

**Chapter Nine**  
**Ninth Annual Activity Report of the**  
**African Commission**  
**1995-1996**

**I. ORGANIZATION OF WORK**

**A. Period Covered by the Report**

1. The Eighth Annual Activity report of the African Commission on Human and Peoples' Rights was adopted by the 31st Ordinary Session of the Assembly of Heads of State and Government of the Organisation of African Unity in its resolution AHG/Res. 240(XXXI). The Ninth Annual Activity Report covers the 18th Ordinary Session held in Praia, Cape Verde, from 2-11 October 1995, the Second Extra-Ordinary Session held in Kampala, Uganda from 18-19 December 1995 and the 19<sup>th</sup> Ordinary Session held in Ouagadougou, Burkina Faso, from 26 March to 4 April 1996.

**B. Status of Ratification**

2. As at the 19th Ordinary Session of the Commission, all the Member States of the OAU, with the exception of Eritrea, Ethiopia and South Africa, had ratified or acceded to the Charter. The list of States and dates of signature, ratification/accession and deposit of instruments is attached to this Volume as Appendix III.

**C. Sessions and Agenda**

3. The Commission held two ordinary sessions and one Extra-Ordinary Session since the adoption of its Eighth Annual Activity Report.
  - The 18th Ordinary Session was held in Praia, Cape Verde, 2-11 October 1995.
  - The 2<sup>nd</sup> Extra-Ordinary Session was held in Kampala, Uganda, 18-19 December 1995.
  - The 19<sup>th</sup> Ordinary Session was held in Ouagadougou, Burkina Faso, from 26 March to 4 April 1996.

**D. Composition and Participation**

4. The following Commissioners attended the 18th Session:

1. Prof. Isaac Nguema, Chairman
2. Prof. Emanuel V.O. Dankwa, Vice Chairman
3. Mr. Robert H. Kisanga
4. Dr. Mohamed H. Ben Salem
5. Dr. Vera V. Duarte Martins
6. Prof. U. Oji Umzurike
7. Mr. Atsu Koffi Amega
8. Mr. Kamel Rezzag-Bara
9. Mrs. Julienne Ondziel-Gnelenga
10. Mr. Youssoupha Ndiaye

Mr. Alioune Blondin Beye was absent with apologies.

5. The representatives of the following States attended the Session and made statements before the Commission:

Swaziland, Cameroon, Benin, Algeria, Zambia and Nigeria.

6. The following members of the Commission attended the 2<sup>nd</sup> Extra-Ordinary session:

1. Prof. Isaac Nguema, Chairman
2. Prof. Emanuel V.O. Dankwa, Vice-Chairman
3. Mr. Mohammed Hatem Ben-Salem
4. Mrs. Julienne Ondziel-Gnelenga
5. Mr. Robert H Kisanga
6. Mr. Kamel Rezzag-Bara
7. Mr. Atsu-Koffi Amega
- 8.

The following members of the Commission were absent with apologies:

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1. Dr. Vera V.B.S. Duarte-Martins
2. Mr. Youssoupha Ndiaye
3. Mr. Alioune Blondin Beye

Professor U. Oji Umozurike could not be contacted due to communication problems. The Extra- Ordinary Session was addressed by representatives from Uganda, Nigeria and the OAU.

7. The following members of the Commission attended the 19<sup>th</sup> Session:

1. Prof. Isaac Nguema, Chairman
2. Prof. Emmanuel V.O. Dankwa, Vice Chairman
3. Mr. Robert H. Kisanga
4. Dr. Vera V. Duarte Martins
5. Prof. U. Oji Umozurike
6. Mr. Kamel Rezzag-Bara
7. Mrs. Julienne Ondziel-Gnelenga
8. Mr. Youssoupha Ndiaye

The following members of the Commission were absent with apologies:

1. Mr. Alioune Blondin Beye
2. Mr. Atsu-Koffi Amega
3. Dr. Hatem Ben-Salem

8. The representatives of the following States attended the 19<sup>th</sup> Session:

Algeria	Burkina Faso	Egypt
Mauritania	Mozambique	Nigeria
Senegal		

9. The three sessions were attended by many non-governmental organisations.

**E. Adoption of the Ninth Annual Activity Report**

10. At its session of 3<sup>rd</sup> April 1996, the Commission considered and adopted its Ninth Annual Activity Report.

## **II. ACTIVITIES OF THE COMMISSION**

### **A. Consideration of Periodic Reports**

11. Under Article 62 of the African Charter on Human and Peoples' Rights, each State Party undertakes to submit a report every two years on the legislative and other measures it takes to give effect to the rights and freedoms enshrined in the Charter.

The first periodic report of Tunisia was presented by the representatives of the State and was duly considered at the 18th Session. The Commission commended the representative for a well prepared report which could serve as a model, reiterated its previous request that report should be submitted in the official languages of the OAU where possible, and called upon the Secretariat to translate reports into the other OAU languages.

12. The first periodic reports of Algeria and Mozambique were also considered at the 19<sup>th</sup> Session. The Commission took note of the high quality of the two reports.

As at the 19th Session the following State Parties had submitted their reports: Libya, Rwanda, Tunisia (9th Session); Egypt and Tanzania (11th Session), The Gambia (12th and 16th Sessions); Senegal (12th Session); Zimbabwe (12th and 21st Session); Togo and Nigeria (12th and 16th Sessions), Benin, Ghana, Cape Verde and Mozambique (14th Session); Tunisia (18th Session) and Algeria and Burkina Faso (19th Session). 31 State parties have not yet submitted their periodic reports.

### **B. Promotional Activities**

#### **i) Report of the Chairman**

14. The Chairman's Activity Report included his participation in various symposia and

seminars within and outside Africa, work related to the Commission's publications and his participation in the 63rd OAU Council of Ministers meeting. He also reported on his mission to Benin as the Chairman of the Francophone Observer team of the 1996 elections.

**ii) Activities of other Members of the Commission**

15. The other members of the Commission also attended conferences, seminars and symposia in Africa as well as outside Africa, and carried out promotional activities in State Parties. Two commissioners who were part of the OAU Observer teams presented reports on elections in Tanzania and the Comoros Islands. The allocation of African countries for promotional activities is attached in the present report as Annex IV.

**iii) The Commission cosponsored and participated in the following seminars:**

- a) Workshop on NGOs participation in the African Commission on Human and Peoples' Rights, which was organised by the International Commission of Jurists and held in Praia, Cape Verde, from 29<sup>th</sup> September to 1<sup>st</sup> October 1995.
- b) Impunity in Africa, held in Ouagadougou, Burkina Faso, 22<sup>nd</sup>-23<sup>rd</sup> March, 1996 and organised in collaboration with, amongst others, the International Centre for Human Rights and Democratic Development, based in Montreal, Canada.
- c) Workshop on NGOs participation in the African Commission, in Ouagadougou, Burkina Faso, from 23<sup>rd</sup> to 25<sup>th</sup> March 1996. This workshop was organised in collaboration with the International Commission of Jurists, and the Burkinabe Movement for Human Rights.

