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EXECUTIVE COUNCIL

Twentieth Ordinary Session

23 - 27 January 2012

Addis Ababa, Ethiopia

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

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Nineteenth Ordinary Session

23 – 28 June 2011

Malabo, EQUATORIAL GUINEA

EX.CL/678(XIX)

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

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**29TH ACTIVITY REPORT OF THE AFRICAN COMMISSION
ON HUMAN AND PEOPLES' RIGHTS
(AFRICAN COMMISSION)**

29TH ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (AFRICAN COMMISSION)

Introduction

1. This is the Twenty-Ninth (29th) Activity Report of the African Commission on Human and Peoples' Rights (African Commission).
2. The Report describes the activities undertaken by the African Commission during the intersession from May 2010 to November 2010 and the 48th Ordinary Session of the African Commission held in Banjul, The Gambia, from 10 to 24 November 2010.

Events Preceding the 48th Ordinary Session

3. Members and staff of the African Commission participated in, and collaborated with other human rights organizations/partners in a series of activities preceding, and on the margins of the Session, including the following:
 - i) Meeting of the Committee to clean up the Rules of Procedure, from 4-5 November 2010;
 - ii) Workshop of Women's Human Rights Defenders, from 4-6 November 2010;
 - iii) Meeting of the Working Group on Indigenous Populations / Communities in Africa, from 6-8 November 2010;
 - iv) Forum of Non-Governmental Organizations (NGOs), from 6-9 November 2010;
 - v) Meeting of the Committee for the Protection of People Living with HIV/Aids, from 6-7 November 2010
 - vi) Meeting with UNAIDS, 7 November 2010;
 - vii) Meeting of the Working Group on the Death Penalty, from 7-9 November 2010;
 - viii) Meeting of the Committee for the Prevention of Torture in Africa, 10 November 2010;
 - ix) International Criminal Tribunal for Rwanda Conference/Exhibition on "Challenging Impunity: the Legacy of the International Criminal Tribunal for Rwanda for the African Continent, from 11-12 November 2010;
 - x) Launch of the Commemoration of the 30th Anniversary of the African Charter, 12 November 2010;
 - xi) Brainstorming Meeting on the Relationship between the African Peer Review Mechanism and the African Commission, 12 November 2010.

Attendance at the Session

4. The following members of the African Commission attended the 48th Ordinary Session:

- Honourable Commissioner **Reine Alapini-Gansou**, Chairperson
- Honourable Commissioner **Mumba Malila**; Vice-Chairperson
- Honourable Commissioner **Lucy Asuagbor**;
- Honourable Commissioner **Catherine Dupe Atoki**;
- Honourable Commissioner **Musa Ngary Bitaye**;
- Honourable Commissioner **Mohamed Bechir Khalfallah**;
- Honourable Commissioner **Soyata Maiga**;
- Honourable Commissioner **Kayitesi Zainabou Sylvie**;
- Honourable Commissioner **Pansy Tlakula**; and
- Honourable Commissioner **Yeung Kam John Yeung Sik Yuen**.

5. Commissioner Mohamed Fayek was absent with apologies.

The Opening Ceremony

6. A total of five hundred and twelve (**512**) participants attended the 48th Ordinary Session of the African Commission, including: representatives from States Parties, International and Inter-Governmental Organizations, African Union (AU) Organs, National Human Rights Institutions (NHRIs), as well as African and International Non-Governmental Organizations (NGOs).

7. At the Opening Ceremony, speeches were delivered by the following:

- i) Honourable Commissioner Reine Alapini Gansou, Chairperson of the African Commission;
- ii) H.E. Commissioner Julia Dolly Joiner, Commissioner, for Political Affairs of the African Union Commission (AUC),
- iii) Mrs. Hannah Forster, Executive Director of the African Centre for Democracy and Human Rights Studies, on behalf of NGOs,
- iv) Mr. Med S. K.Kaggwa, Chairperson of the Uganda Human Rights Commission, on behalf of the Network of National Human Rights Institutions(NHRIs);
- v) Honourable Judge Gerard Niyungeko, President of the African Court on Human and Peoples' Rights,
- vi) H.E. Salamata Sawadogo, Minister for the Promotion of Human Rights in Burkina Faso, on behalf of AU Member States, and
- vii) Honourable Edward Gomez, Attorney General and Minister of Justice of the Republic of The Gambia on behalf of the Government of The Gambia.

8. In her welcoming statement, the Chairperson of the African Commission, Honourable **Commissioner Reine Alapini Gansou**, expressed, on behalf of the

Members of the African Commission, and on her own behalf, her profound gratitude to the Government and People of the Republic of The Gambia for once again hosting the Ordinary Session of the African Commission and welcomed the participants to the 48th Session of the African Commission. The Chairperson congratulated Honourable Justice **Mrs. Lucy Asuagbor** on her election as a Member of the African Commission and officially welcomed her to the Commission.

9. The Chairperson also welcomed the President of the African Court on Human and Peoples' Rights, **Honourable Justice Gerard Niyungeko**, who was attending the Opening Session of the African Commission for the first time. She stated that the presence of Honourable **Justice Gerard Niyungeko** at the African Commission's Opening Session should be seen as a manifestation of the constructive complimentary relationship between the African Court and the African Commission.

10. **Honourable Commissioner Reine Alapini Gansou** noted that the 48th Ordinary Session should be an occasion for the African Commission to reflect on the difficult situation many African women find themselves in on the continent. Speaking under the theme of *Reflecting on the Human Rights of Women in Africa*, she observed that even though there have been a plethora of legislations enacted by some States in the region to protect women's rights, securing women's rights in Africa remains a challenge.

11. Honourable Commissioner Reine Alapini Gansou stated that despite the BEIJING+15 Conference in 2009 that called for an evaluation of the rights of women in Africa, 2010 has shown that there is an urgent need to take positive steps to improve the human rights of women in Africa, particularly on issues such as female genital mutilation, forced marriages, sexual and domestic violence and other types of human rights violations that affect the dignity and physical integrity of women. The Chairperson stated that at the time when democracy in Africa is facing serious challenges, it is imperative for NGOs and civil society in collaboration with the African Commission to send a clear message of their strong commitment to the rights and freedoms guaranteed in the African Charter.

12. In closing her speech, **Honourable Commissioner Reine Alapini Gansou** stressed the need for States Parties to the African Charter to build a culture of human rights observance and to establish strong mechanisms to protect human rights in Africa. She ended her speech by asking the following question: "Do we want the future generation to inherit an intolerable world, an Africa devastated by wars, an Africa that refuses to move forward"?

13. Speaking on behalf of the African Union Commission, **Her Excellency, Mrs. Julia Dolly Joiner**, Commissioner for Political Affairs at the African Union Commission (AUC), assured the African Commission of the continued support of the AUC in the discharge of its mandate and reiterated that the African Commission is an integral part of the human rights dialogue that is taking place right across Africa. **Her Excellency Mrs. Julia Dolly Joiner** noted with appreciation the role the African Commission has played and continues to play in promoting and protecting human

rights on the continent.

14. She stated that despite some progress, the overall human rights record in Africa remains poor and noted with regret that matters such as gender discrimination remain a concern. **Her Excellency Mrs. Julia Dolly Joiner** stated that issues such as the right to development and the rights of women and children needed some more focus by Member States. She said that the deteriorating human rights situation in many African countries has had a negative impact on the lives of women and children and urged Member States to spare no effort to respond progressively and decisively to these issues, in particular to repeal laws that discriminate against women and girls.

15. **Her Excellency, Mrs. Julia Dolly Joiner** urged the African Commission, that whilst responding to the complex demands and challenges of the next six months, it must seek ways to ensure that it delivers on all elements of its core mandate particularly in ensuring that Member States submit their Initial and Periodic States Reports in accordance with Article 62 of the African Charter. She stated that even though the obligation to submit Reports rests with Member States, the African Commission is well placed to explore ways of securing more active participation and commitment in this regard. **Her Excellency, Mrs. Julia Dolly Joiner** underscored that while the anticipated activities to commemorate the 30th Anniversary of the African Charter are important for advocacy and raising the profile of the African Commission, these activities should be used by the African Commission to reflect on the journey travelled and the challenges that lie ahead.

16. The Executive Director of the African Centre for Democracy and Human Rights Studies, **Mrs. Hannah Forster**, made a statement on behalf of the NGOs present at the 48th Ordinary Session of the African Commission and made reference to the NGO Forum which was held prior to the 48th Session to discuss the situation of human rights on the continent. In reviewing the human rights landscape in Africa for the last six months, she noted that Africa still experienced a lot of human rights abuses and called on Member States to ensure better protection of human rights in their territories. She expressed the concerns of the NGO Forum over homophobic attacks in Burundi, Malawi, Rwanda and Uganda, as well as the extrajudicial killings and enforced disappearances in a number of countries including the Democratic Republic of Congo.

17. **Mrs. Forster** stated that some States Parties to the African Charter have not only enacted harsh laws to suppress free expression and the press, but that some of them continue to harass, intimidate, arbitrarily detain and even kill human rights defenders. **Mrs. Forster** also highlighted the challenges faced by various vulnerable groups and communities in Africa such as migrants, refugees and Internally Displaced Persons, the elderly, the disabled and indigenous populations.

18. The Representative of the Network of African National Human Rights Institutions and Chairperson of the Uganda Human Rights Commission, **Mr. Med S. K. Kaggwa**, in his statement expressed appreciation to the African Commission for its relentless efforts to make human rights a reality on the African continent, despite

being confronted with multiple challenges. **Mr. Med S. K. Kaggwa**, stated that the Sessions of the African Commission provide the Network of African National Human Rights Institutions the opportunity to exchange information on various human rights challenges and also serve as a platform to debate pertinent human rights issues concerning the African continent.

19. **Mr. Med S. K. Kaggwa** noted that the Session was being held at a time Africa was facing many challenges ranging from issues relating to freedom of expression, the plight of women and children, especially those caught in conflict zones and issues of democracy and good governance. He stated that, despite some progress made by some African leaders to promote and protect human rights as envisaged in the African Charter and other regional human rights instruments, and the Constitutive Act of the African Union, human rights violations still persist. He underscored, however, that Africans are increasingly becoming aware of their rights and demanding such rights from their governments.

20. **Mr. Med S. K. Kaggwa** said that the Network of African National Human Rights Institutions is happy to collaborate with Member States and the African Union organs, such as the African Commission, the African Court on Human and Peoples' Rights (African Court) and other regional treaty monitoring bodies and civil society organizations to promote and protect the rights of people on the African continent. He noted that the Network of African National Human Rights Institutions complement the already established African human rights institutions, and by the nature of the work they do, are in a good position to make a unique contribution to secure human rights in the region.

21. Speaking on behalf of the African Court, **Honourable Justice Gerard Niyungeko**, President of the African Court reiterated the sentiments expressed by the Chairperson of the African Commission, **Honourable Commissioner Reine Alapini Gansou** in her opening remarks that the collaborative relationship between the African Court and the African Commission is one that is based on mutual respect for the complementary role of both institutions. He added that it is within the spirit of that collaborative relationship that the Rules of Procedure of both organs have been harmonized.

22. **Honourable Justice Gerard Niyungeko** informed the 48th Ordinary Session that the African Court has two roles. Firstly, to look into cases related to the interpretation and the application of the African Charter and secondly, an advisory role, where the African Court gives a legal opinion about any question related to human and peoples' rights.

23. He indicated that the foremost challenge of the African Court is its inability to hear cases due to the small number of countries that have ratified the Protocol Establishing the Court, as well as the small number of States Parties which have made the Declaration allowing individuals and NGOs to submit cases directly to the Court. He informed the Session that of the 53 Member States of the African Union, only 25 have so far ratified the Protocol Establishing the Court. He further stated, that

out of those 25 States only four countries, namely Burkina Faso, Mali, Malawi and Tanzania, have made the a declaration accepting the jurisdiction of the Court to examine applications lodged by individuals and NGOs.

24. The Minister for the Promotion of Human Rights in Burkina Faso, **Honourable Salamata Sawadogo**, delivered a statement on behalf of the State Parties present at the 48th Ordinary Session. After expressing her gratitude to the Government and People of The Gambia, the Honourable Minister reminded the participants, that the African Charter places responsibility on States Parties to ensure the promotion and protection of human rights on the continent. She said however, that the protection of human rights in Africa can only be realised with the collaboration of all, including Member States, international partners, National Human Rights Institutions and NGOs.

25. The Honourable Minister stated that the Sessions of the African Commission provide all those who fight for the cause of human rights with an opportunity to engage in frank and constructive dialogue. The Honourable Minister reminded the African Commission that in order for it to discharge its mandate with success, it is crucial that it cooperates with Member States, who should be encouraged to facilitate and support its work. She urged the African Commission to continue discharging its mandate resolutely and with objectivity.

26. In his opening statement, the **Attorney General and Minister of Justice, Honourable Edward Gomez**, on behalf of his Excellency, Sheikh, Professor, Alhagie, Doctor Yahya A. J. J. Jammeh, President of the Republic of The Gambia welcomed the delegates and participants to the 48th Ordinary Session of the African Commission to Banjul, The Gambia.

27. **Honourable Edward Gomez**, congratulated the African Commission on the successfully convening of the Session and recognised the important role of the African Commission's Sessions which he likened to a mirror through which Africa sees itself, while evaluating its achievements and challenges in the promotion and protection of human rights. He detailed various efforts that have been made by the Government of The Gambia to uphold the rights and liberties of the Gambian people, notably through the constitution and the creation of a Department for Human Rights in the Ministry of Justice. He, however, raised the issue of enjoyment of individual rights, which he argued must be subject to the rights of others and the compelling interests of society as a whole. This, he explained, was the basis for the continued existence of the death penalty in The Gambia and the enactment of legislation to curb corruption.

28. **Honourable Edward Gomez** regretted the deplorable conditions of women in Africa, particularly rural women and the girl-child, whom, he said, continue to be victims of harmful customary practices. He appealed to States Parties and members of civil society to devise more creative ways and means of protecting the African woman and the girl-child. **Honourable Edward Gomez**, congratulated Honourable Justice Mrs Lucy Asuagbor on her election as a Member of the African Commission, before officially declaring the 48th Ordinary Session open.

Swearing in of New Commissioner

29. During the 19th Ordinary Session of the Executive Council of the African Union held in Kampala, Uganda, in July 2010, Honourable Justice Mrs. Lucy Asuagbor was elected as a member of the African Commission on Human and Peoples' Rights.

30. In accordance with Rule 9 of the Rules of Procedure of the African Commission, Honourable Justice Mrs. Lucy Asuagbor was sworn in by making a solemn declaration during the Public Session. .

Agenda of the Session

31. The Agenda of the Session was adopted and is attached to this Report as **Annex I**.

Cooperation and Relationship with NHRIs and NGOs

Application for Observer Status

32. The African Commission considered applications for **Observer Status** from six (6) NGOs. It granted Observer Status to all the six (6) NGOs in accordance with the 1999 Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the Field of Human and Peoples' Rights, ACHPR/Res.33 (XXV) 99. The NGOs granted Observer Status are the following:

- i) Dimension Sociale Benin;
- ii) Consortium for Refugees and Migrants in South Africa;
- iii) Eastern Africa Journalists Association – EAJA;
- iv) Network of African Human Rights Institutions (NANHRI);
- v) Open Society Initiative of South Africa (OSISA); and
- vi) Secretariat of the African Decade of Persons with Disabilities.

33. This brings the total number of NGOs with Observer Status before the African Commission to **four hundred and eighteen (418)**.

Application for Affiliate Status

34. During the 48th Ordinary Session, the African Commission did not receive any application for Affiliate Status from any NHRI. The number of NHRIs with Affiliate Status with the African Commission thus remains at **twenty - two (22)**.

Human Rights Situation in Africa

35. Statements were made by State delegates from Republic of Algeria, Republic of Burkina Faso, Arab Republic of Egypt, Federal Democratic Republic of Ethiopia, Republic of Kenya, Kingdom of Lesotho, Great Socialist People's Libyan Arab Jamahirya, Federal Republic of Nigeria, Sahrawi Arab Democratic Republic, Republic of Senegal, Republic of South Africa, Republic of Sudan, Republic of Tunisia,

Republic of Uganda and Republic of Zimbabwe on the human rights situations in their respective countries. The summarised texts of these statements are reflected in the Session Report of the 48th Ordinary Session of the African Commission.

36. Representatives of AU Organs, International and Intergovernmental Organisations, and NHRIs also addressed the African Commission on the various human rights issues on the continent, and the need to continue cooperation with the African Commission, to better promote and protect human rights. These organisations included: the African Court on Human and Peoples' Rights, the United Nations Programme on HIV/AIDS (UNAIDS), United Nations Permanent Forum on Indigenous Issues (UNFPII), International Organisation of the Francophonie, Burkina Faso National Human Rights Commission, Guinea Bissau National Human Rights Commission and Kenya National Commission on Human Rights.

37. A total of forty-four **(44)** NGOs, having Observer Status with the African Commission also made statements on the human rights situation in Africa.

Activities of Members of the African Commission during the Inter- Session

38. The Chairperson and members of the African Commission presented Reports on the activities that they undertook during the period between the 47th Ordinary Session in May 2010, and the 48th Ordinary Session in November 2010. The reports covered activities undertaken in their capacities as members of the African Commission, Special Rapporteurs, and/or Members of Special Mechanisms. The activities are set out hereunder.

Honourable Commissioner Reine Alapini Gansou - Chairperson of the African Commission

Report on activities as a Commissioner

39. From 7 to 11 June 2010, the Chairperson of the African Commission participated in a training seminar on the African Commission Communication procedures in Dakar, Senegal. The seminar was organized by the African Commission to make available to the key actors some educational tools and texts to serve as a basis for seizure of the African Commission in the event of individual human rights violations.

40. From 22 to 24 June 2010, the Chairperson of the African Commission participated in a working visit of the African Commission's Bureau to Addis Ababa, Ethiopia. The visit had the objective of meeting the key actors of the AU Organs and discussing appropriate ways and means of giving effect to the decisions of the Heads of State and Government regarding the treatment of the members of the African Commission and the need to build the human and intellectual capacities of its Secretariat.

41. From 13 to 16 July 2010, the Chairperson of the African Commission participated in a Continental Conference in Bamako, Mali, on the role of the African Commission in the promotion and protection of Women's Rights in Africa. This Conference which was organized on the initiative of the Special Rapporteur on the Rights of Women in Africa, Maitre Soyata Maiga, sought, among other things, to bring the African Commission closer to the stakeholders who had participated in this conference.¹ In this context, the Chairperson delivered the opening and closing addresses of the Conference. The Conference provided an opportunity for the Chairperson to participate in the launching of the Claims Dossier on the Rights of Women in Africa prepared by the FIDH and its partners.

42. From 19 to 23 July 2010, the Chairperson of the African Commission participated in the AU summit of Heads of State and Government in Kampala, Uganda. During the summit the Chairperson presented the 28th Activity Report of the African Commission which was adopted by the Decision No. EX.CL/600(XVII).

43. The Chairperson of the African Commission participated in two workshops with the NHRIs on human rights promotion mechanisms. The first workshop took place from 29 to 30 July 2010 in Johannesburg, South Africa and brought together more than ten NHRIs. The second workshop took place from 27 to 28 September 2010 in Dakar, Senegal and brought together all the NHRIs from West and North Africa. These workshops had the main objective of putting in place strategies and action plans enabling the NHRIs to engage in a more effective partnership with the African

¹ The Representatives of 18 States Parties, the Members of Civil Society and the Development Partners attended and participated in the conference.

human rights mechanisms.

44. From 2 to 3 August 2010, the Chairperson of the African Commission represented the Commission in three activities relating to the launching of the governance architecture platform in Africa, the African Human Rights Strategy and the preparation of the summit on shared values in Banjul, The Gambia.

45. From 4 to 6 August 2010, the Chairperson of the African Commission participated in the 3rd meeting on the establishment of the Human Rights Strategy for Africa in Banjul, The Gambia. This meeting sought in particular to consider the draft Human Rights Strategy for Africa and to contribute as best as possible to its coherence and practicability.

46. From 12 to 13 August 2010, the Chairperson of the African Commission participated in a meeting organized by the African Union Commission on the study of two Protocols; one on the Pan-African Parliament and the other on the extension of the African Court on Human and Peoples' Rights, in Johannesburg, South Africa.

47. From 15 to 17 September 2010, the Chairperson of the African Commission participated in a sub-regional Forum on the evaluation of the 10 years of the United Nations Resolution 1325 on the situation of Women in conflict situations and on the representation of women in decision making institutions, under the theme "Women, an Asset for Peace". The Forum was organized by the United Nations West Africa Bureau in collaboration with the other representatives of the United Nations Agencies in Dakar, Senegal. During this Forum the Chairperson made a presentation on the African Commission, its achievements, challenges and its prospects with regard to women's rights in Africa.

48. From 4 to 6 October 2010, the Chairperson of the African Commission participated in the Symposium of African Human Rights Courts and similar institutions, in Arusha, Tanzania. The Symposium sought to pool the experiences of the organs and Institutions represented at this symposium for the purpose of strengthening each others' activities and to achieve better cooperation between the human rights protection organs and institutions on the African Continent.

49. On 9 October 2010, the Chairperson of the African Commission participated in the 19th All African MOOT Court organised by the Human Rights Centre of the University of Pretoria as a member of the Jury appointed to proclaim the prize winners results. The Moot Court, which took place in Cotonou, Benin, sought to create a nursery from which competent jurists who have perfect knowledge of the African Charter on Human and Peoples' Rights and other subsequent legal instruments, the jurisprudence of the ACHPR and international human rights law, can be drawn, for the defence and protection of the rights of individuals and communities.

50. From 19 to 22 October 2010, the Chairperson of the African Commission participated in the 3rd edition of the MIBEKO Forum on the Rights of Women in Africa, in Brazzaville, Congo. The central issued tabled during this Forum was that of the

adequate representation of women in decision making institutions and that of women's leadership, as well as crucial issues linked to gender based abuse and to HIV. During this Forum the Chairperson made a presentation on behalf of the African Commission, and delivered an address on the African Commission's achievements.

51. From 25 to 26 October 2010, the Chairperson of the African Commission participated in the last meeting before the launching of the Human Rights Strategy in Arusha, Tanzania. This meeting sought essentially to validate the document on the Human Rights Strategy.

52. From 28 to 29 October 2010, the Chairperson of the African Commission participated in a meeting on the review mechanisms of the United Nations Human Rights Council organized by the United Nations in Geneva, Switzerland.

Activities as a Member of the Working Group on the Rights of Older Persons and People with Disabilities in Africa

53. From 9 to 11 August 2010, the Chairperson of the African Commission participated in the 2nd statutory meeting of the Working Group on the Rights of Older Persons and Persons with Disabilities in Africa in Port-Louis, Mauritius. The objective of the meeting was to examine two draft Protocols; one on the rights of elderly persons and the other on the rights of persons with disabilities.

Activities as Chairperson of the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV

54. On 2 October 2010, the Committee held a working meeting organized by the Human Rights Development Initiative (HRDI), in Pretoria, South Africa. The main objective of this working session was to enable the mechanisms working in human rights and HIV/AIDS issues to discuss their modalities of cooperation and appropriate strategies that would allow the Committee to give effect to the Commission's Resolution No. **ACHPR/Res163 (XLVII) of 26 May 2010**.

55. On 6 November 2010, another working session in Banjul, The Gambia, brought together the HRDI staff and members of the Committee and culminated in the conclusion of a document on the various types of support that can be given to the Committee (technical, material and financial).

56. On 7 November 2010, the Committee held a meeting with the representatives of UNAIDS to fine tune the implementation of the Committee's Action Programme. From this meeting also emanated highly concrete proposals on the activities to be undertaken in the short, medium and long terms.

**Commissioner Mumba Malila -Vice Chairperson of the African Commission
Activities as a Commissioner**

57. From 7 to 11 June 2010, Commissioner Malila participated in a Training Seminar on the Communications Procedure which was organized by the African

Commission in Dakar Senegal. The purpose of the seminar was, in the main, to familiarize various users of the communications procedure of the Commission with the many fine points regarding communications particularly in light of the Commission's new rules of procedure, and generally to discuss issues of concern to the users. He presented a paper on an overview of the African Commission.

58. From 14 to 18 June 2010, Commissioner Malila attended a working visit at the Inter American Commission on Human Rights, in Washington DC, USA together with the Executive Secretary to the Commission and Mr Chafi Bakari, Senior Legal Officer. This visit was done in the framework of cooperation with institutions with similar mandates. The purpose was to share experience, consider challenges and identify ways for future collaboration.

59. From 21 to 25 June 2010, Commissioner Malila undertook a working visit with the Chairperson and the Secretary to the Commission to the AUC in Addis, Ababa. the delegation held meetings with the Vice Chairperson of the AUC, Dr Erustus Mwencha, the Commissioner, Political Affairs Mrs. Julia Dolly Joiner, the AUC Legal Counsel, Mr. Ben Kioko and the Director Human Resource and Administration, among others. The main purpose of the visit was to discuss the outstanding issue of recruitment of staff and revision of remuneration for Commissioners.

60. On 30 June 2010, Commissioner Malila attended the meeting of the Subcommittee of PRC on Administrative and Financial matters, in Addis Ababa, Ethiopia. The meeting was organised to among other things, discuss the issue of remuneration for the African Commission as well as that of the Court.

61. From 19 to 21 July 2010, Commissioner Malila attended the pre AU summit meeting of the PRC in Kampala, Uganda, together with the Chairperson, Commissioner Maiga and the Executive Secretary. Commissioner Malila also attended the Executive Council meeting that preceded the AU Summit and attended the Summit itself.

62. From 28 to 29 July 2010 in Maseru, Lesotho, Commissioner Malila participated in a Judges' Symposium on Judicial Independence, Impartiality and Accountability, organized by the International Commission of Jurists in conjunction with the Judiciary of Lesotho. The participants were drawn from the Southern African sub region and included serving and retired judges and academics. He presented a paper entitled "The Independence of the Judiciary through the Eyes of the African Commission on Human and People's Rights".

63. On 30 July 2010, Commissioner Malila participated in a workshop for Eastern and Southern African National Human Rights Institutions on continental human rights mechanisms held in Johannesburg, South Africa and officially closed the workshop which had been opened by the Chairperson of the African Commission on the 29 July 2010.

64. From 4 to 6 October 2010, Commissioner Malila participated in a colloquium of the African Human Rights Court and Similar Institutions held in Arusha, Tanzania.

The Colloquium was jointly sponsored by the GTZ, the Danish Institute for Human Rights, the European Union and the African Commission. He presented a paper on “the Jurisprudence of the African Commission on Human and Peoples’ Rights”.

65. On 15 October 2010, Commissioner Malila was invited to officially inaugurate a new course in Financial Crimes Investigation at the National Institute of Public Administration in Lusaka, Zambia.

66. On 21 October 2010, Commissioner Malila, at the invitation of the South African Human Rights Commission and the South African Human Rights Institute, participated, in the commemoration of African Human Rights Day whose theme was “*Human Rights; A Key to Sustainable Peace and Security in Africa*” honouring the year 2010 as a year of peace in Africa. The event was organized by the South African Human Rights Commission in conjunction with the Commission on Religious and Linguistic Rights and the South African Human Rights Institute.

67. He presented the key note address in which he, among other things, called on African states to support the human rights institutions they have created, including the African Commission and the African Court. He also featured in an interview on e-TV explaining the significance of the day in the African human rights calendar and also on a live phone-in programme in which he was asked questions on the African human rights system generally.

68. From 25 to 26 October, 2010, Commissioner Malila participated in a regional Training Workshop for Lawyers organized by the Coalition for an Effective African Court, Zimbabwe Human Rights NGO Forum, and the Centre for Human Rights and Rehabilitation in Blantyre, Malawi. He presented a paper on the Complementarity between the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights.

69. On 8 November 2010, Commissioner Malila featured on a Gambian radio station, Paradise FM, to explain the various aspects of the African Commission on Human and Peoples’ Rights. Elementary matters like the creation of the Commission, its composition, mandate, working methods, achievements and challenges were explained.

Activities as Member of the Working Group on the Death Penalty in Africa

70. From 7 to 9 November 2010, Commissioner Malila participated in the meeting of the Working Group on the Death Penalty held immediately preceding the 48th Ordinary Session. The meeting discussed among other things, the Kigali Framework Document and the Cotonou Framework Document as well as the way forward on the question of the death penalty in Africa.

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

71. From 11 to 13 October 2010, Commissioner Malila together with Commissioner Bitaye, Dr. Zephym Kalimba, Mr. Albert Barume and Ms Genivive Rose as members of the Working Group on Indigenous Populations and Communities in Africa attended and participated in the Sub regional Conference on the Rights of Indigenous Peoples/Marginalised Communities in Africa organized by the office of the Prime Minister (Namibia) International Labour Organization and the African Commission.

72. The Conference coincided with the official launch of the overview Report of the Rights of Indigenous Peoples in 24 African Countries. The study leading to the Report was undertaken by the Centre for Human Rights of the University of Pretoria and was presented by Prof Frans Viljoen. The seminar and the launch of the Report took place in Windhoek, Namibia.

73. From 7 to 8 November 2010, Commissioner Malila participated in the meeting of the Working Group on Indigenous Peoples/ Communities held in Banjul, The Gambia, just before the 48th Ordinary Session of the African Commission. The meeting reviewed, among other things, activities undertaken in the last inter session, and planned for programmes to be undertaken in the forthcoming intersession.

Activities as Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa

74. From 27 to 28 September 2010, Commissioner Malila as Chairperson of the Commission's Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, took part in a conference on Legal Remedies and the Role of Lawyers in Protecting Human Rights in the Context of Corporate Activity organized by the International Commission of Jurists in Geneva, Switzerland. He made a presentation on the background to the creation of the Working Group, the purpose of the Working Group and how it hopes to contribute to redressing human rights violations by corporations operating in the continent.

75. From 1 to 2 November 2010, he participated in a workshop on Extra- Territorial Obligations (ETOs) for the African Region in Pretoria, South Africa. The meeting was co-organized by the Centre for Human Rights, Pretoria, FIAN International and SAIFAC. He made a presentation on "the Establishment and Future of the Working Group on Extractive Industries" and possible areas of future cooperation between the African Commission and the ETO Consortium.

Activities as a Member of the Committee for the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV;

76. On 2 October 2010, Commissioner Malila participated together with the Chairperson and Commissioner Maiga as members of the Committee for the Protection of the Rights of People Living with HIV/AIDS and those at risk in a conversation between the Committee, the UN Special Rapporteur on the Right of

Everyone to the Highest Attainable Standard of Physical and Mental Health, Mr. Anand Griverm and the Human Rights Development Institute (HRDI). The conversation took place in Pretoria South Africa.

Honourable Commissioner Catherine Dupe Atoki
Activities as a Commissioner

77. From 7 to 11 June 2010, Commissioner Atoki attended a training seminar in Senegal, Dakar on the Complaints/Communication procedure, organised by the African Commission.

78. On 29 June 2010, Commissioner Atoki chaired a stakeholder's roundtable on strengthening of the National Human Rights Commission of Nigeria and its adherence to the Paris Principles which was organised by the Network of African Human Rights Institutions (NANHRI) in Abuja, Nigeria. The roundtable brought together high level representatives from NHRI's from six regional zones, Members of Parliament and civil society organisations. The meeting involved the launching of the Gap Analysis report on the National Human Rights Commission of Nigeria that was commissioned by NANHRI. The overall objective of the roundtable was to sensitize national and international stakeholders on strengthening the NHRC to enable it carry out its mandate in line with the recommendations of the Gap analysis Report.

79. From 5 to 6 July 2010, Commissioner Atoki participated in an anti- corruption interactive seminar for Magistrates in Lagos, Nigeria. The Seminar was organised by Socio-economic Rights and Accountability Project (SERAP) and it aimed to promote integrity in the Magistrate Courts and improve access of the citizens to justice in Lagos State. She presented a paper on promoting and enhancing the use and awareness of Alternative Dispute Resolution Mechanism.

80. On 10 August 2010, Commissioner Atoki was invited by the Nigerian Institute for Advanced Legal Studies in Lagos to make a presentation on *Revisiting Death Penalty in Nigeria*. She traced the evolution of international law and the trend towards abolition of the death penalty as illustrated by the UN General Assembly's adoption of the 2nd Optional Protocol to the ICCPR and the general reluctance by those States that have retained capital punishment on their Statute books.

81. From 4 to 6 October 2010, Commissioner Atoki attended a Colloquium of the African Human Rights Courts and Similar Institutions in Arusha, Tanzania, together with Commissioners Maiga the Chairperson, Vice-chair, and the Secretary of the Commission. She made a presentation on the "Enforcement of the recommendations of the African Commission" and reiterated the fundamental clog in the wheel of the operationalisation of the mandate of the Commission created by the instrument which left it without an enforcement powers.

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

82. From 10 to 14 July 2010, the Special Rapporteur on the invitation of the

Government of the Republic of Tunisia visited detention and related facilities in the country. During her visit she held talks with high ranking officials including the Government officials responsible for the relevant portfolios dealing with prisons in particular and detention in general. She also held talks with relevant NGOs and civil society organisations working in the field of prisons in the country. During the visit, the Special Rapporteur also visited a wide range of detention facilities including prisons, police stations and juvenile detention centres.

83. On July 22 2010, the Special Rapporteur on the invitation of the Nigerian Bar Association as part of its Law week activities gave *an International/comparative perspective to a keynote presentation on Balancing Public Safety and Security and the Constitutional Rights of Suspects: The Imperatives for Reforming the Pre-Trial System in Lagos State*.

84. Pursuant to the collaborative project with PRAWA on Prison Reform Intervention in Africa, the Special Rapporteur from 19 to 23 July 2010 participated in the assessment programme for Nigeria, which took place in Abuja on the situation and practices of the prisons/ correctional services.

Activities as Chairperson of the Committee on the Prevention of Torture in Africa

85. From June 2010, Commissioner Atoki chaired a public hearing on police abuse in Ibadan city, Nigeria, organized by the Network of Police Reforms, an NGO engaged in monitoring the activities of police in Nigeria. Victims publicly testified to the various violations of human rights suffered by them at the hands of the police whilst wrongfully detained. Torture, cruel, inhuman, degrading treatment and punishment were consistently identified as the means of extorting confessions. These testimonies were televised and reported nationwide.

86. On the occasion of the 'International Day in Support of Victims of Torture', the African Commission on Human and Peoples' Rights (the African Commission) and the CPTA jointly called upon States Parties to the African Charter on Human and Peoples' Rights (the African Charter) to take concrete measures to respect their commitments with regard to the right of victims to an effective remedy for the human rights violations suffered as a result of torture and other ill-treatment, as well as the right to full redress, including compensation and rehabilitation.

87. From 18 to 19 October 2010, Commissioner Atoki attended a Workshop in Nairobi, Kenya, for East Africa National Human Rights Institutions on the Implementation of Standards to Prevent Torture and other Ill-treatment, organised by the Human Rights Implementation Centre of the University of Bristol, UK. She made a presentation on the role of the African Commission in the prevention of Torture in Africa where she highlighted the important role that NHRI can play in support of the work of the African Commission by popularising the RIG, prosecuting torture, advocating for the criminalisation of torture and lobbying for enforcement of the recommendation of the Commission.

88. On 12 November 2010, during celebrations marking the 30th Anniversary of the African Charter on Human and Peoples' Rights, at the 48th Ordinary Session of the African Commission, the CPTA in its effort to promote the RIG, sensitized the public on its role to ensure that States Parties live up to their international obligations. The Chairperson of the CPTA launched a bi-annual publication of a Newsletter known as ***AFRICA TORTURE WATCH***:

89. On 10 November 2010, at the margins of the 48th Ordinary Session, Commissioner Atoki chaired a Meeting of the CPTA in Banjul, The Gambia to review the Meetings of the CPTA of 26 April 2010, which was held in Dakar, Senegal and the Strategic Consultative Meeting of the CPTA of 29 April 2010, also in Dakar, Senegal. The Meeting also discussed the programme and activities of the CPTA for 2010 and 2011.

Honourable Commissioner Musa Ngary Bitaye
Activities as a Commissioner

90. In March 2010, Commissioner Biatye, as Commissioner responsible for promotion activities in the Federal Republic of Nigeria, sent an Urgent Appeal to His Excellency the President of the Federal Republic of Nigeria to "Investigate Allegations of Serious Human Rights Violations" in Jos. Because of the deteriorating situation in Jos, the Chairperson of the African Commission followed the March Urgent Appeal with another letter, in May, addressed to the Chair of the Peace and Security Council, requesting from the State Party a Joint Fact-finding Mission to address the situation in Jos. The African Commission is still awaiting a response from the Federal Republic of Nigeria as to when the African Commission and the Peace and Security Council will be able to carry out the Fact-finding Mission.

91. In September 2010, Commissioner Bitaye also sent an Urgent Appeal to His Excellency the President of the Federal Republic of Nigeria about the alleged assassination of officials of the Economic and Financial Crimes Commission (EFCC). In the Urgent Appeal, he brought to His Excellency's attention the grave concerns of the African Commission about the recent alleged spate of assassinations of officials of the Economic and Financial Crimes Commission (EFCC) and the implications this has for its impartiality and independence. He is still awaiting a reply from the Government of the Federal Republic of Nigeria.

92. Pursuant to the African Commission's decision during the 47th Ordinary Session to conduct a Joint Promotion Mission to Sierra Leone involving all its Special Mechanisms taking into account the recent troubled history of that country and the many challenges it posed with respect for human rights, Commissioner Biatye sent a Note Verbale to the Government of Sierra Leone requesting a Joint Promotion Mission. The Government of Sierra Leone responded, but limited the Mission to conditions in Prisons. Unfortunately, the Commission did not consider it appropriate to truncate the Joint Mission it had proposed. Therefore, the Joint Promotion Mission could not take place.

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

93. The following activities were carried out under the supervision of Commissioner Bitaye, as Chairperson of the Working Group:

94. On 9 August 2010, Commissioner Bitaye together with the Chairperson of the Commission sent an Urgent Appeal to the President of Botswana, His Excellency Ian Khama, drawing his attention to the 21 July 2010 judgment of the High Court in Lobatse, Botswana which ruled that the Bushmen people were not entitled to use a well already established on their traditional land in the Kalahari Game Reserve or excavate a new one. This is in contradiction with the 13 December 2006 ruling of the High Court of Botswana that has ruled the forceful eviction of the Bushmen of the Central Kalahari Game Reserve as 'unlawful and unconstitutional'. In the Urgent Appeal the Government of Botswana was urged to embrace the decision of the 13 December 2006 of the High Court and allow the Bushmen to have access to water from their existing borehole at Mothomelo.

95. On 21 September 2010, Commissioner Bitaye sent a second Urgent Appeal to the Government of Tanzania on the situation of the Masai Pastoralists in Loliondo, Northern Tanzania. In the Urgent Appeal he brought to the attention of the President of the United Republic of Tanzania, His Excellency Jakaya M. Kikwete, that the situation of the Masai Pastoralists in Loliondo reportedly continues to be as bad as it was in 2009 when he wrote the first urgent appeal, that members of non-governmental organizations who are working with the affected people are being intimidated and that the European Union and diplomatic missions from different countries have been denied access to Loliondo. He urged the Government to kindly provide clarification on these reports, and in particular indicate what measures it has put in place or is likely to put in place to deal with the situation, if the reports are correct.

96. From 11 to 13 October 2010, Commissioner Bitaye participated in the launch of the Overview Report of the Research Project carried out jointly by the International Labor Organization, the African Commission on Human and Peoples Rights and the University of Pretoria on the Legal and Constitutional Rights of Indigenous Peoples in 24 African Countries, in Windhoek, Namibia.

97. From 6 to 8 November 2010, Commissioner Bitaye participated in the meeting of the Working Group on Indigenous populations/ Communities, in Banjul, The Gambia, to discuss activities undertaken during the past six months and plan for the future activities.

98. At the 48th Ordinary Session of the African Commission, The UN Declaration on the Rights of Indigenous Peoples and the Advisory Opinion of the African Commission on the UN Declaration on the Rights of Indigenous Peoples, published in English and French was distributed to participants. The publication will be used to

raise awareness about the UN Declaration on the Rights of Indigenous Peoples among African member states and other key stakeholders. The rights enshrined in this important UN Declaration are consistent with the African Charter on Human and Peoples' Rights and the jurisprudence of the African Commission.

Honourable Commissioner Mohamed Khalfallah

Activities as a Special Rapporteur on Human Rights Defenders in Africa

99. Commissioner Khalfallah sent Note Verbales to ten countries for promotion missions namely: Angola, Côte d'Ivoire, Congo Brazzaville, Democratic Republic of Congo, Central African Republic, Guinea, Cameroon, Chad Rwanda and Burundi. Only Cameroon responded to the request and discussions are on-going to agree on a date for the said visit. These country visits are necessary in order to maintain the dialogue with the Governments and with Civil Society on the ground where these partners actually live.

100. Commissioner Khalfallah noted that, the subject of concern by the mechanism during the intersession period is that pertaining to freedom of association and freedom of expression in the various African States. Commissioner Khalfallah is in the process of drafting terms of reference for a study on the freedom of association in Africa. Other matters of concern experienced by the human rights defenders constitute: harassment, intimidation and arbitrary detentions.

101. Following the receipt of urgent appeals from the various human rights organizations and networks, Commissioner Khalfallah dealt with about thirty cases and sent communications to the Governments according to the need and urgency of the case. These cases concern human rights defenders in the following ten (10) countries: Algeria, Angola, Cameroon, The Gambia, the Democratic Republic of Congo, Uganda, Sudan, Tunisia, Zimbabwe, and Swaziland.

102. Commissioner Khalfallah published two Press Releases; one on the assassination of Floribert Chebeya and the other on the arrest of Sylvestre Baziwa in the Democratic Republic of Congo. Commissioner Khalfallah also published a letter of appreciation in relation to the release of a Zimbabwean human rights defender.

103. From 4 to 6 November 2010, Commissioner Khalfallah participated in a seminar on Women Human Rights Defenders organized by the International Human Rights Service. In the same vein, the first activity of the regional meeting held in Banjul, The Gambia, had been designed to provide specific information regarding the experience of women human rights defenders in Africa. These discussions led the Commissioner to the second activity relating to possible strategies for the establishment of contacts with the international and regional mechanisms, so as to maximize the protection of women human rights defenders and the promotion of their work. An Action Plan was developed as well as a Resolution on women human rights defenders with the objective of building their capacity and enabling them to protect their rights in a strategic manner.

104. On 6 November 2010, Commissioner Khalfallah participated in a workshop organized by the International Human Rights Service on human rights defenders. He had discussions with the human rights defenders on several issues so as to provide them information on the role of the Special Rapporteur and to develop common working strategies for the protection of human rights defenders.

105. From 7 to 9 November 2010, Commissioner Khalfallah participated in the NGO forum which preceded the 48th Ordinary Session of the African Commission. Within the context of the forum, he was a member of a panel organized by the International Service, to meet and discuss with human rights defenders about the ways and means of establishing dialogue between them and the Special Rapporteur, and to address the problems encountered by human rights defenders everywhere on the Continent.

Activities as Chairperson of the Working Group on ECOSOC

106. With the objective of working on the mandate assigned by the Commission to the Working Group at its 47th Ordinary Session, namely to extract the guidelines on the elaboration of States Reports, the Working group met from 6 to 8 July 2010, in Tunis, Tunisia, to draft the guidelines for State Reporting on Economic, Social and Cultural Rights in Africa. The document has been completed in English and French, and was considered and adopted by the African Commission during the 48th Ordinary Session.

Honourable Commissioner Soyata Maiga
Activities as a Commissioner

107. From 7 J to 11 June 2010, Commissioner Maiga took part in a seminar organised by the African Commission on Communications/complaints mechanism Dakar, Republic of Senegal. The aim of the seminar was to inform representatives from member States and NGO on the communications/complaints procedure.

108. From 1 to 2 July 2010, Commissioner Maiga participated in a meeting organised by the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People in Rabat, Morocco. The objective was to discuss the importance of building an international consensus on a just and viable solution of the question of Jerusalem and the role of African States and other actors in that regard. In this meeting, Commissioner Maiga delivered a presentation on "The Role of Non-State Actors, including Parliamentarians and African Civil Society".

109. On 19 August 2010, Commissioner participated in a workshop on the validation of the 2010-2014 strategic plan of the National Human Rights Commission of Mali, in Bamako, Mali.

110. On 2 October 2010, Commissioner Maiga participated together with Chairperson and the Vice-Chairperson of the African Commission, in a meeting organized by the Human Rights Development Initiative (HRDI) with the Committee

members on the Protection of the Rights of People Living With HIV/AIDS (PLHIV) and those at risk, vulnerable to and affected by HIV and other actors, in Pretoria, South Africa.

111. From 4 to 6 October 2010, Commissioner Maïga participated in the Colloquium organised by the African Court on Human and Peoples' Rights, in partnership with the Danish Institute for Human Rights (DIHR) and with the support of the German agency for technical cooperation (GTZ) and the European Union in Arusha, Tanzania. The goal of the colloquium was to initiate a judicial dialogue between such institutions, in order to reinforce the means and ways through which cooperation and coordination can be ensured (notably through the exchange of information and expertise) between judicial, quasi-judicial, continental and sub-regional organisations mandated with the promotion and protection of human rights in Africa.

Activities as Special Rapporteur on the Rights of Women in Africa

112. From 3 to 4 June 2010, the Special Rapporteur participated in a seminar organized by the Inter-Parliamentary Union (IPU) in partnership with the National Assembly of Mali on the topic "Violence against Women and Girls" which was intended for Parliamentarians in Bamako, Mali.

113. From 21 to 23 June 2010 and on 24 and 25 October 2010 respectively, the Special Rapporteur participated in Montreal, Canada, as a foreign member, in the deliberations of the Board of Directors of Rights and Democracy.

114. From 13 to 15 July 2010, The Special Rapporteur, in collaboration the Government of the Republic of Mali, organised the first Regional Conference for West and North African States in Bamako, Mali, on the theme "The Role of the African Commission in the Promotion and Protection of the Rights of Women in Africa. The conference took place, under the auspices of the Government of the Republic of Mali". This was the first of a series of conferences that the Special Rapporteur wishes to organize on women's rights in Africa. The overall objective of the Conference was to highlight the role that can be played by the African Commission in the promotion and protection of women's rights in Africa and to provide a better understanding of its protection mandate through its communication/complaint mechanism. The report from the conference is available on the ACHPR website www.achpr.org.

115. From 21 to 23 July 2010, in Kampala, Uganda, the Special Rapporteur participated in the 16th Consultative Meeting of African civil society organisations on Gender Mainstreaming in the African Union in Kampala, Uganda. The meeting was organized by the network "Gender is my Agenda" (GIMAC) and coordinated by Femmes Africa Solidarité (FAS). Participants discussed the following themes: Women, Peace and Security in Africa and the Tenth Anniversary of Resolution 1325; Review of the implementation of the Solemn Declaration; Maternal, infant and child health and development in Africa. Recommendations were formulated at the end of the meeting, in particular in the field of maternal health, for the Summit of Head of States and Government that was to follow.

116. From 22 to 27 July 2010, the Special Rapporteur participated in the Ordinary Session of the African Union's Executive Council, in Kampala, Uganda and subsequently, the Summit of Heads of State and Government of the African Union.

117. On 31 July 2010, on the occasion of Pan African Women's Day, the Special Rapporteur published a press release which highlighted the importance of the topic of maternal health in the African human rights agenda in 2010. She recalled the theme of the African Union Campaign on Accelerated Reduction on Maternal Mortality (CARMMA): "Africa Cares, No woman should die while giving birth!" and that of the 15th Summit of Heads of States and Governments, which was "Maternal, Infant and Child Health and Development in Africa".

