Human Rights*, also made a statement under this item. The representative of this NHRI reiterated the commitment of Algeria to the realization of human rights on the continent.

52. A total of forty-seven (47) Non-Governmental Organisations (NGOs), having Observer Status before the Commission, made statements under this item.

Cooperation and Relationship with National Human Rights Institutions (NHRIs) and Non-Governmental Organisation (NGOs)

53. Commissioner Reine Alapini Gansou, introduced this item.. She recognised the role of NGOs in the work of the African Commission as stipulated in the Resolution of the ACHPR on the Granting of Observer Status to NGOs.

54. She further noted that Rules 75 and 76 of the Commission's Rules of Procedure stipulate the relations between the Commission and the NGOs. Their obligations vis-à-vis the African Commission includes among others, attending the Commission's Sessions, submitting a report of their activities every two years to the Commission, as well as Shadow Reports on the human rights of the countries in which they are based.

55. Reacting to Commissioner Gansou's observations, the Director of the Centre for Human Rights, University of Pretoria, Prof. Frans Viljoen affirmed that NGOs have to be more involved in the work of the Commission. He gave examples of what the Centre for Human Rights is doing in this regard, which includes among others: organizing an annual Moot Court Competition; human rights education; publication of journals dealing with the African Human Rights System; a compendium of Human Rights Instruments; and African Human Rights Law Reports which all go a long way to disseminate the African Charter and promote human rights in the continent.

56. He urged the Commission to publish its Concluding Observations in

respect of State Party Reports on the Commission's website so that stakeholders can follow up on the Commission's recommendations.

57. The African Commission considered the applications of fourteen (14) NGOs seeking Observer Status. It granted observer status in accordance with the 1999 Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the field of Human and Peoples' Rights, ACHPR /Res.33 (XXV) 99, to the following NGOs:

- i. Arid Lands Institute, Kenya
- ii. Association Omunga, Angola
- iii. Coalition for an Effective African Court of Human and Peoples' Rights, Tanzania
- iv. Collectif des Familles des disparu(e)s en Algérie, France
- v. Human Rights Development Initiative(HRDI), South Africa
- vi. International and Humanist and Ethical Union, United Kingdom
- vii. International Catholic Movement for Intellectual and Cultural Affairs(ICMICA)(Pax Romana), Switzerland
- viii. Save the Children Sweden, Sweden
- ix. WaterAid, UK
- x. National Counseling Center(NCC), Angola
- xi. Associacao Construindo Comunidades, Angola
- xii. Rights Enforcement and Public Law Centre(REPLACE), Nigeria

58. The Commission decided to defer the application of two NGOs, namely:

- i. Plan International, United States of America
- ii. International Foundation for the Protection of Human Rights Defenders, Ireland

59. The applications for observer status for these NGOs was postponed in order for them to provide information which was missing in their application.

60. This brings the number of NGOs with Observer Status before the African Commission to **three hundred and ninety-two (392)**.

61. The African Commission did not receive any application for Affiliate Status from any NHRI during its 44th Ordinary Session. The number of NHRIs with Affiliate Status with the African Commission remain at **twenty-one (21)**.

ACTIVITIES OF MEMBERS OF THE COMMISSION DURING THE INTER-SESSION

62. The Chairperson, the Vice Chairperson and members of the African Commission presented reports on the activities they undertook in their capacities as members of the Commission, Special Rapporteurs, or members of Special Mechanisms as follows:

Commissioner Sanji Mmasenono Monageng-Chairperson

63. The Chairperson of the Commission undertook the following activities;

- i. On 21-22 June 2008, she participated in a forum convened by *Femmes Africa Solidarite* (FAS), which preceded the African Union Summit held in Sharm –el Sheikh, Egypt;
- ii. She attended the meeting of the Permanent Representative Committee of the African Union from 24-25 June 2008, and, the meeting of the Executive Council of the African Union from 27-28 June 2008, where she presented the 23rd and 24th Activity Reports of the African Commission;
- iii. She attended the Summit of the Assembly of Heads of State and Government from 29 June to 1 July 2008, which adopted the Activity Reports of the African Commission;
- iv. On 4 July 2008, the Chairperson participated in a Human Rights Education Brainstorming Workshop which took place in the Centre for Human Rights, University of Pretoria on the margins of the Annual African Moot Court Competition;
- v. On 5 July 2008, the Chairperson participated as one of the judges in the aforesaid Moot Court Competition organized by the University of Pretoria;
- vi. Between 21- 29 July 2008, the Chairperson presided over the 5th Extraordinary Session of the African Commission, which took place in Banjul, The Gambia, to finalize the Revised Rules of Procedure of the African Commission;
- vii. Between 26-30 August 2008, she participated at a seminar organised by the Center for Conflict Resolution in Cape Town, South Africa. She presented a paper on the **Role of the African Commission in conflict prevention, resolution and management**;

- viii. On 5 and 6 September 2008, the Chairperson took part in a training of law enforcement officers on the African Commission's Robben Island Guidelines on prevention and prohibition of torture, in Monrovia, Liberia; This training was followed by a joint promotion mission to Liberia with Commissioner Mumba Malila and Commissioner Atoki. This mission ended on 12 September, 2008;
- ix. On 17 and 18 September 2008, the Chairperson represented took part in a Seminar organised by Konrad Adenauer Stiftung Foundation, in Germany. The Seminar sought to introduce the African, Inter American and European human rights system to the German public;
- x. On 26 and 27 September 2008, the Chairperson presided over a meeting on the Working Methods of the Commission, which took place in Ouagadougou, Burkina Faso;
- xi. On the 2 and 3 of October 2008, the Chairperson attended a Consultative Meeting in Mauritius on the Rights of Older Persons, organised by the African Commission. The Meeting was convened in order to brainstorm on the rights of older persons, and the way forward to effectively protect their rights;
- xii. From 4 to 5 November 2008, the Chairperson presided over a meeting in Abuja, Nigeria to consider alternatives to formal human rights education through the use of theatre as a vehicle for human rights education;
- xiii. From 8 to 9 November 2008, in Abuja, Nigeria, she attended a Seminar organised by Interights and the MacArthur Foundation which brought together Regional Economic Communities, Courts, Tribunals and the African Commission..
- xiv. Finally, she participated in some activities of the NGO Forum, which preceded the 44th Ordinary Session.

Commissioner Angela Melo-Vice Chairperson

Report of activities as Commissioner

64. The Vice-Chairperson carried out the following activities:
 - i. On 8 June 2008, she attended a meeting in Nantes (France) with the representatives of the International Organisation of la Francophonie (OIF) with the view to establishing cooperation links between the

Commission and the OIF;

- ii. From 28 to 30 June 2008, she participated in the 3rd Human Rights Forum in Nantes, France as a resource person and a panelist at the opening ceremony of a round table on the celebration on the 60th anniversary of the Declaration of Human Rights. From 30 June – 3 July 2008, she served as Resource Person at a meeting on Economic, Social and Cultural Rights in Nantes, France.
- iii. On 16 July 2008, she attended a meeting in Maputo, Mozambique organised by the Legal Department of the Ministry of Foreign Affairs with members of the Technical Council of the Ministry of Justice, and invited lawyers on the ratification of the Rome Statute of the International Criminal Court (ICC);
- iv. From 21-29 July 2008, she attended the 5th Extraordinary Session held in Banjul, the Gambia, where she chaired the discussions on the revision of the Rules of Procedure of the African Commission in her capacity as chairperson of the Working Group on Specific Issues Relating to the Work of the African Commission.
- v. From 24 to 26 September 2008, she participated in the first World Social Forum organised by Fondazione Rome and Fondazione Celsious. This World Social Forum was intended to build a platform for discussion on current social problems. The theme for this forum was: "Social Apprehension from the Sociological Perspective", and her theme was on: "Promotion of human rights";
- vi. From 29-30 September 2008, she attended and chaired the meeting held in Ouagadougou, Burkina Faso, on the establishment of a framework for the relationship between the African Commission and other Organs of the African Union.
- vii. On 7 October 2008, in Maputo, Mozambique, she attended a meeting with the National Director on Specific Education Programmes, to gather sexospecific statistics in the education sector. The specific purpose for gathering those statistics is to establish, within the African Commission, a database on gender perspective in the education sector in each African country.
- viii. On 8 October 2008, in Maputo, Mozambique, she had a meeting with OXFAM Mozambique to draw conclusions on the modalities for the implementation of the Protocol on Women's Rights in Africa. This project promotes the participation of all women NGOs endowed with expertise on women's rights issues in Maputo;

- ix. On 29 October 2008, she had a meeting with the Minister of Justice to on prison reforms in Mozambique. She drew the attention of the Minister to the Mechanism of the Special Rapporteur on Detention and Prison Conditions in Africa;
- x. From 3 to 4 November 2008, she conducted a Seminar on capacity building for prosecutors, judges, lawyers and academics. This was organised by the Faculty of Law of the University of Maputo;
- xi. On **3rd November 2008**, she had discussions with the judges of the SADC Regional Tribunal, and the President of the African Court on Human and Peoples' Rights.
- xii. **From 7 to 9 November 2008**, she participated in the NGO Forum, where she presided over a stakeholders meeting on economic, social and cultural rights;
- xiii. **From 8 to 9 November 2008**, she participated in a meeting co-hosted by INTERIGHTS and MacArthur Foundation with the support of the European Union in Abuja, Nigeria. The theme of this meeting was: "Interaction between the Community Courts, including the African Court of Human and Peoples' Rights." During this meeting, she presided over a session on challenges and opportunities that exist for the various organs of the Union handling human rights issues;
- xiv. On 14 November 2008, she participated in a meeting organised by COHRE in Abuja, Nigeria, during which Commissioner Maiga presided over a theme on: "Women, their right to housing and HIV/AIDS."

Report of activities as Chairperson of the Working Group on Specific Issues

65. As Chairperson of the Working Group on Specific Issues, Commissioner Melo reported on the activities of the Working Group which held its 6th Meeting in Banjul, The Gambia from 15-17 February 2008. During the meeting, the remaining Articles in the Draft Revised Rules of Procedure were reviewed in preparation for the 5th Extra-Ordinary Session that took place from 21-29 July 2008.

66. The first part of the mandate of this Working Group will end when the Draft Rules of Procedure will be presented to the African Commission for a final adoption.

Activities as Chairperson of the Working Group on ECOSOC Rights in Africa

67. Commissioner Melo, in her capacity as Chairperson of the Working Group on Economic, Social and Cultural (ECOSOC) Rights in Africa, reported that the Working Group held its fourth meeting on 5 and 6 November 2008 in Abuja, Nigeria. She stated that the main objectives of the meeting were to follow-up on the implementation of the 2008-2009 Work Plan: discussion and adoption of the concept note on the Work Plan; and the draft Principles and Guidelines prepared by the Group. These Draft Principles define the obligations for States Parties under the Economic, Social and Cultural Rights provided by the African Charter.

68. The Working Group has examined and discussed the draft Guidelines on ECOSOC Rights.

69. The Working Group will meet again before the next session to finalise the discussion on the draft Guidelines on ECOSOC Rights. Then, the Group has scheduled a regional consultative meeting to gather comments and contributions from representatives of States Parties, National Human Rights Institutions, NGOs, the academia and guests.

Commissioner Catherine Dupe Atoki*Activities as a Commissioner*

70. Commissioner Atoki undertook the following activities;

- i. On 10-13 June 2008, she attended a meeting on Slavery and follow-up to the World Conference against Racism in Banjul, The Gambia;
- ii. She undertook a Promotional mission to the Republic of Ethiopia between 21 June to 1 July 2008, where she held discussions with the President of the Republic, several Government Officials, NGOs, the Regional UN High Commissioner for Human Rights, the Ethiopian Human Rights Commission and the Office of the Ombudsman. During the mission, she had the opportunity to introduce the Robben Island Guidelines(RIG) and encouraged their use to prevent torture;
- iii. Between 21 and 29 July 2008, she attended the 5th Extra-Ordinary Session of the Commission in Banjul, The Gambia, to finalise the Revised Rules of Procedure of the African Commission;
- iv. On 27 August 2008, she was invited by the Nigerian Bar Association in their Annual General Meeting in Abuja, Nigeria, where she presented a paper on the Role of the ACHPR in the merged African Court of Justice and Human Rights. She also presented a paper on: **"Consumer Rights and the ACHPR,"** to Consumer Advocacy

Empowerment Foundation (CADAF) later the same day;

- v. Commissioner Atoki also undertook a Joint Promotional Mission with the Chairperson of the African Commission and Commissioner Malila to the Republic of Liberia. During this mission, discussions were held with the President of the Republic, Government and law Officials, Civil Society Organisations, NGOs, and Magistrates. She also made a visit to the Monrovia Central Prisons and a few Police cells;
- vi. On 20-22 October 2008, she attended a 3 day Conference on Strategic Partnering in Kampala, Uganda, which examined the relationship between the ACHPR, and its partners on the framework for cooperation between AU Organs and the Commission.
- vii. On the 21 October, 2008, Africa Human Rights Day, she read a Statement on behalf of the Chairperson to the Commission. She also presided over a Stakeholders' Round Table Discussion under the theme "Human Rights, Our Collective Responsibility" organised to commemorate this day.

Activities as Chairperson of the Follow-up Committee of the Robben Island Guidelines (RIG)

71. Commissioner Atoki, organised two workshops:

- i. On 17 and 18 July 2008, she conducted a 2-day workshop for heads of Police and Prisons in West Africa in Abuja, Nigeria. This workshop was aimed at, introducing the participants to the African Human Rights System, especially the work of the Commission, as well as the work of the Follow-up Committee on the RIG mechanism and modalities of its implementation;
- ii. On 4 and 6 September 2008, she conducted a 2 day training Workshop for Senior Law Enforcement Officials on the Robben Island Guidelines (RIGs), in Monrovia, Liberia. The Workshop was aimed at training the participants on the use of the RIG in their day-to-day activities, and to abolish and criminalise torture or other forms of cruel and degrading treatment. The positive outcome of this Workshop is that the Liberian Police Force has decided to review their Police Curriculum to include training on the RIGs;

72. The Working Group on the RIGs, in collaboration with Association on the Prevention of Torture (APT), is preparing a publication on the application of the RIGs by State actors, NGOs and the Commission. This publication will contain comments and suggestions on each article.

73. The Chairperson of the Follow-up Committee also attended the NGO Forum from 7-9 November 2008, where she chaired the Interest Group on Torture.

Activities as a Member of the Working Group on ECOSOC

74. On 1 September 2008, Commissioner Atoki was invited by of Social Economic Rights and Accountability Project (SERAP) in Lagos, and presented a paper on corruption, ECOSOC and the role of the ACHPR. She highlighted the need for NGOs to take up litigation using the African Charter as a tool to ensure compliance with ECOSOC rights.

75. Commissioner Atoki attended a meeting that was convened by the Working Group on 6-7 November 2008 in Abuja, Nigeria.

Commissioner Musa Ngary Bitaye

Activities as Commissioner

76. Commissioner Bitaye, undertook the following activities:

- i. Attended the 5th Extraordinary Session of the African Commission which took place in Banjul, the Gambia from 21-29 July, 2008 to finalize the Revised Rules of Procedure of the African Commission;
- ii. Between 1 to 5 September 2008, he undertook a Promotion Mission to the Republic of Ghana.
- iii. From 26-27 September, 2008, Commissioner Bitaye attended a Workshop of the Working Methods of the African Commission, in Ouagadougou, Burkina Faso;
- iv. From 28 -30 September 2008, he participated in a Brainstorming/ Consultative Meeting of AU Organs with Human Rights mandate, on their working relations, in Ouagadougou, Burkina Faso;
- v. On October 20 2008, Commissioner Bitaye participated in a Seminar jointly organised by the Commission and the University of The Gambia, at the High Court of The Gambia, as part of the activities commemorating the Africa Human Rights Day.
- vi. On 21 of October 2008, the Africa Human Rights Day, he delivered a speech on behalf of the Chairperson of the Commission, in Banjul, The Gambia.

- vii. From 4 to 5 November 2008, Commissioner Bitaye attended the Consultative Meeting on the use of theatre as a vehicle for human rights education, organised by the African Commission, in Abuja, Nigeria.
- viii. On 6 November 2008, Commissioner Bitaye took part in a one day Diplomatic training Seminar, organised by the African Commission, in collaboration with the Ministry of Foreign Affairs of the Federal Republic of Nigeria, which took place in Abuja, Nigeria.
- ix. On 8 November 2008, he took part in the NGO Forum, where he chaired the Special Interest Group on Indigenous Populations in Abuja, Nigeria;
- x. On 7-9 November 2008, Commissioner Bitaye attended the regular pre-session meeting of the Working Group on Indigenous Persons, which took place in Abuja, Nigeria.

Activities as chairperson of the Working Group on Indigenous Populations/Communities in Africa

77. , Commissioner Bitaye undertook the following activities::

- i. From 11 – 13 August 2008 he presided over a Steering Committee Meeting in Banjul The Gambia, organized to prepare for the Consultative and Sensitisation Seminar on the Rights of Indigenous Populations to be held in Addis Ababa, Ethiopia from 13 – 16 October 2008;
- ii. From 15 – 16 October 2008, he took part in the Consultative/Sensitisation Seminar on the Rights of Indigenous Populations organized by the African Commission in Addis Ababa, Ethiopia from 13 – 16 October 2008;
- iii. The Commissioner also attended the regular meeting of the Working Group from 7-9 November, 2008, which took place in Abuja, Nigeria.

Commissioner Reine Alapini Gansou

Activities as Commissioner

78. Commissioner Gansou carried out the following activities;

- i. From 11-19 July 2008, she undertook a promotional Mission to Mali;

- ii. From 21-29 July, 2008, the Commissioner participated in the 5th Extraordinary Session of the African Commission;
- iii. From 26-28 August, 2008, she participated in a seminar organised by the Conflict Resolution Centre of Cape Town, South Africa, on the theme: **"Human Rights and Conflict Resolution;"**
- iv. From 25-26 September 2008, at the request of the Open Society Initiative for West Africa (OSIWA), she took part in the launching of the West African Centre for Interest in Public Trials in Abuja, Nigeria. She made a presentation where she pointed out the interest of the African Commission in associating itself with the objectives of the organisation;
- v. On 22 October 2008, at the request of the Africa Regional Office of BIT/PAMODEC, she presented the outcomes of the study on the theme: **Impact of Gender Dimension on Combating HIV/AIDS in work places"**, in collaboration with Mme. Fanta Yaro, Justice of the Appeal Court of Ouagadougou, Burkina Faso at the INFOSEC, Cotonou, Benin.;
- vi. On 5 November 2008, she took part in a Consultative Meeting organised by the Commission of the African Commission, on the theme: **"Theatre, as a Vehicle for Human rights Education in Africa;"**
- vii. On 6 November 2008, Commissioner Gansou attended a Diplomatic Training Workshop organised by the African Commission in collaboration with the Ministry of Foreign Affairs of Nigeria, in Abuja, Nigeria;
- viii. From 7-8 November 2008, she participated in a consultative meeting in Abuja on the relations between the African Human Rights Protection Institutions jointly organised by INTERIGHTS and GOUTCHI Chambers, with the financial support of Mac-Arthur Foundation. She made a presentation titled **"Strengthening human rights within the framework of relations existing between the African Court and African Commission on Human and Peoples' Rights.**

Activities as Special Rapporteur on Human Rights Defenders in Africa

79. The Special Rapporteur undertook promotional and protection activities.
 - i. From 13- 19 June 2008, she undertook a joint promotional Mission to Libya with Commissioner Maiga, Special Rapporteur on the Rights of

Women in Africa;

- ii. From 21 to 25 June 2008, she participated in the launching of the report by the Observatory of the FIDH/ OMCT on the human rights situation in the world, for the year 2007;
- iii. From 25- 30 June 2008, she undertook a joint promotional mission to Tunisia with Commissioner Maiga;
- iv. From 7-8 July 2008, Commissioner Gansou participated in a workshop organised by the Associacao Justica Paz e Democracia (AJPD), in Luanda, Angola, on the initiatives of this Association;
- v. On 11 July 2008, she participated in a meeting of Human Rights Defenders in Johannesburg, South Africa, organised by the Open Society Initiative.
- vi. From 28 July to 5 August 2008, she carried out a joint Mission to Togo with her United Nations counterpart, Mrs. Margaret Sekaggya. The objective of this Mission was to assess the situation of human rights defenders in the light of the principles of the Declaration on Human Rights Defenders adopted by the United Nations General Assembly in 1998 as well as the Grand Bay Declaration adopted in 1999 and the Kigali Declaration of 2003;
- vii. From 21 to 24 August 2008, she participated in a workshop organised by the Network of the West African Human Rights Defenders, in Lome, Togo. This workshop dwelt on the theme: **The African Mechanisms at the African Regional Level;**
- viii. From 31 August to 4 September 2008, with the support of the Kingdom of Norway, she organised a workshop in Cotonou, Benin, on the **"Preparation of Working Tools for Human Rights Defenders in Africa;"**
- ix. On 6 September 2008, she participated in an Inter- Mechanisms meeting on human rights protection, in Brussels, Belgium;
- x. From 7-8 October 2008, she took part in a Conference jointly organised by the European Commission, European Parliament and the United Nations, in Brussels on the theme: **"60 years of the Universal Declaration on Human Rights: the Defenders take the floor"**. This Conference had the objective of taking stock of the human rights situation 60 years after the adoption of the Universal Declaration of Human Rights by giving the floor to the human rights defenders;

- xi. From 9- 11 October 2008, on the request of the British Foreign Office, she carried out an informal visit to London, Great Britain. During this visit, she had the opportunity of presenting the African Commission to representatives of the British Parliament and to the Technical Department of the Foreign Office;
- xii. From 23-25 October 2008, in commemoration of the 60th Anniversary of the UDHR and the 10th Anniversary of the United Nations Declaration on Human Rights Defenders, she organised a seminar, in collaboration with *Association Beninoise des Droits du Development*, with the financial support of OSIWA. The theme of this Seminar was "**Human Rights in Benin; What results?**"
- xiii. From 7-9 November 2008, Commissioner Gansou participated in the NGO Forum, where, she chaired a workshop for Human Rights Defenders and launched the third edition of a Bulletin and Report on the protection of the civil society, prepared by the International Movement for Democracy and Development;
- xiv. The Special Rapporteur sent Note Verbales requesting authorisation to conduct promotional Missions to the Republic of Congo, Central African Republic, Democratic Republic of Congo, Angola and Sudan. She also issued three (3) Press Releases on the situation of human rights defenders in Zimbabwe and on the assassination of a human rights defender in the Democratic Republic of Congo.