*Forthcoming Seminars and Conferences*

16. The Commission decided to organise seminars and conferences on:

- a) Human Rights in the New South Africa
- b) Contemporary forms of Slavery
- c) Prison conditions in Africa
- d) The right to a fair trial
- e) Popular participation and non-formal education
- f) Peaceful resolution of ethnic and social conflicts in the context of

human rights

- g) Freedom of movement and Asylum in Africa
- h) Economic, Social and Cultural Rights and the Right to Development
- i) Seminar for African Ambassadors based in Addis Ababa, Ethiopia on the Human Rights Promotion and Protection System.

The Commission sought the support of International Organisations and NGOs for the seminars/conferences and appointed commissioners to follow up these matters.

### **III. SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL EXECUTIONS IN AFRICA**

17. At the 18th Session, the Commission considered and adopted the mandate of the Special Rapporteur and the budget estimates for the project. However, since the Special Rapporteur was absent from the 19<sup>th</sup> session, the Commission could not discuss progress in work related to extra-judicial executions in Africa.

### **IV. SPECIAL RAPPORTEUR ON PRISON AND DETENTION CONDITIONS IN AFRICA**

18. The Commission agreed in the principle on the appointment of a Special Rapporteur on prison conditions in Africa, who will work under a designated Commissioner. The Commission called for the submission of CVs from suitable candidates and decided to seek the support of NGOs and other institutions in this project.

### **V. SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN**

19. The Commission decided to appoint at its next session a Special Rapporteur on the rights of Women in African. The Special Rapporteur will work under Commissioners EVO Dankwa and Vera VD Duarte-Martins who have experience in this field. The Commission invited CVs from suitable candidates for consideration and decided to seek the support of NGOs and other institutions in this project.

### **VI. MISSIONS TO STATE PARTIES**

20. The Commission reaffirmed its decisions to conduct missions to Nigeria, Senegal, Sudan, Mauritania, Burundi and Rwanda. It will consider with the States concerned, communications brought against the latter which had been declared admissible. The final dates for the missions will be confirmed with the States concerned. The missions will be composed of the following commissioners:

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Nigeria:	Prof. Isaac Nguema Prof. EVO Dankwa Prof. U Oji Umozurike
Senegal:	Prof. Isaac Nguema Dr. V Duarte-Martins
Sudan:	Mr. Robert Kisanga Mr. Kamel Rezzag-Bara
Burundi:	Prof. Isaac Nguema Mrs. Julienne Ondziel-Gnelenga Mr. Atsu-Koffi Amega
Rwanda:	Prof. Isaac Nguema Mrs. Julienne Ondziel-Gnelenga Mr. Atsu-Koffi Amega
Mauritania:	Prof. Isaac Nguema Mrs. Julienne Ondziel-Gnelenga Mr. Kamel Rezzag-Bara

**VII. AMENDMENT TO THE RULES OF PROCEDURE**

21. The Commission completed work on the amendments to its Rules of Procedure at its 18<sup>th</sup> Ordinary Session.

**VIII. PUBLICATIONS**

22. The Commission published two issues of its Review and is preparing the publication of its new Bulletin.

**IX. RELATIONS WITH OBSERVERS**

23. During the two Sessions, the Commission considered the application of, and granted observer status to 29 organisations. At present, the number of organisations with



observer status is 183.

## **X. PROTECTIVE ACTIVITIES**

24. The Commission received eleven new communications and concluded work on seven communications. Its recommendations and decisions are attached as Annex VI.

## **XI. ADMINISTRATIVE AND FINANCIAL MATTERS**

### **a) Administrative Matters**

25. During the financial year under review, the work of the Commission was affected by a number of administrative problems including the following:

#### **i) Staffing**

26. The Secretariat is still suffering from a shortage of staff, in spite of numerous appeals made by the Commission. The Commission appeals again to the Secretary-General of the OAU for an early and appropriate solution to this problem.

27. The Secretary to the Commission is the only professional staff member who is entrusted with the technical and administrative duties of the Secretariat. In view of the Secretariat's volume of work, related to human rights promotional and protective activities, there is an urgent need to recruit four additional lawyers. There is also an urgent need to recruit a documentation officer to run the Documentation Centre which is currently closed because there is no staff member to run it.

#### **ii) Equipment**

28. Due to the increase in the volume of work at the Secretariat, it is necessary to procure adequate and proper equipment. The Commission is appealing to the OAU Secretariat to provide the Commission's Secretariat with the equipment it needs to carry out its functions, including computers, photocopiers, electronic mail, etc.

#### **iii) Medical Coverage and Insurance**

29. The problems of medical fees and the insurance of the Commissioners when

travelling on duty for the Commission have still not been settled yet. The Commission is still waiting for the solution promised some years ago by the OAU Secretariat to materialise. The Commission is making an urgent appeal to the OAU Secretariat to look into this issue.

**b) Financial Matters**

30. During the financial year under review, the Commission was financed from the following resources:

**i) OAU Budget**

31. Due to financial problems facing the OAU, several projects of the Commission had to be suspended. This only made worse the situation of the Commission.

**ii) Subvention from the UN Centre for Human Rights**

32. The UN Centre for Human Rights provided the Commission with grants for its promotional activities.

**iii) Subvention from Raoul Wallenberg Institute**

33. The Raoul Wallenberg Institute continued to finance the promotional activities of the Commission, including missions undertaken by commissioners and publishing of the Commission's Review.

**iv) Assistance from the African Society of International Comparative Law**

34. The African Society provided the Commission with two jurists from 20th March for a period of 12 months.

**XII. RESOLUTIONS ADOPTED AT THE 19TH SESSION**

35. The Commission adopted the following resolutions at its 19<sup>th</sup> session:

1. Resolution on Liberia;

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2. Resolution on the respect for, and strengthening of, the Independence of the Judiciary;
3. Resolution on the role of Lawyers and Judges in the integration of the Charter and the strengthening of National Commissions and sub-regional systems;
4. Resolution on the elections in Benin, Comoros and Sierra Leone; and
5. Resolution on Burundi.

These resolutions are attached as Annex V.

**XIII. ADOPTION OF THE REPORT BY THE ASSEMBLY OF HEADS OF STATE AND GOVERNMENT**

36. After considering this Report, the Assembly of Heads of State and Government adopted it in a resolution which took note of the Report with satisfaction and authorised its publication.

**Annexes**

**Annex I**

**Eighteenth Ordinary Session of the African Commission Human and Peoples' Rights**

1. Opening ceremony
2. Oath by the newly elected members of the Commission
3. Election of Chairman and Vice Chairman of the Commission
4. Adoption of Agenda
5. Organisation of work
6. Observers:
  - a) Consideration of applications for observer status;
  - b) Relationship with observers and statements of the latter.
7. Consideration of periodic reports of the following states:
  - Mauritius;
  - Mozambique.
  - Seychelles
  - Tunisia
8. Methods of work of the Commission:
  - a) Consideration of amendments to the Rules of Procedure;
  - b) Examination of Article 58 of the Charter.
9. Promotional activities:
  - a) Activity reports by commissioners;
  - b) Examination of extra-judicial executions;
  - c) Report on the implementation of Resolution AHG/230 (XXX) on the establishment of an African Human Rights Court;
  - d) Report on the 4<sup>th</sup> World Conference on Women (Beijing, 1995);
  - e) Amendments of the guidelines on the preparation of the periodic States' reports;
  - f) OAU participation in monitoring elections in member States;
  - g) Organisation of forthcoming seminars and conferences;
  - h) Publication of the Review and the Newsletter of the Commission;
  - i) Follow-up of the decisions and recommendations from the international

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conferences on human rights ( Vienna and Montreal conferences);

j) Prison conditions in Africa;

k) Elaboration of the draft additional protocol on African Women's Rights.

