

**FIFTEENTH ANNUAL ACTIVITY
REPORT OF THE AFRICAN
COMMISSION ON HUMAN AND
PEOPLES' RIGHTS**

2001 - 2002

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I. ORGANISATION OF WORK

A. Period covered by the Report

1. The 14th Annual Activity Report was adopted by the 37th Ordinary Session of the Assembly of Heads of State and Government of the Organisation of African Unity (OAU) meeting in July 2001 in Lusaka, Zambia by decision AHG/229 (XXXVII).

During the above Summit meeting of Heads of State, a new Secretary-General of the OAU – Mr Amara Essy was elected. Three new persons were elected members of the African Commission namely – Dr. Angela Melo, Mrs Salimata Sawadogo and Mr Yasser Sid Ahmed El Hassan. One member was re-elected to the Commission – Mr Kamel Rezag Bara.

The Fifteenth Annual Activity Report covers the 30th and 31st Ordinary Sessions of the Commission respectively held from 13th to 27th October 2001 in Banjul, The Gambia and from 2nd to 16th May 2002 in Pretoria, South Africa.

B. Status of ratification

2. All OAU Member States are parties to the African Charter on Human and Peoples' Rights.

C. Sessions and Agenda

3. Since the adoption of the fourteenth Annual Activity Report in July 2001, the Commission has held two Ordinary Sessions as indicated in the paragraphs above.

The agenda for each of the sessions is contained in **Annex I** to this report.

D. Composition and participation

4. At its 30th Ordinary Session, Commissioner Kamel Rezag-Bara and Commissioner Jainaba Johm were elected into office as Chairperson and Vice-Chairperson of the African Commission respectively.
5. The following Members of the Commission participated in the deliberations of the 30th Ordinary Session -:

- | | |
|---------------------------------|------------------|
| - Commissioner Kamel Rezag-Bara | Chairperson |
| - Commissioner Jainaba Johm | Vice Chairperson |

- Commissioner A. Badawi El Sheikh
 - Commissioner Andrew R. Chigovera
 - Commissioner Vera M. Chirwa
 - Commissioner Emmanuel V. O. Dankwa
 - Commissioner Yasser Sid Ahmed El-Hassan
 - Commissioner Angela Melo
 - Commissioner N. Barney Pityana
 - Commissioner Hatem Ben Salem
 - Commissioner Salimata Sawadogo
6. Representatives from the following twenty nine (29) States Parties participated in the deliberations of the 30th Ordinary Session and made statements – Algeria, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Côte d’Ivoire, Democratic Republic of Congo, Eritrea, Ethiopia, Egypt, Gabon, The Gambia, Guinea Bissau, Liberia, Libya, Mauritania, Mozambique, Namibia, Nigeria, Rwanda, Sénégal, Sierra Leone, South Africa, Sudan, Togo, Tunisia, and Uganda.
7. The following Members of the Commission participated in the deliberations of the 31st Ordinary Session -:
- | | |
|-------------------------------------------|------------------|
| - Commissioner Kamel Rezag-Bara | Chairperson |
| - Commissioner Jainaba Johm | Vice Chairperson |
| - Commissioner A. Badawi El Sheikh | |
| - Commissioner Andrew R. Chigovera | |
| - Commissioner Vera M. Chirwa | |
| - Commissioner Emmanuel V. O. Dankwa | |
| - Commissioner Yasser Sid Ahmed El-Hassan | |
| - Commissioner Angela Melo | |
| - Commissioner N. Barney Pityana | |
| - Commissioner Hatem Ben Salem | |
| - Commissioner Salimata Sawadogo | |
8. Representatives from a record number of thirty six (36) States Parties participated in the deliberations of the 31st Ordinary Session and made statements- Algeria, Angola, Botswana, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo, Côte d’Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Gabon, Guinea, Kenya, Lesotho, Libya, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Rwanda, Saharawi Arab Democratic Republic, Senegal, South Africa, Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.
9. Representatives from UN Specialised Agencies, National Human Rights Institutions and Non Governmental Organisations (NGOs) also participated in the deliberations of the two Ordinary Sessions.

E. Adoption of the Activity Report

10. The Commission considered and adopted its Fifteenth Annual Activity Report at its 31st Ordinary Session.

II. ACTIVITIES OF THE COMMISSION

A. Consideration of Periodic Reports of State Parties

11. In accordance with the provisions of Article 62 of the African Charter on Human and Peoples' Rights, each State Party undertakes to present every two years from the date of entry into force of the Charter, a report on legislative and other measures taken with a view to giving effect to the rights and freedoms guaranteed under the Charter.
12. At its 31st Ordinary Session, the African Commission examined the following reports from the following Member States -:
 - Initial Report of Cameroon (combining all the overdue reports)
 - Initial Report of Lesotho (combining all the overdue reports)
 - Initial Report of Mauritania (combining all the overdue reports)
 - Periodic Report of Togo (combining all the overdue reports)
13. The Commission expressed its satisfaction with the dialogue that took place between itself and the Member States and encouraged the States to continue their efforts in fulfilling their obligations under the Charter.
14. The status of submission of Initial and Periodic reports by State parties is contained in **Annex II** of this report.
15. The Commission hereby strongly appeals to those States Parties that have not yet submitted their initial and periodic reports to do so as soon as possible and where possible compile all the overdue reports into one report.

B. Promotional Activities

(a) Report of the Chairperson of the Commission

16. During the period under review, the Chairperson of the Commission undertook the following activities in his capacity as the Chairperson -:
 - Participated in a Meeting of the Bureau of the African Commission at its headquarters in Banjul, The Gambia from 25th to 27th June 2001;
 - Participated on 25th July 2001 in the teleconference of the Jury of the 21st Council of Europe North-South prize award;
 - Attended the 53rd session of the Sub-Committee for the Protection and Promotion of Human Rights, at *Palais des Nations*, in Geneva from 10th to 17th August 2001;
 - Participated in the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban South Africa from 31st August to 7th September 2001;
 - Attended the Annual Meeting of the North-South Centre for Human Rights of the Council of Europe in Lisbon, Portugal from 22nd to 26th November 2001;

- Attended a Meeting of the OAU Mechanism for the Management and Prevention of Conflicts in Africa as an observer on 26th January 2002;
- Made urgent appeals on behalf of the African Commission to -:
 - The Head of State of Nigeria asking for his intervention following the passing of a death sentence by a Sharia Court to Mrs Safiya Yakubu Hussaini
 - The Head of State of Eritrea asking for information relating to the case of the eleven persons arrested and detained incommunicado

(b) Activities of other Members of the Commission

17. During the period under review, Members of the Commission undertook the following activities -:

Commissioner Johm

- Participated in the Second Preparatory meeting for the World Conference against Racism;
- Attended the meeting of the World Intellectual Property Organisation (WIPO) where she held discussions on how WIPO could be of assistance to the African Commission and its Secretariat;
- Participated in the 4th International Procedures for the Promotion and Protection of Women's Rights in Africa;
- Participated at the NGO Forum held prior to the 30th and 31st Sessions;
- Made contacts to hold meetings to assist in the reconciliation process underway in Cote d'Ivoire;
- Attended a meeting on the theme: "*Dialogue for the creation of a conducive framework for human rights in the African Union*" held from 5th to 7th November 2001 in Geneva, Switzerland;
- Undertook a mission to The Gambia from 22nd December 2001 – 5th January 2002 where she met with Ministers and administrative authorities to discuss the issue of the land that was given to the Commission and other questions on human rights;
- Attended the *African Forum for Development* held in Addis Ababa, Ethiopia, from 3rd to 8th March 2002;
- Kept constant contact with the Secretariat of the Commission for follow up of the recommendations, decisions and resolutions of the Commission;

Prof. E.V.O. Dankwa

- Undertook a Promotional Mission to Seychelles from 2nd – 6th July 2001
- Presented the opening speech "*African Mechanisms: Aspirations and Effectiveness*" at a conference on "Justice in Africa" organised by the British Foreign Affairs and Commonwealth, 30th July – 2nd August 2001;
- From 3rd – 9th August, observed the UN Sub-Commission on Human Rights, Geneva, Switzerland;
- Presented a paper at a conference on "*Twenty Years of the African Regional Human Rights System*" organised by the British Institute of International Law

commemorating the 20th anniversary of the adoption of the African Charter, from 5th – 6th October 2001. Paper requested was “*Architecture and Organisation of the African System.*”

- On the 30th August, acted as Judge at the 7th All Africa Moot Court Competition at the Center for Human Rights, University of Pretoria;
- Took part in the NGO Forum held from 11th – 12th October 2001;
- Delivered lecture at the Fourth Chitepo Memorial on *The Significance of Human Rights and Democracy in the Fight against Poverty in Africa* at the University of Zimbabwe in Harare, 2 November 2001;
- Attended a seminar on the *Definition of Torture* organised by the Association for the Prevention of Torture in Geneva, Switzerland, from 10th to 11th November 2001;
- Attended the first Session of the Lisbon Forum on the theme: *Children and Youth in Africa: Authors of their Own Development* held in Lisbon, Portugal from 24th to 26th November 2001;
- On 24th March 2002, presented a paper at a Seminar on inter-regional perspectives on Human Rights Defenders. The seminar was organised jointly by the office of the United Nations High Commissioner for Human Rights and the International Department for Human Rights in Geneva, Switzerland;
- On 25th March 2002, presented a paper on the *Recommendations on the follow up of the Conference on Racism: African Perspectives* during a meeting of experts organised by the International Department for Human Rights in Geneva, Switzerland;
- Gave lecture on the Rights of Women in Africa during a course on the procedures for human rights organised by SIDH in Geneva, Switzerland

Commissioner Chigovera

- Undertook a Promotional Mission to Namibia from 1st – 7th July 2001 and to South Africa from 25th – 29th September 2001;
- Participated in the World Conference Against Racism and activities that took place prior to the World Conference from 25th August to 8th September 2001;
- Participated in the Pre-Conference Consultative Workshop for National Human Rights Institutions in Johannesburg from 26th – 28th August 2001;
- Participated in an Article 19 organised Panel Discussion on “Racism-Roles and Obligations of the Media” at which he presented a paper entitled “*Do the Media Have a Responsibility to be Anti-Racist and Contribute to the Fight Against Racism in Society*”
- Paper delivered at the opening of the workshop on *Media Lawyers* held in Harare, Zimbabwe, in November 2001;
- Attended the meeting of the Working Group on Freedom of Expression and discussed the Draft *Declaration of the Principles of Freedom of Expression in Africa* held in Cape Town, South Africa, from 10th to 11th February 2002;
- Attended a workshop on *The Prevention of Torture and Bad Treatment in Africa* held from 12th to 14th February 2002 in Cape Town and Robben Island, South Africa, organised by the Association for the Prevention of Torture in collaboration with the African Commission

Commissioner Badawi

- Finalised preparations for the Seminar on Economic, Social and Cultural Rights, in collaboration with INTERIGHTS, the Cairo Institute for Human Rights Studies, and Social, Economic Rights Action Center;
- Gave a lecture on “The African Union and Human Rights” at the University of South Africa;
- Gave a lecture on “Future relations between the African Commission and the African Union” at the Human Rights Centre of the University of Pretoria.