Commissioner Soyata Maiga

Activities a Commissioner

80. Commissioner Maiga carried out the following activities during the inter-session:

- i. Between 21 and 29 July 2008, she participated in the 5th Extra-Ordinary Session of the African Commission in Banjul, The Gambia;
- ii. From 11-13 August 2008, she took part in the deliberations of the Steering Committee set up within the Working Group on Indigenous Populations. The Committee was set up to prepare the sensitisation Seminar organised for the States and the African Union in relation to the rights of Indigenous Populations in Africa;
- iii. From 27 to 29 August 2008, she was invited by the Austrian Federal Ministry of European and International Affairs to attend an international conference organised on the theme "**15 years after the**

international conference on Human Rights: Successes and challenges.” During this meeting, she discussed: “The role of the regional human rights promotion and protection mechanisms and their collaboration with the United Nations System,” where she highlighted the challenges and perspectives of the African Commission;

- iv. From 2-4 September 2008 Commissioner Maiga was invited by the German Embassy in Mali, where she organised a two-days Workshop aimed at sensitising the Malians, on the African Human Rights System;
- v. From 26-27 September 2008, she attended a Workshop in Ouagadougou, organised by the African Commission to examine its Working Methods, and to improve the visibility and effectiveness of the Commission.

Activities as Special Rapporteur on the Rights of Women in Africa

81. Commissioner Maiga organised Seminars and Meetings with NGOs and Civil Society. These include:

- i. On 23 May 2008, she organised a Conference in Ezulwini, in the Kingdom of Swaziland on the Protocol on the Rights of Women in Africa. The Conference which brought together Senior Officers of several Departments and female youth leaders discussed strategies to accelerate the implementation by the Government and Civil Society of the Protocol;
- ii. She participated in the deliberations of the extraordinary Congress of the Coordination of Women’s Associations and NGOs in Bamako, Mali on 5 June 2008;
- iii. On 9 June 2008, she participated in the launching of the National Equality Policy between Men and Women, organised by the Ministry of Women’s Affairs, the Child and the Family in Bamako, Mali;
- iv. Commissioner Maiga was invited by the Secretary for Legal Affairs and Human Rights of the General Peoples’ Congress of the Libyan Arab Jamahiriya, to attend a symposium on human rights organised in Albeida, Libya, from 13-14 June 2008;
- v. From 21-22 June 2008, she participated in the 12th Consultative Meeting on the Integration of the Gender Perspective in the AU under the theme; “Gender is my Agenda” in Sharm el Sheikh, Egypt. This Meeting was organised by the Organisations of African Women

and Civil Society prior to the AU Summit.

- vi. From 7-8 July 2008, she participated in the 2nd Meeting on the Women's Campaign; "to ratify and respect," organised by the International Federation of Human Rights (FIDH). The objective of this meeting amongst others was to draw up strategies for the realisation of the required objectives for the benefit of African Women;
- vii. On 31 July 2008, Commissioner Maiga also participated in the celebration of the Pan African Women's Day, in Mali under the theme "Globalisation, challenges, and responsibilities of Malian Women in the face of the high cost of living,";
- viii. She presided over a day organised by Female Lawyers Network (FEMNET), Mali, in collaboration with the Civil Society Institutions on the topic " Solemn Declaration of the African Union on Gender," to popularize the Solemn Declaration and support its implementation;
- ix. From 13-14 August 2008, she participated in the symposium organised by the African Commission in collaboration with the Women's Bureau of The Gambia, in commemoration of the Pan African Women's Day;
- x. On 16 to 18 September 2008, in Banjul, The Gambia., She participated in the Consultative Meeting on the Maputo Protocol and Solemn Declaration of the African Union. She presented a paper on the rights of women in Africa, the mandate of the Special Rapporteur on Women, and the Solemn Declaration of the African Union on Gender. The objective of the Meeting included the need to accelerate the ratification and domestication of the Maputo Protocol by the Mano River Countries. The Meeting was jointly organised by the Solidarity Movement for the Rights of African Women(SOAWR) and the African Centre for Democracy and Human Rights Studies(ACDHRS);
- xi. Commissioner Maiga undertook a Joint Promotional Mission with the Special Rapporteur on Human Rights Defenders to Libya from 15-19 June 2008, where she discussed the general situation of women's right. She, visited institutions responsible for the implementation of socio-economic rights. During the Mission, she urged the Secretary responsible for Women's Affairs to ensure that Libya submits its Report on the Solemn Declaration on Gender regularly;
- xii. Commissioner Maiga also undertook a Joint Mission with the Special Rapporteur on Human Rights Defenders to Tunisia, from 25-30 June

2008. She highlighted the existence of a genuine Policy promoting the status of women in Tunisia;

Commissioner Mumba Malila

Activities as Commissioner

82. Commissioner Malila, undertook the following activities:

- i. On 20 June 2008, Commissioner Malila officially opened a Workshop on Corruption and Human Rights in Crestar Golf View Hotel, Zambia, where he presented a paper on **"Delay as opportunities for corruption in the Public Service;"**
- ii. From 21-29 July 2008, he attended the 5th Extra-Ordinary Session of the Commission in Banjul, The Gambia convened to finalise the Draft Revised Rules of Procedure of the African Commission;
- iii. The Commissioner was invited in August 2008, to write a foreword to two books on human rights for high schools in Zambia authored by Mr. Enock Mulembe, the Director of the Human Rights Commission in Zambia. He used this opportunity to examine the role of the African Commission and how it can be accessed;
- iv. On 28 August 2008, he presented a paper on the **"Normative Content of the right to food,"** at a workshop organised by the Human Rights Foundation of Zambia at Garden House Hotel, Lusaka;
- v. Between 6 and 10 October 2008, Commissioner Malila undertook a promotional mission to the United Republic of Tanzania.
- vi. On 21 October 2008, he participated in a March Past organised by various human rights Institutions in Zambia to commemorate the Africa Human Rights Day, where he made the key note address.

Activities as Special Rapporteur on Prisons and Conditions of Detention in Africa

83. Commissioner Malila, undertook the following activities;

- i. During the 43rd Ordinary Session in Ezulwini, in the Kingdom of Swaziland, the Special Rapporteur visited three prisons, with other members of the African Commission;
- ii. On 11 June 2008, he had a meeting with Mr. Jon Elliot, the Advocacy Director of the African Division of Human Rights Watch in Lusaka,

Zambia, where he explained the operational modalities and mandate of the Commission, as well as the challenges faced;

- iii. He met with Ms Louise Ehlers, Director of the Criminal Justice Initiative of the Open Society Foundation for South Africa and Ms Louise Oliver from the Open Foundation for South Africa (OSF-SA). This Organisation is a grant making organisation which ensures a more humane, efficient and accountable justice process with particular emphasis on policing, courts and prisons. During the meeting, the Commissioner discussed the possibilities of partnership between OSF-SA and the African Commission to redress some human rights issues related to prisons in Southern Africa;
- iv. From 5 to 10 September 2008, he undertook a joint mission with the Chairperson of the Commission and Commissioner Atoki to Liberia. During this mission, he had the opportunity to visit prisons in Liberia and assess the conditions of the same;
- v. In September 2008, the Special Rapporteur was invited to participate in the activities organised in Livingstone, Zambia to launch the African Correctional Services Association (ACSA). This Association wishes to partner with the African Commission in various issues dealing with the rights and welfare of prisoners in Africa.

Commissioner Bahame Tom Mukirya Nyanduga

Activities as Commissioner

84. Commissioner Nyanduga undertook the following activities:
- i. He participated in the 5th Extraordinary Session of the African Commission which took place in Banjul, the Gambia from 21- 29 July 2008;
 - ii. On August 6, 2008, he also gave an interview to a magazine of the Oslo Centre for Peace and Human Rights, regarding the human rights situation in the Republic of Eritrea, in his capacity as Commissioner responsible for promotion of human rights in Eritrea in which he, *inter alia*, urged the Republic of Eritrea to implement recommendations contained in Communications and Resolutions on the human rights situation in Eritrea;
 - iii. On August 21 2008, at the invitation of UNICEF in Tanzania, he made a presentation during a workshop organised for officials of the Zanzibar government to sensitise them on the rights of children, since Zanzibar is in the process of adopting a new legislation on

- children's rights;
- iv. On August 28 2008, he delivered lectures to participants at the Summer Courses on Human Rights, at the Catholic University of Leuven, Belgium, on the Africa Human Rights System, and the implementation of the ESCR in Africa;
 - v. On September 18 2008, Commissioner Nyanduga wrote a foreword to an Audit Report conducted by the African Policing Civilian Oversight Forum (APCOF), on police accountability in Africa. APCOF is a forum composed of representatives of police forces, civil society, and NHRIs in Africa, working on promotion of police accountability and civilian oversight bodies in Africa. He highlighted the role of the African Commission in promoting the administration of law and order, and the need for police forces in Africa to ensure that policing conforms to the basic rights and fundamental freedoms of the African people.
 - vi. From 27-29 September 2008, he participated in the Brainstorming meeting for AU Organs, with human rights mandate, which took place on Ouagadougou, Burkina Faso;
 - vii. On October 10 2008, Commissioner Nyanduga was a guest of honour at a public rally to commemorate the International Day on the Abolition of the Death Penalty. He addressed participants and called on the government of Tanzania to abolish the death penalty. The demonstration was organised by Civil Society Organisations and the Tanganyika Law Society, which later presented a petition to the High Court challenging the constitutionality of the death penalty in Tanzania;
 - viii. On October 20, 2008, Commissioner Nyanduga participated in the 2008 MacArthur International Justice Lecture Series, at the American University College of Law, Washington DC, the United States, organised jointly by the University, the Inter- American Human Rights Commission and the MacArthur Foundation, on advocacy before Regional Human Rights systems.;
 - ix. The Commissioner made a presentation on difficulties on the implementation of the African Commission's recommendations, adopted under the communications procedure, reports of promotion and investigation missions, and resolutions by the African Commission.

Report of Activities as Special Rapporteur for Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa

85. Commissioner Nyanduga, undertook the following activities:

- i. During the 43rd Ordinary Session, held in Ezulwini, in the Kingdom of Swaziland in May 2008, he issued a press statement condemning the xenophobic attacks against African migrants living in a number of townships, in major cities in South Africa. The victims were mostly from Zimbabwe, Mozambique, Malawi and Somalia;
- ii. On May 23 2008, he granted an interview to Capital Radio of Johannesburg and, called for the cessation of the xenophobic attacks and urged the authorities to ensure that timely action is taken to deal with the problem;
- iii. On 24 May 2008 at the invitation of the South African Human Rights Commission, he participated in activities in Johannesburg, including a Workshop organised by Umthombo Lwazi, a community Association in Soweto to sensitise the citizenry against xenophobia;
- iv. From 2- 6 June 2008, he participated in a meeting of AU member States' Legal Experts, in Addis- Ababa, Ethiopia to finalize the draft AU Convention on the Protection and Assistance to IDPs in Africa;
- v. On July 3 2008, at the invitation of FIDA Uganda, he attended a Workshop organised for the Chairmen of the District Councils and the District RDCs from areas affected by displacement due to the 20 year LRA insurgency in Northern Uganda. He delivered a presentation on the role of the African Commission on protection of Internally Displaced Persons and commended the Programme for Development and Reconstruction for the North adopted by the Ugandan government;
- vi. From 11- 15 August 2008, he carried out a Fact-finding Mission to the Republic of Botswana, on the protection regime for asylum seekers, refugees and migrants in Botswana;
- vii. On October 16, 2008, he submitted an article titled, "10th Anniversary of the Guiding Principles: African Perspectives," to the Norwegian Refugees Centre, on the occasion of an International Conference in Oslo, Norway, to commemorate the 10th anniversary since the adoption of the UN Guiding Principle on International Displacement. The Conference was organised jointly by the Norwegian Foreign Ministry, the Norwegian Refugee Council/ Internal Displacement Monitoring Centre (IDMC), the Brookings-Bern University IDP Project

and the Representative of the UN Secretary General on the human rights of IDPs;

- viii. Between 5 and 11 November 2008, he participated in the Experts and Ministerial meeting on Forced Displacement in Africa, organised by the Africa Union Commission to prepare for the AU Special Summit on Forced Displacement, which will *inter alia*, adopt the Draft AU Convention on the Protection and Assistance to IDPs in Africa, in April 2009. During the Addis Ababa Meeting, the Commissioner presented a paper entitled, "Forging partnerships in addressing forced displacement in Africa;"

Commissioner Kayitesi Zainabo Sylvie

Activities as Commissioner

86. Commissioner Kayitesi undertook the following activities:

- i. On 6 and 13 June, 2008, Commissioner Kayitesi, made presentations to teachers in the North and South provinces of Rwanda on: "International human rights mechanisms," during a training organised by the National Commission on Human Rights of Rwanda, This was to ensure that teachers have an enhanced knowledge that they can transmit to students on the African Human Rights system;
- ii. From 21 to 29 July 2008, she attended the 5th Extra-Ordinary Session in Banjul, The Gambia which examined the Draft Rules of Procedure and Communications.
- iii. On 5 September 2008, she took part in a Human Rights Conference in Africa, on: "Challenges and Opportunities in the New Millennium", held in Kigali, Rwanda, under the auspices of the Konrad Adenauer Foundation, where she made a presentation on: "The African Commission and the Human Rights Protection Mechanisms in Africa." This Conference was attended by Judges, representatives of NHRIs and NGOs;
- iv. On 8 September 2008, she discussed the need to ratify the African Charter on Democracy, Elections and Good Governance at a Meeting with the Minister of Justice and Keeper of the Seals, and the Minister of Foreign Affairs and Cooperation;
- v. Between 9 and 10 October 2008, she had the opportunity to carry out promotion on the RIGs during the 60th Anniversary of the Universal Declaration of Human Rights; She discussed issues relating to the treatment of prisoners through speeches made before

State authorities, prison staff, representative of UN agencies, representatives of NGOs, representatives from embassies as well as prisoners themselves;

- vi. On 21 October 2008, Commissioner Kayitesi made a Statement on behalf of the Chairperson of the African Commission during the events marking Africa Human Rights Day in Nairobi, Kenya;

Activities as Chairperson of the Working Group on the Death Penalty

87. Commissioner Kayitesi carried out the following activity:

- i. From 8 to 9 November 2008, she participated in the Meeting of the Working Group that took place in Abuja, Nigeria. During the Meeting, a decision was made to draft a Resolution urging Member States to comply with the Moratorium on Death Penalty.

Commissioner Pansy Tlakula

Report of activities as Commissioner

88. Commissioner Tlakula undertook the following activities:

- i. On 23 June 2008, she participated in the launching of the 2007 Annual Report on Human Rights Defenders by *The Observatory* in South Africa. The Observatory is a partnership between the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), which observes the activities and situation of human rights defenders worldwide and produce a comprehensive report on its findings;
- ii. On 21 October 2008, she participated in a Seminar, jointly organised by the Human Rights Institute of South Africa (HURISA), South Africa Human Rights Commission, Khulumani Support Group, Africa Institute of South Africa, and the Centre for African Renaissance Studies, in Johannesburg, South Africa. The objective of the Seminar was to commemorate the Africa Human Rights Day and the 22nd Anniversary of the coming to force of the African Charter. During the Seminar, she delivered the Human Rights Day message on behalf of the Chairperson of the Commission.

Report of activities as the Special Rapporteur on Freedom of Expression in Africa

89. Commissioner Tlakula, undertook the following activities:

- i. From 2 to 4 October 2008, the Special Rapporteur attended the Regional Workshop on Access to Information in Central and West Africa, in Yaoundé, Cameroon, organised by the Open Society Justice Initiative and the Citizens Governance Initiative, where she delivered the keynote address on "**Freedom of Expression and Freedom of Information and the Advancement of Access to Information in Africa**"
- ii. On 14 October 2008, she participated in a Panel Discussion in a workshop organised by the Inter-Parliamentary Union (IPU) on "**Freedom of Expression and the Right to Information**". She delivered a paper on the "**State of the Right to Information in Africa**".
- iii. The Special Rapporteur sent Urgent Appeals to the governments of The Gambia and Senegal, on allegations of violations of the right to Freedom of Expression in those countries. She also sent a letter to the government of Niger urging that the imminent trial of a Niger journalist respects applicable regional and international human rights standards on the right to fair trial.
- iv. As part of her mandate to *analyse national media legislation, policies and practice within Member States, monitor their compliance with freedom of expression standards in general and the Declaration of Principles on Freedom of Expression in particular*, the Special Rapporteur undertook research which analysed the status of Freedom of Expression legislation in Africa. This research revealed that only South Africa, Zimbabwe, Angola, Uganda, Ethiopia, Tanzania and the Democratic Republic of Congo have enacted Freedom of Information legislation and that Zambia, Mozambique, Malawi, Kenya, Ghana, Nigeria, Sierra Leone and Burkina Faso have draft Bills at various stages of the legislative process. She appeals to these countries to enact the Bills into law as soon as possible.

Commissioner Y.K.J. Yeung Sik Yuen

90. In his capacity as Member of the Commission, he undertook the following activities:

- i. From 25-29 August 2008, he undertook a promotional mission to the Republic of Benin;. During the Mission, he held discussions with government officials, NGOs and Civil Society Organisations and made recommendations which are detailed in the Report submitted to the Commission for consideration and adoption;
- ii. From 28-31 October 2008, he attended a Seminar of the

Commonwealth Judicial Education Institute (CJEI) in Arusha, Tanzania. During the Seminar, thematic issues were discussed such as; human trafficking, HIV/AIDS, Torture, fair trial etc.

- iii. During the same period, he was invited by the President of the International Criminal Tribunal in Rwanda (ICTR), and observed the proceedings of a trial which was in progress.
- iv. The Commissioner also attended a "colloque" at the invitation of the French "Conseil Constitutionnel" marking its 50th Anniversary which was attended by heads of Judiciaries from French speaking countries and all European countries.

Report of activities as a Focal Point on the Rights of Older Person

91. As the Chairperson of the Focal Point on the Rights of Older Persons in Africa, he undertook the following activity:

- i. From 2-3 October, 2008, he organised a Consultative Meeting on the Rights of Older Persons in Africa in Balaclava, Mauritius. This meeting was attended by the Chairperson to the Commission, representatives from HelpAge International (HAI), African Rehabilitation Institute (ARI) and staff from the Secretariat of the Commission. The aim of the meeting was to bring together stakeholders who have interest in providing and protecting the rights of older persons, and to draw up measures to effectively protect them. The Meeting, called the ACHPR to explore further on how it can best take forward the issues of older persons and people with disabilities, and should establish a Working Group on the Rights of Older Persons to entrench/legitimize the process of drafting the Protocol on Ageing as soon as possible.

PRIVATE SESSION

Report of the secretary, including administrative and financial matters

92. The Secretary to the African Commission, Dr. Mary Maboreke, presented her report to the African Commission. The report covered the activities undertaken by the Secretariat in the six-month inter-session period between the 43rd Ordinary Session held in Ezulwini, in the Kingdom of Swaziland, and the 44th Session to which the report was being made. The report also covered administrative and financial matters relating to the work of the Commission.

Staffing matters

93. As reported at the last Session, the Secretariat still awaits a final decision on the proposed structure. However, a decision has been made by the Assembly of Heads of State and Government urging the PRC to expedite consideration of the ACHPR'S structure request. In the meantime, a number of new staff have joined the Secretariat. However, one old staff member resigned because she secured herself a position at the UN. The Secretariat is following up with the Headquarters in Addis Ababa for a replacement.