10. Protective Activities

11. Administrative and financial matters: (private session)

a) Report of the Chairman of the Commission;

b) Report of the Secretary to the Commission;

c) Functioning of the Secretariat;

d) Implementation of recommendations of the previous sessions;

e) Draft Rules on contracts with consultants;

f) Financing the translation of summaries and periodic reports;

g) The situation of the Documentation and Information Centre;

h) Appraisal of the work of the Commission and its future prospects;

i) Distribution of the OAU member States among members of the Commission for promotional activities.

12. Question concerning the Headquarters of the Commission.

13. OAU activities relevant to the Commission

14. Date, venue and the agenda of the 19th Ordinary Session.

15. Any other business.

- Holding of extra-ordinary sessions

16. Preparation of:

- session report;

- Final Communiqué.

**Annex II**

**Agenda of the 2nd Extra-Ordinary Session of the African Commission on Human and Peoples' Rights**

1. Opening ceremony
2. Adoption of Agenda Doc.II/ES/ACHPR/1
3. Organisation of work
4. Human Rights report on the situation in Nigeria
  - a) Arbitrary and summary executions Doc. II/ES/ACHPR/3
  - b) Compatibility between Nigeria's internal legislation and the provisions of the African Charter on Human and Peoples' Rights Doc. II/ES/ACHPR/4
5. Study of some emergency situations on human rights in Africa especially in Burundi. Doc. II/ES/ACHPR/5
6. Study of practical measures to be taken in the prevailing situation in Nigeria Doc. II/ES/ACHPR/6
7. Adoption of the session's report.
8. Closing ceremony.

**Annex III**

**AGENDA OF THE NINETEENTH ORDINARY SESSION OF THE AFRICAN  
COMMISSION ON HUMAN AND PEOPLES' RIGHTS,**

**OUAGADOUGOU, BURKINA, FASO  
26<sup>TH</sup> MARCH - 4<sup>TH</sup> APRIL 1996**

1. Opening ceremony
2. Adoption of Agenda
3. Organisation of work
4. Adoption of the report of the 18<sup>th</sup> Ordinary session, held in Praia, Cape Verde, 2-11 October, 1995.
5. Adoption of the report of the 2<sup>nd</sup> Extra-Ordinary Session (18-19 December, 1995, Kampala, Uganda)
6. Observers:
  - a) Consideration of applications for observer status
  - b) Relationship with observers and statements of the latter
  - c) Statements of the States' Delegates;
7. Consideration of periodic reports of the following States:  
Mozambique  
Algeria  
Mauritius  
Seychelles
8. Amendment to the African Charter on Human and Peoples' Rights.
9. Brainstorming on the setting-up of an early intervention mechanism in case of massive human rights violations.
10. Promotional activities:
  - a) Activity reports by Commissioners;
  - b) Examination of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions;
  - c) Report on the implementation of Resolution AHG/Res. 230 (XXX) on the establishment of an African Court on Human and Peoples' Rights;
  - d) Human Rights Situation in Africa;
  - e) Amendments of Guidelines on the preparation of the periodic reports;
  - f) Organisation of forthcoming seminars and conferences;

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- g) Publication of the Review and the Newsletter of the Commission;
  - h) Follow-up of the decisions and recommendations from the international conferences on human rights (Vienna and Montreal conferences);
  - i) Prison conditions in Africa;
  - j) Elaboration of the draft additional protocol on African Women's Rights.
11. Protective Activities.
12. Administrative and Financial Matters (private session)
- a) Report of the Chairman of the Commission;
  - b) Report of the Secretary to the Commission;
  - c) Implementation of recommendations of the previous sessions;
  - d) Draft Rules of contracts with consultants
  - e) Financing the translation of summaries and periodic reports;
  - f) The situation of the Documentation and Information Centre;
  - g) Appraisal of the work of the Commission and its future prospects;
  - h) Celebration of the 10<sup>th</sup> Anniversary of the establishment of the African Commission on Human and Peoples' Rights.
13. Question concerning the Headquarters of the Commission
14. Participation of the Commission in some activities of the OAU.
15. Dates, venue and agenda of the 20th Ordinary session
16. Any other business (private session).
17. Preparation of:
- a) the 9th Annual Activity Report
  - b) the Session Report
  - c) the Final Communiqué



**Annex IV**

**Distribution of countries to commissioners for Promotional Activities as at January 1996.**

1. **Mr. Isaac Nguema** - Gabon, Equatorial Guinea, Zaire, and Burkina Faso
2. **Mr. E.V.O. Dankwa** - Ghana, Zimbabwe, Malawi, Botswana, and Namibia
3. **Mr. Atsu-Koffi Amega** - Togo, Rwanda, Central African Republic, Djibouti and Seychelles
4. **Mr. Mohamed Kamel Rezzag-Bara** - Algeria, Comoros, SADR, Madagascar and Egypt
5. **Mr. Robert Habesh Kisanga** - Tanzania, Ethiopia, Kenya, Somalia, Uganda and Zambia
6. **Mrs. V.V.D.M. Duarte-Martins** - Cape Verde, Mozambique, Angola, Guinea Bissau and Sao Tomé & Principe
7. **Mr. Yousoupha Ndiaye** - Senegal, Mali, Niger, and Guinea
8. **Mrs. Ondziel-Gnelenga** - Congo, Burundi, Chad and Mauritius
9. **Mr. U. Oji Umzurike** - Nigeria, Cameroon, Lesotho, Swaziland and South Africa
10. **Mr. Mohamed H. Ben-Salem** - Tunisia, Libya, Sudan, Eritrea and The Gambia
11. **Mr. Alioune Blondin Beye** - Benin, Côte d'Ivoire, Mauritania, Liberia and Sierra Leone

## **Annex V**

### **Resolutions adopted at the 19th Ordinary Session**

#### **Resolution on Liberia**

The African Commission on Human and Peoples' Rights meeting at its 19<sup>th</sup> Ordinary Session held from 26<sup>th</sup> March to 4<sup>th</sup> April 1996 in Ouagadougou, Burkina Faso;

*Recalling* the Abuja Agreement signed by all the parties to the Liberian conflict under which the Heads of the Warring Factions were allocated seats in the Governing Council of State in the hope that such an arrangement would facilitate and ensure disarmament of their fighters, a prerequisite for free and fair elections,