Commissioner Ben Salem

- Focused most of his activities on the participation in and monitoring of World Conference Against Racism;
- Participated in a conference organised by Francophone Countries on the Situation in the Great Lakes Region;
- In January 2002 presented a paper on *Economic and Socio-Cultural Rights* in Tunis, Tunisia;
- Research on *Globalisation and its Impact on Economic and Socio-cultural Rights as provided for by the African Charter*;
- Attended a seminar on the follow up and ways of implementing the outcome of the Durban Conference on Racism, organised by the North-South Centre and a coalition of Western NGOs;
- Attended, along with human rights activists, the negotiations on the Additional Protocol to the United Nations Convention on Torture;
- Attended a meeting of the Working Group on the Right to Development;
- Attended the Session of the United Nations Commission on Human Rights;
- Maintained contacts with the Association for the Prevention of Torture in relation to the organisation of a workshop on the *Prevention of Torture and Seminar Treatment* held in Cape Town and Robben Island in February 2002.

Commissioner Chirwa

- Presented a paper on the Commission at the preparatory meeting for the Second Pan African Seminar on Prisons and Penal Reform in Africa held in Lilongwe, Malawi in August 2001;
- Attended the World Conference Against Racism Racial Discrimination, Xenophobia and Related Intolerances in Durban, South Africa from 31st July to August 2001;
- Had meetings with government officials from Malawi to lobby the ratification of the Protocol on the establishment of the African Court;
- Drafted a Draft Code of Conduct for the Commissioners in accordance with the mandate given to her during the 30th Ordinary Session;

Commissioner Pityana

- Continued to monitor the human rights situation in Botswana, Mozambique, Lesotho, Swaziland and Zimbabwe and maintained contact with NGOs within the countries;
- Was a keynote speaker at a parallel NGO meeting to the OAU Assembly of Head of States and Government in Lusaka, Zambia on the 9th July 2001 and at a Conference on Refugee Law held in Gauteng, South Africa on 18th July 2001;
- Attended and observed together with Commissioner Chigovera the Africa Moot Court Competition at the University of Pretoria;
- Participated actively in the organisation of the World Conference Against Racism and facilitated the participation of Members of the Commission to the Conference.
- Together with other Members of the Commission had discussions with DANIDA on the Working Group on Indigenous People and with the Assistant Secretary General of the OAU, Ambassador Djinnit on the relationship between the African Commission and the OAU;
- Attended the meeting of the Working Group on *the Draft Declaration of the Principles of Freedom of Expression in Africa* held in Cape Town, South Africa, from 10th to 11th February 2002;
- Attended the workshop on *The Prevention of Torture and Ill Treatment in Africa* held in Cape Town and Robben Island, South Africa, organised by the Association of the Prevention of Torture in collaboration with the African Commission from 12th to 14th February 2002;
- Participated in the activities of the Working Group on the Rights of Indigenous Peoples and in the organisation of the meeting of this Group in Pretoria prior to the 31st Ordinary Session;
- Participated in the preparation of the 31st Ordinary Session;

Commissioner Salamata Sawadogo

- Attended the first meeting of experts held in Addis Ababa on the Draft Protocol relating to the Rights of Women in Africa from 13th to 27th October 2001;
- Undertook a promotional mission to Niger from 10th to 23rd March 2001;

Commissioner Yassir Sid Ahmed El Hassan

- Undertook a promotional mission to Libya and Sudan from 26th March to 2nd April 2002;
- Attended the meeting of experts on the Draft OAU Convention against Corruption in Addis Ababa held from 26th to 29th November 2001;
- Presented papers on the African mechanism for the promotion and protection of human rights at several meetings of civil servants and representatives of NGOs in Khartoum;

18. In all Members of the Commission undertook promotional missions to the following States Parties -: Burkina Faso, Libya, Namibia, Niger, Seychelles, South Africa and Sudan. The distribution of State Parties among Commissioners for their promotion and protection activities is contained in **Annex III** of the report.

(c) **Seminars and Conferences**

19. The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance took place from 31st August to 7th September 2001. Five Members of the African Commission participated in that World Conference and the various Meetings that took place before the World Conference.
20. During the period under review, the African Centre for Democracy and Human Rights Studies (ACDHRS) in collaboration with the African Commission and other Human Rights NGOs organised an NGO Forum prior to the 30th and 31st Sessions to prepare human rights NGOs for participation in the Ordinary Sessions of the African Commission.
21. The OAU General Secretariat organised an Experts Meeting to consider the Draft OAU Convention on Combating Corruption from 26th to 29th November 2001 in Addis Ababa, Ethiopia. The Commission was represented at that meeting.

Indigenous People/Communities

22. The Working Group of Experts on Indigenous People/Communities held its first meeting prior to the 30th Ordinary Session of the African Commission on 12th October 2001 in Banjul, The Gambia. At this meeting, the Working Group agreed on a comprehensive work plan on the activities it would undertake for the period covered by its mandate.
23. As a follow up to this meeting, Members of the Working Group drafted a Conceptual Framework Paper to map out the scope of what the Working Group would be dealing with. This Conceptual Framework Paper was discussed at a Roundtable Meeting that was held before the 31st Ordinary Session of the African Commission on 30th April 2002 in Pretoria, South Africa. Experts on indigenous issues attended this Meeting. The Commission was represented at this meeting.

Freedom of Expression and the African Charter

24. At its 30th Ordinary Session, following its adoption of the Resolution on Freedom of Expression, the African Commission established a Working Group on Freedom of Expression comprised of Members of the African Commission, Staff from the Secretariat of the African Commission and Staff from the Law Programme of ARTICLE 19. The mandate of the Working Group is to elaborate a Declaration of Principles with a view to strengthening the African Mechanism for the protection of the right to Freedom of Expression and to advise on an appropriate mechanism to assist the Commission review and monitor adherence to freedom of expression.

25. The Working Group on Freedom of Expression had its first meeting from 10th to 11th February 2002 in Capetown, South Africa and Members of the African Commission were present at that Meeting.
26. In accordance with the Mauritius Plan of Action 1996-2001, the Commission resolved to organise a number of Seminars and Conferences. During the period under review, the Commission successfully organised in collaboration with the Association for the Prevention of Torture the Seminar on the Prevention of Torture that was held from 11th to 14th February 2002 in Cape town, South Africa. Two Members of the Commission represented the Commission at that Seminar.
27. Although, the Commission has been able to organise a few Seminars and Conferences, most are yet to be organised and they include -:
 - Comparison of the African Charter Protection System with other regional systems
 - Economic, Social and Cultural Rights; The respect by States Parties of obligations defined in the African Charter
 - Relevance of Peoples' Rights in the African Charter, especially the right to development, the right to have a clean and safe environment, peace, security and the right to self determination
 - The Rights of the Child in Africa
 - Freedom of Movement and the right to Asylum in Africa
 - Claw back Clauses in the African Charter
 - The African Commission and the National structures for the protection and promotion of human and peoples' rights
 - Ethnic Conflict Resolution in a human rights context
 - The problem of Mass Expulsions in Africa
 - Peaceful Settlement of Ethnic and Social Conflicts from a Human Rights Perspective
 - Contemporary Forms of Slavery in Africa
 - The Right to Education, Popular Participation and non formal Education: An Essential Condition for Development in Africa
 - The Rights of Persons with Disabilities
 - The Situation of Refugees and Internally Displaced Persons in Africa
28. The Commission sought the support of Member States, International Organisations and NGOs in organising the above listed seminars and conferences and designated Commissioners to co-ordinate their organisation.
29. It should be noted that arrangements are already underway to organise the Seminar on *Economic, Social and Cultural Rights; the respect by States Parties of obligations defined in the African Charter* and the Seminar on the *Situation of Refugees and Internally Displaced Persons in Africa*.

C. Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa

30. During the period under review, the Special Rapporteur on Prisons and Conditions of Detention in Africa, Dr. Vera Mlangazuwa Chirwa, undertook visits to prisons

and places of detention in Malawi from 17th to 26th June 2001, Namibia from 17th to 28th September 2001 and Uganda from 11th to 23rd March 2002. As part of her mandate and to be able to study the practices of developed countries, the Special Rapporteur also visited one prison in Glasgow, UK on 9th April 2002.

31. The Office of the Special Rapporteur enjoys a good relationship with Penal Reform International (PRI). In the framework of this relationship, the Special Rapporteur on Prisons and Conditions of Detention in Africa met with officials of PRI in April 2002 to plan future activities of the Special Rapporteur and to discuss how PRI can be of better benefit to the Office of the Special Rapporteur.

D. Report of the Special Rapporteur on the Rights of Women in Africa

32. At the 30th Ordinary Session the Commission elected Commissioner Angela Melo as the Special Rapporteur on the Rights of Women in Africa.
33. At the 31st Ordinary Session, the Special Rapporteur on the Rights of Women in Africa, informed the Commission that she had carried out a number of activities including :-
 - Attended the 1st Meeting of Experts on the Draft Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa held in Addis Ababa, Ethiopia from 12th to 16th November 2001
 - Attended a Meeting organised by the NGO Droits et Démocratie in Montreal Canada from 28th February to 3rd March 2002. At the end of that meeting, together with the Special Rapporteurs on the Rights of Women in the Inter-American System and the United Nations System issued a Declaration
 - Commenced preparations to undertake studies on the Women and Poverty in West and Central Africa and Violence against Women
 - Initiated Meetings with NGOs dealing especially with women's human rights in various Member States so as to concretise cooperation with them
 - Made an urgent appeal to the Head of State of Nigeria asking for his intervention following the passing of a death sentence by a Sharia Court to Mrs Safiya Yakubu Hussaini

E. Process of preparation of the Draft Protocol to the African Charter on the Rights of Women in Africa

34. At the 31st Ordinary Session, the Special Rapporteur on the Rights of Women in Africa reported on the process relating to the preparation and adoption of the Draft Protocol to the African Charter on the Rights of Women. She reported that the 1st Meeting of Experts to consider the Draft Protocol was held in Addis Ababa, Ethiopia from 12th to 16th November 2001. Forty-four (44) Member States participated in that Experts Meeting.

F. Ratification of Protocol to the African Charter on Human and Peoples' Rights on the Establishment African Court on Human and Peoples' Rights

35. The Commission, at its 30th and 31st Ordinary Sessions, expressed concern over the delay in ratification of the above-mentioned Protocol. It noted that only Senegal,

Burkina Faso, The Gambia, Mali and more recently Uganda had deposited their Instruments of ratification. Ten (10) Instruments of ratification are still required for the Protocol to come into force. The Commission urged States Parties that had not yet done so, to ratify the said Protocol and called upon human rights organisations to encourage States Parties to quickly ratify this important Instrument.

G. Adoption of Resolutions

36. At its 30th and 31st Ordinary Sessions, the African Commission adopted three (3) Resolutions. The list and texts of these Resolutions are contained in **Annex IV** of this report.