118. From 23 to 25 August 2010, the Special Rapporteur participated in a workshop organised by a Canadian organisation: the International Development Research Centre (IDRC), in Dakar, Senegal, to plan a sub-regional study on the problematic of political participation of young women.

119. On 2 September 2010, the Special Rapporteur was invited by the Office of the High Commissioner on Human Rights (OHCHR) to participate in a meeting with the staff of the Office of Rashida Manjoo, UN Special Rapporteur on Violence against Women, its Causes and Consequences in Geneva, Switzerland. The meeting agreed to reinforce the partnership between our two mechanisms, by exchanging information and with regards to programs implemented by the OHCHR, particularly in the DRC on sexual violence and the right to reparation for victims.

120. On 3 September 2010, the Special Rapporteur took part in a conference on Maternal Mortality, Morbidity, Human Rights and Accountability: A Dialogue with Human Rights Bodies, in Geneva, Switzerland. The conference was organised by the United Nations Population Fund (UNFPA) and the Centre for Reproductive Rights. The objective of the conference was to bring together experts working in the different international and regional human rights systems to share their experiences and develop strategies aimed at recognizing and establishing legal standards in the area of maternal health and morbidity as human rights.

121. In September 2010, the Special Rapporteur wrote the preface of a publication by Rights and Democracy entitled "Sexual Violence in Armed Conflict from 1993 to 2003 in the Democratic Republic of Congo", which should be launched in the upcoming months.

122. From 15 to 17 September 2010, in Dakar, Senegal, the Special Rapporteur participated in a regional forum on the implementation of United Nations Security Council Resolution 1325 on "Women, Peace, and Security" in Dakar, Senegal. The forum was organized by the United Nations Office for West Africa (UNOWA), in partnership with the African Union, the Economic Community Of West African States (ECOWAS), Mano River Union (MRU), the United Nations Population Fund (UNFPA), the United Nations Trust Fund for Women (UNIFEM), UN-INSTRAW, the Office of the

UN High Commissioner for Human Rights (OHCHR), the United Nations Development Program (UNDP), the UN High Commissioner for Refugees (UNHCR) and the United Nations Children's Fund (UNICEF). In addition to technical and financial partners, NGO and ECOWAS Gender Ministers were represented.

123. On 12 October 2010, in Kinshasa (DRC) the Special Rapporteur participated in a Forum organized by the Office of the High Commissioner on Human Rights (OHCHR) and the United Nations Mission for Stabilization in DRC (MONUSCO) in Kinshasa, DRC, on the issue of sexual violence in DRC and the issue of reparation for victims of sexual violence. Representatives from the OHCHR, the Trust Fund for victims, NGO, associations of victims of sexual violence, and government delegates working in the field of gender and justice were represented at the Forum. The goal of this event was to inform participants on the global strategy initiated by the OHCHR and to ensure that all stakeholders working on the issue of sexual violence were being made aware of the latest developments.

124. From 13 to 15 October 2010, the Special Rapporteur participated in a meeting of Experts and Gender Ministers from the African Union in Nairobi, Kenya, which preceded the launch of the African Women Decade (AWD) 2010-2020. The Meeting was officially opened by H. E. Hon. Kolonza Musyoko, Vice President of the Republic of Kenya and chaired by H. E. Atanas Manyala Keya, Assistant Minister for Gender, Children and Social Development. The meeting concluded with the adoption of the Nairobi Declaration and finally launching the AWD on 15 October 2010.

125. From 19 to 22 October, the Special Rapporteur participated in the third edition of the International Mibeko Forum in Brazzaville, Congo. This Forum was organized by Mibeko Association, in partnership with the Ministry of Gender and Integration of Women in Development with the support of the United Nations Development Programme (UNDP) and the United Nations Population Fund (UNFPA). The forum brought together delegates from States, international, regional and sub-regional institutions as well as representatives from African civil society. The Special Rapporteur presented a paper on communication on "Thirty years of CEDAW: Evaluation and Perspectives in Africa".

126. In line with her mandate to undertake promotional and fact finding missions in African countries Members of the African Union, the Special Rapporteur forwarded letters to the Republic of Niger for a mission to be carried out from the 6 to 10 December 2010 and also to the Republic of Algeria, which responded to the verbal note and should welcome the mission from the 13 to 22 December 2010.

127. During the 48th Ordinary Session of the African Commission, which took place in Banjul, the Gambia, the Special Rapporteur participated in the following activities: Meeting of the Committee tasked to work on the Internal Rules of Procedure; made a presentation in a panel discussion organized by the NGO Forum on "Women as a Critical Force in Democratic Governance"; facilitated a discussion on "Women's and Children's Rights in Africa". The discussion was held in the during the NGO Forum organized by the African Centre for Democracy and Human Rights Studies

(ACDHRS) and, made a presentation on the Mandate of the ACHPR and on the mandate of the newly established Committee on People Living with HIV/AIDS in Africa organized by the NGO People Opposing Women Abuse (POWA).

128. In conclusion, the Special Rapporteur reported that the year 2010 was fruitful and highly symbolic for African women. It marked the beginning of the African Women Decade 2010-2020 and the 10th anniversary since the adoption of the UN Security Council Resolution 1325 on “Women, Peace, and Security”. The year 2010 is also the 5th anniversary since the entry into force of the Maputo Protocol.

129. The Special Rapporteur stated that despite an enhanced commitment from member States to improve the situation of women, women continue to be victims of poverty, illiteracy, and suffer from the consequences of armed conflicts and from all kinds of abuses and several forms of discrimination, as well as the weight of traditional practices and that the mechanism is however pleased to have contributed to raising awareness on challenging issues faced by women in decision-making institutions and forums.

130. The Special Rapporteur congratulated the existing collaboration and cooperation between the African Commission, States Parties, United Nations agencies, Regional Economic Commissions, Research Institutions and civil society organizations working on gender issues.

131. She formulated recommendations for Member States on specific themes which have an impact on the promotion and the protection of the rights of women and girls in Africa, including the following:

- i) Ensure the ratification without reservation, the domestication, and the effective implementation of all key human rights instruments which guarantee the rights of women and girls;
- ii) Take appropriate measures to eliminate discrimination against women and girls;
- iii) Enact laws and additional programmes aimed at ensuring a better protection of maternal and child health;
- iv) Adopt national action plans to facilitate the implementation of UN Security Council Resolutions 1325, 1820, 1888 and 1889;
- v) Take appropriate measures to reinforce the role of women and to guarantee their participation in the prevention and the resolution of conflict;
- vi) Reinforce the capacities of women and women NGOs to enable them to influence the systems, structures, and decision-making institutions;

- vii) Ratify and give priority to the implementation of the Charter of Democracy, Elections, and Governance;
- viii) Invest in research on climate change in Africa and its implications on the life of women;

Activities as a Member of the Working Group on Indigenous Populations / Communities in Africa (WGIP)

132. From 6 to 8 November 2010, in Banjul, the Gambia, she participated in the meeting of the Working Group on Indigenous Populations / Communities and took part in the discussion on the agenda items.

***Honourable Commissioner Kayitesi Zainabou Sylvie
Activities as a Commissioner***

133. From 10 to 11 June 2010, Commissioner Kayitesi attended a Workshop on the application of International, Regional Instruments and Principles of Human Rights in the Administration of Justice in Rwanda, organized by the United Nations Coordination in collaboration with the National Commission on the Rights of the Individual in Kigali, Rwanda. During this Workshop, she presented a paper on the “Role of Regional Mechanisms and Instruments for the Protection of Human Rights”.

134. On 7 June 2010, Commissioner Kayitesi attended a training session on human rights organised for priests from the North Western region of Rwanda, organized by the National Commission on the rights of the Person in Rwanda. She presented a paper on “International, Regional and National Mechanisms on the Protection of Human Rights”.

135. From 29 to 30 June 2010, Commissioner Kayitesi attended a National Workshop on Human Rights organized for Members of Parliament in Kigali, Rwanda, by the United Nations Coordination in Rwanda. She presented a paper on “the African System on the Protection of Human Rights”.

136. On 29 July 2010, Commissioner Kayitesi attended a Consultative Meeting with Youth Leaders from Civil Society Organizations held, in Gicumbi, Rwanda. She presented a paper on “African Instruments on Human Rights: The African Charter on Human and Peoples’ Rights and the African Charter on Democracy, Elections and Governance”. The objective of the meeting was to remind Civil Society Organizations of their role as promoters of Democracy that the country was at the time in the process of holding its Presidential Elections.

137. From 20 to 21 September 2010, Commissioner Kayitesi attended the 2nd Regional Conference on the Death Penalty in the Middle East and North Africa in Alexandria, Egypt. The Conference was organized by Penal Reform International (PRI) in collaboration with the Swedish Institute Alexandria and the Arab Center for the Independence of the Judiciary and Legal Profession. During the Conference, she

presented a paper on “The African Commission on Human and Peoples’ Rights and the Working Group of the African Commission on the Death Penalty”.

138. During the intersession, Commissioner Kayitesi forwarded Note Verbales to Burundi and Guinea Bissau in a view to undertake promotional missions in her capacity as Commissioner responsible with promotional activities on human rights in these countries.

Activities as Chairperson of the Working Group on the Death Penalty in Africa

139. From 7 to 9 November 2010, in Banjul, The Gambia, Commissioner Kayitesi chaired the Meeting of the Working Group on the Death Penalty in Africa. The Meeting was organised to examine the document on the issue of the Death Penalty in Africa. During the meeting, the Working Group examined the document and included the recommendations made at the two regional Conferences on the Death Penalty in Kigali, Rwanda and in Cotonou, Benin. The Working Group also examined the Draft Resolution on the Abolition of the Death Penalty in Africa, to be submitted for consideration to the African Commission.

140. During the intersession, Commissioner Kayitesi forwarded Letters of Appeal on the situation of the Death Penalty to:

- i) His Excellency, President of the Federal Republic of Nigeria in June 2010, following information received about the planned execution of 800 prisoners sentenced to Death in a bid to reduce the prison population. The Appeal was addressed to His Excellency, reminding him to adhere to the Resolutions of the African Commission on the Moratorium and urge for measures to be put in place to prevent the execution of these persons.
- ii) His Excellency, President of the Republic of Equatorial Guinea in September 2010, following information received that four persons, three of which were military officers, and a civilian were executed some time after a military tribunal had tried and convicted them in Absentia; and that their family members were neither given the opportunity to see nor give them a decent burial. The letter expressed the African Commission’s disappointment and urged the State Party to make all efforts to ensure that such situations do not re-occur, to respect the African Charter and African Commission Resolutions on the Moratorium.

Activities as Member of the Working Group on Specific Issues

141. From 5 to 6 November 2010, on the margins of the 48th Ordinary Session of the African Commission in Banjul, The Gambia, Commissioner Kayitesi attended the Meeting of the Committee on the Rules of Procedure (ROP) of the African Commission. The meeting was organized to review the text of the Rules of Procedure of the African Commission, make the necessary amendments and fine tune the

document before its publication she contributed to the document and chaired the meeting.

Honourable Commissioner Pansy Tlakula
Activities as a Commissioner

142. From 29 to 30 July 2010, Commissioner Tlakula attended a Workshop for East and Southern African National Human Rights Institutions (NHRIS), organised by the Network of African NHRIs, in Johannesburg, South Africa. She made a presentation on “*the African Commission on Human and Peoples’ Rights: its mandate, functions and relevance in the promotion and protection of human rights*”.

143. On 26 August 2010, Commissioner Tlakula attended a workshop on Public Dialogue on the promotion of the African Charter and Protocols to enhance shared values and women’s participation in governance. The Workshop was organised by IDASA in Pretoria, South Africa.

144. On 8 September 2010, Commissioner Tlakula attended the African Network of Constitutional Lawyers’ Working Group on Social and Economic Rights in Africa (SERIA), organised by the University of Cape Town, South Africa. The theme of the Workshop was, “*Tracking progress in the protection of socio-economic rights in Africa*”. During the Workshop, she made a keynote address on the ‘*Background of the African Commission*,’ where she highlighted the socio-economic rights problems in Africa, and the role of the African Commission in finding lasting solutions to their realisation by States Parties.”

145. From 7 to 9 October 2010, Commissioner Tlakula attended the Second Echenberg Family Global Conference on Human Rights and Diverse Societies, organised by the McGill Centre for Human Rights and Legal Pluralism, and the McGill University Faculty of Law in Montreal, Canada. She gave a speech on “*Human Rights Institutions: Successes and Failures*”

146. On 19 October 2010, Commissioner Tlakula attended a Seminar on the recent developments in the African Commission organised by the People Opposed to Women Abuse (POWA) in Johannesburg, South Africa.

Activities as Special Rapporteur on Freedom of Expression and Access to Information in Africa

147. From 25 to 28 May 2010, the Special Rapporteur participated in a Panel Discussion on ‘*Human Rights of Journalism*,’ at the International Federation of Journalists (IFJ) World Congress in Cadiz, Spain

148. On 5 July 2010, she attended the 2nd World Journalism Education Congress and 2010 Highway Africa Conference in Grahamstown, South Africa, where she made a presentation on “*understanding the mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa: A medium to effective*”

advocacy for Journalists in Africa.”

149. From 19 to 24 July 2010, the Special Rapporteur attended a Seminar on Media and Elections in SADC- challenges and opportunities, organised by the Electoral Commission Forum of SADC. She made a presentation on “*The state of ratification of the African Charter on Democracy, Elections, and Governance in the SADC region:*

150. From 16 to 18 August 2010, the Special Rapporteur attended a Freedom of Information Litigation Strategies meeting in Nairobi, Kenya. During the meeting, she made a presentation on “*Role and Mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa.*” In her presentation, she highlighted Article 9 of the African Charter which entrenches the rights to freedom of expression and access to information, and the Declaration of Principles on Freedom of Expression in Africa (Declaration) which elaborates on Article 9. She also mentioned various Resolutions that have been adopted by the African Commission related to freedom of Expression and Access to Information in Africa since 2006.

151. From 30 August to 2 September 2010, she attended the Open Government Policy Summit organised by the Rivers State, in Port Harcourt Nigeria. She made a presentation on the “*Role & Agenda of the Special Rapporteur on Freedom of Expression and Access to Information in Africa.*”

152. On 15 September 2010, the Special Rapporteur participated in the “Right to Know Campaign” launch organised by the Freedom of Expression Institute (FXI) in Johannesburg, South Africa. She made a presentation on “*Regional Perspectives on Freedom of Expression and Access to Information*”.

153. On 28 September 2010, the Special Rapporteur attended the Regional Training Workshop on Media and Elections for Senior Journalists from Eastern and Southern Africa, organised by the UNDP. She made a presentation on “*Freedom of Expression and Access to Information: A requisite for Democratic Elections in Africa*”.

154. From 29 to 31 October 2010, she attended an Expert meeting on drafting a model for Freedom of Information Law in Africa. The workshop was organised by the Centre for Human Rights, University of Pretoria in collaboration with the Special Rapporteur and the Open Society Justice Initiative (OSJI).

155. On 12 November 2010, the Special Rapporteur attended a Brainstorming Meeting on strengthening freedom of expression under the African Peer Review Mechanism (APRM), organized by Article 19, in collaboration with her mandate. The meeting had three main objectives: to strengthen the cooperation and working relationship between the mandate of the Special Rapporteur and the APRM; ensure that issues related to freedom of expression and access to information are incorporated in the APRM Questionnaire and Indicators; and to strengthen the cooperation between the African Commission and the APRM.

156. In line with her mandate to “*make public interventions where violations of the*

right to freedom of expression and access to information have been brought to her attention, including by issuing public statements, press releases, and sending appeals to Member States asking for clarifications,” the Special Rapporteur forwarded letters of Appeal to the Republic of Zambia, Republic of Rwanda, and the Republic of South Africa, respectively.

157. The Special Rapporteur noted that the Republic of Liberia which was reported to have a Freedom of Information Bill submitted to the House of Representatives since 18 April 2008 by the Liberia Media Law and Policy Reform Working Group was finally passed into law on 6 October 2010. In this regard, the Special Rapporteur commended Liberia for this progress and expressed hope that other States Parties which still have Bills pending in Parliament will follow suit.

158. The Special Rapporteur also noted that she continued to receive reports on violations of the right to freedom of expression and access to information in a number of States Parties to the African Charter. In line with **Executive Council Decision: EX.CL/Dec.639 (XVIII)** on the 29th Activity Report of the African Commission, reached during the 18th Session of the Executive Council held in Addis Ababa, Ethiopia, from 27 to 28 January 2011, the countries against which allegations were made, as well as the details of the specific violations against each country, are set out in **Annex R** hereto attached.

159. The Special Rapporteur welcomed the decision of the Constitutional Court of Uganda in August 2010 that the sedition law infringes on the public's right to freedom of speech guaranteed under Uganda's Constitution, and thus abolishing criminal sedition. She reported that following this decision, a Ugandan Magistrates Court in Kampala dismissed sedition charges in October 2010 against the former radio presenter Robert Kalundi Serumaga, who faced six counts of sedition for making anti-President statements during the September 2009 Kampala riots. The Special Rapporteur expressed hope that the cases against the 10 journalists who are collectively facing 22 sedition charges will be withdrawn soon.

160. The Special Rapporteur also encouraged other African countries to ensure that their criminal defamation laws conform to standards stipulated in Principle XII of the Declaration. The Special Rapporteur pointed to some of the challenges still present and these include amongst others: States Parties who continue to ignore the recommendations and appeals of the Special Rapporteur; absence of Access to Information laws in some States Parties; continuous attacks on journalists and Media Practitioners and Legislative measures that restrict freedom of expression to name a few.

161. She finally appealed to the States Parties that have not yet done so, to ratify the African Charter on Democracy, Elections and Governance, highlighting that the right to freedom of expression and access to information, are essential for free, fair and credible elections.

Honourable Commissioner Yeung Kam John Yeung Sik Yuen

Activities as a Commissioner

162. On 27 August 2010, Commissioner Yeung Sik Yuen received the visit of Mr. Greg SHAW, Director, International and Corporate Relations of the International Federation on Ageing (*IFA*). The IFA has expressed interest to work with the ACHPR in the future.

163. On 2 October 2010, Commissioner Yeung Sik Yuen attended the function marking the International Day of Elderly Persons held at the State House, Le Reduit Mauritius. Almost 1,000 elderly persons turned out at a tea party/ cultural show hosted by the President of the Republic of Mauritius, to mark that yearly event.

164. On 4 November 2010, Commissioner Yeung Sik Yuen contributed to the publication of a booklet of illustrated drawings launched by Amnesty International (Mauritius) branch by writing its preface. The drawings are meant to help diffuse and promote human rights and civil liberties which are embedded in the Constitution of Mauritius.

Activities as the Chairperson of the Working Group on the Rights of Older Persons and Persons with Disabilities in Africa

165. From 9 to 11 August 2010, Commissioner Yeung Sik Yuen participated in the meeting of the Working Group on the Rights of Older Persons and Persons with Disabilities, in Mauritius. The main objective of the meeting was to finalise the Draft Protocol on the Rights of Older Persons in Africa with a view to present it for consideration during the 48th Ordinary Session of the African Commission.

166. The meeting also mapped out strategies to finalize the draft Protocol on the Rights of People with Disabilities, through the participation and collaboration of other stakeholders by 2011. The meeting was able to finalize the draft Protocol on Older Persons in Africa in both English and French for submission to the African Commission.

APPOINTMENT OF SPECIAL RAAPORTEUR

167. The African Commission appointed Honourable Commissioner Lucy Asuagbor as Special Rapporteur on Human Rights Defenders in Africa, effective from 24 November 2010 for a term of two (2) years.

RE-ALLOCATION OF COUNTRIES OF RESPONSIBILITY

168. The African Commission reviewed the countries for which Commissioners would be responsible as follows::

- i. Honourable Commissioner **Reine Alapini-Gansou**: Cameroon, Cape Verde; Democratic Republic of Congo, Mali and Tunisia;

- ii. Honourable Commissioner **Lucy Asuagbor**: Benin; Guinea Bissau and Rwanda;
- iii. Honourable Commissioner **Mumba Malila**: Kenya, Malawi, Mozambique Uganda and Tanzania;
- iv. Honourable Commissioner **Pansy Tlakula**: The Gambia, Namibia, Lesotho,, Swaziland and Zambia;
- v. Honourable Commissioner **Catherine Dupe Atoki**: Egypt, Ethiopia, Equatorial Guinea, Liberia, and Sudan;
- vi. Honourable Commissioner **Musa Ngary Bitaye**: Ghana, Nigeria, Mauritius Sierra Leone and Zimbabwe;
- vii. Honourable Commissioner **Mohamed Bechir Khafallah**: Chad, Central African Republic, Guinea Conakry, Mauritania, SADR and Senegal;
- viii. Honourable Commissioner **Zainabo Sylvie Kaytesi**: Algeria, Burkina Faso, Burundi and Cote d'Ivoire,
- ix. Honourable Commissioner **Mohamed Fayek**: Botswana, Eritrea, South Africa and Somalia;
- x. Honourable Commissioner **Soyata Maiga**: Angola, Congo Brazaville, Gabon, Niger and Libya;
- xi. Honourable Commissioner **Yeung Kam John Yeung Sik Yuen**: Comoros, Djibouti, Madagascar, Sao Tome and Principe, and Seychelles.

Private Session **Report of the Secretary**

169. In her Report to the 48th Ordinary Session of the African Commission, the Secretary, Dr. Mary Maboreke, set out the activities undertaken during the Inter-Session period between the 47th and 48th Ordinary Sessions; updated on administrative, budgetary and staffing issues; discussed the budget execution rate, as well as the budget preparation concerning the 2011 fiscal year.

170. She indicated that there have been some positive developments in the staffing situation at the Secretariat. She reported that in response to the Secretariat's continuous requests to the Headquarters to expedite recruitment to the approved posts for 2010, a new Accounts Assistant has joined the Secretariat and candidates have been interviewed for vacant positions for Legal Officer positions at the Secretariat as follows: Legal Officer /Protection P2; Legal Officer/Promotion P2 and Legal Officer/Protection P3. She said following approval from the Headquarters, the posts of Receptionist/Secretary and Driver/Messenger were advertised locally, and

that a lot of applications have been received, all of which would be forwarded to the Headquarters for processing with a view to having the new staff joining the Secretariat as soon as possible.

171. Concerning implementation of AU Policy decisions, Dr. Maboreke indicated that the Secretariat has continued to follow-up on the issue of the construction of a permanent Headquarters for the African Commission and so far, there have been no new developments on the matter.

172. Regarding the long-standing issue of the review of honorarium and allowances for members of the African Commission, Dr. Maboreke said the proposals for the allowances and honorarium of African Commission Commissioners had been attached to the 28th Activity Report of the African Commission. However, the Executive Council decided that the proposals be considered by the relevant AU bodies before being submitted for consideration by the Executive Council and Summit. She indicated that the Secretariat will continue to follow up on the matter.

173. Recalling that the new Rules of Procedure came into force three (3) months following the date of their adoption, that is, on 18 August 2010, Dr Maboreke informed the Honourable Commissioners that the Committee set up to clean up the Rules met prior to the 48th Ordinary Session, to ensure that the Rules are ready for a final reading and, thereafter, harmonization and translation into all the other AU languages as mandated during the 47th Ordinary Session.

Consideration of State Reports under Article 62 of the Charter

174. The Democratic Republic of Congo presented its combined 8th, 9th and 10th Periodic Report in accordance with Article 62 of the African Charter. The African Commission examined the Report and engaged in constructive dialogue with the State Party.

175. The African Commission adopted Concluding Observations on the combined 8th, 9th and 10th Periodic Report of the Democratic Republic of Congo.

Status of Submission of State Reports

176. The status of submission and presentation of the Periodic Reports of States as at the 48th Ordinary Session of the Commission stood as follows:

No.	Category	Number of States
1.	States which have submitted and presented all their Reports	9
2.	States that are late by one (1) Report.	8
3.	States that are late by two (2) Reports	5
4.	States that are late by three (3) Reports	5

No.	Category	Number of States
5.	States that are late by more than three (3) Reports	12
6.	States that have not submitted any Reports	12
7.	States that have submitted all their Reports and will present at the 49 th Ordinary Session	2

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

No.	State Party
1.	Algeria
2.	Botswana
3.	Cameroon
4.	Congo Brazzaville
5.	Ethiopia
6.	Mauritius
7.	Nigeria
8.	Rwanda
9.	Uganda

b) States which have **submitted one or more Reports but still owe more:**

1.	Angola	6 overdue Reports
2.	Benin	1 overdue Report
3.	Burundi	4 overdue Reports
4.	Cape Verde	6 overdue Reports
5.	Central African Republic	2 overdue Reports
6.	Chad	4 overdue Reports
7.	Egypt	3 overdue Reports
8.	Gambia	7 overdue Reports
9.	Ghana	4 overdue Reports
10.	Guinea	6 overdue Reports
11.	Kenya	1 overdue Report
12.	Lesotho	4 overdue Reports
13.	Madagascar	1 overdue Report
14.	Mali	4 overdue Reports
15.	Mauritania	2 overdue Reports
16.	Mozambique	6 overdue Reports
17.	Namibia	3 overdue Reports
18.	Niger	2 overdue Reports
19.	Saharawi Arab Democratic Rep	2 overdue Reports
20.	Senegal	2 overdue Reports
21.	Seychelles	2 overdue Reports

22.	South Africa	1 overdue Report
23.	Sudan	1 overdue Report
24.	Swaziland	4 overdue Reports
25.	Tanzania	1 overdue Report
26.	Togo	4 overdue Reports
27.	Tunisia	1 overdue Report
28.	Zambia	1 overdue Report
29.	Zimbabwe	1 overdue Report

- c) States which have **submitted all** their Reports **and will present** at the 49th Ordinary Session of the ACHPR:

No.	State Party
1.	Libya
2.	Burkina Faso

- d) States which have **not submitted** any Reports:

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

177. The African Commission congratulates States Parties who are up to date with their Reports, and continues to urge those that have not yet done so, to submit their Initial and Periodic Reports. The African Commission also reminds States Parties that they can combine all the overdue Reports into a single cumulative Report, for submission to the African Commission.

Protection Activities

178. During the Inter-Session period, the African Commission undertook several measures pursuant to Articles 46 to 59 of the African Charter, 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.

179. In addition, a total of eighty-two (82) Communications were tabled before the African Commission: **five (5)** on Seizure; **fifty-two (52)** on Admissibility; **twenty-four (24)** on the Merits; and **one (1)** for review.

180. The following Communications were seized of by the African Commission;

- i. Communication 389/10 – Mbiankeu Genevieve v Cameroon;
- ii. Communication 390/10 – Abba Boukar v Cameroon;
- iii. Communication 391/10 - Mr. Abdelrahman Mohamed Gassim & 9 others (represented by East and Horn of Africa Human Rights Defenders Project) v Sudan;
- iv. Communication 392/10 - Mr. Theogene Muhayeyezu v Rwanda;
- v. Communication 393/10 - Institute for Human Rights and Development in Africa & Rights and Accountability in Development v DRC;

181. The parties concerned (States Parties and Complainants) have been duly informed of the decisions of the African Commission in their respective cases.

182. The African Commission declared the following Communications admissible:

- i) Communication 311/05 - Riffaat Makkawi v Sudan;

183. The African Commission declared the following Communications inadmissible:

- i) Communication 305/06 - Article 19 and Others v Zimbabwe;
- ii) Communication 338/07 – SERAP v Nigeria;

184. The African Commission deferred seventy- four (74) Communications to its 49th Ordinary Session, for various reasons, including time constraints and lack of response from one or both parties.

Decisions/Adoption of Documents of the African Commission

185. The African Commission examined and adopted the following Reports and documents:

- i) Progress Report of the Working Group on the Death Penalty;
- ii) Draft State Reporting Guidelines on Economic, Social and Cultural Rights in Africa; and

- iii) The Report of the Committee on the Rules of Procedure.
186. The African Commission discussed the document on “*the Role of the African Commission on Human and Peoples’ Rights in Promoting the Rights to a Nationality in Africa*” prepared by Citizen Rights in Africa Initiative (CRAI) and deferred its adoption.
187. The African commission also discussed the budget for 2011.
188. The African Commission decided that the nomination of an expert from North Africa to join the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa be re advertised up to 31 January 2011.
189. The African Commission considered a document on matters/cases for referral to the African Court and agreed that the Secretariat should identify such cases and report to the African Commission at its next Session.
190. The African Commission considered the request by Coalition of African Lesbians (CAL) to be furnished with reasons for not granting it observer status and decided that the Secretariat should make these reasons available to CAL.
191. The African Commission decided that the Secretariat intensifies its efforts in inviting States Parties to attend the Ordinary Sessions of the Commission and in ensuring that States Parties submit their Reports in terms of Article 62 of the Charter;
192. On the margins of the 48th Ordinary Session, a delegation of the African Commission led by the Acting Chairperson, met with the Honourable Secretary General for Foreign Affairs of the Republic of Angola, and discussed matters of mutual interest.

Adoption of Mission Reports

193. The African Commission adopted the Promotional Mission Report to the Republic of Sudan.

Appointment of Expert Members of the Committee for the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV;

194. During its 47th Ordinary Session held in Banjul, The Gambia, from 12 to 26 May 2010, in accordance with Rule 28 of its Rules of Procedure, the African Commission adopted a Resolution Establishing a Committee on the Protection of the Rights of Persons Living with HIV and those at Risk, Vulnerable to and Affected by HIV.
195. Following the establishment of the Working Group, the African Commission

mandated its Secretariat to compile a list of interested candidates who will constitute the Independent Expert Members of that Working Group. Due consideration was to be given to expertise on HIV and human rights issues in Africa, as well as gender, geographical distributions and legal aspects.

196. During the 48th Ordinary Session, the African Commission reviewed the applications received and appointed the following as Expert Members of the Committee on the Protection of the Rights of Persons Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV;:

- i. Ms. Atim Agnes, HRDI;
- ii. Mr. Patrick Michael Eba, UNAIDS;
- iii. Mr. Alain Patrick le Doux Fogue Dzutue (Cameroonian);
- iv. Ms. Nicolette Merle Naylor, (South African);
- v. Mr. Christian Garuka Nsabimana, (Rwandan);
- vi. Mr. Durojaye Ebenezer Tope, (Nigerian).

Resolutions

197. The African Commission adopted the following Resolutions:

- i. Resolution on Elections in Africa;
- ii. Resolution on Repealing Criminal Defamation Laws in Africa;
- iii. Resolution on the Cooperation between the African Commission on Human and Peoples' Rights and the African Peer Review Mechanism;
- iv. Resolution on the Deteriorating Situation of Indigenous People/Communities in some parts of Africa;
- v. Resolution to Increase Members of the Working Group on Older Persons and People with Disabilities in Africa;
- vi. Resolution on the Appointment of a Special Rapporteur on Human Rights Defenders in Africa;
- vii. Resolution on the Appointment of Members of the Committee on the Protection of the Rights of People Living with HIV(PLHIV) and those at Risk, Vulnerable to and Affected by HIV;
- viii. Resolution on the Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
- ix. Resolution on Crimes committed against Women in the

Democratic Republic of Congo (DRC);

- x. Resolution on Securing the effective Realization of Access to Information in Africa;
- xi. Resolution to Increase the Membership of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa;

Session Report

198. The African Commission deferred the adoption of the 48th Ordinary Session Report to a later Session, due to time constraints.

Dates and Venue of the 49th Ordinary Session

199. The African Commission decided that the 49th Ordinary Session will be held from 28 April to 12 May 2011, at a venue still to be determined.

Submission of the Twenty – Ninth Activity Report

200. In accordance with Article 54 of the African Charter on Human and Peoples' Rights, the African Commission submits the present 29th Activity Report to the 19th Ordinary Session of the Executive Council of the African Union, for consideration and onward transmission to the 16th Summit of the AU Heads of State and Government.

**AGENDA OF THE 48th ORDINARY SESSION OF THE AFRICAN
COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

(10 – 24 November 2010, Banjul, The Gambia)

Item 1: Opening Ceremony (Public Session)

- a) Swearing-in of New Commissioner

Item 2: Adoption of the Agenda (Private Session)

Item 3: Organization of Work (Private Session)

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

- a) Statements by State Delegates;
- b) Statement by African Union Organs with Human Rights mandate;
- c) Statements by Intergovernmental and International Organizations;
- d) Statements by National Human Rights Institutions;
- e) Statements by NGOs.

**Item 5: Launching of the activities commemorating the 30th Anniversary
of the African Charter** (Public Session)

**Item 6: Cooperation and Relationship with National Human Rights
Institutions (NHRIs) and Non-Governmental Organizations (NGOs)**
(Public Session)

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

Item 7: Consideration of State Reports (Public Session)

- a) Status of Submission of State Party Reports
- b) Consideration of the :
Periodic Report of the Democratic Republic of Congo;

**Item 8: Activity Reports of Members of the Commission & Special
Mechanisms** (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 Committee for the Prevention of Torture in Africa;
- 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; and
- x. Chairperson of the Working Group on the Rights of Older Persons and People with Disabilities;
- xi. Chairperson of the Working Group on Specific Issues Relevant to the Work of the Commission;
- xii. Chairperson of the Committee on the rights of People Living with HIV/AIDS.
- xiii. Report of the Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa.

Item 9: Consideration of: (Private Session)

- a) Budget Proposal for 2011;
- b) Discussion on the Composition of the Advisory Committee on Budget and Staff Matters;
- c) Report of the Committee on the Rules of Procedure;
- d) Report of the Working Group on the Death Penalty;
- e) Draft State Reporting Guidelines on Economic, Social and Cultural Rights in Africa;
- f) Draft Protocol on the Rights of Older Persons in Africa;
- g) Nomination of an Expert from North Africa to join the Working Group on Extractive Industry, Environment and Human Rights Violations in Africa;
- h) Nomination of an Independent Expert for the Working Group on People Living with HIV;
- i) AU Human Rights Strategy;
- j) CAL Application for Observe Status;
- k) Submission of State Reports and Attendance at the Ordinary Sessions of the ACHPR;
- l) Matters /Cases for Referral to the African Court;
- m) Right to Citizenship.

Item 10: Consideration and Adoption of Draft Reports of (Private Session)

Promotion Missions to the:

- i. Republic of The Sudan;
- ii. Republic of Mozambique.

Item 11: Consideration of Communications: (Private Session)

Item 12: Report of the Executive Secretary: (Private Session)

Item 13: Consideration and Adoption of (Private Session)

- a) Recommendations, Resolutions and Decisions;
- b) Concluding Observations on the Periodic Report of the:
 - Democratic Republic of Congo;

Item 14: Dates and Venue of the 49th Ordinary Session of the ACHPR
(Private Session)

Item 15: Any Other Business (Private Session)

- a) Participation of Expert Members of Working Groups in promotional missions;
- b) Update on commissioners' honorarium.
- c) Allegations on staff appointments.

Item 16: Adoption of: (Private Session)

- a) 48th Session Report;
- b) 29^h Activity Report;
- c) Final Communiqué of the 48th Ordinary Session; and

Item 17: Reading of the Final Communiqué and Closing Ceremony
(Public Session)

Item 18: Press Conference (Public Session)

Communication 305/05 - ARTICLE 19 and Others v Zimbabwe

Summary of the Complaint

1. The Complaint is filed by ARTICLE 19, the Media Institute of Southern Africa (MISA) of Zimbabwe, the Institute for Human Rights and Development in Africa, Gerry Jackson and Michael Auret Jr. (herein after referred to as the Complainants) against the Republic of Zimbabwe (the Respondent State) in accordance with Article 55 of the African Charter on Human and Peoples' Rights (the Charter).

2. The Complainants aver that Capital Radio Private Limited (CRPL) is a private company incorporated in the Respondent State seeking to provide broadcasting services within Zimbabwe. They submit that despite repeated efforts, CRPL still cannot broadcast in Zimbabwe due to legal restrictions and political opposition that allows the state broadcaster to enjoy broadcasting monopoly.

3. It is further alleged that on 22 September 2000, the Supreme Court of Zimbabwe ruled, in a matter in which CRPL challenged the constitutionality of this monopoly, that Section 27 of the Broadcasting Act was unconstitutional on the grounds that it was inconsistent with Section 20(1) of the Constitution of Zimbabwe which guarantees the right of freedom of expression. The Supreme Court also struck down Sections 14(1) and 14(2) of the Radio-communication Service Act (RSA) on the same ground, and expressly pronounced that CRPL was legally entitled to broadcast in Zimbabwe and in accordance with the law can import any broadcasting equipment into Zimbabwe.

4. The Complainants aver that on 25 September 2000, the Respondent State publicly responded to the ruling of the Supreme Court by stating that the public broadcaster would continue its broadcasting monopoly and that a new legislation would be enacted to regulate the broadcasting sector.² The Minister of State for Information and Publicity (the Minister) is said to have publicly announced that CRPL would not be permitted to broadcast.³

5. Despite the statements by the Respondent State and the Minister in particular, CRPL proceeded to exercise its newly recognized right to broadcast. It imported broadcasting equipment into Zimbabwe and began broadcasting a test signal on 28 September 2000 from an office in Eastgate shopping centre Harare.

6. However, the Directors of CRPL quickly realized that the location was not ideal for broadcasting and thus, on the following day, 29 September, CRPL, relocated to

² Media Rights Agenda, Media Right Monitor, November 2000 No 5(11) p 22 available at: <http://mediarightsagenda.org>. See also International Freedom of Expression Exchange (IFEX), 'State broadcaster to continue with monopoly' 25 September 2000 <http://www.ifex.org/en/content/view/full/11575>, submitted by the Media Institute of Southern Africa (MISA).

³ IFEX Update 'Court Orders return of confiscated equipment' 6 October 2000 <http://www.ifex.org/en/content/view/full/11680> submitted by the Committee to Protect Journalists (CPJ)

alternative broadcasting premises at the Monomotapa Crowe Plaza Hotel and set up a broadcasting studio in one of the offices there.

7. A music signal was set up on a broadcasting loop while the scope of the coverage was tested and it was determined what additional equipment was required for an improved signal.

8. Following the commencement of CRPL's broadcast, the Respondent State is reported to have stated a number of times in the media that CRPL was operating illegally and referred to CRPL as a "pirate radio station".⁴

9. On 1 October 2000, the Minister of State for Information stated in a Zimbabwe Broadcasting Corporation (ZBC) telecast that he would be "taking appropriate action" against CRPL.

10. On 3 October 2000, an article appeared in The Herald newspaper which indicated that the Inspector Division of the Posts and Telecommunications Corporation (PTC) considered that CRPL's broadcasting service may be in breach of Sections 12 and 13 of the Radio-communications Service Act (RSA).⁵

11. Following this, on 4 October 2000, CRPL applied to the High Court for an order declaring that the RSA does not apply to CRPL's broadcast service and to restrain the Respondent State and police from interfering with its broadcasting on the alleged violation of the RSA.⁶

12. On the same day, the Minister made an application to the High Court seeking an interdict prohibiting CRPL from broadcasting on the basis that it was contravening Sections 12 and 13 of the RSA. A search warrant was also issued by a magistrate on 4 October 2000 permitting the Assistant Police Commissioner to search CRPL's broadcasting premises and all related premises, and to seize its broadcasting equipment.⁷

13. The police sought to exercise the search warrant that day, arriving at CRPL's broadcasting premises that afternoon. Upon the arrival of the police, CRPL made an urgent *ex-parte* application to the High Court seeking a stay of execution of the search warrant.

14. The High Court heard the application immediately and granted the stay of execution, holding that the search warrant was invalid for a number of reasons.⁸ In particular, the Court declared that there was no possibility of CRPL breaching Sections 12 and 13 of the RSA as these provisions did not apply to CRPL and, in any case, these provisions were no longer enforceable since the Supreme Court had

⁴ See The Herald 'Move to Crackdown on Broadcasting Site of Pirate Radio Stations' 3 October 2000.

⁵ Ibid

⁶ Brooks certificate of urgency and Auret's founding affidavit (Annex A6 & A7)

⁷ Search warrant (Annex A8)

⁸ Court transcript of ex-parte application (Annex A9)

ruled that Sections 12 and 13 of the RSA were secondary operative provisions to give effect to Sections 14(1) and 14(2).

15. The stay of execution of the search warrant was valid until 4:30pm of 5 October 2000. CRPL's lawyers at the Monomotapa Plaza reminded the police of the existence of the High Court order prohibiting the execution of the search warrant. In the evening of 5 October, the police raided CRPL's broadcasting studio and seized its broadcasting equipment. This brought CRPL's broadcasting to an end.

16. The police also surrounded the homes of the Directors of CRPL on 4 October 2000 in order to execute the search warrant. On the advice of their lawyer, the CRPL Directors went into hiding at this point. The Directors' homes continued to be surrounded and monitored for a number of days. The police camped outside Mr Auret's family home for a week and executed their search warrant on Ms Jackson's home during the week following 4 October.

17. Finally, in the afternoon of 4 October 2000, an emergency temporary legislation was enacted under the Presidential Powers (Emergency Regulations) Act.⁹ The Regulations introduced a broadcast regulatory regime imposing a requirement to obtain a broadcast license and designating the Minister of State for Information as the licensing authority. The Regulations further provided that broadcasting licenses would only be granted in response to a call for a license application made by the Minister.

18. The Regulations were not gazetted, and so did not become legally enforceable, until 5 October 2000.

19. After the raid on the CRPL's broadcasting premises, the Respondent State held a press conference on 5 October 2000, where they displayed the broadcasting equipment confiscated from the CRPL.¹⁰ At this press conference, the Minister of Information stated that CRPL did not qualify for a broadcasting license under the Regulations.¹¹

20. On 5 October 2000, the High Court ordered the police to return the confiscated equipment, which had been unlawfully seized. In addition to this order, Gwaunza J made a declaration confirming that Sections 12 and 13 of the RSA had no application to CRPL's functioning or broadcasting. The declaration also stated that CRPL should desist from broadcasting for ten days in order that its site and equipment (once returned) could be inspected and that CRPL should be granted a frequency.¹²

21. On 6 October 2000, CRPL's lawyer Mr Antony Brookes went to CRPL's broadcasting premises to oversee the return of the confiscated equipment by the

⁹ Presidential Powers (Temporary Provisions) Broadcasting Regulations 2000 (the Regulations).

¹⁰ IFEX Update 6 October 2000, See also BBC News 'Radio Shut Down Defended' 5 October 2000.

¹¹ Ibid

¹² Gwaunza J Order (Annex (A10))

police. Under the Regulations it was now an offence to possess a “signal transmitting station”, that is, a station which is used for the purpose of transmitting a broadcast service. Accordingly, Mr Brookes stated to the police that CRPL would be taking possession of everything except CRPL’s transmitter unit, as they were legally entitled to under the Regulations.¹³ Despite this, the police proceeded to confiscate all the equipments.¹⁴ CRPL continued to be liable for the hire charges on the equipments at the monthly charge of ZM \$ 158,730.00 (approximately US \$ 2,886.00 at the time).¹⁵

22. On or about 16 October 2000, the High Court held the Assistant Commissioner of Police in contempt of court for the raid on the evening of 4 October.¹⁶ Neither the Assistant Police Commissioner nor the Police Commissioner denied that the stay of execution of the search warrant had been defied.

23. On 3 November 2000, CRPL’s lawyers wrote a letter of demand to the Police Commissioner seeking the return of the equipment, except the transmitter unit, which had been seized on 6 October 2000 and indicating that if this equipment was not returned, court proceedings would be initiated.¹⁷ No response to the letter of demand was received.

24. On 8 November 2000, CRPL applied to the High Court for the return of the equipment seized on 6 October 2000, apart from the transmitter unit. The High Court ruled in CRPL’s favour and ordered the return of the equipment within two days.¹⁸

25. CRPL was not allocated a frequency or granted a broadcasting license. No broadcasting licenses were issued during the six month life span of the Regulations, thus keeping in place the State broadcast monopoly which had been ruled unconstitutional by the Supreme Court.

26. Upon the expiry of the Regulations in April 2001, the Respondent State enacted the Broadcasting Services Act 2001 (the Act), carrying over many of the provisions from the Regulations. The Parliamentary Legal Committee issued two reports – one regarding the Regulations¹⁹ and the other regarding the Bill²⁰ - both of which declared several provisions of the Regulations and the Bill to be Unconstitutional. The Speaker of Parliament dismissed the report on the Bill on a technicality and the Bill was passed without amendment.²¹

27. CRPL then initiated proceedings in the Supreme Court to challenge the Constitutionality of the Broadcasting Services Act. Accordingly, in June 2001, CRPL applied to the Supreme Court to rule that key operative provisions of the Act were

¹³ Affidavit of Mr Antony Brooks dated 8 November 2000

¹⁴ The Herald ‘Police return Capital Radio equipment then seize it again’ 7 October 2000.

¹⁵ Affidavit of Geraldine Jackson dated 8 November 2000

¹⁶ Capitol Radio (Private) Limited v Minister of Information & Ors (3): In re Ndlovu 2000 (2) ZLR 289 (H).

¹⁷ Letter of demand

¹⁸ Court Order from Gwaunza J November 2000

¹⁹ Regulations Report

²⁰ Bill Report

²¹ IFEX Update, ‘Broadcasting Services Bill Passed into Law’ % April 2001.

unconstitutional on the basis of being inconsistent with Section 20(1) of the Zimbabwean Constitution, guaranteeing the right of freedom of expression.

28. There was a significant delay in hearing the matter. In the interim, the Broadcasting Authority of Zimbabwe (BAZ), which was established by the Act, made a call for satellite television license applications in 2002, although formally this fell within the Minister's ambit, not that of the BAZ. Four license applications were received but all were rejected.²² This was the first ever call for license applications under the Regulations or the Act.

29. The Supreme Court handed down its judgment on 19 September 2003, ruling that the majority of the contested provisions were either constitutional or that CRPL did not have standing to challenge them.²³ The Court held four of the seventeen challenged provisions to be unconstitutional.

30. At the time of the Supreme Court's judgment, the Zimbabwean Government enacted the Broadcasting Services Amendment Act 2003 (Amendment Act). The Amendment Act repealed Section 6 of the Act (which designated the Minister as the broadcast licensing authority). The Amendment Act did not, however, repeal any of the other provisions which the Supreme Court had ruled were unconstitutional.

31. A second call for applications, this time for both radio and television, was made in March 2004. This would have been the first ever opportunity for CRPL or other aspirant radio broadcasters to apply for a license. Once again, all of the applications were denied.²⁴ It was announced in May 2005 that Munhumutape African Broadcasting Corporation (MABC) was short listed by the BAZ for further consideration for a license but in August 2005 the BAZ denied MABC's application.²⁵

32. In September 2004, the Zimbabwean Government enacted subordinate legislation outlining the schedule of broadcast license fees for broadcasting licenses.²⁶ These license fees were prohibitively expensive given the increasingly difficult economic situation in Zimbabwe and hence constituted a further barrier to the feasibility of private broadcasting in Zimbabwe. The license fee for a 10-year national commercial radio broadcasting license was set at ZM\$ 672 million (approximately US\$ 159,620 at the time) coupled with a ZM\$ 5 million (US\$ 1,187) non-refundable application fee, and a frequency fee of ZM\$ 800,000 (US\$ 190) per month. For a 10-year national commercial television license, the fee was ZM\$ 840 million (US\$ 199,525), along with the application fee. For a local commercial radio license, the fee was ZM\$ 14 million (US\$ 3,325).

²² IFEX Update 'Information Minister rejects applications for satellite broadcasting licenses' 12 July 2002.

²³ Capitol Radio (Private) Limited v the Broadcasting Authority of Zimbabwe, the Minister of State for Information and Publicity and the Attorney General of Zimbabwe. Judgment No S.C 128/02 (Capitol Radio). Judgment was handed down on 19 September 2003.

²⁴ US Department of State Bureau of Democracy, Human Rights and Labour, Country Report Zimbabwe 2004, Section 2a.

²⁵ Zimbabwe Independent 'MABC denied license' 16 September 2005.

