



**ORGANIZATION OF
AFRICAN UNITY**

Secretariat
P. O. Box 3243

منظمة الوحدة الافريقية
السكرتارية
ص. ب. ٣٢٤٣

**ORGANISATION DE L'UNITE
AFRICAIN**

Secretariat
B. P. 3243

Addis Ababa * ادیس ابابا

CM/783(XXVIII)

COUNCIL OF MINISTERS
TWENTY-EIGHTH ORDINARY SESSION
LOME, 21 - 28 FEBRUARY 1977

REPORT OF THE ADMINISTRATIVE SECRETARY-GENERAL
ON THE AD HOC ADMINISTRATIVE TRIBUNAL OF THE
ORGANIZATION OF AFRICAN UNITY

PRESIDENT: HONOURABLE JULIAN N. NGANUNU
DEPUTY ATTORNEY-GENERAL
REPUBLIC OF BOTSWANA.

MEMBER/JUDGE: HIS EXCELLENCY ABDELAZIZ BEN HASSINE
ALGERIAN AMBASSADOR TO THE SUDAN AND
SOCIALIST ETHIOPIA.

MEMBER/JUDGE: HIS EXCELLENCY MR. CHARLES MABUSHI
PRESIDENT OF THE COURT OF APPEAL OF BURUNDI.

SECRETARY: MR. PAUL A. ARYE
HEAD OF ADMINISTRATION
OAU GENERAL SECRETARIAT, ADDIS ABABA.



REPORT OF THE ADMINISTRATIVE SECRETARY-GENERAL
ON THE AD HOC ADMINISTRATIVE TRIBUNAL OF THE
ORGANIZATION OF AFRICAN UNITY

The Council of Ministers of the Organization of African Unity, meeting in its Ninth Ordinary Session in Kinshasa, Zaire in September 1967 adopted the Statute of the Ad Hoc Administrative Tribunal of the Organization of African Unity contained in Document CM/99/Rev. 2, Article 2 of which stipulated that the Tribunal shall be competent to hear applications alleging:-

- (a) Violation of the relevant provisions of the Staff Rules and Regulations of the OAU;
- (b) Non-observance of contracts of employment and any other act of employment;
- (c) The Tribunal shall also be competent to hear petition against disciplinary action if the Staff Council does not succeed in settling the difference amicably within 30 days reckoned from the date on which the disciplinary action was taken;
- (d) The Tribunal shall only be competent to pass judgement upon the above-mentioned applications and petitions.

2. At that Session, the Council further adopted the RULES OF PROCEDURE for the Ad Hoc Administrative Tribunal of the OAU contained in Document CM/170.Rev 2, Article 1 of which provides as follows:-

"Each year, the Council of Ministers shall nominate three Member States alphabetically, one of which, drawn by ballot, shall be replaced at the end of the year provided that no Member State shall be a Member of the Tribunal for more than three years.

Each one of these States shall designate from among members of his delegation, a qualified Member to the office of Judge on the Ad Hoc Administrative Tribunal. A Judge thus appointed may be removed from

office by decision of the Council of Ministers only on grounds of inability to perform the functions of the office or proved misconduct".

3. Although legal provisions existed for the establishment of the Ad Hoc Administrative Tribunal of the OAU, subsequent sessions of the Council of Ministers, through oversight, did not comply with the provisions of nominating three Member States alphabetically with the result that Members of the Ad Hoc Administrative Tribunal were unable to assume office as they were not designated as required by Article 1 of the RULES OF PROCEDURE. The Twenty-Fourth Session of the Council of Ministers, meeting in Addis Ababa in February 1975 took a bold step and designated ALGERIA, BOTSWANA and BURUNDI to constitute the Ad Hoc Administrative Tribunal of the OAU.

4. Constituent Meeting of the Tribunal: The Member States nominated by the Council of Ministers having designated the following qualified Members to the office of Judges, the Tribunal held its Constituent Meeting at the General Secretariat in Addis Ababa from 30 June - 1 July 1975 during which it discussed with the Administrative Secretary-General a number of issues including procedural and other questions likely to facilitate the work of the Tribunal:-

(a) His Excellency, Abdelaziz Ben Hassine,
Algerian Ambassador to the Sudan and Ethiopia.

(b) The Honourable Julian M. Nganunu,
Deputy Attorney General, Botswana.

(c) His Excellency Mr. Charles Mabushi,
President of the Court of Appeal, Burundi.

5. At this meeting, the Tribunal on the proposal of the Representative of Burundi, designated by consensus of opinion, the Dep. Attorney-General of Botswana,

the Honourable JULIAN M. NGANUNU, as PRESIDENT OF THE AD HOC ADMINISTRATIVE TRIBUNAL who immediately assumed his functions and the direction of the work of the Tribunal in accordance with the provisions of Articles 3 and 4 of its Rules of Procedure. At this meeting, the Administrative Secretary-General placed at the disposal of the Tribunal a Secretary in the capacity of Mr. PAUL A. ARYEE, HEAD OF ADMINISTRATION OF THE OAU. As regards other personnel necessary for the work of the Tribunal, the General Secretariat pointed out that during sittings, Interpreters would be made available especially as the Tribunal would be convening at the end of Council of Ministers Sessions. In the light of previous experience and considering the political nature of the Organization, the General Secretariat thought it would be advisable to restrict the number of servicing personnel such as Precip Writers, the Notes being taken by the Secretary himself. The Tribunal gave consideration to these observations and to the nature of its Rules of Procedure and accordingly decided as follows:-

DECISION: ITS MEETINGS SHOULD BE HELD IN THE OPEN AS AGAINST BEING HELD IN CAMERA UNLESS THE NATURE OF THE CASE i.e. ITS SENSITIVITY BEFORE THE TRIBUNAL REQUIRED TO BE DEALT WITH IN CAMERA.

(b) THE SECRETARY OF THE TRIBUNAL SHOULD BE RESPONSIBLE FOR PERSONNEL AND OTHER ARRANGEMENTS IN THE LIGHT OF THE CASE BEFORE THE TRIBUNAL.

(c) THE COUNCIL OF MINISTERS SHOULD BE INFORMED OF THE FORMATION OF THE TRIBUNAL AND OF THE FACT THAT IT HAD ASSUMED ITS FUNCTIONS IN ACCORDANCE WITH THE DECISION REACHED AT THE 24TH ORDINARY SESSION OF THE COUNCIL OF MINISTERS HELD IN ADDIS ABABA.

6. The Tribunal was provided by the Secretary-General at the Constituent Meeting with the following basic documents:-

- (i) Some important Administrative Documents - AD/GM/3/5
- (ii) Rules of Procedure for the OAU Ad Hoc Administrative Tribunal - Document CM/170/Rev.2
- (iii) The Charter of the OAU
- (iv) Staff Rules and Regulations - Document CM/39/Rev.1
- (v) Convention on Privileges and Immunities
- (vi) Headquarters Agreement

The Report of the Constituent Meeting of the Tribunal held in June and July 1975 is attached to this Document as Annex 1.

7. First Session of the Tribunal: The Tribunal was unable owing to procedural difficulties, to meet at the end of the Twenty-Fifth Ordinary Session of the Council of Ministers held in Kampala although there were cases justifying the holding of a session. The first substantive meeting of the Tribunal was therefore held in an Extraordinary Session, convened by the President in accordance with Article 7 (ii) of the Tribunal's Statute - Document CM/99/Rev.2, in Addis Ababa from 9 - 11 March during which it heard two appeals against decision of transfer in respect of two Statutory Staff Members of the General Secretariat. Being the first substantive session, the President on behalf of his other colleagues on the Bench observed that the Tribunal was an important instrument in the administrative machinery of the OAU adding that, the Organization being composed of International Civil Servants, professional and other high calibre staff, it was not unlikely that differences would exist on a number of issues and assured the Administrative Secretary-General that the Tribunal was not a Court to chastise anyone; on the contrary, it would endeavour to help settle disputes and differences with two objectives viz:-

- (a) To ensure that the General Secretariat is provided with a group of men well organized under the leadership of the Administrative Secretary-General to discharge the functions entrusted to it;
- (b) To ensure that within the Organization while there are Civil Servants loyal and obedient to its leadership, there should also prevail justice and fairness in the administration of the Organization.

8. The Administrative Secretary-General assured the Tribunal of his personal co-operation and that of his Assistants for the success of the Tribunal and having expressed confidence in the Tribunal's impartiality, he drew attention to the need to accord protection to the leadership of the Organization and for establishing authority adding that there was also the need to bear in mind that it could not be in the interest of the Organization for the Tribunal, which was meeting for the first time, to create a situation in which Staff Members would feel that there was no authority since this would undermine authority.

9. The Tribunal considered the two appeals from Messrs Byron R. Hove and Eshmael E. Mlambo, both of whom were Statutory Staff Members of the Organization, against the decision of transfer made in respect of them by the Administrative Secretary-General. In the view of the Tribunal, the issues in both cases which had great similarities were whether:-

- (i) The action of the Administrative Secretary-General was one that was reviewable;
- (ii) The Administrative Secretary-General had discretionary powers of transfer and if he had, whether these had been abused;
- (iii) There had been any breach of natural justice as alleged, and

- (iv) The transfers had been injurious to the Appellants as alleged by them.