94. The Secretariat has sought and received authorization to recruit a French-speaking Legal Officer, as well as French and Arabic translators, also on a temporary basis.

95. Furthermore, a new Bilingual Secretary has been recruited on a temporary basis to replace the former one who has now been retained as a Finance Assistant.

96. A new Documentalist also joined the Secretariat at the beginning of May 2008.

Acquisitions

97. A Staff Bus has been acquired for the Secretariat's use

Progress regarding the construction of the Commission's Headquarters

98. The Secretariat continued to follow-up on the progress regarding the construction of its Headquarters, and has been informed that efforts are being stepped up in this regard. The Secretariat's lease at its current location has expired, and new location has been identified, where the Secretariat has to relocate to, by the end of December 2008. Work is currently underway to convert the building identified into offices for the Secretariat.

Relationship with partners

99. The Secretariat continued to engage with its traditional partners, particularly in terms of modalities for continuing the partnership, in light of the new budgetary situation and related developments

Financial Matters

100. Due to a lot of congestion during the second half of the year in the activities of the ACHPR, only transactions up to the end of July 2008 could be fully posted to the accounts. Therefore by the end of July 2008, **24.83%** of the 2008 budget had been used as most activities for the year had been pushed to

the second half of the year.

Budget

101. The Commission has an approved budget of **US\$ 6,003,856.86** for the 2008 Financial year

Income

102. The ACHPR had received a total of **US\$2,402,692.98** from AU Headquarters as at the end of July 2008.

Statement on Special and Extra Budgetary Funds

103. As at end of July 2008 the statement of Special funds and Extra Budgetary funds stood at **US\$ 405,857.34** and **US\$120,284.37** respectively. There have however been a lot of developments since July as a workshop on Human rights defenders was held using the NORAD funds, The Pan-African Women's day Symposium was also held utilizing part of the South African Funds and all the Rights and Democracy Funds have been transferred to other Partners for events leading to the 44th Ordinary Session. , (see Statement of Fiduciary and Special Funds attached as **Annex II**, as well as the Extra-budgetary funds of the Commission).

Subvention received from AU Headquarters

104. The first Quarter subvention received from the AU Headquarters was **USD 493, 787, 95**, Second Quarter Subvention was **USD 600, 000, 00**, and **Third Quarter Subvention was USD 1,308, 905, 03**. Making a total of **USD 2, 402 692, 98**.

Activities undertaken by the Commission during the intersession, including workshops and seminars

105. During the intersession May - November 2008, the Commission undertook/and or participated in a number of activities. A tabulated format of these activities has been attached to this Report as **Annex III**.

CONSIDERATION OF STATE REPORTS

106. In accordance with the provisions of Article 62 of the African Charter, the Federal Republic of Nigeria presented its second Periodic Report covering the period 2005 – 2008, to the African Commission. During the examination of the Report, the Commission engaged in a constructive dialogue with the State Party with regards to the enjoyment of human rights in the country.

ADOPTION OF CONCLUDING OBSERVATIONS

107. The Commission adopted Concluding Observations on the Periodic Report of Nigeria.

Status of submission of State Reports

108. The status of submission and presentation of the State Reports as at the 44th Ordinary Session of the Commission stood as follows:¹

No.	Category	Number of States
1.	States which have submitted and presented all Reports	9
2.	States which have submitted all their Reports and will present the next Report at the 45 th Ordinary Session of the African Commission	5
3.	States which have submitted one (1) or two (2) Reports but still owe more Reports	26
4.	States which have not submitted any Report	13

a) *States which have submitted and presented all their Reports:*

No.	State Party
1.	Algeria
2.	Kenya
3.	Nigeria
4.	Rwanda
5.	Sudan
6.	Tanzania
7.	Tunisia
8.	Zambia
9.	Zimbabwe

¹ Updated: October 2008

b) States which have submitted all their Reports but are yet to present them :

No.	State Party
1.	Benin
2.	DRC
3.	Madagascar
4.	Ethiopia
5.	Uganda

c) States which have submitted two or more reports but owe more:

No.	State Party	Status
1.	Burkina Faso	1 overdue Report
2.	Gambia	6 overdue Reports
3.	Ghana	3 overdue Reports
4.	Namibia	2 overdue Reports
5.	Senegal	1 overdue Report
6.	Togo	2 overdue Reports

d) States which have submitted one report but owe more:

No.	State Party	Status
1	Angola	5 overdue Reports
2.	Burkina Faso	2 overdue Reports
3.	Burundi	3 overdue Reports
4.	Cameroon	1 overdue Report
5.	Cape Verde	5 overdue Reports
6.	Central African Republic	1 overdue Report
7.	Chad	4 overdue Reports
8.	Congo(Brazzaville)	2 overdue Reports
9.	Egypt	1 overdue Report
10.	Gambia	6 overdue Reports
11.	Ghana	3 overdue Reports
12.	Guinea Republic	5 overdue Reports

13.	Lesotho	3 overdue Reports
14.	Libya	1 overdue Report
15.	Mali	4 overdue Reports
16.	Mauritania	2 overdue Reports
17.	Mauritius	6 overdue Reports
18.	Mozambique	5 overdue Reports
19.	Namibia	3 overdue Reports
20.	Niger	2 overdue Reports
21.	Saharawi Arab Democratic Rep	2 overdue Reports
22.	Seychelles	2 overdue Reports
23.	Senegal	2 overdue Reports
24.	South Africa	1 overdue Report
25.	Swaziland	3 overdue Reports
26.	Togo	3 overdue Reports

e) States which have not submitted any reports:

No.	State Party	Status
1.	Botswana	10 overdue Reports
2	Comoros	10 overdue Reports
3	Côte d'Ivoire	7 overdue Reports
4	Djibouti	8 overdue Reports
5	Equatorial Guinea	10 overdue Reports
6	Eritrea	4 overdue Reports
7	Gabon	10 overdue Reports
8	Guinea Bissau	11 overdue Reports
9	Liberia	12 overdue Reports
10	Malawi	9 overdue Reports
11	Sao Tome & Principe	10 overdue Reports
12	Sierra Leone	12 overdue Reports
13	Somalia	11 overdue Reports

PROTECTION ACTIVITIES

109. Pursuant to Articles 46-59 of the African Charter, during the period covered by this Activity Report, the African Commission undertook several measures to ensure the protection of human and peoples' rights on the continent.

These included, among others, writing Urgent Appeals, in reaction to allegations of human rights violations received from stakeholders, and Press Releases addressing human rights violations.

110. In addition, during the 44th Ordinary Session, a total of **seventy-four (74)** Communications were tabled before the African Commission: **Ten (10)** on seizure; **forty-four (44)** on admissibility; and **twenty (20)**, on merits.

111. During the said Session, the Commission decided not for various reasons, not to be seized of four communications, it finalized consideration of two Communications by declaring one inadmissible and finding violations on the other.

112. The Communication declared inadmissible is **Communication 308/2005 – Michael Majuru/Zimbabwe**, and the Commission found violations with respect to **Communication 281/2003 – Marcel Wetshiokonda/DRC**.

113. The decision on **Communication 308/2005-Michael Majuru/Zimbabwe** is attached to this Report as **Annex IV**.

114. The decision on **Communication 281/2003- Marcel Wetshiokonda/DRC** would be attached to the next Activity Report due to the fact that, translation and harmonisation of the same is still pending.

115. Further consideration of the other Communications was differed to the 45th Ordinary Session, for various reasons.

ADOPTION OF REPORTS

116. During the 44th Session, the African Commission adopted the following reports:

- i. Report of Fact-Finding Mission to the Republic of Botswana;
- ii. Report of the Promotion Mission to the Republic of Zambia;
- iii. Report of the Promotion Mission to the Republic of Malawi;
- iv. Report of the Working Methods Workshop of the African Commission;
- v. Report of the Brainstorming/Consultative Meeting of AU Organs on their Working Relations;
- vi. Report of the Conference on Strategic Partnering on Human Rights in Africa

ADOPTION OF RESOLUTIONS

117. During the Session, the African Commission adopted the following Resolutions:

- i. Resolution calling on State Parties to Observe the Moratorium on the Death Penalty;
- ii. Resolution on the Human Rights situation in the DRC ;
- iii. Resolution on Joint Promotional Missions;
- iv. Resolution on the Human Rights Situation in the Republic of The Gambia;
- v. Resolution on Maternal Mortality in Africa;
- vi. Resolution on the Human Rights Situation in Somalia;
- vii. Resolution on Elections in Africa;
- viii. Resolution on the Human Rights and Humanitarian Situation in Zimbabwe;
- IX. Resolution on Access to Health and Needed Medicine in Africa;

PROPOSED VENUE FOR THE 45th ORDINARY SESSION

118. The African Commission decided that the 45th Ordinary Session will be held from 13-28 May 2009, in Banjul, The Gambia.

**THE 5th EXTRA-ORDINARY SESSION OF THE AFRICAN COMMISSION, 21 -
29 July, 2008 BANJUL, THE GAMBIA**

119. From 21 - 29 July, 2008, the African Commission held its 5th Extraordinary Session in Banjul, The Gambia.

120. The following members of the African Commission attended the Session:

- Commissioner **Sanji Mmasenono Monageng** - Chairperson;
- Commissioner **Angela Melo**-Vice-Chairperson;
- Commissioner **Reine Alapini-Gansou**;
- Commissioner **Catherine Dupe Atoki**;
- Commissioner **Musa Ngary Bitaye**;
- Commissioner **Soyata Maiga**;
- Commissioner **Mumba Malila**;
- Commissioner **Bahame Tom Mukirya Nyanduga**;
- Commissioner **Kayitesi Zainabo Sylvie**;

121. The Session was chaired by Honourable Commissioner Sanji Mmasenono Monangeng.

122. It was convened, amongst other reasons, to finalise the Draft revised Rules of Procedure of the Commission and to consider the backlog of Communications.

123. The following Communications on admissibility were considered and adopted by the Commission:

- i. 300/05 - Serap/Nigeria
- ii. 302/05 - Maitre Mambeolo/DRC

124. The following Communications on the merits were considered and adopted by the Commission:

- i. 242/01 Interights & IHRDA/Mauritania
- ii. 246/02-MIDH/Cote D'Ivoire
- iii. 262/2002-MIDH/Cote d'Ivoire

125. The decisions on Communications: **246/02-MIDH/Cote d'Ivoire** and **300/05-Serap/Nigeria** are attached to this Report as part of **Annex IV**. The others will be attached to the next Activity Report.

ADOPTION OF THE TWENTY- FIFTH ACTIVITY REPORT

126. In accordance with Article 54 of the African Charter on Human and Peoples' Rights, the African Commission submits the present Twenty fifth (25th) Activity Report to the 14th Ordinary Session of the Executive Council of the African Union, for consideration and onward transmission to the 12th Summit of Heads of State and Government of the African Union, held in Addis Ababa, Ethiopia.

ANNEX I
AGENDA OF THE 44TH ORDINARY SESSION

**AGENDA OF THE 44th ORDINARY SESSION OF THE AFRICAN
COMMISSION ON HUMAN AND PEOPLES' RIGHTS**
(10th – 24th Nov. 2008, Abuja, Nigeria)

Item 1: Opening Ceremony (Public Session)

Item 2: Adoption of the Agenda (Private Session)

Item 3: Organisation of Work (Private Session)

Item 4: Human Rights Situation in Africa (Public Session)

- a) Statements by State Delegates;
- b) Statement by the African Union Committee of Experts on the Rights and Welfare of the Child;
- c) Statements by Intergovernmental Organizations;
- d) Statements by National Human Rights Institutions;
- e) Statements by NGOs.

Item 5: Cooperation and Relationship with National Human Rights Institutions (NHRIs) and Non-Governmental Organizations (NGOs) (Public Session)

- a) Cooperation between the ACHPR and NHRIs:
Relationship with NHRIs.
- b) Cooperation between the ACHPR and NGOs:
 - i. Relationship with NGOs;
 - ii. Consideration of Applications for Observer Status from NGOs.

Item 6: Consideration of State Reports (Public Session).

- a) Status of Submission of State Party Reports
- b) Consideration of:
 - i. The Periodic Report of the Democratic Republic of Congo;
 - ii. The Initial Report of the Republic of Madagascar;
 - iii. The Periodic Report of the Federal Republic of Nigeria.

Item 7: Promotion Activities (Public Session)

- a) Presentation of the Activity Reports of the Chairperson, Vice-Chairperson and Members of the ACHPR;

- b) Presentation of the Activity Reports of Special Mechanisms of the ACHPR:
 - i. Special Rapporteur on Prisons and Conditions of Detention in Africa;
 - ii. Special Rapporteur on the Rights of Women in Africa;
 - iii. Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;
 - iv. Special Rapporteur on Human Rights Defenders in Africa;
 - v. Special Rapporteur on Freedom of Expression and Access to Information in Africa;
 - vi. Chairperson of the Working Group on the Implementation of the Robben Island Guidelines;
 - vii. Chairperson of the Working Group on the Situation of Indigenous Peoples/Communities in Africa;
 - viii. Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa;
 - ix. Chairperson of the Working Group on the Death Penalty;
 - x. Chairperson of the Working Group on Specific Issues Relevant to the Work of the African Commission;
 - xi. Chairperson of the Focal Point on the Rights of Older Persons.

Item 8: Consideration of (Private Session)

- a) Draft Rules of Procedure of the ACHPR;
- b) Joint Missions;
- c) Protection of the Environment and Natural Resources;
- d) Report of the Ouagadougou Meetings;
- e) Report of the Kampala Meeting;
- f) Internal and administrative matters on the work of the ACHPR.

Item 9: Consideration and Adoption of Draft Mission Reports (Private Session)

- a) Promotional Missions:
 - i. Promotional Mission to the Republic of Malawi
 - ii. Promotional Mission to the Republic of Zambia
- b) Fact-finding Mission by the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, to the Republic of Botswana;

- c) Joint Mission of the Special Rapporteur on Women in Africa and the Special Rapporteur on Human Rights Defenders in Africa to the Republic of Tunisia.

Item 10: Consideration of Communications: (Private Session)

Item 11: Report of the Secretary: (Private Session)

Item 12: Consideration and Adoption of (Private Session)

- a) Recommendations, Resolutions and Decisions;
- b) Concluding Observations on the Initial/Periodic Reports.

Item 13: Dates and Venue of the 45th Ordinary Session of the ACHPR (Private Session)

Item 14: Any Other Business (Private Session)

Item 15: Adoption of: (Private Session)

- a) 25th Activity Report;
- b) Final Communiqué of the 44th Ordinary Session;
- c) Report of the 43rd Ordinary Session;
- d) Report of the 44th Ordinary Session.

Item 16: Reading of the Final Communiqué and Closing Ceremony (Public Session)

Item 17: Press Conference (Public Session)

ANNEX II

*Statement of Fiduciary & Special Funds and Extra-
budgetary funds of the Commission*

Statement of Fiduciary and Special Funds

AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS
BANJUL, THE GAMBIA
STATEMENT OF FIDUCIARY AND SPECIAL FUNDS
AS AT JULY 31st 2008

	Fund Name	Balance As at 01/01/2008	Received During the Period	Available During the Period	Expenditure Incurred	Balance Available
		US \$	US \$	US \$	US \$	US\$
1	Human Right & Democracy Canada	29 457,52	0,00	29 457,52	0,00	29 457,52
2	Human Right Defenders	5 220,00	0,00	5 220,00	0,00	5 220,00
3	Rights and Democracy - Women's forum	781,49	0,00	781,49	0,00	781,49
4	South African Government	243 567,74	0,00	243 567,74	13 312,75	230 254,99
5	Rights and Democracy - WGSi & Orentat	21 269,89	0,00	21 269,89	0,00	21 269,89
6	NORAD	118 873,45	0,00	118 873,45	0,00	118 873,45
		419 170,09	0,00	419 170,09	13 312,75	405 857,34

AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS						
BANJUL, THE GAMBIA						
STATEMENT OF OTHER EXTRA BUDGETARY FUNDS						
	Fund	Balance	Received	Available	Expenditure	Balance
		As at	During the	During the		
	Name	01/01/2008	Period	Period	Incurred	Available
		US \$	US \$	US \$	US \$	US \$
1	Danish Centre for Human Rights	4 625,05	12 975,00	17 600,05	15 849,07	1 750,98
2	Working group on Indigenous populations	24 963,09	0,00	24 963,09	16 728,36	8 234,73
3	OSIWA	158 537,81	0,00	158 537,81	48 239,15	110 298,66
		188 125,95	12 975,00	201 100,95	80 816,58	120 284,37

ANNEX III
ACHPR IMPLEMENTED ACTIVITIES
FOR 2008

ACHPR BUDGETED ACTIVITIES FOR 2008

S/NO.	ACTIVITY	DATES	VENUE	STATUS
JANUARY				
1.	Presentation of Budget & Structure	9 th – 11 th	Addis Ababa, Ethiopia	Done
2.	AU Summit	25 th January - 2 nd February	Addis Ababa, Ethiopia	Done
FEBRUARY				
3.	Meeting of the WGSJ relating to the work of the ACHPR	15 – 17 th	Banjul, The Gambia	Done
4.	4 th Extraordinary Session of the ACHPR	17 th – 24 th	Banjul, The Gambia	Done
MARCH				
5.	Preparatory mission for the 43 rd Ordinary Session	3 rd – 8 th	Kingdom of Swaziland	Done
6.	1 st Staff Retreat	27 th – 29 th	Banjul, The Gambia	Done
APRIL				
7.	AU Audit Training on Process Facility of the AUC	1 st – 3 rd	Banjul, The Gambia	Done
8.	OPCAT Conference (RIG)	3 rd – 4 th	South Africa	Done

MAY				
9.	Meeting of the Working Group on the Death Penalty	4 th – 5 th	Kingdom of Swaziland	Done
10.	Technical Preparatory Committee Meeting on Indigenous Issues	4 th - 5 th	Kingdom of Swaziland	Done
11.	House-keeping meeting	6 th	Kingdom of Swaziland	Done
12.	Meeting on Budgetary and Legal Matters	12 th	Kingdom of Swaziland	Done
13.	43 rd Ordinary Session	7 th to 22 nd	Kingdom of Swaziland	Done
14.	Africa Day celebrations:	25 th (23 rd -24 th)	Kingdom of Swaziland	Done
15.	Workshop on the Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	23 – 25	Kingdom of Swaziland	Done
16.	Workshop for Lawyers, Journalists and NGOs	24	Kingdom of Swaziland	Done
17.	Africa Day	25	Kingdom of Swaziland	Done
JUNE				
18.	RIG Workshop		Nigeria	Done
19.	Day of the African Child	16	Gambia	Press Statement Issued
20.	Joint Promotional Mission	14 – 19	Libya	Done
21.	AU Pre-Summit Gender Meeting on "Gender Is My	21 - 24	Egypt	Done

	Agenda Forum"			
22	Promotional Mission	25 – 30	Tunisia	Done
23	AU Policy Organs meetings & Summit	24 June – 2 nd July	Egypt	Done
24.	Refugee Day	20	Gambia	Press Issued Statement
25.	Promotional Mission	23 – 1 July	Ethiopia	Done
JULY				
26.	HRE Consultation	4	South Africa	Done
27.	Africa Moot Court Competition	5	South Africa	Done
28.	RIG Workshop	17 – 18	Nigeria	Done.
29.	Promotional Mission	15 – 19	Mali	Done
30.	5 th Extraordinary session	21 – 29	Gambia	Done
31	Pan African Women's Day	31	Gambia	Press issued Statement
32	Promotional Mission	30 July – 5 August	Togo	Done
AUGUST				
33	Fact Finding Mission	11 - 15	Botswana	. Done
34	Meeting of the Steering Committee on IPC in Africa	11 - 13	Gambia	Done
35	Pan African Women's Symposium	13 - 14	Gambia	Done
36.	Preparatory Mission for Working Methods Workshop & Brainstorming/ Consultation of AU Organs	14 - 18	Burkina Faso	Done
37.	Promotional Mission	25 - 29	Benin	Done
38.	Consultative Meeting on HRD	31 August – 3 Sept.	Benin	Done

SEPTEMBER				
39.	Advance team in preparation for the RIG Workshop	1 - 3	Liberia	Done
40.	Preparatory Mission for the 44 th Ordinary Session, the HRE Seminar, and the Diplomatic Training	1 - 5	Nigeria	Done
41.	Promotional Mission	1 - 5	Ghana	Done
42.	RIG Workshop	4 - 6	Liberia	Done
43.	Promotional Mission	8 - 12	Liberia	Done
44.	Preparatory Mission for the Conference on Strategic Partnering	10 - 13	Uganda	Done
45.	Stakeholders Consultation on Indigenous Populations in Africa	13 - 16	Ethiopia	Done
46.	Staff retreat	18 - 20	Gambia	Done
47.	AU/EC Consultation	20 - 26	Ethiopia	Done
48.	Working Methods Workshop	26 - 27	Burkina Faso	Done
49.	Brainstorming and Consultation of AU Organs on their Working Relations	28 - 30	Burkina Faso	Done
50.	Mission for the Closure of the AU office in Dakar	26 September - 1 October	Dakar	Done
OCTOBER				
51.	Consultation on Older Persons	1 - 3	Mauritius	Done
52.	Promotional Mission	6 - 10	Tanzania	Done
53.	Meeting of the Advisory Sub-Committee on Administrative and Budgetary Matters	8 - 9	Ethiopia	Done
54.	Consultation and Sensitisation Seminar on the Rights of Indigenous Populations/	13 - 16	Ethiopia	Done