²⁶ Broadcasting Services (Licensing and Content) Regulations 2004, Statutory Instrument 185 of 2004.

33. By the time this Communication was filed before the Commission no private broadcasting license have been granted in Zimbabwe, leaving in place the State broadcasting monopoly.

Articles alleged to have been violated:

34. The Complainants allege violation of Articles 1, 2 and 9 of the African Charter.²⁷

Procedure:

35. The Complaint dated 18 August 2005 was received at the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) on 19 August 2005.

36. The Secretariat acknowledged receipt of the same on 22 August 2005.

37. An amended version of the Complaint, dated 6 October 2005, was received by the Secretariat on 11 October 2005. On 11 October 2005, the Secretariat wrote to the Complainants acknowledging receipt thereof.

38. At its 38th Ordinary Session held from 21 November to 5 December 2005 in Banjul, The Gambia, the African Commission considered the communication and decided to be seized thereof.

39. On 15 December 2005, the Secretariat notified the Respondent State of this decision and requested it to forward its written submissions on the Admissibility of the matter.

40. On 30 January 2006, a similar notice was sent to the Complainants also requesting them to forward their written submission on the Admissibility of the matter.

41. On 25 April 2006, the Secretariat received the written submissions of the Complainants on Admissibility.

42. At its 39th Ordinary Session, the African Commission considered the communication and decided to defer it to its 40th Ordinary Session pending the Respondent State's submission on Admissibility. The parties were notified accordingly.

43. At its 40th Ordinary Session, the African Commission considered the communication and deferred its decision thereof to the next session. The Complainant sent in further submissions on the communication and the Respondent State also made its submissions during the said session.

²⁷ The Complainants also aver that the provisions of Article 9 of the African Charter should be read in light of the African Commission's Declaration of Principles on Freedom of Expression in Africa (Declaration), with Principles I, II, III, V, VII and XVI having particular bearing on this communication.

44. At its 41st Ordinary Session, the Communication was further deferred to the 42nd Ordinary Session for a decision on Admissibility and the parties were accordingly informed of the decision by a Note Verbale and letter dated 8 July 2007.

45. During the inter-session, the Secretariat on examining the Respondent State's submission on Admissibility discovered that they had sent submissions on the merits instead of submissions on Admissibility as requested.

46. By Note Verbale ACHPR/LPROT/COMM/305/ZIM/TN, dated 6 September 2007, the Secretariat informed the Respondent State of this and asked the later to make submissions on Admissibility by 30 September 2007. The Secretariat also informed the Respondent State that if it wishes the African Commission to proceed on the Merits of the case, this should be indicated by the State.

47. During the 42nd Ordinary Session held from 15 – 28 November 2007 in Brazzaville, Republic of Congo, the Commission considered the Communication and decided to defer the decision on Admissibility to the 43rd Ordinary Session.

48. The parties were informed of the decision of the Commission by a Note Verbale and letter dated 19 December 2007.

49. At its 43rd, 44th and 45th Ordinary Sessions the Commission considered the Communication and deferred its decision on Admissibility as the Respondent State did not submit its arguments on Admissibility.

50. By Note Verbale and letter dated 3 June 2009 the Secretariat informed the parties of the deferment of the Commission's decision on Admissibility to its 46th Ordinary Session and further notified the Respondent State of the former's decision to proceed to decide on the Communication if it fails to submit its arguments on Admissibility.

51. On 19 August 2009 the Secretariat received the Respondent State's submission on Admissibility of the Communication.

52. During its 46th Ordinary Session the Commission considered the Communication and deferred its decision to the 47th Ordinary Session to enable the Secretariat prepare a draft decision on Admissibility.

53. During its 47th Ordinary Session held in Banjul, The Gambia, from 12 to 26 May 2010, the African Commission decided to defer its decision on Admissibility to its 48th Ordinary Session.

54. In Note Verbale and letter dated 16 June 2010 the Respondent State and the Complainants respectively were informed of the above decision of the African Commission.

The Law on Admissibility

Complainants' submission on Admissibility

55. The Complainants submit that they have met all the admissibility requirements under Article 56 of the African Charter. They submit that the Communication complies with Article 56(1) as the authors of the Communication are listed as Article 19, Gerry Jackson, Michael Auret Jr., Media Institute of Southern Africa and the Institute for Human Rights and Development in Africa.

56. Regarding Article 56(2) of the Charter, the Complainants submit that the Communication alleges violation by the Respondent State of Articles 1, 2 and 9 of the Charter. They submit that the Respondent State has violated Article 1 of the Charter by failing to adopt measures to give effect to its obligations under Article 9 of the Charter and this has the effect of denying the rights enshrined in this provision. They also argue that the specific actions of the Respondent State, particularly the Minister's official statement that CRPL would never be granted a license because of its predominately white ownership, discriminated against CRPL, thereby constituting a violation of Article 2 of the Charter. They therefore submit that these allegations establish a *prima facie* violation of the Charter and thus compatible with Article 56(2).

57. Regarding Article 56(3) of the Charter, the Complainants aver that the Communication is written in a manner that is neither disparaging nor insulting to either the Respondent State or the Organization of African Unity (now the African Union).

58. With respect to Article 56(4) the Complainants submit that the Communication is supported by firsthand experience of two of the Complainants, court rulings and other pertinent documents, which are annexed to the Communication.

59. Concerning Article 56(5) of the Charter, the Complainants submit that the Supreme Court handed down its judgment on 19 September 2003, ruling that most of the impugned provisions it was challenging were either constitutional or that CRPL as a prospective broadcaster, lacked standing to challenge them. According to the Complainants, in respect of the provisions ruled constitutional (which constituted a number of the key operative provisions of the broadcast regulatory regime), it is well established that when the highest appellate court of a respondent state has pronounced on an issue in contention, it is settled that the remedy is exhausted.²⁸

60. According to the Complainants, the Supreme Court ruled that four out of the seventeen provisions were unconstitutional.²⁹ This limited ruling of unconstitutionality would not, in their view, even if fully implemented, provide an effective solution to the

²⁸ See for example A Concado Trinidad The Application of the Rule of Exhaustion of Local Remedies in International Law: Its Rationale in the International Protection of Individual Rights (1983) p 58.

²⁹ The Supreme Court of Zimbabwe ruled that Secs 6, 9(1), (2) & (3) were unconstitutional. Sec 6 designate the Minister as the licensing authority; Sec 9(1) restricts one national broadcasting license to each radio and television; Sec 9(2) restricts only one signal carrier license to be issued other than to public broadcaster; and Sec 9(3) prohibits a person holding both a broadcasting license and signal carrier license.

violations of the Charter as it would not remedy the systematic Charter violations which are inherent in the broadcast regulatory regime as a whole. The Complainants believe that the predominant effect of the broadcast regulatory regime at present is to keep in place the State broadcasting monopoly, which, as a result of the Act, has continued uninterrupted by the Supreme Court's ruling.

61. Furthermore, they aver that the Amendment Act largely ignored the Supreme Court's ruling on unconstitutionality and no further legislation has been enacted to implement these rulings. Accordingly, the Complainants argue, the limited remedy provided by the Supreme Court was rendered ineffective.

62. It is submitted that the Amendment Act responds to only one of the rulings of unconstitutionality of the Supreme Court judgment, but even such minor compliance with the Supreme Court's judgment fails to address the fundamental issue of the Minister's ability to exert significant influence over the licensing process and the broadcast regulatory regime. The Complainants are of the view that a broadcast licensing process which is not independent of government control is inconsistent with the right to freedom of expression, an argument which remains unaffected by both the Supreme Court's ruling and the Amendment Act.

63. The Complainants allege that by allocating formal regulatory responsibility to the BAZ and at the same time reserving significant powers of intervention and direction to the Minister, the Amendment Act fails to address the primary arguments put forward both at the Zimbabwean Supreme Court and in the present Communication.

64. In conclusion, the Complainants contend that by pursuing to completion the Supreme Court proceedings, CRPL has exhausted available domestic remedies.

65. Concerning the Admissibility requirement under Article 56(6) of the Charter, the Complainants submit that the Communication was filed before the Commission in August 2005, but September 2003, the date on which the Supreme Court rendered its judgment, should not be taken as the correct point for purposes of exhaustion of local remedies, because according to the Complainants, it was reasonable to wait and see how the Supreme Court judgment would be implemented and whether any broadcasting license would be issued.

66. According to the Complainants, this is supported by the fact that a call for application for satellite television broadcasting licenses had been made in 2002, although all four applicants were in fact rejected. Furthermore, a call for national radio and television broadcasting license applications as well as local commercial radio licenses was made some months after the Supreme Court judgment, in March 2004, and the period for submitting radio license applications was extended until January 2005. In May 2005, they submit, the BAZ announced that of the five applicants, only one had been short-listed. In August 2005, it was announced that even this applicant, MABC, would not be given a license.

67. Following the denial of all the applications after the March 2004 call, which made it clear that the authorities were not implementing even the very flawed

broadcasting regime set out in the Act in good faith, the Complainants claim that they decided to file the Communication with the Commission.

68. The Complainants also submit that this Communication has not been submitted to any other international body in accordance with Article 56(7) of the Charter.

69. For these reasons, the Complainants submit that the Complaint satisfies each of the requirements for Admissibility.

Respondent State's submission on Admissibility

70. The Respondent State contends that non-compliance with even a single requirement under Article 56 of the Charter renders a Communication inadmissible, and that Article 56(5) on exhaustion of local remedies has not been complied with by the Complainants.

71. The State avers that the record shows that CRPL approached the Supreme Court in 2000 in the case **CRPL v Ministry of information, Posts and Telecommunications SC99/2000** and was successful in having Section 27 of the Broadcasting Act and Sections 14(1) and 14(2) of the Radio Communications Services Act declared unconstitutional.

72. In the same year, the State submits, CRPL was granted an order by the High Court of Zimbabwe to have its confiscated property returned to it, which was accordingly returned. The Respondent State further submits that CPRL was ordered not to carry out broadcasting services until properly licensed and in order for the license to be issued and the air waves allocated, CPRL was required by the Court order to submit its equipment and site for inspection. The latter was not done, and hence, the State argues, CRPL itself has contributed to the failure to comply with the full court order and that CRPL has not satisfied this requirement to date.

73. The Respondent State submits that in 2002 CRPL approached the Supreme Court, which as provided by the national law is the first court of instance in matters relating to constitutional cases or matters relating to the Bill of Rights. The Court considered the application on the merits and declared that Sections 6, 9(1), (2) & (3) were unconstitutional, and declared Sections 8(1), (2) and (5), 11(4), 12(1)(f), 12(2), 12(3), 15, 16 and 22(2) constitutional. The Sections that were declared unconstitutional, according to the Respondent State, were repealed or amended to be in conformity with the Constitution. This record of proceedings, the Respondent State argues, shows that CRPL was never without a remedy.

74. The Respondent State claims that having declared some sections of the RSA unconstitutional, and the state having amended those provisions accordingly, its broadcasting monopoly was removed and CRPL could have taken that opportunity, but the latter failed to apply for a license on both the first and the second calls made in 2002 and 2004 respectively. Previously, the Respondent State alleges, other aggrieved parties in similar circumstances sought relief from the High Court and were

granted licenses as in ***Retrofit v Minister of Information, Posts and Telecommunications***.

75. The Respondent State avers that if CRPL had applied for and was not granted the license then it should have taken the matter to court as the remedy has been proven not only to be available but effective.

76. With respect to Article 56(6) of the Charter the Respondent State submits that even if the Commission were to find that local remedies were exhausted, the Communication was submitted after an unduly prolonged period of time as it was filed with the Commission after more than two years.

Commission's Analysis on Admissibility

77. Article 56 of the Charter provides for seven requirements on the basis of which the Admissibility or otherwise of Communications is determined. Accordingly, the Commission proceeds to assessing the submissions of both parties against the requirements under the said provision.

78. Although the Respondent State challenges the Admissibility of the present Communication only on two grounds, that is Article 56(5) and (6) of the Charter, the Commission finds it necessary to analyze the admissibility of the Communication against all the seven requirements under Article 56 of the Charter.

79. Article 56(1) requires Communications to indicate the authors even if the latter wants to remain anonymous. With respect to this requirement, the Complainants have indicated their names as: Article 19, Gerry Jackson, Michael Auret Jr, Media Institute of Southern Africa and the Institute for Human Rights and Development in Africa together with their contact addresses. The Respondent State has not raised any objection on this issue. Accordingly, since the Communication clearly lists the names and contact details of the Complainants (authors), the Commission holds that the Communication meets the requirement under Article 56(1) of the Charter.

80. The second admissibility requirement provided under Article 56(2) states that Communications should be compatible with the Constitutive Act of the African Union (AU) or with the African Charter. The Complainants submit that the Respondent State has violated Articles 1, 2 and 9 of the Charter. They have also briefly narrated the series of events and acts that they allege have caused the violation of those provisions of the Charter. The Respondent State however does not challenge the Admissibility of this Communication on this ground. The Commission is of the view that the facts described in this Communication reveal a *prima facie* violation of the Charter, and the Communication is brought by persons within the jurisdiction of a State Party to the Charter. Based on the above, the Commission is satisfied that the requirement under Article 56(2) has been met.

81. Article 56(3) provides that for a Communication to be admissible it must not be written in a language which is insulting or disparaging to the AU or the Respondent State or its institutions. The Complainants contend that the Communication is written in a manner that is neither disparaging nor insulting to

either the Respondent State or the OAU (present AU). The Respondent State is again silent on this claim which is taken as acceptance. Having studied the Communication, the Commission does not find it disparaging in any way. The Commission therefore concurs with the Complainants that the Communication complies with Article 56(3) of the Charter.

82. Article 56 (4) of the Charter requires Communications not to be based exclusively on news disseminated by the media. The Complainants submit with respect to this requirement that the Communication is based on personal experiences and testimonies of two of the Complainants and the rulings and proceedings of the High Court and Supreme Court of Zimbabwe. They have also attached the relevant Acts, Parliamentary Legal Committee report and numerous reports of NGOs. This claim is not contested by the Respondent State. Thus, the Commission is of the view that this Complaint is not solely based on news disseminated by the media and hence complies with Article 56(4) of the Charter.

83. Article 56(5) requires that Communications should be brought to the Commission after exhausting all local remedies, if any, unless it can be shown that the procedure of exhausting local remedies have been unduly prolonged. The Complainants submit that CRPL challenged the constitutionality of seventeen provisions of the Broadcasting Services Act 2001, and the Supreme Court in its 19 September 2003 judgment ruled that four out of the seventeen provisions of the Act were unconstitutional, and the rest were found to be constitutional or that CRPL, as a prospective broadcaster, lacked standing to challenge them.

84. The Supreme Court is the court of original and final jurisdiction on matters relating to the constitutionality of laws and the Bill of Rights. No appeal lies from the decision of the Supreme Court. Thus, having approached the Supreme Court of the Respondent State the Complainants are still not satisfied with the judgment and hence they were left with no other local remedy. It is the Commission's view that with respect to this communication, the Complainants have exhausted the domestic remedies available to them.

85. The Respondent State's argument that the repeal or amendment of certain provisions that were found to be unconstitutional by the Supreme Court provided the CRPL with domestic remedy is noted, but does not deny the fact that the Complainants exhausted local remedies.

86. The Respondent State is of the view that after the ruling of the Supreme Court and the subsequent amendment of the provisions of the regulatory framework found to be unconstitutional, CRPL should have applied for a license using the two calls for application made by BAZ in 2002 and 2004. According to the Respondent State, had CRPL applied for, and not been granted a license then it should have taken the matter to Court. The position of the Respondent State is that by not applying for a license there is an available and effective domestic remedy left to be pursued.

87. The Commission wishes to state with respect to the above submissions by the Respondent State that the matter before this Commission is the compatibility of the provisions of the Broadcasting Services Act with the African Charter. The CRPL

petitioned the Supreme Court of Zimbabwe arguing that seventeen provisions of the Act are unconstitutional (and restrict the enjoyment of freedom of expression). The Supreme Court ruled that four of the seventeen provisions are indeed unconstitutional. However, the Complainants are not satisfied with the decision of the Supreme Court, nor are they satisfied with the measures taken by the State to amend some of the provisions found to be unconstitutional. They have thus approached the Commission challenging those same provisions as contravening Articles 1, 2 and 9 of the African Charter. Nowhere in their submissions have the Complainants indicated that they were before the Commission because they could not apply for a license or that they have been denied a broadcasting license. The State can therefore not rely on an issue that is not before this Commission to argue that local remedies have not been exhausted. Therefore, this Communication has complied with Article 56(5) of the Charter.

88. Article 56(6) stipulates that a Communication should be submitted within a reasonable period of time after exhausting local remedies or from the date the Commission is seized with the matter.

89. In the present Communication the Supreme Court rendered its judgment on 25 September 2003 and the Complainants submitted the Complaint with the Commission on 19 August 2005, which is almost two years after exhausting local remedies.

90. The question here is, can this period be considered as 'reasonable' in terms of Article 56(6) of the Charter?

91. Unlike the European Convention on Human Rights and Fundamental Freedoms³⁰ and the American Convention on Human Rights³¹, which provide a specific time limit for the submission of communications, which is six months, the African Charter only provides that Communications should be submitted 'within a reasonable period' which is not defined. The Commission thus treats each case on its own merit to ascertain the reasonableness of the time.³²

92. Thus, in ***Darfur Relief and Documentation Centre v Republic of Sudan***³³ the Commission stated that the lapse of two years and five months or twenty nine months *without any reason or justification* was considered as unreasonable. The Commission noted further that 'where there is a good and compelling reason why a Complainant does not submit his complaint to the Commission for consideration, the Commission has a responsibility, for the sake of fairness and justice, to give such a Complainant an opportunity to be heard'.

93. In the present Communication, it took the Complainants two years after the exhaustion of local remedies to bring the matter to the Commission. The reason

³⁰ Art 26 European Convention on Human Rights and Fundamental Freedoms

³¹ Art 46(1)(b) American Convention on Human Rights

³² Communication 310 /05 - *Darfur Relief and Documentation Centre v Republic of Sudan* (2009) para 74.

³³ *Darfur Relief and Documentation Centre v Republic of Sudan* para 77.

advanced by the Complainants for this delay in submission is that they wanted to wait and see how the Supreme Court's judgment would be implemented and whether any broadcasting licenses would be issued.

94. Is the reason advanced by the Complainants 'good and compelling'?

95. The issue brought before the Supreme Court by CRPL was that seventeen provisions of the broadcasting regulatory regime (the BSA) were unconstitutional. The Supreme Court held that four of the provisions were indeed unconstitutional and the others were constitutional and that CRPL had no standing before the Court. The Court's decision was not appealable as the Supreme Court is the highest court in Zimbabwe. CRPL was not satisfied with the Court's ruling as it insisted that the provisions restrict the enjoyment of freedom of expression. So why was it necessary for the Complainants to 'wait and see' how the Supreme Court's decision would be implemented, and whether any broadcasting license would be issued?

96. The reason advanced by the Complainants for the delay is neither good nor compelling. The CRPL itself did not apply for a license. It was 'waiting to see' whether others who applied would be granted the license. In any case the matter before the Commission is not the refusal to grant licenses, it is rather the incompatibility of provisions of the BSA with the African Charter. The Complainants knew as far back as September 2003 that they had reached 'a dead end' at domestic level. They could have within a reasonable time seized the Commission with the matter. Waiting for two years with no compelling reason is not justifiable.

97. For the above reasons the Commission finds that the Communication was not filed within a reasonable time after the exhaustion of local remedies and hence does not comply with Article 56(6) of the Charter.

98. Article 56(7) of the Charter states that a Communication submitted to the Commission should not be one already settled by states involved according to the principles of the Charter of the United Nations, or the Charter of the OAU or the provisions of the African Charter. The Complainants submit that the Communication has not been submitted to any other international body for settlement and the Respondent State has not contested this claim. Thus, the Commission holds that the Communication fulfils the requirement under Article 56(7) of the Charter.

Decision of the Commission on Admissibility

99. In view of the above, the African Commission on Human and Peoples' Rights decides:

- i) To declare this Communication Inadmissible as it does not comply with the requirement of Article 56(6) of the African Charter;
- ii) To give notice of this decision to the parties; and
- iii) To include this decision in its Report on Communications.

Done in Banjul, The Gambia, during the 48th Ordinary Session of the African Commission, 10 – 24 November 2010.

**Communication 338/07 - Socio-Economic Rights and Accountability Project
(SERAP) v the Federal Republic of Nigeria**

Summary of the Complaint:

1. On 14 February 2007, the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received the present Communication from the Complainant - Socio-Economic Rights and Accountability Project (SERAP) on behalf of the people of Awori Community in Abule Egba in Lagos State, Nigeria, against the Federal Republic of Nigeria (the Respondent State or Nigeria).³⁴
2. The Complainant alleges that the Respondent State violated the rights of the people of Awori Community, following a pipeline explosion in Abule Egba on 26 December 2006, which resulted in loss of lives, physical and permanent injuries, destruction of properties, environmental degradation, and other human rights violations.
3. The Complainant alleges that, for months, the Respondent State failed to deal with the issue of fuel scarcity in the country, repair damaged pipelines, and inspect these incidents. According to the Complainant, this led to young men and women scooping fuel from damaged pipelines in order to sell and make a living.
4. Furthermore, the Complainant alleges that after the explosion, the fire department was ill-equipped to deal with the fire as they reportedly had no water or equipment.
5. The Complainant alleges that about 700 lives were lost including women and children in the aftermath of the pipeline explosion. Furthermore, it submits that, the environment has not been properly disinfected since the explosion, which could cause an epidemic to the remaining residents of the area.
6. The Complainant alleges that there has been environmental degradation, and potential pollution of water, as a result of the explosion, which may amount to health problems in the long run.
7. According to the Complainant, the injured have also not been adequately treated of their injuries and that some of them have died while in the hospital.
8. The Complainant further alleges that the leaders of the Abule Egba Community reported the matter to the Nigerian authorities and they were ignored.
9. The Complainant alleges that due to the above-mentioned facts, the rights of the people of Awori Community, which are guaranteed under the African Charter on Human and Peoples' Rights (the African Charter), have been violated by the Respondent State.

³⁴ Nigeria ratified the African Charter on Human and Peoples' Rights on 22nd July 1983, and is therefore a State Party.

Articles alleged to have been violated:

10. The Complainant alleges that the actions and omissions of the Respondent State resulted in violations of Articles 2, 4, 5, 14, 16, 20 and 24 of the African Charter.

Procedure:

11. The present Communication was received by the Secretariat on 14 February 2007.

12. The Secretariat acknowledged receipt of the Communication to the Complainant by letter ACHPR/LPROT/COMM/CB/338/07/NIG/RE of 21 February 2007, in which the Complainant was informed that the Communication would be scheduled for seizure by the African Commission for Human and People's Rights (the African Commission or the Commission) at its 41st Ordinary Session held from 16 to 30 May 2007, in Accra, Ghana.

13. At its 41st Ordinary Session, held from 16 to 30 May 2007, in Accra, Ghana, the African Commission considered the Communication and decided to be seized thereof.

14. By letter of 13 June 2007 and Note Verbale of 15 June 2007, the Secretariat notified the parties of its decision on seizure and requested them to submit their arguments on the Admissibility of the Communication within three months.

15. At its 42nd Ordinary Session, held from 15 to 28 November 2007, in Brazzaville, Republic of Congo, the African Commission received a submission from the Respondent State and the Complainant was notified accordingly in 19 December 2007.

16. By Note Verbale of 19 December 2007 and by letter of the same date, both parties were notified of the African Commission's decision at its 42nd Ordinary Session. The Complainant was given a three months period to submit its arguments on Admissibility.

17. The African Commission decided to defer consideration of the Communication to the 43rd Ordinary Session to allow the Complainant to submit its arguments on Admissibility.

18. By Note Verbale, of 17 October 2008, the African Commission informed the Respondent State of its intention to take a decision on the Admissibility of the Communication during its 44th Ordinary Session, in November 2008.

19. By letter, dated 22 October 2008, the African Commission informed the Complainant that, during its 43rd Ordinary Session, held from 7 to 22 May 2008, in Ezulwini, the Kingdom of Swaziland, it considered the present Communication and

decided to defer its decision on Admissibility to its 44th Ordinary Session to allow the Complainant to submit its arguments on Admissibility.

20. By letter, of 11 December 2008, the African Commission informed the Complainant that its decision on Admissibility was deferred during the 44th Ordinary Session, held from 10 to 24 November 2008 in Abuja, Federal Republic of Nigeria, to allow the Complainant to submit its arguments on Admissibility within a period of three months.

21. By letter and Note Verbale, of 4 June 2009, the African Commission informed both parties that at its 45th Ordinary Session held from 13 to 27 May 2009 in Banjul, The Gambia, the African Commission decided to defer further consideration of the Communication to allow the Complainant to make its submissions on Admissibility within a period of two months.

22. By letter of 15 March 2009, the Secretariat acknowledged receipt of the Complainant's submission on Admissibility on the same day and forwarded the same to the Respondent State by Note Verbale dated the same day.

23. By letter and Note Verbale, of 14 December 2009, the African Commission informed both parties that at its 46th Ordinary Session held from 11 to 25 November 2009, in Banjul, The Gambia, the Commission considered the Communication and decided to defer it to its 47th Ordinary Session to allow its Secretariat time to prepare a draft decision.

24. By letter and Note Verbale, of 25 June 2010, the African Commission informed both parties that at its 47th Ordinary Session held from 12 to 26 May 2010, in Banjul, The Gambia, the Commission considered the Communication and decided to defer the consideration of Admissibility to its 48th Ordinary Session in November 2010 to allow the Secretariat time to prepare a draft decision.

The Law on Admissibility

The Complainant's Submissions On Admissibility

25. The Complainant submits that the present Communication satisfies all the requirements of Admissibility as contained under Article 56 of the African Charter.

26. The Complainant submits that it complies with Article 56 (1) of the African Charter, because the author of the Communication is identified. It declares that SERAP is the author of the present Communication, on behalf of several victims of the Awori Community affected by the pipeline explosion.

27. The Complainant also submits that it complies with Article 56 (2) of the African Charter, as the present Communication reveals a *prima facie* violation of the African Charter.

28. Concerning Article 56 (3) of the African Charter, the Complainant submits that the present Communication complies with the requirement under the said sub-Article because it is written and presented in a professional and respectful language.

29. The Complainant further submits that the present Communication fulfils the requirement in Article 56 (4) of the African Charter because according to the Complainant, it relies on first hand information from the victims, including testimonies from those directly affected by the pipeline explosion.

30. With respect to Article 56 (5) of the African Charter, the Complainant submits that the present Communication “constitutes a compelling exception to the requirement of exhaustion of local remedies” and requests the African Commission to wave this requirement as portrayed in its jurisprudence. It submits that there is no adequate or effective domestic remedies that exist to address the violations alleged in the present Communication.

31. The Complainant also submits that, although the Nigerian Government is well aware of the human rights violations that the country is subject to, it has not fully or effectively addressed the violations in the present Communication, and that these violations are still ongoing.

32. It further submits that even though the Respondent State has incorporated the African Charter into its national laws, Nigerian courts have ruled that its application in the country is subject to the Nigerian Constitution, which is the supreme law of the land.

33. The Complainant bases its request to wave the requirement of Article 56 (5) of the African Charter on several decisions of the African Commission.³⁵

34. The Complainant also submits that the Nigerian legal system lacks availability and effectiveness, because it is not accessible to the poor and the marginalized community.

35. Furthermore, the Complainant submits that, the burden shifts to the Respondent State to submit evidence proving the availability, the accessibility, and the effectiveness of local remedies to redress the violations in the current Communication.

36. With respect to Article 56 (6) of the African Charter, the Complainant avers that the present Communication was filed within days of the pipeline explosion.

³⁵ Communication 147/95 and 149/96 – *Sir Dawda K. Jawara v The Gambia (Jawara v The Gambia)* (2000) ACHPR, Communications 54/91, 61/91, 98/93, 164/97 à 196/97, 210/98 – *Malawi Africa Association and Others v Mauritania* (2000) ACHPR, Communications 25/89, 47/90, 56/91, 100/93 *World Organisation Against Torture and Others v Zaire* (1996) ACHPR, Communication 71/92 *Rencontre Africaine pour la Defence des Droits de l'Homme v Zambia* (1997) ACHPR.

37. Regarding Article 56 (7) of the African Charter, the Complainant avers that the present Communication is not being considered by another international or regional mechanism, nor has it been previously settled by any of them.

The Respondent State's Submissions On Admissibility

38. In its submission on Admissibility, the Respondent State urged the African Commission "to strike out the Communication as it is an abuse of the process of the Commission." It submits that the present Communication should not be Admissible for the non-fulfilment of Article 56 (4), (5) and (6) of the Charter.

39. According to the Respondent State, the Complaint does not fulfil the requirement of Article 56 (5) of the African Charter related to the exhaustion of local remedies. It submits that, "the incident complained of is envisaged and effectively covered by local legislation providing for local remedies."

40. It further submits that the Complainant "did not attempt any form of utilization of such local remedies," which are available and accessible, before submitting a Communication about the incident to the African Commission.

41. To substantiate its submission, the Respondent State submits that, the domestic law of Tort; Section 11 (5) of Oil Pipelines Act LFN 2004, provides several remedies for the victims in case of pipeline explosions.

42. Furthermore, the Respondent State submits that, under Sections 33, 35, 36, 42 and 46 of the Nigerian Constitution, victims have the "unfettered right of action." It adds that, Section 46 of the Nigerian Constitution expressly mandates the State to provide them with legal representation.

The African Commission's Analysis On Admissibility

43. In order for a Communication to be admissible before the African Commission, they have to fulfill all the seven requirements of Article 56 of the African Charter. The African Commission has affirmed in its jurisprudence that those requirements are cumulative, meaning that, if any one of them is absent, the Communication will be declared inadmissible.³⁶

44. In the present Communication, the Complainant submits that they have complied with six of the seven requirements enumerated in Article 56 of the African Charter. The Complainant requests the African Commission to waive the requirement under Article 56 (5) of the African Charter that is related to the exhaustion of local remedies due to the lack of adequate or effective domestic remedies that exist to address the violations alleged in the Communication.

³⁶ See Communication 284/03 – *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Republic of Zimbabwe* (2009) ACHPR para 81, and Communication 299/05 - *Anuak Justice Council v Ethiopia* (2006) ACHPR para. 44.

45. In its submission on Admissibility, the Respondent State, however, noted that the present Communication should not be Admissible because of the non-fulfilment of Article 56 (4), (5) and (6) of the African Charter. The Respondent State nonetheless only submitted arguments relating to the non-exhaustion of local remedies requirement, that is, Article 56 (5) of the African Charter.

46. Notwithstanding the fact that the only Article the Respondent State contends to is Article 56 (5) of the African Charter, the African Commission will still proceed to analyse all the seven requirements under Article 56 of the African Charter to ensure that they have been duly complied with by the Complainant.

47. Article 56 (1) of the African Charter provides that Communications should be Admissible if it 'indicates their authors even if the latter requests anonymity.' This Communication is filed by SERAP – a registered human rights NGO based in Lagos, Nigeria. The author of the Communication has not requested anonymity. The Complainant has thus fulfilled the requirement set in Article 56 (1) of the African Charter.

48. Article 56 (2) of the African Charter provides that Communications should be 'compatible with the Charter of the Organisation of African Unity or with the Present Charter.' The present Communication complies with this requirement because it invokes the violation of Articles 2, 4, 5, 14, 16, 20 and 24 of the African Charter, thus it shows a *prima facie* violation of the African Charter.

49. Article 56 (3) of the African Charter provides that in order for Communications to be Admissible, they should 'not [be] written in disparaging or insulting language directed against the State concerned and its institutions or the Organisation of African Unity.' The present Communication has not shown any evidence of disparaging language and therefore fulfills the requirement under Article 56(3) of the African Charter.

50. Article 56 (4) of the African Charter provides that Communications should not be 'based exclusively on news disseminated through the mass media.' The present Communication is submitted based mainly on primary information gathered by the Complainant from victims of the pipeline explosion, and thus fulfills the requirement of Article 56 (4) of the African Charter.

51. Article 56 (5) of the African Charter provides that Communications should be 'sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.'

52. The Complainant argues that, there is no adequate or effective domestic remedy that exists in Nigeria to address the violations alleged. It argues that the African Charter has not been accorded recognition and supremacy in the Nigerian legal system.

53. The Complainant referred the African Commission to its decision in *Jawara v The Gambia*³⁷ where the African Commission held that local remedies must be available, effective and sufficient; meaning that it can be pursued without impediment, offers a prospect of success, and is capable of redressing the complaint.

54. The Complainant avers that the Respondent State is aware of the violations and did not remedy the situation. They argue that, given the scale of the human rights violations involved, the large number of victims, and the unaccessibility of the Nigerian legal system to the poor and the marginalized, local remedies could not be exhausted.

55. The Complainant, basing its arguments on *World Organisation Against Torture and others v Zaire*³⁸ where the African Commission decided that it is not expected from the complainants to wait for an 'unduly prolonged' procedure of local remedies.

56. The Complainant submits that given the scale of the human rights violations in the present Communication, and the large number of the victims involved, local remedies are unavailable, ineffective and insufficient.³⁹

57. The Respondent State on the other hand, contends that the Complainant did not use the available national legislation to remedy the violations alleged before bringing the complaint to the African Commission, and thus has not fulfilled the requirement of Article 56 (5) of the African Charter.

58. In the view of the African Commission, the purpose of the requirement of exhaustion of local remedies under Article 56(5) of the African Charter is based on the principle that 'the Respondent State must first have an opportunity to redress by its own means within the framework of its own domestic legal system, the wrong alleged to have been done to the individual.'⁴⁰ The African Commission has also stated that this well established rule in international law conforms to the principle that international law does not replace national law, and international mechanisms do not replace national judicial institutions.⁴¹

59. The jurisprudence of the African Commission, in determining compliance with this requirement, laid down '[t]hree major criteria...that is: the local remedy must be **available, effective and sufficient**.'⁴² Nevertheless, for the local remedy to fulfill these criteria, the African Commission elaborates in *Jawara v The Gambia* '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.'⁴³

³⁷ *Jawara v The Gambia*

³⁸ *World Organisation Against Torture and Others v Zaire*

³⁹ The Complainant referenced as well to Communications *Malawi Africa Association and Others v Mauritania*

⁴⁰ *Rencontre Africaine pour la Defense des Droits de l'Homme v Zambia*

⁴¹ *Anuak Justice Council v Ethiopia* para 48

⁴² Communication 300/05 – *Socio Economic Rights and Accountability Project v Nigeria* (2008) ACHPR para 45

⁴³ *Jawara v The Gambia* para 32

60. The Complainant submits that there are no adequate or effective domestic remedies to address the violations, and the Respondent State on the other hand, provides a specific legislation that it claims is available.

61. According to the Respondent State, Section 11 (5) of Oil Pipelines Act LFN 2004 of the domestic law of Tort provides several remedies for pipeline explosions. In reading the said law, the African Commission is of the view that Section 11 (5) indeed creates a civil liability on the person who owns or is in charge of an oil pipeline. According to the law, the latter would be liable to pay compensation to anyone who suffers physical or economic injury as a result of a break or leak in his pipelines.⁴⁴ The Complainant did not adduce any evidence in their submission that it has attempted to use this legislation to redress the violations for compensation to the victims of the pipeline explosion.

62. Furthermore, the case of *World Organisation Against Torture and others v Zaire*,⁴⁵ which the Complainant based their argument upon for waiver of the requirement of Article 56 (5) of the African Charter, cannot be applied in the current Communication because the Complainant did not provide evidence for this general statement, nor any precedent which show that Section 11 (5) of Oil Pipelines Act LFN 2004 is proved to be an unduly prolonged avenue, nor have they attempted to take their case before a court of law.

63. The African Commission is of the view that the initial burden is on the Complainant to prove that they have met the requirement set-out in Article 56 (5) of the African Charter. Thereafter the burden shifts to the Respondent State if it contests the allegations of the former, declaring that there is further available and effective remedy.

64. In the current Communication, the Respondent State provides in its submission that Section 11 (5) of Oil Pipelines Act LFN 2004 is an available and effective remedy for the victims of the pipeline explosion, which, as indicated above, the Complainant failed to refute or prove otherwise.

65. In *Anuak Justice Council v Ethiopia* the African Commission declared the Communication Inadmissible because the Complainant did not provide evidence to their claim about why they could not exhaust local remedies. The African Commission said in its decision that:

⁴⁴ Sec 11 (5) of Oil Pipelines Act LFN 2004: "The holder of a licence shall pay compensation -
(a) to any person whose land or interest in land (whether or not it is land respect of which the licence has been granted) is injuriously affected by the exercise of the rights conferred by the licence, for any such injurious affection not otherwise made good; and
(b) to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work structure or thing executed under the licence, for any such damage not otherwise made good; and
(c) to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good.
If the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by a court in accordance with Part iv of this Act."

⁴⁵ *World Organisation Against Torture and Others v Zaire*

Apart from casting aspersions on the effectiveness of local remedies, the complainant has not provided concrete evidence or demonstrated sufficiently that these apprehensions are founded and may constitute a barrier to it attempting local remedies. In the view of this Commission, the complainant is simply casting doubts about the effectiveness of the domestic remedies. This Commission is of the view that it is incumbent on every 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 or past incidences. [...] The African Commission can therefore not declare the communication admissible based on this argument. If a remedy has the slightest likelihood to be effective, the applicant must pursue it. Arguing that local remedies are not likely to be successful, without trying to avail oneself of them, will simply not sway this Commission.⁴⁶

66. In the present Communication, the African Commission is of the opinion that the Complainant only made generalised statements about the unavailability of local remedies in the Respondent State, without attempting to exhaust them. Accordingly, as was the situation in the **Anuak Justice Council v Ethiopia** case, the African Commission concludes that the Complainant in the present Communication has not exhausted local remedies.

67. A waiver of the requirement of Article 56 (5) of the African Charter according to the African Commission's jurisprudence⁴⁷ is not automatic, except in cases of serious and massive violations of human rights.

68. Based on the above analyses, the African Commission is of the view that the Communication has not fulfilled the requirement set by Article 56 (5) of the African Charter.

69. Article 56 (6) of the African Charter stipulates that Communications should be "submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter." The Complainant avers that the Communication has been submitted in a timely manner, from the date of the alleged violation, which is not contested by the Respondent State, thus the requirement under Article 56 (6) of the African Charter has been duly complied with.

70. Article 56 (7) of the African Charter stipulates that Communications should "not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter." The Complainant avers that the Communication is not being considered by another international or regional mechanism, nor has it been previously settled by one, which

⁴⁶ *Anuak Justice Council v Ethiopia* para. 58

⁴⁷ Also see Communication 201/97 – *Egyptian Organisation for Human Rights v Egypt* (2000) ACHPR, Communication 307/05 - *Mr. Obert Chinhamo v Zimbabwe* (2007) ACHPR, and Communication 308/05 - *Michael Majuru v Zimbabwe* (2008) ACHPR.

is not contested by the Respondent State, thus the requirement under Article 56 (7) of the African Charter has been duly complied with.

The Decision of the African Commission on Admissibility

71. In view of the above, the African Commission on Human and Peoples' Rights decides:

- i) To declare the Communication Inadmissible with respect to Article 56 (5) of the African Charter;
- ii) To give notice of this decision to the parties;
- iii) To publish this decision in its report on Communications.

Done in Banjul, The Gambia, during the 48th Ordinary Session of the African Commission on Human and Peoples' Rights, from 10 to 24 November 2010.

ANNEXURE R

ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS REPORTED TO THE SPECIAL RAPPOETEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA REFERRED IN PARAGRAPH 158

- A) The details of the allegations of human rights violations received by the ACHPR Special Rapporteur on Freedom of Expression and Access to Information in Africa (hereafter the Special Rapporteur), referred to in paragraph 158 of this 29th Activity Report of the ACHPR were as set out hereunder.

Republic of Angola

1. On 8 September 2010, the African Commission received reports regarding the alleged murder of Mr. Alberto Graves Chakussanga, a 32 year-old radio journalist who worked for a weekly, Umbundu-language news call-in program on a private radio station called *Radio Despertar*.

2. It is alleged that, Mr. Alberto Graves Chakussanga was killed on 5 September 2010. The reports indicate that his body was found in a corridor of his home in the Viana district of Luanda, with a bullet in the back. While the motive of the murder of Mr. Alberto Graves Chakussanga remains unknown, reports reaching the African Commission allege that *Radio Despertar* is critical of the ruling MPLA Government in the Republic of Angola.

Republic of Burundi

3. On 19 July 2010, the African Commission received reports alleging that Mr. Jean-Claude Kavumbagu, Editor of the private online daily *Net Press* newspaper, was arrested at his office on 17 July 2010 for defamation charges. Thereafter, according to reports, he was taken to the office of Magistrate Tabu Renovat, where he was interrogated for two hours, charged with treason, and later transferred to Mpimba prison in Bujumbura.

4. It is also alleged that Mr. Jean-Claude Kavumbagu could face life imprisonment if convicted over a story he published on 12 July 2010, concerning the deadly 11 July 2010 terrorist attacks in the Republic of Uganda. According to reports, among other things, the *Net Press* story accused Burundian security forces of looting and killing in the Republic of Burundi.

5. It was reported that on 10 August 2010, Burundian Police allegedly arrested Mr. Thierry Ndayishimiye, chief Editor of the private weekly, *Arc-en-Ciel*, and detained him in the Mpimba Prison. The reports alleged that the arrest of Mr. Thierry Ndayishimiye emanated from an article he published on 30 July 2010, alleging embezzlement and the use of substandard materials at the State Energy Authority, REGIDESO. According to reports, REGIDESO did not publicly respond; however an executive of the company filed a complaint alleging that the article had defamed him.

Republic of Cote D'Ivoire

6. The African Commission received reports alleging that on 16 July 2010, three journalists: Ms. Stéphane Guédé, Managing Editor; Mr. Théophile Kouamouo, News Editor; and Mr. Saint-Claver Oula, Editor-in-Chief of the daily *Le Nouveau Courrier* newspaper, were allegedly arrested and charged with refusal to reveal their sources concerning a story on corruption based on a document that was leaked from the Prosecutor's office. It is alleged that the journalists could face up to 10 years imprisonment.

Democratic Republic of Congo

7. According to reports received at the African Commission on 28 July 2010, Mr. Pascal Mulunda, Editor of weekly *Le Monitor* newspaper, was allegedly arrested for criminal defamation charges in Kinshasa, Democratic Republic of Congo (hereafter, DRC).

8. Mr. Pascal Mulunda was allegedly arrested on 27 July 2010 based on a defamation complaint filed by Mr. Baudouun Iheta, an official with an Agency of the Ministry of Mining called Saesscam. The complaint was allegedly filed against *Le Monitor* and *Le Baromètre* newspapers on 26 June 2010 after it published a story implicating Mr. Baudouun Iheta in over billing following the Agency's purchase of four (4) vehicles on 23 June 2010.

Arab Republic of Egypt

9. On 6 October 2010, the African Commission received reports alleging that the Egyptian Satellite Company, *Nilesat*, allegedly shut down the transmission of *El Badr* Channel on 1 October 2010 for no just reasons.

10. According to reports reaching the African Commission, the Director of the Channel is of the view that, the only authority that has the right to take this kind of decision is the General Authority for Investment in cases where a dispute arises over possible violations of the terms and conditions.

Republic of Eritrea

11. The African Commission received reports on 22 September 2010, about two issues: the case of the alleged unwarranted arrest of Mr. Eyob Kessete, an Eritrean Journalist who worked for the state-owned radio Dimtsi Hafash's Amharic-language service, as well as the matter of the alleged lack of information on journalists who have been imprisoned in Eritrea since 2001.

12. Mr. Eyob Kessete was allegedly arrested in the summer of 2010 as he attempted to flee the Republic of Eritrea and cross the border into Ethiopia. Reports reaching the African Commission further alleged that Mr. Eyob Kessete had earlier been arrested in 2007, when he made an attempt to escape. He was kept in several prisons until relatives obtained his release. The reports also alleged that since his

arrest in the summer of 2010, Eritrean authorities have refused to disclose his whereabouts.

13. With regards to the second matter, reports reaching the African Commission allege that, there is no information on the fate of twenty (20) other journalists who have been imprisoned in Eritrea since 2001. These reports add that an "oppressive official silence" surrounds the 2001 detention of Swedish-Eritrean journalist, Mr. Dawit Isaac and the March 2010 arrest of another journalist called Mr. Said Abdulhai.

14. It is worth noting that the letter of Appeal addressing the second matter also recalled the 2007 and 2009 letters of Appeal sent by the Special Rapporteur concerning the fate of the journalists imprisoned since 2001.

Federal Democratic Republic of Ethiopia

15. On 29 October 2010, the African Commission received reports alleging that 17 year old Mr. Akram Ezedin, son of Mr. Mohamed Ezedin, was arrested on 11 September 2010, and had been in detention since, without charges. The reports state that Mr. Mohamed Ezedin is the Editor of *Al-Quds*, a privately owned Islamic weekly newspaper based in Addis Ababa. The reports alleged that Mr. Mohamed Ezedin served a one-year prison sentence in 2009, for a column that he published in 2008, which was critical of statements made by H.E Prime Minister Meles Zenawi. The reports state that in his absence, his son, Mr. Akram Ezedin was managing *Al-Quds*.

16. According to the reports, on 11 September 2010, the police released Mr. Mohamed Ezedin from prison and arrested and imprisoned his son, Mr. Akram Ezedin because of a series of articles published by *Al-Quds* in July 2010 that criticised the performance of Afar's local Islamic Council or Mejjilis.

Republic of Gabon

17. On 29 October 2010, the African Commission received reports alleging that, on 26 October 2010, Mr. Jean-Yves Ntoutoume, Editor of the private bimonthly *Le Temps* newspaper was allegedly detained in Gros Bouquet prison in Libreville. The reports state that he was detained for failing to pay "exorbitant damages" stemming from a 2004 civil libel suit.

18. According to reports received by the African Commission, Mr. Jean-Yves Ntoutoume was allegedly imprisoned over his newspaper's failure to pay ten (10) million CFA (US \$20,000) in damages to Mr. Albert Méyé, a former Treasurer of the Gabonese Democratic Party (PDG). The reports alleged that Mr. Albert Méyé filed an action against *le Temps* in response to a column published by the former Reporter of *Le Temps*, Mr. Mathieu Ebozo'o, which posed critical questions about whether Mr Albert Méyé could have been involved in an armed robbery six years previously at PDG headquarters.

19. The reports further alleged that the article resulted in the death of a courier and the theft of more than eighty (80) million CFA (US \$165,000). According to the reports, the heavy civil damages imposed on Mr. Jean-Yves Ntoutoume did not appear to be based on any actual losses sustained by Mr. Albert Méyé as a result of the article published by *Le Temps*.

Republic of Kenya

20. On 28 October 2010, the African Commission received reports about the allegedly unwarranted deferral of the murder case of Mr. Francis Nyaruri, a Reporter with *The Weekly Citizen* newspaper.

21. The reports alleged that the murder case of Mr. Francis Nyaruri had been adjourned, yet again by the Court on 28 October 2010. These reports indicate that, due to this adjournment, “*the outcome of his bereaved family and friends’ quest for justice appears uncertain.*”

22. It is worth noting that the letter of Appeal sent with respect to this allegation also recalled the Special Rapporteur’s letter of Appeal forwarded to the Republic of Kenya concerning the murder of Mr. Francis Nyaruri on 19 May 2009.

Republic of Malawi

23. On 31 August 2010, the African Commission received reports of threats allegedly made on 26 August 2010, by H.E Mr. Bingu wa Mutharika President of the Republic of Malawi to close down newspapers that published articles critical of his administration. The reports said the alleged threats were made after the private weekly newspapers, *Malawi News* and *Weekend Nation*, quoted the report of a regional agency that forecast food shortages in the country.