*Taking note* that the Council of State of the Liberian Transitional Government, created in pursuance of the Abuja Agreement, has been installed into office and that the government including the judiciary and the legislature has been freely constituted and is now functional,

*Considering* however, that notwithstanding the establishment of the Council of State, the Warring Factions have refused to disarm, and that Liberia, contrary to the Abuja Agreement, still remains fragmented and partitioned among warring factions, and hostilities still exist, all of which have the potential to derail the peace process and prolong the suffering of the Liberian people and the strain on the West African sub region,

*Considering further* that if peace is to be restored to Liberia, a civil government installed through a free and fair elections, and democratic institutions established with respect for human rights under the rule of law, Liberians themselves, and with the support of the international community, must exert efforts to cease all hostilities, disarm their combatants, have them encamped, demobilised and re-integrated into civil society,

*Endorses* the Abuja Peace Accord as the best means for the cessation of hostilities and the restoration of peace to Liberia and calls upon all parties to this Agreement to co-operate in good faith in its implementation,

*Calls upon* the Warring Factions to take all necessary steps to disarm their fighters, co-operate with the West African Peace Keeping Forces (ECOMOG) and the United Nations Observer Mission to Liberia (UNOMIL) and have fighters encamped, demobilised and re-integrated into civil society so as to pave the way for a free and fair general elections,

*Calls also* upon the Council of State to extend its authority over the whole of Liberia and to guarantee genuine respect for the rights and liberties of all its citizens and residents, and in this regard to observe the independence of the judiciary,

*Further calls* upon the Council of State to take all necessary measures to fight against impunity and ensure that all perpetrators of crimes against the Liberian people are brought to justice,

*Appeals* to the international community, especially the United Nations, to facilitate Liberia's transition from war to peace by enhancing the capacity of the West African Peace Keeping Force to encamp all combatants and to keep the peace through the provision of financial and logistic support; and to alleviate the suffering and the daily struggle of the Liberian people for survival through the provision of humanitarian relief and medical supplies.

## **Resolution on the Respect and the Strengthening of the Independence of the Judiciary**

The African Commission on Human and Peoples' Rights meeting at its 19<sup>th</sup> Ordinary Session held from 26<sup>th</sup> March to 4<sup>th</sup> April at Ouagadougou, Burkina Faso,

*Noting* that justice is an integral part of human rights and a necessary condition for democracy,

*Considering* the importance and the role of the judiciary, not only in the quest for the maintenance of social equilibrium, but also in the economic development of African countries,

*Recognising* the need for African countries to have a strong and independent judiciary enjoying the confidence of the people for sustainable democracy and development,

*Considering* the need to train lawyers in human rights in order to enable them apply judiciously international human rights instruments:

### 1. CALLS UPON African countries to:

- repeal all their legislation which are inconsistent with the principles of respect of the independence of the judiciary, especially with regard to the appointment and posting of judges;
- provide, with the assistance of the international community, the judiciary with sufficient resources in order to enable the legal system fulfil its function;
- provide judges with decent living and working conditions to enable them maintain their independence and realise their full potential;
- incorporate in their legal systems, universal principles establishing the independence of the judiciary, especially with regard to security of tenure;
- refrain from taking any action which may threaten directly or indirectly the independence and the security of judges and magistrates.

2. URGES African judges to organise nationally and regionally, periodic meetings in order to exchange experience and evaluate efforts undertaken in various countries to bring about an efficient and independent judiciary.

**Resolution on the Role of Lawyers and Judges in the Integration of the African Charter and the Enhancement of the Commission's work at National and Sub-Regional Systems**

The African Commission on Human and Peoples' Rights meeting at its 19<sup>th</sup> Ordinary Session held from 26<sup>th</sup> March to 4<sup>th</sup> April at Ouagadougou, Burkina Faso,

*Noting* the central role that lawyers play in advocacy in the judicial and other adjudicative processes in national legal systems and considering further how such roles can be used to promote reference to and reliance on the Charter in the Judicial and other adjudicative processes,

*Considering* the mandate and judicial competence of judges to base their reasoning and judgements on all relevant human rights instruments, either as applicable authoritative laws or as persuasive aids to interpretation of constitutional and legislative provisions on fundamental rights, freedoms and duties,

*Recognising* the importance of specialised and continuing training in human and peoples' rights for legal practitioners, judges, magistrates and the commissioners,

*Appreciating* the initiative of Commonwealth judges to incorporate and further develop human rights instruments and principles in their work:

1. URGES Judges and Magistrates to play a greater role in incorporating the Charter and future jurisprudence of the Commission in their judgements thereby promoting and protecting the rights and freedoms guaranteed by the Charter;
2. CALLS UPON lawyers to place greater reliance on the Charter and other international and regional human rights instruments in their various legal advocacy roles;
3. URGES law societies, legal and human rights Non-Governmental Organisations with observer status with the Commission, associations or organisations of judges and magistrates, to initiate specialised and comprehensive training for judicial officers, lawyers at national and sub-regional levels.

## **Resolution on Electoral Process and Participatory Governance**

The African Commission on Human and Peoples' Rights meeting at its 19<sup>th</sup> Ordinary Session held from 26<sup>th</sup> March to 4<sup>th</sup> April at Ouagadougou, Burkina Faso,

*Having taken note* of the report of the recent elections in the Republic of Benin,

*Taking note* of the report of the smooth organisation of elections in the Comoros Islands,

*Further noting* the satisfactory manner in which the Presidential Elections were held in the Republic of Sierra Leone:

1. ASSERTS that elections are the only means by which the people can elect democratically the government of their choice in conformity with the African Charter on Human and Peoples' Rights;
2. COMMENDS the governments and the peoples of the Republic of Benin, the Comoros and the Republic of Sierra Leone for having organised successfully free and fair elections and hopes that their example will encourage and motivate other countries in transition to democratic rule;
3. EMPHASISES that it is the duty of State Parties to the Charter to take the necessary measures to preserve and protect the credibility of the electoral process. This measures should include the presence of national and international observers during the elections and guarantee access to the electoral process and personal safety to enable them to fulfil their mission and prepare their report on elections in a proper manner;
4. FURTHER EMPHASISES it is the responsibility of State Parties to provide electoral commissions and other organs entrusted with the task of organising elections in their countries with adequate material resources and any items necessary for the preparation and holding of elections;
5. REAFFIRMS the importance of African countries and institutions to participate in observation of elections in State Parties; and reasserts its willingness to place at the disposal of States Parties and other institutions its expertise and that of its members in observing elections.