	Communities in Africa			
55.	Africa Human Rights Day	21	Gambia/Uganda	Done
56.	Conference on Strategic Partnering	20 – 22	Uganda	Done
57.	Meeting on Administrative and Budgetary Matters	26 – 30	Ethiopia	Done
58.	First AU Ministerial Conference	27 - 31	Namibia	Done
59.	Preparation and finalization of documents for the 44 th Ordinary Session including: - Communications; - 23 reports comprising : Promotional Missions, Fact-Finding Missions & Major Seminars/ Workshops; - Summaries, questionnaires and draft Concluding Observations on States Reports (DRC, Madagascar, Nigeria & Sudan); - Finalization / Harmonisation of the ROPs		Gambia	Done
NOVEMBER				
60.	HRE Seminar	4 – 5	Nigeria	Done
61.	Diplomatic Training	6 – 7	Nigeria	Done
62.	Meeting of the WG on ECOSOC	5 - 6	Nigeria	Done
63.	Meeting of the WG Indigenous Populations in Africa	6 - 7	Nigeria	Done
64.	Meeting of the WG on the Death Penalty	8 – 9	Nigeria	Done
65.	NGO Forum	7 – 9	Nigeria	Done

66.	Roundtable Discussions Upholding Women's Rights to High Standard of Living, Health, Housing and Wellbeing	14	Nigeria	Done
67.	44 th Ordinary Session	10 – 24	Nigeria	Done
DECEMBER				
68.	Budget Discussion & Presentation	1 December	Ethiopia	Done
69.	Promotional Mission (WGIP)	1 - 5	Rwanda	Done
70.	Promotional Mission	1 – 5	Congo (Brazzaville)	Done
71.	Regional HR Seminar for Journalists	16 – 18	Cameroon	Done
72.	Movement to new Office Building		Gambia	Pending

ANNEX IV

Decisions on Communications

Brought Before The African Commission

Communication 246/2002- *Mouvement Ivoirien des Droits Humains (MIDH)/Côte d'Ivoire*

Summary of facts

1. On 8 February 2002, the Secretariat of the African Commission on Human and Peoples' Rights (the African Commission) received from Mr. Ibrahima Doumbia, First Vice-President of the *Mouvement Ivoirien des Droits Humains (MIDH)*² a Communication submitted pursuant to Article 55 of the African Charter on Human and Peoples' Rights (the African Charter).
2. The Communication was filed against the Republic of Côte d'Ivoire (State Party³ to the African Charter, hereunder referred to as Côte d'Ivoire) in which MIDH alleges that the Constitution of Côte d'Ivoire, adopted by a minority of citizens during the Constitutional Referendum of 23rd July 2000, contained provisions which are discriminatory to some citizens of Côte d'Ivoire, prohibiting them from performing political functions.
3. The Communication alleges furthermore that the provisions granting immunities to some persons, particularly the members of the National Committee for Public Security (CNSP), the military executive organ which ruled the country during the military transition period (from 24 December 1999 to 24 October 2000), as well as the authors of the coup d'état of 24 December 1999, were discriminatory.

Complaint

4. The Complainant alleges that the events cited above constitute a violation of Articles 2, 3 and 13 of the African Charter and requests the African Commission to recommend to Côte d'Ivoire to review Articles 35, 65 and 132 of the Constitution adopted on 23rd July 2000.

Procedure

5. During the 31st Ordinary Session held in Pretoria, South Africa, from 2nd to 16th May 2002, the African Commission considered this Communication and decided to be seized of the said Communication.

² The MIDH is an NGO based in Côte d'Ivoire and which enjoys Observer Status with the African Commission on Human and Peoples' Rights since October 2001 (30th Ordinary Session).

³ Côte d'Ivoire ratified the African Charter on 6th January 1992.

6. Through Note Verbale ACHPR/COMM 246/2002 dated 11th June 2002, the Secretariat of the Commission informed the Respondent State (Côte d'Ivoire) of this decision and requested it to provide within two months its arguments on the admissibility of the Communication.
7. Through its letter ACHPR/OBS/266 of the 11th June 2002, the Secretariat of the African Commission informed the Complainant (MIDH) of this decision and requested it to provide within two months its arguments on the admissibility of the case.
8. Through Note Verbale No. 563/MEMREIE/AF/AJC/BAB/VG of 16th October 2002, the Minister of State, Ministry of Foreign Relations and Ivorians living abroad requested the African Commission for extra time to present its arguments and observations on the Communication.
9. This request from the Respondent State which the African Commission received during the 32nd Ordinary Session held from 17 to 23 October in Banjul, The Gambia, prompted the Commission to defer its decision on the admissibility of the Communication to the 33rd Ordinary Session.
10. In Note Verbale ACHPR/COMM 246/2002 of 28th October 2002, the Secretariat of the Commission informed the Respondent State that an extra period of three (3) months was granted and that its arguments and observations on the Communication were expected by end January 2003.
11. The same information was communicated to the Complainant by letter ACHPR/COMM 246/02 of 28th October 2002.
12. Having received no reply from the Respondent State by end January 2003, the Secretariat of the Commission sent a reminder by Note Verbale ACHPR/246/02 of 10th February 2003, drawing the attention of Côte d'Ivoire to the fact that its arguments and observations on the Communication were necessary for the Commission to take a well informed decision on the admissibility of the case during its 33rd Session scheduled for May 2003.
13. During its 33rd Ordinary Session held from 15th to 29th May 2003 in Niamey, Niger, the Commission decided to defer its decision on the admissibility of this Communication to its 34th Session, thus granting the verbal request of the delegate of the Respondent State attending the Session for extra time to present its arguments, particularly on the admissibility of the case.
14. The Secretariat of the Commission also gave a copy of the complaint to the delegate of Côte d'Ivoire attending the Session.

15. On 11th June 2003, through its Note Verbale ACPHR/246/2002, the Secretariat sent a copy of the complaint to the Respondent State by DHL, requesting a rapid response, in any case before the end of August 2003, to enable the Commission make a ruling on the admissibility of the case.
16. The Secretariat also wrote to the Complainant on 11th June 2003 explaining to him the reasons of the postponement of the decision of the Commission on the admissibility of the Communication.
17. During its 34th Ordinary Session which was held from the 6th to 19th November 2003 in Banjul, The Gambia, the representatives of the Respondent State made an oral presentation before the Commission and conveyed the substance of their observations on the issue in a written memo to the Secretariat.
18. During the 35th Ordinary Session which was held from the 21st May to 4th June 2004 in Banjul, The Gambia, the African Commission considered the Communication and decided to declare it admissible.
19. On 21st June 2004, the Secretariat notified the decision of the African Commission to the parties and requested them to submit their submission on merits within 3 months.
20. At its 36th Ordinary Session, which was held from 23rd November to 7th December 2004, in Dakar Senegal, the African Commission considered the Communication and deferred it to the 37th Ordinary Session pending receipt of the arguments of the Respondent State on the merits of the case.
21. On 20th December 2004, the Secretariat of the African Commission notified this decision to the Respondent State and requested its submission on the merits as early as possible.
22. On the same date, a similar letter was sent to the Complainant requesting him to submit, at the earliest, his arguments on the merits of the case.
23. At its 37th Session, the African Commission, acceding to the request of the respondent Party, deferred its decision on the merits of the Complaint pending receipt of its arguments. This decision was conveyed to both Parties on the 3rd June 2005.
24. On 12 September 2005 a reminder was sent to the Respondent State.
25. On 8th November 2005, the Respondent State forwarded its supplementary submissions on the merits of the Complaint.

26. The Secretariat acknowledged receipt of these submissions and conveyed them to the Complainant on the 10th November 2005.
27. At its 38th Ordinary Session which took place from the 21st November to 5th December 2005 in Banjul, the Gambia, the African Commission considered the Complaint and deferred its decision to the 39th Session.
28. On the 7th December 2005, the Parties were informed of this decision.
29. At its 41st ordinary session held in Ghana in May 2007, the Commission considered the above communication and decided to defer it to its 42nd session on the request of the Respondent State who informed the Commission that it had initiated amicable settlement of the matter with the complainant.
30. By note verbale of 7 July 2007 and by letter of the same date, both parties were notified of the Commission's decision.
31. At its 42nd Ordinary Session, held in Brazzaville, Republic of Congo, the African Commission considered the Communication and deferred its decision to the 43rd Ordinary Session due to confirm from the complainant whether they were engaged in amicable settlement as suggested by the State.
32. By note verbale of 19 December 2007 and by letter of the same date, both parties to the Communication were notified of the Commission's decision.

LAW

Admissibility

Complainant's submissions on admissibility

33. The Complainant submits that the only possible remedy against the Ivorian Constitution is to request its revision, which, though provided for in the said Constitution, "is impossible in the present state of affairs". He added that, under Article 124 of the Ivorian Constitution, "the initiative for the review of the Constitution is a joint undertaking by the President of the Republic and the members of the National Assembly".
34. He argues further that the President of the Republic has on several occasions clearly expressed his opposition to any review of the Constitution. The Complainant also alleges that the President of the Republic has peremptorily asserted that he will never submit the Constitution to a review, which clearly expresses his intention of not applying this mechanism which only he and the Speaker of the National Assembly have the prerogative to initiate.

35. The Complainant alleges further that, the Speaker of the National Assembly, speaking on behalf of all the Deputies of the Forum for National Reconciliation, rejected the possibility of a Constitutional review by asserting that "the people of Côte d'Ivoire do not want a constitutional review".
36. The Complainant further argues that the final hope to have the Authorities (the President of the Republic and the Speaker of the National Assembly) reconsider their position remained with the "National Forum for National Reconciliation held from 9th October 2001 to 18th December 2001 in Abidjan". And yet, the Forum, in its final resolutions, did not rule on a review of the Constitution.
37. The Complainant contends therefore that there is no possible domestic remedy in this particular case and asks the African Commission to draw the appropriate conclusions by declaring the Communication admissible.

Respondent State's Submissions on admissibility

38. The Respondent State, in a memorandum conveyed to the African Commission on 10 November 2003 claims that as far as it is concerned, the Communication is "inadmissible and baseless". The Respondent State maintains that there is indeed a local remedy "constituted by the imminent revision of Articles 124 and others of the Constitution".
39. The Respondent State further notes that the Complainant has not submitted any evidence on the use and exhaustion of existing local remedies. The Respondent State which considers "local remedies" as any legal and lawful action undertaken to "ensure the cessation of the alleged violations" claims that the Complainant did not attempt anything of the sort.
40. Concerning the request of the Complainant relative to the revision of certain Articles of the Ivorian Constitution, the Respondent State intimates that the Ivorian people freely espoused this Constitution which in no way "either grossly or manifestly negates human dignity". It concludes therefore that the request for revision of this Constitution by the Complainant is not "compatible with the provisions of the OAU Charter and the African Charter on Human and Peoples' Rights" and that the Communication should therefore be declared inadmissible by the African Commission, because it is not in conformity with Article 56 (2) of the African Charter.

Decision of the Commission on admissibility

41. The admissibility of communications submitted to the African Commission pursuant to Article 55 is determined by seven requirements provided for under Article 56 of the African Charter. In **communications 147/95 and 149/96 – Sir Dawda K Jawara v The Gambia**, the Commission held that these requirements must all be satisfied for a communication to be declared admissible.
42. In the present communication, without making references to the other requirements, the complainant submits that local remedies are not available in his circumstance, as the remedy available could only be used by the President and the members of the National Assembly. He then concluded that for this reason, there are no remedies and the communication should be declared admissible. The state on the other hand avers that the communication is incompatible with the OAU Charter and the African Charter, and without specifying, also notes that the complainant has not attempted the remedies available to him. The state concludes that for the above reasons, the communication should be declared inadmissible.
43. In view of the foregoing, the African Commission notes that since the state did not raise objections on the other requirements under Article 56, it is presumed that they have been complied with by the complainant. The Commission will therefore pronounce on the two requirements in dispute, that is Article 56(2) incompatibility with the Charter, and Article 56 (5) exhaustion of local remedies.
44. Compatibility, according to the *Black's Law Dictionary* means 'in compliance' or 'in conformity with' or 'not contrary to' or 'against'. The African Commission has interpreted compatibility under Article 56 (2) of the Charter to mean the communication must reveal a prima facie violation of the Charter. In the present communication, the complainant alleges that the Cote d' Ivoire constitution of 2000 includes provisions which are discriminatory and do not provide citizens of the country equal opportunity to fully participate in the governance of their country. The complainant claims that in terms of Article 35 of the constitution "*The President of the Republicshould be of Ivorian origin, born of a Father and Mother of Ivorian origin.....*", Article 65 of the constitution stipulates that a Candidate to the Presidential elections or to the functions of Speaker or Deputy Speaker of the National Assembly "*should be of Ivorian origin, with both parents being of Ivorian origin, should never have renounced Ivorian nationality, and should never have acquired another nationality*" and Article 132 according to the complainant accorded civil and criminal immunity to the members of the former National Committee

for Public Security (CNSP), an executive military body which had directed the transition, and to the perpetrators of the events which brought about the change of Government following the Coup d'Etat of 24 December 1999. These allegations in the opinion of the Commission do raise a *prima facie* violation of human rights. Based on this, the African Commission holds that the requirement of Article 56(2) of the African Charter has been sufficiently complied with.

45. Secondly, the respondent State contends that the complainant has not attempted any domestic remedies. The complainant has stated clearly that the remedy available to secure a revision of the Constitution can be used only by the President and the members of parliament. It is not available to any other individual or citizen. The respondent state did not dispute this fact but instead indicated, without elaborating, that the complainant has not submitted any evidence on the use and exhaustion of existing local remedies, adding that "local remedies" include any legal and lawful action undertaken to "ensure the cessation of the alleged violations".
46. In **Sir Dawda K. Jawara/The Gambia**, the African Commission made it clear that a local remedy is available if the Complainant is able to pursue it without any hindrance; the remedy is effective if it offers the Complainant the possibility of success and if this remedy is adequate and capable of providing reparation for the alleged violation⁴.
47. Where the complainant demonstrates to have exhausted all remedies, the burden shifts to the respondent state which has to show the remedies available and the extent to which the complainant could use them to remedy his/her claim. Making a general statement on the availability of local remedies without substantiating is not sufficient. This view is supported by the Human Rights Committee on **Albert Mukong v Republic of Cameroon**,⁵ where the Committee stated that the State party had merely listed *in abstracto* the existence of several remedies without relating them to the circumstances of the case, and without showing how they might provide effective redress in the circumstances of the complainant's case.
48. In the **Velasquez Case**⁶ the Inter-American Court on Human Rights, in interpreting Article 46 of the Inter-American Human Rights Convention (Article similar to Article 56 of the African Charter) on the matter of exhaustion of local remedies, declared that, for the necessary condition of

⁴ Communication 147/95 and 149/96 – Sir Dawda K. Jawara/The Gambia.

⁵ Communication No. 458/1991.

⁶ Velasquez Rodriguez Case, Judgment of the 29th July 1988, Inter-Am.Ct.H.R (Ser.C) No.4 (1988).

the exhaustion of local remedies to apply, the local remedies of the State concerned should be available, adequate and effective so that they can be used and exhausted.

49. In the present case, the Complainant does not have the possibility of resorting to any judicial means to remedy the alleged violation as the mechanism provided for by Article 124 of the Constitution is not available to him. In effect, the Complainant does not have the necessary capacity to initiate the local remedy because this is reserved exclusively for the President of the Republic and for the members of the National Assembly. It can therefore be concluded that the remedy offered by Article 124 of the Constitution is neither adequate nor available to the Complainant.
50. The Respondent State is under obligation to provide all possible, effective and accessible remedies for its citizens by which means the latter can seek, at the national level, recognition and remedying of the alleged violations of their rights, even if it means resorting, should the need arise, to the international systems of protection of human rights like the African Commission for Human and Peoples' Rights.
51. In view of the foregoing, the African Commission considers that in the context of the present Communication, the domestic remedies are not available and as such the condition for exhausting them as envisaged by Article 56 of the African Charter cannot be invoked. The African Commission therefore concludes that the objections raised by the Respondent State in terms of Article 56 (2) and (5) are not substantiated, and thus holds that the present communication is **admissible**.

Decision on the merits

Complainant's submissions on the merits

52. The Complainant claims that the provisions of Articles 35 and 65 of the 2000 Constitution of the Republic of Cote d'Ivoire contravenes both articles 2 and 13 of the African Charter. Article 35 of the said Constitution stipulates that:

"The President of the Republicshould be of Ivorian origin, born of a Father and Mother who themselves must be Ivorian by birth....."

53. Article 65 of the Constitution stipulates that the candidate to the Presidential elections or to the posts of Speaker or Deputy Speaker of the National Assembly *"should be of Ivorian by birth, with both parents being of Ivorian origin, should never have renounced Ivorian nationality, and should never have acquired another nationality"*.

54. The Complainant contends that in establishing the rules and conditions of access to the above-mentioned public offices, the Constitution makes a distinction between Ivorians on the basis of their places of origin and their birth, and divides Ivorians into categories, applying different standards to different categories, something the complainant finds discriminatory and contrary to Article 2 of the African Charter.
55. In terms of Article 35 of the Constitution the following categories of citizens cannot be eligible to run for the office of President of the Republic, or to be elected as Speaker of the National Assembly or Deputy Speaker of the National Assembly:
- a) Ivorians who acquired Ivorian nationality other than by birth, that is, either through, marriage or naturalisation;
 - b) Ivorians who although Ivorians by birth, were born of Ivorian parents, do, at some stage in their lives, hold another nationality; and
 - c) Ivorians who had once renounced Ivorian nationality.
56. Such a distinction, according to the Complainant, would result in the exclusion of more than "40% of the Ivorian population...from submitting candidature to the above-mentioned public offices...", and this would reduce the choice left to citizens to freely choose their fellow citizens to direct the affairs of their nation, contrary to Articles 13 (1) of the African Charter.
57. On the allegation that the Constitution violates Article 3 of the African Charter, the Complainant points out that the Constitution, in its Article 132, accords civil and criminal immunity to the members of the former National Committee for Public Security (CNSP), an executive military body which had directed the transition, and to the perpetrators of the events which brought about the change of Government following the *Coup d'Etat* of 24 December 1999.
58. According to the complainant, this immunity is "total and unlimited" in time and would prevent certain persons, victims of the acts perpetrated by those granted amnesty to bring their cases to court in order to obtain compensation for the wrongs done to them. According to the complainant, this constitutes unequal protection of the law contrary to Article 3 (2) of the Charter.

Respondent State's submissions on the merits

59. The Respondent State, for its part, while disputing the assertion that the Constitutional provisions in question have excluded "more than 40% of the population" of Côte d'Ivoire from access to the said offices as argued by the Complainant, justifies instead the need of the said provisions by the fact that the State has the right to legally determine the category of citizens to whom "the accomplishment of a specific act or the access to a specific situation" should be entrusted.
60. The Respondent State considers it legitimate to require "a certain level of loyalty from whoever aspires to preside over its highest offices in the land", which is the case for the office of President of the Republic or that of Speaker of the National Assembly or that of Deputy Speaker of the National Assembly.
61. Moreover, the Respondent State refutes the notion of discrimination advanced by the Complainant in this case, and contends that the Ivorian Constitution rather makes a "distinction" between the different citizens of the same country. Whereas, argues the Respondent State, it is not discrimination "when the distinction between individuals placed under similar conditions is made on a "reasonable and objective" basis.
62. The Respondent State quotes the American, Algerian, *Beninoise*, Burkinabé and Gabonese examples where access to the office of President of the Republic is restricted by various criteria including, for instance, that of nationality.
63. The Respondent State further argues that the discrimination and exclusion denounced by the Complainant can no longer be put forward before the African Commission considering that within the context of the Pretoria Accord⁷, which the Parties had concluded under the aegis of the African Union, the President of the Republic of Côte d'Ivoire, making use of the exceptional powers vested in him by the Constitution (Article 48), had declared eligible all the candidates designated by the Parties in the Marcoussis Accord⁸.
64. For the Respondent State, "it appears from the terms of the Communication (currently under consideration) that its main objective is the candidature of all those who want it, notably that of Mr. Alassane Dramane Ouattara. Since this requirement has been satisfied in

⁷ The Accord was concluded in April 2005 in Pretoria, South Africa.