In addition to the above issues, it was obvious that the Appeal of Mr. Eshmael E. Mlambo contained a new element i.e. an allegation of defamation which the Tribunal felt was not within its competence in the light of Article 2 of Document CM/99/Rev. 2. Even if it was within its jurisdiction, the Tribunal held the view that the allegation of defamation was not conclusively proved. Details of the judgement delivered in both cases which had the concurrence and unanimity of the entire membership of the Tribunal are contained in the REPORT OF THE FIRST SESSION OF THE AD HOC ADMINISTRATIVE TRIBUNAL which forms Annex 2 to this Report.

10. Second Session of the Tribunal: The Tribunal listed two appeals filed by Messrs Azim Eldin Sadek and Amin Sabry of the General Secretariat against the Administrative Secretary-General for hearing at its Second Session in Port Louis, Mauritius in July 1976 in conformity with its Rules of Procedure, which stipulates that the Tribunal shall sit wherever the Council of Ministers meets in Ordinary Sessions and at the end of each Ordinary Session of the Council of Ministers. The Tribunal was only able to meet in brief session and therefore unable to hear the cases listed on its Agenda owing to a number of technical and other factors. With the heavy load of work connected with the Twenty-Seventh Ordinary Session of the Council of Ministers and the Thirteenth Assembly of Heads of State and Government which stretched to the maximum the facilities available in Port Louis, Mauritius, the General Secretariat was unable to provide the necessary technical and other facilities subsequently and the Tribunal could not therefore hold its Second Session in Mauritius. It therefore decided to adjourn the Second Session, a new date and venue being determined in consultation with the Administrative Secretary-General. The Report of the Proceedings are contained in Annex 3.

11. The adjourned Second Session of the Tribunal has unfortunately not been able to resume owing to a number of other pressing issues and the Tribunal has not therefore been able to dispose of the two outstanding cases of Messrs Azim Eldin Sadek and Amin Sabry. Mr. Amin Sabry has since withdrawn his Appeal and the only outstanding case on the list as at present is therefore that of Mr. Azim Eldin Sadek.

PROPOSED AMENDMENT OF ARTICLES 7 & 9
OF THE RULES OF PROCEDURE

12. Article 7 and 9 of the Tribunal's RULES OF PROCEDURE stipulate that the "The Tribunal shall sit wherever the Council of Ministers meets in Ordinary Sessions" and that "The Tribunal shall meet twice a year at the end of each Ordinary Session of the Council of Ministers provided that the sessions shall not be held if in the opinion of the President there are no cases on the list which would justify the holding of a Session". Article 1 of the Rules of Procedure clearly underscores the essence for the Tribunal's meetings being held wherever the Council of Ministers meets in Ordinary Sessions since it is expected that Judges of the Tribunal should be members of their respective delegations. While the Tribunal does not envisage any difficulties, technical or otherwise in convening at the end of the Ordinary (Budgetary) Sessions of the Council of Ministers, it would nonetheless face a number of technical and other problems during Ordinary Sessions of the Council of Ministers preceding Assemblies of Heads of State and Government especially as the heavy load of work compels such ordinary sessions to continue until the day of the Assembly and sometimes to meet simultaneously with the Assembly to complete its business. With the experience of the past as a useful guide, it is the view that it is administratively not convenient for the Tribunal to meet at the end of the Ordinary Session of the Council of Ministers preceding the Summit because.

of a number of factors which cannot be overcome given our operational circumstances. At the same time it would not be legally tenable for the Tribunal to meet after the Assembly of Heads of State and Government since its doing so would contravene Articles 7 and 9 of its Rules of Procedure.

13. In the light of the technical and other difficulties encountered during Ordinary Sessions preceding the Heads of State and Government, the General Secretariat is of the view that it can only provide the necessary technical and other facilities required by the Tribunal after the Assembly of Heads of State and Government had adjourned. Alternatively, the Tribunal could meet elsewhere, i.e. in the Headquarters of the General Secretariat in Addis Ababa in Extraordinary Session. By this alternative, the Tribunal shall still meet twice a year as envisaged in Article 9 of the Rules of Procedure, one at the end of the Ordinary (Budgetary) Session and the other either at the end of the Assembly of Heads of State and Government wherever it meets in Ordinary Sessions or at the Headquarters of the General Secretariat in an Extraordinary Session. The idea of convening the Tribunal in an Extraordinary Session as well as after the Ordinary Session of the Assembly of Heads of State and Government may have additional financial implications and may tend to defeat the objective and purpose of Article 1 which provides that each Member State "shall designate from among Members of its Delegation, a qualified Member to the office of Judge on the Ad Hoc Administrative Tribunal".

14. Article 7 of the Statute of the Ad Hoc Administrative Tribunal - Document CM/99/Rev.2 - empowers the President of the Tribunal to convene Extraordinary Sessions in addition to the two sessions prescribed in Article 9 of the Rules of Procedure - Document CM/170/Rev. 2. In the light of the operational procedures of the Tribunal, in particular having regard to the processing of Appeals and the time such processing entails, it is not considered that there is need

for more than two sessions of the Tribunal in any one year in addition to an Extraordinary Session. There should, however, be enough cases for two sessions, one to be held at the end of the Ordinary (Budgetary) Session of the Council of Ministers and one in an Extraordinary Session in the Headquarters or at the end of the Assembly of Heads of State and Government.

15. The General Secretariat favours the proposal for two meetings of the Tribunal i.e. one at the end of the Ordinary (Budgetary) Session of the Council of Ministers and the other at the end of the Assembly of Heads of State and Government. This will enable the General Secretariat to provide:-

- (a) adequate technical and other servicing facilities and
- (b) enable the Administrative Secretary-General or his duly appointed Representative to be present throughout the proceedings of the Tribunal.

This proposal, while accommodating and satisfying the principle in Article 9 of the Rules of Procedure that each Member State shall designate a Judge from among its Delegation, simultaneously, provides for two sessions of the Tribunal. Nonetheless, where in the opinion of the President the number of cases on the list justifies the convening of an Extraordinary Session, the President should continue to exercise the authority vested in him by Article 7 (ii) of the Statute of the Ad Hoc Administrative Tribunal - Document CM/99/Rev.2.

16. The proposals of the General Secretariat which have been formulated after due consideration of the various technical and other aspects of the Tribunal's operations including servicing personnel, have been fully discussed with the President and the Member/Judges of the Ad Hoc Administrative Tribunal who have indicated their support for the proposals. Should the Council of Ministers also accept the proposals, Article 7 and 9 of the RULES OF PROCEDURE OF THE AD HOC ADMINISTRATIVE TRIBUNAL should be amended as follows:-

"Article 7:

The Tribunal shall sit wherever the Council of Ministers meets in Ordinary (Budgetary) Sessions".

"Article 9:

The Tribunal shall meet twice a year either at the end of each Ordinary (Budgetary) Session of the Council of Ministers or at the end of the Ordinary Session of the Assembly of Heads of State and Government provided that the sessions shall not be held if in the opinion of the President there are no cases on the list which would justify the holding of a session".

NOMINATION OF MEMBER STATES FOR THE AD HOC
ADMINISTRATIVE TRIBUNAL

17. Since February 1975, the three Member States of ALGERIA, BURUNDI and BOTSWANA have constituted the Ad Hoc Administrative Tribunal. In conformity with the provisions of Article 1 of the Tribunal's Rules of Procedure, the Council of Ministers shall each year nominate three member states alphabetically one of which, drawn by ballot, shall be replaced at the end of the year provided that no Member State shall be a Member of the Tribunal for more than three years. Against this background, the Council of Ministers meeting in its Twenty-Eighth Ordinary Session should nominate the three Member States who should constitute the Ad Hoc Administrative Tribunal for the ensuing year. The three out-going Member States which constituted the Ad Hoc Administrative Tribunal were nominated alphabetically; with the admission of Angola into the Organization and with the former Republic of Dahomey renamed the Republic of Benin, a new situation had arisen considering the alphabetical sequence in which the Member States were nominated. This, in the view of the Secretariat, should be brought to the attention of the Council of Ministers to ensure that

this aspect of the matter is taken into consideration when the Council is seized with the question of nominations for the Ad Hoc Administrative Tribunal.

GENERAL OBSERVATIONS

18. The Administrative Secretary-General is indeed grateful to the Member States which constituted the Tribunal and in particular wishes to express his profound gratitude to the President and Member/Judges of the Tribunal for their co-operation and for their endeavours to dispose of the delicate matters brought before them without fear, favour and devoid of pre-conceptions. They performed their duties impartially within the confines of natural justice and fairness.

COUNCIL OF MINISTERS

TWENTY-EIGHTH ORDINARY SESSION

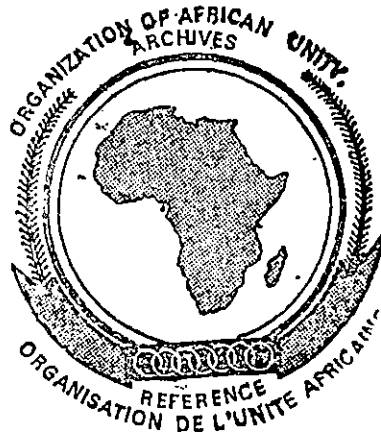
LOME, TOGO,

FEBRUARY, 21-28, 1977

CM/783 (XXVIII)

Annexes I - III

REPORT OF THE SECRETARY-GENERAL ON
THE ADMINISTRATIVE TRIBUNAL



OAU AD HOC ADMINISTRATIVE TRIBUNAL
FIRST ORDINARY SESSION

CM/783 (XXVIII)
Annex I

MINUTES OF THE CONSTITUENT MEETING OF
THE OAU AD HOC ADMINISTRATIVE TRIBUNAL
HELD IN ADDIS ABABA ON 30TH JUNE AND
1ST. JULY, 1975

MINUTES OF THE CONSTITUENT MEETING OF THE
OAU AD HOC ADMINISTRATIVE TRIBUNAL
HELD AT THE GENERAL SECRETARIAT
ADDIS ABABA ON 30TH JUNE & 1ST JULY 1975

PRESENT: THE HONOURABLE A.M. MOGWE,
MINISTER OF FOREIGN AFFAIRS, BOTSWANA.