H. Relations with observers

37. At its 30th and 31st Ordinary Sessions the African Commission deliberated further on its co-operation with National Human Rights Institutions and NGOs. The matter remains on the Agenda of the Commission.
38. At its 30th and 31st Ordinary Sessions, the African Commission granted Affiliate Status to the following National Human Rights Institutions -:
- Comité National des Droits de l'Homme du Cameroun;
 - Commission Nationale des Droits de l'Homme du Togo;
 - National Human Rights Commission of Mauritius.

This brings to ten (10) the number of National Human Rights Institutions to which the African Commission has granted affiliate status.

39. The Commission reiterated its appeal to States Parties to create National Human Rights Institutions and strengthen the capacities of those already in existence.
40. At its 30th and 31st Ordinary Sessions, the Commission granted Observer Status to the following NGOs -:
- Minority Rights Group (London);
 - Association Femme et Vie (Benin);
 - Le Mouvement Ivoirien des Droits de l'Homme (Côte d'Ivoire);
 - Le Mouvement Nigérien pour la Défense et la Promotion des Droits de l'Homme (Niger);
 - Cellule de Liaison et d'Information des Associations Féminines (Chad);
 - Reporters Sans Frontières (France);
 - Women Aid Collective (Nigeria);
 - Kituo Cha Katiba (Uganda);
 - Human Rights Center for the Assistance of Prisoners (Egypt);
 - Africa Legal Aid (Netherlands);
 - Sudan Bar Union (Sudan);
 - Bangladesh Human Rights Commission (Bangladesh);
 - The Human Rights Law Service - HURILAWS (Nigeria);
 - Women and Law in Southern Africa – WLSA (Zimbabwe);
 - Le Groupe LOTUS ONG des Droits de l'Homme et de Développement (Democratic Republic of Congo)

- Développement 2000 (Benin)
- Commonwealth Human Rights Initiative – CHRI, Africa (Ghana)

This brings the total number of NGOs granted Observer Status with the African Commission to two hundred and seventy five (275) as at 16th May 2002.

I. Protection Activities

41. At its 30th Ordinary Session the African Commission considered eighteen (18) communications; it was seized of two (2) new communications, it took a decision on the merits of one (1) communication and considered fifteen (15) other communications.
42. The Commission also decided to convene an Extraordinary Session to fully consider and examine Communication 227/99 - Democratic Republic of Congo/ Burundi, Rwanda and Uganda. In accordance with Rule 3 of its Rules of Procedure, the African Commission resolved to seize the Secretary General of the OAU/AU of this decision and subsequently fix the date of the Extra-Ordinary Session.
43. At its 31st Ordinary Session, the Commission learnt that due to lack of funds, the Extra-Ordinary Session could not be held before the 31st Ordinary Session. The Commission maintained the principle that they would still hold an Extra-Ordinary Session to discuss Communication 227/99 pending availability of funds and in the event that funds are not available, the Commission will consider setting aside a few days at the 32nd Ordinary Session to discuss the matter.
44. At its 31st Ordinary Session, the Commission considered altogether twenty four (24) communications; of those 24 communications, the Commission was seized of eight (8) new communications, delivered decisions on inadmissibility on two (2) communications. One (1) communication was withdrawn by the Complainants. Thirteen (13) communications were deliberated upon and deferred to the 32nd Ordinary Session for further consideration.

The decisions on these communications are contained in **Annex V** of the report.

J. Administrative and Financial Matters

a) Administrative Matters

45. At the 30th and 31st Ordinary Sessions of the African Commission, the Secretary to the African Commission presented his report on the financial and administrative situation of the Secretariat.
46. The Secretary reported on the administrative situation of the Secretariat and the situation of the members of staff serving at the Secretariat of the African Commission. Members of the Commission discussed this matter extensively. They regretted that due to the different terms and conditions of the various agreements signed with donors, officers at the same level at the Secretariat have uneven salary

levels and duration of staff contracts, and that this has directly affected the work of the African Commission. Furthermore, this has been exacerbated by inadequate staffing especially in the legal department at the Secretariat of the Commission. The Members of the Commission called on the OAU General Secretariat to look into this problem and particularly recruit more seasoned lawyers at the Secretariat of the Commission.

47. Members of the African Commission commended the work done by the Secretariat despite the difficult circumstances that it is facing.

b) Financial matters.

1. O.A.U Budget

48. Under Article 41 of the Charter, the General Secretariat of the OAU is responsible for meeting the costs of the African Commission's operations including provision of staff, resources and services. The Commission expressed its appreciation at the continued improvement of its working conditions.

2. Extra-Budgetary Funds

49. In order to complement the limited resources allocated by the OAU, the Commission continues to solicit for financial and material assistance and presently receives such assistance from the following partners -:

a) *The Danish Centre for Human Rights (DCHR)*

50. The Secretariat of the Commission still receives extra budgetary funding from the Danish Centre for Human Rights to finance the post of Administrative Officer.
51. In consultation with the Secretariat, the DCHR has maintained its contacts with various partners to mobilise additional resources for the benefit of the Secretariat and is also coordinating the mobilisation of resources to implement the Strategic Plan.
52. It is worth noting that the DCHR will merge with other Danish human rights organisations with effect from 1st January 2003. The Commission hopes that the current cooperation with the DCHR will continue.

b) *Swedish International Development Agency (SIDA)*

53. SIDA still funds the Commission's promotional and protection activities. This grant is designated for the Commission's activities and for strengthening the Secretariat's Staff capacity.

c) *The Government of The Netherlands*

54. The Ministry of Foreign Affairs of the Netherlands continues to support the Documentation Centre, the Press and Information Section and has recently granted a subvention amounting to USD\$213,600 to finance the positions of the two Legal Officers who were previously financed by the African Society for International and Comparative Law.

d) Centre International des Droits de la Personne et Développement Démocratique

55. The Centre International des Droits de la Personne et Développement Démocratique based in Canada has provided a grant of \$15,000 CAN (fifteen thousand Canadian dollars) for the activities of the Special Rapporteur on Women's Rights in Africa.

e) Other partners

56. The Commission continues to enjoy various forms of assistance from other African and Non-African partners thus enabling it to carry out its mandate of promoting and protecting human and peoples' rights. The Commission intends to strengthen such co-operation and collaboration.

f) Evaluation and Auditing

57. During the period under review, the Secretariat received consultants and auditors from various partner organisations to evaluate and audit some of the activities of the Secretariat and they are -:
- A Consultant from the Office of the United Nations High Commissioner for Human Rights (OHCHR) visited the Secretariat from 23rd February to 3rd March 2002 to evaluate the projects previously funded by the OHCHR with a view to re-activating the Cooperation Agreement signed in April 1999. An official from the same Office is expected to visit the Secretariat in early June 2002 in order to audit the OHCHR Accounts;
 - Auditors from an Audit firm based in Stockholm - Ernst & Young and an Authorised Public Accountant, Carl Gustaf Gutberg were designated by the Swedish Government to audit the SIDA accounts and to determine whether the funds contributed to the Secretariat by SIDA have been used for agreed purposes, and that the accounting procedures and internal control meet with SIDA's requirements;
 - An external Audit firm – KPMG Chartered Accountants and Business Consultants was employed to audit all the Donors' Accounts in accordance with the Agreements signed with the latter.
58. The African Commission expresses its profound gratitude to all the donors and other partners whose financial, material and other contributions has enabled it to carry out its mandate during the period under review.

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

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

LIST OF ANNEXES

- Annex I** **Agenda of the 30th Ordinary Session (13th to 27th October 2001, Banjul, The Gambia)**
- Agenda of the 31st Ordinary Session (2nd to 16th May 2002, South Africa)**
- Annex II** **Status of Submission of State Periodic Reports to the African Commission on Human and Peoples' Rights (as at May 2002)**
- Annex III** **Distribution of State Parties among Commissioners**
- Annex IV** **Resolutions adopted during the 30th and 31st Ordinary Sessions**
- Annex V** **Decisions on Communications brought before the Commission**

Annex I

*Agenda Of The 30th Ordinary Session
13th To 27th October 2001,
Banjul, The Gambia*

*Agenda Of The 31st Ordinary Session
2nd To 16th May 2002, South Africa*

**Agenda of the 30th Ordinary Session of the
African Commission on Human and Peoples' Rights**

13th – 27th October 2001, Banjul, The Gambia

- Item 1: Opening Ceremony (**Public session**)
- Item 2: Swearing-in of the newly elected/re-elected Commissioners (**public session**)
- Item 3: Election of the “Bureau” of the Commission (**private session**)
- Item 4: Adoption of the Agenda (**private session**)
- Item 5: Organisation of work (**private session**)
- Item 6: Adoption of the Report
- Item 7: Nomination of the Special Rapporteur on the Rights of Women in Africa and the Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions in Africa (**private session**)
- Item 8: Observers (**public session**)
- Item 9: Consideration of States' Reports (**public session**) :
 - a) Initial Report of Lesotho
 - b) Periodic Report of Togo
- Item 10: Promotion Activities (**public session**)

Besides the general consideration of promotion activities, it is expected that the following issues will be specially deliberated upon:

- a. Human Rights situation in Africa;
- b. Report of Activities of the Chairman and Members of the Commission;
- c. Consideration of the Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa;
- d. Consideration of the Report of the Special Rapporteur on the Rights of Women in Africa;
- e. The Right to a fair trial and Legal Assistance in Africa
- f. Situation of refugees and displaced persons in Africa;

- g. Situation of people with disability;
- h. Organisation of Conferences and Seminars;
- i. Situation of Indigenous peoples;
- j. Participation of the Commission at the World Conference Against Racism, Racial Discrimination, Xenophobia and associated Intolerance, in Durban, South Africa;
- k. Situation of Human Rights defenders in Africa;
- l. The African Charter on Human and Peoples' Rights and the African Union;

Item 11: Review and Bulletin of the African Commission on Human and Peoples' Rights **(public session)**

Item 12: Protection Activities **(private session)**

- a) *Method of consideration of communications*
- b) *Consideration of communications*

Item 13: Administrative and Financial matters **(private session)**

- a) *Administrative and financial situation of the Secretariat*
- b) *Construction of the Headquarters of the Commission*
- c) *Participation of the Commission in certain activities of the Organization of African Unity /African Union (O.A.U./A.U.):*

Item 14: Methods of Work of the Commission **(private session)**

Item 15: Adoption of resolutions, recommendations and decisions **(private sessions)**

Item 16: Dates, venue and draft Agenda of the 31st Ordinary Session **(private session)**

Item 17: Any Other Business **(private session)**

Item 18: Preparation of the Session report and Final Communiqué.