⁸ This Accord was concluded at Marcoussis, France, in January 2003.

accordance with the principles of the African Union, article 56 (7) of the Charter can be applied.

65. On the allegation of unequal protection of the law, the Respondent State argues that the immunity granted to the perpetrators of the events which brought about the change of Government on 24 December 1999 is neither *total nor limitless* in time, and that it only covers "*the Members of the National Committee for Public Security (CNSP) and all the perpetrators of the events*". Therefore, the other perpetrators of the looting, whether civilians or military, committed during the military transition period, are not covered by this immunity.
66. With regard to the possibility of the victims instituting legal proceedings in order to obtain compensation for the wrongs they have suffered, the Respondent State contends that there is no inequality as no victim can be allowed to institute proceedings against the people benefiting from the amnesty.

African Commission's decision on the merits

67. At its 41st Ordinary session held in Accra, Ghana in May 2007, the state informed the Commission that it was in the process of dealing with the civil crisis in the country, and the issues raised in the present communication would be dealt with. The Commission regrets the State Party's failure to provide any further information with regard to developments on the substance of the author's claims since then.
68. Having received submissions on the merits from both parties, and in the absence of any indication that this matter has been or is being resolved by the parties amicably, the Commission will proceed to consider this communication on the merits.
69. In the case under consideration, the Complainant alleges violation by the respondent state of Articles 2, 3 and 13 of the African Charter. The African Commission has analysed these allegations in the light of the information at its disposal.
70. The Commission will deal with allegations regarding violation of Articles 2 and 13 together, and allegations regarding the violation of Article 3 separately.

Allegations on the violation of Articles 2 and 13 of the African Charter.

71. Articles 2 of the African Charter stipulates 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, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any other status".

And Article 13 (1) of the Charter provides that:

"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.

72. The African Commission considers that the restrictions which can be imposed on the enjoyment of the rights prescribed by the African Charter should only be applied, where the need arises, in the spirit of the conditions provided for by the Charter.
73. In **Civil Liberties Organisation (on behalf of the Nigerian Bar Association)/Nigeria**⁹ the Commission stated that "in regulating the exercise of this right [referring to the right to association] the competent authorities should not enact [legislation which would limit the right...". In **Constitutional Rights Project and Civil Liberties Organisation/Nigeria**¹⁰, The Commission while restating the above statement added that 'with these words, the Commission states a general principle that applies to all rights, not only freedom of association". The Commission went further to state that "Governments should avoid restricting rights, and take special care with regard to those rights protected by constitutional or international human rights law...".
74. The Ivorian Constitution of 2000, in its Articles 35 and 65, as conditions of eligibility to certain high offices of State, imposed limitations which effectively disqualified a certain percentage of the Ivorian population from aspiring to these positions. The complainant puts the figure at 40%, and although the respondent state disputes this figure, it does not dispute the existence of the situation itself. According to the state, the disqualification clause is justified on the basis of exigencies of "the level of loyalty". It added that the practice is also current in other countries.
75. Article 2 of the African Charter provides that every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction on any kind such as "...national or social origin, fortune, birth or other status". Article 13 provides that "every citizen shall have the right to participate freely in the

⁹ Communication 101/93.

¹⁰ Communication 102/93.

government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law”.

76. Unlike Article 2 which talks of '*every individual*', Article 13 is even clearer as it talks of '*every citizen*'. Under this Article therefore, every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2, and without unreasonable restrictions, to take part in the conduct of government of his country, directly or through freely chosen representatives, which includes to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot.
77. The right to participate in government or in the political process of ones country, including the right to vote and to stand for election, is a fundamental civil liberty and human right, and should be enjoyed by citizens without discrimination. The reason for this lies in the fact that, as historical experience has shown, governments derived from the will of the people, expressed in free elections, are those that provide the soundest guarantee that the basic human rights will be observed and protected.
78. Several other international instruments guarantee the rights under Articles 2 and 13 of the African Charter, that is, non-discrimination and to participate in government. Article 5(c) of International Convention on the Elimination of Racial Discrimination (ICERD) states *inter alia* that: in compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: “... (c) Political rights, in particular the right to participate in elections, to vote and to stand for election on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service”. Article 2 in the ICERD refers to the obligation to eliminate racial discrimination and ‘to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.’ Article 21 of the Universal Declaration on Human Rights on its part, provides that: “everyone has the right to take part in the government of his country, directly or through freely chosen representatives,” and “has the right to equal access to public service.” Article 25 of the International Covenant on Civil and Political Rights (ICCPR) recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary

to ensure that citizens have an effective opportunity to enjoy the rights it protects.

79. The most elaborate interpretation of the right to participate in government has been provided by the Human Rights Committee of the United Nations. In its General Comment No. 25 on participation in public affairs and the right to vote¹¹, the Committee stated *inter alia*, that: "the effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy."¹²
80. In the present communication, could it be said that the conditions set out in Articles 35 and 65 of the Ivorian Constitution of 2000 are *justifiable on objective and reasonable criteria* and *reasonable and non-discriminatory*?
81. Article 35 of the said Constitution stipulates that *the President of the Republicshould be of Ivorian origin, born of a Father and Mother who themselves must be Ivorian by birth.....*. Article 65 stipulates that the Candidate to the Presidential elections or to the posts of Speaker or Deputy Speaker of the National Assembly *"should be Ivorian by birth, with both parents being of Ivorian origin, should never have renounced Ivorian nationality, and should never have acquired another nationality"*.
82. Admittedly, the constitution places these restrictions only on the highest positions in the land. Many other countries, including European, American and African countries have similar provisions to determine those eligible to ascend to the highest offices. Most of these countries have the same justification given by the Ivorian government, that is, persons having these positions must have undoubted loyalty to the nation. It is doubtful though whether this is the only way to test loyalty or whether this is even the best way to test loyalty.

¹¹ CCPR/C/21/Rev.1/Add.7, General Comment No. 25. Adopted by the Committee at its 1510th meeting (fifty-seventh session) on 12 July 1996.

¹² Human Rights Committee, General Comment No. 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996), para. 15.

83. The Commission recognises the right of each State Party to the Charter to adopt appropriate legislation that would regulate the conduct of elections. It is also for the states to determine criteria for eligibility for those who can vote and those who can stand for elections to whatever positions. The exercise of adopting criteria to regulate those who can vote and those who can stand for elections is in itself not a violation of human rights norms. In every society, some positive measure/actions need to be taken to regulate human behaviour in certain areas. However, these criteria must be reasonable, objective and justifiable. They must not seek to take away the already accrued rights of the individual.
84. The African Commission is of the view that the right to vote as well as the right to stand for election are rights attributable and exercised by the individual. This is why voting, in democratic societies, is by secret ballot, to the extent that even the individual's father or mother may not know who the individual has voted for. By the same token, the exercise of the right to stand for elections is a personal and individual right which must not be tied to the status of some other individual or group of individuals. The right must be exercised by the individual simply because he/she is an individual, and not tied to the status of another individual. Distinctions must thus be made between the rights an individual can exercise on his own and the rights he/she can exercise as a member of a group or community.
85. Thus, to state that a citizen born in a country cannot stand for elections because his/her parents were not born in that country would be stretching the limit of objectivity and reasonableness too far. The Commission recognises the fact that the position of President, Speaker and Deputy Speaker, and indeed other similar positions are very crucial to the security of a country, and it would be unwise to put a *blank cheque* vis-à-vis accessibility to these positions. Placing restrictions on eligibility for these posts is in itself not a violation of human rights. However, where these restrictions are discriminatory, unreasonable and unjustifiable, the purpose they intended to serve will be overshadowed by their unreasonableness.
86. In the present instance, the rights to vote and to stand for elections is an individual right and conditions must be made to ensure that the individual exercises these rights without reference to his/her attachment to other individuals. The Commission thus finds the requirement that an individual can only exercise the right to stand for the post of a President not only if he/she is born in Cote d'Ivoire, but also that his parents must be born in Cote d'Ivoire unreasonable and unjustifiable, and find this an unnecessary restriction on the right to participate in government guaranteed under Article 13 of the African Charter. Article 35 is also discriminatory because it applies different standards to the same categories of persons, that is

persons born in Cote' d'Ivoire are now treated based on the places of origin of their parents, a phenomenon which is contrary to the spirit of Article 2 of the African Charter.

87. This was also the Commission's position in **Legal Resources Foundation v/ Zambia**¹³, where the African Commission held that the right to equality is very important. It means that citizens should expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to all other citizens. The right to equality is important for a second reason. Equality or lack of it affects the capacity of one to enjoy many other rights. For example, one who bears the burden of disadvantage because of one's place of birth or social origin suffers indignity as a human being and equal and proud citizen. He may vote for others but has limitations when it comes to standing for office. In other words, the country may be deprived of the leadership and resourcefulness such a person may bring to national life".

88. The Complainant also alleges the violation by the Respondent State of Article 3 of the African Charter which stipulates:

*"1 – Every individual shall be equal before the law
2 – Every individual shall be entitled to equal protection of the law".*

89. The Respondent State argues that the immunity granted to the perpetrators of the events which brought about the change of Government on 24 December 1999 is neither *total nor limitless* in time, and that it only covers *"the Members of the National Committee for Public Security (CNSP) and all the perpetrators of the events"*. Therefore, the other perpetrators of the looting, whether civilians or military, committed during the military transition period, are not covered by this immunity. With regard to the possibility of the victims instituting legal proceedings in order to obtain compensation for the wrongs they have suffered, the Respondent State contends that there is no inequality as no victim can be allowed to institute proceedings against the people benefiting from the amnesty.

90. It appears therefore that *"the Members of the National Committee for Public Security (CNSP)"* had total and complete immunity, and no action could be brought against them by any body for whatever reason.

91. Over the years, the strict interpretation of Clemency powers or pardons have been the subject of considerable scrutiny by international human

¹³ Communication 211/98.

rights bodies and legal scholars. There has been consistent international jurisprudence suggesting that the adoption of amnesties leading to impunity for serious human rights has become a rule of customary international law. In a report entitled "*Question of the impunity of perpetrators of human rights violations (civil and political)*", prepared by Mr. Louis Joinet for the Sub-commission on Prevention of Discrimination and Protection of Minorities, pursuant to Sub-commission decision 1996/119, it was noted that "amnesty cannot be accorded to perpetrators of violations before the victims have obtained justice by means of an effective remedy" and that "the right to justice entails obligations for the State: to investigate violations, to prosecute the perpetrators and, if their guilt is established, to punish them".¹⁴

92. The Report went on to state that "even when intended to establish conditions conducive to a peace agreement or to foster national reconciliation, amnesty and other measures of clemency shall be kept within certain bounds, namely: (a) the perpetrators of serious crimes under international law may not benefit from such measures until such time as the State has met their obligations to investigate violations, to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that they are prosecuted, tried and duly punished, to provide victims with effective remedies and reparation for the injuries suffered, and to take acts to prevent the recurrence of such atrocities."¹⁵

93. In its General Comment No. 20 on Article 7 of the ICCPR, the UN Human Rights Committee noted that "amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible".¹⁶ In the case of **Hugo Rodríguez v. Uruguay**,¹⁷ the Committee reaffirmed its position that amnesties for gross violations of human rights are incompatible with the obligations of the State party under the Covenant and expressed concern that in adopting the amnesty law in

¹⁴ See E/CN.4/Sub.2/1997/20/Rev.1, paras. 32 and 27.

¹⁵ Ibid. Principles 18 and 25.

¹⁶ See Human Rights Committee General Comment No. 20 (44) on Article 7, para. 15 at www.unhchr.ch/tbs/doc.nsf/view40?SearchView.

¹⁷ *Rodríguez v. Uruguay*, Communication No. 322/1988, U.N. Doc. CCPR/C/51/D/322/1988 (1994).

question, the State party contributed to an atmosphere of impunity which may undermine the democratic order and give rise to further human rights violations.

94. The African Commission has also held amnesty laws to be incompatible with a State's human rights obligations.¹⁸ Guideline No. 16 of the Robben Island Guidelines adopted by the African Commission during its 32nd session in October 2002 further states that 'in order to combat impunity States should: a) ensure that those responsible for acts of torture or ill-treatment are subject to legal process; and b) ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law'.¹⁹
95. In **Malawi African Association and Others v. Mauritania**,²⁰ "the Commission held 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". The Commission went further to note 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 the force of law ...cannot shield that country from fulfilling its international obligations under the Charter.
96. In **Zimbabwe Human Rights NGO Forum/Zimbabwe**²¹ this Commission reiterated its position on amnesty laws by holding that "by passing the Clemency Order No. 1 of 2000, prohibiting prosecution and setting free perpetrators of "politically motivated crimes",...the State did not only encourage impunity but effectively foreclosed any available avenue for

¹⁸ See also: Various communications v. Mauritania Communications 54/91, 61/91, 96/93, 98/93, 164/97-196/97, 210/98 and Jean Yokovi Degli on behalf of Corporal N. Bikagni, Union Interafricaine des Droits de l'Homme, Commission International de Juristes v Togo Communications 83/92, 88/93, 91/93.

¹⁹ Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines), African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia. See also: Various communications v. Mauritania Communications 54/91, 61/91, 96/93, 98/93, 164/97-196/97, 210/98.

²⁰ Communications, Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98.

²¹ Communication 245/2002.

the alleged abuses to be investigated, and prevented victims of crimes and alleged human rights violations from seeking effective remedy and compensation. This act of the state constituted a violation of the victims' right to judicial protection and to have their cause heard under Article 7 (1) of the African Charter".

97. If there appears to be any possibility of an alleged victim succeeding at a hearing, the applicant should be given the benefit of the doubt and allowed to have their matter heard. Adopting laws that would grant immunity from prosecution of human rights violators and prevent victims from seeking compensation render the victims helpless and deprives them of justice.
98. In light of the above, the African Commission holds that by granting total and complete immunity from prosecution which foreclosed access to any remedy that might be available to the victims to vindicate their rights, and without putting in place alternative adequate legislative or institutional mechanisms to ensure that perpetrators of the alleged atrocities were punished, and victims of the violations duly compensated or given other avenues to seek effective remedy, the Respondent State did not only prevent the victims from seeking redress, but also encouraged impunity, and thus reneged on its obligation in violation of Articles 1 and 7 (1) of the African Charter. The granting of amnesty to absolve perpetrators of human rights violations from accountability violates the right of victims to an effective remedy.²²

For these reasons, the African Commission:

- a) Finds that the Respondent State is in violation of Articles 1, 2, 3(2), 7 and 13 of the African Charter and requests it to take the appropriate measures to remedy the situation.
- b) Requests both parties to inform the Commission on the progress made in reviewing the discriminatory provisions in the Constitution.
- c) Offers its Good Offices in case it is needed to assist.

Adopted at the 5th Extraordinary Session of the African Commission on Human and Peoples' Rights, 21 – 29 July 2008, Banjul, The Gambia.

²²

See the African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, para C(d).

300/2005 - Socio Economic Rights and Accountability Project/Nigeria**Summary of Facts:**

1. The Communication (herein referred to as the Communication or Complaint) is submitted by the Socio-Economic Rights and Accountability Project (SERAP, the Complainant) against the Government of Nigeria (the Respondent State). Nigeria is a State Party to the African Charter on Human and Peoples' Rights, (the African Charter) which it ratified on 22nd July 1983.
2. In the Complaint, SERAP states that the President of the Republic, Olusegun Obasanjo in a television broadcast of 22 March 2005, alleged that members of the Nigerian Senate and the House of Representatives took bribes from the Federal Minister of Education in order to increase the budget for education. That, according to the President, the Minister of Education invited his acting Permanent Secretary and some Directors to collect money from votes under their control to bribe some members of the National Assembly so that the budget for the Ministry could be increased.
3. The Directors then allegedly took from the votes under their control 35 million naira, while an additional loan of 20 million naira was taken from the National Universities Commission (NUC) to pay a bribe totalling 55 million naira to named members of the National Assembly and a member of the Federal House of Representatives.
4. The Petitioner contends that the above is an illustration of the grand corruption by high-level officials and that it is routine for federal ministries to offer bribes to National Assembly members to have their budget estimates inflated. According to the Complainant, large-scale corruption such as the one described above has contributed to serious and massive violations of the right to education, among other rights, in Nigeria. It further avers that in effect, Nigeria's human rights legal obligations under the African Charter to achieve the minimum core contents of the right to education has been honoured more in breach than in observance, resulting in:
 - a. Failure of government to train the required number of teachers;
 - b. Gross under-funding of the nation's educational institutions;
 - c. Lack of motivation of teachers;
 - d. Non-available class room seats and pupils sitting on bare floor;
 - e. Non-availability of books and other teaching materials;
 - f. Poor curricula;
 - g. Poor and uninviting learning environments;
 - h. Overcrowding;
 - i. Persistent strikes by teachers and staff who have not been paid;

- j. Inability of supervising agencies to set and/or enforce standards; and
 - k. Absence of infrastructure facilities.
5. The Complainant further submits that, the Nigerian Government has deliberately failed to investigate all allegations of corruption and this has contributed in impeding its ability to utilize Nigeria's natural resources for the benefit of its peoples.
6. To demonstrate the gravity of the situation, the Complainant quotes the Concluding Observations of the Committee on Economic, Social and Cultural Rights, where the Committee held that millions of children hold odd jobs and some who go to school are crammed in dilapidated classrooms. The poor quality of education is attributed to the fact that teachers are not devoted to work since their salaries do not meet their expectations. Furthermore, that, in 1997, fees were increased in the universities which caused a brain drain in academia because of long periods of closures, strikes etc.

The Complaint:

7. The Complainant alleges violation of Articles **1, 2, 3, 17, 21, and 22** of the African Charter on Human and Peoples' Rights.

Procedure

8. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received the Communication by letter of 29 March 2005. The Commission decided to be seized of the Communication at its 37th Ordinary Session held in Banjul, The Gambia from 27 April to 11 May 2005.
9. On 18 May 2005 the Respondent State was informed of the seizure and it was requested to submit its arguments on admissibility.
10. The Complainant was also informed of the seizure and requested to submit its arguments on admissibility.
11. By a letter of 4 August 2005, the Secretariat received the Complainant's arguments on admissibility, to which receipt of acknowledgement was sent on 25 August 2005.
12. The arguments on admissibility were also sent to the Respondent State on 25 August 2005.

13. On 14 November 2005, a letter was sent to the Respondent State party urging it to submit its arguments on admissibility.
14. The Respondent State submitted its written observations on the admissibility of the Communication during the 38th Ordinary Session.
15. At its 38th Ordinary Session held from the 21 November to 5 December 2005 in Banjul, The Gambia, the African Commission considered this Communication and deferred its decision on admissibility to the 39th Ordinary Session.
16. By a Note Verbale of 15 December 2005, the Secretariat notified the Respondent State of this decision to defer decision on admissibility to its 39th Ordinary Session.
17. By a letter of 15 December 2005, the complainant has likewise notified.
18. At its 39th Ordinary Session held from 11th to 25th May 2006 in Banjul, The Gambia, the African Commission considered the Communication and deferred consideration of the same to its 40th Ordinary Session. The Commission indicated that the Complainant's allegation of "serious and massive" human rights violation by the Respondent State merits a hearing before the African Commission as per the latter's established practice.
19. At its 40th Ordinary Session, the African Commission considered the Communication and deferred its decision on admissibility to the 41st Ordinary Session.
20. During the same Session, the Secretariat received the additional written submissions of the Respondent State's admissibility.
21. At its 42nd Ordinary Session held in Brazzaville, Republic of Congo from 15-28 November 2007, the Commission considered the Communication and deferred its consideration of the same to its 43rd Ordinary Session to allow the Secretariat to draft a decision on admissibility.
22. During the same Session, the Secretariat received additional written submissions of the Respondent State's admissibility which was forwarded to the Complainant.

The Law

Admissibility

Submissions by the Complainant

23. The Complainant submits that the Communication raises *prima facie* violation of the Charter and meets the conditions of admissibility in terms of Article 56 of the Charter.
24. However, on the requirement of the exhaustion of local remedies in accordance with Article 56(5), the Complainant is requesting the Commission to invoke the exception rule. While admitting that local remedies have not been attempted, the Complainant explains that such a course would have been futile for three reasons.
25. Firstly, that there is no local recourse readily available to SERAP because of the strict interpretation of the principle of *locus standi* in Nigeria, and that exhaustion of local remedies is inapplicable where it is impractical to seize the domestic courts due to the large number of potential plaintiffs (Nigerian students amounting over 5 millions at the primary, secondary and university levels) and potentially over burden the courts resulting in unduly prolonged process.
26. Secondly, that there is no adequate or effective domestic remedies to address the violations alleged in this Complaint since Nigerian courts do not generally regard economic and social rights as legally enforceable human rights. Furthermore, that there is no equivalent of the provisions of Articles 17 and 21 of the African Charter relating to the right to education and the right of people not to be disposed of their wealth and natural resources under Nigeria's Constitution or legislation. For this reason therefore, Nigerian courts will not be easily disposed to hear the matter.
27. Thirdly, that the Nigerian judiciary process is weak and cases are unduly prolonged, making recourse to them ineffective.