## Resolution on Burundi

The African Commission on Human and Peoples' Rights meeting at its 19<sup>th</sup> Ordinary Session held from 26<sup>th</sup> March to 4<sup>th</sup> April at Ouagadougou, Burkina Faso,

*Extremely* concerned with the serious human rights violations and abuses occurring in Burundi, especially extra-judicial executions by some members of the security forces, armed gangs and militias,

*Considering* that impunity is one of the main causes of the worsening human rights situation in Burundi,

*Considering* that the independence of the judiciary is the corner stone of the effective struggle against human rights violations in general and impunity in particular,

*Concerned* with the plight of refugees and displaced persons and their vulnerability to human rights violations and abuses,

*Considering* that the Burundi crisis is made worse by the hate media and that the high point of the message of hatred was reached with the launching of "*Radio Démocratie la voix du peuple*",

1. URGES the government of Burundi to:
  - a) conduct transparent and impartial investigations into all human rights violations and abuses;
  - b) take the necessary steps to guarantee the independence of the judiciary by ensuring, *inter alia*, that there is no interference in its functioning by the executive and that judges and magistrates are protected in the carrying out of their duty;
  - c) ensure that persons accused of human rights violations and abuses are tried in compliance with international fair trial standards;
  - d) improve the living conditions of refugees and displaced persons, ensure their safety and security and create conditions to enable them to return to their homes in collaboration with International Governmental and Non- Governmental Organisations;
  - e) allow the Mission International d'Observation au Burundi (MIOB), human rights monitors and Special Rapporteurs from the United Nations, African Commission on Human and Peoples Rights and other International bodies freedom of movement throughout the country and take adequate and effective steps to guarantee their safety and security without compromising their independence;

2. FURTHER URGES the government of Burundi and the concerned political parties

to respect the spirit and letter of the Government Agreement which they signed in 1994 in the supreme national interest of Burundi;

3. CALLS UPON the OAU to strengthen MIOB and include human rights monitoring in its mandate;
4. REQUESTS the UN to provide adequate resources to enable its Commission of inquiry sent to Burundi to function efficiently and to complete its task as soon as possible;
5. CALLS UPON the international community to assist the government of Burundi and neighbouring countries to rid the region of media which propagate hatred and fuel communal conflict in Burundi especially the Radio Station “*Radio Démocratie la voix du Peuple*” or “*RUTOMORANGINGO*”;
6. DECIDES to involve itself more in efforts to resolve the crisis affecting Burundi by, among other things, sending a mission to Burundi and participating actively in the process of national reconciliation.



## ANNEX VI

### **Decisions/Recommendations on communications**

#### **25/89, 47/90, 56/91, 100/93 World Organisation Against Torture, Lawyers' Committee for Human Rights, Jehovah Witnesses, Inter-African Union for Human Rights /Zaire**

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#### **FACTS**

1. Communication 25/89 alleges the torture of 15 persons by a military unit on, or about, 19 January 1989. These people were brought to Kinsuka near the Zaire river, where they were subject to severe forms of torture. On 19 April 1989, when several people protested their treatment, they were detained and held indefinitely.
2. Communication 47/90 describes, in detail, many arbitrary arrests, arbitrary detentions, torture, extra-judicial executions, unfair trials, severe restrictions placed on the right to association and peaceful assembly, and suppression of the freedom of the press.
3. Communication 56/91 concerns the persecution of the Jehovah's Witnesses (*Témoins de Jéhovah*), a religious group. The communication alleges many types of harassment including arbitrary arrests, unlawful appropriation of church property, and exclusion from access to education.
4. Communication 100/93 contains allegations of torture, executions, arrests, detention, unfair trials, restrictions on freedom of association and freedom of the press. It also alleged that public finances were illegally mismanaged; that the failure of the government to provide basic services such as safe drinking water and electricity was degrading; that there was a shortage of medicines in the country; that the universities and secondary schools had been closed for two years; that freedom of movement was violated by restrictive police measures; and that ethnic hatred was incited by the official media.
5. When the Commission considered all the communications, they revealed evidence of serious or massive violations of human rights in Zaire. It decided to draw the attention of the Assembly of the Heads of State of the Organisation of African Unity in December 1995.
6. The Commission also requested, on more than one occasion, that the government of Zaire permit a mission consisting of two members of the

Commission to the country, with the objective of discovering the extent and cause of human rights violations and endeavouring to help the government to ensure full respect of the African Charter. The government of Zaire did not respond to these request.

#### **PROCEDURE BEFORE THE COMMISSION**

7. **Communication 25/89** was received by the Commission in June 1989. The Commission was seized of the communication at its 11<sup>th</sup> session in October 1989 and the State of Zaire was notified on 14 March 1990.
8. Between 1990 and 1993, numerous reminders were sent by the Secretariat to the Government of Zaire, but no response was received.
9. The Secretariat also sent the complainants regular updates on the status of the communication
10. On 23 September 1993, the Ministry of Justice of Zaire wrote that no copy of the communication had ever been received.
11. A copy was sent on 3 March 1994 by registered post to the Embassy of Zaire in Dakar. No response was forthcoming.
12. At the 16th Session held in October/November 1994, the Commission decided to send a mission to Zaire in order to create a dialogue.
13. At the 17th session, held in Lomé, Togo, March 1995, the communications against Zaire were declared admissible.
14. The government of Zaire was notified of this decision on 26 April, 1995.
15. At the 18th session held in October 1995, in Praia, Cape Verde, the Commission decided to apply Article 58.1 of the Charter and to draw the attention of the Heads of State and Government to the serious or massive violations of human rights in Zaire.
16. On 12 January 1996, a *note verbale* was sent to the Ministry of Foreign Affairs of Zaire, informing the Ministry of the proposed mission to Zaire to be undertaken by Commissioners Nguema and Ben-Salem.
17. **Communication 47/90**, was received by the Commission in October 1990.
18. On 20 October 1990, at the 8th Ordinary Session, held in Banjul, The Gambia, the African Commission was seized of the communication and decided to notify the State of Zaire of the complaint and invite its written comments on admissibility.

19. On 6 November 1990, the Secretariat of the Commission informed the Ministry of Foreign Affairs of Zaire of this decision by registered post. No response was forthcoming.
20. At the 11th Ordinary Session, held in Tunisia in March 1992, the Commission decided to send a reminder to Zaire. The Secretariat sent this reminder on 30 March 1992. No response was forthcoming.
21. At the 12th Ordinary Session, held in Banjul, The Gambia, the Commission declared the communication admissible and decided that it would be examined on the merits.
22. The notice of this decision was sent by the Secretariat of the Commission on 16 November 1992. No response was forthcoming.
23. In 1993 and 1994, the Secretariat sent several reminders to the government of Zaire. No response was received.
24. From August 1994 to the present, the correspondence in respect of this communication is identical with that in communication 25/89, above.
25. **Communication 56/91**, was received by the Commission in Summer of 1991.
26. The Commission was seized of the communication and a notification was sent by the Secretariat of the Commission to the State of Zaire on 14 November 1991. No response was forthcoming.
27. Two reminders were sent by the Secretariat of the Commission to the State of Zaire in 1992.
28. In a letter dated 14 September 1993 was received from the Ministry of Justice of Zaire, claiming that a copy of the communication had never been received.
29. A copy of the communication was sent on 3 March 1994 by registered post to the Embassy in Dakar, but no response was received.
30. From August 1994 to the present, the correspondence in respect of this communication is identical with that in communication 25/89, above.
31. **Communication 100/93** was received by the Commission in April 1993.
32. The Commission was seized of the communication at its 13<sup>th</sup> session in April 1993 and it was brought to the attention of the State in 12 April 1993. No response was forthcoming.
33. In 1993 and 1994, reminders were sent to the government of Zaire but no response was forthcoming.