THE AG. ADMINISTRATIVE SECRETARY-GENERAL
MR KAMANDA WA KAMANDA, OAU

H.E. MR. JUSTICE MABUSHI,
PRESIDENT OF THE COURT OF APPEAL, BUJUMBURA.

MR. JULIAN M. NGANUNU,
DEPUTY ATTORNEY GENERAL, BOTSWANA

H.E. ABDELAZIZ BEN HASSINE,
ALGERIAN AMBASSADOR TO THE SUDAN AND ETHIOPIA

MR. PAUL A. ARYEE,
HEAD OF ADMINISTRATION, OAU

MR. C. O EGBUNIKE,
CHIEF LEGAL ADVISER, OAU

MR. PAPA DIOUF,
CHIEF OF CABINET, OAU

PRELIMINARY DISCUSSIONS WITH THE AG. ADMINISTRATIVE
SECRETARY-GENERAL

The Members of the Ad Hoc Tribunal were first received at 1600 hours by the Ag. Administrative Secretary-General, Mr. Kamanda Wa Kamanda, in his office, who welcomed them to the General Secretariat on behalf of the Administrative Secretary-General, then away from Addis Ababa on official Mission. He stated that the General Secretariat was unaware of the Tribunal's arrival in Addis Ababa as it had not received any communication to that effect..

The Minister of Foreign Affairs of Botswana then recalled the decision of the 24th Ordinary Session of the Council of Ministers designating Algeria, Botswana and Burundi to constitute the Ad Hoc Administrative Tribunal stating Botswana was assumed the Presidency provisionally pending the resignation of the other members by the respective countries. He noted that there was some confusion which was not unexpected, the meeting being the first of its kind of the Administrative Tribunal. Referring to the Rules of Procedure, he observed that it was not clear whether the Secretary and the permanent staff of the Tribunal's Secretariat should have been appointed immediately, the Ad Hoc Administrative Tribunal was set up or thereafter through which the President could have corresponded. He also referred to the discussions he had with the Administrative Secretary-General while in Rabat following which he informed the General Secretariat by telegram that the Tribunal would convene in Addis Ababa on 27th and 28th June 1975.

2. The Ag. Administrative Secretary-General, while regretting that there had been some confusion, stated that the General Secretariat was first of all unaware of the designation of a Provisional Chairman and also of the discussions held with the Administrative Secretary-General in Rabat adding that the Secretary-General had to proceed to Lome from Rabat on mission and then to Lourenco Marques after a day's stop-over in Addis Ababa. He further stated that the telex referred to was never received in the General Secretariat. As regards the designation of Secretary of the Tribunal, he pointed out that it was up to the Administrative Secretary-General himself to appoint one.

DECISION: IT WAS AGREED THAT THE TRIBUNAL SHOULD MEET,
ELECT ITS OWN PRESIDENT IN ACCORDANCE WITH
THE RULES OF PROCEDURE AND DECIDE ON ITS
PROGRAMME OF WORK.

FORMAL MEETING OF THE AD HOC TRIBUNAL

3. The Tribunal then moved into the Ceremonial Room in Building "A" to continue its business with the Minister of Foreign

Affairs of Botswana in the Chair. After a Brief introduction during which he stated that although the Tribunal had met at a short notice, this was an indication of the seriousness with which the Member States viewed the work of the Tribunal which is vital. He noted also that the General Secretariat was made up of International Civil Servants and there was the need for the Staff Rules and Regulations to be mutually respected by the top hierarchy as well as by the Civil Servants; at the same time it was necessary for the Administrative Secretary-General to maintain discipline and for these reasons objectivity was essential. He stated that there should be no recriminations and asked the Members of the Tribunal to familiarise themselves with the Staff Rules and Regulations and other Codes of discipline etc. to enable them carry out their functions effectively and properly.

4. The Ag. Administrative Secretary-General while formally welcoming the Members of the Tribunal, referred to Article 10 of the Rules of Procedure stipulating the notice required of convening sessions of the Tribunal and of preparation of the Provisional Agenda. He also observed that the Tribunal should be seen as an instrument designed to protect the interests of the Civil Servants as well as those of the Organization itself. He pointed out that the question of recriminations should not arise.

ELECTION OF PRESIDENT

5. In the light of Article 3 of the Rules of Procedure, Document CM/170/Rev.2; the Tribunal proceeded to elect from its number of President. The Representative of Burundi proposed for election as President the Representative of Botswana.

DECISION: THE TRIBUNAL DECIDED THAT MR. JULIAN M. NGANUNU, DEPUTY ATTORNEY GENERAL OF BOTSWANA BE THE PRESIDENT.

A G E N D A

6. The President then assumed his functions and having thanked the other members of the Tribunal for the honour done to

him and to his country outlined the following Agenda for the Tribunal's consideration:-

- a) Procedure and Organization of Work.
- b) Designation of Secretary and Personnel necessary for the work of the Ad Hoc Tribunal.

DECISION: THE TRIBUNAL DECIDED TO PROCEED BY THE AGENDA AS PROPOSED BY THE PRESIDENT.

7. As regards Procedure and Organization of Work - Agenda Item (a) - the Board noted that Articles 6, 11, 12-17 of the Rules of Procedure in Document CM/170/Rev.2 clearly defined the procedures and the methodology to be followed in all cases and commended them to be observed meticulously.

DECISION: THE TRIBUNAL DECIDED THAT BASIC DOCUMENTS SUCH AS STAFF RULES AND REGULATIONS, THE OAU CHARTER, RULES OF PROCEDURE FOR THE AD HOC ADMINISTRATIVE TRIBUNAL ETC. BE PROVIDED FOR ITS MEMBERS IN FRENCH AND ENGLISH.

IT ALSO DECIDED THAT DOSSIERS OF CASES ON WHICH THE TRIBUNAL WOULD BE REQUIRED TO ADJUDICATE SHOULD BE FORWARDED BY THE SECRETARY IN GOOD TIME TO AFFORD THE PRESIDENT AND THE MEMBERS OF THE TRIBUNAL A REASONABLE OPPORTUNITY FOR SERIOUS STUDY.

ADJOURNMENT AND RESUMPTION OF DELIBERATIONS

8. The Tribunal adjourned to resume at 10.30 hrs. on 1st. July to continue its deliberations. On resumption of deliberations, the Tribunal was provided with the following basic documents.

- i) Some important Administrative Documents - AD/GM/3/5 - (in English only).

- ii) Rules of Procedure for the OAU Ad Hoc Administrative Tribunal - Doc. CM/170/Rev.2 - (in English and French);
- iii) The Charter of the OAU (in English and French);
- iv) Staff Rules and Regulations - CM/39/Rev.1 - (in English and French);
- v) Convention on Privileges and Immunities - (in English and French);

The General Secretariat promised to make available copies of the Headquarters Agreement also and that Document AD/GM/3/5 would be made available in French in due course.

DESIGNATION OF SECRETARY OF THE AD HOC ADMINISTRATIVE
TRIBUNAL AND PERSONNEL NECESSARY FOR ITS WORK - AGENDA

ITEM (B)

9. The President of the Tribunal referred to Article 5 of the Rules of Procedure - Doc. CM/170/Rev. 2 - stipulating that the Administrative Secretary-General shall place at the disposal of the tribunal a Secretary and staff and observed that the Ag. Administrative Secretary-General had earlier indicated that he would nominate a provisional Secretary pending the arrival of the Secretary-General who would either confirm or designate a substantive Secretary. He then invited the Ag. Administrative Secretary-General to make a nomination. The Ag. Administrative Secretary-General then nominated Mr. Paul A. Aryee, Head of Administration of the OAU as Secretary ad interim.

10. As regards personnel necessary for the work of the Tribunal, the General Secretariat pointed out that during sittings Interpreters would be made available especially as it would be convening at the end of Council Sessions but considered that in

the light of previous experience and considering the political nature of the Organization, it would be advisable to restrict the number of servicing personnel such as precis writers; the notes being taken by the Secretary himself. The Tribunal gave consideration to these observations and to the nature of its Rules of Procedure.

DECISION: THE TRIBUNAL DECIDED THAT:

- a) ITS MEETINGS SHOULD BE HELD IN THE OPEN AS AGAINST BEING HELD IN CAMERA UNLESS THE NATURE OF THE CASE, I.E. ITS SENSITIVITY BEFORE THE TRIBUNAL REQUIRED TO BE DEALT WITH IN CAMERA,
- b) THE SECRETARY OF THE TRIBUNAL SHOULD BE RESPONSIBLE FOR PERSONNEL AND OTHER ARRANGEMENTS IN THE LIGHT OF THE CASE BEFORE THE TRIBUNAL,
- c) THE COUNCIL OF MINISTERS SHOULD BE INFORMED OF THE FORMATION OF THE TRIBUNAL AND OF THE FACT THAT IT HAD ASSUMED ITS FUNCTIONS IN ACCORDANCE WITH THE DECISION REACHED AT THE 24TH ORDINARY SESSION OF THE COUNCIL OF MINISTERS HELD IN ADDIS ABABA.