24. The reports allege that H. E. Mr. Bingu wa Mutharika declared during an agricultural fair in Blantyre, which took place on 26 August 2010, that he “... *will close down newspapers that lie and tarnish my government’s image.*” The reports further alleged that H. E. Mr. Bingu wa Mutharika told editors to leave “*blank pages or else publish pictures of cows, hyenas, or dogs, if they have nothing positive to report.*”

25. On 1 November 2010, the African Commission received additional reports alleging that following the aforesaid threats, on 28 October 2010, the National Archives of Malawi issued an immediate suspension of *The Weekend Times*, on charges of failing to have the paper registered. According to the reports, *The Weekend Times* focuses on sports and entertainment, as well as investigative stories covering cases of fraud and sexual scandals of public figures.

Republic of Mozambique

26. On 22 May 2010, the African Commission received reports alleging that since 28 April 2010, Mr. Salomao Moyana, Editor of *Magazine Independente* in Maputo, had been receiving death threats through mobile text messages. Some of the messages allegedly read:

“you go around insulting Alfonso Dhlakama and you think you can destroy his image,” ... and you think that we're fools”, “We are tired of you. . . We will beat you. We will look for you to beat you like you never seen in your life.”

27. It is alleged that the threats followed the publication of an editorial written by Mr. Salomao Moyana where he criticised the "political inconsistency" of party leader, Mr. Alfonso Dhlakama, who refused to recognise the legitimacy of the Mozambican National Resistance Movement (Renamo) deputies sitting in Parliament without his prior authorisation. The reports also alleged that Mr. Salomao Moyana wrote about Mr. Afonso Dhlakama's private life.

28. According to the reports, the Mozambican Police Criminal Investigation Department was informed about the death threats and it promised to investigate the matter. However, there are fears that the threats may be carried out against Mr. Salomao Moyana before the investigations commence effectively since Mr. Salomao Moyana's car was allegedly vandalized outside his home.

Republic of Namibia

29. On 7 November 2010, the African Commission received reports about alleged threats to Mr. Max Hamata, Editor of *Informanté* newspaper for publishing an article concerning the illness of the former President of Namibia, Dr. Sam Nujoma.

30. It is alleged that *Informanté*, an independent weekly tabloid, has been overwhelmed with legal threats following the publication of the article in its edition of 4 November 2010. The reports allege that the newspaper reported that Dr. Sam Nujoma, former President of the Republic of Namibia was flown from Windhoek to Cape Town for treatment of his alleged health complications.

31. The reports state that, in its edition of 11 November 2010, *Informanté* published a letter from Dr. Sam Nujoma's legal representatives, Sisa Namandje & Co. Inc., instructing the tabloid to retract the article and issue an unconditional apology, failure to which it would face legal action. The reports alleged that Mr. Max Hamata reacted to the threats by stating that as a public figure, Dr. Nujoma has no immunity from public scrutiny.

Federal Republic of Nigeria

32. In July 2010, the African Commission received reports about alleged assaults and intimidation of three journalists: Mr. Friday Otor, State Correspondent for the Lagos-based private daily newspaper, *The Nation*; Mr. Gabriel Odia, Correspondent for Galaxy Television which is based in Lagos; and Mr. Edosa Okunbo, a Reporter with the *Midwest Herald* newspaper, in Edo State.

33. The reports allege that at about 12:15 p.m. on 24 July 2010, thugs suspected of being loyal to the Action Congress (AC) political party in Nigeria, assaulted these three named journalists in Edo State during the re-run election for a Constituency in

the State House of Assembly. It is also alleged that the thugs, who were about 30 in number, were led by a leader of the AC in Edo State.

34. It is said that Mr. Friday Otabor narrowly escaped death at the hands of the thugs while covering the election at Unit 9 of the ward located at the Igo Primary School. According to reports, Mr. Friday Otabor was trying to capture an argument between supporters of the AC and those of the Peoples Democratic Party (PDP) with the camera in his mobile phone when about 15 men allegedly pounced on him. The reports alleged that the men seized his cell phone, identity card and N13, 000 (approx. US\$87) cash and beat him up.

35. The report also state that Mr. Gabriel Odia fled the scene when the thugs allegedly attempted to seize and smash his camera, while Mr. Edosa Okunbo, was also allegedly assaulted by the thugs while trying to rescue his colleagues.

Somali Republic

36. On 2 July 2010, the African Commission received reports about alleged harassment and unwarranted detention of independent journalists covering the fighting in Mogadishu, Somalia.

37. According to the reports, on 1 July 2010, the police detained award-winning journalist, Mr. Mustafa Haji Abdinur and freelance Cameraman Mr. Yusuf Jama Abdullahi, for taking pictures of their colleague, Associated Press photo journalist, Mr Farah Abdi Warsame, who had been hit in crossfire. The reports alleged that officers at the Criminal Investigation Department interrogated the journalists for several hours, forced them to delete their photographs, and then released them without charge.

Republic of Sudan

38. On 3 November 2010, the African Commission received reports of the alleged closure of *Alentebaha*, *Al Tayar*, and *Al Ahdath* newspapers, the alleged raid on the office of the Human Rights and Democracy Network, the alleged raid and closure of *Radio Dabanga* in Khartoum and the alleged arrests of 13 staff members.

39. The Sudanese security authorities allegedly took a decision on 7 July 2010, to close the *Alentebaha* newspaper for an indefinite period of time. According to those reports, the newspaper had urged Sudanese citizens to vote in the referendum on the independence of Southern Sudan and the separation between the North and South. The reasons for the alleged closure of *Al Tayar* and *Al Ahdath* newspapers were not provided to the African Commission.

40. It is also alleged that in the week of 1 November 2010, Sudanese security raided the office of the Human Rights and Democracy Network and arrested several journalists and activists. The reports further allege that on 2 November 2010, Sudanese Security Forces raided the office of Radio Dabanga in Khartoum, arrested thirteen (13) of its staff members, and closed the office. According to the reports, the

closure is related to their reporting on the Darfur conflict which outraged Sudanese officials.

The Kingdom of Swaziland

41. In July 2010, the African Commission received reports alleging that the brother of King Mswati III, King of the Kingdom of Swaziland (whose name was not mentioned in the reports), made death threats against local journalists.

42. The reports allege that during a 21 July 2010 public forum called, the Smart Partnership National Dialogue, which took place in the central commercial city of Manzini, the brother of King Mswati III was quoted by local media as having said:

"I want to warn the media to bury things that have the potential of undermining the country rather than publish all and everything even when such reports are harmful to the country's international image. Journalists who continue to write bad things about the country will die."

43. The reports also allege that the King's brother accused the media of peddling lies, stating that: *"It's a fact that journalists earn their living by writing lies and if they do not write the lies then their source of livelihood is threatened and this is fact and beyond debate."*

United Republic of Tanzania

44. On 27 October 2010, the African Commission received reports alleging that the Government of the United Republic of Tanzania threatened to either ban or deregister the *Mwananchi* and *MwanaHalisi* newspapers for allegedly publishing materials with the intention of inciting chaos and disturbing peace in the country.

45. According to reports, the threat was communicated through a letter published in the *Mwananchi* and *MwanaHalisi* newspapers. The reports alleged that the letter which was dated 11 October 2010, had "confidential" stamped on it, and was signed by a certain Mr. Raphael Hokororo from the office of the newspapers' Registrar. It is said that the letter requires the newspapers to immediately stop publishing "inciting" and "humiliating" news, which "tarnish" the country and the Government. According to the reports, the letter also allegedly states that the Government will not hesitate to suspend or deregister the newspapers if they continue to publish negative articles against it.

46. It is further alleged that the Government of the United Republic of Tanzania could not pinpoint the negative articles published by these newspapers against the Government. In this regard, lack of evidence regarding these allegations prompted *Mwananchi* Communications Limited (MCL), publisher of *Citizen*, *Mwananchi* and *Mwanaspoti* newspapers, to respond by stating that it "could not understand the basis of the government's allegations, which lacked examples of the disputed articles".

Republic of Togo

47. On 26 August 2010, the African Commission received reports alleging that on 25 August 2010, the Lomé Magistrate Court indefinitely banned *Tribune d'Afrique*, a privately-owned bi-monthly newspaper, for defaming Mr. Mey Gnassingbé, who is a brother to the President of the Republic of Togo, H.E Mr. Faure Essozimna Gnassingbé.

48. According to reports, the action was brought against the newspaper by Mr. Mey Gnassingbé on 14 July 2010 following articles published by *Tribune d'Afrique* newspaper. It is alleged that these articles linked Mr. Mey Gnassingbé to drug trafficking. It is alleged that one of the articles published on the front-page of the newspaper on 2 May 2010, was headlined "*Drug trafficking at the highest echelon of the State: Mey Gnassingbé linked to network in Togo*".

49. According to the reports, *Tribune d'Afrique* was ordered to pay one million FCFA (about US\$2000) as damages and another one million FCFA for publication of false news. The reports further alleged that the local distributor of *Tribune d'Afrique* was fined one million FCFA, while the Court ordered the withdrawal and destruction of the edition of the newspaper which carried the story.

50. Furthermore, the reports alleged that Mr. Komi Agbédivlo, popularly known as Didier Ledoux, a reporter with the privately-owned *Liberté* daily newspaper, who was covering the defamation trial involving the President of Togo, was arrested and assaulted by security officers providing security at the Court for taking pictures of the Court building.

Republic of Tunisia

51. On 8 July 2010, the African Commission received reports that on 6 July 2010, Mr. Mouldi Zouabi, a senior reporter at Radio Kalima in Tunis, and founding member of the Tunisian Pen Club, allegedly received a summons to appear at the Jendouba District Court on 14 July 2010. It is said that the summons were in connection with charges of "*aggravated violence and public insults*" against Mr. Khalil Maaroufi, member of the ruling party in Tunis.

52. The reports allege that, Mr. Mouldi Zouabi is a reporter who is famous for his reports on social issues in Tunisia's poor north-west region. The reports claim that it is his writings that have exposed the regime's propaganda concerning economic performance and poverty eradication efforts.

53. The reports allege that the case dates back to 1 April 2010, when Mr. Mouldi Zouabi was attacked by Mr. Khalil Maaroufi near the Central Police Station in Jendouba District. It is alleged that Mr. Khalil Maaroufi jumped out of a car with tinted windows, asked the journalist if his name was Mr. Mouldi Zouabi, and when his response was affirmative, Mr. Khalil Maaroufi allegedly beat him up and broke his glasses. The report also alleged that Mr. Mouldi Zouabi was threatened, insulted, and called a "*traitor to the homeland who tarnishes the country's image.*" The report further allege that Mr. Mouldi Zouabi's Identity Card was taken from him, while he lay

helpless on the ground, as were his credit card, driver's licence, press card, an audio recorder and other personal effects.

Republic of Uganda

54. On 4 August 2010, the African Commission received reports that on 3 August 2010, the police allegedly accused Mr. Timothy Kalyegira, online Editor of *The Ugandan Record* of sedition, and on 4 August 2010, searched his house. The report alleges that the Commissioner of Police, Mr. Simon Kuteesa, from the Police Media Offences Department, interrogated Mr. Timothy Kalyegira about two online articles allegedly speculating on the involvement of the Ugandan Government in the 11 July 2010 bomb attacks in Kampala.

55. The reports alleged that the police confiscated Mr. Timothy Kalyegira's laptop, modem, passport, notes, and mobile phone. It also alleged that the Police Media Offence Department, which is part of the Criminal Investigations Department, accused Mr. Timothy Kalyegira of violating the Penal Code by publishing seditious material.

Republic of Zimbabwe

56. On 11 November 2010, the African Commission was informed that in first week of November 2010, the Zimbabwean police issued an arrest warrant for Mr. Wilf Mbanga, publisher of the *The Zimbabwean* newspaper over a story published in December 2008.

57. According to the reports, the December 2008 story alleged that senior officials had plotted the murder of Mr. Ignatius Mushangwe, Director of Training and Polling in the Zimbabwe Electoral Commission, because they suspected that he leaked information to the media about alleged ballot-rigging during the disputed 2008 Presidential Elections.

58. The reports received alleged that Mr. Wilf Mbanga, who is in exile in London, was wanted for an article "*prejudicial to the state.*" According to the reports, while Mr. Wilf Mbanga would not face immediate arrest, the warrant would be an impediment to his return to Zimbabwe

- B)** In line with the Executive Council Decision referred to in paragraph 158 of the 29th Activity Report of the African Commission, and in fulfilment of her mandate as the Special Rapporteur to "to keep a proper record of the violations of the right to freedom of expression and publish this in her report submitted to the African Commission; and to report at each session of the African Commission on the status of the enjoyment of the right to freedom of expression in Africa" the Chairperson of the African Commission, H.E Reine Alapini Gansou, on behalf of the Special Rapporteur, addressed letters to the States Parties mentioned above, informing them of the alleged violations, and requesting their responses and remedial action as appropriate within a period of **thirty (30) days** from the date of receipt of the letters of Appeal.

C) All the letters of Appeal were dispatched on **10 May 2011**.

ANNEXES

ANNEX I

AGENDA OF THE 49TH ORDINARY SESSION

Item 1: Opening Ceremony (Public Session)

Item 2: Adoption of the Agenda (Private Session)

Item 3: Organization of Work (Private Session)

Item 4: Commemorative Activities for the 30th Anniversary of the African Charter on Human and Peoples' Rights(Public Session)

Item 5: Human Rights Situation in Africa (Public Session)

- f) Statement of the African Commission on the Status of Human and Peoples' Rights on the continent;
- g) Statements by State Delegates;
- h) Statement by African Union Organs with a Human Rights Mandate;
- i) Statements by Intergovernmental and International Organizations;
- j) Statements by National Human Rights Institutions;
- k) Statements by NGOs.

Item 6: Cooperation and Relationship with National Human Rights Institutions (NHRIs) and Non-Governmental Organizations (NGOs) (Public Session)

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

Item 7: Consideration of State Reports (Public Session)

- c) Status of Submission of State Party Reports
- d) Consideration of the :
 - i) Periodic Report of the Republic of Burkina Faso;

- ii) Periodic Report of the Peoples' Bureau of the Great Socialist People's Libyan Arab Jamahiriya;
- iii) Periodic Report of the Republic of Namibia;
- iv) Periodic Report of the Republic of Uganda.

Item 8: Activity Reports of Members of the Commission & Special Mechanisms (Public Session)

- c) Presentation of the Activity Reports of the Chairperson, Vice-Chairperson and Members of the ACHPR;
- d) 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 Committee for the Prevention of Torture in Africa;
 - 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 the Rights of Older Persons and People with Disabilities in Africa;
 - xi. Chairperson of the Committee on the Protection of the Rights of People Living with HIV (PLHIV);
 - xii. Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa.

Item 9: Consideration of: (Private Session)

- (a) Reports of the Research and Study Visit of the Working Group on the Rights of Indigenous Peoples/Communities in Africa to:
 - i) The Republic of Kenya;
 - ii) The Democratic Republic of Congo;
 - iii) The Republic of Congo
- (b) Document on the Study of the Question of the Death Penalty in Africa;
- (c) Transfer of Cases to the African Court on Human and Peoples' Rights;
- (d) Nomination of Experts on the Working Group on Older Persons and People with Disabilities in Africa; and
- (e) Nomination of an Expert from North Africa to join the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa.

Item 10: Consideration and Adoption of Draft Reports of (Private Session)

- a) Promotion Missions to the Republic of Mozambique.
- b) Mission of Special Mechanisms to the:
 - i. Republic of Tunisia
 - ii. Republic of Angola

Item 11: Consideration of Communications: (Private Session)

Item 12: Report of the Secretary to the Commission: (Private Session)

Item 13: Consideration and Adoption of (Private Session)

- c) Resolutions;
- d) Concluding Observations on the:
 - Periodic Report of the Republic of Burkina Faso;
 - Periodic Report of the Peoples' Bureau of the Great Socialist People's Libyan Arab Jamahiriya;
 - Periodic Report of the Republic of Namibia;
 - Periodic Report of Uganda.

Item 14: Dates and Venue of the 50th Ordinary Session of the ACHPR (Private Session)

Item 15: Any Other Business (Private Session)

Item 16: Adoption of: (Private Session)

- d) 49th Session Report;
- e) 29th Activity Report;
- f) 30^h Activity Report;
- g) Final Communiqué of the 49th Ordinary Session; and

Item 17: Reading of the Final Communiqué and Closing Ceremony (Public Session)

Item 18: Press Conference (Public Session)

ANNEX II
ACTIVITIES OF MEMBERS OF THE AFRICAN COMMISSION DURING THE
INTER-SESSION

I. Honorable Commissioner Reine Alapini-Gansou – Chairperson of the African Commission

a) Report on Activities as Commissioner and Chairperson of the African Commission

1. On 6 December 2010, in Dakar, Senegal, the Chairperson participated in the Annual Conference of the African Institute on Governance, Democracy and Human Rights in Africa. During this Conference, she made a presentation on governance issues in Africa from the perspective of the current political situation in the West African sub-region. In this respect she highlighted the normative framework necessarily linking democracy and human rights.

2. From 8 to 9 December 2010 in Addis Ababa, Ethiopia, the Chairperson represented the African Commission within the framework of three activities relating to the launching of the African Governance Architecture, the African Human Rights Strategy and the preparation of the Summit on Shared Values held from 23 to 31 January 2011.

3. At the conclusion of the Conference, it was specifically recommended that the human rights promotion and protection organs, at the national and regional levels, the members of civil society and all the players working for a more effective Rule of Law, increase their involvement in sensitizing and raising the awareness of the citizens and that of the political actors.

4. From 19 to 20 January 2011 in Nairobi, Kenya, the Chairperson participated in a meeting of experts on the amalgamation of the Ouagadougou Protocol establishing the African Court on Human and Peoples' Rights and the Instrument which created the African Court of Justice. Indeed, almost two years ago the African Union decided to merge these two Institutions to give substance to a single African Court of Justice and Human Rights. The meeting had, at the request of the AU, sought to re-examine the content of the Draft Protocol which had been prepared by some members of Civil Society, of the Office of the Legal Adviser of the African Union and of the Union of African Lawyers.

5. In the light of the discussions, emphasis was placed on the serious problem of coherence caused by the Draft Protocol within the current state of affairs since the Ouagadougou Protocol which instituted the African Court on Human and Peoples' Rights had into force since 2004 and the Court itself has been operational since 2006, whereas the African Court of Justice which was established on the basis of the 2002 Constitutive Act of the African Union has not yet reached this stage. Furthermore, this Protocol also creates problems in relation to the number of Judges within the Court and

its internal organization. This justified the holding of further meetings after that of Nairobi.

6. From 23 to 25 January 2011 in Addis Ababa, the Chairperson participated in the 18th Summit of Heads of State and Government of the African Union and presentation of the African Commission Activity Report. She participated in the deliberations of the Permanent Representatives Committee and the Executive Council of the African Union respectively. In this context she submitted the 29th Activity Report of the African Commission.

7. From 25 to 26 January 2011, in Addis Ababa, Ethiopia, the Chairperson took part **in the GIMAC Conference (Gender is my Agenda Campaign)**, held on the sidelines of the 18th Summit of Heads of State and Government, on the theme: «what challenges for the social climate change»? Several important topics were discussed during the conference. The GIMAC members initiated discussions on issues linked to the political situations in Côte d'Ivoire and in North Africa. Also discussed was the indispensable involvement of women in peace keeping operations and in the conflict settlement negotiation process.

8. The Chairperson's interest in participating in the GIMAC conference is justified by the fact that the African Commission's thematic agenda on the rights of women concerns GIMAC at the highest level and was at the core of the conference discussions. Thus she felt that the African Commission needs to extend its expertise to this programme and to hold discussions with GIMAC on the challenges against the effectiveness and fulfilment of women's rights in Africa.

9. From 01 to 7 February 2011, the Chairperson participated in a joint visit to Cameroon in her capacity as Commissioner responsible for human rights in Cameroon with her colleague Madam Lucy Asuagbor, Special Rapporteur on the Situation of Human Rights Defenders in Africa. This mission which was carried out at the request of the Cameroonian State was concluded by a Press Release which outlined the global human rights situation in this country, in particular the achievements and the challenges which still prevailed. At the end of the mission, the Chairperson formulated preliminary recommendations which will be reproduced in the Mission Report.

10. From 13 to 14 February 2011, in Dakar, Senegal, with the financial support of the Open Society Initiative, the Chairperson, with her colleagues Me Soyata MAIGA and Me Catherine Dupe ATOKI, held a two-day working session on the preparations for the 30th anniversary of the African Charter during which they were able to identify the activities to be carried out on the basis of the terms of reference which had already been prepared during the 48th Session. In the same context an Action Plan was drafted and a scientific Committee set up, as well as an Organization Committee for the said events. These discussions were pursued on the 11, 12 and 13 April 2011 in Nairobi, Kenya with her colleague Me Catherine Dupe Atoki.

11. From 23 February to 3 March 2011, the Chairperson participated in the 9th Extraordinary Session of the African Commission, held in Banjul, The Gambia. During

this session the African Commission outlined a programme relative to the execution of its 2011 annual budget. The African Commission also examined the human rights situation on the African continent, in particular in the following countries: Tunisia, Libya, Algeria, Egypt, Benin and Côte d'Ivoire. All these countries which were subjected to analysis are undergoing profound changes in their political and governance systems. Besides, it should be noted that the crucial recurring issue is not only that of democratic change but especially that of elections.

12. From 9 to 11 March 2011, in Lilongwe, Malawi, the Chairperson participated in a Conference on the promotion of the African Court on Human and Peoples' Rights. The objectives of this conference were to find ways and means of supporting and promoting the newly established Court, and to make it effective where human rights protection in Africa is concerned. The Bureau of the Commission and that of the Court also met on the sidelines of this Conference.

13. On this occasion, the Chairperson made a presentation on « An overview of the regional human rights protection system in Africa ». In this presentation, she outlined the achievements of the African Commission over the past 25 years, as a pioneer organ for the promotion and protection of Human Rights. She also underscored the role that it has to play within the context of the needful complementarity between itself and the African Court on Human and Peoples' Rights.

14. From 1 to 9 April 2011, in her capacity as Commissioner responsible for human rights promotion in the Democratic Republic of Congo, the Chairperson carried out a joint mission to that country accompanied by her colleagues, Me Soyata MAIGA, Special Rapporteur on the Rights of Women in Africa, Me Catherine Dupe ATOKI, Special Rapporteur on Prisons and Detention Centres in Africa, Lucy ASUAGBOR, Special Rapporteur on the situation of Human Rights Defenders in Africa, Zainabo Sylvie KAYITESI, Chairperson of the Working Group on the Death Penalty, Mohammed Bechir KHALFALLAH, Chairperson of the Working Group on ESCRs.

15. This mission, carried out at the request of the Government of the Democratic Republic of Congo, had, among other objectives, that of promoting the Charter and of ascertaining the follow up of the recommendations formulated sequel to the examination of the 8th, 9th and 10th cumulative Reports presented by the DRC to the 48th Ordinary Session of the African Commission. The mission was concluded with the publication of a Press Release which reviewed the global human rights situation in this country by underscoring the progress made in the social context and in the promulgation of laws including that pertaining to the criminalization of torture; that on the abolition of forced labour and the continuation of the examination of the law on parity; and the challenges to be addressed including that of the resistance to the abolition of the death penalty. The preliminary recommendations formulated at the end of the mission will be reproduced in the Mission Report.

16. From 25 to 27 April in Banjul, The Gambia, as a prelude to the 49th Ordinary Session of the African Commission, the Chairperson participated in the NGO Forum organized by the African Centre for Democracy and Human Rights Studies. She

participated in it on the basis of the practice established since the existence of this Forum. The Chairperson had the honour to deliver the opening address of this Forum and she seized the opportunity to remind the civil society organizations about the fundamental role they have to play and how much they need to contribute to the achievements of the African Commission on Human and Peoples' Rights in the promotion and protection of human rights.

17. During the Intersession the Chairperson maintained contact with the States Parties to the Charter, notably those that had undertaken to provide support to the African Commission. She also pursued the dialogue with the States Parties that had participated in the 48th Session of the African Commission. Furthermore, she continued to monitor, alongside the African Commission Secretariat, the preparations for the celebration of the 30th anniversary of the African Charter on Human and Peoples' Rights. She took part in the discussions which culminated in the conception of the African Human Rights Strategy. This Strategy document was validated on the 26 and 27 April 2011 with the constant support of the AU Commission in collaboration with the parties that have a stake in this issue.

a) Report on Activities as Chairperson of the Committee for the Protection of the Rights of People Living with HIV/AIDS, Those at Risk, Vulnerable to and Affected by HIV

18. On 17 and 18 January 2011, the Chairperson took part in an orientation workshop for members of the African Commission on the protection of the rights of people living with HIV and persons at risk, vulnerable persons and those affected by HIV (the Committee). The workshop was organised by the African Commission and the Secretariat of the United Nations Joint Programme on HIV/AIDS (UNAIDS). The objective of the Workshop was to offer members of the Committee the opportunity to learn, discuss and understand the latest scientific, medical, epidemiological and legal developments relating to HIV and essential issues relating to the theme: **HIV and human rights**. It was also an opportunity to discuss plans for the implementation of the mandate of the newly created Committee.

19. During the intersession, the Chairperson undertook actions and consultations with the partners concerning capacity building for action by the Committee. To this effect, a Memorandum of Understanding was signed with a South African NGO, to provide a legal assistant to the Committee Human Rights Development Initiative (HRDI) in November 2010 and an action plan drawn up in collaboration with UNAIDS.

20. On 26 November 2011, the South African NGO, *Human Rights Development Initiative* and the Legal Clinic of the University of Dar-es-Salam drew attention to the existence of a practice whereby the rights of people living with HIV/AIDS are violated; in particular, the right to the respect of confidentiality as far as a medically-certified HIV-positive status report is concerned. To give effect to this request and to verify the alleged facts, a letter was written on 30 April 2011, requesting for clarification of these human rights violations. The letter was given to the Secretary for it to go through the normal procedures.

b) Report on Activities as Member of the Working Group on the Rights of Older Persons and People with Disabilities in Africa

21. From 18 to 21st April 2011, the Chairperson, at the invitation of the United Nations in New York, participated in the First Ordinary Session of the Working Group with enlarged membership on the rights of Elderly Persons. One of this Working Group's key assignments is to examine the utility, in collaboration with all the stakeholders, of drafting a specific legal instrument for elderly persons. During these deliberations, I made a presentation on the state of African law in this field, on the established mechanisms, on the achievements registered in the protection of the rights of elderly persons and the shortcomings which have been observed.

22. During the Intersession, the Chairperson took part in the discussions within the Working Group on a Draft Protocol on the Rights of Disabled Persons.

II. Honorable Commissioner Mumba Malila

a) Report on Activities as Vice-Chairperson and Member of the Bureau

23. From 29 November to 01 December 2010, the Vice-Chairperson of the African Commission led a delegation of Commissioners and staff of the Secretariat to a retreat organized by IPAS Alliance in Nairobi, Kenya. The retreat was called to sensitize the African Commission on various aspects of maternal mortality, unsafe abortions and human rights. The retreat was attended by medical practitioners, academics, representatives of the African Court and NGOs.

24. From 27 to 28 January 2011, the Vice-Chairperson of the African Commission participated in the meeting of the Executive Council of the African Union in Addis Ababa, Ethiopia.

25. From 29 to 31 January 2011, the Vice-Chairperson of the African Commission attended the Summit of the Assembly of Heads of State and Government of the African Union in Addis Ababa, Ethiopia. A joint meeting of the Bureau of the African Commission and African Court on Human and Peoples' Right was also held on the side lines of the summit.

b) Report on Activities as Commissioner

26. On 3 February 2011, in Lusaka, Zambia, Commissioner Malila participated in a round table meeting of the African Court on Human and Peoples' Rights organized by the Zimbabwe Human Rights NGO Forum, as the Southern Africa Focal Point for the Africa Court Coalition, together with the African Women Millennium Initiative, Zambia. Commissioner Malila made a presentation on "*the relationships between the African court and the African Commission*".

27. From 23 February to 3 March 2011, Commissioner Malila participated in the 9th Extra Ordinary Session of the African Commission held in Banjul, the Gambia. That session dealt with among other things, outstanding Reports, Communications and the human rights situations in North and West Africa.

28. From 9 to 11 March 2011, Commissioner Malila participated in the Conference on the Promotion of the African Court, held in Lilongwe, Malawi. He presented a paper entitled "*The Promising Siblings: The Relationship between the African Court and the African Commission on Human and Peoples' Rights*".

29. On 21 March 2011, Commissioner Malila had a round table meeting with an organization called "Friends of Mulik" on health and human rights with particular reference to marginalized groups.

c) Report on Activities as Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa

30. This mandate was established at the 46th Ordinary Session of the African Commission held in Banjul, The Gambia, from 11 to 25 November 2009. The purpose of this special mechanism as set out in the resolution that created it are to:

- i. Examine the impact of extractive industries in Africa within the context of the African Charter on Human and Peoples' Rights;
- ii. Research the specific issues pertaining to the right of all peoples to freely dispose of their wealth and natural resources and to a general satisfactory environment favourable to their development;
- iii. Undertake research on the violations of human and peoples' rights by non-state actors in Africa;
- iv. Request, gather, receive and exchange information and materials from all relevant sources, including Governments, communities and organizations, on violations of human and peoples' rights by non-state actors in Africa;
- v. To inform the African Commission on the possible liability of non-state actors for human and peoples' rights violations under its protective mandate;
- vi. Formulate recommendations and proposals on appropriate measures and activities for the prevention and reparation of violations of human and peoples' rights by extractive industries in Africa;
- vii. Collaborate with interested donors institutions and NGOs, to raise funds for the Working Group's activities;

viii. Prepare a comprehensive report to be presented to the African Commission by November 2011;

31. To date, the Working Group has not held its inaugural meeting due to resource constraints. A meeting has now been scheduled for Lusaka Zambia in July 2011 to set out its program of action.

d) Report on Activities as Member of the Working Group on the Death Penalty in Africa

32. From 24-27 March 2011, as a member of the Working Group on the Death Penalty in Africa, Commissioner Malila attended the 5th Meeting of the Working Group on the Death Penalty in Africa, in Johannesburg, South Africa. The meeting was organized to finalize the Working Group's document on *'the Study on the Question of the Death Penalty in Africa,'* for presentation to the African Commission at its 49th Ordinary Session.

e) Report on Activities as Member of the Committee for the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV

33. From 17 to 18 January 2011, Commissioner Malila participated in the orientation meeting of the Committee for the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV which was held in Dakar, Senegal. This was the first meeting of all the expert members of the Committee together with the Commissioners and was intended to map out the agenda for the Committee.

III. Honorable Commissioner Dupe Atoki

a) Report on Activities as Member of the African Commission

34. On 24 November 2010, Commissioner Atoki attended a seminar organized by the Socio-Economic Rights Accountability Project (SERAP) in Lagos, Nigeria. The seminar was aimed at promoting integrity in Magistrate Courts and improve on access of citizens to justice in Lagos State. She presented a paper on alternative dispute resolution mechanisms.

35. On 26 November 2010, Commissioner Atoki was invited by the Nigerian Institute of Advanced Legal Studies in Lagos, Nigeria, to a human rights workshop. She made a presentation on the adoption of the African Charter, the mandate of the Commission and the different mechanisms set up to actualize the mandate of the Commission.

36. From November 28 – 30 2010, Commissioner Atoki attended a workshop on ***'Abortion and Reducing Maternal Mortality in Africa – a Human Rights Approach'***, that held in Nairobi, Kenya. The workshop was organized by IPAS, an international NGO working on women's sexual and reproductive rights for Commissioners of the African Commission. The main objective of the workshop was to review the current

status of and achievements in the promotion of women's sexual and reproductive rights in the light of the Protocol to the African Charter on the Rights of Women in Africa.

37. On February 14 – 15 2011, Commissioner Atoki attended a meeting in Dakar, organized by the Open Society Initiative for East Africa (OSEIA) in collaboration with the African Commission. The meeting was aimed at preparing and mapping out strategies for celebrations marking the 30th anniversary of the adoption of the African Charter. During the meeting, an action plan of envisaged activities and the modalities of their implementation was drawn up and roles distributed to various stakeholders.

38. Commissioner Atoki participated in the 9th Extra-ordinary Session of the African Commission that held from February 21 to March 03 2011, in Banjul, the Gambia. The Session discussed the budget of the commission and other outstanding issues that were not finalized during the 48th Ordinary Session and considered pending communications.

39. From 12 – 13 April, She attended another preparatory meeting for the celebration of the 30th Anniversary of the African Charter in Nairobi, Kenya. The meeting was a follow up to the Dakar meeting and was aimed at evaluating progress and setting out further strategies for a successful anniversary celebration.

a) Report on Activities as Chairperson of the Committee for the Prevention of Torture in Africa

40. From 14 - 20 December 2010, Commissioner Atoki undertook a joint Promotion Mission to Algeria with Commissioners Maiga and Kayitesi. During the mission she visited prisons and detention facilities and highlighted to the various officials and partners in civil society the importance of using principles contained in the Robben Island guidelines in their torture prevention efforts.

41. From January 24 - 25, Commissioner Atoki participated in a workshop on the abolition of the death penalty in Harare, Zimbabwe, organized by Amnesty International Zimbabwe and the Zimbabwe Human Rights NGO Forum. The main objectives of the workshop were to campaign and lobby for the abolition of the death penalty (which has been internationally recognized as a form of cruel and inhuman punishment) and build on and develop strategies to influence key stakeholders to support the call for abolition of the death penalty in the new Constitution of Zimbabwe. The workshop brought together members of NGOs campaigning for abolition, representatives from Zimbabwe's Constitutional Parliamentary Select Committee, traditional leaders, the Legal Secretaries to the three parties of the Zimbabwean unity government and other civil society leaders. She participated in the workshop as facilitator and made presentations on the African Commission and its role in the abolition of the death penalty in Africa. She also presented on the trends towards abolition in Africa and the success stories that have so far been registered.

42. On February 21st, Commissioner Atoki addressed an Urgent Appeal to the President of Djibouti, His Excellency Ismaïl Guelleh, following the death in detention of Abdallah Mohamed Abdallah and the arrest and detention of some opposition party

officials and militants who were alleged to be at risk of torture and ill-treatment. She has not yet received any formal response to this Appeal.

43. On 26 April, during the NGO Forum that preceded the present Session, Commissioner Atoki chaired a panel discussion on '*Bringing the absolute prohibition of torture in Africa to life*'. The Panel discussion was co-organized by PRAWA and IRCT and discussions centered around the torture situation in Africa, its effects and the role of the African Commission in enforcing standards on the absolute prohibition of torture. Presentations on the role of medical experts in providing evidence on torture cases, the role of rehabilitation centers for torture victims, torture documentation and redress and the rehabilitation of torture survivors were also made by representatives of participating NGOs.

44. Commissioner Atoki was also invited to facilitate the special interest group discussion on prisons and conditions of detention in Africa that was also held on the 26 April during the NGO Forum. This discussion accorded her the opportunity to explain to participants, the work of the Committee for the Prevention of Torture in Africa (CPTA) in its efforts to prevent torture in Africa and how civil society partners could engage with and contribute to the work of the CPTA and the Commission as a whole. Participants at the discussion also explored the torture situation in some African countries, outlining the positive developments and challenges that were registered during the intersession and made recommendations on how the situation could be improved.

45. On 28 April, Commissioner Atoki was invited to chair deliberations at a seminar on the theme '*need for effective victim protection in the fight against impunity for serious human rights violations*'. The workshop was co –organized by OMCT, Independent Medico Legal Unit and REDRESS, and brought together representatives of NGOs and experts on witness protection. During the seminar, she outlined the importance of witness protection and its bearing on the fight against impunity and presented the approach of the African Commission on this issue as enunciated in its rules of procedure and the Robben Island Guidelines.

46. During the intersession, Commissioner Atoki made requests for authorization to undertake promotion activities on the prevention of torture to the Governments of Mauritania, Gabon, Equatorial Guinea, Cameroon and Zambia and the DRC. The response of these governments is still being awaited.

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

47. From the 14 – 20 December 2010, the Special Rapporteur undertook a Promotion Mission to the Republic of Algeria alongside Commissioners Maiga and Kayitesi. She visited prisons and police holding cells in the country with a view to assessing their compliance with international standards and made recommendations on lapses noticed. During the Mission, she also held talks with high ranking officials including the Government officials responsible for the relevant portfolios dealing with prisons in

particular and detention in general. Commissioner Atoki also held consultations with relevant civil society organizations.

48. On 18 April 2011, the Special Rapporteur attended a one day conference in Washington DC on detention visits. The conference was organized by the American University Washington College of Law and the Association for the Prevention of Torture (APT) and was aimed at addressing the crucial role of visits to detention facilities around the world in ensuring that safeguards for detainees are enforced. The conference convened top experts including mandate holders, policymakers, lawyers, NGOs, scholars, and practitioners from around the world to analyze key challenges confronting detention visits today and establish channels for enhancing collaboration. She was invited in her dual capacity as the Chairperson of the CPTA and the Special Rapporteur on Prisons and Places of Detention in Africa to present the African perspective on detention visits and vulnerable groups.

49. From 1 - 9 April 2011, the Special Rapporteur participated in a joint Promotional Mission of the African Commission to the Democratic Republic of Congo in her capacity as Special Rapporteur on Prisons and Places of Detention in Africa. During the Mission, she held consultations with the Minister of Justice and the administrative staff of prisons and other detention centers in the DRC. She visited the central prison of Makala, the biggest in Kinshasa, as well as the military prison of Ndolo. In these two prisons she addressed concerns to the authorities regarding the issues of overpopulation, malnutrition, and the lengthy periods of incarceration of pre-trial detainees. She also visited two police detention centers in the districts of Lingwala and Kintambo in Kinshasa where she formulated recommendations regarding the strict observance by police officers of the 48 hour limit of detention pending investigations and secured the release of detainees who had been held beyond the limit. The Special Rapporteur also congratulated the government of DRC for the adoption of the anti torture bill, as well as the law on the abolition of forced labour, which were recently passed in the Parliament.

50. On 26 April, the Special Rapporteur chaired a workshop on the management of prison populations in Africa and a strategic planning meeting on prison reform interventions in Africa. The workshop was organized in the context of a Memorandum of Understanding signed between PRAWA and the African Commission on the Prison Reform Intervention in Africa (PRIA) – an initiative supported by the Dutch Prison Service to carry out relevant, effective and sustainable interventions in penal reform. The workshop was organized following completion of the first part of the project involving a baseline assessment of practices and situations in six selected pilot countries namely: Zambia, Nigeria, Kenya, Burundi, DRC and Rwanda.

IV. Honorable Commissioner Musa Ngary Bitaye

a) Report on Activities as Commissioner

51. From 29 November to 01 December 2010, Commissioner Bitaye participated in a three day Retreat for Commissioners and the Secretariat of the African Commission on the theme "Abortion and Reducing Maternal Mortality in Africa: A Human Rights

Approach". The retreat took place in Nairobi and was organized by Africa Alliance (IPAS) in collaboration with the Special Rapporteur on Women's Rights in Africa. The main objective of the workshop was to, among other things, review the current status of, and achievements in the promotion of women's sexual and reproductive rights in the light of the Protocol to the African Charter on the Rights of Women in Africa.

52. From 24 to 31 January 2011, Commissioner Bitaye participated in the Permanent Representative Council Meeting on Budget Proposals of the AU Organs and the 18th Extraordinary Session of the Executive Council as well as the 16th Summit of Heads of States and Government in Addis Ababa, Federal Republic of Ethiopia. On the sidelines of this meeting, Commissioner Bitaye followed up with the AUC on the recruitment of staff for the African Commission, given that the African Commission suffers from a chronic shortage of staff, especially legal officers.

53. From 22 February to 03 March 2010, Commissioner Bitaye attended the 9th Extra-ordinary Session of the African Commission in Banjul, The Gambia. During this Session, a number of urgent human rights matters were addressed and measures adopted in respect of some of these issues, including a Statement on the Human Rights Situation in North Africa and Resolutions on the Arab Republic of Egypt, the Republic of Cote d'Ivoire, the Democratic Republic of Tunisia and the Libyan Arab Jamahiriya.

54. Commissioner Bitaye also participated in some discussions at the NGO Forum that preceded the Session of the African Commission, from 25 to 27 April 2011 in Banjul, The Gambia.

b) Report on Activities as Chairperson of the Working Group on the Rights of Indigenous Peoples /Communities

55. Following an Urgent Appeal letter sent to the President of the United Republic of Tanzania, regarding the situation of the Masaai pastoralists in Loliondo, the Government of the United Republic of Tanzania on 7 December 2009, sent a detailed response to the Urgent Appeal reacting to the issues that had been raised in the Appeal. Commissioner Bitaye caused a note verbale to be sent to the Government of Tanzania on 22 December 2010, acknowledging receipt and appreciating the efforts the Government has deployed in investigating the allegations highlighted in the Urgent Appeal. In this Note verbale, the Government was requested for a third time to invite the working group to undertake a promotion mission to Tanzania.

56. On 20 January 2011, Commissioner Bitaye addressed an Urgent Appeal to the President of the Republic of Rwanda, with respect to the alleged destruction of the huts of the Batwa people of Eastern, Southern and Western Provinces of Rwanda. In the Urgent Appeal, Commissioner Bitaye brought to the attention of the President, the alleged destruction of the huts of the Batwa that has forced 734 families comprising 2, 936 Batwa people, to live without enough food or blankets, exposing them to multiple health problems. He urged the Government of Rwanda to provide clarifications and to investigate the alleged human rights violations. So far, he has not yet received any response from the Government of Rwanda.

57. On 29 March 2011, Commissioner Bitaye wrote a congratulatory letter to the President of the Republic of Congo following the promulgation of a Law for the Promotion and Protection of the Rights of Indigenous Populations, which came into force on 25 February 2011. This law is the first of its kind in Africa and would be used and cited by the Working Group, to lobby other Member States, as one of the best practices geared towards protecting and enhancing the rights and wellbeing of indigenous populations in Africa. In the letter, Commissioner Bitaye expressed the willingness of the working group to assist the Government of the Republic of Congo in the implementation of the law.

58. During the intersession, and following the plan of the Working Group to undertake at least one Promotion Mission during the intersession, Commissioner Bitaye addressed Notes Verbales to the Governments of the Republic of Chad, Federal Democratic Republic of Ethiopia and the Peoples' Democratic Republic of Algeria. Only Algeria responded to the request declining to invite the Working Group to conduct a Promotion Mission in Algeria.

59. Commissioner Bitaye also addressed requests to the Governments of Namibia and South Africa respectively on 9 December 2010 and 13 January 2011, to host a Regional Sensitization Seminar for the Southern African Region on issues of indigenous people. Commissioner Bitaye also addressed a similar request to the Great Socialist Peoples' Libyan Arab Jamahiriya on 13 January 2011, to host a similar seminar for the North African Region. Commissioner Bitaye did not receive any response to these requests during the intersession.

60. Commissioner Bitaye chaired the Meeting of the Working Group that was held from 26 to 27 April 2011, in Banjul, The Gambia. The Meeting discussed activities undertaken during the intersession and planned for future activities.

V. Honorable Commissioner Lucy Asuagbor

a) Report on Activities as Commissioner

61. At the invitation of IPAS Africa Alliance, and in collaboration with Commissioner Soyata Maiga: the Special Rapporteur on the Rights of Women in Africa, Commissioner Asuagbor attended a 3 day retreat organized for Commissioners and the Secretariat of the African Commission on Human and Peoples Rights that was held from 29 November to 1 December 2010. The theme of the retreat was "Abortion and Reducing Maternal Mortality in Africa - A Human Rights Approach". The main objectives of the retreat were amongst other things, to share information on the magnitude and consequences of women's lack of access to comprehensive reproductive health services, including safe abortion services and the impact of this on the maternal mortality and morbidity in Africa and understanding on how unsafe abortion services and its consequences are tantamount to a violation of women's human rights.

62. From the 23 February to 3rd March 2011 Commissioner Asuagbor participated in the 9th Extraordinary Session of the African Commission on Human and Peoples' Rights that was held from 23 February to 03 March 2011.

b) Report on Activities as Special Rapporteur on the Situation of Human Rights Defenders in Africa

63. From 01 to 07 February 2011, the Special Rapporteur participated in a joint promotion mission to the Republic of Cameroon within the frame work of her mandate as Special Rapporteur on the Situation of Human Rights Defenders in Africa. The visit served as a follow up and evaluation of the implementation of recommendations made by the African Commission during the visit of the Special Rapporteur on Human Rights Defenders in 2006, and implementation of concluding observations made during the consideration of Cameroon's Periodic Report presented at the 47th Ordinary Session of the African Commission.

64. She held discussions with competent Government authorities on the legal and administrative framework and measures put in place to guarantee freedom of association and manifestation and the level of implementation of the 1998 UN Declaration on Human Rights Defenders. She also held meetings with human rights defenders including journalists and members of Civil Society Organizations. Recommendations aimed at enhancing the rights of human rights defenders in Cameroon will be formulated in the mission report to be presented to the African Commission.

65. The Special Rapporteur participated in a joint Promotion Mission of the African Commission to the Democratic Republic of Congo (DRC) in her capacity as Special Rapporteur on the Situation of Human Rights Defenders in Africa from 01 to 09 April 2010. The overall objective of the Mission was to promote the African Charter; exchange views; share experiences with the Government of the DRC, the major human rights stakeholders in the country and human rights defenders on how to enhance the protection of Human Rights defenders in the country.

66. From 07 to 11 December 2011 in Warsaw, Poland, the Special Rapporteur attended the third "inter-mechanisms" meeting organized by the Observatory for the Protection of Human Rights Defenders and hosted by the Office for Democratic Institutions and Human Rights (ODIHR). This meeting coincided with the International Human Rights Defenders Day on 10 December 2010. On this occasion, international and regional mechanisms and programs for the protection of human rights defenders within the United Nations, African Commission, Council of Europe, European Union, Inter-American Commission on Human Rights, ODIHR, and the International Organization of the Francophonie shared their respective experiences, and identified best practices on ways to increase their efficiency.

67. From 7 to 17 March 2011 in Geneva, Switzerland, the Special Rapporteur attended, at the invitation of the International Service for Human Rights (ISHR), the UN Human Rights Council Session during which the UN Special Rapporteur on Human

Rights Defenders, Ms Margaret Sekaggya, submitted her annual country visit report. During the Session, she held meetings with NGOs, the Mission of Norway, the International Service for Human Rights, the AU Representative in Geneva and the Representative of the High Commissioner of Human Rights. She also attended a parallel event organized by women human rights defenders under the theme "Contesting violations against women human rights defenders and ensuring their protection".

68. From 11 to 14 April 2011, the Special Rapporteur attended the SADC Human Rights NGO Workshop in Luanda, Angola. The objective of the workshop was to strengthen the African System of Human Rights in the SADC Region. The workshop reviewed among other things, the human rights situation in Africa, the experience of NGOs in obtaining observer status with the African Commission and the key human rights treaties and their implementation mechanisms. During the workshop, the Special Rapporteur made three presentations on the Mandate of the Special Rapporteur and its mechanism; Access to the African Court and The Relationship between the African Commission and the African Court.

69. On 25 April 2011, the Special Rapporteur held an interactive discussion with the Human Rights Defenders Network in Africa during the NGO Forum that preceded the 49th Session of the African Commission. In the course of these discussions, recommendations with respect to country visits, thematic issues to be prioritized, reprisals against human rights defenders who engage with the African Commission, communication with national and international human rights mechanisms to reinforce protection for human rights defenders, were made.

70. On April 26 2011 in Banjul, The Gambia, the Special Rapporteur participated in a panel discussion on "Uprisings in North Africa and Challenges for Human Rights Defender". She also took part in the special interest group discussion on human rights defenders in Africa.