34. From August 1994 to the present, the correspondence in respect of this communication is identical with that in communication 25/89, above.

## **LAW**

### **Admissibility**

35. After deliberations, as envisioned by article 58 of the Charter, the Commission considered that communications 25/89, 47/90, 56/91 and 100/93 reveal the existence of a series of serious or massive violations of human and peoples' rights.
36. Article 56.5 of the African Charter requires that complainants exhaust local remedies before the Commission can take up a case, unless these remedies are as a practical matter unavailable or unduly prolonged. The requirement of exhaustion of local remedies is founded on the principle that a government should have notice of human rights violation in order to have the opportunity to remedy such violation, before being called before an international body. In this case, the government has had ample notice of the violation.
37. The Commission has never held the requirement of exhaustion of local remedies to apply literally in cases where it is impractical or undesirable for the complainant to seize the domestic courts in the case of each violation. This is the situation, given the vast and varied scope of the violations alleged and the general situation prevailing in Zaire.
38. For the above reasons, the Commission declared the communications admissible.

### **The Merits**

39. The main goal of the communications procedure before the Commission is to initiate a positive dialogue, resulting in an amicable resolution between the complainant and the State concerned, which remedies the prejudice complained of. A pre-requisite for amicably remedying violations of the Charter is the good faith of the parties concerned, including their willingness to participate in a dialogue.
40. In the present case, there has been no substantive response from the Government of Zaire, despite the numerous notifications of the communications sent by the African Commission. The African Commission, in several previous decisions, has set out the principle that where allegations of human rights abuse go uncontested by the government concerned, even after repeated notifications, the Commission must decide on the facts provided by the complainant and treat those facts as given.<sup>1</sup> This principle conforms with the practice of other international human rights adjudicatory bodies and with the Commission's duty to protect human rights. Since the Government of Zaire does not wish to participate in a dialogue, the Commission must,

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<sup>1</sup> (see, e.g., the Commission's decisions in communications 59/91, 60/91, 64/91, 87/93 and 101/93).  
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regrettably, continue its consideration of the case on the basis of facts and opinions submitted by the complaints alone.

41. Article 5 of the African Charter prohibits torture and inhuman or degrading treatment. The torture of 15 persons by a military unit at Kinsuka, near the Zaire river, as alleged in communication 25/89, constitutes a violation of this article.
42. Article 6 of the African Charter guarantees the right to liberty and security of the person. The indefinite detention of those who protested against torture as described in communication 25/89 violates article 6.reads:
43. Article 4 of the Charter protects the right to life. Communication 47/90, in addition to alleged arbitrary arrests, arbitrary detention and torture, alleges extra-judicial executions which are a violation of article 4.
44. Article 7 of the African Charter specifies the right to have one's cause heard. The unfair trials described in communication 47/90 constitute a violation of this right.
45. Article 8 of the African Charter protects freedom of conscience. The harassment of the Jehovah Witnesses, as described in communication 56/91, constitutes a violation of this article, since the government has presented no evidence that the practice of their religion in any way threatens law and order. The arbitrary arrests of believers of this religion likewise constitutes a contravention of article 6 of the Charter.
46. The torture, executions, arrests, detention, unfair trials, restrictions on freedom of association and freedom of the press described in communication 100/93 violate the above articles.
47. Article 16 of the African Charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health and that States Parties should take the necessary measures to protect the health of their people. The failure of the government to provide basic services necessary for a minimum standard of health, such as safe drinking water and electricity and the shortage of medicine as alleged in communication 100/93 constitutes a violation of Article 16.
48. Article 17 of the Charter guarantees the right to education. The closures of universities and secondary as described in communication 100/93, constitute a violation of Article 17.

**FOR THESE REASONS, THE COMMISSION**

holds that the facts constitute serious or massive violations of the African Charter, namely of Articles 4, 5, 6, 7, 8, 9.2, 10.1, 12.2, 16, 17, 18.3 and 26.

**Taken at the 19th Ordinary Session, Ouagadougou, Burkina Faso, March 1996.**

**Communication No. 70/92, Ibrahima Dioumessi, Sekou Kande, Ousmane Kaba/Guinea**

**FACTS**

1. The communication was submitted by Ibrahima Dioumessi, Sékou Kande, Ousmane Kaba , and received by the Commission on 15 November 1991. It contains no mailing address of the complainants.
2. The communication alleges that following the *coup d'état* of 4 July 1984 in Guinea, the complainants were arrested, tortured and incarcerated for three years without charge or trial.
3. The complainants allege violation of the right to security of persons and the right to fair trial. They request compensation for the moral and material prejudice they have suffered.

**PROCEDURE**

4. The Commission was seized of the communication at its 12<sup>th</sup> session in November 1992.
5. On 13 November 1992 the Secretariat to of the Commission notified the Ministry of Foreign Affairs of Guinea of the communication. The Secretariat also requested the complainants' address.
6. In 1993 and 1994, numerous reminders were sent by the Secretariat to the Government of Guinea, but no response was received.
7. On 21 October 1994 the Guinean government sent a *note verbale* to the Commission requesting that the Commission delay consideration of the communication until the 17th session, in order to allow the government to submit its memorandum in response.
8. At the 17th session, held in Lomé, Togo, in March 1995, the memorandum of the Government of Guinea had not been received, but the Commission decided to postpone consideration of the communication until it was, and in the meantime to ask the complainants if they had exhausted all local remedies.
9. All attempts to get the address of the complainants proved fruitless.
10. At the 18th session, the memorandum of the Government of Guinea still had not been received.

**LAW**

**Admissibility**

11. The problem posed here is one of admissibility. To be admissible, a communication must fulfil all the conditions of Article 56 of the Charter. In particular the identity of the complainants, so that they may be sent notifications.
12. In the present case, the Secretariat had not been able to remedy this lack of the complainant's address.

**FOR THESE REASONS, THE COMMISSION**

Declares the communication inadmissible.

**Taken at the 18th Ordinary Session, Praia, Cape Verde, 7 October 1995.**



**Communication 74/92**

**Commission Nationale des Droits de l'Homme et des Libertés/Chad**

**FACTS**

1. The communication is brought by the Commission Nationale des Droits de l'Homme et des Libertés of the Fédération Nationale des Unions de Jeunes Avocats in France. The complaint alleges massive and serious violations of human rights in Chad.
2. The complaint alleges that journalists are harassed, both directly and indirectly. These attacks are often by unidentified individuals whom the complainants claim to be security service agents of the government. The government denies responsibility.
3. The complaint alleges the arbitrary arrest of several people, among these, four members of the opposition party, R.D.P., by the security services. These people were never brought before a court, although they were eventually set free. Fifteen more people were illegally detained, but have now been released.
4. There are several accounts of killings, disappearances and torture. Fifteen people are reported killed, 200 wounded, and several persons tortured as a result of the civil war between the security services and other groups.
5. The communication alleges the assassination of Mamadou Bisso, who was attacked by armed individuals. The minister responsible was warned of the danger to Mr. Bisso, but he refused to issue protection. Subsequently, the minister did not initiate investigation into the killing.
6. The communication also alleges the assassination of Joseph Betudi, Vice-President of Ligue Tchadienne des Droits de l'Homme. It also contains allegations of the inhuman treatment of prisoners.