Submissions by the Respondent State

28. On its part, the Respondent state submits that in Nigeria, social and economic rights are not justiciable under the Constitution as they fall under what may be termed the preamble of the Constitution, mapping objectives rather than enforcing and sanctioning compliance thereof. Hence there is no legal right that can give rise to rights of action.

29. The Respondent State further argues that, this notwithstanding, the courts in Nigeria have creatively made socio-economic rights justiciable where it can be shown that a denial of these principles are likely to result in a denial of fundamental human rights guaranteed under the Constitution. The State added that, the domestication of the African Charter by virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Chapter 10, Laws of the Federation of Nigeria 1990) empowers the Nigerian courts to enforce or give remedies under the provision of the African Charter. Furthermore, that the Constitution of Nigeria contains provisions on socio-economic rights which, even though non-justiciable, States can be held accountable by the courts if they disregard them.
30. The State also argues that even though socio-economic rights are not justiciable, the government has enunciated some policies and created some institutions to address the issue, including the National Economic Empowerment and Development Strategy (NEEDS) and the State Economic Empowerment and Development Strategy (SEEDS). The institutions and programmes include the National Directorate of Employment (NDE), the National Poverty Eradication Programme (NAPEP) as well as the Small and Medium Enterprises Development Agency (SMEDAN) respectively. It further avers that these measures are all geared towards enhancing the peoples' economic and social welfare generally.
31. The Respondent State further submits that the Communication should be declared inadmissible because:
- the Complaint does not disclose a breach of any municipal law within the Federal Republic of Nigeria or the breach of any international treaties or conventions to which Nigeria is a party;
 - the factual basis for the Communication is an allegation of criminal conduct which is currently the subject of an on-going criminal trial before the Federal High Court in Abuja;
 - the conduct of a few officials does not, in law and in fact, amount to the abdication by Nigeria of her sovereign obligations to her citizens properly covered by any municipal law or international conventions or treaties to which Nigeria is a signatory;
 - all the officers named by the Complainant were forced to resign from their positions in the National Assembly and have since been defending the prosecution case filed against them;

- the sum of fifty-five million Naira involved in the illegal transaction has been recovered;
 - adequate local remedies exist in Nigeria and have been employed by the State, and the Complainant has failed to exhaust these local remedies;
 - the facts alleged by the Complaint are purely criminal in nature and do not amount to an official policy by the government to deny the people of Nigeria the "right to productive use of their resources" or their "right to education" as alleged;
 - the Complaint has been filed before the African Commission on the basis of generalised statements and information obtained from unverified sources and that there are no statistical or other information supplied in support of these general statements; and
 - the government has been carrying out various initiatives, including negotiating for debt relief with the Paris Club of Creditors, to significantly impact on the level of poverty in the country.
32. The Respondent State in its additional submission on admissibility reiterates the fact that this Communication offends the fifth ground of admissibility set out under Article 56 of the African Charter. Furthermore, that Chapter 2(Sections 13 to 24) of the Nigerian Constitution of 1999 shows the State's commitment to promotion and protection of the socio-economic rights of its citizens.

Decision of the African Commission on admissibility

33. The admissibility of Communications before the African Commission is governed by the requirements of **Article 56** of the African Charter which provides seven requirements that must be met before the African Commission can declare a Communication admissible. If one of these requirements is not met, the African Commission will declare the Communication inadmissible, unless the Complainant provides justifications why any of the requirements could not be met.
34. In the present Communication, the Complainants submit that they have complied with all the requirements under Article 56 of the Charter, except Article 56(5) due to the absence of local remedies. The State however argues that the Communication does not satisfy Article 56(5) of the Charter, as well as Article 56(2) of the Charter. The African Commission will thus deal with the above provisions.
35. As indicated earlier, for a Communication to be declared admissible, it must meet all the requirements under Article 56. Thus, if a party contends

that another party has not complied with any of the requirements, the Commission must pronounce itself on the contentious issues between the parties. However, the Commission shall also examine other requirements of Article 56 which are not contested by the parties.

36. **Article 56(1)** of the African Charter provides that Communications will be admitted if the authors indicate their identity, even if they request anonymity. In the present case the author of this Communication is SERAP, which is an NGO based in Lagos. The author of the Communication is thus clearly identified.
37. **Article 56(2)** of the African Charter provides that a Communication must be compatible with the Charter of the OAU or with the African Charter on Human and Peoples' Rights. In the present Communication, the Respondent State argues that the Communication does not comply with this requirement. The State asserts in this regard that, the Complaint does not disclose a breach of any municipal law within Nigeria or the breach of any international treaties or conventions to which Nigeria is a party.
38. For a Complaint to be compatible with the Charter or the Constitutive Act, it must prove a *prima facie* violation of the Charter. Compatibility according to the Black's Law Dictionary denotes, 'in compliance with' and 'in conformity with' or 'not contrary to' or 'against'. In this Communication, the Complainant alleges violations of the right to education, health and enjoyment of natural resources occasioned by the actions of the Respondent State. These allegations do raise a *prima facie* violation of human rights guaranteed in the Charter. Based on the above, the African Commission is satisfied that Article 56(2) of the African Charter in the present Communication has been sufficiently complied with.
39. **Article 56(3)** of the Charter provides that a Communication will be admitted if it is not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity (African Union). In the present case, the Communication does not, in the view of this Commission, contain any disparaging or insulting language, and thus fulfils the requirement of Article 56(3).
40. **Article 56(4)** of the Charter provides that the Communication must not be based exclusively on news disseminated through the mass media. This Communication was submitted based on the testimonies given before the Nigerian National Assembly, text statements, reports by human rights organisations and first hand information from the Nigerian students themselves, "who have been directly affected by the theft of Nigeria's natural resources." Thus the requirement under Article 56(4) has been fully complied with.

41. **Article 56(5)** provides that Communications to be considered by the African Commission must be sent after local remedies have been exhausted. The Respondent State contends that the Complainant has not complied with this requirement. The State argues that the complainant has not sought the sufficient and effective local remedies available to them in the State, before bringing the present Communication before the Commission. On the other hand, the Complainant states that they could not comply with the requirements under this article due to reasons that will be outlined below.
42. **Article 56(6)** provides that, Communications must be submitted within a reasonable period from the time local remedies are exhausted, or from the date the Commission is seized with the matter. From the wording of this Article, time-limit commences from the date when all local remedies are supposed to have been exhausted, and the phrase "or from the date the Commission is seized with the matter," does not apply to the case before the Commission because a Communication is only seized after the Complainant must have submitted the same, and this Communication has already been seized by the Commission. In addition, the African Charter does not expressly lay down a clear-cut time-limit for the Complainant to submit a Complaint. In this regard, 'reasonableness' of the time limit can rightfully be assessed by this Commission bearing in mind the circumstances of the case. The Commission is therefore of the opinion that, the Complaint was submitted within a reasonable time period because according to the facts herein, the Complainant submitted when it thought it practicable to do so. Based on the above, and the fact that this Article is not in contention with the Respondent State, the Commission holds that Article 56(6) has been satisfied by the Complainant.
43. Lastly, **Article 56(7)** provides that the Communication must not deal with cases which have been settled by states, in accordance with the principles of the United Nations, or the Charter of the OAU or the African Charter. This Communication has not been settled by any of these international bodies and thus, the requirement of Article 56(7) has been fulfilled by the Complainant.
44. The rationale for the exhaustion of local remedies is to ensure that before proceedings are brought before an international body, the State concerned must have the opportunity to remedy the matter through its own local system. This prevents the international tribunal from acting as a court of first instance rather than as a body of last resort.²³

²³ See Communications 25/84, 74/92 & 83/92.

45. Three major criteria could be deduced from the practice of the Commission in determining compliance with this requirement, that is: the local remedy must be **available, effective and sufficient**.
46. These three major criteria are clearly expressed by the Commission in **Sir Dawda K. Jawara v The Gambia**. In this case, the Commission held that '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.....'²⁴
47. The Complainant in the present Communication submit that it could not exhaust local remedies because there are no provisions in the national laws of Nigeria allowing them to seek remedies for the violations alleged.
48. It further avers that there was no local recourse readily available to them, "due to the strict interpretation of locus standi in Nigeria." Furthermore, that *locus standi* is not available in domestic courts due to the large number of students involved.
49. It also submits that, Nigerian courts will not easily be disposed to hear the matter because they do not enforce socio-economic rights. In addition, there is no equivalent of Articles 17 and 21 of the African Charter relating to the right to education and 'the right of people not to be disposed of their wealth and natural resources under Nigeria's Constitution or legislation.'
50. Lastly, the Complainant avers that the Nigerian judiciary process is weak and cases are unduly prolonged, making recourse to them ineffective.
51. The Respondent State on its part, submits that even though the rights alleged to have been violated are not justiciable under the Nigerian Constitution of 1999, the domestication of the African Charter by virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Chapter 10, Laws of the Federation of Nigeria 1990) empowers the Nigerian courts to enforce or give remedies under the provision of the African Charter. Furthermore, that Chapter 2(Sections 13 to 24) of the Nigerian Constitution of 1999 portrays the State's commitment to promotion and protection of the socio-economic rights of its citizens, and that the government has enunciated some policies and institutions that are aimed at protecting socio-economic rights of its citizens.
52. Considering the arguments brought by the Complainant before this Commission, the latter is of the view that, the Complainant has failed to prove that local remedies are not available. It is simply casting doubts

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See para. 32. of Communications 147/95 and 149/96

about the effectiveness and availability of the domestic remedies. However, it is also the Commission's view that the Policies and Institutions which have been enunciated by the government are administrative remedies and not legal remedies. Moreover, the Respondent has not shown the potential effectiveness of the local remedies that are alleged to exist for the benefit of the applicants.

53. The Complainant contends that it could not exhaust local remedies due to the strict interpretation of the principle of *locus standi* in Nigeria, especially when it involves a large number of plaintiffs. The Commission notes that, notwithstanding the strict interpretation of this rule, Nigerian courts allow class/representative actions where numerous persons have the same interest, right and a common grievance, and the judgement obtained is binding on all the persons represented.

54. Section 6(6)(b) of the 1979 Constitution in Nigeria, which is the same as Section 6(6)(b) in the 1999 Constitution provides that;

"The judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons, or between governments or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."

55. On the basis of the above, Justice Belo of the Supreme Court of Nigeria in the case of **Abraham Adesanya v President of the Federal Republic of Nigeria**, held that;

*"Section 6(6) (b) can be interpreted to mean that, standing can only be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or affected by the act complained of."*²⁵

56. The decision became a binding precedent for most class action litigations in Nigeria, even though there were dissenting opinions on the fact of considering Section 6(6) (b) as a test for *locus standi*. It was held in **NNPC v Fawehinmo** for instance that;

*"This section is not intended to be a catch-all, all purpose provision to be pressed into service for determining questions ranging from locus standi to the most uncontroversial questions of jurisdiction."*²⁶

²⁵ (1981) 2 NCLR 358

²⁶ (1998) 1 NWLR(pt.559) 598 at 612

57. Supporting Justice Belo's opinion in the **Adesanya case**, Justice Pats-Acholonu of the Supreme Court in **Ladejobi v Oguntayo**, also stated that;

*".....it is dangerous to limit the opportunity for one to canvass his case by rigid adherence to the ubiquitous principle inherent in locus standi which is whether a person has standing in a case. The society is becoming highly dynamic and certain stands of yester years may no longer stand in the present state of our social and political development."*²⁷

58. With the above submissions, this Commission is of the view that Nigerian courts can properly employ the *locus standi* rule in class actions. The question should not be whether it is a public or private action, but whether the applicants sufficiently prove violation of the rights alleged and demonstrates enough interest. For this reason, the Complainant cannot rely on the argument that it could not exhaust local remedies due to the large number of plaintiffs involved and the strict interpretation of the principle of *locus standi* in Nigeria.

59. With respect to the Complainant's assertion that the courts in the Respondent State are weak and ineffective, the African Commission is of the opinion that, the Complainant is simply casting doubts about the effectiveness of the domestic remedies.

60. The African Commission has held in **Article 19 v Eritrea**, that; "it is incumbent on the Complainant to take all necessary steps to exhaust, or at least attempt the exhaustion of local remedies," adding that; " it is not enough for the Complainant to cast aspersions on the ability of the domestic remedies of the State due to isolated incidences."²⁸ In the same case, the Commission referred to the Human Rights Committee's (the Committee) decision in **A v Australia**, in which the Committee held that; "mere doubts about the effectiveness of local remedies or prospect of financial costs involved did not absolve the author from pursuing such remedies."²⁹

61. Furthermore, the Commission held in **Mr. Obert Chingamo v Zimbabwe** that, "Complainants are required to set out in their submissions the steps taken to exhaust domestic remedies. They must provide some prima facie evidence of an attempt to exhaust local remedies."³⁰ Thus, the Commission is of the opinion that, by not attempting local remedies or substantiating the weaknesses or ineffectiveness, the Complainant cannot

²⁷ (2004) All FWLR(pt. 231) 1209 at 1235-1236

²⁸ See Communication 275/2003, Article 19 v Eritrea, para 67

²⁹ Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993(1997

³⁰ Communication 307/2005, para 84

rely on this argument as reasons for their non exhaustion of local remedies.

62. Regardless of the fact that there is no legislation in Nigeria domesticating the International Covenant on Economic, Social and Cultural Rights (the ESR Covenant), the 1999 Constitution of Nigeria has certain provisions which embody most of the rights enumerated in the ESR Covenant. These provisions are contained in **Chapter II** (Sections 13-24) of the Constitution and couched as **Fundamental Objectives and Directive Principles of State Policy**.
63. Even though it can be argued that, these are not rights, but mere Political, Economic, Social, Educational, Environmental, Cultural and Foreign Policy Directives and that these provisions are non justiciable by virtue of Section 6 (6) (c) of the Constitution, the African Commission is of the view that this Chapter provides a foundation upon which economic and social rights could be enjoyed, and its provisions indicate that the courts are not excluded from entertaining cases relating to socio-economic rights.
64. Section 16(2) (d) for instance, requires the state to direct its policy towards ensuring that "suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care, pension, unemployment, sick benefits and welfare of the disabled are provided for the citizens." Section 20 and 21 on the other hand, require the state to protect the environment and preserve and promote Nigerian cultures.
65. Furthermore, Nigeria is a State Party to the African Charter and has domesticated the same. By reason of this domestication as required by Section 12 of the 1999 Constitution, the African Charter has become part of Nigerian Law. The African Charter therefore constitutes a normative base for socio-economic rights claims which allow any claim brought under the Charter to be litigated before the national courts.
66. This was substantiated in **Abacha v Fawehinmi**, where the Supreme Court of Nigeria recognised the African Charter as part of Nigerian Law and that its provisions were justiciable. In that case, the Supreme Court stated that;

"The African Charter which is incorporated into our municipal law becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the courts. Thus, if the individual rights contained in the African Charter are justiciable in Nigerian courts and the African Charter does not recognise any

*generational dichotomy of rights, the articles conferring socio-economic rights are equally justiciable in the Nigerian courts.*³¹

67. This decision was also reflected in **Ogugu v The State**, where the Supreme Court held that:

*"By reason of its domestication, the African Charter has become part of Nigeria's domestic laws and the enforcement of its provisions...falls within the judicial powers of the courts as provided by the Constitution and all other laws relating thereto since the African Charter is part of Nigeria's domestic laws. Furthermore, that human and people's rights of the African Charter are enforceable by several High Courts depending on the circumstances of each case and in accordance with the rules, practice and procedure of each court."*³²

68. In **Oronto Douglas v Shell Petroleum Development Company Limited**, for instance, the Federal Government together with other oil companies, including Shell Petroleum Development Company as the Operator, decided to set up Nigeria's Liquefied Natural Gas Project at Bonny. This was in a bid to harness Nigeria's huge gas resources. However, the environmental impact assessment which is obligatory was not carried out until after the project was underway, and a private citizen's suit, challenging this was initially thrown out for lack of *locus standi*. The case was appealed and the Court of Appeal in Nigeria upheld the justiciability of an action brought on the basis of Article 24 of the African Charter (Ratification and Enforcement) Act.³³

69. All the Nigerian cases cited above are aimed at establishing the fact that socio-economic rights can be litigated in Nigerian Courts. Thus the Complainant could have made attempts to utilise the local remedies available instead of making presumptions that this Complaint would not be heard since Nigerian courts do not generally regard economic and social rights as legally enforceable human rights. The African Commission thus holds that, the Complainant has not utilised the domestic remedies available and has not demonstrated why this could not be done.

For the reasons outlined above, the African Commission declares this Communication inadmissible.

Adopted at the 5th Extraordinary Session of the African Commission on Human and Peoples' Rights, 21-29 July 2008, Banjul, The Gambia.

³¹ (2000) 6 NWLR (Pt 600) 228

³² (1994) 9 NWLR (pt 336) 1, 26-27

³³ (1999) 2 NWLR(pt 591) 466

Communication 308/2005 – Michael Majuru/Zimbabwe**Summary of Facts**

1. The Complainant, Michael Majuru (hereinafter called the Complainant), submitted this Communication against the Republic of Zimbabwe, (hereinafter called the Respondent State), a State Party to the African Charter on Human and Peoples' Rights (the African Charter). The Complainant is a citizen of the Respondent State and is currently residing in the Republic of South Africa.
2. The Complainant submits that the Respondent State has committed gross violations of human rights and fundamental freedoms against him through acts committed by the Minister of Justice, Legal and Parliamentary Affairs and the Central Intelligence Organisations (CIO) under the Office of the President and Cabinet.
3. The Complainant alleges further that that in committing the gross violations, the aforementioned organisations, individuals and organs of the state were acting in the course and scope of their employment as Respondent State's agents.
4. The Complainant submits further that his rights were abused because of his role as a presiding Judge in a case in which the Associated Newspaper Group of Zimbabwe (ANZ), a publishing house in the Respondent State, sought to challenge, before the Administrative Court, the Respondent State's act of banning ANZ from publishing its two newspapers, the Daily News and the Daily News on Sunday. The matter was lodged before the Administrative Court on or about 23 September 2003 and he presided over the matter.
5. The Complainant states that following his decision in favour of the ANZ, he became a target of human rights abuses wrought upon him by agents of the Respondent State and recounts the chronology of events that depict incidents in which the Respondent State allegedly violated his human rights.
6. The first incident is reported to have occurred on or about 24 September 2003. It is alleged that the Minister of Justice, Legal and Parliamentary Affairs, the Hon. Patrick Chinamasa invited the Complainant's workmate, who was also a Judge at the Administrative Court (Justice Chipo Machaka) to his office to issue instructions that the matter relating to the ANZ case that was to be presided over by the Complainant should be conducted in a manner that the said Minister was going to dictate. Justice Machaka was instructed by the Minister to convey these instructions to the Complainant, with an order that Complainant should comply with such

orders.

7. It is further alleged that the Minister also instructed that the Administrative Court should delay the court proceedings until February 2004, noting that the ANZ did not deserve impartial treatment by the Judiciary because it was a front of western nations and 'other imperialists'. Secondly, Justice Machaka is alleged to have been told that if the ANZ were granted its application for an urgent appeal hearing and thereafter allowed publication at that stage this would jeopardize continuing negotiations between ZANU PF and the Movement for Democratic Change (MDC), (the biggest opposition party in Zimbabwe), which according to the Minister, had reached a delicate stage. As proof of this delicate relationship between ZANU PF and MDC, Justice Machaka was shown a draft constitution agreed upon between the two parties and some other supporting documents.
8. The Complainant submits that he disregarded the aforesaid instructions and upon considering the ANZ's application on its merits ruled in favour of the ANZ by granting the application for an urgent appeal hearing on or about 27 September 2003. From 15 to 19 October 2003, the Complainant presided over the appeal hearing between the two parties. He adjourned the matter for judgment to 24 October 2003.
9. Subsequently, the Complainant states that he was summoned by Enoch Kamushinda, a suspected member of the CIO for a meeting at Kamushinda's office on 22 October 2003. This information was conveyed through another CIO operative with instructions that the Complainant should dismiss the ANZ appeal. As a reward for dismissing the ANZ appeal, Kamushinda promised the Complainant a fully developed farm in Mashonaland West Province.
10. The Complainant further states that on 23 October 2003 at around 21:00 hours, the Minister of Justice, Legal and Parliamentary Affairs, Hon. Patrick Chinamasa, telephoned and enquired from the Complainant whether he had finalised the judgment in the ANZ matter and what decision he had reached. The Complainant advised him that he was in the process of finalising the judgment and that he was going to allow the appeal. The Complainant states that the Minister expressed his displeasure with the said decision and further attempted to unduly influence and/or threaten the Complainant.
11. The Complainant claims that he went ahead to deliver the judgment in favour of ANZ at about 1600 hours on 24 November 2003. Subsequently, at about 2130 hours, Hon. Chinamasa in an angry telephone call to the Complainant, accused the latter of pre-determining the matter and berated him for delivering a judgment dictated by British agents and other

imperialist forces.