71. The Special Rapporteur participated in a discussion with the Special Rapporteur on Women and the International Service for Human Rights on how to address challenges faced by women human rights defenders in Africa.

72. During the intersession, the Special Rapporteur issued a Press Release expressing her concern over the alleged assassination of David Kato, a Ugandan human rights activist and called on Ugandan authorities to open investigations into the cause of death and bring the perpetrators to justice.

73. The Special Rapporteur also addressed letters of allegation to the following governments:

- i. Algeria, on 15 February 2011, following allegations of arbitrary arrests, acts of intimidation and denial of the right to manifest on 12 February 2011 of members of the National Coordination for Democracy and Change and of

the Lique Algerienne des Droits de l'Homme. The government of Algeria has not yet reacted to the letter.

- ii. Burundi, on 05 December 2010, following allegations of pressure and dead threats on 29 November 2010 against Mr. Gabriel Rufyiri and his wife, and Mr. Pierre-Claver Mbonimpa. No response to the letter has been received.
- iii. Burundi, on 18 April 2011, following allegations of a request on 13 April 2011 by the Prosecutor of Bujumbura for a life sentence to be imposed on a journalist, Jean-Claude Kavumbagu, editor of an online newspaper who had been accused of treason and defamation. The Government of Burundi has not yet responded to the letter.
- iv. Cameroon, on 12 January 2011, following allegations of the arbitrary arrest and denial of the right to freedom of association of a human rights defender working on reproductive rights, Mr. Fogué Foguito on 22 Dec 2010. The Government of Cameroon has not responded to this letter.
- v. Sudan, on 31 January 2011, following allegations of harassment, intimidation and arbitrary detention on 25 January 2011 of Dr. Mudawi Ibrahim Adam. No response to the letter of allegation has been received from the Government of Sudan.
- vi. Egypt, on 14 February 2011, following allegations of arbitrary arrest of human rights defenders from Hisham Mubarak Law Centre and the Egyptian Center for Economic, Social and Cultural Rights by the military police on 03 February 2011, and their subsequent release between the 04 and 06 February 2011 without being charged. The Government has not yet responded to the letter.
- vii. Sudan, on 23 December 2010, following allegations of harassment, detention and intimidation of Mr. Abdul Basit Margani alleged to have been arrested by the National Intelligence and Security Services (NISS) on 14 December 2010. The Government of Sudan has not yet responded to the letter of allegation.
- viii. Sudan, on 23 December 2010, following allegations of harassment, intimidation and detention of 13 Darfuri human rights defenders, including Mr. Abdelrahman Mohamed Al Gasim, Legal Aid and Training Coordinator of the Darfur Bar Association, and several staff members of HAND network and Radio Dabanga alleged to have been arrested amid a wave of arrests in Khartoum between 30 October and 3 November 2010. The government of Sudan has not responded to the letter of allegation.
- ix. Tunisia, on 30 December 2010, following allegations of arrest, intimidation, harassment, detention, ill-treatment, torture, denial of freedom of assembly of Mr. Mouldi Zouabi journalist and correspondent for Al-Quds Al-Arabi and

Mr. Al-Arabyia, Nizar Ben Hassen, correspondent for Kalima Radio on 24 November 2010. The Government has not responded to the letter of allegation.

- x. Tunisia, on 04 January 2011, following allegations of intimidation, harassment, death threats ill-treatment and arbitrary arrest of Mr. Ben Hassen on 22 December 2010. No response has been received from the Government of Tunisia.
- xi. Tunisia, 04 January 2011, following allegations of intimidation, harassment, torture and ill-treatment of Mr. Ahmad Al Rahmouni, Mrs Kalthoum Kennou, Mrs Wassila Kaabi, Mrs Raoudha Karafi, Mrs Leila Bahria and Mrs Noura Al Hamdi on 19 December 2010. No response has been received from the Government of Tunisia.
- xii. Tunisia, on 10 January 2011, following allegations of arrest, intimidation, harassment, detention, ill-treatment, torture, denial of freedom of assembly of two lawyers; Mr. Chaouki Ayadi and Abdelraouf Beleid On 28 December 2010. The Government has not responded to the letter of allegation.
- xiii. Tunisia on 17 January 2011, following allegations of arrest, intimidation, harassment, detention, ill-treatment, torture, denial of freedom of assembly of Mr. Hamma Hammami, Me Nasraoui, and Mohammed Mezam on 12 and 13 January 2011. No response has been received from the Government of Tunisia.
- xiv. Tunisia, on 20 April 2011, following allegations of arrest, intimidation, harassment, detention, ill-treatment, torture, denial of freedom of assembly of Mr. Abdallah Ben on 13 April 2010. No response has been received from the Government of Tunisia.
- xv. Uganda, on 14 February 2011, following allegations of the murder of human rights defender, Mr. David Kako in Kampala on 26 January 2011. The Government has not responded to the letter that was sent to it.
- xvi. Zimbabwe, on 25 February 2011, following allegations of the arbitrary arrest of Mrs. Jenni Williams and Mr. Magodonga Mahlangu on 12 February 2011. No response has been received from the Government of Zimbabwe.
- xvii. Zimbabwe, on 01 April 2011, following allegations of intimidation and attacks on Mr. Bamusiof Kasembe, focal person in the Maramba community for Zimbabwe Human Rights Association (ZIMRIGHTS) and his assistant known as Tongai, and 11 other researchers, among them Messrs. Dzikamai Bere, from the Zimbabwe Human Rights NGO Forum and Admire Munava, on 18 March 2011. No response has been received from the Government of Zimbabwe.

xviii. Zimbabwe, on 20 March 2011, following allegations of intimidation and harassment against Mr. Abel Chikomo on 14 March 2011. No response has been received from the Government of Zimbabwe.

74. The Special Rapporteur recalls that the situation of human rights defenders in Africa continues to be a serious cause for concern. She continues to receive reports of cases of assassination, harassment, intimidation, violation of privacy, illegal detention, enforced disappearance abduction, ill-treatment in custody, and poor detention conditions, attack and threats on members of families of human rights defenders. Obstacles to the exercise of the right to freedom of movement, association and manifestation abound; from the refusal of entry visas to inordinate delays at ports of entry. Women human Rights Defenders face particular challenges due to societal stereotypes. Not only do they face the other challenges faced by their male counterparts they are subjected to rape as means of discouraging them from pursuing their mission.

75. The Special therefore recommends that:

- i. Human Rights Defenders should develop Networks in order to exchange notes on best practice and develop protective mechanisms.
- ii. States Parties should speed up the process of implementation of the UN Declaration on Human Rights Defenders in order to provide a healthy environment for HRDs to perform their mission.
- iii. State Parties should collaborate in order to achieve the ultimate goal of assuring to each and every one the rights enshrined in the African Charter and other human Rights instruments.

VI. Honorable Commissioner Yeung Kam John Yeung Sik Yuen

Report on Activities as Commissioner and Chairperson of the Working Group on the Right of Older persons and People with Disabilities in Africa

76. During the intersession, Commissioner Yeung participated in the review of a paper to be published by the University of London on the Rights of Older Persons in Africa and People with disabilities. The paper has been sent to the publishers.

77. Commissioner Yeung also took part in the review of the English and French versions of a draft Protocol on the Rights of Older Persons which came up for discussion at the 48th Ordinary Session of the African Commission. This revised edition will now serve as working document before finalization at the level of the Working Group and at the level of the African Commission before dispatch to the African Union.

78. Pursuant to a Resolution of the African Commission at its 48th Ordinary Session that the membership of the Working Group be enhanced by three (3) additional members, a call for candidates has been published in the website of the African

Commission and a selection exercise is scheduled to be carried out during the 49th Ordinary session.

79. Apart from his mandate as member of the African Commission and Chairperson of the Working Group on the Rights of Older Persons and People with Disabilities in Africa, Commissioner Yeung has also been engaged with the program of the United Nations Office on Drugs and Crime (UNODC) to curtail piracy in the Indian Ocean and to bring pirates operating in that region to stand trial.

VII. Honourable Commissioner Khalfallah

Report on Activities as Commissioner and Chairperson of the Working Group on Economic, Social and Cultural Rights (ECOSOC)

80. During the intersession, as part of the promotion activities of the African Commission, Commissioner Khalfallah attended a joint human rights Promotion Mission of the African Commission to Kinshasa in the Democratic Republic of Congo (DRC) from 01 to 09 April 2011. This Mission, which was led by the Chairperson Madam Reine Alapini Gansou, provided an opportunity for fruitful exchange of views with senior officials of the DRC.

81. As the Chairperson of the ECOSOC Working Group, he inquired about the economic, social and cultural rights situation in the DRC and also encouraged the Government and all the social actors to work together in order to strengthen the economic fabric and ensure a judicious and equitable use of national resources for the benefit of all Congolese citizens.

82. Commissioner Khalfallah caused the publication of a Press Release on the transition process in Tunisia and Egypt on 25 March 2011. He advised the new authorities in charge of the democratic transition process initiated in Tunisia and Egypt to undertake, without any further delay, the appropriate reforms which will take into account, the economic, social and cultural needs of the people after open and transparent consultations.

83. At the end of March, Commissioner Khalfallah attended a meeting on the coordination of activities of workers resident in Europe, on the occasion of the proposed review of the Schengen Accords by Italy and France. The implementation of such a measure will pave the way for the springing up of new ghettos.

84. Commissioner Khalfallah sent Note Verbale to the Central African Republic in order to undertake a promotion visit to this Country.

85. Commissioner Khalfallah also attended a group discussion meeting on economic, social and cultural rights on 26 April 2011, as part of the NGO forum on the margins of the 49th Ordinary Session. On recommendations by the Forum, the discussion group prepared a draft Resolution calling for the gradual implementation of economic, social and cultural rights by African Governments.

86. The Working group is planning to organize a Pan-African meeting in 2011 on the global financial crisis and its impact on African economies. To this end, commissioner Khalfallah has informed potential partners and envisages a meeting of the Working Group as soon as possible in order to prepare the agenda, search for possible partners as well as the host country for this meeting. Such a meeting will also come up with a working plan for the Working group.

87. Commissioner Khalfallah recommended to States Parties to the African Charter, and other actors, to continue to provide support to the African Commission in general and to the ECOSOC Working Group in particular, in order for it to contribute effectively to accomplishing its mission of promotion and protection, aimed at meeting economic, social and cultural rights of African peoples. He also recommended the implementation of appropriate policies aimed at achieving all economic, social and cultural rights, including education, health, access to portable water and sanitation, which are an integral part of individual human rights.

VIII. Honorable Commissioner Adv. Pansy Tlakula

Report on Activities as Commissioner and Special Rapporteur on Freedom of Expression and Access to Information in Africa

88. From 19 to 21 January 2011, the Special Rapporteur, in collaboration with the Centre for Human Rights, University of Pretoria, with the financial support of Open Society Initiative for Southern Africa (OSJI), organized a Working Group Meeting on the draft Model Law on Access to Information, in Pretoria, South Africa. The Workshop was aimed at bringing together members of the Working Group that was established in October 2010 to discuss the draft Law prepared by the Drafting Committee.

89. On 12 February 2011, the Special Rapporteur participated as Panellist in a discussion entitled "*Whose Press Freedom,*" organised by the Nieman Foundation for Journalism (South Africa), in Cape Town, South Africa, aimed at examining the current debate on press freedom in South Africa.

90. On **15 February 2011**, the Special Rapporteur attended a Conference on "*Freedom of Expression and the Internet in Sub-Saharan Africa*". The Conference was aimed at providing a report on the "*state of freedom of expression on the Internet to the UN Human Rights Council*" in line with the mandate of the United Nations (UN) Special Rapporteur for Freedom of Expression. The Special Rapporteur gave a brief outline of the status of freedom of expression in Africa.

91. The Special Rapporteur was also party to a Joint Declaration on Freedom of Expression and the Internet in collaboration with the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, and the Organization of American States (OAS).

92. From 14 to 16 March 2011, the Special Rapporteur organized another Expert Workshop to discuss the Draft Model legislation on Access to Information in Pretoria, South Africa. The Workshop brought together experts in the field of Access to Information, to comment on the Draft law and Explanatory Note.

93. From 22 to 23 March 2011, the Special Rapporteur was invited to attend a “Regional Meeting on Transparency and Anti-corruption Policy in the SADC Region,” in Johannesburg, South Africa. She could not attend the meeting due to other commitments, but however forwarded her presentation paper on the “*the impact of the Declaration of Principles of Freedom of Expression in Africa since its adoption,*” to the organizers.

94. On 29 April 2011, the Special Rapporteur organized a Workshop on the draft Model Law on Access to Information, in collaboration with the Centre for Human Rights, University of Pretoria and OSJI on the margins of the 49th Ordinary Session in Banjul, The Gambia. The aim of the Workshop was to inform States Parties to the African Charter, Non Governmental Organisations (NGOs), and other stakeholders about the existence of the draft law and subsequently open the law for public consultation.

95. During the intersession period, the Special Rapporteur noticed some developments on the status of the enjoyment of the right to freedom of expression and access to Information in Africa, in the countries as indicated below:

- i. *Ghana*. A Bill guaranteeing the right of access to information held by public bodies was drafted in 2002 and re-introduced to Parliament in 2010, and in February 2011. It was reported that the delayed passage of the Bill is due to the unavailability of funds for law makers to hold consultations on the Bill in every region of the country. The Special Rapporteur appreciates this development and hopes that the financial bottlenecks will be resolved in due course with the assistance of the World Bank as promised, so that the draft Bill can be passed into law as soon as possible.
- ii. *Nigeria*. A Freedom of Information Bill was initially adopted by the Nigerian House of Representatives in August 2004. On 15 March 2011, a weaker version of the Bill was passed by the Senate which grants the right to access information only to Nigerian citizens, provided the release of information does not compromise national security.
- iii. *Sierra Leone*. There has been a draft Access to Information Legislation since 2003, amended in 2008. On 16 June 2010, this Bill was approved by cabinet, and on 11 November 2010, the Bill was tabled before parliament. On 4 March 2011, the Sierra Leone Minister of Information and Communication, made comments on the Bill and promised that it would be passed into law within the next four or five weeks.

96. The Special Rapporteur welcomes all the support she continues to receive from Governments, Civil Society Organisations (CSOs) and other partners which have gone a long way to help her overcome the challenges that come with her mandate.

97. The Special Rapporteur is however still concerned about certain challenges beyond her control that greatly impede the effective realization of her mandate. Some of these challenges include lack of political will by some States Parties to the African Charter in implementing her recommendations; lack of cooperation between her mandate and some Governments in the continent with respect to advocacy on the importance of these rights and documenting their violation; the absence of freedom of expression and access to information laws at the national level; and the lack of recognition and non-binding nature of the Declaration of Principles on Freedom of Expression which should serve as a benchmark in the realization of freedom of expression and access to information on the continent.

98. It is the view of the Special Rapporteur that, the safety of journalists and Media Practitioners generally, and especially during times of conflict, remains a cause for concern. The Special Rapporteur therefore calls on Governments in war torn countries, to ensure the safety of Journalists and Media Practitioners, and consent to their independence in reporting violations and other subjects during such periods.

99. Considering that empowering citizens is a very important aspect of participatory democracy, the Special Rapporteur calls on States Parties to the African Charter to put legislative and other measures in place, to facilitate the empowerment of citizens within their jurisdiction, including encouraging pluralistic media.

100. The Special Rapporteur commends countries in the continent that have taken concrete steps towards enacting Access to Information Laws, as well as those who have incorporated the right to freedom of expression and access to information in their Constitutions. She however reiterates her stance about the need to have such laws in place, and calls on States Parties, who have not yet done so, to start the process of enacting such laws. She also calls on countries that already have these laws, to accelerate their implementation.

101. The Special Rapporteur also draws the attention of States Parties, CSOs, and other stakeholders about the existence of a draft Model law on Access to Information, which is now open for public consultation. In this sense, she is calling on all stakeholders to collaborate with her mandate to enrich this draft law during the time it is open for the public, with a view to take into consideration their aspirations before it is finally adopted by the African Commission in the nearest future.

102. The Special Rapporteur also underscores the fact that the Declaration on Principles of Freedom of Expression in Africa is an elaboration of Article 9 of the African Charter. Therefore, even though the Declaration is not binding on States Parties to the African Charter, recognizing that it is a more comprehensive document on the rights that emanate from Article 9 which has proved to be inadequate with respect to content, the Special Rapporteur encourages States Parties to abide by it. Accordingly, the Special

Rapporteur calls on States Parties to use the Declaration as a basis for drafting their national laws on freedom of expression and access to information.

103. The Special Rapporteur continues to oppose all forms of criminal defamation and seditious laws which constitute restrictions to freedom of expression and access to information, in violation of Principle XII of the Declaration.

104. The Special Rapporteur therefore calls on all States Parties to the African Charter, who maintain criminal defamation and seditious laws, to immediately eradicate or repeal them to be in line with the African Charter, the Declaration, other regional and international instruments related to freedom of expression and access to information.

105. The Special Rapporteur continues to deplore the fact that the African Charter on Elections, Democracy, and Governance has still not come into force because the required number of ratifications (which is fifteen (15) Member States) has not been attained. In this regard, while commending States Parties that have ratified the African Charter on Democracy, she continues to urge those that have not yet done so, to ratify it as soon as possible.

106. Finally, she urges all States Parties who have received her Appeals and recommendations, to act on them and report on the measures they have taken to implement them as soon as possible.

IX. Honorable Commissioner Soyata Maiga

a) Report on Activities as Commissioner

107. From 29 November to 1st December 2010, Commissioner Maiga participated in a retreat organized by IPAS in Nairobi for the Commissioners and members of the Secretariat on various aspects of maternal mortality relating to the problem of abortion from the human rights perspective. This meeting brought together jurists, human rights activists, medical practitioners, academics and NGO representatives to discuss several topics: in particular the laws governing abortion in Africa and their implications for health; the reality of abortions at risk; the vulnerable abortions and violations of women's rights; the ratification and implementation of the Maputo Protocol; the collaboration between the National Human Rights Commissions and the African Commission.

108. From 21 to 22 January 2011 Commissioner Maiga participated in Montreal in her capacity as foreign member in the deliberations of the Rights and Democracy Governing Council. This is a Canadian Institution which works in Africa and in several regions of the world for the democratic development and promotion of human rights.

109. Commissioner Maiga participated, from 14 to 15 February 2011 in Dakar, in a working session organized by OSIWA on the preparation of the activities marking the 30th Anniversary of the African Charter on Human and Peoples' Rights and the 25th Anniversary of the African Commission.

110. From 23 February to 3rd March 2011 in Banjul, Commissioner Maiga took part in the Extraordinary Session of the African Commission. On this occasion major decisions were made on the human rights situation in the North African countries, in Côte d'Ivoire and in Benin.

b) Report on Activities as Special Rapporteur on the Rights of Women in Africa

111. From 4 to 6 December 2010, the Special Rapporteur participated in Addis Ababa in the « African Union's Women's Forum on Shared Values » organized by the Department of Political Affairs of the African Union. The Forum registered the participation of the Ministers of Gender, of Women Parliamentarians, and representatives of African NGOs and the United Nations Agencies working on Gender Issues. This meeting had the objective of including the women's component in the brainstorming engaged, sequel to a recommendation of the Executive Council of the African Union in December 2009, on the content of shared values and the programme for their implementation on the Continent. It also sought to guarantee the effective contribution of women to the content and results of the Summit of Heads of State and Government on shared values.

112. On 12 December 2010, the Special Rapporteur took part in the International Conference celebrating the 50th Anniversary of Resolution 1514 of the United Nations General Assembly on the Right of Peoples to Self-Determination in Algiers. This event was enhanced by the participation of important African and foreign personalities among whom figured several former Heads of State and former Secretaries General of the African Union. The commitment of the African Leaders and the responsibility of the populations in the decolonization process were discussed at length as well as the role of women in raising the awareness of the African masses on the eve of the independence period.

113. From 13 to 21 December 2010, the Special Rapporteur participated in a joint promotion mission to Algeria under the terms of the mechanism on the Rights of Women. The recommendations formulated at the end of her visit are currently awaiting adoption by the African Commission before being publicised. Nonetheless their basic content was presented to the Algerian Authorities at the end of their visit. On this occasion they lauded the progress which has been made in the promotion of women's rights while highlighting the numerous constraints which still persist and which are of a nature to reduce the potential of Algerian Women as well as their contribution to the development of their country.

114. On the 13 January 2011, the Special Rapporteur participated in the Multi-Actors Forum on Governance in Mali which devoted its session to the discussion on the theme: « **The Civil Society Organizations and the Strengthening of Democracy in Mali: To promote substitutes or anti-establishment?** ». The Multi-Actors Forum on Governance in Mali is a space for dialogue initiated in 2008 pursuant to a dynamic brainstorming on governance and which brings together numerous partners of the State Actors responsible for institutional reform in Mali.

115. From 24 to 26 January 2011 in Addis Ababa, the Special Rapporteur participated in Addis Ababa in the 17th Consultative Meeting of African Civil Society Organizations on the Integration of Gender in the Member States of the African Union. The meeting was organized by the network: « Gender: My Agenda » (GIMAC) and coordinated by Africa Women's Solidarity (FAS). It registered the participation of Ministers of Gender from several countries and the contribution of African and International NGO networks under the chairmanship of the Honourable Mary Robinson former President of the Republic of Ireland. A delegation of Ivorian women was received to hear the wounded voices of the women living in that part of Africa racked by serious violations of women's rights.

116. From 27 to 28 January 2011 in Addis Ababa, the Special Rapporteur participated in the meetings of the Executive Council of the African Union.

117. From 29 to 31 January 2011, the Special Rapporteur participated in the Summit of Heads of State and Government of the African Union. On this occasion she led a delegation of African Women Leaders in her capacity as Special Rapporteur on the Rights of Women in Africa and they were received by the Heads of State of Senegal, of Rwanda and of Liberia within the framework of the advocacy for the recognition of the recommendations emanating from the Pre-Summit on Gender in the Agenda and Decisions of the Summit.

118. From 24 to 26 March 2011 in Bamako, the Special Rapporteur participated in the workshop on the drafting of Mali's National Action Plan for the implementation of UN Security Council Resolution 1325 on « **Women, Peace and Security** ». The workshop, organized at the initiative of the Ministry for the Promotion of Women, the Child and the Family, brought together representatives of the Associations and NGOs working for the protection of women's rights, peace and security, representatives of the Ministries of Justice, Social Development, Security and the Armed Forces.

119. During this workshop, she made a presentation on « **Resolution 1325 and the Human Rights of Women in Africa** » focussing on the relevant provisions of the Maputo Protocol relating to the situation of women in conflict and post conflict countries.

120. From 28 to 31 March 2011 in Monrovia, the Special Rapporteur led a delegation of the Gender Award Selection Committee to Liberia. The Gender Award, an African Prize of Excellence for Gender initiated by the Pan-African Centre for Gender, Peace and Development (Dakar) and Africa Women's Solidarity (FAS) and which compensates African Heads of State and Government who distinguish themselves through the adoption and the implementation of laws, policies, plans and programmes on Gender integration.

121. The delegation was received by the President of the Republic Mrs. Ellen Johnson Sirleaf who had been duly informed of her election for the said distinction and the award ceremony which is scheduled for June 2011 in Dakar. The delegation then met with the Civil Society and Private Sector Organizations to inform them about the second

component of the Gender Award which commits them to choosing from within themselves two beneficiaries who have developed initiatives favourable to the promotion of Gender in the economic field and within Civil Society. The Gender Award initiative is sustained and supported by the Republic of Senegal and several development partners among whom figure the Gender Rights and Equality Action Trust (Great Initiative) Association which has its headquarters in London.

122. On 30 March 2011 in Monrovia, the delegation visited « The Women Democracy Radio Station » and granted interviews on the occasion of the special broadcast on the objectives of the mission to Liberia and the Gender Award conferred on Mrs. Ellen Johnson, President of the Republic. The delegation visited project sites of women's empowerment funded by Oxfam gender projects. Furthermore, it had a meeting with the special security unit of the United Nations Mission to Liberia, the first Unit which is entirely composed of Indian women officers.

123. On 31 March 2011 in Monrovia, the Special Rapporteur participated in a validation workshop of a study on the actions and activities relating to the reform of the Security and Gender sector in Liberia organized by the Centre for the Democratic Control of the Armed Forces (DCAF Geneva).

124. From 1 to 9 April 2011 in Kinshasa (DRC), the Special Rapporteur participated in a joint human rights promotion mission in DRC within the framework of the mechanism on Women's Rights. One of the objectives of the said mission was, among others, to have discussions with the highest Authorities of the land, the Women's Organizations and the United Nations Agencies involved in Gender programmes and issues; to assess the progress made in the protection of women in DRC and to identify the shortcomings of the current laws, policies and strategies. In the light of what was derived from the meetings with the various actors, appropriate recommendations will be formulated in the mission Report for the benefit of all the stake holders with the objective of enhancing the protection of the rights of Women and Girls in DRC.

125. During the intersession the Special Rapporteur sent letters of reminder to the Member States which have not yet ratified the Maputo Protocol urging them to take all the necessary measures to this effect. She also sent Notes Verbales once again to the Republic of Niger and the Republic of Gabon within the framework of the exchanges on the human rights promotion missions to be carried out in these two countries.

126. In January 2011, the Special Rapporteur drafted the Preface to the 2nd Edition of the Report on the state of progress of the implementation of the Solemn Declaration on Gender Equality in Africa. This Edition presents the table showing the countries which are up to date with their annual Reports to the African Union and gives an account of certain experiences realized in the thematic areas concerned, namely: Women's Empowerment; Education; Health; Governance; Human Rights; Peace and Security.

127. On 3rd March 2011, the Special Rapporteur published a Press Release in reaction to the violence that took place in Abidjan during a peace march by Ivorian women during which 6 of them were shot down by the Defence and Security Forces

loyal to Mr. Laurent Gbagbo. The Press Release called on African Women to rise in solidarity with the Women of Côte d'Ivoire.

128. On 8 March 2011, on the occasion of the 100th Anniversary of the International Women's Day, the Special Rapporteur published a Press Release highlighting the challenges linked to the chosen theme, namely: «Equal access to Education, Training, Science and Technology: Means of access to decent employment for Women». The Release reminds the State Parties and all the other actors of their commitments and of the need to address the challenges, to allocate more financial resources to national and regional programmes being implemented to promote the greater access of Women and girls to education, science and technology.

129. In March 2011, the Special Rapporteur published an Article which was disseminated by the Africa Women's Solidarity (FAS) communication network on « the successes and challenges encountered in the field of Women's Rights in Africa, 5 years after the adoption of the Maputo Protocol ».

130. April 2011, the Special Rapporteur was approached by the International Development Research Centre (IDRC; Ottawa, Canada) to chair the Scientific and Political Development Consultative Council on a research project on the political participation of young girls covering 4 countries of the West African region: Mali, Burkina, Senegal and Togo.

131. The research project seeks to promote understanding of the nature, forms and perspectives of citizenship participation of young women of francophone West Africa, and their contribution to change at the different levels of the decision making institutions. In the long term it will be a matter of identifying and analysing to what extent the implemented public policies can allow young women to fully assume their role as citizens; and to formulate recommendations aimed at enhancing their participation.

132. Within the framework of the 49th Ordinary Session of the African Commission, the Special Rapporteur took part in the NGO Forum held from 25 to 27 April 2011 in Banjul, The Gambia. From 26 to 27 April 2011, she participated in the meeting of the Working Group on Indigenous Populations/Communities.

133. On 27 April 2011, the Special Rapporteur participated in the launching of the Information Kit on the rights of indigenous women and the African Human and Peoples' Rights System edited by The Forest Peoples Program.

134. On 28 April 2011 she participated in the training session organized for the representatives of States Parties on the Guidelines for the drafting of State Reports on the implementation of the Maputo Protocol.

135. By way of recommendations addressed to the African Union, the Special Rapporteur:

- i. Urged the Member States which have not already done so to ratify and/or accelerate the ratification process of the Maputo Protocol.
 - ii. Encouraged the Member States which have ratified the Protocol to implement it and to submit their Periodic Reports, as early as possible, to the African Commission on the basis of the Guidelines adopted for this purpose.
 - iii. Moreover urged those countries which have not yet done so to submit their Annual Report on the progress they have made in the integration of gender in policies and programmes, in conformity with Point 12 of the African Union's Declaration on Gender and to guarantee the funding of the priority areas identified in the African Women's Decade, 2010-2020.
136. For the Member States, the Special Rapporteur called on the Member States to:
- i. Strengthen the measures taken to ensure a wide dissemination, at the national level, of the legal instruments relating to women among the populations, in particular the legal practitioners, the members of the public service, the political leaders, the Parliamentarians and women and human rights defence organizations.
 - ii. Adopt measures of positive action so as to accelerate the greater participation of women in public and political affairs, in conformity with the provisions of Article 4 of CEDAW and Article 19 of the Maputo Protocol.
 - iii. Launch and intensify public sensitization campaigns on gender abuse so as to eliminate the phenomenon of abuse.
 - iv. Appoint women in mediation teams and in the high level panels as mediators in the current peace processes on the Continent.
 - v. Build the capacities of NGOs and women's associations to enable them support the initiatives of women developing in the informal sector.
137. For the African Commission the Special Rapporteur recommended that the African Commission should:
- i. Embark on the dissemination of new Guidelines for the presentation of State Reports pursuant to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
 - ii. Support the efforts of the Special Rapporteur mechanism in order to enable her to support the programmes and strategies of the African Union in the context of the African Woman's Decade.

X. Honorable Commissioner Zainabo Kayitesi

a) Report on Activities as Commissioner

138. From 13 to 21 December 2010, as Commissioner responsible for promotional activities in the Peoples' Democratic Republic of Algeria and Chairperson of the Working Group on the Death Penalty in Africa, Commissioner Kayitesi conducted a joint promotion Mission to the Peoples' Democratic Republic of Algeria, together with the Special Rapporteur for the Rights of Women in Africa, Commissioner Maiga and the Special Rapporteur for Prisons and Conditions of Detention in Africa and the Chairperson of the Committee against Torture, Commissioner Catherine Dupe Atoki. The mission focused on various mechanisms supported by the Commissioners. During the mission, the Commissioner took note of the positive developments in the promotion and protection of human rights; and the Algerian Government's commitment in overcoming the challenges still faced by the State in the area of human rights.

139. Commissioner Kayitesi welcomes the fact that even if there were demonstrations in the People's Republic of Algeria recently, the Algerian government could still maintain peace and security of its population during this difficult time. The Commissioner encourages the Government of Algeria to continue its efforts to maintain peace and initiate reforms for the well-being of its citizens.

140. On 14 January 2011, Commissioner Kayitesi took part in a training seminar on human rights organized for thirty three (33) Journalists in the Northern Province of Rwanda. She made a presentation on '*International and Regional Mechanisms on the Protection of Human Rights*'. She seized the opportunity to elaborate on the mandate and work of the African Commission and called on the Journalists to play a key role in disseminating the content of the African Charter on Human and Peoples' Rights.

141. From 24 February to 3 March 2011, Commissioner Kayitesi participated in the 9th Extraordinary Session of the African Commission, which took place in Banjul, The Gambia. The Session was organized to deal with the burning human rights issues at the time as well as to consider Communications and Reports of the African Commission.

142. On 14 March 2011, Commissioner Kayitesi participated in a training seminar on human rights for 44 Senior Prison Officials organized in the North Rwanda Province. She made a presentation on '*International and Regional Human Rights Protection Mechanisms*'. The latter focused on the work of the African Commission and on some African legal instruments which promote the rights of detainees.

143. From 1 to 9 April 2011, Commissioner Kayitesi was a member of the African Commission's delegation in a joint promotion Mission to the Democratic Republic of Congo. The delegation comprised of the Chairperson of the African Commission, Commissioner Reine Alapini Gansou, the Special Rapporteur for the Rights of Women in Africa, Commissioner Maiga, the Special Rapporteur for Prisons and Conditions of Detention in Africa and the Chairperson of the Committee against Torture, Commissioner Catherine Dupe Atoki, the Special Rapporteur for Human Rights

Defenders, Commissioner Lucy Asuagbor, and the Chairperson of the Working Group on ECOSOC, Commissioner Bechir Khalfallah. During this mission, the Commissioner focused her interventions on the death penalty. She expressed appreciation for the Government's will to abolish the death penalty and urged the DRC to pursue action on the draft law which had been initiated on the abolition of the death penalty.

144. On 28 April 2011, Commissioner Kayitesi sent a Note Verbale as a reminder to the Republic of Burundi pertaining to the promotional mission which she wished to carry out in her capacity as Commissioner responsible for promotional activities in Burundi.

b) Report on Activities as Chairperson of the Working Group on the Death Penalty in Africa

145. During the intersession, the Chairperson of the Working Group on the Death Penalty in Africa forwarded Letters of Appeal on the situation of the Death Penalty to:

- i. His Excellency, President of the Federal Republic of Nigeria on 10 January 2011, following information received which indicated that no fewer than five female inmates at the Kirikiri Maximum Prison in Apapa, Lagos State, are awaiting execution early in 2011. The Appeal was sent to remind the State to adhere to the Resolutions of the African Commission on the Moratorium and to urge it to put in place measures to suspend the execution of these persons.
- ii. His Excellency, President of the Republic of Sudan on 10 January 2011, following information received indicating that four minors namely, Ibrahim Shrief (17), Abdalla Abadalla Doub (16), Altyeb Mohamed Yagoup (16), and Abdarazig Abdelseed (15) had been sentenced to death out of the nine people sentenced for carjacking in Khour Baskawit in South Darfur. The letter urged His Excellency's Government to review its child rights Laws in line with the absolute prohibition of sentencing children to death under the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child and other regional and international Treaties. The letter further urged the State to observe a moratorium on executions and to take all necessary measures to ensure that persons facing the death sentence are not executed.
- iii. His Excellency, President of the Republic of The Gambia on 10 January 2011, following information which indicated that the Drug Control Amendment Act 2010, the Trafficking in Persons Amendment Act 2010 and the Criminal Code Amendment Act 2010 extend the scope of the application of capital punishment to human trafficking, robbery, rape and drug-related offences. The letter urged the State to take all necessary measures to refrain from signing these amendments in order to prevent these laws from entering into force out of respect for international human rights standards and principles, in particular for the Resolutions of the African Commission,

and so that the Government initiates consultations on the total abolition of the death penalty.

146. On 26 February 2011, the Chairperson of the Working Group on the Death Penalty interacted with the International Commission against the Death Penalty (ICDP), an organization based in Spain, by letter dated 26 February 2011. She expressed her appreciation for the work of the Organization on the death penalty. It is working towards the same objective which is in tandem with that of the African Commission's Working Group on the Death Penalty. Commissioner Kayitesi also expressed the readiness of the Working Group to collaborate with the ICDP in promoting the abolition of the death penalty, particularly in Africa.

147. This dialogue was pursued on the sidelines of the 49th Ordinary Session of the African Commission. Commissioner Kayitesi had a meeting with the Secretary General of the International Commission on the Death Penalty, Madam Asunta Vivo Cavaller. The Commissioner and the Secretary General discussed the various objectives and work of both institutions and exchanged ideas on how to fast track the abolition of the death penalty. They also discussed the various ways on how to collaborate in promoting the abolition of the death penalty in Africa.

148. From 24 to 26 March 2011, the Chairperson of the Working Group on the Death Penalty chaired the 5th Meeting of the Working Group on the Death Penalty in Johannesburg, South Africa. The meeting was organized to finalize the Document on "*The Study of the Issue of the Death Penalty in Africa*" for presentation to the African Commission at its 49th Ordinary Session, scheduled to take place from 28 April to 12 May 2011, in Banjul, The Gambia.

149. During the intersession, the Chairperson of the Working Group on the Death Penalty continued to follow up on the situation of the death penalty in Africa. It was noted that no country in Africa had abolished the death penalty during the intersession and that the situation remained the same. The statistics indicate that thirty-eight (38) African countries retain the death penalty in their Statute Books although in fourteen (14) of these countries there is a moratorium on executions and some death sentences are at times commuted to various terms of imprisonment. Also only about eight out of the current 53 African Union countries are Parties to the Second Optional Protocol to the International Convention on Civil and Political Rights ICCPR, aimed at the abolition of the death penalty.

150. The Commissioner would like to remind States Parties to the African Charter that capital punishment is cruel and therefore morally unjustifiable, unnecessary, irreversible, and illogical. It represents the most serious violation of fundamental human rights under Article 4 of the African Charter. Yet an alternative exists, namely life imprisonment or fixed term imprisonment. She would therefore like to urge State Parties to the African Charter, who have not yet done so, to observe a moratorium on the death penalty in line

with the resolutions of the United Nations and the African Commission and take measures to abolish the death penalty.

**STATUS OF SUBMISSION OF STATE PERIODIC REPORTS AS AT MAY 2011
STATUS OF SUBMISSION OF STATE PERIODIC REPORTS TO THE AFRICAN COMMISSION ON
HUMAN AND PEOPLES RIGHTS**

SN	STATES SUMITTED AND PRESENTED ALL REPORTS	STATES THAT OWE ONE REPORT	STATES WITH TWO PENDING REPORTS	STATES WITH THREE REPORTS PENDING	STATES WITH MORE THAN THREE REPORTS PENDING	STATES SUBMITTED NO REPORT AT ALL	DATES WHEN PENDING REPORTS WERE DUE
1	Botwana	Zambia	Burkina Faso	Egypt			
2	Cameroon	Tunisia	C.A.R	Ghana			
3	Congo Brazzaille	Tanzania	Mauritania	Lesotho			
4	Ethiopia	Sudan	Niger	Namibia			
5	Mauritius	Algeria	SADR	Togo			
6	Nigeria	Kenya	Sychelles				
7	Rwanda		South Africa				
8	Uganda		Senegal				
9	Zimbabwe						
10	Benin						

**STATUS OF SUBMISSION OF STATE PERIODIC REPORTS TO THE AFRICAN
COMMISSION ON HUMAN AND PEOPLES RIGHTS**

STATES	STATES SUMITTED AND PRESENTED ALL REPORTS	STATES WITH ONE REPORT PENDING	STATES WITH TWO PENDING REPORTS	STATES WITH THREE REPORTS PENDING	STATES SUBMITTED NO REPORT AT ALL	NUMBER OF PENDING REPORTS	DATES WHEN PENDING REPORTS WERE DUE
Botwana							
Cameroon							

Congo Brazzaille							
Ethiopia							
Mauritius							
Nigeria							
Rwanda							
Uganda							
Zimbabwe							
Benin							
TOTAL	10						
Zambia							
Tunisia							
Tanzania							
Sudan							
Algeria							
Kenya							
TOTAL		6					

STATES	STATES SUMMITTED AND PRESENTED ALL REPORTS	STATES WITH ONE REPORT PENDING	STATES WITH TWO REPORTS PENDING	STATES WITH THREE REPORTS PENDING	STATES SUBMITTED NO REPORT AT ALL	NUMBER OF PENDING REPORTS	DATES WHEN PENDING REPORTS WERE DUE
Burkina Faso							
C.A.R							

Mauritania							
Niger							
SADR							
Sychelles							
South Africa							
Senegal							
		TOTAL	8				
Egypt							
Ghana							
Lesotho							
Namibia							
Togo							
			TOTAL	5			
Comoros						10	1988,1990,1992,1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010
Cote d'Ivoire					7		
Djibouti					8		
Equatoria Guinea					10		

Eritrea						4
Gabon						10

STATES	STATES SUMMITTED AND PRESENTED ALL REPORTS	STATES WITH ONE REPORT PENDING	STATES WITH TWO PENDING REPORTS	STATES WITH THREE REPORTS PENDING	STATES SUBMITTED NO REPORT AT ALL	NUMBER OF PENDING REPORTS
Guinea Bissau						11
Liberia						12
Malawi						9
Saotome & Principe						10
Sierra Leone						12
Somalia						11
				TOTAL	12	

151.
152.

153.

154.

STATUS OF SUBMISSION OF STATE PERIODIC REPORTS TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS

SN	STATES PARTIES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE
1	Botwana	17/07/1986	0	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	Initial report 2009	1st report 2009 at the 46th Ordinary Session	N/A
2	Cameroon	20/06/1989	0	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st report 2001; 2nd report 2005; 3rd report 2009	1st report 2002 at the 31st Ordinary Session	N/A
3	Congo Brazzaville	09/12/1982	0	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 2001; 2nd Report 2009	1st Report 2001-29th Ordinary Session; 2nd Report 2009 - 46th Ordinary Session	N/A
4	Ethiopia	16/06/1998	0	2000, 2002, 2004, 2006, 2008	1st Report 2009	1st Report 2009 - 46th Ordinary Session	N/A
5	Mauritius	19/06/1992	0	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1994	1st Report 1996 - 20th Ordinary Session	N/A

6	Nigeria	22/06/1983	0	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1990; 2nd Report 2006	1st report 1993 - 13th Ordinary Session, 2nd Report 2006 - 40th Ordinary Session	N/A
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	MEMBER STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE
7	Rwanda	15/07/1983	0	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1990; 2nd Report 2000; 3rd Report 2004; 4th Report 2007; 5th Report 2010	1st Report 1996 - 19th Ordinary Session; 2nd Report 2000 - 27th ordinary Session; 3rd Report 2004-36th Ordinary session; 4th Report 2007-42nd Ordinary Session;	N/A
8	Uganda	10/05/1986	0	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2000; 2nd Report 2006; 3rd Report 2008	1st Report 2000-27th Ordinary Session; 2nd Report 2006-40th Ordinary Session; 3rd Report 2009-45th Ordinary Session	N/A

9	Zimbabwe	30/05/1986	0	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1992; 2nd Report 1996; 3rd Report 2006	1st Report 1992 - 12th Ordinary Session; 2nd Report 1997 - 21st Ordinary Session; 3rd Report 2007 - 41st Ordinary Session	N/A
10	Libya	19/07/1986	0	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1990; 2nd Report 2000, combining the 1993 - 1999 overdue Reports	1st Report 1991 @ 9th Ordinary Session; 2nd Report 2000 @ 27th Ordinary Session	N/A
	STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE
11	Madagascar	09/03/1992	0	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010		1st - 8th Reports 2008 @ 44th Ordinary Session	N/A
12	Benin	20/01/1986	0	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1993; 2nd Report 2000	1st Report 1994 @ 16th Ordinary Session; 2nd Report 2000 @ 28th Ordinary Session; 3rd Report 2008 @ 44th ordinary Session	N/A

13	DRC	20/07/1987	0	1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011	1st Report 2002, combining overdue Reports since 1989; 2nd Report 2007, combining overdue Reports since 2005	1st Report 2003 @ 34th Ordinary Session; 2nd Report rescheduled for the 47th Ordinary Session	N/A
TOTAL NUMBER OF STATES SUBMITTED ALL THEIR REPORTS = 13							
14	Tunisia	16/03/1983	1	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1990; 22nd Report 1995; 3rd Report 2007	1st Report 1991 @ 9th Ordinary Session; 2nd Report 1995 @ 18th Ordinary Session; 3rd Report 2007 @ 42nd Ordinary Session	16/03/2009

	MEMBER STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE
15	Tanzania	18/02/1984	1	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1991; 2nd report 2007	1st Report 1992 @ 11th Ordinary session; 2nd Report 2008 @ 43rd Ordinary Session	18/02/2008

16	Sudan	18/02/1986	1	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2009	1st Report 1996; 2nd Report 2003; 3rd Report 2007	1st Report 1997 @21st Ordinary Session; 2nd Report 2004 @ 35th Ordinary Session; 3rd Report 2007 @ 43rd Ordinary Session	18/02/2009
17	Algeria	01/03/1987	1	1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1995; 2nd Report 2000; 3rd Report 2006	1st Report 1996 @ 19th Ordinary Session; 2nd Report 2001 @ 29th Ordinary Session; 3rd Report 2008 @ 43rd Ordinary Session	01/03/2009
18	Zambia	10/01/1984	1	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	Initial Report 2006;	1st Report 2007 @ 42nd Ordinary Session	10/01/2008
	MEMBER STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE

19	Kenya	23/01/1992	1	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1994; 2nd Report 1996; 3rd Report 1998; 4th Report 2000; 5th Report 2002; 6th Report 2004; 7th Report 2006; 8th Report 2008; 9th Report 2010	1st Report 2007 @ 41st Ordinary Session	23/01/2008
TOTAL NUMBER OF STATES WITH ONE REPORT PENDING = 6							
20	Burkina Faso	06/07/1984	2	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1998; 2nd Report 2004	1st Report 1999 @ 25th Ordinary Session; 2nd Report 2004 @ 35th Ordinary Session	06/07/2006 06/07/2008
21	C.A.R	26/04/1986	2	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2006	1st Report 2006 @ 39th Ordinary session	26/04/2006, 26/04/2008
22	Mauritania	14/06/1986	2	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2001; 2nd Report 2005	1st Report 2002 at the 31st Ordinary Session; 2nd Report 2005 @ 37th Ordinary Session	14/06/2006, 14/06/2008

	MEMBER STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE
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23	Niger	15/07/1986	2	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2003	1st Report 2004 @ 35th Ordinary Session	15/07/2004, 15/07/2006
	SADR	02/05/1986	2	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2003	1st Report 2003 @ 33rd Ordinary Session	02/05/2006, 02/05/2008
24	Sychelles	13/04/1992	2	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1994	1st Report not presented as there was no presenter; 2nd Report 2006 @ 39th Ordinary Session	13/04/2006, 13/04/2008,
25	South Africa	09/07/1996	2	1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1998; 2nd Report 2005	1st Report 1999 @ 25th Ordinary Session; 2nd Report 2005 @ 38th Ordinary Session	09/07/2006, 09/07/2008
TOTAL NUMBER OF STATES WITH TWO PENDING REPORTS = 8							

	MEMBER STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE
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	Senegal	13/08/1982	2	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1992; 2nd Report 2003	1st Report 1992 @ 12th Ordinary session; 2nd Report 2003 @ 34th Ordinary Session	13/08/2006, 13/08/2008
28	Egypt	20/03/1984	3	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2002, 2004, 2005, 2006, 2009, 2010	1st Report 1991; 2nd report 2000; 3rd Report 2004	1st Report 1992 @ 11th Ordinary session; 2nd Report 2000 @ 29th Ordinary Session; 3rd Report 2005 @ 37th Ordinary Session	20/03/2004, 20/03/2006, 20/03/2008
29	Ghana	24/01/1989	3	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1992; 2nd Report 2000	1st Report 1993 - 14th Ordinary Session, 2nd Report 2001 - 29th Ordinary Session	24/01/2001, 24/01/2003, 24/01/2005, 24/01/2007, 24/01/2009
30	Lesotho	10/02/1992	3	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2001	1st Report 2002 @ 31st Ordinary Session	10/02/2002, 10/02/2004, 10/02/2006, 10/02/2008
	MEMBER STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE

31	Namibia	30/07/1992	3	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1997; 2nd Report 2000	1st Report 1998 @ 23rd Ordinary Session; 2nd Report 2001 @ 29th Ordinary Session	30/07/2002, 30/07/2004, 30/07/2006, 30/07/2008
32	Togo	05/11/1982	3	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1990; 2nd Report 2001	1st Report 1993 @ 13th Ordinary Session; 2nd Report 2002 @ 31st Ordinary Session	05/11/2002, 05/11/2004, 05/11/2006, 05/11/2008
33	Burundi	28/07/1989	4	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011	1st Report 2000, combining 1991 - 1999 overdue Reports	1st Report 2000-27th Ordinary Session	28/07/2003, 28/07/2005, 20/07/2007, 28/07/2009
34	Mali	21/12/1981	4	19983, 1985, 1987, 1987, 1999, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1999 Combining 1988 - 1998 overdue Reports	1st Report 1999 @ 26th Ordinary Session	21/12/2001, 20/12/2003, 21/12/2005, 21/12/2007, 21/12/2009
35	Swaziland	15/09/1995	4	1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 2000, combining 1997 - 1999 overdue Reports	1st Report 2000 @ 27th Ordinary Session	15/09/2001, 15/09/2003, 15/09/2005, 15/09/2007, 15/09/2009

	MEMBER STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE
36	Angola	02/03/1990	6	1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1998, combining 1992 - 1998 overdue Reports	1st Report 1998 @ 24th Ordinary Session	02/03/2000, 02/03/2003, 02/03/2005, 02/03/2007, 02/03/2009
37	Cape Verde	02/06/1987	6	1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011	1st Report 1992, combining all overdue Reports since 1991	1st Report 1996 @ 20th Ordinary Session	02/06/1993, 02/06/1995, 02/06/1999, 02/06/1997, 02/06/2001, 02/06/2003, 02/06/2005, 02/06/2007, 02/06/2009
38	Chad	09/10/1986	6	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1997, combining the 1988 - 1999 overdue Reports	1st Report 1999 @ 25th Ordinary Session	09/10/2000, 09/10/2002, 09/10/2004, 09/10/2006, 09/10/2008
39	Guinea Republic	16/02/1982	6	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1997, combining the 1988 - 1998 overdue Reports	1st Report 1998 @ 23rd Ordinary Session	16/02/2000, 16/02/2002, 16/02/2004, 16/02/2006, 16/02/200.