Isogato OPERATIONAL PROCEDURES TO BE OBSERVED BY THE TRIBUNAL

11. The Tribunal noted inter alia the following procedures to be complied with in accordance with its Rules of Procedure

(Document CM/170/Rev.2):-

- a) Written answer could be obtained from both sides i.e. the Applicant and the Respondent.
- b) The Administrative Secretary-General as Respondent could be represented by Counsel.
- c) The Appellant could also be heard orally if the Tribunal so decided.

- d) The Secretary of the Tribunal should be responsible for registering cases and documents and for the preparation of dossiers etc. for the Tribunal.
- e) The procedures laid down in the Rules of Procedure should in all cases be fully complied with.

During the discussion on the operational procedures and methodology the Tribunal received a petition dated 1st. July from Mr. Byron Hove, a Staff Member of the General Secretariat. The Tribunal did not discuss his petition but took the view that all petitions and appeals to the Tribunal must be submitted through the channels and procedures laid down in the Rules of Procedure (Doc. CM/170/Rev.2). Mr. Byron Hove's appeal dated 1st. July was accordingly handed over to the Interim Secretary by the President.

VENUE OF THE FIRST MEETING OF THE
AD HOC ADMINISTRATIVE TRIBUNAL

12. The Tribunal then gave consideration to the venue of its First meeting. In accordance with Article 7 of the Rules of Procedure, it was the consensus that the meeting should be held in Kampala and that any change of venue would be in violation of that Article which stipulates that the Tribunal shall sit wherever the Council of Ministers meets in Ordinary Sessions. The Chairman recalled the decision of the President of Botswana regarding his country's position on the Kampala meeting which had been officially made known to the Administrative Secretary-General and that this would obviously be a hinderance to his coming to Kampala. The Tribunal observed that he could come to Kampala at the end of the Council's meeting and that as Chairman, he would be attending the sittings of the Tribunal as a Judge and as a part-time OAU official, not as a Delegate of Botswana and was therefore entitled to enjoy the immunities and privileges conferred on OAU high officials. The Ag. Administrative Secretary-General, as a way out suggested that OAU Laissez-Passer would be issued to all the Judges of the Tribunal.

DECISION: IT WAS DECIDED THAT THE VENUE OF THE FIRST MEETING OF THE AD HOC TRIBUNAL SHOULD BE IN KAMPALA IN ACCORDANCE WITH ARTICLE 7 OF THE RULES OF PROCEDURE. THE PRESIDENT UNDERTOOK TO PURSUE THE SUGGESTIONS MADE BY THE TRIBUNAL ADDING THAT HE WAS AS ANXIOUS AS EVERYBODY ELSE TO SEE THE TRIBUNAL SETTLE DOWN TO SERIOUS BUSINESS.

NATURE OF THE MEETING HELD IN THE GENERAL SECRETARIAT
OF THE OAU IN ADDIS ABABA

13. The meeting held in the General Secretariat, it was agreed, could not be regarded as a meeting of the Tribunal since the Tribunal in accordance with Article 7 could only sit wherever the Council of Ministers convened. The Tribunal unanimously agreed to this observation.

DECISION: IT WAS AGREED THAT THE MEETING IN ADDIS ABABA SHOULD BE REGARDED AS A CONSTITUENT MEETING OF THE TRIBUNAL AND NOT AS ITS FIRST.

CONCLUDING REMARKS

14. The President in his concluding remarks appealed that the Secretariat should bear in mind the need to designate a substantive Secretary of a high calibre, competence and in a position to talk and discuss issues with the Administrative Secretary-General. He observed that the Administrative Secretary-General would have the possibility of changing the Secretary from time to time but it might be necessary to let one Secretary carry on for sometime in view of the need to acquaint members with procedural details of the Tribunal. In reply, the Ag. Administrative Secretary-General stressed that the fact that the General Secretariat has nominated a high Official in the capacity of Head of Administration of the OAU was indicative of the considerable importance it attached to the work of the Tribunal. He added that the Head of Administration was familiar with the Organization's Staff Rules and Regulations, its operations and was experienced in documentation procedures. He reiterated the view that the Tribunal should be seen as an instrument designed to protect the interests of the Organization as well as of the Civil Servants and pledged the General Secretariat's co-operation towards its successful operation.

The President indicated, that on his own behalf and on behalf of his colleagues, he was pleased with the co-operation extended at all levels.

The constituent meeting of the Tribunal came to an end at 12:30 p.m.



**ORGANIZATION OF
AFRICAN UNITY**

Secretariat

P. O. Box 3243

OAU AD HOC ADMINISTRATIVE TRIBUNAL

FIRST SESSION

منظمة الوحدة الافريقية
السكرتارية
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**ORGANISATION DE L'UNITE
AFRICAIN**

Secretariat

B. P. 3243

CM/783 (XXVIII)

Annex 2

REPORT OF THE FIRST SESSION OF THE AD HOC
ADMINISTRATIVE TRIBUNAL OF THE OAU HELD IN
THE CONFERENCE ROOM OF BUILDING "B" OF THE
GENERAL SECRETARIAT FROM 9 - 11 MARCH 1976.

Report of the First Session of the Ad-Hoc Administrative Tribunal
Of the Organization of African Unity
Held in the Conference Room of Building "B"
of the General Secretariat from 9 - 11 March 1976

Present:

Honourable Julian M. Nganunu
 President, Ad-Hoc Administrative Tribunal
 of the OAU and Deputy Attorney-General
 of Botswana

Justice Charles Mabushi
 Member/Judge, Ad-Hoc Administrative Tribunal
 of the OAU and President of the Court of Appeal
 of Bujumbura

His Excellency Abdelaziz Ben Hassine
 Member/Judge, Ad-Hoc Administrative
 Tribunal of the OAU and Algerian Ambassador
 Extraordinary and Plenipotentiary to Ethiopia
 and the Sudan

Mr. Paul A. Aryee

Interim Secretary of the Ad-Hoc Administrative
 Tribunal of the OAU and Head of Administration
 and Finance Department of the OAU

In Attendance: Mr. Byron R. Hove (Appellant)

Statutory Staff, OAU General Secretariat,
 Addis Ababa

Mr. Eshmael E. Mlambo (Appellant)

Statutory Staff, OAU Permanent Delegation, Geneva

His Excellency Mr. William Eteki Mboumoua,
 Administrative Secretary-General of the OAU (Respondent)

Opening Statement of the President of the Ad-Hoc Administrative Tribunal - Agenda Item 1(a)

The President declared the Session open at about 10.40 a.m. on 9th March 1976 and warmly welcomed the Members/Judges to the First Substantive Session of the Ad-Hoc Administrative Tribunal of the OAU. In his opening statement he expressed his happiness that at long last the Tribunal had been able to commence the work entrusted to it and while he indicated that the Tribunal did not provide occasions for speeches, he referred to the Tribunal as an important instrument in the administrative organization of the OAU adding that OAU being composed of International Civil Servants, professionals and other high calibre staff, it was not unlikely that differences would exist on a number of issues. He then pointed out that the Members/Judges of the Tribunal had no pre-conceptions in the approach to their duties and would therefore act impartially. He also pointed out that the Tribunal was not a Court to chastise anyone but it would endeavour to help settle disputes and differences with two objectives viz:

- (a) To ensure that the Secretariat is provided with a group of men well organized under the leadership of the Administrative Secretary-General to discharge the functions entrusted to it.
- (b) To ensure that within the Organization while there are civil servants loyal and obedient to its leadership, there should also prevail justice and fairness in the administration of the Organization.

2. He expressed confidence, in conclusion, that the Members/Judges of the Tribunal would give of their best in achieving the objectives; he also expressed the genuine hope that the Session would be fruitful and would in its own way help in furthering the aims and objectives of the Organization. The President of the Tribunal then invited the Administrative Secretary-General to take the floor.

Opening Statement of the Administrative Secretary-General -
Agenda Item 1(b)

3. The Administrative Secretary-General welcomed the President and Members/Judges of the Tribunal and said that he was happy that the Tribunal had met at long last after a number of delays caused by numerous official meetings and demands which did not permit the Tribunal to meet earlier. He denied any allegations that he did not want the Tribunal to convene; on the contrary he was prepared to contribute to its success and to extend his fullest cooperation for its running. He expressed confidence that the Tribunal would be impartial and that the Members/Judges will bear in mind the need for according protection to the leadership of the Organization and for establishing authority. The Administrative Secretary-General pointed out that it would not be in the interest of the Organization for the Tribunal, which was meeting for the first time, to create a situation in which Staff Members would feel that there was no authority adding that any impression given that a vacuum existed would undermine authority.

Adoption of the Agenda - Agenda Item 2

4. The Tribunal considered the Provisional Agenda in Document ADMT/1(I) Rev.1 which had earlier been circularized.

DECISION: THE TRIBUNAL DECIDED TO ADOPT AS ITS AGENDA FOR THE FIRST SESSION DOCUMENT ADMT/1/(I)Rev.1 ON THE UNDERSTANDING THAT OTHER MATTERS COULD BE RAISED.

A copy of the Agenda as adopted is annexed hereto.

Adoption of the Minutes of the Constituent Meeting

Agenda Item 4 - Document ADMT/2

5. The Minutes having been circulated to the President and Members/Judges of the Tribunal well in advance were adopted without amendments.