12. Subsequently, the Media and Information Commission (MIC) appealed to the Supreme Court against the decision of the Administrative Court. ANZ on the other hand decided to approach the Administrative Court seeking an order that its original decision be rendered operative notwithstanding the institution of an appeal by the MIC.
13. The Complainant claims that upon the lodging of this application by the ANZ, the Complainant was placed under immense pressure from agents of the Respondent State urging him to desist from dealing with the matter. The Complainant claims that the Respondent sent members of the CIO to track, trail and monitor the Complainant's movements and interactions with other people.
14. The Complainant alleges that on several occasions he was approached by Ben Chisvo, a suspected CIO informer, a former ruling ZANU PF Councillor of the City of Harare and also a war veteran. Chisvo sought to persuade the Complainant to recuse himself from presiding over the matter, claiming that the case was serious and sensitive and that President Mugabe did not want the ANZ to be registered. Chisvo further indicated that the President had set up a team led by a senior assistant commissioner of Zimbabwe, Changara, to monitor the proceedings in the ANZ matter and confirmed that the Complainant was being monitored by state security agents.
15. On 23 November 2003, at around 2300 hours, the Complainant received a telephone call from Chisvo in which he claimed that his car had had a puncture close to the Complainant's residence and requested for assistance. Upon meeting the Complainant, Chisvo demanded to know whether the former would preside over the ANZ matter or recuse himself as previously ordered. The Complainant informed Chisvo that he would be presiding over the ANZ matter.
16. The Complainant further alleges that, on 24 November 2003, following the Complainant's postponement of the ANZ matter upon the request of the two parties to the case, he received a telephone call from Hon. Chinamasa at around 21:00 hours. The Complainant states that the Minister alleged that he had information linking the Complainant to British agents and other imperialists and that the complainant was under investigation for these alleged links with the British agents and imperialists. The Minister also indicated that he was aware through his informants that the ANZ was going to succeed in the second matter which was pending before the Complainant. Shortly thereafter, Justice Machaka phoned the Complainant and advised him that the Minister of Justice had also phoned her ordering

her to meet him at his office the following morning. She informed the Complainant that the Minister wanted to be advised on how the Complainant intended to decide the ANZ matter in order for him to brief the Cabinet that morning. Soon after this telephone call from Justice Machaka, the Minister telephoned the Complainant once again ordering that they meet the following morning at his office at 0800 hours.

17. On 25 November 2003, the Complainant met with the Minister as instructed. The Minister wanted to know what the Complainant's decision in the ANZ matter would be but the Complainant declined to inform him stating that he had not yet heard the parties' arguments on the matter and was therefore in no position to know the outcome. The Complainant alleges that the Minister informed him that the Police Commissioner Augustine Chihuri had approached him the previous night with information that the Complainant was under investigation for colluding with British agents over the ANZ matter and was considering arresting him.
18. The Minister is also reported to have shown the Complainant the Herald newspaper which carried an article on its front page alleging that the Complainant was under probe over the ANZ matter. The Minister also produced an affidavit, which he said had been obtained from Chisvo by the Police Commissioner. In the said affidavit, Chisvo had made statements to the effect that the Complainant had informed Chisvo that the ANZ matter was predetermined.
19. The Complainant claims that as a result of such sustained and relentless pressure he had no other option but to recuse himself from the matter. Notwithstanding the recusal, the Complainant remained under surveillance by state security agents.
20. The Complainant states that on 1 December 2003, he received a telephone call from a member of the legal fraternity and the Police informing him that the Respondent State was fabricating a case against him and that he was to be arrested and incarcerated on unspecified charges as punishment for defying the Respondent's orders.
21. The Complainant alleges that fearing for his safety and security, he decided to go into hiding until 9 December when he fled to South Africa, where he remains in exile.
22. The Complainant submits that he is not the only member of the Judiciary who has been persecuted but that there is a systematic, consistent and sustained pattern of interference with the Judiciary by the Executive in the Republic of Zimbabwe.

Complaint

23. The Complainants allege that **Articles 3, 5, 8, 9, 14, 15, 16, 18 and 26** of the African Charter on Human and Peoples' Rights have been violated.
24. The Complainant requests that the African Commission should:-
 - a. Urge the Respondent State to institute an inquiry and investigation that should result in the Government of Zimbabwe bringing those who perpetrated the violations to justice
 - b. Order the Respondent State to pay compensation for the physical pain, psychological trauma, loss of earnings and job and access to family suffered by the Complainant.

Procedure

25. The Communication is dated 2 November 2005 and was sent by email to the Secretariat, and was received on 8 November 2005.
26. On 17 November 2005, the Secretariat acknowledged receipt of the Communication and informed the Complainant that the Communication would be scheduled for consideration by the African Commission at its 38th Ordinary Session.
27. At its 38th Ordinary Session held from 21 November - 5 December 2005 in Banjul, The Gambia, the African Commission considered the Communication and decided to be seized of it.
28. By Note Verbale dated 8 December 2005, the Secretariat transmitted a copy of the Communication to the Respondent State by DHL and requested it to forward its submissions on admissibility within 3 months. The Complainant was also requested to send his submissions on admissibility within 3 months.
29. By letter and Note Verbale dated 20 March 2006, the parties to the Communication were reminded to forward their written submissions on admissibility of the Communication.
30. On 3 April 2006, the Secretariat received submissions on admissibility of the Communication from one Gabriel Shumba. By letter dated 12 April 2006, the Secretariat of the African Commission wrote to Gabriel Shumba informing him that the Communication had been brought before the African Commission by Michael Majuru who had never made any indication to the African Commission that Gabriel Shumba could make representations on his behalf. This letter was also copied to the Complainant- Michael Majuru.

31. As at the 40th Ordinary Session there had been no reply from the Complainant. The Communication was therefore deferred to the 41st Ordinary Session pending the reply of the Complainant and Mr. Shumba, as well as the Respondent State's submission on admissibility.
32. By letter and Note Verbale dated 11 December 2006, written to the Complainant and Respondent State respectively, the parties were informed by the Secretariat, about the decision of the African Commission during its 40th Session, to consider the admissibility of the Communication during its 41st Session. The parties were asked to send their Submissions on admissibility within 3 months of receiving the letters.
33. The Complainant sent an email on 18 December 2006, confirming that Zimbabwe Exiles Forum to which Gabriel Shumba is the Executive Director are his agents in the matter and that the Secretariat should acknowledge submissions made by them.
34. By Note Verbale dated 4 January 2007, the Secretariat reminded the Respondent State of the Commission's decision during its 40th Ordinary Session, and asked them to make their submissions on admissibility within 3 months of receipt of the notification. Another reminder by way of a Note Verbale dated 10 April 2007 was also sent to the Respondent State.
35. On 24 April 2007, the Secretariat received the Respondent State's submission on admissibility. The Respondent State's submission was forwarded to the Complainant by email and he was asked to make additional submissions (if any), in order to address some important points which were raised by the Respondent State in its submission.
36. During its 41st Ordinary Session, the African Commission decided to defer consideration of the Communication to its 42nd Ordinary Session for its decision on admissibility.
37. By letter ACHPR/LPROT/COMM/308/2005/ZIM/TN dated 20 July 2007 and by Note Verbale ACHPR/LPROT/COMM/308/2005/ZIM/RE, with the same date, the parties were informed of the decision of the African Commission to defer consideration of the Communication to its 42nd Ordinary Session.
38. At its 42nd Ordinary session held in Brazzaville, Republic of Congo, the Commission considered this communication and decided to defer further consideration into the 43rd ordinary session due to lack of time.

39. By note verbale of 19 December 2007 and letter of the same date, the Secretariat of the Commission notified both parties of the Commission's decision.

Complainant's submission on admissibility

40. The Complainant submitted that he has local standing before the African Commission as the Communication is brought by himself, a citizen of Zimbabwe, the Respondent State in this matter. Regarding compatibility, the Complainant submitted that the Communication raises a *prima facie* violation of the African Charter committed by the Respondent State. He submitted further that the evidence he has submitted reveals that the Communication is not based exclusively on news disseminated by the mass media, adding that it is based on first hand evidence – including reports by reputable human rights organizations.
41. On the exhaustion of local remedies, the Complainant submitted that the onus is on the State to demonstrate that remedies are available, citing the Commission's decisions in the cases of *Rencontre Africaine pour la Defense des Droits de l'Homme v. Zambia*³⁴ and *Sir Dawda K. Jawara v The Gambia*³⁵. The Complainant added that the remedy in his particular circumstance is not available because he cannot make use of it, that he was forced to flee Zimbabwe for fear of his life and that of his immediate family, because of his work as a judge of the Administrative Court. That he fled to the Republic of South Africa following threats of arrest and unspecified harm by the Respondent State.
42. The Complainant drew the Commission's attention to its decision on *Rights International v Nigeria*,³⁶ where the Commission held that a complainant's inability to pursue local remedies following his flight for fear of his life to Benin, and was subsequently granted asylum was sufficient to establish a standard for constructive exhaustion of local remedies. He concluded by noting that considering the fact that he was no longer in the Respondent State's territory where remedies could be sought, and that he fled the country *against his will* due to threat to his life, remedies could not be pursued without impediments.
43. The Complainant also challenged the effectiveness of the remedies noting that remedies are effective only where they offer a prospect of success. He claimed the Respondent State's reaction to court rulings that go against it is well documented by reputable international and African NGOs, noting that the Respondent State treats court rulings that go against it with *indifference and disfavour, and that he does not expect that in his case,*

³⁴ Communication 71/1992.

³⁵ Communication 146/96.

³⁶ Communication 215/98

any decision of the court would be adhered to. He said there was a tendency in the Respondent State to ignore court rulings that went against it and added that the Zimbabwe Lawyers for Human Rights had documented at least 12 instances where the State had ignored court rulings since 2000. He cited the ruling of the High Court in the **Commercial Farmers Union, the Mark Chavunduka and Ray Choto** cases, where, in the latter case, the duo were allegedly abducted and tortured by the army. He concluded that given the prevailing circumstances and the nature of his complaint and the Respondent State's well publicized practice of non-enforcement of court decisions, his case had no prospect of success if local remedies were pursued and according to him, not worth pursuing. Finally, the Complainant submitted that he could not have exhausted local remedies as any such exhaustion would have to comply with the States Liabilities Act which prevents the complainant from suing the Respondent State after the expiration of two months of the date of the incident complained of, if no prior notice has been given.

44. The Complainant further submitted that the Communication was submitted 22 months after the violation because he hoped that the situation in the country would improve to enable him utilize domestic remedies. He said there is instead a deterioration of the situation and hope of improvement is highly unlikely in the near future, adding that 'continuing to wait whilst the Complainant is undergoing tremendous psychological torture and suffering attributable to his persecution will undoubtedly cause irreparable harm'. The Complainant added that since he fled to South Africa he has been undergoing psycho-therapy and was not in a position to submit his Communication to the Commission.
45. The Complainant indicated other reasons that prevented him from submitting his complaint on time, including the fact that the judiciary abides by a code of conduct in terms of which they do not ordinarily speak out and take positions against the establishment, noting that out of eight or so members who have left Zimbabwe because of persecution, he is the only one who was speaking out. He added that he was afraid for the lives of members of his immediate family that were at risk of persecution because of him and that he was unable to submit immediately for want of resources and facilities, noting that the submission was made possible through the assistance and support of well wishers.
46. Finally, Complainant further submitted that the Communication had not been before any other international body for settlement as required by Article 56 (7).

Respondent State's submission on admissibility

47. The Respondent State briefly restated the facts of the Communication and indicated that it will attend to the matters of fact, pertaining to the complaint 'in order to put the Communication in proper perspective'. The State submitted that the Complainant was appointed to the Office of Administrative Court President in terms of Section 79 of the Constitution of Zimbabwe, read together with the Administrative Court Act. The State added that while performing his functions as a Magistrate, Presidents of the Administrative Court are not judges, noting that in essence, the Complainant was not a judge.
48. According to the State, the Complainant was supposed to be in a court in Bulawayo, but due to his poor health and his relationship with the Minister of Justice, he was appointed to the Administrative Court in Harare. The State noted that Complainant was a sick man throughout his whole duration at the court and added that 'in fact from the time of his appointment as a Court President, the Complainant used to travel to South Africa to seek medical attention'.
49. The State claims that Complainant applied for two weeks vacation from 9 – 31 December 2003 and went to South Africa for medical attention. That he then tendered his resignation on 14 January 2004. The State observed that even though the letter has a Zimbabwean address, an examination of the delivery slip showed that it had been dispatched from South Africa. The State concluded that the above circumstances which show how Complainant left the country do not amount to forced flight as he claims.
50. The State questioned why Complainant would take steps to regularize his absence from office by applying for vacation leave and tender his resignation to the Minister who was threatening him. Without producing any document, the state added that it is apparent from the documents available that he was maintaining dialogue with a government which he claims was persecuting him. The State observed further that the letter of resignation even showed the address Complainant was residing and 'assuming the government of Zimbabwe really wanted his life, it would have used the address he had volunteered to track him'. The State concluded by stating that the truth is that 'complainant was never threatened by anyone, anywhere both within and outside Zimbabwe'.
51. On the admissibility of the Communication, the State argued that the Communication be declared inadmissible for non-compliance with the provisions of Article 56 (2), (5) and (6) of the Charter.
52. The State argued that the Communication is not compatible as required by Article 56 (2) of the Charter, as it makes general allegations without

substantiating, adding that, for a complaint to be compatible with the Charter or the Constitutive Act, it must prove a *prima facie* violation of the Charter. According to the State, the facts raised in the Communication do not raise any violation of the Charter, noting that 'basically the facts and issues in dispute do not fall within the *rationae materiae* and *rationae personae* of the jurisdiction of the Commission.

53. On the exhaustion of local remedies under article 56 (5), the State submitted that local remedies were available to the Complainant, citing section 24 of the Constitution of Zimbabwe which provides the course of action to be taken where there is human rights violation. The State added that there is no evidence to prove that the Complainant pursued local remedies. The State further indicated that in terms of Zimbabwe law, where one is engaged in acts that violate the rights of another person, that other person can obtain an interdict from the court restraining the violator from such act.
54. On the effectiveness of the remedies, the State submitted that the Constitution provides for the independence of the judiciary in the exercise of its mandate in conformity with both the UN Principle on an independent Judiciary and the African Commission's Guidelines on the right to a fair trial.
55. The State dismissed the Complainant's argument that his case is similar to those brought by Sir Dawda Jawara against The Gambia and Rights International (on behalf of Charles Baridorn Wiza) against Nigeria, adding that in the latter cases, there was proof of real threat to life. The State went further to indicate instances where the government has implemented court decisions that went against it.
56. The State further indicated that in terms of Zimbabwe law, it is not a legal requirement for a Complainant to be physically present in the country in order to access local remedies, adding that both the High Court Act and the Supreme Court Act permit any person to make an application to either court through his/her lawyer. The State added that in the Ray Choto and Mark Chavhunduka case, the victims were tortured by State agents and they applied for compensation while they were both in the United Kingdom and succeeded in their claim. The State concluded that the Complainant is not barred from pursuing remedies in a similar manner.
57. The State further submitted that since his resignation, the government of Zimbabwe continues to pay the Complainant his pension benefits and argued that the excuse raised by the Complainant of lack of resources to enable him submit his complaint on time is therefore without merit, adding that he could have instructed his counsel in Zimbabwe to attend to his claim on his behalf.

58. According to the State, the Complainant sought to mislead the Commission by claiming that under the State Liabilities Act, claims against the State are prescribed within a period of sixty days. The State indicated that section 6 of the Act is clear that the sixty days is in respect of a notice of intention to sue. The Act prescribes that a summons against a State in certain matters must be delivered sixty days after the notice of intention to sue, and according to the State, this would actually work well for the Complainant, adding that the period of proscription of claims is three years and complainant's claim was not yet three years and thus not proscribed.
59. The State also submitted that the complaint does not conform to article 56 (6) of the Charter indicating that the Communication should be lodged within a reasonable time after exhaustion of local remedies, but where Complainant realizes that local remedies shall be unduly prolonged, he/she must submit the complaint to the Commission immediately. According to the State, although the Charter does not specify what constitute a reasonable time, the Commission should get inspiration from the other jurisdictions, including the Inter-American Commission which has fixed six months as reasonable time, adding that even the draft protocol merging the African Court of Justice and the African Court on Human and Peoples' Rights provides for six months.
60. The State argued that the Communication was submitted 22 months after the alleged violation, which according to the State 'was filed well out of time'. On Complainant's submission that he had been seeking psychotherapy treatment, the State argued that Complainant had been the centre of attraction in South Africa since 2004, demonizing the Respondent State, adding that articles published by Complainant in the South African press do not show someone with a psychological ailment. The State added that no proof had been given of the alleged treatment or an expert diagnosis of how such condition was acquired. On Complainants' claim that he had no resources, the State argued that he had his pension benefits which he could have used to submit his complaint to the Commission.
61. The state concluded its submissions by noting that 'no cogent reasons have been given for the failure to pursue local remedies or remedies before the Commission within a reasonable time', and as such the Communication should be declared inadmissible.

LAW
Admissibility

Competence of the African Commission

62. In the present Communication, the Respondent State raises a question regarding the competence of the African Commission to deal with this Communication. The State avers that: (quote) "...basically the facts and issues in dispute do not fall within the *rationae materiae* and *rationae personae* of the jurisdiction of the Commission". This statement thus challenges the competence of the African Commission to deal with this Communication. The Commission will thus, first deal with the preliminary issue of its competence raised by the Respondent State.
63. Black's law dictionary defines *rationae materiae* as "**by reason of the matter involved; in consequence of, or from the nature of, the subject-matter**" While *rationae personae* is defined as "**By reason of the person concerned; from the character of the person**".³⁷
64. Given the nature of the allegations contained in the Communication, such as allegations of violation of personal integrity or security, intimidation and torture, the Commission is of the view that the Communication raises material elements which may constitute human rights violation, and as such, it has competence *rationae materiae* to deal with the matter, because the Communication alleges violations to human rights protected in the Charter. With regards to the Commission's competence *rationae personae*, the Communication indicates the name of the author, an individual, whose rights under the African Charter, the Respondent State is committed to respecting and protecting. With regards to the State, the Commission notes that Zimbabwe, the Respondent State in this case, has been a State Party to the African Charter since 1986. Therefore, both the Complainant and the State have *locus standi* before the Commission, and the Commission thus has competence *rationae personae* to examine the Communication.
65. Having decided that it has competence *rationae materiae* and *rationae personae*, the African Commission will now proceed to pronounce on the admissibility requirements and the contentious areas between the parties.

³⁷ HC Black, JN Nolan-Haley & JR Nolan Blacks LAW Dictionary (6 ed) 1990, 1262-1263. St Paul Minn. West Publishing Co.

Decision of the African Commission on admissibility

66. The admissibility of Communications before the African Commission is determined by the requirements of Article 56 of the African Charter. This Article provides seven requirements which must all be met before the Commission can consider and declare a Communication admissible. If one of the conditions/requirements is not met, the Commission shall declare the Communication inadmissible, unless the complainant provides justifications why any of the requirements could not be met.
67. In the present Communication, the Complainant avers that his complaint meets the requirements under Article 56 (1) - (4), (6) and (7). He admits that he did not attempt to comply with the requirement provided under Article 56 (5) dealing with the exhaustion of local remedies, but added that given the nature of his case, and the circumstances under which he left the Respondent State, and is living in South Africa, the exception rule under this sub-section of Article 56, should be invoked.
68. The State on the other hand argues that the Complainant has not complied with the provisions of Article 56 (2), (5) and (6) of the Charter, and urges the Commission to declare the Communication inadmissible, based on non-compliance with these requirements.
69. The African Commission will thus examine each of the provisions under Article 56 of the African Charter, whether it is disputed or not, as the African Commission has a responsibility to ensure that every requirement in Article 56 has been fulfilled before admitting a Communication.
70. The requirements under Article 56 of the Charter are meant to ensure that a Communication is properly brought before the Commission, and seek to sieve frivolous and vexatious Communications before they reach the merits stage. Thus, declaring a Communication admissible does not mean the State Party concerned has violated the provisions of the Charter. It simply means that the Communication meets the requirements necessary for it to be considered on the merits. As indicated earlier, for a Communication to be declared admissible, it must meet all the requirements under Article 56. Therefore, if a party contends that another party has not complied with one of the requirements, the Commission must pronounce itself on the contentious issues between the parties, as well as the non-contentious issues.
71. **Article 56(1)** of the African Charter provides that Communications will be admitted if they indicate their authors, even if they request anonymity. In the present case the author of this Communication is identified as Michael Majuru, he has also not requested that his identity be hidden. The respondent State has also been clearly identified as the Republic of

Zimbabwe. Therefore the provision of Article 56(1) has been adequately complied with.