	MEMBER STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE
40	Gambia	08/06/1983	6	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1992; 2nd Report 1994	1st Report 1992 @ 12th Ordinary session; 2nd Report 1994 @ 16th Ordinary Session	08/06/1995, 08/06/1997, 08/06/1999, 08/06/2001, 08/06/2003, 08/06/2005, 08/06/2007, 08/06/2009,
41	Mozambique	22/02/1989	6	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1992, combining all overdue Reports since 1991-1995	1st Report 1996 @ 19th Ordinary Session	22/02/1997, 22/02/1999, 22/02/2001, 22/02/2003, 22/02/2005, 22/02/2007, 22/02/2009
42	Comoros	01/06/1986	12	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010

43	Cote d'Ivoire	06/01/1992	9	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010
	MEMBER STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE
44	Djibouti	11/11/1991	8	1993, 1995, 1997, 1999, 2001, 2003,2005, 2007, 2009, 2011			1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011
45	Equatoria Guinea	07/04/1986	10	1988, 1990, 1992, 1994, 1996, 1998, 2000,2002,2004,2006, 2008, 2010			1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010
46	Eritrea	14/01/1999	4	2001, 2003, 2005, 2007, 2009			2001, 2003, 2005, 2007, 2009
47	Gabon	20/02/1986	10	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002,2004,2006, 2008, 2010			1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002,2 004, 2006, 2008, 2010

48	Guinea Bissau	04/12/1985	11	1987, 1999, 1991, 1993, 1995, 1997, 1999, 2001, 2003,2005, 2007, 2009, 2011			1987, 1999, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011
	MEMBER STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE
49	Liberia	04/08/1982	12	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010
50	Malawi	17/11/1989	9	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011			1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011
51	Saotome & Principe	23/05/1986	10	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010

52	Sierra Leone	21/09/1983	12	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009
	MEMBER STATES	DATE OF RATIFICATION OF THE CHARTER	NUMBER OF PENDING REPORTS	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	DATE WHEN PENDING REPORTS WERE DUE
53	Somalia	31/07/1985	11	1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009
TOTAL NO. OF STATES THAT HAVE NEVER SUBMITTED ANY REPORTS = 12							

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STATUS OF SUBMISSION OF STATE PERIODIC REPORTS TO THE AFRICAN COMMISSION

ON HUMAN AND PEOPLES RIGHTS

AS OF MAY 2011

STATES THAT HAVE SUBMITTED ALL THEIR REPORTS = 12

STATES THAT ARE LATE BY ONE REPORT = 8

STATES THAT ARE LATE BY TWO REPORTS = 8

STATES THAT ARE LATE BY THREE REPORTS = 2

STATES THAT ARE LATE BY MORE THAN THREE REPORTS = 11

STATES THAT HAVE NEVER SUBMITTED ANY REPORTS = 12

STATES THAT PRESENTED AT THE 49TH ORDINARY SESSION = 4 (Libya, Namibia, Burkina Faso and Uganda)

SN	STATES PARTIES	DATE OF RATIFICATION OF THE CHARTER	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	NUMBER OF PENDING REPORTS	DATE FOR OVERDUE AND NEXT REPORTS
1	Algeria	01/03/1987	1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1995; 2nd Report 2000; 3rd Report 2006	1st Report 1996 - 19th Ordinary Session; 2nd Report 2001 - 29th Ordinary Session; 3rd Report 2008 - 43rd Ordinary Session	1	01/03/2011

2	Angola	02/03/1990	1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1998, combining 1992 - 1998 overdue Reports	1st Report 1998 - 24th Ordinary Session	6	02/03/2000, 02/03/2002, 02/03/2004, 02/03/2006, 02/03/2008, 02/03/2010, 02/03/2012
3	Benin	20/01/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1993; 2nd Report 2000	1st Report 1994 -16th Ordinary Session; 2nd Report 2000 - 28th Ordinary Session; 3rd Report 2008 - 44th ordinary Session	1	1/2/2010, 1/2/2012
4	Botswana	17/07/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	Initial report 2009	1st report 2009 at the 46th Ordinary Session	0	17/07/2012
5	Burkina Faso	06/07/1984	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1998; 2nd Report 2004	1st Report 1999 - 25th Ordinary Session; 2nd Report 2004 - 35th Ordinary Session; 3rd Report 2011 - 49th Ordinary Session	0	07/06/2014

6	Burundi	28/07/1989	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 2000, combining 1991 - 1999 overdue Reports	1st Report 2000-27th Ordinary Session	4	6/7/2003, 6/7/2005, 6/7/2007, 6/7/2009, 6/7/2011
7	Cameroon	20/06/1989	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st report 2001; 2nd report 2005; 3rd report 2009	1st report 2002 at the 31st Ordinary Session; 2nd report 2006 at the 39th Ordinary Session; 3rd report 2010 at the 47th Ordinary Session	0	20/6/2013
8	Cape Verde	02/06/1987	1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011	1st Report 1992, combining all overdue Reports since 1991	1st Report 1996 - 20th Ordinary Session	6	02/06/1999, 02/06/2001, 02/06/2003, 02/06/2005, 02/06/2007, 02/06/2009, 02/06/2011
9	C.A.R	26/04/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2006	1st Report 2006 - 39th Ordinary session	2	26/04/2008, 26/04/2010, 26/04/2012

10	Chad	09/10/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1997, combining the 1988 - 1999 overdue Reports	1st Report 1999 - 25th Ordinary Session	4	09/10/2002, 09/10/2004, 09/10/2006, 09/10/2008, 09/10/2010
11	Comoros	01/06/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			11	01/06/1988, 01/06/1990, 01/06/1992, 01/06/1994, 01/06/1996, 01/06/1998, 01/06/2000, 01/06/2002, 01/06/2004, 01/06/2006, 01/06/2008, 01/06/2010
12	Congo Brazzaville	09/12/1982	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 2001; 2nd Report 2009	1st Report 2001- 29th Ordinary Session; 2nd Report 2009 - 46th Ordinary Session	0	09/12/2012
13	DRC	20/07/1987	1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 2002, combining overdue Reports since 1989; 2nd Report 2007, combining overdue Reports since 2005	1st Report 2003 - 34th Ordinary Session; 2nd Report rescheduled for the 48th Ordinary Session 2010	0	20/7/2013

14	Cote D'Ivoire	06/01/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			9	06/01/1994, 06/01/1996, 06/01/1998, 06/01/2000, 06/01/2002, 06/01/2004, 06/01/2006, 06/01/2008, 06/01/2010, 06/01/2012
15	Djibouti	11/11/1991	1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			9	11/11/1993, 11/11/1995, 11/11/1997, 11/11/1999, 11/11/2001, 11/11/2003, 11/11/2005, 11/11/2007, 11/11/2009, 11/11/2011
16	Egypt	20/03/1984	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2002, 2004, 2005, 2006, 2009, 2010	1st Report 1991; 2nd report 2000; 3rd Report 2004	1st Report 1992 - 11th Ordinary session; 2nd Report 2000 - 29th Ordinary Session; 3rd Report 2005 - 37th Ordinary Session	2	20/03/2008, 20/03/2010, 20/03/2012

17	Equatorial Guinea	07/04/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000,2002,2004,2006, 2008, 2010			12	07/04/1988, 07/04/1990, 07/04/1992, 07/04/1994, 07/04/1996, 07/04/1998, 07/04/2000, 07/04/2002, 07/04/2004, 07/04/2006, 07/04/2008, 07/04/2010, 07/04/2012
18	Ethiopia	16/06/1998	2000, 2002, 2004, 2006, 2008	1st Report 2009	1st Report 2009 - 46th Ordinary Session	0	16/06/2012
19	Eritrea	14/01/1999	2001, 2003, 2005, 2007, 2009			6	14/01/2001, 14/01/2003, 14/01/2005, 14/01/2007, 14/01/2009, 14/01/2011
20	Gabon	20/02/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002,2004,2006, 2008, 2010			12	20/02/1988, 20/02/1990, 20/02/1992, 20/02/1994, 20/02/1996, 20/02/1998, 20/02/2000, 20/02/2002, 20/02/ 2 004, 20/02/2006, 20/02/2008,

							20/02/2010, 20/02/2012
21	Gambia	08/06/1983	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1992; 2nd Report 1994	1st Report 1992 - 12th Ordinary session; 2nd Report 1994 - 16th Ordinary Session	7	08/06/1997, 08/06/1999, 08/06/2001, 08/06/2003, 08/06/2005, 08/06/2007, 08/06/2009, 08/06/2011
22	Ghana	24/01/1989	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1992; 2nd Report 2000	1st Report 1993 - 14th Ordinary Session, 2nd Report 2001 - 29th Ordinary Session	4	24/01/2003, 24/01/2005, 24/01/2007, 24/01/2009

23	Guinea Republic	16/02/1982	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1997, combining the 1988 - 1998 overdue Reports	1st Report 1998 - 23rd Ordinary Session	6	16/02/2000, 16/02/2002, 16/02/2004, 16/02/2006, 16/02/2008, 16/02/2010, 16/02/2012
24	Guinea Bissau	04/12/1985	1987, 1999, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			12	04/12/1987, 04/12/1989, 04/12/1991, 04/12/1993, 04/12/1995, 04/12/1997, 04/12/1999, 04/12/2001, 04/12/2003, 04/12/2005, 04/12/2007, 04/12/2009, 04/12/2011
25	Kenya	23/01/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1994; 2nd Report 1996; 3rd Report 1998; 4th Report 2000; 5th Report 2002; 6th Report 2004; 7th Report 2006; 8th Report 2008; 9th Report 2010	1st Report 2007 - 41st Ordinary Session	1	23/01/2010, 23/01/2012

26	Lesotho	10/02/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2001	1st Report 2002 - 31st Ordinary Session	4	10/02/2004, 10/02/2006, 10/02/2008, 10/02/2010, 10/02/2012
27	Liberia	04/08/1982	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			13	04/08/1984, 04/08/1986, 04/08/1988, 04/08/1990, 04/08/1992, 04/08/1994, 04/08/1996, 04/08/1998, 04/08/2000, 04/08/2002, 04/08/2004, 04/08/2006, 04/08/2008, 04/08/2010
28	Libya	19/07/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1990; 2nd Report 2000, combining the 1993 - 1999 overdue Reports	1st Report 1991 - 27th Ordinary Session; 2nd Report 2000 - 27th Ordinary Session; 3rd Report 2006 - 39th Ordinary Session; 4th Report 2011 - 49th Ordinary Session	0	19/7/2014

29	Madagascar	09/03/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010		1st - 8th Reports 2008 - 44th Ordinary Session	1	3/9/2010, 3/9/2012
30	Malawi	17/11/1989	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			10	17/11/1991, 17/11/1993, 17/11/1995, 17/11/1997, 17/11/1999, 17/11/2001, 17/11/2003, 17/11/2005, 17/11/2007, 17/11/2009, 17/11/2011
31	Mali	21/12/1981	1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1999 Combining 1988 - 1998 overdue Reports	1st Report 1999 - 26th Ordinary Session	5	21/12/2001, 20/12/2003, 21/12/2005, 21/12/2007, 21/12/2009, 21/12/2011
32	Mauritania	14/06/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2001; 2nd Report 2005	1st Report 2002 - 31st Ordinary Session; 2nd Report 2005 - 37th Ordinary Session	2	14/06/2008, 14/06/2010, 14/06/2012
33	Mauritius	19/06/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1994	1st Report 1996 - 20th Ordinary Session; 2nd Report 2009	0	19/06/2012

					- 45th Ordinary Session		
34	Mozambique	22/02/1989	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1992, combining all overdue Reports since 1991- 1995	1st Report 1996 - 19th Ordinary Session	6	22/02/1999, 22/02/2001, 22/02/2003, 22/02/2005, 22/02/2007, 22/02/2009, 22/02/2011
35	Namibia	30/07/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1997; 2nd Report 2000	1st Report 1998 - 23rd Ordinary Session; 2nd Report 2001 - 29th Ordinary Session; 3rd Report 2011 - 49th Ordinary Session	0	30/07/2014
36	Niger	15/07/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 2003	1st Report 2004 - 35th Ordinary Session	3	15/07/2006, 15/07/2008, 15/07/2010
37	Nigeria	22/06/1983	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1990; 2nd Report 2006	1st report 1993 - 13th Ordinary Session, 2nd Report 2006 - 40th Ordinary Session; 3rd	0	22/6/2011

					Report 2008 - 44th Ordinary Session		
38	Rwanda	15/07/1983	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1990; 2nd Report 2000; 3rd Report 2004; 4th Report 2007; 5th Report 2010	1st Report 1996 - 19th Ordinary Session; 2nd Report 2000 - 27th ordinary Session; 3rd Report 2004-36th Ordinary session; 4th Report 2007-42nd Ordinary Session; 5th Report 2010 - 47th Ordinary Session	0	15/07/2013
39	SADR	02/05/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2003	1st Report 2003 - 33rd Ordinary Session	2	02/05/2006, 02/05/2008, 02/05/2010

40	Sao Tome & Principe	23/05/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			11	23/05/1988, 23/05/1990, 23/05/1992, 23/05/1994, 23/05/1996, 23/05/1998, 23/05/2000, 23/05/2002, 23/05/2004, 23/05/2006, 23/05/2008, 23/05/2010, 23/05/2012
41	Senegal	13/08/1982	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1992; 2nd Report 2003	1st Report 1992 @ 12th Ordinary session; 2nd Report 2003 @ 34th Ordinary Session	2	13/08/2006, 13/08/2008, 13/08/2010
42	Sychelles	13/04/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1994	1st Report not presented as there was no presenter; 2nd Report 2006 @ 39th Ordinary Session	2	13/04/2008, 13/04/2010, 13/04/2012

43	Sierra Leone	21/09/1983	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			13	21/09/1985, 21/09/1987, 21/09/1989, 21/09/1991, 21/09/1993, 21/09/1995, 21/09/1997, 21/09/1999, 21/09/2001, 21/09/2003, 21/09/2005, 21/09/2007, 21/09/2009, 21/09/2011
44	Somalia	31/07/1985	1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			12	31/07/1987, 31/07/1989, 31/07/1991, 31/07/1993, 21/07/1995, 21/07/1997, 21/07/1999, 21/07/2001, 21/07/2003, 21/07/2005, 21/07/2007, 21/07/2009, 21/07/2011
45	South Africa	09/07/1996	1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1998; 2nd Report 2005	1st Report 1999 -25th Ordinary Session; 2nd Report 2005 -38th	2	09/07/2008, 09/07/2010

					Ordinary Session		
46	Sudan	18/02/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1996; 2nd Report 2003; 3rd Report 2007	1st Report 1997 - 21st Ordinary Session; 2nd Report 2004 - 35th Ordinary Session; 3rd Report 2008 - 43rd Ordinary Session	1	18/02/2010, 18/02/2012
47	Swaziland	15/09/1995	1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 2000, combining 1997 - 1999 overdue Reports	1st Report 2000 - 27th Ordinary Session	4	15/09/2003, 15/09/2005, 15/09/2007, 15/09/2009, 15/09/2011
48	Tanzania	18/02/1984	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1991; 2nd report 2007	1st Report 1992 - 11th Ordinary session; 2nd Report 2008 - 43rd Ordinary Session	1	18/02/2010, 18/02/2012

49	Togo	05/11/1982	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1990; 2nd Report 2001	1st Report 1993 - 13th Ordinary Session; 2nd Report 2002 - 31st Ordinary Session	3	05/11/2004, 05/11/2006, 05/11/2008, 05/11/2012
50	Tunisia	16/03/1983	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1990; 22nd Report 1995; 3rd Report 2007	1st Report 1991 - 9th Ordinary Session; 2nd Report 1995 - 18th Ordinary Session; 3rd Report 2007 - 42nd Ordinary Session	2	16/03/2009, 16/03/2011, 16/03/2013

51	Uganda	10/05/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2000; 2nd Report 2006; 3rd Report 2008	1st Report 2000-27th Ordinary Session; 2nd Report 2006-40th Ordinary Session; 3rd Report 2009-45th Ordinary Session; 4th Report 2011 - 49th Ordinary Session	0	10/05/2014
52	Zambia	10/01/1984	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	Initial Report 2006;	1st Report 2007 - 42nd Ordinary Session	1	1/10/2010, 1/10/2012
53	Zimbabwe	30/05/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1992; 2nd Report 1996; 3rd Report 2006	1st Report 1992 - 12th Ordinary Session; 2nd Report 1997 - 21st Ordinary Session; 3rd Report 2007 - 41st Ordinary Session	1	30/05/2010, 30/05/2012

**ANNEX IV
DECISIONS ON COMMUNICATIONS**

**Communication 306/05 – Samuel T. Muzerengwa and 110 Others (represented by
Zimbabwe Lawyers for Human Rights) v Zimbabwe**

Summary of the Complaint

1. The Complaint is filed by the Zimbabwe Lawyers for Human Rights (the Complainant) on behalf of one Samuel T. Muzerengwa and 110 families (the victims), against the Republic of Zimbabwe (the Respondent State).
2. The Complainant alleges that on 16 December 1998, the Buhera Rural District Council at a Council meeting decided that Samuel T Muzerengwa's village (hereinafter the "Wakarambwa Village") was situated in the lands of another village called Nyararai Village headed by Mungofa Gotora. In its decision the Council resolved that the Wakarambwa's village should immediately move out of the land it occupied. No alternative land was provided even though the decision to evict was reached in terms of the Rural District Act (29:13) which allows the District Councils of each district to allocate land to individuals who are resident or originate from that district, if there is an unoccupied land.
3. The Complainant avers that the dispute of ownership of the said land dates back to the colonial era, when the land had been declared a quarantine land, and was reserved for livestock grazing. Residents of Nyararai Village hail from the family of the paramount chieftaincy of Nyashanu, which is the reigning family in the Buhera area. In 1975, the head of the Nyararai Village applied to the District Administrator and the Ministry of Local Government to establish a sub chieftaincy. The request was granted and they proceeded to establish the Nyararai Village. Furthermore, the Complainant claims that during this period, families of the Wakarambwa Village had already settled in the area or as it were, they encroached on the land, which was reserved for Nyararai Village.
4. With a view to decide on the dispute that ensued between the two families over the ownership of the land, the Buhera Rural District Council held three meetings. During the first meeting the members of the Council failed to reach a decision and decided to visit the area and analyze the maps of the same. When they went to inspect the land the Wakarambwa's refused to have the land inspected, and this was found to be in violation of the procedure of the Buhera District Council. Accordingly, at the next meeting the Council after taking into consideration a number of issues ruled that the Wakarambwa Village headed by Samuel Muzerengwa had unlawfully occupied and encroached into the land of Nyararai Village. The Council also resolved to evict the petitioners and instructed the complainant to seek court orders to the same.

5. The Complainant submits that armed with the Council's resolution, the Gatora family approached the magistrate's court and obtained an eviction order. The Wakarambwa Village decided to challenge the eviction order by seeking a review of the same in the High Court and Supreme Court. In both instances the case was dismissed on technicalities and the decision to evict the Wakarambwa family stood. The Courts did not order or direct the State through the Buhera District Council to make alternative arrangements for the Wakarambwa families who were now being considered as illegal settlers. This effectively rendered the petitioners homeless.
6. The Complainant avers that the President of the Republic of Zimbabwe, under the Communal Lands Act⁴⁸, is the guardian of the land and can intervene in land disputes, and can vary, set aside or reverse any decision or make such order he deems just. The Complainant submits that on 6 March 2003 an appeal was made to the President but no formal acknowledgement of receipt of the appeal has been received.
7. As a result of the failure of the courts and the Executive of the country to provide an effective remedy to the disputes surrounding ownership, the court orders were enforced, despite the fact that the Wakarambwa Village had not been given alternative land to settle. The Complainant alleges that the manner in which the evictions were carried was inhuman, unfair and disproportionate.
8. The Complainant claims that the evictions did not meet international standards on forced evictions; that there was no compensation or restitution for destroyed properties; and no alternative land was provided for the affected families. The Complainant submits that from 1999 to 2003 the Republic of Zimbabwe was engaged in a land reform and resettlement exercise, but despite the fact that they were literally landless and homeless in their own country, they were not considered suitable candidates or beneficiaries during this programme.

Articles alleged to have been violated

9. The Complainant alleges violations of Articles 1, 2, 3, 5, 10(1), 13(1) and (3), 14, 16, 17, 18(1) and (4), 21 and 22 of the African Charter on Human and Peoples' Rights.

Procedure:

10. The Complaint dated 22 August 2005 was received at the Secretariat of the African Commission on 29 August 2005.

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Section 8(4) & (5) of the Communal Land Act Chapter 20:04

11. On 27 September 2005, the Secretariat received *amicus curiae* brief from the Centre on Housing Rights and Evictions in support of the Complaint.
12. At its 38th Ordinary Session held from 21 November to 5 December 2005 in Banjul, The Gambia, the African Commission considered the Communication and decided to be seized thereof.
13. On 15 December 2005, the Secretariat of the African Commission notified the Respondent State of this decision and requested it to forward its written submissions on the Admissibility of the matter. The Secretariat also enclosed a copy of the above mentioned *amicus curiae* brief from the Centre on Housing Rights and Evictions which was submitted in support of the present Complaint.
14. On 30 January 2006, a similar notice was sent to the Complainant requesting them to forward their written submission on Admissibility.
15. On 1 May 2006, the Secretariat received the written submissions of the Complainant on Admissibility.
16. At its 39th Ordinary Session, the African Commission considered the Communication and decided to defer it to its 40th Ordinary Session pending additional information from both parties. The parties were notified accordingly.
17. At its 40th Ordinary Session the African Commission considered this Communication and deferred consideration of the matter to the 41st Ordinary Session.
18. On 24 November 2006 the Respondent State submitted supplementary information on the Admissibility of the Communication.
19. At its 41st Ordinary Session, the Commission deferred consideration of the Communication to its 42nd Ordinary Session. During this Session the parties made their oral submissions before the Commission.
20. By Note Verbale and letter dated 8 July 2007 the Secretariat notified the Respondent State and the Complainant of the deferment of the Communication and further invited the parties to forward additional submissions on Admissibility, if any.
21. During its 42nd Ordinary Session held in Brazzaville, Republic of Congo, the Commission decided to defer the case to the 43rd Ordinary Session.

22. By Note Verbale of 19 December 2007 and letter of the same date, the Secretariat notified both parties of the Commission's decision.
23. During its 43rd Ordinary Session the Commission considered the Communication and decided to defer the decision on Admissibility to its 44th Ordinary Session which was scheduled to be held in Abuja, Nigeria from 10 – 24 November 2008.
24. By a Note Verbale and letter dated 22 October 2008 the Secretariat notified the parties of the decision of the Commission.
25. During its 44th, 45th and 46th Ordinary Sessions the Commission decided to defer its decision on Admissibility and the parties were accordingly notified of the decisions.
26. During its 47th Ordinary Session held in Banjul, The Gambia from 12 to 26 May 2010, the African commission decided to defer its decision on Admissibility to its 48th Ordinary Session.
27. In Note Verbale and letter dated 16 June 2010 the Respondent State and the Complainants respectively were informed of the above decision of the African Commission.
28. During its 48th Ordinary Session the African Commission considered and deferred its decision on Admissibility of the Communication to its 49th Ordinary Session to allow the Secretariat incorporate the comments made by the Commission.
29. By Note Verbale and letter dated 13 December 2010 the Respondent State and the Complainant were informed of the abovementioned decision of the Commission.

The Law on Admissibility

Complainant's Submission on Admissibility

30. The Complainant submits that the Complaint fulfills the requirements of Article 56 of the African Charter.
31. The Complainant submits that Articles 56(1) and (2) of the Charter are complied with as the authors of the Communication are identified and do not seek anonymity and as the Complaint alleges infringement of provisions of the Charter by a State Party thereto.

32. Regarding Articles 56(3) and (4) of the Charter, the Complainant avers that the Complaint is not written in disparaging or insulting language and is not based on news disseminated in the mass media, as the information provided is based on court and council records.
33. The Complainant also submits that the Communication clearly lays down the processes through which the petitioners sought necessary remedies locally but failed to obtain them. After being served with the initial eviction order from the Magistrates Court the Wakarambwa Village took the case on review to the High Court and on appeal to the Supreme Court, where they lost in both courts on technicalities, thereby the decision to evict was upheld.
34. The Complainant further submits that the petitioners have tried to appeal to the President to reverse the decision under Section 8(4) and (5) of the Communal Lands Act.
35. The Complainant avers that the petitioners made the application to the President on 6 March 2003 but no formal acknowledgment of receipt or response thereto has ever been received. The Complainant submits that since the President has chosen not to respond to the “plea” by the petitioners, they have no option than to turn to regional institutions such as the Commission.
36. Accordingly, the Complainant submits that local remedies have been exhausted as per Article 56(5) of the African Charter.
37. Concerning Article 56(6), the Complainants are of the view that the Complaint was filed within a reasonable time after exhaustion of local remedies.
38. On Article 56(7) the Complainant argues that the requirement has been satisfied as the matter has not been dealt with by, nor is it pending before any other international body.
39. Based on the above submission the Complainant urges the Commission to declare the Communication Admissible.

Respondent State’s Submission on Admissibility

40. The Respondent State submits that the petitioners, in 1993, moved into the area in dispute without authority, effectively invading the said land. It further alleges that subsequent to the petitioning by the Nyararai village against the invasion, the Community Court, the District Court, and the High Court decided in favour of Nyararai village. The Supreme Court, on the other hand, made it clear that although the Buhera District Council had erred in proceeding to determine the dispute, “it is common cause that the First Respondent (Buhera District Council) has jurisdiction to determine land disputes in terms of the Communal Lands Act.”

It further held that if the petitioners had been aggrieved by the Council resolution, they could appeal against the decision to the President of Zimbabwe in terms of Section 8(4) of the Communal Lands Act.

41. Although the Complainant's letter of appeal to the President indicates that the appeal was also lodged at the Ministry of Local Government and National Housing, the Ministry contends that the appeal cannot be traced.
42. According to the Respondent State the Communication does not reveal any *prima-facie* violation of the rights and freedoms other than general averments of violations of the African Charter.
43. The Respondent State submits that the land dispute is entirely between two private persons or group of persons and that it suspects that the submission of the Communication to the Commission is nothing more than a ploy to portray the petitioners as victims of the clean-up operation "*Murambatsvina*" undertaken by the Government in June 2005, as nowhere in the Complaint has it been shown that the Government had a hand in the alleged "impoverishment" of the Complainants.
44. The Respondent State holds that the evictions are not "forced evictions" effected by the state but rather "legal evictions" carried out after following due process of law.
45. According to the Respondent State, the evictions were carried out in terms of the Communal Lands Acts read with the Regional, Town and Council Planning Act, and that the Buhera District Council is an autonomous body corporate with a distinct *locus standi* from the State of Zimbabwe and does not fall under the direction and control of the Government. This according to the Respondent State explains why in all the civil suits between the parties the Complainant never cited any Government Minister or Government Organ.
46. The Respondent State further argues that the Complainants have not exhausted local remedies as they have appealed to the President in terms of Section 8(4) of the Communal Lands Act, which is an administrative (not Executive) procedure to be exercised by the President, and from which, if still aggrieved, they could approach the High Court for judicial review of the President's decision. The Respondent State further avers that the Supreme Court could have been approached for relief on the basis of Section 24(2) of the Constitution.
47. The Respondent State further submits that the Complainant portrays a picture of the President who is not bound by anything but his unfettered discretion in deciding the dispute, while the President like any other administrative body, would be bound to follow the rules of natural justice. If these rules were not followed, then the petitioners could always approach the courts for judicial

review. The State submits that the President's powers in this instance are not judicial but administrative and hence cannot undermine the powers of the judiciary.

48. The Respondent State avers that at no point did the High Court and the Supreme Court make a final determination on the merits of the case other than being confined to the technical points that had been raised by either party. In this case, the High Court ruled that the Buhera District was the proper forum to deal with the dispute in terms of Section 8 of the Communal Lands Act and that an appeal from the Council would lie with the President in terms of Section 8(4) of the Act.
49. Although an appeal against the Council's decision is claimed to have been filed to the President, through the Ministry of Local Government, the Respondent State submits that the said Ministry does not have the appeal.
50. Based on the above submission, the Respondent State avers that the Communication is inadmissible.

The Commission's Analysis on Admissibility

51. Article 56 of the African Charter provides seven requirements based on which the African Commission assesses the admissibility or otherwise of communications submitted to it.
52. Even though the Respondent State contests the Admissibility of the Communication on the basis of only three provisions of the Charter, namely; Articles 56(2), (5) and (6), the Commission will proceed to analyse all the seven admissibility requirements provided under Article 56 of the Charter.
53. Article 56(1) of the Charter states that communications received by the Commission should 'indicate their authors even if the latter requests anonymity'. In the present case the alleged victims are Samuel T. Muserengwa and 110 families, and the author of the Communication is Zimbabwe Lawyers for Human Rights whose address is disclosed in the Communication. Neither the alleged victims nor the author of the Communication has requested anonymity. The Respondent State has not contested this fact. Thus, the Commission holds that the Communication fulfils the requirement under Article 56(1) of the Charter.
54. The second requirement under Article 56(2) of the Charter requires communications to be compatible with the Constitutive Act of the African Union or with the African Charter. The Complainant in the present Communication catalogues a number of rights guaranteed in the Charter alleged to have been violated by the Respondent State. The Respondent State on the other hand argues that the Complaint has failed to meet the requirement as it does not

establish a *prima facie* violation of rights and freedoms, or the basic principles of the Constitutive Act of AU such as ‘freedom, equality, justice and dignity’. The Respondent State submits that there is no *prima facie* case because the dispute in question is between two private parties and does not involve the State at all, and that the eviction was carried out by a non-state organ, in execution of a court order.

55. It is important to explain what *prima facie* violation of rights and freedoms entail. The term ‘*prima facie*’ means “on the face of it”; “so far as can be judged from the first disclosure”; “a fact presumed to be true unless disproved by some evidence to the contrary”.⁴⁹ So, *prima facie* is a decision or conclusion that could be reached from preliminary observation of an issue or a case without deeply scrutinizing or investigating into its validity or soundness.
56. Therefore, one is presumed to have presented a *prima facie* case or shown a *prima facie* violation of rights and freedoms under the Charter, when the facts presented in the Complaint show that a human rights violation has likely occurred. The Complaint should be one that compels the conclusion that a human rights violation has occurred if not contradicted or rebutted by the Respondent State.
57. In the case at hand the Complaint alleges a violation of Articles 1, 2, 3, 5, 10(1), 13(1) and (3), 14, 16, 17, 18(1) and (4), 21 and 22 of the African Charter supported by court orders and other pertinent documents. The allegations in this Communication are specific enough to establish a *prima facie* case. Therefore, the present Communication is based on alleged violations of the Charter and hence fulfills the *ratione materiae* requirement.
58. The *ratione personae* and *ratio temporis* requirements have also been met. The Complainants, as indicated above in paragraph 51, have the standing to bring the case before the Commission and hence meet the *ratione personae* requirement, and the alleged human rights violations occurred within the period of the Charter’s application to the State, which is also a fact that is uncontested by the Respondent State confirming that the *ratio temporis* requirement is also complied with. The last requirement under this provision is the *ratione loci*, which provides that States Parties to the African Charter are responsible for violations that occur within their territory. While whether the alleged violations were committed by state actors directly or by private individuals is something that would be looked into at the Merits stage, at this stage it suffice to proof that the alleged violation occurred within the territorial jurisdiction of the Respondent State, which according to the Commission the Complainant satisfactorily did.

⁴⁹Henry Campbell Black *et al*, Black’s Law Dictionary, 6th ed. (1990) 1189.

59. The Commission thus holds that the Communication establishes a *prima facie* violation of rights and freedoms in the Charter and thus complies with Article 56(2) of the Charter.
60. Article 56(3) provides that communications should not be written in disparaging or insulting language directed against the State concerned and its institutions or to the African Union. The Complainant claims that the Communication is not written in disparaging or insulting language, which the Respondent State has not challenged. So, the Commission holds that the Communication fulfils the requirement under Article 56(3) of the Charter.
61. Article 56(4) provides that communications should not be based exclusively on news disseminated through the mass media. The Complainant submits that the Communication is based on courts and council records, not on news disseminated by the mass media. The Respondent State does not deny the Complainant's assertion. Accordingly, the Commission is of the view that the Communication complies with Article 56(4) of the Charter.
62. Article 56(5) of the Charter stipulates that communications should be 'sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged'.
63. In human rights law it is important for a person whose rights have been violated to make use of domestic remedies to right the wrong, rather than address the issue to an international body.⁵⁰
64. "The rule is founded on the premise that the full and effective implementation of international obligations in the field of human rights is designed to enhance the enjoyment of human rights and fundamental freedoms at the national level "and this is supplemented by the fact that "local remedies are normally quicker, cheaper, and more effective than international ones".⁵¹
65. The rationale behind the exhaustion of local remedies is that states should be given the opportunity to address the issue before the matter is brought before international treaty bodies. In the African human rights system, the Commission has confirmed and reconfirmed this position in its decisions. In **Free Legal Assistance Group and Others v Zaire**⁵² and **Recontre Africaine pour la**

⁵⁰ Nsongurua J. Udombana So Far, So Fair: The Local Remedies Rule in the Jurisprudence of the African Commission on Human and Peoples' Rights (2003) 97 *The American Journal of International Law* (2003) 9.

⁵¹ n 4 above, 9.

⁵² Communication 25/89, 47/90, 56/91, 100/93 – *Free Legal Assistance Group and Others v Zaire* (1995)

para 36

Defense des Droits de l'Homme v Zambia⁵³ the Commission stated that 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 violations before being called before an international body.

66. Accordingly, the submissions of the parties in this case would be assessed in light of the above.

67. The Complainant submits that after the eviction order the petitioners appealed against the order in the High Court and then the Supreme Court, and both courts dismissed the appeal. They later appealed to the President of the Republic and received no response. The Complainant further submits that even though they have appealed to the President, they were not required to, as executive remedies are discretionary and non-judicial in nature. The Complainant accordingly submits that all local remedies have been exhausted.

68. The Respondent State in response argues that the Complainant has not exhausted local remedies as they have both administrative and judicial remedies left to pursue. According to the Respondent State, the petitioners could appeal to the President in terms of Section 8 of the Communal Land Act and could get administrative, not executive, remedy which can redress their claims. If they are not satisfied with the President's decision, the Respondent State argues, they could always take their case before the High Court for review as per the Administrative Justice Act. The Respondent State further avers that the Supreme Court could have been as well approached for relief on the basis of Section 24(2) of the Constitution. The Respondent State is also of the view that the High Court and Supreme Court never made a final determination of the matter on the basis of the merits of the case.

69. In the present Communication after the eviction order from the Magistrate Court the petitioners' took their case to the High Court contending that the decision of the Council should be reviewed.⁵⁴ This was dismissed by Justice Ziyambi who did not find any conduct which was reviewable on the part of the Council. The petitioners appealed against the decision of the High Court to the Supreme Court and the latter also dismissed the appeal. The Supreme Court stated that the appeal was argued by the appellant (petitioners) on the wrong basis. The appeal was argued on the basis that the first respondent's (the Council's) decision of 19 August 1998 was made in terms of Section 32 of the Regional, Town and Country Planning Act (Chapter 29:12) which according to the Supreme Court had nothing to do with what transpired in this case.

⁵³ Communication 71/92 – *Recontre Africaine pour la Defense des Droits de l'Homme v Zambia* (1997) para 10.

⁵⁴ *Mungofa Gotora v Nditra Muzerengwa and 32 Others* (Zimbabwean Magistrate Court for the Province of Manicaland) Annexure C

70. Based on the above, the Supreme Court adjudged that the appeal before the court *a quo* to have the decision of the Buhera Rural District Council set aside on review on the basis of non-compliance with the provisions of the Regional, Town and County Planning Act was misconceived.⁵⁵ The judgment of the Supreme Court also indicates that even the counsel of the appellants conceded that the appeal has no merit, which is also obvious from the reading of the judgment.
71. The Commission agrees with the Respondent State on the point that the domestic courts were not given the opportunity to remedy the merits or substance of the complaint. As indicated above the purpose of the rule of exhaustion of local remedies is to enable states address alleged violations of human rights before international bodies. In assessing whether states have been given this opportunity it is of prime importance to make sure that they have been addressed on all the substantive issues complained of and that the domestic procedures as provided by the laws of the country have been properly pursued, unless they are apparently unjust or prolonged.
72. In this Communication the issue for determination before the Commission is the alleged unlawful eviction of the Muzerngwa's and the human rights violations they suffered as the result of such evictions. However, as the reading of the facts of the case clearly indicate the local courts of the Respondent State were never approached to rule on the issue of eviction and other human rights violations that are allegedly caused by the evictions. The African Commission is convinced by the Respondent State's argument, which is not contested by the Complainant, that the latter could have approached the Supreme Court on the basis of Section 24(2) of the Constitution to get redress for the alleged human rights violations.
73. It is true that the High Court and Supreme Court have been approached and both of them ruled against the petitioners. It should however, be noted that the Courts did not rule on the merits of the case but on both instances dismissed the case on technicalities. The reason the courts were not able to deal with the merits is because the courts were approached to rule on procedural matters and thus failed to raise the substantive issues before the domestic courts.
74. The African Commission is in agreement with the Complainant that appealing to the President is not a judicial remedy as it is discretionary in nature and therefore they are not expected to pursue it. Notwithstanding this fact the Commission is of the opinion that the issue before it, that is, the eviction of residents of the Wakarambwa village, has not been decided upon by the domestic courts of the Respondent State. What the High Court and Supreme Court were called upon to do was to review the decision of the Buhera District Council and not to rule on the substance of the case.

⁵⁵ Nditira Muzerengwa Chuma v Buhera Rural District Council & Mungofa Gotora (Judgment No SC 75/2001
Civil Appeal No 325/2000) Annexure F

75. For the aforementioned reasons the Commission finds that this Communication does not comply with Article 56(5) of the Charter.
76. From the above ruling it follows that the filing of the Communication by the Complainant is premature and has not observed the requirement under Article 56(6) of the Charter.
77. Regarding the requirement that a communication must not be considered if it has already been settled before other international bodies, the Complainant claims that the present Communication has neither been dealt with nor is it pending before any other international body. The Respondent has also not challenged this assertion. Consequently, the Commission holds that the Complainants have satisfied the requirement under Article 56(7).
78. *Obiter dictum*: in line with its well established jurisprudence the African Commission considered the *amicus curiae* brief submitted by the Centre on Housing Rights and Evictions⁵⁶ in support of the Complainants submissions. However, the Commission notes that the *amicus curiae* brief submitted by the Centre on Housing Rights and Evictions does not address itself on Admissibility.

Decision of the Commission on Admissibility

79. In view of the above the African Commission on Human and Peoples' Rights decides:
- I. To declare the Communication Inadmissible because it does not comply with the requirements of Article 56(5) and (6) of the African Charter;
 - II. To give notice of this decision to the parties in accordance with Rule 107(3) of the New Rules of Procedure (RoPs)
 - III. To inform the Complainants of their right to resubmit the Communication before the Commission after exhausting local remedies in accordance with Rule 107(4) of the RoPs;
 - IV. To include this decision in its Report on Communications.

Done in Banjul, The Gambia, during the 9th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights held from 23 February to 3 March 2011.s

⁵⁶ See Communication 276/03 – *Centre for Minority Rights Development and Minority Rights Group International (on behalf of the Endorois Welfare Council) v Kenya* and Communication 313/05 – *Kenneth Good v Botswana* (2010) and also Rule 99 (16) of the New Rules of Procedure of the African Commission.

Communication 361/08: J.E Zitha & P.J.L.Zitha (represented by Prof. Dr. Liesbeth Zegveld) v Mozambique**Summary of Complaint**

1. The Communication is submitted by Prof. Dr. Liesbeth Zegveld (Attorney at Law) (hereinafter called the Complainant) on behalf of Mr Jose Eugency Zitha (herein after called first victim) and Prof. Pacelli L.J. Zitha (herein after called second victim). The Respondent State is the Republic of Mozambique a State party to the African Charter on Human and Peoples' Rights (the African Charter or the Charter)⁵⁷.

2. Mr. Jose Eugency Zitha was a citizen of Mozambique, born on 15 April 1939 in Magude, Mozambique and lived in Matola. Prior to his arrest and detention on 26 October 1974, he was a medical student at the University of Lourenco Marques in Mozambique, where he was enrolled in the Faculty of Medicine from 1968 and 1974.

3. The second victim, Prof. Pacelli L.J. Zitha, the son of the first victim, is a citizen of France, born on 19 October 1961 in Mozambique. He is currently living in The Netherlands and by profession, he is a Professor of Oil and Gas Production with the Delft University of Technology.

4. It is alleged that on 26 October 1974, the first victim was requested by the Minister of Home Affairs of the Transition Government of Mozambique⁵⁸, Mr. Armando Guebuza, to join a meeting of the members of the *grupos dinamisadores*. He was taken to the meeting in a military vehicle, accompanied by armed FRELIMO⁵⁹ soldiers. When he entered the meeting room, under the escort of heavily armed militia, he was humiliated and accused of being a betrayer.

5. It is alleged that Mr Guebuza ordered his arrest and detention at the head quarters of FRELIMO Armed Forces in Boane. He was not informed about the reasons for his arrest. His family, including his son, the second victim, were not informed nor notified of these events. After five days of thorough search by second victim and his family, they discovered that the first victim was detained at the prison of Boane.

6. A few weeks later, the first victim suddenly disappeared from the prison in Boane. After a few days the second victim found out that his father, the first victim, had been transferred to the former *Cadeia Judiciaria* in Maputo. Around the beginning of 1975, the second victim met the first victim for the last time at *Cadeia Judiciaria* in Maputo. After that visit, the first victim suddenly disappeared from the prison in Maputo.

7. The Complainant alleges that an article from the Tanzania Daily News of 23 April 1975 indicated that the first victim was paraded in public on 21 April 1975 at the

⁵⁷ Mozambique ratified the African Charter on 22 February 1989.

⁵⁸ The Transition Government of Mozambique was formed after the Lusaka Agreement in 1974

⁵⁹ The ruling party of Mozambique.

Nachinqwea Prison in southern Tanzania. Since then, there has been no trace of the first victim

Articles alleged to have been violated

8. The Complainant submits that with respect to the first victim, the Respondent State violated Articles **2,4,5,6** and **7(1) (d)** of the African and with respect to the second victim Article 5 of the same Charter.

Procedure

9. The Complaint was received at the Secretariat of the African Commission (herein after the Secretariat) on 9 June 2008.

10. On 15 July 2008, the Secretariat acknowledged receipt of the Complaint and informed the Complainant that it will be considered at the African Commission on Human and Peoples' Rights (herein after the African Commission) 44th Ordinary Session.

11. During its 44th Ordinary Session held from 10 to 24 November 2008, in Abuja, Nigeria, the African Commission decided to be seized of the Communication and requested the Complainant to submit its arguments on Admissibility.

12. By letter, dated 11 December 2008, the Secretariat wrote to the Complainant informing her of the decision of the African Commission.

13. By letter, dated 22 December 2008, the Secretariat of the African Commission wrote to the Complainant requesting her to furnish the African Commission with the information on the missing documents in the Complaint.

14. By letter, dated 7 January 2009, the Secretariat wrote to Complainant reminding her to forward the information previously requested on the missing documents in the Complaint.

15. On 18 February 2009, the Complainant sent her submission on Admissibility and adapted version of the original Communication to the Secretariat. The Secretariat acknowledged receipt by letter dated 4 March 2009.

16. By Note Verbale dated 24 March 2009, the Secretariat informed the Respondent State about the Communication and requested it to submit its submissions on Admissibility within three (3) months of notification.

17. On 21 April 2009, the Complainant wrote to the Secretariat to enquire whether she could attend and make oral submissions on Admissibility at the 45th Ordinary Session of the African Commission. The Secretariat acknowledged receipt by a letter dated 25 April 2009 and informed the Complainant that the Respondent State has not

yet submitted its arguments on Admissibility and as such it would not be necessary for the Complainant to make oral submission.

18. By letter, dated 29 April 2009 and 28 May 2009 respectively, the Complainant requested the Secretariat to consider the Communication at its 45th Ordinary Session or provide explanations for the African Commissions position on the matter. The Secretariat acknowledged receipt by a letter dated 9 June 2009 and informed the Complainant about the procedure for consideration of Communications by the African Commission.

19. By Note Verbale dated 26 June 2009, the Secretariat informed the Respondent State that it is yet to receive its arguments on Admissibility and requested the State to send its arguments on Admissibility by 23 July 2009.

20. By letter, dated 8 July 2009, the Complainant requested the Secretariat to table the Communication for considered at the 46th Ordinary Session of the African Commission. The Secretariat acknowledged receipt by letter dated 5 August 2009, and informed the Complainant that when the Communication is considered, the decision of the African Commission will be communicated to her. The Complainant by letter, dated 17 August 2009, requested the Secretariat to clarify whether the Secretariat's letter of 5 August 2009, explains that it is not necessary for her to attend the Session with her client.

21. By letter, of 29 September 2009, the Secretariat informed the Complainant that the Respondent State had still not yet submitted its arguments on Admissibility and that if the Respondent States does not forward its submissions before the 46th Ordinary Session, the African Commission will decide on the way forward and the decision will be communicated to her.

22. By letter, dated 21 October 2009, the Complainant requested the Secretariat to confirm whether due to the fact that she and her client would not be allowed to make a statement during the 46th Ordinary Session of the African Commission, it would not be necessary for them to attend the Session.

23. The Secretariat acknowledged receipt by letter, dated 26 October 2009 and informed her that it will not be necessary for them to attend the Session.

24. By letter, dated 4 November 2009, the Secretariat received the submission of the Respondent State on Admissibility and forwarded it to the Complainant by letter dated 30 November 2009 for her response.

25. On 19 February 2010, the Secretariat received the Complainant's response to the Respondent State's submission on Admissibility and acknowledged receipt on 5 March 2010.

26. On 22 April 2010, the Secretariat received an email from the Complainant indicating that, she will be attending the 47th Ordinary Session of the African

Commission, together with the second victim to address the African Commission on the Communication.

27. By Note Verbale, dated 23 April 2010, the Secretariat informed the Respondent State about the Complainants letter of 22 April 2010.

28. At the 47th Ordinary Session of the African Commission held from 12-26 May 2010, in Banjul, The Gambia, the Complainant and the Respondent State addressed the African Commission on the Admissibility of the Communication.