DECISION: THE TRIBUNAL DECIDED TO ADOPT THE REPORT CONTAINED IN DOCUMENT ADMT/2 AS REFLECTING A CORRECT RECORD OF THE CONSTITUENT MEETING HELD IN ADDIS ABABA.

Matters arising from the Minutes of the Constituent Meeting
Held in Addis Ababa - Agenda Item 5: Document ADMT/2

6. The Tribunal noted that there were no matters arising from the Minutes of the Constituent Meeting as the relevant and pertinent documents had been made available to all Members/Judges.

Consideration of the Appeal in case of Byron R. Hove Staff
Member, General Secretariat, Addis Ababa (Appellant)

Versus

William Eteki Mboumoua, Administrative Secretary-General (Respondent) -
Agenda Item 6(a) - Document ADMT/3

7. The Tribunal invited the Appellant, Byron R. Hove, to state his case. Having welcomed the opportunity, he asked that copies of correspondence between the Secretary, the President of the Tribunal and the Administrative Secretary-General be made available to him since in his opinion they were relevant documents and pertinent to submissions he was going to make. The Tribunal contended that documents having relevance to his case and which should have bearing on any submissions were those made available. If his request concerned correspondence between the Secretariat of the Tribunal and the Administrative Secretary-General bearing on consultations for convening the Tribunal, then this could not be made available to him since such type of correspondence need not be circularised, being irrelevant to the substance of the Appeal. The Appellant then proceeded to draw the Tribunal's attention to a number of procedural lapses within the framework of the Rules of Procedure and the Statute of the Tribunal. Notable among the procedural issues raised by him were that:-

- (a) The Administrative Secretary-General's Answer was not received by the Secretary within the stipulated period of 30 days required in Article 12.
- (b) The Answer of the Administrative Secretary-General to his Appeal was not transmitted immediately to him as required by the Article 12 of the Rules of Procedure Document CM/170/Rev.2.
- (c) The thirty days limit in Article 12 of the Rules of Procedure - Document CM/170/Rev.2 - should be reckoned from the date he filed his Appeal with the Secretary of the Tribunal.

As regards the procedural lapses alleged by the Appellant in (a) and (b), he contended that as the Appellant, he should be placed on equal footing with the Administrative Secretary-General as Respondent in that both the Appellant and the Respondent should be brought within the provisions of the Rules of Procedure and the Statute of the Tribunal without exception.

8. The Tribunal took note of the procedural issues raised by the Appellant and while recognizing the need to abide by the letter of the Rules of Procedure and the provisions of the Statute, it requested the Appellant to deal with the substance of his case adducing any additional arguments, legal or otherwise in substantiation of his appeal. It was of the view that the issues were whether -

- (i) the action of the Administrative Secretary-General was one that was reviewable
- (ii) the Administrative Secretary-General had discretionary powers of transfer and if he had, whether these had been abused
- (iii) there had been any breach of natural justice as alleged, and
- (iv) the transfer had been injurious to the Appellant as alleged by him.

These views should be amplified by the Appellant.

9. The Appellant contended that viewed against the background of his (Appellant's) qualifications, the Administrative Secretary-General abused his discretionary powers as he did not take his qualifications into consideration in transferring him to the Cultural Section. He called AMBASSADOR M. DIARRA, Director of the Educational, Cultural, Scientific and Health Department as a witness, a request which was granted by the Tribunal as it had no objection. AMBASSADOR DIARRA, in giving evidence, objected to his being referred to as a witness stating that he was giving evidence in his capacity as a Director of the Department. In his evidence, AMBASSADOR DIARRA stated he received a memorandum indicating that the Appellant had been transferred from the Information Division to the Cultural Section but he was not made aware of the circumstances surrounding the transfer. He knew there were vacancies in the Educational, Cultural, Scientific and Health Department of which he is the Director to which the Appellant was transferred and he tried to arouse the Appellant's interests in the cultural affairs schedule,

without much success. Asked by the Tribunal to state what in his opinion should be the qualifications of a Cultural Affairs Officer, AMBASSADOR DIARRA said in reply that the incumbent should have a degree in Political Science, History or the Arts with special knowledge of cultural affairs. AMBASSADOR DIARRA was asked by the Administrative Secretary-General to indicate how many specialists were in his Department; to this he stated that there were Medical Doctors specializing in their various domains of competence, Chief of the Education Section and his immediate assistants who could be considered specialists in their own areas of operation. He said there was no cultural expert in his department. AMBASSADOR DIARRA indicated also in his evidence that he was informed by the Chief of Cabinet that the transfer was temporary and that the Administrative Secretary-General was considering transferring the Appellant to other duties.

10. The Administrative Secretary-General, in his observations, referred to a portion of a memo from the Assistant Secretary-General, Education, Cultural, Scientific and Health Department dated 18th June addressed to him (Secretary-General) regarding the Appellant. He indicated that he would place the memo at the disposal of the Tribunal, if required, although he was of the view that the memo would in no way change anything. The Appellant asked for a copy of the memo citing Article 3 of the Disciplinary Code, Reference CAB/GM/1/11 of 27th April, 1973, as enjoying the Organization to make copies of reports available to staff members. He refuted an alleged statement made by the Administrative Secretary-General implying that he had refused to work under a man with secondary education.

11. Earlier Mr. Eshmael Mlambo, another Appellant in a case pending before the Tribunal took his seat by Mr. Hove. The Tribunal having drawn attention to the fact that it was meeting in camera and Mr. Mlambo should therefore not be present since his case would be heard later by the Tribunal, Mr. Hove contended that at no time had he been so informed of the closed session and that he wanted Mr. Mlambo to assist him in his case. He then referred to the presence of the Administrative Secretary-General's bodyguard and of the Chief of Cabinet in

the room as an indication that the Tribunal was not meeting in private session. He was informed in reply that the Tribunal had earlier decided to hold the first session in camera, a prerogative vested in it by the Rules of Procedure which could not be challenged. As regards the presence of the Chief of Cabinet, the President stated that on request he had earlier permitted him to take notes for the Administrative Secretary-General; the bodyguard was however asked to leave the room. It was explained that the Rules of Procedure permitted a Counsel, a function which Mr. Mlambo was not known to be exercising but there would be no objection, if Mr. Hove made a request for a Secretary to assist him. At the Appellant's request, the Tribunal agreed that Mrs. AIKA SHAO SHAI, Stenographer/Secretary of the General Secretariat should take notes in the Tribunal on his behalf. Mr. Mlambo was therefore obliged to leave the room to return when his own appeal came to be heard.

12. The Tribunal then held a closed session, excluding the two parties to the dispute to enable it consider the need for making available the memo of 18th June or otherwise of determining its relevance to the Appeal. Having considered the facts of the matter and in particular the contents of the memorandum dated 18th June addressed to the Administrative Secretary-General by the Assistant Secretary-General for Education, Cultural, Scientific and Health Department, the Tribunal resumed its sitting, the two parties to the dispute having been called in. It decided that the memo dated 18th June, 1975, having been written after the transfer, was effected and considering its contents, was not relevant to the substance of the Appeal and in consequence it need not be tendered in evidence or used at all.

13. The Appellant resumed his case and stated that during the recess the Administrative Secretary-General indicated to him that he was prepared to review his transfer and had even sent messages through other parties known to him indicating his intention to review the transfer. The Appellant stated that this had come to his notice for the first time and that if he was aware of this, he would not have brought the suit against the Administrative Secretary-General adding that apart from his intention of seeing justice done and seeking a redress of the situation, he had no other motives. The Administrative Secretary-General in reply stated that

during the recess, he had a conversation with the Appellant at the latter's request in which the Appellant asked to know if AMBASSADOR DIARRA's statement before the Tribunal that he (Diarra) had earlier been informed by the Chief of Cabinet that the transfer was temporary and that he (Secretary-General) had envisaged transferring him again to other duties was true. The Administrative Secretary-General confirmed that it was true and in fact he had contemplated transferring the Appellant to other duties since he had not shown inclination or interest in cultural matters but in his opinion, this should not effect the substance of the Appeal since again this would call for the exercise of his administrative prerogative being questioned in the Appeal. He added on point of clarification that in transferring the Appellant there were no improper motives neither was the transfer made on punitive grounds; on the contrary he was motivated by the desire and concern to ensure the smooth running of the Organization. The Appellant also reiterated, by way of explanation, that he submitted his case to the Administrative Secretary-General asking to be transferred to other duties in line with his qualifications but that he had no intention of challenging the powers of transfer of the Secretary-General.

14. In reply to a question put to him by the Tribunal as regards whether in the light of the conversation and of the disclosure, the Tribunal would be correct to say that he wished to withdraw his case, the Appellant answered that he did not wish to press his case. In the light of this, the Tribunal decided to summarize the position as follows below. The summary was approved by both parties and they agreed with the Tribunal that it should form part of the record of the Tribunal.

THE SUMMARY

THE APPELLANT HAVING HAD CONVERSATION WITH THE ADMINISTRATIVE SECRETARY-GENERAL ON THE MATTER, THE SUBJECT OF DISCUSSION AND UPON FURTHER CONSIDERATION OF THE MATTER IN THE TRIBUNAL, HAS DECIDED THAT HE NO LONGER WISHES TO PURSUE THE MATTER AND THEREFORE THE MATTER BEFORE THE TRIBUNAL IS WITHDRAWN.