Item 19: Consideration and adoption of the Session Report and the Final Communiqué **(public session)**

Item 20: Reading of the Final Communiqué and Closing Ceremony **(public session)**

Item 21: Press Conference **(public session)**

**Agenda of the 31st Ordinary Session of the
African Commission on Human and Peoples' Rights
2nd - 16th May 2002, Pretoria, South Africa**

Item 1: Opening Ceremony (Public session)

Item 2: Adoption of the Agenda (private session)

Item 3: Organisation of work (private session)

Item 4: Observers (public session)

- a) Statements by State Delegates and guests;
- b) Co-operation between the Commission and the National Human Rights Institutions;
- c) Consideration of applications for Affiliate status;
- d) Relationship and co-operation between the Commission and NGOs;
- e) Consideration of applications for observer status.

Item 5: Consideration of States' Reports (public session)

- a) Initial Report of Lesotho;
- b) Periodic Report of Togo;
- c) Initial Report of Mauritania; and
- d) Initial Report of Cameroon.

Item 6: Promotion Activities (public session)

- a) Human Rights situation in Africa;
- b) Report of Activities of the Chairman and Members of the Commission;
- c) Consideration of the Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa;
- d) Consideration of the Report of the Special Rapporteur on the Rights of Women in Africa;
- e) The Right to a Fair Trial and Legal Assistance in Africa;
- f) Situation of refugees and displaced persons in Africa;
- g) Situation of people with disabilities;
- h) Organisation of Conferences and Seminars;

- Report on the Workshop on The Prevention of Torture;

- Report on the Meeting of the Working Group on Freedom of Expression

- i) Situation of Indigenous Populations/Communities;
- j) Strategies for the rapid ratification of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights;
- k) Follow-up on the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance;
- l) Situation of Human Rights Defenders in Africa.
- m) NEPAD and Human Rights and Peoples' Rights

Item 7: Protection Activities (private session)

- Method of consideration of Communications
- Consideration of communications

Item 8: Administrative and Financial matters (private session)

- a) Administrative and financial situation of the Secretariat:
- b) Construction of the Headquarters of the Commission:
- c) O.A.U. and the ACHPR:
 - Participation of the Commission in certain activities of the Organization of African Unity /African Union (O.A.U./A.U.)
 - The African Charter on Human and Peoples' Rights and the African Union

Item 9: Methods of Work of the Commission (private session)

- a) Construction of the Commission's Website
- b) Consideration of the draft code of conduct for Commissioners
- c) Mechanism of the Special Rapporteurs of the ACHPR
- d) Nomination of the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions in Africa

Item 10: Adoption of resolutions, recommendations, concluding observations and decisions (private session)

Item 11: Dates, venue and draft Agenda of the 32nd Ordinary session (private session)

Item 12: Any Other Business (private session)

Item 13: Preparation of the Session report, the 15th Annual Activity Report, and Final Communiqué. (private session)

Item 14: Adoption of the Session report, the 15th Annual Activity Report and Final Communiqué (private session)

Item 15: Reading of the Final Communiqué and Closing Ceremony (public session)

Item 16: Press Conference (public session)

Annex II

*Status of Submission of Initial & State Periodic
Reports to the African Commission on
Human and Peoples' Rights
(As at May 2002)*

Annex III

Distribution of State Parties among Commissioners

**DISTRIBUTION OF COUNTRIES AMONG COMMISSIONERS
FOR THEIR PROMOTION ACTIVITIES**

- | | | |
|-----|--------------------------------------|--------------------------------------------------------------------------------------|
| 1. | Mr. Kamel Rezag-Bara | Algeria, Saharawi Arab Democratic, Mauritania, Ethiopia and Central African Republic |
| 2. | Mrs Jainaba Johm | Nigeria, Togo, Senegal, Gambia, Benin and Côte d'Ivoire |
| 3. | Dr. Ibrahim A. Badawi | Egypt, Eritrea, Burundi and Rwanda |
| 4. | Dr. Mohamed H. Ben Salem | Tunisia, Mali, Comoros, Seychelles and Madagascar |
| 5. | Mr. Andrew R. Chigovera | South Africa, Namibia, Zambia and Democratic Republic of Congo |
| 6. | Dr. Vera M. Chirwa | Malawi, Kenya, Tanzania, and Uganda |
| 7. | Prof. E.V.O. Dankwa | Ghana, Cameroon, Guinea Bissau, Sierra Leone and Liberia |
| 8. | Mr. Yaser Sid Ahmad El-Hassan | Sudan, Somalia, Djibouti, Libya and Chad |
| 9. | Dr. Angela Melo | Angola, Sao Tome and Principe, Equatorial Guinea, Mauritius and Cape Verde |
| 10. | Dr. Nyameko B. Pityana | Zimbabwe, Botswana, Mozambique, Swaziland, and Lesotho |
| 11. | Mrs Salamata Sawadogo | Gabon, Guinea, Burkina Faso, Niger and Republic of Congo (Brazzaville) |

Annex IV

*Resolutions Adopted During
The 30th And 31st Ordinary Sessions*

RESOLUTION ON THE CONSTRUCTION OF THE HEADQUARTERS OF THE AFRICAN COMMISSION ON HUMAN & PEOPLES' RIGHTS

The African Commission on Human and Peoples' Right meeting at its 30th Ordinary Session in Banjul, The Gambia, 13th -27th October 2001;

Noting that in 1989 the Republic of The Gambia and the OAU signed a solemn and binding Agreement to establish the seat of the African Commission on Human and Peoples' Rights in Banjul, and to provide adequate facilities for the Commission to execute its mandate in terms of the African Charter on Human and Peoples' Rights;

Noting with appreciation that the Government of the Republic of the Gambia has now resolved to construct the headquarters building to house the Secretariat of the Commission and towards that end has allocated a site on which such headquarters building is to be situated; and

Noting also that on 24th October 2001 to mark United Nations Day and African Human Rights Day (21st October), the Foundation Stone was laid during a ceremony on the site presided over by the Hon. Attorney General and Secretary of State for Justice and in the presence of the Chairman, other members of the Commission, the staff of the Secretariat and other dignitaries.

1. **Congratulates** the Government of the Republic of the Gambia on the provision of land and for the resolve to construct the headquarters of the African Commission;
2. **Supports** the Government of the Republic of the Gambia in all fundraising efforts necessary to raise the necessary capital for the construction of the building;
3. **Instructs** the Secretary to the Commission to report regularly on the progress of the appeal.

Done in Banjul, The Gambia 27th October 2001

RESOLUTION ON THE RATIFICATION OF THE STATUTE ON THE INTERNATIONAL CRIMINAL COURT BY OAU MEMBER STATES

The African Commission on Human and Peoples' Rights, meeting at its 31st Ordinary Session in Pretoria, South Africa, from 2nd to 16th May 2002;

RECALLING that the establishment of the International Criminal Court (ICC) represents an important development in the history of humanity and Universal jurisdiction and more specifically in the struggle against impunity for the more serious crimes as crimes of war, crimes against humanity and genocide;

RECALLING that the 60 ratifications necessary for the entry into force of the ICC Statute was reached in April 2002 and that the statute will subsequently enter into force on 1st July 2002;

NOTING WITH SATISFACTION the fact that among the 66 States who have presently ratified the ICC Statute, 14 are African countries: South Africa, Benin, Botswana, Gabon, Ghana, Lesotho, Mali, Mauritius, Niger, Nigeria, Central African Republic, Democratic Republic of Congo, Senegal, Sierra Leone ;

CAUTIONOUS that for the ICC to reflect universal jurisdiction and to receive universal credibility, as many countries as possible, from all regions of the world should ratify the Rome Statute;

RECALLING that the Assembly of States Parties will meet at the beginning of September 2002 in order to adopt the final texts necessary for the functioning of the ICC and to appoint and elect the judges;

NOTING that only the States party to the Statute will have the opportunity to present candidates for the position of judges;

CONVINCED that by dealing with crimes against humanity, war crimes, crimes of aggression, crimes of genocide and by putting an end to the tradition of impunity, the International Criminal Court will enhance and contribute sensitively to the protection of Human and Peoples' Rights;

URGES OAU Member States who have not yet done so to ratify the ICC Statute without delay;

CALLS upon the States that have ratified the ICC Statute to rapidly incorporate it into their domestic legislation in order to be able to fully cooperate with the ICC and implement the principle of complementarity with their national courts;

CALLS on OAU Member States to ensure the active participation of Africans in the functioning of the International Criminal Court;

Done in Pretoria, South Africa 16th May 2002

**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.**

The African Commission on Human and Peoples' Rights, meeting at its 31st Ordinary Session in Pretoria, South Africa, from 2nd to 16th May 2002 ;

RECALLING that the Assembly of Heads of States and of Governments of the Organisation of African Unity (OAU) adopted the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights at its 19th Ordinary Session on 9 July 1998 in Ouagadougou, Burkina Faso;

NOTING with satisfaction that 36 States have signed the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights;

CONSIDERING that only 5 States have up to now ratified the said Protocol: Burkina Faso, Gambia, Mali, Senegal and Uganda;

RECALLING that 15 ratifications or accessions are necessary for the entry into force of the Protocol on the Establishment of an African Court on Human and Peoples' Rights;

URGES all the OAU Member States to ratify or accede as soon as possible to the Protocol on the Establishment of an African Court on Human and Peoples' Rights.

Done in Pretoria, South Africa 16th May 2002

Annex V

*Decisions On Communications
Brought Before The African Commission*

155/96 The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria

Rapporteur: 20th Session: Commissioner Dankwa
21st Session: Commissioner Dankwa
22nd Session: Commissioner Dankwa
23rd Session: Commissioner Dankwa
24th Session: Commissioner Dankwa
25th Session: Commissioner Dankwa
26th Session: Commissioner Dankwa
27th Session: Commissioner Dankwa
28th Session: Commissioner Dankwa
29th Session: Commissioner Dankwa
30th Session: Commissioner Dankwa

Summary of Facts:

1. The Communication alleges that the military government of Nigeria has been directly involved in oil production through the State oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC), and that these operations have caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People.
2. The Communication alleges that the oil consortium has exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways in violation of applicable international environmental standards. The consortium also neglected and/or failed to maintain its facilities causing numerous avoidable spills in the proximity of villages. The resulting contamination of water, soil and air has had serious short and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, and increased risk of cancers, and neurological and reproductive problems.
3. The Communication alleges that the Nigerian Government has condoned and facilitated these violations by placing the legal and military powers of the State at the disposal of the oil companies. The Communication contains a memo from the Rivers State Internal Security Task Force, calling for "ruthless military operations".