29. The African Commission decided to defer the Communication to the 48th Ordinary Session for consideration on Admissibility, to allow the Secretariat to take into consideration, the oral submissions of both parties in its draft decision.

30. By letter, and Note Verbale, dated 4 June 2010, the Secretariat informed the Complainant and the Respondent State of the decision of the African Commission.

31. The African Commission decided to defer the Communication to the 49th Ordinary Session for consideration on Admissibility due to lack of time.

32. By letter, and Note Verbale, dated 9 December 2010, the Secretariat informed the Complainant and the Respondent State of the decision of the African Commission.

The Law on Admissibility

Complainant's Submission on Admissibility

33. The Complainant states that the criteria for Admissibility stipulated in Article 56 of the African Charter have been fulfilled and goes further to address each of these criteria.

34. The Complainant states that in compliance with Article 56(1) of the African Charter, the author has been indicated as Prof. Dr. Liesbeth Zegveld on behalf of Mr. Jose Eugency Zitha and Prof. Pacelli L.J. Zitha.

35. The Complainant submits that Article 56(2) of the African Charter has been complied with, noting that the Communication deals with violations of rights guaranteed under the African Charter, which the Respondent State is a party to.

36. The Complainant states that the Communication is not written in disparaging or insulting language directed at the Respondent State and as such it has complied with Article 56(3) of the African Charter.

37. The Complainant avers that the Communication is not based exclusively on news disseminated through the mass media but is based on witness statements, a book and several reports of human rights organizations, and has thus fulfilled Article 56(4) of the African Charter.

38. The Complainant further states that in fulfilling Article 56(5) of the African Charter, local remedies were not available or sufficient. The Complainant submits with respect to the first victim that in ***Forum of Conscience v Sierra Leone***⁶⁰ filed on behalf of people who were already executed, the African Commission held that ‘there were no local remedies for Complainants to exhaust and even if such possibility had existed, the execution of the victims had completely foreclosed such remedy’. The Complainant argues that if there is a substantial chance that the first victim has been arbitrarily executed, exhaustion of local remedies is impossible and the requirement to exhaust local remedies is therefore not applicable in this case.

39. The Complainant further argues that if the Respondent State claims that the first victim is still alive, the Respondent State is responsible to prove so. The Complainant cites the African Commission’s decision in ***Institute for Human Rights and Development (on behalf of Jean Simbarakiye) v Democratic Republic of Congo***⁶¹ in which it stated that:

when a person is being held in detention and accused of committing a crime, it is the responsibility of the Member State, through its appropriate judicial bodies, to bring this person promptly before a competent court of law in order to enable him/her to be tried in accordance with the rules guaranteeing the right to fair trial in accordance with national and international standards.

40. The Complainant argues that with respect to the second victim, due to fear of persecution after the disappearance of the first victim, he was forced to flee his country in 1983 to France, after which his office in Mozambique was bombed. When gaining his political asylum status in France, he made a commitment by signing a form in France, stating that he would not undertake any action against Mozambique while living there. He lived in France from 1983 to 1994 and in 1995 he moved to the Netherlands where he currently resides.

41. The Complainant further argues that it was thus impossible for the second victim to pursue any domestic remedies following his flight from Mozambique to France for fear of his life. Because of this, he could not travel to Mozambique to undertake legal action himself. The Complainant cites the African Commission’s decision in ***Sir Dawda K. Jawara v The Gambia***⁶², where the African Commission held that:

‘the existence of 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 generalized fear for

⁶⁰ Communication 223/98 - *Forum of Conscience v Sierra Leone* (2000)

⁶¹ Communication 247/02 - *Institute for Human Rights and Development (on behalf of Jean Simbarakiye v Democratic Republic of Congo)* (2006).

⁶² Communication 147/95 and 149/96 - *Sir Dawda K. Jawara v The Gambia* (2000).

his life or even those of his relatives, local remedies would be considered to be unavailable to him’.

42. The Complainant further argues that, when the second victim moved to the Netherlands in 1995 and was able to work and obtain some resources to undertake legal research and action, he and his family contacted several competent lawyers in Mozambique but no counsel appeared available or willing to defend their interests because of fear for their lives. The Complainant cites the African Commission’s decision in ***Curtis Francis Doebbler v. Sudan***⁶³ which states that ‘in order to exhaust local remedies within the spirit of the Article 56(5) of the African Charter, one needs to have access to those remedies but if the victims have no legal representation it would be difficult to access domestic remedies’.

43. According to the Complainant, other reasons for the inability of the second victim to exhaust local remedies are that the fear remains that harm may be inflicted on his family living in Mozambique, and because he is still hopeful that his father may be alive in the hands of the Government, he opted for a careful approach to deal with the matter.

44. The Complainant also argues that it was only after the second victim made his first trip to Mozambique in 1995, that he became aware that it was most likely that his father had been executed and he decided to undertake legal action because the Respondent State did not react to any request for information and local undertakings proved unsuccessful.

45. The Complainant submits that recently the second victim, still being actively seized of the matter to gain information from the Respondent State, during President Guebuza’s visit to the Netherlands on 27 February 2008, he personally presented a letter to the President and subsequent correspondences took place between the victims lawyers and the Human Rights Ambassador of the Dutch Ministry of Foreign Affairs.

46. The Complainant submits that the second victim further went to Mozambique in August 2007, for an extensive inquiry to ensure progress in the case of the first victim. During this visit he managed to arrange two meetings with the son of Uria Simango (the former Vice-President of FRELIMO in the 1960’s) and a meeting with Dr. Simeao Cuamba (a high profile lawyer in Mozambique). Both meetings were unsuccessful. Several letters were also sent to Sir Armando Emilio Guebuza, the current President of Mozambique, requesting information of the whereabouts of the first victim. No reply was ever received.

47. The Complainant cites the African Commission’s decision in Communication ***Legal Assistance Group, Lawyers Committee for Human Rights, Union Interafricaine des Droits de l’Homme, Les Temoins de Jehovah v. Zaire***⁶⁴, where the African Commission stated that ‘one of the rationale for the exhaustion requirement

⁶³ Communication 236/200. *Curtis Francis Doebbler/Sudan*

⁶⁴ Communication 25/89, 47/90, 56/91 and 100/93- *Legal Assistance Group, Lawyers Committee for Human Rights, Union Interafricaine des Droits de l’Homme, Les Temoins de Jehovah v. Zaire*.

is that the government should have notice of a human rights violation in order to have the opportunity to remedy such violation, before being called to account by an international tribunal’.

48. The Complainant finally submits that all the above mentioned instances prove the difficulty and impossibility of the second victim to exhaust local remedies in accordance with Article 56(5) of the African Charter.

49. The Complainant submits that the requirements of Article 56(6) of the African Charter have been fulfilled. The Complainant argues that it is a well-established principle of international law that a new government inherits the previous government’s international obligations including responsibility for the previous government’s misdeeds and mismanagements⁶⁵.

50. The Complainant further submits that the African Commission is therefore, competent *ratione temporis* to consider events that happened after the coming into force of the African Charter, or if they happened before, constitutes a continuing violation after the coming into force of the African Charter⁶⁶. The Complainant, therefore, submits that forced disappearance of the first victim and the failure of the Respondent State to investigate the case constitute a continuous violation of a human right and the Communication was submitted as soon as it was possible to do so, as the second victim was unable to submit at an earlier time.

51. The Complainant states that the Communication has not been submitted to any other procedure of international investigation or settlement and as such has fulfilled the requirements under Article 56(7) of the African Charter.

Respondent State’s Submission on Admissibility

a) Incompetent *ratione temporis*

52. The Respondent State submits that the African Commission is incompetent *ratione temporis*, and therefore should not have even received the Communication in question. The Respondent State argues that Article 65 of the African Charter provides that: ‘For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by that State of the instrument of ratification or adherence’.

53. The Respondent State argues that the alleged incident happened in April 1977 before Mozambique became party to the African Charter.

⁶⁵ Communication 64/92, 68/92 and 78/92 - *Khrishna Achutan (on behalf of Aleke Banda), Amnesty International 9on behalf of Orton and Vera Chirwa), Amnesty International (on behalf of Orton and Vera Chriwa) v Malawi* (1995)

⁶⁶ Communication 251/02 - *Lawyers for Human Rights v Swaziland* (2005)

54. The Respondent State submits that the Communication alleges that the first victim was transferred to Nachingwea, Tanzania, in April 1975 and has never been seen since. The Respondent State states that the Communication mentioned that most probably the first victim was executed there, noting that if that is true, it is obvious that the African Commission is being called upon to entertain a matter (the occurrence of which besides being prior to its own existence also preceded the coming into force of the Charter).

The Respondent State submits that the African Commission is only competent to entertain facts which occurred after the coming into force of the African Charter or, if they occurred before, they constitute a violation continuing after the coming into force of that same Charter.⁶⁷ The Respondent State argues that that is not the case with the facts alleged in the present Communication. The Respondent State thus submits that, the African Commission is incompetent *ratione temporis*, since the facts which it is being asked to entertain in relation to both victims, preceded the coming into force of the African Charter, insofar as the Respondent State is concerned, and such facts have not continued subsequently.

55. The Respondent State submits further that if, however, the African Commission decides it is competent *ratione temporis* to entertain the subject matter of the Communication, the African Commission should declare the Communication inadmissible for failure to meet the fundamental requirement in Article 56(5) of the African Charter.

b) Incompatibility with Article 56(5)

56. The Respondent State argues that Article 56(5) of the African Charter states that: '[...] Communications relating to human and peoples' rights referred to in Article 55 received by the Commission, shall of necessity, in order to be examined, meet the following conditions: [...] Be subsequent to the exhaustion of local remedies, if any, unless it is obvious to the Commission that the procedure relating to these remedies is unduly prolonged'.

57. The Respondent State argues that with respect to the first victim, the Communication was submitted on behalf of a citizen who, according to the same Complainant had been detained on 26 October 1974 and executed in Nachingwea, Tanzania, in April 1975 or thereabout. The period in question, the Respondent State argues, coincides to a large extent with the transitional period to an independent Mozambican State, during which an assortment of legislation was enacted, culminating in the adoption of the first Constitution of the Republic on 24 June 1975, which came into force with the proclamation of independence on 25 June 1975.

58. The Respondent State further argues that there is no record at Mozambique's judicial institutions of any report, application for the right to appear before a judge, for *habeas corpus* or other appropriate judicial proceedings addressed by either the family members of the first victim or his legal representative. The Respondent State cites the

⁶⁷ Communication 59/91 - *Emgba Louis Mekongo v Cameroon* (1995) para. 28.

case of *Jawara v The Gambia*⁶⁸ where the African Commission noted that the exhaustion of domestic remedies was one of the most important conditions for Admissibility of Communications, and held that ‘before a case is brought before an international body, the State in question should have the opportunity to remedy the situation through its own system’. The Respondent State argues that this has not happened.

59. The Respondent State argues that the same observation applies with respect to the second victim. Although the Complainant lists several attempts of which the second victim claimed to have tried to find answers of the whereabouts of the first victim, he did not grant the Respondent State the opportunity to remedy the situation through its own system. The Respondent State argues that none of the attempts were addressed to institutions of the judicial apparatus, which, besides being available since the time of the alleged detention of the first victim, were a reality, and effective and sufficient.

60. The Respondent State argues that the 1975 Constitution established the political, economic and social organization of the Mozambican State, and enshrines the separation of legislative, executive and judicial powers. It further argues that the Constitution guarantees the rights and freedoms of citizens, as well as, the principle of continuity of the preceding legislation, that is, from the colonial era, which did not contravene the Constitution. It argues that the Constitution also established the judicial organization, enshrining among other aspects, the fundamental rules and principles of the judiciary. It states that, Article 33 of the Constitution of the People’s Republic of Mozambique provides that:

‘The State guarantees the individual freedoms to every citizen of the People’s Republic of Mozambique. These freedoms include the inviolability of dwelling and the secrecy of correspondence, and cannot be restricted save in cases specially foreseen in the law.’ It states further that Article 35 of the same Constitution states: “In the People’s Republic of Mozambique nobody may be arrested and subjected to trial except in terms of the law. The State guarantees the accused the right to defence’.

61. The Respondent State further argues that the periods of provisional detention are laid out in Article 308 of the Criminal Procedure Code, and Article 337 deals with the procedure for disregard of such periods. It argues that Article 312 of the Criminal Procedure Code also provides for (application for appearance before a judge), the right of a detainee to appear before a judge, and Article 315 provides for (“habeas corpus”). The Respondent State, therefore, argues that the Complainant could have had recourse to these rights before judicial instances already contemplated in Article 62, Chapter VI of the Constitution of the Republic (Judicial Organization).

62. Furthermore, the Respondent State argues that the Ministry of Justice provides legal assistance to citizens through the National Institute for Judicial Assistance (I.N.A.J) established under Law no. 3/86 of 16 April 1986. The Respondent State also argues

⁶⁸ Communication 147/95 and 149/96 - *Sir Dawda K. Jawara v The Gambia* (2000)

Law no.6/89 of 19 September 1989 created and institutionalized the Office of the Attorney-General of the Republic as the supreme body of the Public Prosecution Office and Article 42 of Law no.12/78 of 2 December 1978 provided that: “The fundamental tasks of the Public Prosecution Office are as follows:

- a) To watch over the observance of legality;
- b) Oversee the enforcement of the law and other legal norms;
- c) Control the legality of detentions and compliance with the respective periods”;

63. The Respondent State, therefore, submits that the Complainant had opportunities for redress.

64. The Respondent State further submits that the Communication unfortunately presumed at the outset that it was useless to resort to the existing institutions, contrary to what the rest of Mozambique’s citizens had been doing. The Respondent State states that preference was given to unsuitable mechanisms, for instance, the handing of letters to bearers or members of the Executive branch. It argues that disregard of the judiciary, which is the only institution competent to address concerns of the Communication in hand, and the preference for political mechanisms (letters and meetings) have compromised the prime opportunity that the second victim, who, according to the Communication, has visited Mozambique more than once, and his family who are even residents of Mozambique, had to put to the test the efficacy and sufficiency of the remedies available in the country.

65. The Respondent State, therefore, submits that this Communication should be declared Inadmissible on two grounds:

- 1) Incompetence *ratione temporis* in light of Article 65 of the African Charter.
- 2) Non-compliance with the requirement of Article 56(5) of the African Charter.

Supplementary Submission by the Complainant

66. In response to the Respondent State’s submission, the Complainant states that in general, the African Commission should consider carefully the political situation under which the violations were made.

67. The Complainant therefore comments on two points made by the Respondent State. Firstly, on the Respondent State’s argument that the African Commission is not a competent *ratione temporis*, the Complainant states that the Respondent State has neither disputed that it inherited the alleged acts and consequences of the previous Government, nor has it offered any reasons or explanation why the alleged violations are continuing.

68. The Complainant further submits that, the fact that the Respondent State ratified the African Charter in 1988 does not mean that it is exonerated from past violations of human rights and are therefore under obligation to undertake due diligence to remedy past violations that are still continuing and as such the African Commission should declare itself competent *ratione temporis*.

69. Secondly, on exhaustion of domestic remedies, the Complainant argues that the first victim was a political prisoner unable to exhaust local remedies. As to the applicability of *habeas corpus*, the Complainant states that according to Article 6 of Decree-Law No.21/75 (11 October 1975), “persons implicated in the practice of crimes, the investigations and preparations of suits thereof having been or to be attributed to National Service for Public Security (SNASP), shall not benefit from the provisions of Article 315 of the criminal Procedure Code”. The Complainant argues that since the SNASP was involved in the case of the first victim, he could not benefit from *habeas corpus*.

70. On exhaustion of local remedies by the second victim, the Complainant refers the African Commission to a personal statement made by the second victim in which he reiterates personal facts that are of importance to this Communication. The second victim in his personal statement stated that:

‘Mozambique indicates the existing legal machinery that could have been used for this case. The fact that they exist does not guaranty that they have been, or would have been applied. In the political case the judiciary system has lacked and may still lack the capacity to apply the law because of the specific political situation where a single party governance hardly warranties independence of justice. It is misleading to state that domestic remedies have been and continued to be available uninterruptedly, especially when members of the executive branch are involved. There are many examples where injustice was rendered rather than justice, sometimes with deadly consequences. I have indeed visited Mozambique- my mother country for which I still have the deepest love-but certainly not calmly. It has always been after taking adequate security measures with appropriate warning systems to be able to flee the country at the first sign of danger. Perhaps the 1975 Constitution of Mozambique intended to enshrine the separation of the legislative, executive and judicial power and the guarantee of the fundamental rights of persons, but the reality has been totally different. On the contrary the executive has maintained strict control over the judicial power. Therefore, the judicial machine will be ineffective in any case’.

Oral Submissions at the 47th Ordinary Session

71. At the 47th Ordinary Session of the African Commission, held from 12 to 26 May 2010, in Banjul, The Gambia, the Complainant, the Respondent State and the second victim made oral submissions to the African Commission.

72. The oral submissions made by all the parties were the same as the written submissions submitted to the African Commission above.

Decision on the Competence of the Commission

73. In the present Communication, the Complainant submits that the Communication fulfils all the requirements of Article 56 of the African Charter. The Respondent State on the other hand submits that: firstly, the African Commission is incompetent *ratione temporis* in terms of Article 65 of the African Charter, and secondly if the African Commission decides that it is competent *ratione temporis* to entertain the Communication, the Complainants have not fulfilled the requirements of Article 56(5) of the African Charter and as such, the African Commission should declare the Communication Inadmissible.

74. The Respondent State on the other hand argues that the African Charter came into force in 21 October 1986 and the Republic of Mozambique ratified the African Charter on 22 February 1988, and it came into force for Mozambique in February 1989.

75. The Respondent State submits that the African Commission is only competent to entertain allegations which occurred after the coming into force of the African Charter, or where, they constitute a continuing violation after the coming into force of the African Charter. The Respondent State further submits that since the facts which the African Commission is asked to consider in relation to both victims, preceded the coming into force of the African Charter, and as far as the Respondent State is concerned such facts have not continued subsequently, the African Commission is therefore incompetent *ratione temporis*.

76. The Complainant argues that the African Commission held in ***Krishna Achutan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chriwa) v Malawi***,⁶⁹ that 'it is a well established principle of international law that a new government inherits the previous government's international obligations, including responsibility of the previous government's misdeeds and mismanagements'. The Complainant submits that even if the Government in power did not commit the human rights abuses complained of, it is responsible for the reparation of these abuses. The Complainant further argues that in order to consider whether the African Commission is competent to entertain allegations of human rights violations that took place before the coming into force of the African Charter, the African Commission has to differentiate

⁶⁹ Krishna Achutan (on behalf of Aleke Banda) and others v Malawi.

between allegations of violations that are no longer perpetrated and violations that are ongoing⁷⁰.

77. The Complainant further argues that the African Commission needs to consider whether a disappearance is a continuous violation? The Complainant states that though the African Commission has not explicitly decided whether a disappearance leads to a continuous violation, in **Commission Nationale des Droits de l'Homme et des Libertes v Chad**⁷¹, the African Commission referred to the principle that conforms with the practice of other international human rights adjudicatory bodies. The Complainant argues that the African Commission's duty to protect human rights indicates that it may take decisions from other international bodies into consideration, where it is accepted that forced disappearances amounts to a continuous violation.

78. The Complainant submits that in the Inter-American Court on Human Rights, the Court in numerous cases, held that 'forced disappearance of human beings is a multiple and continuous violations of many rights under the Convention that the State Parties are obliged to respect and guarantee'.⁷² She also argues that the European Court of Human Rights have held that:

'there has been a continuous violation of Article 2 on account of the failure of the authorities of the Respondent State to conduct an effective investigation aimed at clarifying the whereabouts and fate of the Greek-Cypriot missing persons, who disappeared in life-threatening circumstances in respect of whom there is arguable claim that they were in custody at the time they disappeared'⁷³.

79. The Complainant submits that it must be concluded that the forced disappearance of the first victim and the failure of the Respondent State to investigate the case constitutes a continuous violation of human rights, and the African Commission is competent *ratione temporis*.

80. The African Commission holds that the fact that the events alleged occurred before the coming into force of the African Charter, is not sufficient to render the African Commission incompetent *ratione temporis*, because the African Commission is of the view that not only has the first victim been missing before the coming into force of the African Charter, he continues to be missing even after the coming into force of the Charter and to date, he is still missing.

81. In the view of the African Commission, every enforced disappearance violates a range of human rights including, the right to security and dignity of person, the right not

⁷⁰ Lawyers for Human Rights v Swaziland

⁷¹ Communication 74/92 - *Commission Nationale des Droits de l'Homme et des Libertes v Chad* (1995)

⁷² Inter-American Court on Human Rights (IACHR), *Velasquez v. Honduras*, 29 July 1988, Series C No.4, para. 155.

⁷³ European Court of Human Rights (ECHR), *Cyprus v. Turkey*, Application no. 25781/94, Judgment d.d.10 mei 2001

to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, the right to humane conditions of detention, the right to a legal personality, the right to a fair trial, the right to a family life and when the disappeared person is killed, the right to life.

82. It is worth mentioning that the Respondent State does not refute that the first victim was ordered to be arrested by the then Minister of Interior. The Respondent State does not deny that the first victim was in its custody at some point in time. In the present Communication, the first victim did not just vanish.

83. According to the facts before the African Commission, the first victim was arrested on 26 October 1974 on the orders of the then Minister of Home Affairs of the Transition Government of Mozambique, Mr Armando Guebuza. It should be noted that on this date, the African Charter was not in existence. The African Charter was adopted in 1981 and came into force in 21 October 1986. The Republic of Mozambique ratified the said African Charter on February 1988, and it came into force for Mozambique on 22 February 1989 in terms of Article 65 of the Charter. Is it possible therefore that a violation that occurred before the adoption, ratification and entry into force of an international instrument can be imputed on a State that was not a party to the treaty when the act was committed?

84. It is a well-established rule of international law that a State can be held responsible for its acts or omissions only if these acts and omissions are not in conformity with the obligations imposed on that State at the time that they were committed. However, in some cases, an act or an omission committed before the ratification of a human rights treaty may keep affecting the right(s) of a person protected under the treaty. A similar situation may be observed when an application is lodged with an international organ whose competence was recognized by the relevant State after the complained act or omission had been committed.⁷⁴ The effects of an event which occurred before the recognition might be continuing. Problems arising from these situations are generally resolved with reference to the doctrine of continuing violation under international law.

85. In the present Communication, the alleged act is enforced disappearance and the alleged lack of investigation on the part of the Respondent State. The question to ask at this juncture is can enforced disappearance, be considered a continuing violation?

86. The question whether or not a disappearance can be considered to be a continuing violation of the African Charter is relevant in this case for at least two reasons: the first is to determine the moment from when the time limit under Article 56(6) of the African Charter starts to run, and the second is a determination of the Admissibility of complaints concerning events which occurred before ratification of the African Charter by the Respondent State.

⁷⁴ Altıparmak Kerem, *The Application of the Concept of Continuing violation to the Duty to Investigate, Prosecute and Punish under International Human Rights Law* (1 January 2003). Available at SSRN: <http://ssrn.com/abstract=926281>

87. To determine whether 'disappearance' is a continuing violation, the African Commission has to clarify what is a continuing violation or a continuing act?

88. A continuing violation happens when an act is committed in a certain moment, but continues due to the consequences of the original act.⁷⁵ The doctrine of continuing violation has been used by several international tribunals to hold states accountable for acts or human rights violations which occurred before the state became a party to a particular treaty or recognized the competence of the tribunal.

89. In the Inter-American Human Rights system, the Inter-American Commission on Human Rights has used the doctrine of continuing violation on several occasions to exert its authority over failure to investigate a past violation on grounds that an ongoing failure violates victims' Convention-protected right to judicial protection. In ***Moiwana Village v. Suriname***,⁷⁶ the Inter-American Court of Human Rights examined the violation which occurred before Suriname's acceptance of the Court's jurisdiction, but which continued after it. The Court argued that its jurisdiction is based on the State's failure to investigate the facts which occurred before the Convention's ratification.

90. In ***Ovelario Tames v. Brazil***,⁷⁷ the victim was allegedly beaten by military police officers and found dead in a prison in October, 1988. The Inter-American Commission accepted its own jurisdiction on facts which occurred before Brazil ratified the American Convention. It stated that: 'The fact that Brazil has ratified the Convention on 25 September, 1992, does not exempt its responsibility for violations of human rights that occurred prior to that ratification...'

91. In ***Blake v. Guatemala***⁷⁸, an American journalist was executed by Guatemalan authorities before the State accepted the Tribunal's jurisdiction. In that case, Blake's forced disappearance lasted from 1985 until 1992, and in spite of the fact that his whereabouts were known by the Government authorities, his next of kin were not informed. The Guatemalan Government ratified the Convention in 1978 and accepted the jurisdiction of the Court in 1987, therefore, concerning the forced disappearance, the Court exerted its jurisdiction. According to the Court, the enforced disappearance was a continuous violation of the Convention rights.

92. All the above mentioned cases refer to continuing violation of rights which happened after the establishment of either the Inter American Commission or the Court, even if the events occurred before the related countries had ratified the Inter-America Convention.

⁷⁵ Lilian M. Yamamoto., Inter-American Commission of Human Rights -Feasibility Study of Atomic Bombing Case. Japan Association of Lawyers Against Nuclear Arms.

⁷⁶ Inter-Am. Ct. H.R. (ser. C) No. 124, at 1 (15 June, 2005)

⁷⁷ IACHR Report N? 19/98, Case No. 11.516, 21 February, 1998, Ann. Report . IACHR 1998.

⁷⁸ Inter-Am. Ct. H.R. (ser. C) No. 36, at 1 (2 July 1996).

93. Another issue that must be taken into account is the doctrine of instantaneous act, which should be distinguished from continuous violations. In case of a continuing act, the violation occurs and continues over a period of time until the violation ceases. In case of an instantaneous act, the violation itself does not continue over time, although the completion of such an act might take some time. This definition of continuous violations can be applied to acts of disappearances, which can be qualified as a violation that occurs and continues over time, until it ceases, that is, until the missing person is no longer disappeared. Nigel Rodley, the United Nations Special Rapporteur on Torture at the time until 2001, pointed out that: "[...] the idea of 'disappearances' constituting a continuing offence is logical, since non-acknowledgement of the detention and non-disclosure of the fate or whereabouts of detained persons are key elements in the offence itself."⁷⁹

94. In the present Communication, the Respondent State has not proved the whereabouts of first victim and neither has it demonstrated efforts made to investigate his whereabouts. The African Commission is of the view that the forced disappearance of the first victim constitutes a continuing violation of his human rights and for these reasons holds that it is competent *ratione temporis* to examine the matter.

The African Commission's Analysis on Admissibility

95. Having established that the African Commission is competent *ratione temporis* to entertain the Communication before it, the African Commission will now proceed to analyze Admissibility of the Communication.

96. The Admissibility of Communications within the African Commission is governed by the requirements of Article 56 of the African Charter. This Article provides seven requirements that must be met before the African Commission can declare a Communication Admissible. If one of the conditions/requirements is not met, the African Commission will declare the Communication Inadmissible, unless the Complainant provides sufficient justifications why any of the requirements could not be met.

97. Article 56(1) of the African Charter states that 'Communications relating to Human and Peoples' Rights...received by the Commission shall be considered if they indicate their authors even if the latter request anonymity...' The Communication indicates the author as well as the victims of the alleged violations, and the African Commission therefore holds that the requirement under Article 56(1) of the African Charter is fulfilled.

98. Article 56(2) of the African Charter states that 'Communications...received by the Commission shall be considered if they are compatible with the Charter of the Organisation of African Unity or with the present Charter.' The Communication is brought against the Republic of Mozambique which became a party to the African Charter on 22 February 1989 and the Communication alleges violations of the rights

⁷⁹ "An Analysis of International Instruments on 'Disappearance', *Nunca Más*, in *Human Rights Quarterly*, vol.19, 1997, p. 389.

contained in the African Charter, in particular, rights guaranteed under Article 2,4,5,6 and 7(1) (d) of the African Charter. The African Commission therefore holds that the requirements under Article 56(2) of the African Charter have been fulfilled.

99. Article 56(3) of the African Charter states that ‘Communications ...received by the Commission shall be considered 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 African Union (AU). The present Communication is not written in disparaging or insulting language directed at the State, its institutions or the AU, and for these reasons the African Commission holds that the requirement of Article 56(3) of the African Charter has been complied with.

100. Article 56(4) of the African Charter states that ‘Communications relating to human and peoples’ rights... shall be considered if they are not based exclusively on news disseminated through the mass media’. The Communication is not based exclusively on news disseminated through the mass media and there is evidence to show that the Communication is based on witness statements, a book and several reports of Human Rights Organisations. For these reasons, the African Commission holds that the requirement under Article 56(4) of the African Charter has been fulfilled.

101. Article 56(5) of the African Charter states that ‘Communications relating to human and peoples’ rights... shall be considered if they: are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged’. With regards to the first victim, the Complainant submits that the Respondent State has to prove that the first victim is still alive and bring him before a competent court of law in order to enable him to be tried in accordance with national and international fair trial standards.⁸⁰ The Respondent State has not proved that the first victim is alive, and the Complainant argues that there is substantial chance that the first victim has been executed and his execution has completely foreclosed such a remedy.

102. With respect to the second victim, the Complainant submits that he has made several attempts to exhaust local remedies during visits to Mozambique to find out the whereabouts of his father. It is submitted that in his attempt to deal with the whereabouts of his father, the second victim took the following measures:

- a) Sent a letter to the former President of Mozambique Joaquim Chissano with no response;
- b) Sent several letters to the current President of Mozambique, Sir Armando Emilio Guebuza on 15 August 2006, 12 September 2006 and 17 November 2006 respectively with no response;
- c) Sent a letter to Mr Bacre Waly Ndiaye: Special Rapporteur of Extrajudicial, Summary and Arbitrary Executions of the United Nations on 11 March 1996;

⁸⁰ Communication 250/02 - *Liesbeth Zegveld & Mussie Ephrem v Eritrea* (2003)

- d) Correspondence with Mrs. Marise Castro of Amnesty International dated 5 January 1996 and 11 March 1996 respectively.
- e) Attempted to engage Mozambican Lawyers to no avail, because, he alleges they were too afraid;
- f) Through his sister he tried to find another Mozambican Lawyer whom he allege was also not available for this case;
- g) Other family members of first victim undertook several actions such as seeking information from the police and prisons;
- h) Sister and mother contacted the former President of Mozambique, Samora Machel and even had an appointment with the President. He promised to support the case but later died in an air crash in 1986 and could not conclude the case.

103. The question to be asked at this juncture is 'what does exhaustion of local remedies entail?

104. The African Commission in *Institute of Human Rights and Development in Africa and Interights v Mauritania*⁸¹, made it clear that 'the generally accepted meaning of local remedies, which must be exhausted prior to any communication/complaint procedure before the African Commission, are the ordinary remedies of common law that exist in jurisdictions and normally accessible to people seeking justice'.

105. The African Commission is of the view that the measures taken by the second victim in paragraph 102 above, do not only fall short of the judicial remedies required to be exhausted, but they also do not seem to be institutionalized administrative remedies. The second victim seemed to have been exploring other possibilities other than judicial remedies. The Complainant's argument that the second victim approached lawyers who refused to take up the matter for fear of their lives has not been adequately substantiated – no dates have been indicated and there is no adequate indication of why the lawyers would be afraid to take up the matter.

106. 106. It is a general principle that the person who seizes the African Commission with a complaint is expected to demonstrate that he or she has complied with the requirements under Article 56 of the African Charter especially Article 56(5). The African Commission has developed in its jurisprudence that the person submitting the Communication (author or complainant) need not be the victim. All the author/Complainant needs to do is to comply with the requirements of Article 56.

⁸¹ Communication 242/01 - *Institute of Human Rights and Development in Africa and Interights v Mauritania*

107. The African Commission has thus allowed many Communications from authors acting on behalf of victims of human rights violations. Thus, having decided to act on behalf of the victims, it is incumbent on the author of a Communication to take concrete steps to comply with the provisions of Article 56 (5) or to show cause why it is impracticable to do so'. This was reiterated in **Article 19 v the State of Eritea**⁸², where the African Commission made it clear 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',⁸³

108. Therefore, local remedies could have been exhausted by the victim, the Complainant or any other person. The African Commission is thus not convinced that the Complainant or the victim in the present Communication attempted, to exhaust local remedies, and was unable to exhaust those remedies because they were not available, effective or sufficient. The African Commission is of the view that the measures taken by the second victim as stated above in paragraph 102, to deal with the matter, do not fall within the purview of the African Commission's meaning of domestic remedies. The African Commission, therefore, is of the opinion that local remedies were not attempted.

109. For the above reasons, the African Commission holds that the requirement of Article 56(5) of the African Charter has not been complied with.

110. Article 56(6) of the African Charter states that 'Communications relating to human and Peoples' Rights... shall 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 Complainants argue that because of fear of persecution, the second victim fled to France in 1983, and lived there until 1994. He later moved to the Netherlands in 1995, where he currently lives and works.

111. The African Commission notes the Complainant's arguments that while applying for refugee status in France, the second victim made a commitment not to undertake any legal action against Mozambique while living in France and due to lack of resources it was impossible to undertake legal action from France. The Complainant further states that when the second victim moved to the Netherlands in 1995, and obtained work, he was able to fund the resources in order to undertake legal action. He however made his first visit to Mozambique in 1995 and a second visit in 2007. This according to the Complainant explains why the matter was submitted to the African Commission only in 2008.

112. While noting the difficulties encountered by the second victim, the African Commission is of the view that, the second victim or the Complainant could have seized the African Commission as soon as the second victim or the Complainant was convinced that local remedies could not be exhausted. The Complainant submits that

⁸² Id, para 63

⁸³ Id. para 65.

the second victim visited Mozambique in 1995 and again in 2007 to deal with the matter and that in 1995 when the second victim visited Mozambique, it became clear that his father, the first victim, had been executed, and he decided to pursue legal action.

113. In the second victim's personal statement Annex V and in his oral submission to the African Commission at the 47th Ordinary Session, he stated that he visited Mozambique on average every two years, and spends three to four weeks although, he indicates that he did so after taking adequate security measures. One wonders why it took the Complainant over 13 years, from 1995 to 2008, to either bring a legal action in Mozambique or seize the African Commission. In ***Darfur Relief and Documentation Centre v. Republic of Sudan***⁸⁴, the African Commission held that '29 months after the exhaustion of local remedies, the Complainant submitting the complaint to the African Commission was unreasonable' and in ***Southern Africa Human Rights NGO Network and Others v. Tanzania***⁸⁵ the African Commission held that '11 years after the exhaustion of local remedies, the Complainant submitting the complaint to the Commission was considered unreasonable'. It is therefore the African Commission's view that the Complainant seizing the African Commission 13 years after which the Complainant could have submitted the Communication to the African Commission, is unreasonable.

114. For the above reasons, the African Commission holds that the requirement of Article 56(6) of the African Charter has not been fulfilled.

115. Article 56(7) of the African Charter states that 'Communications relating to human and Peoples' Rights... shall be considered if they: do not deal with cases which have been settled by these states involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter.' The Complainant submits that the Communication has not been submitted to any international body and as such this requirement has been met. The State has no objections and there is no evidence before the Commission to show that the Communication has been settled by another international body. The Commission therefore holds that this requirement has been fulfilled.

DECISION OF THE AFRICAN COMMISSION

116. Based on the above analysis, the African Commission on Human and Peoples' Rights decides:

- I. To declare the Communication Inadmissible because it does not comply with the requirements under Article 56 (5) and (6) of the African Charter;
- II. To give notice of this decision to the parties;
- III. To publish this decision on its 30th Activity Report.

⁸⁴ Communication 310/2005- *Darfur Relief and Documentation Centre V. Republic of Sudan*

⁸⁵ Communication 333/2006- *Southern Africa Human Rights NGO Network and Others v. Tanzania*

Done in Banjul, The Gambia during the 9th Extra-ordinary Session of the African Commission on Human and Peoples' Rights, 23 February to 3 March 2011.

**30TH ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN
AND PEOPLES' RIGHTS (AFRICAN COMMISSION)**

30TH ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (AFRICAN COMMISSION)

INTRODUCTION

201. This is the Thirtieth (30th) Activity Report of the African Commission on Human and Peoples' Rights (African Commission).

202. The Activity Report describes the activities undertaken by the African Commission during the Inter-Session period between the 48th and the 49th Ordinary Sessions of the African Commission 2011.

203. A substantial part of the Report is devoted to the proceedings of the 49th Ordinary Session.

49TH ORDINARY SESSION OF THE AFRICAN COMMISSION

Attendance at the Session

204. The following Members of the African Commission attended the 49th Ordinary Session:

- Honourable Commissioner **Reine Alapini-Gansou**, Chairperson;
- Honourable Commissioner **Mumba Malila**, Vice-Chairperson;
- Honourable Commissioner **Lucy Asuagbor**;
- Honourable Commissioner **Catherine Dupe Atoki**;
- Honourable Commissioner **Musa Ngary Bitaye**;
- Honourable Commissioner **Mohamed Bechir Khalfallah**;
- Honourable Commissioner **Soyata Maiga**;
- Honourable Commissioner **Kayitesi Zainabou Sylvie**; and
- Honourable Commissioner **Yeung Kam John Yeung Sik Yuen**.

205. Honourable Commissioner **Pansy Tlakula** was absent with apologies.

Opening Ceremony

206. Four hundred and eighty nine (**489**) participants attended the 49th Ordinary Session of the African Commission, including representatives from States Parties, International and Inter-Governmental Organizations, African Union Organs, National Human Rights Institutions (NHRIs), as well as African and International Non-Governmental Organizations (NGOs).

207. At the Opening Ceremony, statements were delivered in the following order:

- i) Honourable Commissioner Reine Alapini Gansou, Chairperson of the African Commission;
- ii) Mrs. Hannah Forster, Executive Director of the African Centre for Democracy

and Human Rights Studies, on behalf of NGOs;

- iii) H.E. Mrs. Julia Dolly Joiner, Commissioner, for Political Affairs at the African Union Commission (AUC);
- iv) Commissioner Lindiwe Mockate, Commissioner of the South African Human Rights Commission, on behalf of the Network of NHRIs;
- v) Honourable Justice A. B. Akuffo, Vice-President of the African Court on Human and Peoples' Rights;
- vi) The Honourable Minister Delegate in Charge of Human Rights of the Republic of Senegal, Honourable Madam Coumba Gaye, on behalf of AU Member States, and
- vii) Mrs. Isatou Albert Graham, Principal State Counsel, representing the Honourable Attorney General and Minister of Justice of The Gambia on behalf of the Government of The Gambia.

208. Summaries of their statements are included in the Report of the 49th Ordinary Session of the African Commission.

Agenda of the Session

209. The Agenda of the Session is attached to this Report as **Annex I**.

Cooperation and Relationship with NHRIs and NGOs

210. In accordance with its Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the Field of Human and Peoples' Rights: Res.33 (XXV) 99, the African Commission considered applications for Observer Status from ten (10) NGOs, and granted Observer Status to all of them. These 10 NGOs are:

- i) Ligue Togolaise des Droits de l'Homme
- ii) Right to Information Initiative
- iii) Zimbabwe Women Lawyers' Association
- iv) Southern African Litigation Centre
- v) Dignity International
- vi) Action International pour la Paix et le Développement dans la Région des Grands Lacs
- vii) Réseau des Défenseurs des Droits de l'Homme en Afrique Centrale
- viii) Defender International
- ix) IPAS Africa Alliance
- x) Ogiek Peoples' Development Project.

211. This brings the total number of NGOs with Observer Status before the African

Commission to four hundred and twenty-eight (428).

Applications for Affiliate Status

212. There were no applications for Affiliate Status by National Human Rights Institutions (NHRIs). Consequently, the number of NHRIs with Affiliate Status with the African Commission remains at twenty two (22).

Statements on the Human Rights Situation

213. During the Session, the following States Parties made statements on the human rights situations in their respective countries during the Inter-Session: the Republic of Algeria, Burkina Faso, the Arab Republic of Egypt, the Democratic Republic of Congo, the Federal Democratic Republic of Ethiopia, the Islamic Republic of Mauritania, the Great Socialist People's Libyan Arab Jamahiriya, the Federal Republic of Nigeria, the Sahrawi Arab Democratic Republic, the Republic of Mali, the Republic of Niger, the Republic of Senegal, the Republic of South Africa, the Republic of the Sudan, the Republic of Tunisia, the Republic of Uganda, the United Republic of Tanzania and the Republic of Zimbabwe.

214. Representatives of AU Organs, International and Inter-Governmental Organisations, and NHRIs also addressed the African Commission on various human rights issues on the continent. The Institutions that took the floor under this Item included the African Committee of Experts on the Rights and Welfare of the Child, the International Organisation of the Francophonie, the International Committee of the Red Cross, the National Human Rights Commission of Algeria, the National Human Rights Commission of Burkina Faso, the National Human Rights Commission of Guinea Bissau, the Kenya National Commission on Human Rights, the South African Human Rights Commission, and the Rwandan Human Rights Commission. The common thread running through the statements made by these Institutions is the need for continued cooperation between these Institutions and the African Commission, to ensure better promotion and protection of human rights on the continent.

215. In addition, a total of thirty-seven (**37**) NGOs that have Observer Status with the African Commission also made statements on the human rights situation in Africa.

Inter-Session Activities of Members of the African Commission

216. The Chairperson, the Vice-Chairperson and the members of the African Commission presented reports on the various activities which they undertook during the Inter-Session. These reports covered activities undertaken in their capacities as members of the African Commission, as Special Rapporteurs, and as members of Special Mechanisms of the Commission. These Reports are attached to this Report as **Annex II**.

Consideration of State Reports under Article 62 of the Charter

217. In accordance with Article 62 of the African Charter, the African Commission considered the Periodic Reports of Burkina Faso, the Great Socialist Peoples' Libyan Arab Jamahiriya, the Republic of Namibia and the Republic of Uganda.

218. Following constructive discussions with the respective State Parties, the African Commission adopted Concluding Observations on the Periodic Report the Republic of Namibia, and deferred the consideration of Concluding Observations on the Periodic Reports of Burkina Faso and the Great Socialist Peoples' Libyan Arab Jamahiriya to its 10th Extra-Ordinary Session which is slated for 6 -9 August 2011, in Kigali, Rwanda.

219. The Concluding Observations on the Periodic Report of the Republic of Uganda could not be adopted as the Ugandan Delegation was unable to provide any response to the questions and observations made by the Commission during examination of the Report but promised to do so at a later date.

Status of States Parties' Compliance with Article 62 of the African Charter

220. As at the 49th Ordinary Session, the status of submission and consideration of the Periodic Reports of States Parties is as follows:

- i) Twelve (12) States Parties are up to date with their Periodic Reports (Botswana, Burkina Faso, Cameroon, Congo Brazzaville, DRC, Ethiopia, the Great Socialist Libyan Arab Jamahiriya, Mauritius, Namibia, Nigeria, Rwanda, and Uganda);
- ii) Eight (8) States Parties are behind in their reporting obligations by one Periodic Report (Algeria, Benin, Kenya, Madagascar, the Sudan, Tanzania, Zambia and Zimbabwe);
- iii) Eight (8) States Parties are behind in their reporting obligations by two Periodic Reports (CAR, Egypt, Mauritania, SADR, Senegal, Seychelles, South Africa and Tunisia);
- iv) One State Party, Togo, is behind in its reporting obligations by three Periodic Reports;
- v) Eleven (11) States Parties are behind in their reporting obligations by more than 3 Periodic Reports (Angola, Burundi, Cape Verde, Chad, The Gambia, Ghana, Republic of Guinea, Lesotho, Mali, Mozambique, Namibia and Swaziland)
- vi) Thirteen (13) States have never submitted Periodic Reports to the African Commission (Comoros, Djibouti, Equatorial Guinea, Eritrea, Gabon, Guinea Bissau, Ivory Coast, Liberia, Madagascar, Malawi, Sao Tome and Principe, Sierra Leone and Somalia).

221. A detailed computation of the status of submission is attached hereto as **Annex**

III.

222. The African Commission congratulates those States Parties that are up to date with their Reports, and continues to urge those that have not yet done so, to submit their Reports to the African Commission in compliance with their obligations under Article 62 of the African Charter on Human and Peoples' Rights (African Charter). The Commission further reminds States Parties that all overdue Reports can be combined into a single Cumulative Periodic Report.

Report of the Secretary to the African Commission

223. The Report of the Secretary to the Commission set out various administrative developments during the Inter-Session, including feedback on the various tasks assigned to the Secretariat by the Commission. In addition, the Report analyzed the new Rules of Procedure in relation to the work, practice and operational modalities of the African Commission and its Secretariat, and made proposals for the consideration of the Commission.

224. Among other things, the Report called attention to the continuing chronic understaffing at the Commission's Secretariat, and underscored the imperative to accelerate and expedite recruitment of staff for the Secretariat. Quite clearly, the staffing situation has reached such critical levels that **it is no longer physically possible for the Secretariat** to provide the Commission with the support which it needs to function effectively and deliver on the mandate entrusted to it.

225. The Report also recalled Executive Council Decision EX.CL/446(XIII) which calls upon the African Commission, in collaboration with the AUC, to take the necessary steps to have the status of the African Commission as an Organ of the AU regularized. The Report stressed the need for this to be done as soon as possible, in order to streamline the institutional arrangements between AUC and the African Commission on account of Article 41 of the African Charter on Human and Peoples' Rights, so that the African Commission can operate like other AU Organs.

Consideration of Communications

226. A total of eighty-three (83) Communications were tabled before the African Commission: six (6) on Seizure; fifty-two (52) on Admissibility; twenty-four (24) on the Merits; and one (1) on Review.

227. The African Commission decided to be seized of the following five (5) Communications:

- i) Communication 396/11 – Mr El Sharkawi (represented by Egyptian Initiative for Personal Rights and Organization for Social Justice v Egypt;
- ii) Communication 397/11 - Omo Valley and Lake Turkana Communities v Kenya and Ethiopia;

- iii) Communication 398/11 - Institute for Human Rights and Development in Africa and Congolese Human Rights Observatory v DRC;
- iv) Communication 399/11 – Minority Rights Group International and UNIPROBA (on behalf of the Bahakwaninda family) v Burundi;
- v) Communication 400/11 – West African Network of Human Rights Defenders and the Ivorian Coalition of Human Rights Defenders (on behalf of the people of Cote d’Ivoire) v Cote d’Ivoire.

228. The African Commission deferred consideration of seventy-seven (77) Communications to its 10th Extra-Ordinary Session, for various reasons, including time constraints and lack of response from one or both parties.

Consideration of Various Reports and Documents

229. The African Commission examined and adopted the Reports of the Research and Information Visit of its Working Group on the Rights of Indigenous Peoples/Communities in Africa to the Republic of Congo, and to the Democratic Republic of Congo.

230. The Commission considered the Report of the Research and Information Visit of its Working Group on Indigenous Peoples/Communities to the Republic of Kenya, and decided to defer its adoption pending additional work.

231. On the issue of referral of cases to the African Court, the Commission requested the Secretariat to do further research and propose criteria for referral of cases, for the Commission’s consideration during the 10th Extra-Ordinary Session.

232. The African Commission considered and adopted reports of promotional missions undertaken by various members of the Commission to the Republics of Mozambique and Angola, and the Islamic Republic of Mauritania.

Resolutions

233. The African Commission adopted the following Resolutions:

- i) Resolution on the Appointment of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;
- ii) Resolution on the Rights of Indigenous Women in Africa;
- iii) Resolution on the Appointment of Members of the Research Team on the Study of Freedom of Association in Africa;
- iv) Resolution on the Safety of Journalists and Media Practitioners in Africa;

- v) Resolution on the Renewal and Extension of the Mandate of the Advisory Committee on Budgetary and Staff Matters;
- vi) Resolution on the Nomination of Expert Members to the Working Group on the Rights of Older Persons and People with Disabilities in Africa.