By this, the Tribunal disposed of the case of Byron R. Hove during its deliberations on 9th and 10th March, 1976, delivering judgement in the case Byron R. Hove (Appellant) versus William Eteki Mboumoua (Respondent) - Document ADMT/3 - as follows:-

THE AD HOC ADMINISTRATIVE TRIBUNAL OF THE OAU MET IN ACCORDANCE WITH ITS RULES OF PROCEDURE AS EMBODIED IN DOC. CM/170/Rev.2 ON 9TH AND 10TH MARCH 1976 TO EXAMINE THE APPLICATION SUBMITTED BY MR. HOVE AGAINST THE DECISION OF TRANSFER MADE BY THE ADMINISTRATIVE SECRETARY-GENERAL OF THE OAU CONCERNING MR. HOVE.

AFTER HAVING DECLARED A SESSION IN CAMERA ON ACCOUNT OF THE NATURE OF THE CASE, THE TRIBUNAL AUTHORIZED UPON REQUEST OF THE APPELLANT AND IN CONFORMITY WITH ARTICLE 19 PARAGRAFE 2 OF THE RULES OF PROCEDURE THE APPELLANT TO USE THE SERVICES OF A COUNSEL OF HIS CHOICE. THE APPELLANT HAVING ON HIS VOLITION WITHDRAWN HIS APPEAL THE TRIBUNAL TOOK NOTE OF THE ACT AND DECIDED TO CLOSE THE MATTER. THUS THE TRIBUNAL DECIDED UNANIMOUSLY IN ADDIS ABABA ON THIS DAY OF 11TH MARCH 1976.

Consideration of Appeal in case Eshmael E. Mlambo (Appellant)
Statutory Staff versus William Eteki Mboumoua (Respondent),
Administrative Secretary-General - Agenda Item (b) - Document

ADMT/4

15. The Tribunal resumed its deliberations on 11th March 1976 to hear the case of Eshmael E. Mlambo versus William Eteki Mboumoua. The Tribunal had earlier mandated its President to meet Mr. Mlambo and ascertain from him whether he wanted to pursue his appeal in view of his transfer to the Geneva Office. The President therefore informed the Tribunal that he had a meeting with Mr. Mlambo in the presence of and in the Office of the Secretary of the Tribunal during which he ascertained from him if he still wanted to pursue his case. The President also reported that while referring to the case of Hove in which the two parties achieved a measure of reconciliation, he assured Mr. Mlambo that he was free to pursue his case. Mr. Mlambo, the President reported, indicated that he was not so worried about the transfer which he could withdraw, but his main concern was about a memo from the Administrative Secretary-General in which he was defamed; he was most anxious to clear his name and unless the Administrative Secretary-General was prepared to either withdraw the memo or offer apologies he was not inclined to withdraw his appeal.

16. The Tribunal having heard the report of the President decided to proceed with the appeal in case Eshmael E. Mlambo versus the Administrative Secretary-General pointing out that the Tribunal would achieve speed and efficiency if the Appellant would get to the substance of the matter, thus avoiding procedural wrangles and polemics. To speed up the Tribunal's work, it was proposed that:-

- (a) The Appellant and Respondent should make clear and comprehensive statements,
- (b) a series of questions be prepared by the President as well as by Members/Judges of the Tribunal for answering by the Appellant and the Respondent,
- (c) the Appellant should get to the substance of the Appeal and at the same time substantiate allegations or charges made in the Appeal,
- (d) thereafter the Tribunal could subsequently meet in camera i.e. in the absence of the parties to consider the verdict.

17. The Appellant having been summoned to appear before the Tribunal and having earlier given notice of his intention to be assisted by Counsel, to which the Tribunal had no objection, he proceeded to state his case assisted by his Counsel, Mr. Byron R. Hove, Staff Member of the General Secretariat. He stated that although he was not contesting the powers of the Administrative Secretary-General in respect of transfers, he was most unhappy with the way the transfer was effected, with the circumstances surrounding the transfer and since it was done without regard to his qualifications and without prior consultations with his superiors as required by elementary rules of administration. The Administrative Secretary-General having reversed his decision after one year during which the Appellant did not perform any official duties, the Appellant stated that he did not want to press the question of transfer. He however contended that the Administrative Secretary-General in his capacity as Chief Officer of the Organization had made unfounded allegations against him in a memo the Secretary-General addressed to the Assistant Secretary-General (Political), allegations of which in his opinion constituted acts of breach of employment and therefore within the purview of Article 2(b) of Document CM/99/Rev.2. He gave notice of intention to call the following witnesses:-

1. Dr. Peter U. Onu, Assistant Secretary-General for Political Affairs.
2. Mr. A.N. Chimuka, Director, Political Department.
3. Mr. A.E.Q. Nyyneque, Assistant Secretary-General for Economic and Social Affairs.

As regards the third witness, having realized that he was temporarily away from Addis Ababa, he decided to leave him out.

18. The Appellant enumerated the allegations made against him which were based on (a) his conversation with Mr. Papa Diour, Chief of Cabinet of the Administrative Secretary-General and (b) the contents of the inter-office memorandum addressed to the Assistant Secretary-General in charge of Political Affairs by the Administrative Secretary-General. The details of the said conversation were embodied in a memorandum subsequently written by the Appellant and which formed an annex to his appeal. The Appellant alleged inter-alia that he had been branded an

Agent and that the Administrative Secretary-General took his decision following an audience he (the Secretary-General) had with the former President of ZANU in a Lusaka Hotel during which the Appellant was said to be a member of a rival Liberation Movement. This added to the insinuations in the said memo to the Assistant Secretary-General (Political Affairs) and the haste with which his successor was appointed without prior consultations with the Assistant Secretary-General (Political Affairs) and the Director of the Political Department concluded that there was malice.

19. The Administrative Secretary-General (Respondent) confirmed that he wrote the memo in question to the Assistant Secretary-General (Political) who is responsible for the Political Department and expressed reservations of how the Appellant could come to be in possession of it. According to the Respondent the memo was written after the Appellant had been transferred to other duties from the Political Department and indeed it was not directed against him. He stated that he had earlier discussed the contents of the said memo with his immediate collaborator, the Assistant Secretary-General (Political) who had returned the memo to him, i.e. they had both agreed that the memo be withdrawn and should not form part of the official correspondence of the OAU. He added that the memo was confidential. As regards the conversations between the Appellant and the Chief of Cabinet, the Administrative Secretary-General stated that these were private and did not concern him as Secretary-General. He then referred to his discussions with the former President of ZANU and confirmed that during the discussions, the ZANU President expressed concern about the Appellant being in the Secretariat and also in the Political Department, as the Appellant was a member of a rival Nationalist Organization, but denied that the Appellant was referred to as an Agent. The Administrative Secretary-General (Respondent) also confirmed that he did not use that piece of unsolicited information that the Appellant belonged to a rival Liberation Movement at all nor was he influenced by this in his decision in transferring the Appellant to other duties.

20. The Appellant raised objections to the alleged confidential nature

of the said memo addressed to the Assistant Secretary-General (Political) adding that the staff of the Political Section including himself contributed jointly to the reply of the Assistant Secretary-General (Political) and he did not therefore consider that there was any confidentiality about it.

21. The Tribunal held the view that the record of conversations between the Chief of Cabinet and the Appellant as reproduced by the Appellant could not be accepted in evidence since the document was not authenticated and since the Chief of Cabinet was not subpoenaed to give evidence before the Tribunal in substantiation. On the question of the memorandum said to contain the alleged defamation, the Tribunal noted that it was written after the transfer of the Appellant and that it was an inter-office memorandum and its contents could not constitute grounds for defamation. It held the view that defamation could only be made in public. The Tribunal felt that the allegation of defamation is not within its competence in the light of Article 2 of CM/99/Rev.2. Even if it was within its jurisdiction, it felt that the allegation of defamation had not been conclusively proved as the memo of the Administrative Secretary-General (Respondent) was merely making observations.

22. The Tribunal did not consider it necessary to invite the two witnesses, Dr. Peter Onu and Mr. A.N. Chimuka as it was disclosed that their evidence would be designed to show that the memorandum was written by the Respondent after the transfer. The Respondent had admitted this fact. It held the view that there was no doubt about its author and evidence as would be given by the witness had no substance to the issue. As regards the confidentiality or otherwise of the memorandum in question, the Tribunal felt it did not affect the issue. It admitted the Memo in evidence.

23. After due consideration of the various arguments and in the light of evidence adduced including statements of substance bearing on the appeal in the case of Eshmael E. Mlambo (Appellant) versus William Eteki Mboumoua (Respondent), the Tribunal delivered the following judgement:-

THE TRIBUNAL CONSTITUTED IN TERMS OF DOCUMENTS CM/99/Rev.2 AND CM/176/Rev.2 MET ON 11 MARCH 1976 TO HEAR THE CASE BY MR. MLAMBO COMPLAINING ABOUT CERTAIN ACTIONS ALLEGEDLY TAKEN

BY THE ADMINISTRATIVE SECRETARY-GENERAL WHICH WERE PREJUDICIAL TO MR. MLAMBO.