4. The Communication alleges that the Government has neither monitored operations of the oil companies nor required safety measures that are standard procedure within the industry. The Government has withheld from Ogoni Communities information on the dangers created by oil activities. Ogoni Communities have not been involved in the decisions affecting the development of Ogoniland.
5. The Government has not required oil companies or its own agencies to produce basic health and environmental impact studies regarding hazardous operations and materials relating to oil production, despite the obvious health and environmental crisis in Ogoniland. The government has even refused to permit scientists and environmental organisations from entering Ogoniland to undertake such studies. The government has also ignored the concerns of Ogoni Communities regarding oil development, and has responded to protests with massive violence and executions of Ogoni leaders.
6. The Communication alleges that the Nigerian government does not require oil companies to consult communities before beginning operations, even if the operations pose direct threats to community or individual lands.
7. The Communication alleges that in the course of the last three years, Nigerian security forces have attacked, burned and destroyed several Ogoni villages and homes under the pretext of dislodging officials and supporters of the Movement of the Survival of Ogoni People (MOSOP). These attacks have come in response to MOSOP's non-violent campaign in opposition to the destruction of their environment by oil companies. Some of the attacks have involved uniformed combined forces of the police, the army, the air-force, and the navy, armed with armoured tanks and other sophisticated weapons. In other instances, the attacks have been conducted by unidentified gunmen, mostly at night. The military-type methods and the calibre of weapons used in such attacks strongly suggest the involvement of the Nigerian security forces. The complete failure of the Government of Nigeria to investigate these attacks, let alone punish the perpetrators, further implicates the Nigerian authorities.
8. The Nigerian Army has admitted its role in the ruthless operations which have left thousands of villagers homeless. The admission is recorded in several memos exchanged between officials of the SPDC and the Rivers State Internal Security Task Force, which has devoted itself to the suppression of the Ogoni campaign. One such memo calls for "ruthless military operations" and "wasting operations coupled with psychological tactics of displacement". At a public meeting recorded on video, Major Okuntimo, head of the Task Force, described the repeated invasion of Ogoni villages by his troops, how unarmed villagers running from the troops were shot from behind, and the homes of suspected MOSOP activists were ransacked and destroyed. He stated his commitment to rid the communities of members and supporters of MOSOP.
9. The Communication alleges that the Nigerian government has destroyed and threatened Ogoni food sources through a variety of means. The government has participated in irresponsible oil development that has poisoned much of the soil and water upon which Ogoni farming and fishing depended. In their raids on villages, Nigerian security forces have destroyed crops and killed farm animals. The security forces have created a state of

terror and insecurity that has made it impossible for many Ogoni villagers to return to their fields and animals. The destruction of farmlands, rivers, crops and animals has created malnutrition and starvation among certain Ogoni Communities.

Complaint:

10. The communication alleges violations of Articles 2, 4, 14, 16, 18(1), 21, and 24 of the African Charter.

Procedure:

11. The communication was received by the Commission on 14th March 1996. The documents were sent with a video.
12. On 13th August 1996 letters acknowledging receipt of the Communication were sent to both Complainants.
13. On 13th August 1996, a copy of the Communication was sent to the Government of Nigeria.
14. At the 20th Ordinary Session held in Grand Bay, Mauritius in October 1996, the Commission declared the Communication admissible, and decided that it would be taken up with the relevant authorities by the planned mission to Nigeria.
15. On 10th December 1996, the Secretariat sent a Note Verbale and letters to this effect to the government and the Complainants respectively.
16. At its 21st Ordinary Session held in April 1997, the Commission postponed taking decision on the merits to the next session, pending the receipt of written submissions from the Complainants to assist it in its decision. The Commission also awaits further analysis of its report of the mission to Nigeria.
17. On 22nd May 1997, the Complainants were informed of the Commission's decision, while the State was informed on 28th May 1997.
18. At the 22nd Ordinary Session, the Commission postponed taking a decision on the case pending the discussion of the Nigerian Mission report.
19. At the 23rd Ordinary Session held in Banjul, The Gambia the Commission postponed consideration of the case to the next session due to lack of time.
20. On 25th June 1998, the Secretariat of the Commission sent letters to all parties concerned informing them of the status of the Communication.
21. At the 24th Ordinary Session, the Commission postponed consideration of the above Communication to the next session.
22. On 26th November 1998, the parties were informed of the Commission's decision.

23. At the 25th Ordinary Session of the Commission held in Bujumbura, Burundi, the Commission further postponed consideration of this communication to the 26th Ordinary Session.
24. The above decision was conveyed through separate letters of 11th May 1999 to the parties.
25. At its 26th Ordinary Session held in Kigali, Rwanda, the Commission deferred taking a decision on the merits of the case to the next session.
26. This decision was communicated to the parties on 24th January 2000.
27. Following the request of the Nigerian authorities through a Note Verbale of 16th February 2000 on the status of pending communications, the Secretariat, among other things, informed the government that this communication was set down for a decision on the merits at the next session.
28. At the 27th Ordinary Session of the Commission held in Algeria from 27th April to 11th May 2000, the Commission deferred further consideration of the case to the 28th Ordinary Session.
29. The above decision was communicated to the parties on 12th July 2000.
30. At the 28th Ordinary Session of the Commission held in Cotonou, Benin from 26th October to 6th November 2000, the Commission deferred further consideration of the case to the next session. During that session, the Respondent State submitted a Note Verbale stating the actions taken by the Government of the Federal Republic of Nigeria in respect of all the communications filed against it, including the present one. In respect of the instant communication, the note verbale admitted the gravamen of the complaints but went on to state the remedial measures being taken by the new civilian administration and they included -:
 - Establishing for the first time in the history of Nigeria, a Federal Ministry of Environment with adequate resources to address environmental related issues prevalent in Nigeria and as a matter of priority in the Niger delta area
 - Enacting into law the establishment of the Niger Delta Development Commission (NDDC) with adequate funding to address the environmental and social related problems of the Niger delta area and other oil producing areas of Nigeria
 - Inaugurating the Judicial Commission of Inquiry to investigate the issues of human rights violations. In addition, the representatives of the Ogoni people have submitted petitions to the Commission of Inquiry on these issues and these are presently being reviewed in Nigeria as a top priority matter
31. The above decision was communicated to the parties on 14th November 2000.
32. At the 29th Ordinary Session held in Tripoli, Libya from 23rd April to 7th May 2001, the Commission decided to defer the final consideration of the case to the next session to be held in Banjul, the Gambia in October 2001.

33. The above decision was communicated to the parties on 6th June 2001.
34. At its 30th session held in Banjul, the Gambia from 13th to 27th October 2001, the African Commission reached a decision on the merits of this communication.

LAW

Admissibility

- 35.** Article 56 of the African Charter governs admissibility. All of the conditions of this Article are met by the present communication. Only the exhaustion of local remedies requires close scrutiny.
- 36.** Article 56(5) requires that local remedies, if any, be exhausted, unless these are unduly prolonged.
- 37.** One purpose of the exhaustion of local remedies requirement is to give the domestic courts an opportunity to decide upon cases before they are brought to an international forum, thus avoiding contradictory judgements of law at the national and international levels. Where a right is not well provided for in domestic law such that no case is likely to be heard, potential conflict does not arise. Similarly, if the right is not well provided for, there cannot be effective remedies, or any remedies at all.
- 38.** Another rationale for the exhaustion requirement is that a 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. **(See the Commission's decision on Communications 25/89, 47/90, 56/91 and 100/93 World Organisation Against Torture et al./Zaire: 53).** The exhaustion of domestic remedies requirement should be properly understood as ensuring that the State concerned has ample opportunity to remedy the situation of which applicants complain. It is not necessary here to recount the international attention that Ogoniland has received to argue that the Nigerian government has had ample notice and, over the past several decades, more than sufficient opportunity to give domestic remedies.
- 39.** Requiring the exhaustion of local remedies also ensures that the African Commission does not become a tribunal of first instance for cases for which an effective domestic remedy exists.
40. The present communication does not contain any information on domestic court actions brought by the Complainants to halt the violations alleged. However, the Commission on numerous occasions brought this complaint to the attention of the government at the time but no response was made to the Commission's requests. In such cases the Commission has held that in the absence of a substantive response from the Respondent State it must decide on the facts provided by the Complainants and treat them as given. **(See Communications 25/89, 47/90, 56/91, 100/93, World Organisation Against Torture et al. /Zaire, Communication 60/91 Constitutional Right Project/Nigeria and Communication 101/93 Civil Liberties Organisation/Nigeria).**

41. The Commission takes cognisance of the fact that the Federal Republic of Nigeria has incorporated the African Charter on Human and Peoples' Rights into its domestic law with the result that all the rights contained therein can be invoked in Nigerian courts including those violations alleged by the Complainants. However, the Commission is aware that at the time of submitting this communication, the then Military government of Nigeria had enacted various decrees ousting the jurisdiction of the courts and thus depriving the people in Nigeria of the right to seek redress in the courts for acts of government that violate their fundamental human rights¹. In such instances, and as in the instant communication, the Commission is of the view that no adequate domestic remedies are existent (**See Communication 129/94 Civil Liberties Organisation/Nigeria**).
42. It should also be noted that the new government in their Note Verbale referenced 127/2000 submitted at the 28th session of the Commission held in Cotonou, Benin, admitted to the violations committed then by stating, "there is no denying the fact that a lot of atrocities were and are still being committed by the oil companies in Ogoni Land and indeed in the Niger Delta area".

The Commission therefore declared the communication admissible.

Merits

43. The present Communication alleges a concerted violation of a wide range of rights guaranteed under the African Charter for Human and Peoples' Rights. Before we venture into the inquiry whether the Government of Nigeria has violated the said rights as alleged in the Complaint, it would be proper to establish what is generally expected of governments under the Charter and more specifically vis-à-vis the rights themselves.
44. Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights-both civil and political rights and social and economic-generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to **respect, protect, promote, and fulfil these rights**. These obligations universally apply to all rights and entail a combination of negative and positive duties. As a human rights instrument, the African Charter is not alien to these concepts and the order in which they are dealt with here is chosen as a matter of convenience and in no way should it imply the priority accorded to them. Each layer of obligation is equally relevant to the rights in question.²
45. At a primary level, the obligation to **respect** entails that the State should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of their action.³ With respect to

¹ See The Constitution (Suspension and Modification) Decree 1993

² See generally, Asbjørn Eide, "Economic, Social and Cultural Rights As Human Rights" in Asbjørn Eide, Catarina Krause and Allan Rosas (Eds.) *Economic, Social, and Cultural Right: A Textbook* (1995) PP. 21-40

³ Krzysztof Drzewicki, "Internationalization of Human Rights and Their Juridization" in Raija Hanski and Markku Suksi (Eds.), Second Revised Edition, *An Introduction to the International Protection of Human Rights: A Textbook* (1999), p. 31.

socio economic rights, this means that the State is obliged to respect the free use of resources owned or at the disposal of the individual alone or in any form of association with others, including the household or the family, for the purpose of rights-related needs. And with regard to a collective group, the resources belonging to it should be respected, as it has to use the same resources to satisfy its needs.