72. **Article 56(2)** of the African Charter provides that a Communication must be compatible with the Charter of the OAU (now Constitutive Act of the African Union) or with the African Charter on Human and Peoples' Rights. In the present Communication, the Respondent State argues that the Communication does not comply with this requirement. The State asserts in this regard that, for a complaint to be compatible with the Charter or the Constitutive Act, it must prove a *prima facie* violation of the Charter.
73. Compatibility denotes 'in compliance' or 'in conformity with' or 'not contrary to' or 'against'.³⁸ In the present Communication, the Complainant alleges among others, violations of his right to personal integrity and being subjected to intimidation, harassment and psychological torture. He alleges further that agents of the intelligence service of the Respondent State constantly harassed him and prevented him from exercising his duties freely. These allegations do raise a *prima facie* violation of human rights, in particular, the right to the security of the person or personal integrity and the right to work under satisfactory condition as stipulated in the Charter. In the jurisprudence of this Commission, Complainants need not specify which articles of the Charter have been violated, or even which right is being invoked, so long as they have raised the substance of the issue in question. That, in the view of the Commission, has been established in this case. Based on the above, the African Commission is satisfied that the requirement of Article 56(2) of the African Charter has been sufficiently complied with.
74. **Article 56(3)** of the Charter provides that a Communication will be admitted if they are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity (now the African Union). In the present case, the Communication sent by the Complainant, does not, in the view of the African Commission, contain any disparaging or insulting language, and as a result of this, the requirement of Article 56(3) has been fulfilled.
75. **Article 56(4)** of the Charter provides that the Communication must not be based *exclusively* on news disseminated through the mass media. This Communication was submitted by the complainant himself and gives an account of his personal experience with the law enforcement agents of the Respondent State. As a result of this, the requirement of Article 56(4) has also been met.

76. **Article 56(5)** of the Charter provides that a Communication will be admitted only after all local remedies have been exhausted. The Respondent State contends that the Complainant has not brought his case before the courts of the State in compliance with this provision of the Charter. The State argues that there are sufficient and effective local remedies available to the Complainant in the State, and the Complainant has not sought these remedies before bringing the present Communication before the Commission. On the other hand, the Complainant argues that since he had to flee the country due to fear for his life, he could not come back to the country to pursue these local remedies.
77. The rationale for the exhaustion of local remedies is to ensure that before proceedings are brought before an international body, the State concerned must have the opportunity to remedy the matter through its own local judicial system. This prevents the international tribunal from acting as a court of first instance, rather than as a body of last resort.³⁹
78. Three major criteria could be deduced from the practice and jurisprudence of the Commission in determining compliance with this requirement, namely: the remedy must be *available, effective and sufficient*.
79. In **Jawara v The Gambia**, the Commission stated that "*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*". In the **Jawara** Communication, which both parties have cited, the Commission held that "*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 fear for his life (or even those of his relatives), local remedies would be considered to be unavailable to him*".
80. The Complainant in the present Communication claims that he left his country out of fear for his life due to intimidation, harassment and undue influence in the exercise of his duties. The Complainant has also alleged a history of non-compliance with the orders of the court of the Respondent, and alleges that a human rights NGO in Zimbabwe – the Zimbabwe Lawyers for Human Rights, has documented 12 cases since the year 2000, where the State has ignored court rulings that go against it. According to the Complainant, it is noteworthy that although local remedies may be available in the Respondent State, there is no assurance of its effectiveness or its implementation due to the fact that if the court

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Communications 25/84, 74/92 and 83/92.

rules in favour of the complainant, there is no guarantee that the ruling will be complied with by the State.

81. The Complainant cited the African Commission's decisions in the **Jawara case** and the cases of **Alhassan Abubakar v Ghana**⁴⁰ and **Rights International/ Nigeria**⁴¹ in which he said the Commission found that the Complainants in these cases could not be expected to pursue domestic remedies in their country due to the fact that they had fled their country and were in fact residing outside their country at the time the Communications were brought before the Commission.

82. Having studied the Complainant's submissions, and comparing it with the above cases cited in support of his claim, this Commission is of the opinion that the above cases cited by the Complainant are not similar to his case. In the **Jawara case** for example, the Complainant was a former Head of State who had been overthrown in a Military coup. Mr. Jawara alleged that after the coup, there was "blatant abuse of power by ... the military junta". The military government was alleged to have initiated a reign of terror, intimidation and arbitrary detention. He further alleged 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. The Communication alleged the banning of political parties and of Ministers of the former civilian government from taking part in any political activity. The Communication further alleged 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.

83. In the **Jawara case**, the Commission concluded that "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. 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". The

⁴⁰ Communication 103/93

⁴¹ Communications 215/98

Commission finally noted that, "it would be an affront to common sense and logic to require the complainant to return to his country to exhaust local remedies".

84. In the **Alhassan Abubakar case**, it should be recalled that Mr. Alhassan Abubakar was a Ghanaian citizen who was arrested by the Ghanaian authorities in the 1980s for allegedly cooperating with political dissidents. He was detained without charge or trial for over 7 years until his escape from a prison hospital on 19 February 1992 to Cote d'Ivoire. After his escape, his sister and wife, who had been visiting him in Cote d'Ivoire, were arrested and held for two weeks in an attempt to get information on the Complainant's whereabouts. The Complainant's brother informed him that the police have been given false information about his return, and have on several occasions surrounded his house, searched it, and subsequently searched for him in his mother's village.
85. In the early part of 1993, the UNHCR in Côte d'Ivoire informed the Complainant that they had received a report on him from Ghana assuring that he was free to return without risk of being prosecuted for fleeing from prison. The report further stated that all those detained for political reasons had been released. Complainant on the other hand maintained that there is a law in Ghana which subjects escapees to penalties from 6 months to 2 years imprisonment, regardless of whether the detention from which they escaped was lawful or not. On the basis of the above, the Commission held that "considering the nature of the Complaint it would not be logical to ask the Complainant to go back to Ghana in order to seek a remedy from national legal authorities. Accordingly, the Commission does not consider that local remedies are available for the complainant".
86. In **Rights International v. Nigeria**⁴², the victim, a certain Mr. Charles Baridorn Wiwa, a Nigerian student in Chicago was arrested and tortured at a Nigerian Military Detention Camp in Gokana. It was alleged 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 and remained in the said Military detention camp from 3-9 January 1996. While in detention, Mr. Wiwa was horsewhipped and placed in a cell with forty-five other detainees. When he was identified as a relative of Mr. Ken Saro - Wiwa he was subjected to various forms of torture. Enclosed in the Communication was medical evidence of Mr. Wiwa's physical torture. After 5 days in the detention camp in Gokana, Mr. Wiwa was transferred to the State Intelligence Bureau (SIB) in Port Harcourt. 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. On 11 January 1996, Mr. Wiwa and 21 other Ogonis were brought before the Magistrate Court 2

⁴² Communication 215/98.

in Port-Harcourt, charged with unlawful assembly in violation of Section 70 of the Criminal Code Laws of Eastern Nigeria 1963. Mr. Wiwa was granted bail, but while 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. 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. On September 17 1996, the US government granted him refugee status and he has been residing in the United States since then.

87. In this case, the African 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. It went further to assert that "the standard for constructive exhaustion of domestic remedies is satisfied where there is no adequate or effective remedy available to the individual. In this particular case, ... 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".
88. The present Communication brought by Mr. Michael Majuru should also be differentiated from **Gabriel Shumba v Republic of Zimbabwe**.⁴³ In the Shumba case, the Complainant alleged that, he, in the presence of 3 others, namely Bishop Shumba, Taurai Magayi and Charles Mutama, was taking instructions from one of his clients, a Mr. John Sikhala, in a matter involving alleged political harassment by members of the Zimbabwe Republic Police (ZRP). Mr. John Sikhala is a Member of Parliament for the Movement for Democratic Change (MDC), which is an opposition party in Zimbabwe. At about 11:00 pm riot police accompanied by plain-clothes policemen and personnel identified to be from the Central Intelligence Organization (CIO) stormed the room and arrested everyone present. During the arrest, the Complainant's law practicing certificate, diary, files, documents and cell phone were confiscated and he was slapped and kicked several times by, among others, the Officer in Charge of Saint Mary's Police Station.
89. The Complainant and the others were taken to Saint Mary's Police Station where he was detained without charge and denied access to legal representation. He was also denied food and water. The Complainant claimed that on the next day following his arrest, he was removed from the cell, a hood was placed over his head and he was driven to an unknown location where he was led down what seemed like a tunnel to a room underground. The hood was removed, he was stripped naked and his hands and feet were bound in a foetal position and a plank was thrust

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between his legs and arms. While in this position, the Complainant was questioned and threatened with death by about 15 interrogators. The Complainant further alleged that he was also electrocuted intermittently for 8 hours and a chemical substance was applied to his body. He lost control of his bodily functions, vomited blood and he was forced to drink his vomit. The Complainant submitted a certified copy of the medical report describing the injuries found on his body. Following his interrogation, at around 7pm of the same day, the Complainant was unbound and forced to write several statements implicating himself and several senior MDC members in subversive activities. At around 7.30pm he was taken to Harare Police Station and booked into a cell. On the third day of his arrest, his lawyers who had obtained a High Court injunction ordering his release to court were allowed to access him. The Complainant was subsequently charged under section 5 of the Public Order and Security Act that relates to organizing, planning or conspiring to overthrow the government through unconstitutional means. He then fled Zimbabwe for fear of his life.

90. In the above cases, there is one thing in common – the clear establishment of the element of fear perpetrated by identified state institutions, fear which in the **Jawara case**, the Commission observed that “it would be reversing the clock of justice to request the complainant to attempt local remedies”.
91. In the Communication under consideration, however, Mr. Michael Majuru alleges that he fled the country for fear of his life, that he was intimidated and harassed by the Minister of Justice and by *suspected* state agents. He also indicated that he received ‘a telephone call from a sympathetic member of the legal fraternity and the police that the Respondent State was fabricating a case against him and that he was to be arrested and incarcerated on unspecified charges as punishment for defying the Respondent’s orders’.
92. In this Communication, it is clear that the Complainant has simply made general accusations and has not corroborated his allegations with documentary evidence, sworn affidavits or testimonies of others. He claims the Minister sent an instruction through a colleague of his but there is no way of ascertaining this fact. The applicant was the President of the Administrative Court, and has not show how the instruction purportedly sent by the Minister through the Complainant’s colleague, who the Commission is not told the kind of influence he had over the Complainant, could have or did intimidate him. Apart from the direct telephone call the Complainant claims he received from the Minister on 23 October and 24 November 2003, all the alleged threats, intimidations and harassment he claims, were perpetrated by persons he suspects were government agents. Most of his allegations are unsubstantiated. For example, he indicated in paragraph 2.5.4.7 of his

submissions that "the Minister expressed his displeasure with the said decision and further attempted to unduly influence and/or threaten the Complainant". He fails to show how this attempted influence or threat by the Minister was carried out.

93. It is further observed by the Commission that the alleged threat or pressure claimed by the Complainant to have been meted by Enoch Kamushinda, who the complainant himself refers to as a *suspected Central Intelligence Organisation (CIO) operative*, has not been substantiated; neither has the purported pressure and entrapment alleged to have been made by Mr. Ben Chisvo, who according to the Complainant, is a *suspected CIO informer*. Furthermore, the Complainant alleged he received a telephone call from a sympathetic member of the legal fraternity and the police that the Respondent State was fabricating a case against him, and that he was to be arrested and incarcerated on unspecified charges as punishment for defying the Respondent's orders. All the above allegations are not substantiated. Take the latter for example, what if the 'sympathetic member of the legal fraternity' was a hoax? What if he was acting on his own or wanted to benefit from the misfortune of the Complainant? His or her name is not even known.
94. It is not possible for the Commission to determine the level of intimidation or harassment that is needed to instil fear in a person, to force that person to flee for their life. However, in the instant case, there is no concrete evidence to link the complainant's fear to the Respondent State.
95. It is therefore the opinion of the Commission that the Complainant has not sufficiently demonstrated that his life or those of his close relatives were threatened by the Respondent State, forcing him to flee the country, and as such, cannot hold that the Complainant left the country due to threats and intimidation from the State.
96. However, the question is, having left the country, could the Complainant still have exhausted local remedies or better still is he required to exhaust local remedies?
97. The first test that a local remedy must pass is that it must be available to be exhausted. The word "available" means "readily obtainable"; "accessible";⁴⁴ or "attainable, reachable; on call, on hand, ready, present; . . . convenient, at one's service, at one's command, at one's disposal, at one's beck and call."⁴⁵ According to the African

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WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 102 (1989).

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LONGMAN SYNONYM DICTIONARY 82 (1986).

Commission, a remedy is considered to be available if the petitioner can pursue it without impediments or if he can make use of it in the circumstances of his case.⁴⁶ In the present Communication, the question to be asked is whether there were remedies available to the Complainant even from outside the Respondent State?

98. The State indicates that in terms of its laws, a Complainant need not be physically present in the country in order to access local remedies, adding that both the High Court Act and the Supreme Court Act permit any person to make an application to either court through his/her lawyer. In support of this, the State cited the Ray Choto and Mark Chavhunduka case where the victims were tortured by state agents and they applied for compensation while they were both in the United Kingdom and succeeded in their claim. The State concluded that the Complainant is not barred from pursuing remedies in a similar manner. The State further argues that since his resignation, the government of Zimbabwe continues to pay the Complainant his pension benefits which he could have used to instruct his counsel in Zimbabwe to attend to his claim on his behalf.
99. The Complainant does not dispute the availability of local remedies in the Respondent State, but argues that in his particular case, having fled the country for fear of his life, and now out of the country, local remedies are not available to him.
100. The African Commission holds the view that having failed to establish that he left the country involuntarily, and in view of the fact that in Zimbabwe law, one need not be physically in the country to access local remedies, the Complainant cannot claim that local remedies were not available to him.
101. The Complainant argues that even if local remedies were available, they were not effective because the State has the tendency of ignoring court rulings taken against it, citing among others, the High Court decision in the Commercial Farmers Union and the Ray Choto and Mark Chavhunduka cases, and added that the Zimbabwe Lawyers for Human Rights has documented at least 12 instances where the state has ignored court rulings since 2000.
102. The Rules of Procedure of the African Commission provide that "[t]he Commission shall determine questions of admissibility pursuant to Article 56 of the Charter."⁴⁷ Generally, the rules require applicants to set out in their submissions the steps taken to exhaust domestic remedies.

⁴⁶ *Jawara v. The Gambia*, *supra*.

⁴⁷ See Rule 116 of the Rules of Procedure of the African Commission.

They must provide some *prima facie* evidence of an attempt to exhaust local remedies. The Human Rights Committee has stated that the mere fact that a domestic remedy is inconvenient or unattractive, or does not produce a result favorable to the petitioner does not, in itself, demonstrate the lack of exhaustion of all effective remedies.⁴⁸ In the Committee's decision on **A v Australia**,⁴⁹ it held that "mere doubts about the effectiveness of local remedies or prospect of financial costs involved did not absolve the author from pursuing such remedies."⁵⁰ In **Article 19 v Eritrea**, the Commission held that "it is incumbent on the Complainant to take all necessary steps to exhaust, or at least attempt the exhaustion of local remedies. It is not enough for the Complainant to cast aspersion on the ability of the domestic remedies of the State due to isolated incidences". The European Court of Human Rights on its part has held that even if the applicants have reason to believe that available domestic remedies and possible appeals will be ineffective, they should seek those remedies since "it is generally incumbent on an aggrieved individual to allow the domestic courts the opportunity to develop existing rights by way of interpretation."⁵¹

103. From the above analysis, this Commission is of the view that the complainant ignored to utilize the domestic remedies available to him in the respondent State, which had he attempted, might have yielded some satisfactory resolution of the complaint.
104. **Article 56(6)** of the Charter provides that "*Communications received by the Commission will be considered if they are submitted within a reasonable period from the time local remedies are exhausted, or from the date the Commission is seized with the matter...*" The respondent State contends that the present Communication was not submitted on time by the complainant, as required by the African Charter.
105. The present Communication was received at the Secretariat of the Commission on 8 November 2005 (even though dated 2 November 2005). It was considered for seizure by the Commission in November 2005, that is, two years after the Complainant allegedly fled from the

⁴⁸ Nos. 220/1987, *T. K. v. France*; 222/1987, *M. K. v. France*; 306/1988, *J. G. v. The Netherlands*, in 2 Report of the Human Rights Committee 188, 122; 127, 130; 180, 182–83, UN Doc. A/45/40 (1990) [hereinafter HRC 1990 Report].

⁴⁹ Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997).

⁵⁰ See also *L. Emil Kaaber v. Iceland*, Communication No. 674/1995, UN Doc. CCPR/C/58/D/674/1995 (1996). See also *Ati Antoine Randolph v. Togo*, Communication No. 910/2000, UN Doc. CCPR/C/79/D/910/2000 (2003).

⁵¹ PHILIP LEACH, *TAKING A CASE TO THE EUROPEAN COURT OF HUMAN RIGHTS* 79 (2001) (quoting *Earl Spencer and Countess Spencer v. United Kingdom*, App. Nos. 28851/95, 28852/95 (Eur. Comm'n on H.R. 1998)).

country. The Complainant never approached the courts of the Respondent State. He left the country in December 2003 and only seized the Commission twenty two months later. The Complainant submits without substantiating that he had been undergoing psychotherapy while in South Africa, and also indicated that he did not have the financial means to bring the case before the Commission. He also stated that he had hoped the situation in the country would improve to enable him utilize domestic remedies but there was instead a deterioration.

106. The Commission notes that the Complainant is not residing in the Respondent State and notes further that the Complainant indicated that he was prevented from submitting his complaint on time, because the judiciary abides by a code of conduct in terms of which they do not ordinarily speak out and take positions against the establishment, noting that out of eight or so members who have left Zimbabwe because of persecution, he is the only one who was speaking out. He added that he was afraid for the lives of members of his immediate family that were at risk of persecution because of him.
107. The State on its part argues that "no cogent reasons have been given for the failure to pursue local remedies or remedies before the Commission within a reasonable time". The State submits that the Communication was submitted 22 months after the alleged violation, which according to the State 'was filed well out of time'. On Complainant's submission that he had been seeking psycho-therapy treatment, the State argued that Complainant had been the *centre of attraction* in South Africa since 2004 demonizing the Respondent State, adding that articles published by the Complainant do not show someone with a psychological ailment. The State added that no proof had been given of the alleged treatment or an expert diagnosis of how such condition was acquired. On Complainants' claim that he had no resources, the State argued that he had his pension benefits which he could have used to submit his complaint to the Commission.
108. The Charter does not provide for what constitutes "reasonable period". However, the Commission has the mandate to interpret the provisions of the Charter⁵² and in doing so, it takes cognizance of its duty to protect human and people's rights as stipulated in the Charter. The provisions of other international/ regional instruments like the European Convention on Human Rights and Fundamental Freedoms and the Inter- American Convention on Human Rights, are almost similar and state that they ... *may only deal with the matter... within a period of*

⁵² Article 45 (3) African Charter on Human and Peoples' Rights

*six months from the date on which the final decision was taken*⁵³, after this period has elapsed the Court/Commission will no longer entertain the Communication.

109. The Commission is urged in Articles 60 and 61 of the Charter to consider as subsidiary measures to determine the applicable principles of law "other general or special international instruments, laying down rules expressly recognized by member states of the African Union...". Going by the practice of similar regional human rights instruments, such as the Inter-American Commission and Court and the European Court, six months seem to be the usual standard. This notwithstanding, each case must be treated on its own merit. Where there is good and compelling reason why a Complainant could not submit his/her complaint for consideration on time, the Commission may examine the complaint to ensure fairness and justice.
110. In the present Communication, the arguments advanced by the Complainant as impediments for his late submission of the complaint do not appear convincing. The complainant does not supply the Commission with medical proof to indicate he was suffering from mental problems, he does not indicate what gave him the impression that things might improve in Zimbabwe, after he himself noted in his complaint that since 2000 there has been documented evidence to show that things were deteriorating, including the fact that the government does not respect court judgments. Even if the Commission accepts that he fled the country and needed time to settle, or that he was concerned for the safety of his relatives, twenty two (22) months after fleeing the country is clearly beyond a reasonable man's understanding of reasonable period of time. The African Commission thus holds that the submission of the Communication was unduly delayed and thus does not comply with the requirements under Article 56 (6) of the Charter.
111. **Article 56(7)** of the African Charter provides that the Communication must not deal with cases which have been settled by the States, in accordance with the principles of the United Nations, or the Charter of the OAU or the African Charter. In the present case, this case has not been settled by any of these international bodies, and as a result of this, the requirement of Article 56(7) has been fulfilled by the complainant.

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Article 26 European Convention on Human rights.

The African Commission finds that in the present Communication, that is, **Communication 308/05 - Michael Majuru/Zimbabwe**, the Complainant has not complied with sub-sections (5) and (6) of Article 56 of the African Charter, and thus declares the Communication **inadmissible**.

Adopted at the 44th Ordinary Session of the African Commission on Human and Peoples' Rights, 10 – 24 November 2008, Abuja, Nigeria.

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