THE COMPLAINT WAS FORMULATED IN TWO PARTS, THE FIRST PART DEALT WITH A QUESTION OF TRANSFER OF MR. MLAMBO FROM THE POLITICAL DEPARTMENT TO THE DEPARTMENT OF SCIENTIFIC, EDUCATION AND CULTURAL AFFAIRS TO ACT AS CHIEF OF NATURAL RESOURCES. DURING THIS DISCUSSION, THE APPELLANT MADE IT KNOWN THAT HE DID NOT CHALLENGE THE POWERS VESTED IN THE SECRETARY-GENERAL TO DEPLOY STAFF NOR DID HE CHALLENGE THE DISCRETION OF THE SECRETARY-GENERAL TO DEPLOY STAFF IN THE WAY HE CONSIDERED BEST IN THE INTEREST OF THE ORGANIZATION. IT WAS HOWEVER HIS CASE THAT THE PARTICULAR TRANSFER IN QUESTION HAD BEEN DONE IN ABUSE OF THE DISCRETION VESTED IN THE SECRETARY-GENERAL AND IN THE DOSSIER OF THE CASE THE REASONS WERE GIVEN FOR THAT VIEW. HOWEVER, THE APPELLANT HAVING BEEN RE-TRANSFERRED TO AN OFFICE OF THE OAU IN GENEVA, DEALING WITH ECONOMIC AFFAIRS, FELT THAT THIS HAS REMEDIED THE SITUATION AND HE COULD NO LONGER PERSIST IN HIS ALLEGATION REGARDING THE TRANSFER. HE THEREFORE, IN OUR VIEW PROPERLY, WITHDREW THE ALLEGATION ON THE QUESTION OF TRANSFER.

ON THE SECOND LIMB OF HIS CASE, THE APPELLANT STATED THAT HE HAS BEEN MALICIOUSLY DEFAMED BY THE ADMINISTRATIVE SECRETARY-GENERAL AND THAT THIS WAS THE CASE HE WANTED TO PRESS BEFORE THIS TRIBUNAL. THE TRIBUNAL, UPON HEARING THE SUBMISSIONS OF BOTH PARTIES, AND UPON CONSIDERING THE PROVISIONS OF THE STATUTES, HAS COME TO THE CONCLUSION THAT IT HAS NO JURISDICTION TO HEAR ALLEGATIONS OF DEFAMATION. THE PROVISION IN THE STATUTE WHICH DEALS WITH THE COMPETENCE OF THE TRIBUNAL IS IN ARTICLE 2 OF CM/99/Rev.2. THIS ARTICLE PROVIDES THAT:

- (i) THE TRIBUNAL SHALL BE COMPETENT TO HEAR APPLICATION ALLEGING:
 - (a) VIOLATION OF THE RELEVANT PROVISIONS OF THE STAFF RULES AND REGULATIONS OF OAU;
 - (b) NON-OBSERVANCE OF CONTRACTS OF EMPLOYMENT AND ANY OTHER ACT OF EMPLOYMENT;



- (ii) THE TRIBUNAL SHALL ALSO BE COMPETENT TO HERE PETITION, AGAINST DISCIPLINARY ACTION IF THE STAFF COUNCIL DOES NOT SUCCEED IN SETTLING THE DIFFERENCE AMICABLY WITHIN 30 DAYS RECKONED FROM THE DATE ON WHICH THE DISCIPLINARY ACTION WAS TAKEN;
- (iii) THE TRIBUNAL SHALL ONLY BE COMPETENT TO PASS JUDGEMENT UPON THE ABOVE MENTIONED APPLICATION AND PETITIONS.

WE ARE AGREED IN THE TRIBUNAL THAT AN ALLEGATION OF DEFAMATION IS NOT A VIOLATION OF THE PROVISIONS OF STAFF RULES AND REGULATIONS NOR IS IT A NON-OBSERVANCE OF CONTRACT OR ANY ACT OF EMPLOYMENT. IT IS QUITE CLEAR THAT AN ALLEGATION OF DEFAMATION IS NOT A DISCIPLINARY ACTION. A DEFAMATION IN OUR VIEW IS AN IMPAIRMENT OF ANOTHER PERSON'S REPUTATION, DIGNITY OR HONOUR. IT IS A MATTER OF THE LAND WHERE THE DEFAMATION TAKES PLACE. IN OUR VIEW THIS TRIBUNAL'S JURISDICTION IS INTENDED TO DEAL WITH ACTIONS OR DECISIONS OF THE ADMINISTRATIVE SECRETARY-GENERAL IN RELATION TO STAFF RULES, CONTRACTS OR DISCIPLINARY MEASURES TAKEN BY THE ADMINISTRATIVE SECRETARY-GENERAL. IT IS INTENDED TO SAFEGUARD THE STAFF MEMBERS OF THE OAU IN RELATION TO ADMINISTRATIVE ACTIONS, WHICH ARE NOT CAPABLE OF BEING HEARD IN A COURT OF LAW. WE ARE THEREFORE QUITE CLEAR THAT THIS TRIBUNAL COULD NOT ENTERTAIN ANY QUESTION OF ALLEGATION OF DEFAMATION, EVEN IF THIS TRIBUNAL HAD THE JURISDICTION TO DEAL WITH THE MATTER OF DEFAMATION, WE WOULD HOLD, ON THE BASIS OF ARGUMENT PRESENTED TO US, THAT THE ALLEGATION OF DEFAMATION IS NOT PROVED. WE SHOULD NOT GO INTO THE ISSUE AT LENGTH, BUT MERELY INDICATE WHY WE ARE OF THESE VIEWS. AGAIN, WE EMPHASIZE THAT IT WAS NOT NECESSARY TO OUR DECISION TO DECIDE ON THE SUBSTANCE OF THE ALLEGATION SINCE WE ARE FIRMLY OF THE VIEW THAT THE TRIBUNAL HAS NO JURISDICTION TO HEAR COMPLAINTS OF DEFAMATION.

THERE WERE TWO POINTS RAISED BY THE APPELLANT TO SUSTAIN THE ALLEGATION OF DEFAMATION. THE FIRST ONE REALLY DERIVED FROM AN ALLEGED CONVERSATION BETWEEN THE APPELLANT AND MR. PAPA DIOUF, HEAD OF CABINET IN THE ADMINISTRATIVE SECRETARY-GENERAL'S OFFICE.

THE ALLEGED CONVERSATION WAS REDUCED INTO WRITING BY THE APPELLANT AND IT FORMS ANNEXURE IV OF THE DOSSIER IN THIS CASE. THE APPELLANT DID NOT HOWEVER ATTEMPT TO ESTABLISH BY OTHER EVIDENCE APART FROM HIS OWN:

- (i) THAT THE ALLEGED CONVERSATION INDEED TOOK PLACE;
- (ii) THAT THE CONTENTS OF ANNEX IV WERE AN ACCURATE REFLECTION OF THAT CONVERSATION, IF IT INDEED TOOK PLACE.

THE QUESTION WHETHER A CONVERSATION AS ALLEGED TOOK PLACE, AND WHAT ITS CONTENTS ARE OR WHETHER THE ANNEX REFLECTS THE CONVERSATION, ALL DEPEND ON THE SAY SO OF THE APPELLANT. NO ATTEMPT WAS MADE TO CALL MR. PAPA DIOUF TO CONFIRM THE CONVERSATION AND THE CONTENTS OF ANNEX IV. IN OUR VIEW IT IS THE APPELLANT'S BURDEN TO PROVE THE ALLEGATION AND ANY DEFICIENCY IN THE EVIDENCE IS AT THE APPELLANT'S PERIL.

IT SHOULD BE NOTED THAT IN HIS OWN STATEMENT THE ADMINISTRATIVE SECRETARY-GENERAL DENIED THAT HE HAD ANYTHING TO DO WITH THE ALLEGED CONVERSATION BETWEEN THE APPELLANT AND MR. PAPA DIOUF OR WITH THE CONTENTS OF THE ALLEGED CONVERSATION AS REPRODUCED BY THE APPELLANT. HE STATED THAT DURING ONE OF HIS TOURS HE HAD THE FORMER HEAD OF ZANU IN LUSAKA WHO COMPLAINED TO HIM THAT MR. MLAMBO - WHO IS THE PRESENT APPELLANT - WAS A MEMBER OF A RIVAL LIBERATION MOVEMENT, THAT IS TO SAY, ZANU. THE SECRETARY-GENERAL STATED THAT HE DID NOT INVESTIGATE THIS NOR WAS HE INCLINED TO VERIFY THIS ALLEGATION. THE SECRETARY-GENERAL DID NOT USE THIS PIECE OF UNSOLICITED KNOWLEDGE AT ALL; IN PARTICULAR HE DENIED THAT IT INFLUENCED HIS DECISION TO TRANSFER THE APPELLANT OR IN WRITING THE LETTER (DISCUSSED IN THE NEXT PARAGRAPH) SAID TO CONTAIN THE DEFAMATION.

THE SECOND POINT ADVANCED BY THE APPELLANT IN SUPPORT OF THE ALLEGATION WAS THAT THE SECRETARY-GENERAL DEFAMED HIM IN A LETTER TO THE ASSISTANT SECRETARY-GENERAL IN CHARGE OF THE POLITICAL DEPARTMENT. THIS LETTER REFERRED TO A REPORT WHICH WAS BEING PREPARED BY THE POLITICAL DEPARTMENT

AND EVENTUALLY TO BE SUBMITTED BY THE SECRETARY-GENERAL TO THE COUNCIL OF MINISTERS. THE CASE OF THE APPELLANT WAS THAT CERTAIN REMARKS IN THAT LETTER REFERRED TO HIM BECAUSE HE WAS THE HEAD OF THE SANCTIONS SECTION AND HAD IN FACT PREPARED THIS REPORT BEFORE HIS TRANSFER. THE APPELLANT MENTIONED THAT AT THE TIME OF THE TRANSFER HE HAD NOT FINISHED THE REPORT AND THEREFORE IT HAD NOT BEEN SUBMITTED TO THE SECRETARY-GENERAL. THE ADMINISTRATIVE SECRETARY-GENERAL STATED THAT THIS LETTER WAS ONE TO HIS IMMEDIATE SUBORDINATE I.E. THE ASSISTANT SECRETARY-GENERAL IN CHARGE OF THE POLITICAL DEPARTMENT WHO WAS RESPONSIBLE FOR THE PRODUCTION OF THAT REPORT FOR SUBMISSION TO THE SECRETARY-GENERAL.