46. At a secondary level, the State is obliged to **protect** right-holders against other subjects by legislation and provision of effective remedies.⁴ This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms. This is very much intertwined with the tertiary obligation of the State to **promote** the enjoyment of all human rights. The State should make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures.
47. The last layer of obligation requires the State to **fulfil** the rights and freedoms it freely undertook under the various human rights regimes. It is more of a positive expectation on the part of the State to move its machinery towards the actual realisation of the rights. This is also very much intertwined with the duty to promote mentioned in the preceding paragraph. It could consist in the direct provision of basic needs such as food or resources that can be used for food (direct food aid or social security).⁵
48. Thus States are generally burdened with the above set of duties when they commit themselves under human rights instruments. Emphasising the all embracing nature of their obligations, the International Covenant on Economic, Social, and Cultural Rights, for instance, under Article 2(1), stipulates exemplarily that States “*undertake to take steps... by all appropriate means, including particularly the adoption of legislative measures.*” Depending on the type of rights under consideration, the level of emphasis in the application of these duties varies. But sometimes, the need to meaningfully enjoy some of the rights demands a concerted action from the State in terms of more than one of the said duties. Whether the government of Nigeria has, by its conduct, violated the provisions of the African Charter as claimed by the Complainants is examined here below.
49. In accordance with Articles 60 and 61 of the African Charter, this communication is examined in the light of the provisions of the African Charter and the relevant international and regional human rights instruments and principles. The Commission thanks the two human rights NGOs who brought the matter under its purview: the Social and Economic Rights Action Center (Nigeria) and the Center for Economic and Social Rights (USA). Such is a demonstration of the usefulness to the Commission and individuals of *actio popularis*, which is wisely allowed under the African Charter. It is a

⁴ Drzewicki, *ibid.*

⁵ See Eide, in Eide, Krause and Rosas, *op cit.*, p. 38

matter of regret that the only written response from the government of Nigeria is an admission of the gravamen of the complaints which is contained in a note verbale and which we have reproduced above at paragraph 30. In the circumstances, the Commission is compelled to proceed with the examination of the matter on the basis of the uncontested allegations of the Complainants, which are consequently accepted by the Commission.

50. The Complainants allege that the Nigerian government violated the right to health and the right to clean environment as recognized under Articles 16 and 24 of the African Charter by failing to fulfill the minimum duties required by these rights. This, the Complainants allege, the government has done by -:
- Directly participating in the contamination of air, water and soil and thereby harming the health of the Ogoni population,
 - Failing to protect the Ogoni population from the harm caused by the NNPC Shell Consortium but instead using its security forces to facilitate the damage
 - Failing to provide or permit studies of potential or actual environmental and health risks caused by the oil operations

Article 16 of the African Charter reads:

"(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.

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

Article 24 of the African Charter reads:

"All peoples shall have the right to a general satisfactory environment favourable to their development."

51. These rights recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual.⁶ As has been rightly observed by Alexander Kiss, "an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health."⁷
52. The right to a general satisfactory environment, as guaranteed under Article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Article 12 of the International Covenant on Economic, Social and Cultural

⁶ See also General Comment No. 14 (2000) of the Committee on Economic, Social and Cultural rights

⁷ Human Rights in the Twenty first Century: A Global Challenge Edited by Kathleen E. Mahoney and Paul Mahoney. Article by Alexander Kiss " Concept and Possible Implications of the Right to Environment at page 553

Rights (ICESCR), to which Nigeria is a party, requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in Article 16(1) of the African Charter and the right to a general satisfactory environment favourable to development (Article 16(3)) already noted obligate governments to desist from directly threatening the health and environment of their citizens. The State is under an obligation to respect the just noted rights and this entails largely non-interventionist conduct from the State for example, not from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual⁸.

53. Government compliance with the spirit of Articles 16 and 24 of the African Charter must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.
54. We now examine the conduct of the government of Nigeria in relation to Articles 16 and 24 of the African Charter. Undoubtedly and admittedly, the government of Nigeria, through NNPC has the right to produce oil, the income from which will be used to fulfil the economic and social rights of Nigerians. But the care that should have been taken as outlined in the preceding paragraph and which would have protected the rights of the victims of the violations complained of was not taken. To exacerbate the situation, the security forces of the government engaged in conduct in violation of the rights of the Ogonis by attacking, burning and destroying several Ogoni villages and homes.
55. The Complainants also allege a violation of Article 21 of the African Charter by the government of Nigeria. The Complainants allege that the Military government of Nigeria was involved in oil production and thus did not monitor or regulate the operations of the oil companies and in so doing paved a way for the Oil Consortiums to exploit oil reserves in Ogoniland. Furthermore, in all their dealings with the Oil Consortiums, the government did not involve the Ogoni Communities in the decisions that affected the development of Ogoniland. The destructive and selfish role-played by oil development in Ogoniland, closely tied with repressive tactics of the Nigerian Government, and the lack of material benefits accruing to the local population⁹, may well be said to constitute a violation of Article 21.

Article 21 provides

1. *All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.*

⁸ See Scott Leckie " the Right to Housing " in Economic, social and cultural rights (ed) Eide, Krause and Rosas, Martinus Nijhoff Publishers 1995

⁹ See a report by the Industry and Energy Operations Division West Central Africa Department "Defining an Environmental Development Strategy for the Niger Delta" Volume 1 - Paragraph B(1.6 - 1.7) at Page 2-3

2. *In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.*
3. *The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.*
4. *States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.*
5. *States Parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.*

56. The origin of this provision may be traced to colonialism, during which the human and material resources of Africa were largely exploited for the benefit of outside powers, creating tragedy for Africans themselves, depriving them of their birthright and alienating them from the land. The aftermath of colonial exploitation has left Africa's precious resources and people still vulnerable to foreign misappropriation. The drafters of the Charter obviously wanted to remind African governments of the continent's painful legacy and restore co-operative economic development to its traditional place at the heart of African Society.

57. Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties (***See Union des Jeunes Avocats /Chad¹⁰***). This duty calls for positive action on part of governments in fulfilling their obligation under human rights instruments. The practice before other tribunals also enhances this requirement as is evidenced in the case ***Velásquez Rodríguez v. Honduras¹¹***. In this landmark judgment, the Inter-American Court of Human Rights held that when a State allows private persons or groups to act freely and with impunity to the detriment of the rights recognised, it would be in clear violation of its obligations to protect the human rights of its citizens. Similarly, this obligation of the State is further emphasised in the practice of the European Court of Human Rights, in ***X and Y v. Netherlands¹²***. In that case, the Court pronounced that there was an obligation on authorities to take steps to make sure that the enjoyment of the rights is not interfered with by any other private person.

58. The Commission notes that in the present case, despite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of the Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors, and the oil Companies in particular, to

¹⁰ Communication 74/92

¹¹ See, Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Judgment of July 19, 1988, Series C, No. 4

¹² 91 ECHR (1985) (Ser. A) at 32.

devastatingly affect the well-being of the Ogonis. By any measure of standards, its practice falls short of the minimum conduct expected of governments, and therefore, is in violation of Article 21 of the African Charter.

59. The Complainants also assert that the Military government of Nigeria massively and systematically violated the right to adequate housing of members of the Ogoni community under Article 14 and implicitly recognised by Articles 16 and 18(1) of the African Charter.

Article 14 of the Charter reads:

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

Article 18(1) provides:

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

60. Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing which the Nigerian Government has apparently violated.
61. At a very minimum, the right to shelter obliges the Nigerian government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes. The State's obligation to respect housing rights requires it, and thereby all of its organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to them in a way they find most appropriate to satisfy individual, family, household or community housing needs.¹³ Its obligations to protect obliges it to prevent the violation of any individual's right to housing by any other individual or non-state actors like landlords, property developers, and land owners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies.¹⁴ The right to shelter even goes further than a roof over ones head. It extends to embody the individual's right to be let alone and to live in peace- whether under a roof or not.

¹³ Scott Leckie, "The Right to Housing" in Eide, Krause and Rosas, op cit., 107-123, at p. 113

¹⁴ Ibid. pp. 113-114

62. The protection of the rights guaranteed in Articles 14, 16 and 18 (1) leads to the same conclusion. As regards the earlier right, and in the case of the Ogoni People, the Government of Nigeria has failed to fulfil these two minimum obligations. The government has destroyed Ogoni houses and villages and then, through its security forces, obstructed, harassed, beaten and, in some cases, shot and killed innocent citizens who have attempted to return to rebuild their ruined homes. These actions constitute massive violations of the right to shelter, in violation of Articles 14, 16, and 18(1) of the African Charter.
63. The particular violation by the Nigerian Government of the right to adequate housing as implicitly protected in the Charter also encompasses the right to protection against forced evictions. The African Commission draws inspiration from the definition of the term "forced evictions" by the Committee on Economic Social and Cultural Rights which defines this term as "the permanent removal against their will of individuals, families and/or communities from the homes and/or which they occupy, without the provision of, and access to, appropriate forms of legal or other protection"¹⁵. Wherever and whenever they occur, forced evictions are extremely traumatic. They cause physical, psychological and emotional distress; they entail losses of means of economic sustenance and increase impoverishment. They can also cause physical injury and in some cases sporadic deaths.... Evictions break up families and increase existing levels of homelessness.¹⁶ In this regard, **General Comment No. 4 (1991)** of the Committee on Economic, Social and Cultural Rights on the right to adequate housing states that "all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats" (E/1992/23, annex III. Paragraph 8(a)). The conduct of the Nigerian government clearly demonstrates a violation of this right enjoyed by the Ogonis as a collective right.
64. The Communication argues that the right to food is implicit in the African Charter, in such provisions as the right to life (Art. 4), the right to health (Art. 16) and the right to economic, social and cultural development (Art. 22). By its violation of these rights, the Nigerian Government trampled upon not only the explicitly protected rights but also upon the right to food implicitly guaranteed.
65. The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation. The African Charter and international law require and bind Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens. Without touching on the duty to improve food production and to guarantee access, the minimum core of the right to food requires that the Nigerian Government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves.
66. The government's treatment of the Ogonis has violated all three minimum duties of the right to food. The government has destroyed food sources through its security forces and State Oil Company; has allowed private oil companies to destroy food

¹⁵ See General Comment No.7 (1997) on the right to adequate housing (Article 11.1): Forced Evictions

¹⁶ Ibid. p. 113

sources; and, through terror, has created significant obstacles to Ogoni communities trying to feed themselves. The Nigerian government has again fallen short of what is expected of it as under the provisions of the African Charter and international human rights standards, and hence, is in violation of the right to food of the Ogonis.

67. The Complainants also allege that the Nigerian Government has violated Article 4 of the Charter which guarantees the inviolability of human beings and everyone's right to life and integrity of the person respected. Given the wide spread violations perpetrated by the Government of Nigeria and by private actors (be it following its clear blessing or not), the most fundamental of all human rights, the right to life has been violated. The Security forces were given the green light to decisively deal with the Ogonis, which was illustrated by the wide spread terrorisations and killings. The pollution and environmental degradation to a level humanly unacceptable has made it living in the Ogoni land a nightmare. The survival of the Ogonis depended on their land and farms that were destroyed by the direct involvement of the Government. These and similar brutalities not only persecuted individuals in Ogoniland but also the whole of the Ogoni Community as a whole. They affected the life of the Ogoni Society as a whole. The Commission conducted a mission to Nigeria from the 7th – 14th March 1997 and witnessed first hand the deplorable situation in Ogoni land including the environmental degradation.
68. The uniqueness of the African situation and the special qualities of the African Charter on Human and Peoples' Rights imposes upon the African Commission an important task. International law and human rights must be responsive to African circumstances. Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective. As indicated in the preceding paragraphs, however, the Nigerian Government did not live up to the minimum expectations of the African Charter.
69. The Commission does not wish to fault governments that are labouring under difficult circumstances to improve the lives of their people. The situation of the people of Ogoniland, however, requires, in the view of the Commission, a reconsideration of the Government's attitude to the allegations contained in the instant communication. The intervention of multinational corporations may be a potentially positive force for development if the State and the people concerned are ever mindful of the common good and the sacred rights of individuals and communities. The Commission however takes note of the efforts of the present civilian administration to redress the atrocities that were committed by the previous military administration as illustrated in the Note Verbale referred to in paragraph 30 of this decision.