**PROCEDURE BEFORE THE COMMISSION**

7. The communication is dated 11 May 1992 and includes a report based on an observation mission to Chad made by the association "Agir Ensemble pour les Droits de l'Homme" and the Federation Nationale des Unions de Jeunes Avocats.
8. The Commission was seized of the communication at the 12th Session, and on 16 November 1992 the government of Chad was notified of the communication.
9. On 10 March 1993, the Ministry of Justice of Chad responded to the communication.

10. On 12 April 1993, the Chairman of the Commission wrote to the Ministry of Foreign Affairs and requested its permission to conduct an on-site investigation in Chad.
11. The government of Chad did not reply to that letter, nor the following reminders.
12. A letter was sent to the government on 3<sup>rd</sup> February 1995, and to the complainant on 17 February 1995, stating that the communication would be considered at the 17<sup>th</sup> session.
13. At the 17th session, held in March 1995 in Lomé, Togo, the communication was declared admissible. The government and the complainant were informed of that decision.
14. On 1 September 1995, a letter was sent to the government stating that the communication would be heard on the merits at the 18th session of the Commission and inviting the government to send a representative.
15. At the 18th session, held in October 1995 in Praia, Cape Verde, the Commission heard Ms. Fabiene Trusses-Naprous, of the Fédération Nationale des Unions de Jeunes Avocats, Commission Nationale des Droits de l'Homme et des Libertés of France. She reiterated the information in the original communication, both verbally and by way of a brief. This brief, in addition to summarising the information in the original communication, affirmed that the human rights situation in Chad has not seen improvement to the present day. Article 58 was invoked to draw the attention of the Assembly of Heads of State and Government of the OAU to this fact.
16. On 27 November 1995, a letter was received from the Ministry of External Affairs of Chad with regard to the Secretariat's letter of 1 September 1995. This letter stated that the National Human Rights Commission of Chad could find no record of the communication.

## **LAW**

### **Admissibility**

17. Article 1 of the African Charter reads:

“ The Member States of the Organisation of African Unity parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative and other measures to give effect to them”.
18. In this case, the complainant complains that not only did the Government agents commit violations of the African Charter, but that the State failed to protect the rights in the Charter from violation by other parties.

19. The government claims that no violations were committed by its agents, and that it had no control over violations committed by other parties, as Chad is in a state of civil war.
20. The Charter specifies in Article 1 that the States Parties shall not only recognise the rights duties and freedoms adopted by the Charter, but they should also “undertake ... measures to give effect to them”. In other words, if a State neglects to ensure the rights in the African Charter, this can constitute a violation, even if the state or its agents are not the immediate cause of the violation.
21. The African Charter, unlike other human rights instruments<sup>2</sup> does not allow for States Parties to derogate from their treaty obligations during emergency situations. Thus, even a civil war in Chad cannot be used as an excuse by the State for violating or permitting violations of rights in the African Charter.
22. In the present case, Chad has failed to provide security and stability in the country, thereby allowing serious or massive violations of human rights. The national armed forces are participants in the civil war and there have been several instances in which the government has failed to intervene to prevent the assassination and killing of specific individuals. Even where it cannot be proved that violations were committed by government agents, the government has the responsibility to secure the safety and the liberty of its citizens, and to conduct investigations into murders. Chad therefore is responsible for the violations of the African Charter.
23. The complainant claims that the events in Chad constitute violations of Article 4 (right to life), Article 5 (prohibition from torture, inhuman and degrading treatment), Article 6 (right to liberty and security of the person), Article 7 (right to a fair trial) and Article 10 (right to freedom of expression).
24. In the present case, there has been no substantive response from the government of Chad, only a blanket denial of responsibility.
25. The African Commission, in several previous decisions, has set out the principle that where allegations of human rights abuse go uncontested by the government concerned, the Commission must decide on the facts provided by the complainant and treat those facts as given<sup>3</sup>. This principle conforms with the duty to protect human rights. Since the government of Chad does not wish to participate in a dialogue, that the Commission must, regrettably, continue its consideration of the case on the basis of facts and opinions submitted by the complainants alone.

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<sup>2</sup> E. g. the European Convention on Human Rights, Article 15; the Inter-American Convention on Human Rights; and the International Covenant on Civil and Political Rights.

<sup>3</sup> See e.g. the Commission’s decisions in communications 59/91, 60/91, 64/91, 87/93 and 101/93.

26. Thus in the absence of a substantive response by the government, in keeping with its practice, the Commission will take its decision based on the events alleged by the complainants.

**FOR THESE REASONS, THE COMMISSION**

finds there have been serious or massive violations of human rights in Chad and

finds that there has been violations of Articles 1, 4, 5, 6, 7 and 9 of the Charter.

**Taken at the 18th Ordinary Session, Praia, Cape Verde, October 1995**

## **Communication 129/94**

### **Civil Liberties Organisation/Nigeria**

#### **FACTS**

1. The communication is filed by the Civil Liberties Organisation, a Nigerian based NGO. The communication alleges that the military government of Nigeria has enacted various decrees in violation of the African Charter, specifically the Constitution (Suspension and Modification) Decree No. 107 of 1993, which not only suspends the Constitution but also specifies that no decree promulgated after December 1983 can be examined in any Nigerian Court; and the Political Parties (Dissolution) Decree No. 114 of 1993, which, in addition to dissolving political parties, ousts the jurisdiction of the courts and specifically nullifies any domestic effect of the African Charter.
2. The communication further alleges that the ousting of the jurisdiction of the courts in Nigeria to adjudicate the legality of any decree threatens the independence of the judiciary and violates Article 26 of the African Charter.
3. The communication also complains that this ouster of the jurisdiction of the courts deprives Nigerians of their right to seek redress in the courts for government acts that violate their fundamental rights, in violation of Article 7.1(a) of the African Charter.

#### **PROCEDURE BEFORE THE COMMISSION**

4. The complaint is dated 31 December 1993.
5. On 29 July 1994 a copy of the communication was sent by the Secretariat of the Commission to the state concerned for its comments.
6. At the 16th Ordinary Session of the Commission, the communication was declared admissible.
7. On 10 January 1995 the parties were informed of the admissibility decision.

#### **LAW**

##### **Admissibility**

8. The communication meets all the specifications for admissibility set out in Article 56 of the Charter. With specific reference to Article 56.5, the Commission accepted the complainant's argument that since the decrees complained of oust the jurisdiction of the courts to adjudicate their validity, "it is reasonable to presume that local remedies will not only be prolonged but are certain to yield no results."

## **The Merits**

9. Article 7 of the African Charter provides:

“Every individual shall have the right to have his cause heard. This comprises: the right to an appeal to competent national organs against acts violating his fundamental rights as guaranteed by conventions, law, regulations and customs in force.”