Report of the 49th Ordinary Session

234. The African Commission deferred consideration and adoption of the 49th Ordinary Session Report to the 50th Ordinary Session, due to time constraints.

Dates and Venue of the 50th Ordinary Session

235. The African Commission decided to hold the 50th Ordinary Session from 24 October to 7 November 2011, at a venue still to be determined.

9TH EXTRA-ORDINARY SESSION OF THE AFRICAN COMMISSION

236. The African Commission held its 9th Extra-Ordinary Session from 23 February to 3 March 2011, in Banjul, The Gambia. The Extra-Ordinary Session was convened to deal with some urgent and outstanding matters, including the 2011 and 2012 budget, program of activities for the year and Communications.

237. The following members of the African Commission participated:

- i) Honourable Commissioner Reine Alapini-Gansou, Chairperson;
- ii) Honourable Commissioner Mumba Malila, Vice-Chairperson;
- iii) Honourable Commissioner Musa Ngary Bitaye;
- iv) Honourable Commissioner Catherine Dupe Atoki;
- v) Honourable Commissioner Kayitesi Sylvie Zainabo;
- vi) Honourable Commissioner Soyata Maiga;
- vii) Honourable Commissioner Mohamed Bèchir Khalfallah;
- viii) Honourable Commissioner Lucy Asuagbor.

238. Honourable Commissioners Pansy Tlakula, Mohamed Fayek, and Yeung Kam John Yeung Sik Yuen were absent with apologies.

239. The 9th Extra-Ordinary Session considered seven Communications. It was seized of one; it considered four on Admissibility, one on Review and one on Merits. One of the Communications considered on Admissibility was declared admissible, one was deferred, and two were declared inadmissible – the latter are attached hereto as **Annex IV. Communication 334/07 – EIPR and INTERIGHTS v Arab Republic of Egypt**, decided on the Merits is being finalized and will be attached to the next Activity Report of the Commission.

240. The African Commission considered the human rights situation in Northern Africa and Cote d'Ivoire, after which it issued Press Statements on the Human Rights Situation in Northern Africa and in Cote d'Ivoire.

241. The Commission also adopted the following Resolutions:

- i) Resolution on the Human Rights Situation in the Great Socialist People's Libyan Arab Jamahiriya;
- ii) Resolution on the Human Rights Situation in the Republic of Tunisia;
- iii) Resolution on the Human Rights Situation in the Arab Republic of Egypt;
- iv) Resolution on the Human Rights Situation in the People's Democratic Republic of Algeria;
- v) Resolution on the Human Rights Situation in the Republic of Cote d'Ivoire;
- vi) Resolution on the Electoral Process and Participative Governance in the Republic of Benin;
- vii) Resolution on the Electoral Process and Participative Governance in the Federal Republic of Nigeria.

242. In addition, the African Commission considered the issue of cases to be referred to the African Court on Human and Peoples' Rights, and requested the Secretariat to identify cases for its consideration in this regard.

243. The African Commission also adopted its 48th Ordinary Session Report and reviewed paragraph 158 of its 29th Activity Report, in line with Executive Council Decision: EX.CL/Dec.639 (XVIII) on the 29th Activity Report of the African Commission, made during the 18th Session of the Executive Council held in Addis Ababa, Ethiopia, from 27 to 28 January 2011.

CONSTRUCTION OF THE HEADQUARTERS OF THE AFRICAN COMMISSION

244. The Commission continued to follow up on the construction of a permanent Headquarters for the African Commission. The Deputy Chairperson of the AUC also raised the matter when he paid a courtesy call on the Attorney General and Minister of Justice of the Republic of The Gambia on 28th February 2011, during his visit to The Gambia. Thereafter the host authorities requested the Secretariat to re-submit the relevant documentation, which was duly done.

THE STATUS OF HUMAN AND PEOPLES' RIGHTS ON THE CONTINENT

245. It will be recalled that paragraph 2 of Executive Council Decision EX.CL/Dec.639 (XVIII), adopted during the 18th Ordinary Session of the Council, in Addis Ababa, Ethiopia, from 27 to 28 January 2011 *"calls on the ACHPR to include in future reports, the status of human and peoples' rights in the continent"*.

246. This new section on the status of human rights in Africa, is drawn from the Periodic Reports submitted to it by States Parties, the Inter-Session Activity Reports of

members of the Commission and its Special Mechanisms, the reports of the promotion missions undertaken by the members of the Commission to various State Parties, the missions as well as study and information visits carried out by the Commission's Special Mechanisms, the reports and appeals made by or on behalf of alleged victims of human rights abuses in different parts of the continent, the interventions made during the Commission's Sessions and from reports received at the Commission's Secretariat.

247. A review of all these sources reveals that the continent has witnessed quite a number of positive developments in the field of human and peoples' rights. For instance, the organization of the Referendum in Southern Sudan, which is expected to usher in the birth of the world's youngest Nation State, is a good example of the exercise of a people's right to self-determination as provided for in Article 21 of the African Charter.

248. The right to political participation as provided for in Article 13 of the African Charter was also given a boost during the Inter-Session with the organization of elections in the Republic of Benin (27 February 2011), the Republic of Niger (12 March 2011), the Federal Republic of Nigeria (16 April 2011), the Republic of Uganda (18 February 2011), the Republic of Chad (25 April 2011) the Referendum in the Arab Republic of Egypt (19 March 2011) and the Referendum in the Sudan as already alluded to in the preceding paragraph.

249. The adoption by the Republic of Congo of Law No 05 on the Promotion and Protection of the Rights of Indigenous Populations on 25 February 2011, which is the first of its kind in Africa, is a very positive development that will go a long way in enhancing the protection of the rights of indigenous communities, and, indeed, should be emulated by other States Parties that have indigenous populations.

250. Africa has also witnessed the adoption of progressive laws and the ratification of international and regional human rights instruments in a number of States Parties, aimed at enhancing the realization of human and peoples' rights. The Democratic Republic of Congo, the Republic of Gabon and Burkina Faso ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Republic of Gabon and the Republic of Zambia ratified the AU Convention for the Assistance and Protection of Internally Displaced Persons in Africa. The Republic of Djibouti ratified the African Charter on the Rights and Welfare of the Child. The Republic of South Africa ratified the African Charter on Democracy, Elections and Governance. Burkina Faso, the Republic of Ghana, the Republic of Malawi, the Republic of Mali and the United Republic of Tanzania have all made the Declaration under Article 34 (6) of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples Rights, giving individuals and NGOs, direct access to the African Court. The African Commission commends these States Parties and encourages those that have not yet done so to make the Declaration.

251. Some States Parties have enacted laws that directly target and promote the rights of older persons (Mauritius) and the physically challenged (Uganda); others have put in place educational systems that are specifically tailored to suit the mobile lifestyles of their indigenous populations/communities (Namibia). Others have promulgated laws that

create child friendly courts and enable children to give evidence in camera (Zimbabwe); others impose taxes to support national HIV/AIDS schemes (Zimbabwe). Yet others have adopted community service as an alternative to imprisonment (Nigeria's Lagos State and Zimbabwe); others have built model prisons, while yet others have incorporated some of the Commission's Robben Island Guidelines into the training manuals of their law enforcement agencies as a follow-up to their constructive engagements with the Special Mechanisms of the Commission, especially the Committee for the Prevention for Torture in Africa.

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252. On the downside, the African Commission has continued to receive reports of human rights violations from many parts of the continent. The violations complained of include arbitrary arrests, arbitrary detentions, torture, ill-treatment, harassment, as well as assassination of journalists, human rights defenders and individuals in some States Parties. Concerns relating to discrimination, marginalization, prejudices, stereotyping and exclusion from political participation of vulnerable groups such as women, indigenous populations, people living with HIV/AIDS, and sexual minorities were also brought to the attention of the African Commission.

253. The situation in prisons and other places of detention in several States Parties, characterised by recurrent challenges such as high levels of overcrowding, disease, malnutrition, torture and ill-treatment of inmates and long pre-trial detention periods were also brought to the attention of the African Commission.

254. The realization of economic, social and cultural rights provided for in the African Charter continues to be an elusive goal despite the credible efforts of many States Parties. Adequate provision of healthcare, education, water, employment, adequate shelter, social security and food, is still to be achieved in many parts of the continent.

255. Similarly, the Commission continues to be concerned about alleged religious intolerance, as was reportedly the case with the clashes that erupted in Jos, Nigeria in the first quarter of 2010 and in Egypt in the first quarter of this year.

256. The Commission is concerned about the fact that not all States Parties have established National Human Rights Institutions (NHRIs) and that not all of those NHRIs that have been established comply with the Paris Principles. In addition, the bulk of those NHRIs that exist are woefully under-resourced.

257. The issues/situations mentioned above are not exhaustive, but rather serve to provide an idea of some of the human rights challenges that face the continent.

258. In the exercise of its mandate, the African Commission has taken certain measures with respect to the reports and allegations of human rights violations.

- i)* In respect of the alleged religious clashes in the Jos region of Nigeria in 2010, the African Commission brought the matter to the attention of the AU Peace and Security Council in line with Articles 3 and 19 of the Protocol Relating to the Establishment of the Peace and Security Council of the

African Union; the Commission also requested authorization from the Nigerian authorities to undertake a Fact-Finding mission to the region and a response to the request is still awaited.

- ii)* Concerning the case of the Great Socialist People's Libyan Arab Jamahiriya, the Commission referred the matter to the African Court on Human and Peoples' Rights and the Court has since issued provisional measures on the same.
- iii)* With regards to the other human rights challenges, the African Commission sent Urgent Appeals to the authorities of the concerned States Parties requesting them to take appropriate remedial action if the allegations were true; it made recommendations to States Parties on how to address the issues concerned; it adopted Resolutions, and issued Press Statements, as appropriate.

259. The African Commission remains committed to constructively engaging with States Parties and all other stakeholders in order to inculcate a culture of human rights observance in Africa, because ensuring the promotion, protection and enjoyment of human rights on the continent is our collective responsibility under the African Charter and other international norms.

SUBMISSION OF THE THIRTIETH ACTIVITY REPORT

260. In accordance with Article 54 of the African Charter on Human and Peoples' Rights, the African Commission submits the present 30th Activity Report to the 20th Ordinary Session of the Executive Council of the African Union, for consideration and onward transmission to the 17th Summit of the AU Heads of State and Government.

ANNEX I
AGENDA OF THE 49TH ORDINARY SESSION

Item 1: Opening Ceremony (Public Session)

Item 2: Adoption of the Agenda (Private Session)

Item 3: Organization of Work (Private Session)

Item 4: Commemorative Activities for the 30th Anniversary of the African Charter on Human and Peoples' Rights(Public Session)

Item 5: Human Rights Situation in Africa (Public Session)

- l) Statement of the African Commission on the Status of Human and Peoples' Rights on the continent;
- m) Statements by State Delegates;
- n) Statement by African Union Organs with a Human Rights Mandate;
- o) Statements by Intergovernmental and International Organizations;
- p) Statements by National Human Rights Institutions;
- q) Statements by NGOs.

Item 6: Cooperation and Relationship with National Human Rights Institutions (NHRIs) and Non-Governmental Organizations (NGOs) (Public Session)

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

Item 7: Consideration of State Reports (Public Session)

- e) Status of Submission of State Party Reports
- f) Consideration of the :

- (i) Periodic Report of the Republic of Burkina Faso;
- (ii) Periodic Report of the Peoples' Bureau of the Great Socialist People's Libyan Arab Jamahiriya;
- (iii) Periodic Report of the Republic of Namibia;
- (iv) Periodic Report of the Republic of Uganda.

Item 8: Activity Reports of Members of the Commission & Special Mechanisms (Public Session)

- e) Presentation of the Activity Reports of the Chairperson, Vice-Chairperson and Members of the ACHPR;
- f) 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 Committee for the Prevention of Torture in Africa;
 - 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 the Rights of Older Persons and People with Disabilities in Africa;
 - xi. Chairperson of the Committee on the Protection of the Rights of People Living with HIV (PLHIV);

- xii. Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa.

Item 9: Consideration of: (Private Session)

- (f) Reports of the Research and Study Visit of the Working Group on the Rights of Indigenous Peoples/Communities in Africa to:
- iv) The Republic of Kenya;
 - v) The Democratic Republic of Congo;
 - vi) The Republic of Congo
- (g) Document on the Study of the Question of the Death Penalty in Africa;
- (h) Transfer of Cases to the African Court on Human and Peoples' Rights;
- (i) Nomination of Experts on the Working Group on Older Persons and People with Disabilities in Africa; and
- (j) Nomination of an Expert from North Africa to join the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa.

Item 10: Consideration and Adoption of Draft Reports of (Private Session)

- a) Promotion Missions to the Republic of Mozambique.
- b) Mission of Special Mechanisms to the:
- i. Republic of Tunisia
 - ii. Republic of Angola

Item 11: Consideration of Communications: (Private Session)

Item 12: Report of the Secretary to the Commission: (Private Session)

Item 13: Consideration and Adoption of (Private Session)

- e) Resolutions;
- f) Concluding Observations on the:
- Periodic Report of the Republic of Burkina Faso;
 - Periodic Report of the Peoples' Bureau of the Great Socialist People's Libyan Arab Jamahiriya;
 - Periodic Report of the Republic of Namibia;

- Periodic Report of Uganda.

Item 14: Dates and Venue of the 50th Ordinary Session of the ACHPR (Private Session)

Item 15: Any Other Business (Private Session)

Item 16: Adoption of: (Private Session)

- e) 49th Session Report;
- f) 29th Activity Report;
- g) 30^h Activity Report;
- h) Final Communiqué of the 49th Ordinary Session; and

Item 17: Reading of the Final Communiqué and Closing Ceremony (Public Session)

Item 18: Press Conference (Public Session)

EX.CL/717 (XX)
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**31ST ACTIVITY REPORT OF THE AFRICAN COMMISSION ON
HUMAN AND PEOPLES' RIGHTS
(AFRICAN COMMISSION)**

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
31 Bijilo Annex Layout, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 4410505 / 4410506; Fax: (220) 4410504 E-mail: au-banjul@africa-union.org ; Web www.achpr.org		

REV.5

31ST ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (AFRICAN COMMISSION) *Submitted in Accordance with* *Article 54 of the African Charter on Human and Peoples' Rights*

INTRODUCTION

1. This is the Thirty-First (31st) Activity Report of the African Commission on Human and Peoples' Rights (the African Commission).
2. The Activity Report presents the activities undertaken by the African Commission during the Intersession period between the 49th and the 50th Ordinary Sessions of the Commission in 2011. A substantial portion of this report is also devoted to the proceedings of the 50th Ordinary Session.

50TH ORDINARY SESSION OF THE AFRICAN COMMISSION

Attendance at the Session

3. sAll members of the African Commission except one attended the Session; namely; Commissioners **Catherine Dupe Atoki, Kayitesi Zainabo Sylvie, Lucy Asuagbor, Reine Alapini-Gansou, Maya Sahli Fadel, Med S. K. Kaggwa, Soyata Maiga, Pacifique Manirakiza** and **Yeung Kam John Yeung Sik Yuen**. Commissioner **Mohamed Bechir Khalfallah** was absent due to illness. Commissioner **Faith Pansy Tlakula** left mid-session, with apologies.
4. The Session was attended by three hundred and seventy three (373) participants, including representatives from State Parties, International and Inter-Governmental Organizations, Organs of the African Union, National Human Rights Institutions (NHRIs), African and International Non-Governmental Organizations (NGOs), as well as other observers.
5. Five new Commissioners were sworn in during the 50th Ordinary Session: namely Commissioners Reine Alapini Gansou (re-elected), Maya Sahli Fadel (elected),

Med S. K. Kaggwa (elected), Pacifique Manirakiza (elected) and Faith Pansy Tlakula (re-elected).

6. The Commission elected Commissioner Catherine Dupe Atoki as its Chairperson and Commissioner Kayitesi Zainabo Sylvie as its Vice-Chairperson, for the next two years.

7. Two NGOs, the **Gambia Press Union** and the **East African Law Society**, were granted Observer Status by the African Commission in accordance with the Commission's 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]. This brings the total number of NGOs with Observer Status before the African Commission to four hundred and thirty (430).

8. The following State Parties made statements on human rights situations in their respective countries: Algeria, Angola, Burkina Faso, Burundi, Egypt, Cote d'Ivoire, Ethiopia, Kenya, Lesotho, Mauritania, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Senegal, South Africa, Sudan, Tunisia, Uganda and Zimbabwe.

9. The African Committee of Experts on the Rights and Welfare of the Child, the African Court on Human and Peoples' Rights (the African Court), the International Committee of the Red Cross and the United Nations Expert Mechanism on the Rights of Indigenous Peoples also delivered statements during the Session.

10. The Network of African National Human Rights Institutions (NANHRI) was represented by the South Africa Human Rights Commission; one NHRI took the floor on the human rights situation in Africa and forty-three (43) NGOs made interventions before the African Commission.

Intersession Activities of Members of the African Commission

11. The members of the African Commission presented reports of their activities during the intersession period. The reports covered activities undertaken in their capacities as Commissioners and as members of the Commission's Special Mechanisms. Some of the activities undertaken include the following:-

- i. Commissioner Mohamed Béchir Khalfallah undertook a promotion country visit to the Central African Republic, jointly with Commissioner Lucy Asuagbor, the Special Rapporteur on Human Rights Defenders, in June 2011;
- ii. The Special Rapporteur on the Rights of Women in Africa undertook a promotion mission to Niger, in conjunction with other special mechanisms of the African Commission, in July 2011;

- iii. The Special Rapporteur on Prisons and Other Places of Detention in Africa undertook a mission to Nigeria in August 2011; she also organized a stakeholders' strategy session on implementing penal reforms recommendations in Lagos, in August and September 2011, respectively;
- iv. The Chairperson of the Committee on the Protection of the Rights of Persons Living with HIV/AIDS and those at Risk organized the second meeting of the Committee and also undertook an information visit on HIV/AIDS to Kenya, in October 2011;
- v. The bi-annual meeting of the Working Group on Indigenous Populations/Communities in Africa was held Congo-Brazzaville, in August 2011;
- vi. The Working Group on the Death Penalty in Africa held a meeting in Pretoria, South Africa, in August 2011;
- vii. The Chairperson of the Committee for the Prevention of Torture in Africa organized a workshop on the effective functioning of the Senegalese National Prevention Mechanism Dakar, Senegal, in July 2011; she also finalized and adopted a Strategic Plan which will enhance efforts on the prevention of torture, in October 2011;
- viii. The African Commission held a Moot Court competition in Banjul, The Gambia to commemorate Africa Human Rights Day, on 21 October 2011;
- ix. The African Commission held a Colloquium to commemorate the 30th Anniversary of the African Charter on Human and Peoples' Rights, in Banjul, The Gambia, on 22-23 October 2011;
- x. The Working Group on Indigenous Populations/Communities in Africa held a meeting, in Banjul, The Gambia on 23-24 October 2011;
- xi. The Working Group on Economic, Social and Cultural Rights launched the Principles on the Implementation of Economic, Social and Cultural Rights in the African Charter and the Guidelines on Reporting by the State Parties on Economic, Social and Cultural Rights Under the African Charter, in Banjul, The Gambia on 25 October 2011;
- xii. The Chairperson as well as two Members of the Working Group on the Rights of Older Persons and People with Disabilities participated in a meeting in Cape Town, South Africa, in October 2011 on the Rights of Older Persons and People with Disabilities;
- xiii. The Special Rapporteur on Freedom of Expression and Access to Information in Africa organized a series of consultations on the Draft Model Law for AU Member States on Access to Information: on 27 to 29 June in

Maputo, Mozambique; 28 to 31 August in Nairobi, Kenya; and 10 to 12 October in Dakar, Senegal.

Consideration of State Reports

12. The African Commission considered the Periodic Reports of Nigeria, Togo and Burundi. It adopted Concluding Observations on the Report of Nigeria, and deferred consideration of the Concluding Observations on the Reports of Togo and Burundi to the 51st Ordinary Session pending receipt of additional information from Burundi and Togo, as requested by the African Commission.

13. The Commission also adopted the Concluding Observations on the Periodic Reports of Burkina Faso and Uganda, which had been deferred from the 49th Ordinary Session.

Compliance with Article 62 by State Parties

14. As of the end of the 50th Ordinary Session, the status of submission of Periodic Reports by State Parties is as follows:

- a) State Parties that are up to date with their Periodic Reports – eleven (11); [Botswana, Burkina Faso, Cameroon, Congo Brazzaville, Democratic Republic of Congo, Ethiopia, Libya, Mauritius, Namibia, Rwanda, Uganda]
- b) State Parties that are behind in their reporting obligations by **one** Report - eight (8); [Algeria, Benin, Kenya, Madagascar, Sudan, Tanzania, Zambia, Zimbabwe]
- c) State Parties that are behind in their reporting obligations by **two** Reports - six (6); [Central African Republic, Egypt, Mauritania, Seychelles, South Africa, Tunisia]
- d) State Parties that are behind in their reporting obligations by **three** Reports - three (3); [Senegal, Niger, Sahrawi Arab Democratic Republic]
- e) State Parties that are behind in their reporting obligations by **more than three** Reports - ten (10); [Cape Verde, Chad, Eritrea, Gambia, Ghana, Guinea Republic, Lesotho, Mali, Mozambique, Swaziland]
- f) State Parties that have **never** submitted a report to the Commission - eleven (11); [Comoros, Cote d'Ivoire, Djibouti, Equatorial Guinea, Gabon, Guinea Bissau, Liberia, Malawi, Sao Tome & Principe, Sierra Leone, Somalia]
- g) State Parties whose periodic reports were considered during the 50th Ordinary Session – three (3); [Nigeria, Togo, Burundi]

- h) State Parties whose Periodic Reports are before the African Commission for consideration – one (1); [Angola]
- i) State Party whose Initial Report is not yet due – one (1). South Sudan attained independent statehood on 9 July 2011 and was formally admitted as a Member of the African Union on 15 August 2011. Its Initial Report is due in 2013.

Report of the Secretary to the Commission

15. The Report presented by the Secretary to the 50th Ordinary Session briefed the Commission on staffing and administrative matters, and developments during the intersession, among others. She indicated that the staffing situation had improved slightly, but that more staff were still needed. She called attention to some human rights situations that had been referred to the Commission, and highlighted various issues for consideration and decision by the Commission, such as the need for the Commission to review the way it handles Communications, with a view to improving it. She also briefed the Commission on the reasons why the 29th and 30th Activity reports were not adopted at the African Union Summit, including the bulk of the Activity Reports.

Construction of the Headquarters of the Commission

16. The Commission continues to follow up on this matter with the Host Government but there has been no progress thus far.

Consideration of Communications

17. The African Commission considered ninety two (92) Communications; three of which were transferred by the African Court to the Commission. It was seized with six (6). Three (3) communications which were considered for seizure did not meet the requirements. It considered three (3) on admissibility and one (1) on the merits.

18. The African Commission decided to dismiss four (4) Communications for want of diligent prosecution. These are:-

- i. Communication 350/07- Sizalobuhle Moyo Mpofu v. Zimbabwe
- ii. Communication 352/07- Sarah Mwatenga v. Zimbabwe
- iii. Communication 358/08- Zimbabwe Exiles Forum v. Zimbabwe
- iv. Communication 364/08- Jurists and Journalists for the Defence of Human Rights and Citizenship Rights v. Angola

19. One Communication was withdrawn by the Complainant because the subject matter before the African Commission was dealt with by the Constitutional Court in Sudan, namely Communication 311/05- Riffaat Makkawi v. Sudan.

20. Seventy-four (74) communications were deferred to the next Session, in the majority of cases due to failure by one or both parties to make submissions.

Reports and Documents

21. The Commission deliberated on and adopted the following reports: Reports of the missions of the Special Rapporteur on Prisons and Conditions of Detention in Africa to Tunisia and Nigeria; Report of the Research and Information Visit to Kenya by the Working Group on Indigenous Populations/Communities in Africa; Reports of the joint promotional missions to Algeria and Cameroon; and the Study on the Question of the Death Penalty in Africa.

Resolutions

22. The Commission adopted **twelve (12)** Resolutions relating to the renewal and reconstitution of its Special Mechanisms. It also adopted a Resolution reconstituting the membership of its Advisory Committee on Budgetary and Staff Matters and extending its mandate, and adopted a Resolution Establishing a Working Group on Communications and Appointment of Members. In addition the Commission adopted the following Resolutions: Resolution on the General Human Rights Situation in Africa; Resolution on the Situation of Human Rights Defenders in Africa; and a Resolution on Indigenous Peoples' Rights in the Context of the World Heritage Convention and Designation of Lake Bogoria as a World Heritage Site.

23. Furthermore, the African Commission issued a Communiqué on the abduction of three international humanitarian NGO workers from Sahrawi Refugee Camps, which recognized the role played by international aid organizations in alleviating the situation of refugees and demanded the immediate and unconditional release of the hostages.

The Status of Human and Peoples Rights on the Continent

24. Information from the promotional missions undertaken by Members of the Commission to State Parties, from the Periodic Reports of State Parties considered by the Commission, from the intersession activity reports of the Members and Special Mechanisms of the Commission and from the interventions made by State Parties during the 50th Ordinary Session, reveal both positive developments as well as causes for concern regarding the status of human and peoples' rights on the continent during the last six months.

(a) Positive Developments

25. A number of countries have adopted legislation to domesticate international and regional human rights instruments: Senegal adopted a law instituting the National Observer of Places of Deprivation of Liberty as its National Preventive Mechanism; the Freedom of Information Act was passed into law in Nigeria; the Children's Protection and Welfare Act 2011 was passed in Lesotho; in addition Nigeria, Togo, Namibia and Uganda initiated bills criminalizing torture in their respective jurisdictions.

26. A number of countries either ratified or acceded to various international and regional human rights instruments during the intersession. Guinea and Zambia ratified the African Charter on Democracy, Elections and Governance; Togo ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; Benin ratified the Second Optional Protocol to the International Convention on Civil and Political Rights; Tunisia acceded to the Rome Statute of the International Criminal Court and the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT); while Cape Verde and Mauritania also signed the same Protocol during the intersession.

27. Further, South Africa launched a Child Protection Unit within the South African Police Service; the Government of Zimbabwe purchased and officially handed over a building to accommodate the Zimbabwe Human Rights Commission, and an Older Persons Bill was gazetted and now awaits debate in the Parliament of Zimbabwe; additional resources were allocated to improve places of detention in the Kingdom of Swaziland, in South Africa and in Tunisia; while Burundi established a National Human Rights Commission.

28. With regard to the right to popular participation, peaceful presidential elections were held in Cape Verde (07 August 2011), in Sao Tome & Principe (07 August 2011), in Cameroon (09 October 2011) and in Zambia (20 September 2011). In Liberia the first round of elections was held in Liberia on 11 October 2011; additionally, Tunisia successfully held parliamentary elections following the popular uprising which occurred at the beginning of the year.

29. During a promotion visit to Nigeria, the Special Rapporteur on Prisons and Conditions of Detention in Africa was informed that over the last four years, the Government of Nigeria had renovated over sixty per cent of the prisons in the country, and had also built some new prisons and new cells to ensure that the environment where prisoners are kept does not detract from their humanity. The Special Rapporteur also commended the establishment of the Borstal institutions for the rehabilitation of young male offenders.

30. During a promotion visit to Tunisia, the Special Rapporteur on Prisons and Conditions of Detention in Africa was impressed with the great strides made in Tunisia in responding to the situation of women and children in prison. The Special Rapporteur also appreciated the range of training and skills programmes to rehabilitate women and children offenders in all the detention places visited. She further noted that in Prison of Mahdia, Prison of Messadine, Prison of Borg El Ami and Women Prison Mornaguia, prison reform educational programs allow the prisoners to obtain an academic degree or vocation. The Special Rapporteur commended Tunisia for offering education in prison, as this gives prisoners the chance to have a better future outside of the prison system by helping them to be equipped with useful and practical knowledge to become self-sufficient.

31. During a joint promotion visit to Algeria, several Special Mechanisms of the

African Commission noted the improvement in the representation of women in some governance structures, such as in the Parliament, Government Ministries and other decision-making positions. Further, the Delegation observed the various measures taken over the past few years to eliminate discriminatory laws against women, and in particular the amendment of Article 31 of the Constitution which now guarantees equality between men and women and the establishment of a Commission to ensure its implementation.

32. The African Commission commended the inclusion of provisions prohibiting torture in the training manual of the Uganda Peoples Defence Force (UPDF) and commuting the death sentences of sixty (60) prisoners to life imprisonment following the Constitutional Court Judgement, in the Concluding Observations on the Periodic Report of the Republic of Uganda.

33. Further, the African Commission commended the adoption of the law relating to the protection of handicapped persons and the establishment of mechanisms for the promotion of their rights, in the Concluding Observation on the Periodic Report of the Republic of Burkina Faso.

(b) Causes for Concern

34. These positive developments notwithstanding, the African Commission continued to both note and receive reports of human rights violations from different parts of the continent.

35. During the intersession, allegations of arrests and arbitrary detention of civilians, journalists and human rights defenders, pre-trial detention, torture and harassment of human rights defenders, violations of the rights of women and breaches of the rights of groups such as migrants in some State Parties, were reported the Commission.

36. In addition, high levels of overcrowding, disease, malnutrition, torture and ill-treatment of inmates and unduly long periods of pre-trial detention were noted in some of the places of detention in Africa. For instance, the Special Rapporteur on Prisons and Conditions of Detention in Africa has expressed concern regarding the overcrowding which she noted in many of the prisons that she visited during her promotion visit to Nigeria, a fact acknowledged by the Delegation of the Federal Republic of Nigeria during presentation of its 4th Periodic Report at the 50th Ordinary Session of the Commission. The Special Rapporteur was especially concerned about prisoners in Nigeria who have been awaiting a decision from the court for well over thirteen years. In this regard, the Special Rapporteur recommended adherence to Section 35 of the Nigerian Constitution and Article 7(1) (a) of the African Charter, which guarantee the right of persons to be brought before a court of law within a reasonable time. The Africa Commission also noted its concern about the high number of prisoners on death row and overcrowding in prisons, in its Concluding Observations on the Periodic Report of the Republic of Uganda.

37. The African Commission is concerned about the prevailing conflict situation in Somalia which has further exacerbated the famine and led to an influx of refugees into Kenya. In addition, reports of extra-judicial killings and persecution of African migrant workers in Libya, as well as the killing of innocent civilians during the Libyan conflict, were also brought to the attention of the African Commission. The situations in Southern Kordofan and the Blue Nile, in the Sudan, which have reportedly resulted in the displacement of populations, and created a serious human rights situation, were also brought to the attention of the Commission.

38. Access to the African Court on Human and Peoples Rights continues to be constrained by the limited number of ratifications, as well as the reluctance of State Parties that have ratified the Protocol establishing the African Court, to make the requisite Declaration, as stated in Article 34(6) of the Protocol, to allow individuals and NGOs direct access to the African Court.

39. Further to this, the African Commission is also concerned about the low rate of implementation and domestication of those regional and international human rights instruments that have been ratified by State Parties, as this impedes the realization of human and peoples' rights on the continent.

(c) Interventions of the African Commission

40. The African Commission has taken a number of measures and actions, including the following, in response to some of the challenges outlined above:

- i. The African Commission adopted and launched the Principles on the Implementation of Economic, Social, and Cultural Rights and the Guidelines on Reporting by State Parties on Economic, Social and Cultural Rights, to guide the efforts of State Parties in providing basic healthcare, education, water, adequate shelter, food, and other basic necessities to their people.
- ii. The African Commission organized a number of sensitization seminars, workshops and a host of other activities in various countries, in collaboration with State Parties and other partners. These workshops and seminars were aimed at raising public awareness and empowering relevant stakeholders on human rights promotion and protection on the continent.
- iii. The African Commission undertook promotion missions to a number of State Parties and held discussions on the issues and challenges which influence the implementation of regional human rights instruments. The African Commission met with government authorities and engaged in constructive and continuing dialogue in order to identify good practices, share experiences and make recommendations on ways and means of addressing the challenges facing them with a view to strengthening existing policies, programs and plans of action and initiating new ones.

- iv. By virtue of Article 62 of the African Charter, the Commission received and examined Periodic Reports submitted by State Parties to the Charter. It engaged in constructive dialogue with the authorities of those State Parties and made useful recommendations on ways and means of enhancing and sustaining a culture of respect for human rights and fundamental freedoms.
- v. The African Commission, acting under Rule 98 of the Commission's Rules of Procedure, has adopted provisional measures on the human rights situation in Southern Kordofan.
- vi. The African Commission and its Special Mechanisms adopted Resolutions, issued Press Statements, and sent Urgent Appeals to concerned State Parties with a view to raising its concerns about various human rights violations that has come to its attention. It issued, for example, a Press Statement on the deteriorating human rights situation in Libya and Egypt, which, *inter alia*, condemned the violence against civilians and called on those Governments to uphold the fundamental rights and freedoms as provided in the African Charter.

Dates and Venue of the Next Sessions

41. The Commission decided to hold an Extra-Ordinary Session from 21st February to 1st March 2012 in Banjul, The Gambia, and the 51st Ordinary Session from 18th April to 2nd May 2012, at a venue to be decided.

Submission of the Thirty-First Activity Report

42. In accordance with Article 54 of the African Charter, the African Commission hereby presents the 31st Activity Report.

STATUS OF SUBMISSION OF STATE PERIODIC REPORTS TO THE AFRICAN COMMISSION

ON HUMAN AND PEOPLES RIGHTS

AS OF MAY 2011

STATES THAT HAVE SUBMITTED ALL THEIR REPORTS = 12

STATES THAT ARE LATE BY ONE REPORT = 8

STATES THAT ARE LATE BY TWO REPORTS = 8

STATES THAT ARE LATE BY THREE REPORTS = 2

STATES THAT ARE LATE BY MORE THAN THREE REPORTS = 11

STATES THAT HAVE NEVER SUBMITTED ANY REPORTS = 12

STATES THAT PRESENTED AT THE 49TH ORDINARY SESSION = 4 (Libya, Namibia, Burkina Faso and Uganda)

SN	STATES PARTIES	DATE OF RATIFICATION OF THE CHARTER	DATES WHEN REPORTS WERE DUE	DATE WHEN REPORTS WERE SUBMITTED	DATE WHEN REPORTS WERE CONSIDERED	NUMBER OF PENDING REPORTS	DATE FOR OVERDUE AND NEXT REPORTS
1	Algeria	01/03/1987	1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1995; 2nd Report 2000; 3rd Report 2006	1st Report 1996 - 19th Ordinary Session; 2nd Report 2001 - 29th Ordinary Session; 3rd Report 2008 - 43rd Ordinary Session	1	01/03/2011

2	Angola	02/03/1990	1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1998, combining 1992 - 1998 overdue Reports	1st Report 1998 - 24th Ordinary Session	6	02/03/2000, 02/03/2002, 02/03/2004, 02/03/2006, 02/03/2008, 02/03/2010, 02/03/2012
3	Benin	20/01/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1993; 2nd Report 2000	1st Report 1994 -16th Ordinary Session; 2nd Report 2000 - 28th Ordinary Session; 3rd Report 2008 - 44th ordinary Session	1	1/2/2010, 1/2/2012
4	Botswana	17/07/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	Initial report 2009	1st report 2009 at the 46th Ordinary Session	0	17/07/2012
5	Burkina Faso	06/07/1984	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1998; 2nd Report 2004	1st Report 1999 - 25th Ordinary Session; 2nd Report 2004 - 35th Ordinary Session; 3rd Report 2011 - 49th Ordinary	0	07/06/2014

					Session		
6	Burundi	28/07/1989	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 2000, combining 1991 - 1999 overdue Reports	1st Report 2000-27th Ordinary Session	4	6/7/2003, 6/7/2005, 6/7/2007, 6/7/2009, 6/7/2011
7	Cameroon	20/06/1989	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st report 2001; 2nd report 2005; 3rd report 2009	1st report 2002 at the 31st Ordinary Session; 2nd report 2006 at the 39th Ordinary Session; 3rd report 2010 at the 47th Ordinary Session	0	20/6/2013
8	Cape Verde	02/06/1987	1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011	1st Report 1992, combining all overdue Reports since 1991	1st Report 1996 - 20th Ordinary Session	6	02/06/1999, 02/06/2001, 02/06/2003, 02/06/2005, 02/06/2007, 02/06/2009, 02/06/2011

9	C.A.R	26/04/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2006	1st Report 2006 - 39th Ordinary session	2	26/04/2008, 26/04/2010, 26/04/2012
10	Chad	09/10/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1997, combining the 1988 - 1999 overdue Reports	1st Report 1999 - 25th Ordinary Session	4	09/10/2002, 09/10/2004, 09/10/2006, 09/10/2008, 09/10/2010
11	Comoros	01/06/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			11	01/06/1988, 01/06/1990, 01/06/1992, 01/06/1994, 01/06/1996, 01/06/1998, 01/06/2000, 01/06/2002, 01/06/2004, 01/06/2006, 01/06/2008, 01/06/2010
12	Congo Brazzaville	09/12/1982	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 2001; 2nd Report 2009	1st Report 2001- 29th Ordinary Session; 2nd Report 2009 - 46th Ordinary Session	0	09/12/2012

13	DRC	20/07/1987	1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 2002, combining overdue Reports since 1989; 2nd Report 2007, combining overdue Reports since 2005	1st Report 2003 - 34th Ordinary Session; 2nd Report rescheduled for the 48th Ordinary Session 2010	0	20/7/2013
14	Cote D'Ivoire	06/01/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			9	06/01/1994, 06/01/1996, 06/01/1998, 06/01/2000, 06/01/2002, 06/01/2004, 06/01/2006, 06/01/2008, 06/01/2010, 06/01/2012
15	Djibouti	11/11/1991	1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			9	11/11/1993, 11/11/1995, 11/11/1997, 11/11/1999, 11/11/2001, 11/11/2003, 11/11/2005, 11/11/2007, 11/11/2009, 11/11/2011

16	Egypt	20/03/1984	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2002, 2004, 2005, 2006, 2009, 2010	1st Report 1991; 2nd report 2000; 3rd Report 2004	1st Report 1992 - 11th Ordinary session; 2nd Report 2000 - 29th Ordinary Session; 3rd Report 2005 - 37th Ordinary Session	2	20/03/2008, 20/03/2010, 20/03/2012
17	Equatorial Guinea	07/04/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			12	07/04/1988, 07/04/1990, 07/04/1992, 07/04/1994, 07/04/1996, 07/04/1998, 07/04/2000, 07/04/2002, 07/04/2004, 07/04/2006, 07/04/2008, 07/04/2010, 07/04/2012
18	Ethiopia	16/06/1998	2000, 2002, 2004, 2006, 2008	1st Report 2009	1st Report 2009 - 46th Ordinary Session	0	16/06/2012
19	Eritrea	14/01/1999	2001, 2003, 2005, 2007, 2009			6	14/01/2001, 14/01/2003, 14/01/2005, 14/01/2007,

							14/01/2009, 14/01/2011
20	Gabon	20/02/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002,2004,2006, 2008, 2010			12	20/02/1988, 20/02/1990, 20/02/1992, 20/02/1994, 20/02/1996, 20/02/1998, 20/02/2000, 20/02/2002, 20/02/ 2 004, 20/02/2006, 20/02/2008, 20/02/2010, 20/02/2012
21	Gambia	08/06/1983	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1992; 2nd Report 1994	1st Report 1992 - 12th Ordinary session; 2nd Report 1994 - 16th Ordinary Session	7	08/06/1997, 08/06/1999, 08/06/2001, 08/06/2003, 08/06/2005, 08/06/2007, 08/06/2009, 08/06/2011
22	Ghana	24/01/1989	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1992; 2nd Report 2000	1st Report 1993 - 14th Ordinary Session, 2nd Report 2001 - 29th Ordinary	4	24/01/2003, 24/01/2005, 24/01/2007, 24/01/2009

					Session		
23	Guinea Republic	16/02/1982	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1997, combining the 1988 - 1998 overdue Reports	1st Report 1998 - 23rd Ordinary Session	6	16/02/2000, 16/02/2002, 16/02/2004, 16/02/2006, 16/02/2008, 16/02/2010, 16/02/2012
24	Guinea Bissau	04/12/1985	1987, 1999, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			12	04/12/1987, 04/12/1989, 04/12/1991, 04/12/1993, 04/12/1995, 04/12/1997, 04/12/1999, 04/12/2001, 04/12/2003, 04/12/2005, 04/12/2007, 04/12/2009, 04/12/2011

25	Kenya	23/01/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1994; 2nd Report 1996; 3rd Report 1998; 4th Report 2000; 5th Report 2002; 6th Report 2004; 7th Report 2006; 8th Report 2008; 9th Report 2010	1st Report 2007 - 41st Ordinary Session	1	23/01/2010, 23/01/2012
26	Lesotho	10/02/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2001	1st Report 2002 - 31st Ordinary Session	4	10/02/2004, 10/02/2006, 10/02/2008, 10/02/2010, 10/02/2012
27	Liberia	04/08/1982	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			13	04/08/1984, 04/08/1986, 04/08/1988, 04/08/1990, 04/08/1992, 04/08/1994, 04/08/1996, 04/08/1998, 04/08/2000, 04/08/2002, 04/08/2004, 04/08/2006, 04/08/2008, 04/08/2010

28	Libya	19/07/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1990; 2nd Report 2000, combining the 1993 - 1999 overdue Reports	1st Report 1991 - 27th Ordinary Session; 2nd Report 2000 - 27th Ordinary Session; 3rd Report 2006 - 39th Ordinary Session; 4th Report 2011 - 49th Ordinary Session	0	19/7/2014
29	Madagascar	09/03/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010		1st - 8th Reports 2008 - 44th Ordinary Session	1	3/9/2010, 3/9/2012
30	Malawi	17/11/1989	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			10	17/11/1991, 17/11/1993, 17/11/1995, 17/11/1997, 17/11/1999, 17/11/2001, 17/11/2003, 17/11/2005, 17/11/2007, 17/11/2009, 17/11/2011

31	Mali	21/12/1981	1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1999 Combining 1988 - 1998 overdue Reports	1st Report 1999 - 26th Ordinary Session	5	21/12/2001, 20/12/2003, 21/12/2005, 21/12/2007, 21/12/2009, 21/12/2011
32	Mauritania	14/06/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2001; 2nd Report 2005	1st Report 2002 - 31st Ordinary Session; 2nd Report 2005 - 37th Ordinary Session	2	14/06/2008, 14/06/2010, 14/06/2012
33	Mauritius	19/06/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1994	1st Report 1996 - 20th Ordinary Session; 2nd Report 2009 - 45th Ordinary Session	0	19/06/2012
34	Mozambique	22/02/1989	1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1992, combining all overdue Reports since 1991- 1995	1st Report 1996 - 19th Ordinary Session	6	22/02/1999, 22/02/2001, 22/02/2003, 22/02/2005, 22/02/2007, 22/02/2009, 22/02/2011

35	Namibia	30/07/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1997; 2nd Report 2000	1st Report 1998 - 23rd Ordinary Session; 2nd Report 2001 - 29th Ordinary Session; 3rd Report 2011 - 49th Ordinary Session	0	30/07/2014
36	Niger	15/07/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 2003	1st Report 2004 - 35th Ordinary Session	3	15/07/2006, 15/07/2008, 15/07/2010
37	Nigeria	22/06/1983	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1990; 2nd Report 2006	1st report 1993 - 13th Ordinary Session, 2nd Report 2006 - 40th Ordinary Session; 3rd Report 2008 - 44th Ordinary Session	0	22/6/2011

38	Rwanda	15/07/1983	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1990; 2nd Report 2000; 3rd Report 2004; 4th Report 2007; 5th Report 2010	1st Report 1996 - 19th Ordinary Session; 2nd Report 2000 - 27th ordinary Session; 3rd Report 2004-36th Ordinary session; 4th Report 2007-42nd Ordinary Session; 5th Report 2010 - 47th Ordinary Session	0	15/07/2013
39	SADR	02/05/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2003	1st Report 2003 - 33rd Ordinary Session	2	02/05/2006, 02/05/2008, 02/05/2010

40	Sao Tome & Principe	23/05/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010			11	23/05/1988, 23/05/1990, 23/05/1992, 23/05/1994, 23/05/1996, 23/05/1998, 23/05/2000, 23/05/2002, 23/05/2004, 23/05/2006, 23/05/2008, 23/05/2010, 23/05/2012
41	Senegal	13/08/1982	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1992; 2nd Report 2003	1st Report 1992 @ 12th Ordinary session; 2nd Report 2003 @ 34th Ordinary Session	2	13/08/2006, 13/08/2008, 13/08/2010
42	Sychelles	13/04/1992	1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1994	1st Report not presented as there was no presenter; 2nd Report 2006 @ 39th Ordinary Session	2	13/04/2008, 13/04/2010, 13/04/2012

43	Sierra Leone	21/09/1983	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			13	21/09/1985, 21/09/1987, 21/09/1989, 21/09/1991, 21/09/1993, 21/09/1995, 21/09/1997, 21/09/1999, 21/09/2001, 21/09/2003, 21/09/2005, 21/09/2007, 21/09/2009, 21/09/2011
44	Somalia	31/07/1985	1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009			12	31/07/1987, 31/07/1989, 31/07/1991, 31/07/1993, 21/07/1995, 21/07/1997, 21/07/1999, 21/07/2001, 21/07/2003, 21/07/2005, 21/07/2007, 21/07/2009, 21/07/2011

45	South Africa	09/07/1996	1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1998; 2nd Report 2005	1st Report 1999 -25th Ordinary Session; 2nd Report 2005 -38th Ordinary Session	2	09/07/2008, 09/07/2010
46	Sudan	18/02/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1996; 2nd Report 2003; 3rd Report 2007	1st Report 1997 -21st Ordinary Session; 2nd Report 2004 - 35th Ordinary Session; 3rd Report 2008 - 43rd Ordinary Session	1	18/02/2010, 18/02/2012
47	Swaziland	15/09/1995	1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 2000, combining 1997 - 1999 overdue Reports	1st Report 2000 - 27th Ordinary Session	4	15/09/2003, 15/09/2005, 15/09/2007, 15/09/2009, 15/09/2011
48	Tanzania	18/02/1984	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1991; 2nd report 2007	1st Report 1992 - 11th Ordinary session; 2nd Report 2008 - 43rd Ordinary Session	1	18/02/2010, 18/02/2012

49	Togo	05/11/1982	1984, 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 1990; 2nd Report 2001	1st Report 1993 - 13th Ordinary Session; 2nd Report 2002 - 31st Ordinary Session	3	05/11/2004, 05/11/2006, 05/11/2008, 05/11/2012
50	Tunisia	16/03/1983	1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009	1st Report 1990; 22nd Report 1995; 3rd Report 2007	1st Report 1991 - 9th Ordinary Session; 2nd Report 1995 - 18th Ordinary Session; 3rd Report 2007 - 42nd Ordinary Session	2	16/03/2009, 16/03/2011, 16/03/2013

51	Uganda	10/05/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010	1st Report 2000; 2nd Report 2006; 3rd Report 2008	1st Report 2000-27th Ordinary Session; 2nd Report 2006-40th Ordinary Session; 3rd Report 2009-45th Ordinary Session; 4th Report 2011 - 49th Ordinary Session	0	10/05/2014
52	Zambia	10/01/1984	1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	Initial Report 2006;	1st Report 2007 - 42nd Ordinary Session	1	1/10/2010, 1/10/2012
53	Zimbabwe	30/05/1986	1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008	1st Report 1992; 2nd Report 1996; 3rd Report 2006	1st Report 1992 - 12th Ordinary Session; 2nd Report 1997 - 21st Ordinary Session; 3rd Report 2007 - 41st Ordinary Session	1	30/05/2010, 30/05/2012

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