For the above reasons, the Commission,

Finds the Federal Republic of Nigeria in violation of Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter on Human and Peoples' Rights;

Appeals to the government of the Federal Republic of Nigeria to ensure protection of the environment, health and livelihood of the people of Ogoniland by:

- Stopping all attacks on Ogoni communities and leaders by the Rivers State Internal Securities Task Force and permitting citizens and independent investigators free access to the territory;
- Conducting an investigation into the human rights violations described above and prosecuting officials of the security forces, NNPC and relevant agencies involved in human rights violations;
- Ensuring adequate compensation to victims of the human rights violations, including relief and resettlement assistance to victims of government sponsored raids, and undertaking a comprehensive cleanup of lands and rivers damaged by oil operations;
- Ensuring that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry; and
- Providing information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations.

Urges the government of the Federal Republic of Nigeria to keep the African Commission informed of the out come of the work of -:

- The Federal Ministry of Environment which was established to address environmental and environment related issues prevalent in Nigeria, and as a matter of priority, in the Niger Delta area including the Ogoni land;
- The Niger Delta Development Commission (NDDC) enacted into law to address the environmental and other social related problems in the Niger Delta area and other oil producing areas of Nigeria; and
- The Judicial Commission of Inquiry inaugurated to investigate the issues of human rights violations.

***Done at the 30th Ordinary Session, held in Banjul, The Gambia
from 13th to 27th October 2001***

220/98 The Law Offices of Ghazi Suleiman / Sudan

Rapporteur:

24th Session: Commissioner Rezag-Bara
25th Session: Commissioner Rezag-Bara
26th Session: Commissioner Rezag-Bara
27th Session: Commissioner Rezag-Bara
28th Session: Commissioner Rezag-Bara
29th Session: Commissioner Rezag-Bara
30th Session: Chairperson Rezag-Bara
31st Session: Chairperson Rezag Bara

Summary of Facts:

1. Complainant is a Human Rights Law office in Sudan and is submitting the communication on behalf of all University Students and Teachers in Sudan.
2. The complaint was sent by post and received at the Secretariat on 14 October 1998.
3. Complainant alleges that on 26 September the Minister of Education in Sudan announced that all the universities in Sudan would be closed for one month.
4. It is alleged that the closure of universities is in order to assist the military mobilisation for the civil war in Southern Sudan.
5. The Complainant has included with the complaint, a sworn affidavit by a university lecturer in the Khartoum University to attest to these allegations.
6. Complainant notifies the Commission that though an administrative appeal has been filed against the decision of the Minister of Education, he does not believe this will yield any realistic success.
7. The Complainant urges the Commission to adopt provisional measures under Rule 111 of its Rules of Procedure which will request the government of Sudan to re-open the universities immediately and prevent further interference with university teaching.

Complaint:

The Complainant alleges a violation of the following provisions of the African Charter on Human and Peoples' Rights:

Articles 6, 7(c) and 17(1)

Procedure:

- 8.** At the 24th ordinary session held in Banjul, The Gambia from 22nd to 31st October 1998, the Commission decided to be seized of the communication.
- 9.** On 26 November 1990, the Secretariat informed the two parties of the Commission's decision.
- 10.** On 3 May 1999, during the 25th ordinary session of the Commission in Bujumbura, Burundi, a representative of the government of Sudan submitted a written response to the Commission concerning the communication.
- 11.** At its 25th ordinary session held in Bujumbura, Burundi, the Commission postponed consideration of the communication to the next session.
- 12.** On 13 May 1999, the Secretariat of the Commission wrote letters to all the parties notifying them of this decision.
- 13.** On 21 September 1999, the Complainant notified the Secretariat of the Commission of a new address for all correspondences relating to the communication.
- 14.** During the 26th ordinary session, the Commission received a written response, together with a three paged document in Arabic, from Dr. Ahmed El Mufti, Rapporteur of the Advisory Council for Human Rights, Ministry of Justice, Sudan concerning the communication. The attached document is said to be the decision of the Constitutional Division of the High Court.
- 15.** The Commission considered the communication at its 26th ordinary session held in Kigali, Rwanda and requested the Complainant to submit written observations on the outcome of the administrative appeal filed against the decision of the Minister of Education, and generally, on the administrative appeal processes in the Republic of Sudan.
- 16.** On 21 January 2000, the Secretariat of the Commission wrote to the parties informing them of the decision of the Commission. It specifically requested the government of Sudan to furnish it with the translation of the decision of the Constitutional Division of the High Court in English or French.
- 17.** On 23 February 2000, following an email from Dr. Curtis Doebbler of the Complainant Firm requesting the Secretariat to furnish him on the progress of all communications filed, the Secretariat forwarded to him through email the letter of 21 January 2000. It also requested him to indicate a fax number to enable it send observations received from the government of Sudan for his response.

- 18.** On 1 March 2000, the Secretariat received an email from Dr. Curtis Doebbler indicating a fax number for the above documents to be sent. The Secretariat acknowledged receipt of the same and intimated to him the necessity of submitting the requested written responses on time.
- 19.** On 8 March 2000, the observation of the government of Sudan was faxed to the Complainant in the U. S. as requested.
- 20.** The Complainant repeated its request for information on the progress of all communications pending before the Commission on 9 and 16 March 2000.
- 21.** At last, the Secretariat received an e-mail from Dr. Curtis Doebbler on 17 March 2000, acknowledging receipt of the e-mail indicating the facts of all the pending communications filed by the Complainant, and also promising to furnish it with their responses no later than 24 March 2000.
- 22.** At the 27th ordinary session held in Algeria, the Commission heard oral submissions from parties and decided to consolidate all the cases. It requested to furnish it with written submissions on the issue of exhaustion of local remedies.
- 23.** On 30 June 2000, the above decisions were communicated to parties.
- 24.** On 4 September 2000, Dr. Curtis Doebbler wrote from Cairo to the Secretariat of the Commission requesting information on the decision taken by the Commission at the 27th session in Algiers.
- 25.** The Secretariat responded on 7 September 2000, informing him that same had earlier been faxed to him and observing that there were at least three e-mail addresses given by him to the Secretariat for communication purposes and proposing that he should indicate the most suitable e-mail address for future correspondence in order to avoid delays and missing mails. The mails were dispatched to though all the email addresses designated by him and also through fax.
- 26.** On 14 September 2000, Dr. Curtis Doebbler acknowledged receipt of the mails but pleaded for an adjournment to enable him submit in advance a full brief on the issue of exhaustion of local remedies and to arrange for his witnesses.
- 27.** On 13th March 2001, the Secretariat received the Complainant's submission. At the 29th Ordinary Session, the Commission will hear evidence on exhaustion of local remedies and will then decide on admissibility.
- 28.** At the 29th Ordinary session held in Tripoli, the rapporteur introduced the communications and reviewed the facts and the status of the case. The Commission thereafter heard the parties to the case. Following detailed discussions, the Commission noted that the Complainant had submitted a detailed brief on the case. It was therefore recommended that consideration of this communication be deferred to the 30th Session pending submission of detailed replies by the Respondent State.

29. On 19th June 2001, the Secretariat of the African Commission informed the parties of the above decision and requested the Respondent State to forward its written submissions within two (2) months from the date of notification of the decision.
30. On 14th August 2001, a reminder was sent to the Respondent State to forward its submissions within the prescribed time to enable the Secretariat proceed with the communication.
31. During the 30th Session, the rapporteurs introduced the communications and reviewed the facts and the status of each case. The Commission thereafter heard the oral submission of the Respondent State to the case. Following detailed discussions, the Commission noted that the Respondent State did not respond to the questions raised by the Complainant. The Commission also heard oral submissions by Dr. Curtis Doebbler and recommended that consideration of these communications be deferred to the 31st Session, pending detailed written submission by the Respondent State to the submissions of the Complainant.
32. On 15th November 2002, the Secretariat of the African Commission informed the parties on the decision of the Commission and requested Respondent State to forward its written submissions within two (2) months from the date of notification of this decision.
33. On 7th March 2002, a reminder was sent to the Respondent State to forward its submissions within the prescribed time to enable the Secretariat to proceed with the communication.

LAW

Admissibility

34. Article 56(5) of the African Charter provides:

"The communications stipulated in Article 55 received by the Commission relating to human and peoples' rights, must meet the following conditions in order to be investigated:

(5) *Be subsequent to exhausting all local remedies, if they exist, unless it is obvious to the Commission that the procedure for such recourse is abnormally prolonged;*"
35. Concerning the question of exhausting local avenues of recourse, the Complainant informed the Commission that no effective recourse was available and that, even if used, the Constitutional Court is not qualified due to the state of emergency and the political limitations, which makes it impossible to legitimately complain to the court.
36. He maintains that the grounds for a local remedy that could apply are rendered ineffective by the fact that the legal system in Sudan is neither free nor independent since the Sudanese courts have been controlled by the executive since 1998 and that, given this situation, the executive could not rule on proceedings brought against the

Sudanese government which are based on international humanitarian law, or even apply this law when it is clearly relevant.

37. The Complainant alleges that, in practice, the procedures in place, which allow for compensation for human rights violations committed by the Government of Sudan, are often inaccessible to those individuals whose rights have been violated, due to the fact that current administrative and legal solutions are serious obstacles to their use. Consequently, complainants who ask that their rights be protected before Sudanese courts, come up against obstacles which make these avenues of redress ineffective.
38. The Sudanese government alleges that the complainants did not use the remedies available to them in the local courts before applying to the Commission. It insists that neither the lawyer lodging the complaint, nor the complainants, filed an appeal against the decision; this is proved from the registers of the administrative courts.
39. The government maintains that the complainants, despite their insistence in previous correspondence, did not transmit to them the reference number of the appeal that had been filed which proves that no appeal was filed, contrary to the assertions of the complainants who therefore did not exhaust all the local remedies as provided in Article 56 of the African Charter on Human and Peoples' Rights.
40. It argues that the right of the complainants to file an appeal against a decision of the court, is provided for in Article 20 (1) of the administrative and constitutional code of justice of 1996 as amended in 2000, and documentation on decisions handed down in similar cases was submitted.
41. Article 56 (5) of the African Charter requires that "*a communication be introduced subsequent to exhaustion of local remedies, if they exist, unless it is obvious to the Commission that the procedure for such recourse is abnormally prolonged*". The complaint before the Commission was received by the Secretariat on 14th October 1998 and the decision to close the universities was taken on 26th September 1998 - an interval of one month between closure of the universities and receipt of the complaint.
42. The Commission is of the view that an interval of one month is a short time within which the Complainant could have accessed and exhausted all local remedies. Furthermore, the Complainant gives no indication of instituting proceedings before the domestic courts.