10. The Constitution (Suspension and Modification) Decree 1993, section 5 reads:

“No question as to the validity of this Decree or any other Decree made during the period 31st December 1983 to 26th August 1993 or made after the commencement of this Decree or of an Edict shall be entertained by a court of law in Nigeria.”

11. The Political Parties (Dissolution) Decree 1993, section 13(1) reads:

“Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act or any other enactment, no proceeding shall lie or be instituted in any court for or on account of any act, matter or thing done or purported to be done in respect of this Decree.”

12. The reference in Article 7.1(a) to “fundamental rights as guaranteed by conventions...in force” refers to the rights in the Charter itself, among others. Given that Nigeria ratified the African Charter in 1983, it is presently a convention in force in Nigeria. If Nigeria wished to withdraw its ratification, it would have to undertake an international process involving notice, which it has not done. Nigeria cannot negate the effects of its ratification of the Charter through domestic action. Nigeria remains under the obligation to guarantee the rights of Article 7 to all of its citizens.

13. The ousting of jurisdiction of the courts of Nigeria over any decree enacted in the past ten years, and those to be subsequently enacted, constitutes an attack of incalculable proportions on Article 7. The complaint refers to a few examples of decrees which violate human rights but which are now beyond review by the courts. An attack of this sort on the jurisdiction of the courts is especially invidious, because while it is a violation of human rights in itself, it permits other violations of rights to go unredressed.

14. Article 26 of the African Charter reiterates the right enshrined in Article 7 but is even more explicit about States Parties’ obligations to: “guarantee the independence of the Courts and ... allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.” While Article 7 focuses on the individual’s right to be heard, Article 26 speaks of the institutions which are essential to give meaning and content to that right. This

Article clearly envisions the protection of the courts which have traditionally been the bastion of protection of the individual's rights against the abuses of state power.

15. The communication notes that Nigeria fully incorporated the African Charter upon ratification in 1983. The African Charter (Ratification and Enforcement Act) specifies:

“ 1. As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights... shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

It is this Act that is repealed by clause 13(1) of the Political Parties Dissolution Decree.

16. Any doubt that may exist as to Nigeria's obligations under the African Charter is dispelled by reference to Article 1 of the Charter, which reads:

“The Member States...parties to the present Charter shall recognise the right, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.”

17. The African Commission has to express its approval of Nigeria's original incorporation of the Charter, an incorporation that should set a standard for all Africa, and its sadness at the subsequent nullification of this incorporation. The Commission must emphasise, however, that the obligation of the Nigerian government to guarantee the right to be heard to its citizens still remains, unaffected by the purported revocation of domestic effect of the Charter. The Charter remains in force in Nigeria, and notwithstanding the Political Parties Dissolution Decree, the Nigerian government has the same obligations under the Charter. These obligations include guaranteeing the right to be heard.

#### **FOR THE ABOVE REASONS, THE COMMISSION**

1. holds that the Decrees in question constitute a breach of Article 7 of the Charter, the right to be heard
2. holds the ouster of the courts' jurisdiction constitutes a breach of Article 26, the obligation to establish and protect the courts
3. finds the act of the Nigerian government to nullify the domestic effect of the Charter constitutes a serious irregularity.

**Taken at the 17th Ordinary Session, Lomé, Togo, March 1995**

**Communication No. 135/94**

## **Kenya Human Rights Commission/Kenya**

### **FACTS**

1. The university academic staff from the four public universities in Kenya (University of Nairobi, Kenyatta University, Moi University and Egerton University) met and resolved to form an umbrella trade union to represent their interests in negotiations with their respective employers. They decided to name their union the Universities Academic Staff Union (UASU).
2. On 25 May 1992 they submitted an application for registration to the Registrar of Trade Unions. The Registrar acknowledged the receipt of the application documents the same day. However, there were no further replies from either the Registrar General, or the Attorney General.
3. In June 1993, the UASU interim officials wrote to the Attorney General seeking audience with him to discuss UASU's registration. The Attorney General did not reply to this letter.
4. Due to the lack of response, the members of the UASU decided to go on strike on 29 November 1993. The notice of the intended strike was issued to the Attorney General, the Registrar and the Vice-Chancellors of the public universities. A copy of notice was also delivered to Kenya's President Daniel Arap Moi, who is also the Chancellor of all the public universities.
5. On 24 November 1993 the Registrar refused to register UASU on the grounds that "the union is used for unlawful purposes and as such peace, welfare and good order in Kenya would otherwise be likely to suffer prejudice..."
6. The strike began on 29 November 1993 and court proceedings were initiated on 23 December 1993, challenging the Registrar's decision to reject their application for registration as a trade union.
7. On 27 December 1993, during the swearing in of two newly appointed judges of the High Court of Kenya, President Moi stated that the government would never register UASU despite the fact that the matter was already in court. He reiterated the government's position on 31 December in a public statement. He again repeated that the government would not allow the registration of UASU on 25 February 1994 and further stated that the government would take stern action against the leaders of the UASU.



8. Justice AB Shah, one of the new judges sworn in on 27 December 1993, and who was previously the President's lawyer, heard an application filed by University of Nairobi UASU chapter officials seeking to restrain eviction from their university housing until the cases against the Registrar challenging the rejection of registration, and their purported dismissal from the university, were fully determined. Justice AB Shah rejected the application.
9. All the national officials of UASU have been arrested and harassed since the strike begun in November 1993. On 10 December 1993, the national interim officials were arrested while proceeding to Egerton University for a meeting. No charges were pressed and the officials were released the following day. Dr. Korwa Adar was again arrested on 25 February 1994 from his house after the president warned that action will be taken against UASU leaders. Dr. Adar was charged with inciting students and colleagues to violence.

### **PROCEDURE BEFORE THE COMMISSION**

10. The communication is dated 8 March 1994 and was received by the Secretariat of the Commission on 2 May 1994.
11. the Commission was seized of the communication At the 16th session held in October 1994, and it was decided that the Government of Kenya should be notified of the complaint against it for comments.
12. On 10 January 1995 a letter was sent by the Secretariat of the Commission to the complainant asking what had been the outcome of the court case in respect of the refusal of the Government to register the union in question. On the same day, a notification was sent to the government informing it of the communication during the 16th session and that the admissibility of the communication would be considered at the 17th session.
13. At the 17th session the 3 month period given to the Government of Kenya to respond to the communication had not yet elapsed. The case was therefore deferred to the 18th session.
14. On the 20 April 1995, letters were sent to both the complainant and the government of Kenya, stating that the case would be considered at the 18th session and requesting the Government of Kenya's response to the communication and information from the complainant on the pending court case.

**LAW**

**Admissibility**

15. Article 56 of the African Charter reads:

“Communications ... shall be considered if they:

...

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

16. The most recent information the Commission has, provided by the complainants themselves, states that two cases relating to the subject of the communication are still pending before Courts of Kenya. The complainant has therefore not exhausted all available local remedies.

**FOR THE ABOVE REASONS, THE COMMISSION**

declares the communication inadmissible.

**Taken at the 18th Ordinary Session, Praia, Cape Verde, October 1995.**

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