THE SECRETARY-GENERAL MAINTAINED THROUGHOUT THAT THIS LETTER WAS WRITTEN BY HIM AS THE HEAD OF THE SECRETARIAT TO ONE OF HIS SUBORDINATES AND IT WAS A CONFIDENTIAL NOTE BETWEEN HIMSELF AND THAT OFFICER. HE MAINTAINED THAT HE HAS THE RIGHT TO COMPLAIN TO ANY OF HIS OFFICERS ABOUT ANY OF THEIR WORK. THE APPELLANT HAS SAID THAT THIS NOTE WAS NOT A CONFIDENTIAL DOCUMENT AND THAT HE AND OTHERS IN THE POLITICAL DEPARTMENT HAD DISCUSSED IT AND CONTRIBUTED TO A REPLY TO THAT NOTE. THE TRIBUNAL REFUSED TO BE DRAWN ON THE QUESTION OF CONFIDENTIALITY OR OTHERWISE OF OAU DOCUMENTS. THE TRIBUNAL THINKS THAT IS AN INTERNAL MATTER WHICH CAN ONLY BE REVIEWED BY THE HEAD OF THE SECRETARIAT.

ON THE TWO POINTS RAISED BY THE APPELLANT TO SUSTAIN THE ALLEGATION, WE ARE FULLY CONVINCED THAT THEY WOULD NOT SUSTAIN IN ANY COURT A CASE OF DEFAMATION, SINCE REALLY THE ALLEGATIONS ARE NOT PROVEN. OF COURSE IF THERE WAS ANY SUCH CASE IT WOULD BE JUDGED BY A COURT AND NOT BY THIS TRIBUNAL. THIS IS ONLY TO GIVE THE INDICATION OF OUR VIEW SINCE WE HAVE HEARD TO SOME EXTENT ARGUMENTS ON THE MATTER.

FOR THE ABOVE REASONS, IT IS DECIDED AS FOLLOWS:-

- (i) THAT THE QUESTION OF TRANSFER WITHDRAWN BY THE APPELLANT IN TERMS OF THE RELEVANT RULES OF PROCEDURE OF THIS TRIBUNAL IS NOW CLOSED;
- (ii) THAT THE TRIBUNAL HAS NO JURISDICTION TO HEAR AN ALLEGATION OF DEFAMATION.

THE JUDGEMENT WHICH IS DELIVERED HEREIN HAS CONCURRENCE AND UNANIMITY OF THE WHOLE TRIBUNAL.

24. In conclusion, the President thanked all the Members/Judges of the Tribunal for their indulgence and also the Parties appearing before the Tribunal and for the facilities offered by the General Secretariat. The Administrative Secretary-General thanked all concerned for the efforts made to create a new atmosphere in relation to the Secretariat and for resolving the Issues.

25. The Tribunal adjourned sine die at 1700 hours on 11th March, 1976.

·OAU AD HOC ADMINISTRATIVE TRIBUNAL
SECOND SESSION

CM/783 (XXVIII)
Annex 3

REPORT OF THE PROCEEDINGS OF THE SECOND SESSION
OF THE AD HOC ADMINISTRATIVE TRIBUNAL HELD IN
PORT LOUIS, MAURITIUS ON SATURDAY 3rd JULY 1976

HON. JULIAN NGANUNU (PRESIDENT)
DEPUTY ATTORNEY GENERAL
BOTSWANA

MR. PAUL A. ARYEE (INTERIM SECRETARY)
HEAD OF ADMINISTRATION
OAU GENERAL SECRETARIAT.

REPORT OF THE PROCEEDINGS OF THE SECOND SESSION OF THE
AD HOC ADMINISTRATIVE TRIBUNAL
HELD IN PORT LOUIS, MAURITIUS ON SATURDAY 3 JULY 1976

PRESENT: Hon. Julian Nganunu (President)
Mr. Charles Mabushi (Member/Judge)
His Excellency Abdelaziz Ben Hassine (Member/Judge)
Mr. Paul A. Aryee (Interim Secretary)

OPENING

The President declared the Second Session of the QAU Ad Hoc Administrative Tribunal open at 1130 hours on 3rd July, 1976 and warmly welcomed the Members/Judges of the Tribunal.

OBSERVATIONS OF THE PRESIDENT AND MEMBERS/JUDGES

2. The President of the Tribunal drew attention to the Provisional Agenda already circulated by the Secretary and noted that of the two cases listed, one had been submitted a long time ago. He pointed out that although the Second Session of the Tribunal was scheduled to take place in Mauritius on 30 June 1976 i.e. at the end of the 27th Ordinary Session of the Council of Ministers in conformity with its Rules of Procedure, this was not possible owing to a number of technical and other factors and that it was not possible for the Secretariat to provide facilities subsequently and therefore the meeting could also not be held thereafter. The President observed that the Administrative Secretary-General had also indicated that in view of the heavy load of work connected with the Council of Ministers and the Assembly of Heads of State and Government, technical servicing facilities would not be available and it would therefore not be possible to hold the meeting in Mauritius. Nevertheless he noted that it was the duty of the Tribunal in accordance with the Rules of Procedure to meet wherever the Council of Ministers was in ordinary session and at the end of its ordinary sessions and he thought the position should be made known to the Tribunal for it to consider the best way of dealing with the situation which had arisen. While apologising for the situation, he observed that Members/Judges were witnesses to the circumstances culminating in the situation and invited their comments and ideas.

3. The Members/Judges were in general agreement with the observations

of the President. They also noted that in the light of the experience gained, it was obvious that it would not be possible for the Tribunal to meet at the same time as the Council of Ministers. This they pointed out, called for amendment of Article 9 of the Tribunal's Rules of Procedure which stipulate that the Tribunal should convene when the Council of Ministers is in ordinary session and at the end of such sessions of the Council. They also submitted that the meeting should be considered a formal session of the Tribunal and proposed that in the light of the situation, to which all of them had been witnesses, the Second Session of the Tribunal should be adjourned; the new date and venue to be decided later..

4. Thereupon the Tribunal reached the following conclusions:-

DECISION: IT DECIDED THAT

- (a) THE MEETING HELD ON SATURDAY, 3RD JULY 1976 SHOULD CONSTITUTE A FORMAL MEETING;
- (b) THE MEETING (SECOND SESSION) SHOULD BE ADJOURNED;
- (c) THE NEW DATE AND VENUE TO BE DETERMINED IN CONSULTATION WITH THE ADMINISTRATIVE SECRETARY GENERAL;
- (d) THE PRESIDENT SHOULD CONFER WITH THE ADMINISTRATIVE SECRETARY GENERAL ON THE ISSUE AND IF POSSIBLE THE ADMINISTRATIVE SECRETARY-GENERAL SHOULD INDICATE THE NEW DATE AND VENUE BEFORE THE END OF THE SUMMIT IN VIEW OF THE NEED TO FINALISE OR DISPOSE OF THE CASES ON THE AGENDA;
- (e) AS REGARDS THE PROPOSAL TO AMEND ARTICLE 9 OF THE RULES OF PROCEDURE, THE MATTER BE LOOKED INTO IN GREATER DETAIL AT THE TRIBUNAL'S NEXT MEETING;
- (f) THE ADMINISTRATIVE SECRETARY-GENERAL SHOULD BE OFFICIALLY INFORMED OF THE ADJOURNMENT OF THE MEETING AND OF THE NEED TO DETERMINE A NEW DATE AND VENUE;

- (g) THE APPELLANTS, MESSRS AMIN SABRY AND AZIM SADEK SHOULD BE INFORMED OFFICIALLY THAT THE TRIBUNAL MET AND DECIDED TO ADJOURN TO A LATER DATE AND THAT THEY WOULD BE NOTIFIED OF THE NEW DATE AND VENUE IN DUE COURSE.

5. PROPOSED AMENDMENT OF ARTICLE 9 OF THE RULES OF PROCEDURE

As regards the proposal for amendment of Article 9 of the Tribunal's Rules of Procedure, it was observed that the Article in question could only be amended by the Council of Ministers. It was agreed that the matter should be looked into in greater detail at the Tribunal's next session and that the Administrative Secretary-General in his capacity as the Chief Executive of the Organization, should also be asked to look into the matter with a view to advise on whether or not it could be amended.

6. The Tribunal also noted that in respect of Article 9 of the Rules of Procedure, it could make a recommendation which could form the basis of a Report to be submitted to the Council of Ministers for consideration. It also agreed to include in the Report the question of election of Members of the Tribunal but noted that with the admission of Angola into the Organization and with the former Republic of Dahomey assuming the new name of Republic of Benin, a new situation had arisen considering the alphabetical order in which the election was made. This, it was the view of the Tribunal, would be a matter for the Council of Ministers.

7. CONCLUSION OF MEETING

The meeting came to a close at 12.30 noon on Saturday 3rd July, 1976.



1977-02

Report of the Administrative Secretary-General on the AD HOC Administrative Tribunal of the Organization of African Unity

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