For these reasons, and in accordance with Article 56(5) of the African Charter, the Commission declares this communication inadmissible due to non-exhaustion of local remedies.

*Done at the 31st Ordinary Session held in
Pretoria, South Africa, from 2nd to 16th May 2002.*

238/2001 – Institute for Human Rights and Development (on behalf of Sédar Tumba Mboyo) / Democratic Republic of Congo

Rapporteur:

- 29th session: Commissioner Isaac Nguema
30th session: Commissioner Sawadogo
31st session: Commissioner Sawadogo

Summary of Facts

1. The Institute submitted the complaint on behalf of Mr Sedar Tumba Mboyo for Human Rights and Development, (the Institute for Human Rights and Development is a Human Rights NGO located in Banjul, the Gambia and since October 1999 has been granted observer status with the African Commission).
2. The communication was sent by post and was received at the Secretariat of the Commission on 21st November 2000.
3. The applicant who has full powers to act on behalf of Mr. Tumba Sedar Mboyo, maintains that AFDL (the Alliance of Democratic Forces for Liberation) soldiers forced entry into Mr Sedar's Residence, and after having brutalised and intimidated his neighbourhood forcefully took him without warrant or explanation.
4. He was bound hand and foot, kept in conditions where he could not satisfy his natural needs and subjected to "heavy handed" interrogation for three (3) days, after which he was accused of inciting a popular uprising.
5. He was then transferred and detained together with ten or so other anti-Kabila protesters in the former Mobutu military camp. Mr Mboyo affirms that he was beaten and his rights infringed upon for two days by the three soldiers guarding him.
6. Mr Mboyo was detained incommunicado for a total period of twenty three (23) days.
7. The Complainant alleges that Mr Mboyo's human rights activities within the NGO may have led the government into making these unfounded accusations.

Complaint

8. The Complainant is alleging that Articles 5, 6, 7, 9, 10, 11, 13, 18 and 26 of the African Charter on Human and Peoples' Rights have been violated.

Procedure

9. At the 29th ordinary session held in Tripoli, the rapporteur introduced the complaint. The Commission examined the communication and decided to be seized of the matter and recommended that the parties be informed accordingly.
10. On 19th June 2001, the Secretariat of the African Commission informed the parties on the above decision and requested Respondent State to forward its written submissions within two (2) months from the date of notification of this decision
11. On 20th June the Secretariat of the African Commission requested the Institute for Human Rights and Development to furnish clarification on the measures taken by the author to exhaust local remedies or any documents on his possession proving the all allegations.
12. During the 30th Ordinary Session, the rapporteur reviewed the facts of the communication and recommended that the case be deferred to the next Session. Parties were requested to forward relevant information to the Commission on exhaustion of local remedies and on the alleged violence against the Complainant before the next Session to enable it decide on admissibility.
13. On 19th November 2001, the Secretariat of the African Commission informed the parties on the decision of the Commission and requested the Complainant and the Respondent State to forward their written submissions within two (2) months from the date of notification of this decision.
14. On 19th February 2002, a reminder was sent to the Respondent State and the Complainant to forward their submissions within the prescribed time to enable the Secretariat to proceed with the communication.
15. By letter dated 6th March 2002, Counsel for the Complainant informed the Commission that Mr Mboyo had requested that this communication be withdrawn.

For the abovementioned reason;

The Commission takes note of the withdrawal of the communication by the Complainant and decides to close the file.

***Done at the 31st Ordinary Session, held in Pretoria, South Africa
from 2nd to 16th May 2002***

239/2001 - Interights (on behalf of Jose Domingos Sikunda) / Namibia

Rapporteur:

29th Session: Commissioner Andrew R. Chigovera

30th Session: Commissioner Andrew R. Chigovera

31st Session: Commissioner Andrew R. Chigovera

Summary of Facts

1. The communication is submitted by Interights a human rights NGO based in the United Kingdom on behalf of Jose Domingos Sikunda
2. Mr. Sikunda is of Angolan descent but has been living in Namibia for 25 years.
3. The Complainant alleges that sometime in 2000, Mr. Sikunda was arrested and detained by Namibian authorities. No reasons were given for his arrest and detention.
4. It is alleged that on 24th October 2000 the high court of Namibia ordered the release of Mr. Sikunda from detention but that the government of Namibia declined to comply with the order.
5. It is also alleged that Mr. Sikunda's lawyers then sought to enforce the high court order and on 31st October the Judge issued a *rule nisi* directing the Minister to show cause why he should not be cited for contempt of the court order. The case was adjourned twice and on 12th January 2001 Judge Teek delivered his ruling recusing himself from the case without either party having applied for it.
6. The Complainant states that there is a pending court order restraining the deportation of Mr. Sikunda which will lapse on 1st February 2001; and that the Namibian authorities have indicated their preparedness to deport Mr. Sikunda to Angola whose government accuses Mr. Sikunda of being a UNITA rebel. The Complainant alleges that such an act will put Mr. Sikunda at real risk of torture and extra judicial death.

Complaint

7. The Complainant alleges a violation of **Articles 4, 5 and 12(4)** of the African Charter on Human and Peoples' Rights.

Procedure

8. The communication was received at the Secretariat of the Commission on 31st January 2001 by fax, a copy of which was forwarded to the Chairman of the African Commission requesting him to appeal (under Rule 111 of the Commission's Rules of Procedure) to

the Namibian government to refrain from taking any measures that may put the life of Mr. Sikunda at risk.

9. The Secretariat acknowledged receipt of the communication on 2nd February 2001 and requested the Complainant to furnish it with further information.
10. On 19th February 2001, the Chairman of the African Commission wrote to the Minister of Foreign Affairs of the Republic of Namibia expressing concern over the alleged deportation of Mr. Sikunda.
11. On 22nd February 2001, the government of Namibia responded to the Chairman's appeal declining it and stating that the actions of the Namibian government were legal and aimed at protecting the security of the country and its citizens.
12. On 12th March 2001 a copy of the above-mentioned written response was forwarded to the Complainant and they were reminded to furnish the Commission with further information.
13. On 21st March 2001, the Complainant responded to the request for further information stating that will revert back to the Commission with additional submissions and evidentiary material.
14. At its 29th ordinary session, the Commission decided to be seized of the Complaint.
15. On 23rd May 2001, the Secretariat conveyed the above decision to the parties and requested parties to furnish it with additional information on admissibility in accordance with Article 56 of the African Charter and forwarded a copy of the text of the Complaint to the Respondent State. The Parties were requested to present their written submissions to the Secretariat within three months of notification of the decision.
16. During his promotional visit to Namibia from 2nd to 7th July 2001, Commissioner Chigovera raised the matter of this Complaint with officials from the Ministries of Justice and Foreign Affairs and urged them to submit their written submissions to the Secretariat as soon as possible.
17. On 17th August 2001, the Parties were reminded to forward their written submissions to the Secretariat on or before the 23rd of August 2001.
18. On 18th and 21st September 2001, the Secretariat wrote to the Respondent State and the Complainant respectively reminding them to forward their submissions on admissibility.
19. On 24th September 2001, the Secretariat received a letter from Interights stating that they would not be able to forward their submissions for consideration at the forthcoming 30th session as there are elements missing from their submissions that have not been transmitted by the lawyers of the victims.

20. At its 30th ordinary session held in Banjul, the Gambia, the Commission considered the communication and decided to defer the matter to the 31st Ordinary Session to allow the Complainants forward their submissions on admissibility.
21. On 9th November 2001, the Parties were informed of the Commission's decision.
22. On 2nd January 2002, the Complainants were reminded to submit their written submissions on admissibility.
23. By email on 7th January 2002, the Complainants informed the Secretariat that they had sent a request for supplementary information to their colleagues in Namibia but had not yet heard from them and in the event that they do not hear from them they would actively consider sending a notification for discontinuance of the case.
24. On 19th March 2002, the Secretariat wrote enquiring as to whether the Complainants still wished to proceed with the communication and if that were the case to forward their written submissions on admissibility.
25. The Complainant on 20th March 2002 wrote informing the Secretariat that despite repeated attempts they had failed to secure a response from their colleagues at the National Society for Human Rights. The Complainants assured the Secretariat that if this situation does not change before the next session, then they would request the Commission to authorise them to withdraw the communication.

LAW

Admissibility

26. Article 56 of the African Charter governs admissibility. The most relevant provisions of that Article provide
Communications ... received by the Commission shall be considered if they-:
(5) *are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged*
27. The Respondent State argues that following refusal by the Minister of Home Affairs to honour the High Court decision on 24th October 2000 ordering Sikunda's release from detention, Sikunda's lawyers sought to enforce the Court order by an application to commit the Minister of Home Affairs for contempt of court.
28. The Respondent State submits that Interights submitted the present communication to the African Commission on 31st January 2001 whilst the matter of hearing the application of a *rule nisi* showing cause why the Home Affairs Minister should not be held in contempt of court was still pending before the High Court. Indeed High Court heard the matter on 1st February 2001 and delivered judgement on 9th February 2001, finding the Minister of Home Affairs in contempt of court. Therefore, the Respondent State argues, that Interights by submitting a complaint on 31st January 2001 had failed to meet the requirements of Article 56(5) of the African Charter.

29. The Complainants on the other hand have been repeatedly requested by the Commission to furnish their submissions on admissibility, especially on the question of exhaustion of domestic remedies but there has not been any response from them.
30. Thus from the information available to the Commission and principally from the copy of the judgement of the High Court of Namibia delivered on 9th February 2001; the Commission observes that the Complainant brought the matter before it prior to exhausting domestic remedies, indeed while the matter was still pending before the High Court of Namibia.

For these reasons, the Commission in conformity with Article 56(5) of the African Charter declares this Communication inadmissible for non-exhaustion of domestic remedies.

NOTE:

When the Chair of the Commission wrote to the Government of Namibia expressing concern over the alleged deportation of Mr Sikunda, the government responded stating that its actions were legal and aimed at protecting the security of the country and its citizens.

Following the decision that the Commission has come to, the Commission would like to state that in circumstances where an alleged violation is brought to the attention of the Commission and where it is alleged that irreparable damage may be caused to the victim, the Commission will act expeditiously appealing to the State to desist from taking any action that may cause irreparable damage until after the Commission has had the opportunity to examine the matter fully. In such cases the Commission acts on the facts as presented and it was therefore in this vein that the Commission wrote to the Minister of Foreign Affairs of the Republic of Namibia expressing concern over the alleged deportation of Mr. Sikunda.

***Done at the 31st Ordinary Session of the African Commission
held from 2nd to 16th May 2002 in Pretoria, South Africa***

2002

FIFTEENTH ANNUAL ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS 2001 - 2002

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