

ELEVENTH ANNUAL ACTIVITY REPORT OF  
THE AFRICAN COMMISSION ON HUMAN AND  
PEOPLES` RIGHTS 1997 - 1998

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COMMISSION ON HUMAN AND PEOPLES' RIGHTS  
1997/98**

**I. ORGANIZATION OF WORK**

**A. Period Covered by the Report**

1. The Tenth Annual Activity report of the African Commission on Human and Peoples' Rights was adopted by the 33rd Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity in its decision AHG/DEC 123(XXXIII) taken during its meeting in Harare, Zimbabwe, from 2 - 4 June 1997. The Eleventh Annual Activity Report covers the 22nd and 23rd Ordinary Sessions held in Banjul, Gambia, from 2-11 November 1997 and from 20-29 April 1998 respectively. The addendum to this document concerns the part of the report covering the 23rd session.

**B. Status of Ratification**

2. All the Member States of the OAU, with the exception of Eritrea and Ethiopia have ratified or acceded to the African Charter on Human and Peoples' Rights. Annex I contains the list of States parties to the African Charter on Human and Peoples' Rights indicating inter alia

the dates of signature, ratification or accession, as well as the date of deposit of the instruments of ratification or accession as the case may be.

**C. Sessions and Agenda**

3. The Commission held two ordinary sessions since the adoption of the Tenth Annual Activity Report in June 1997:

- The 22nd Ordinary Session held in Banjul, The Gambia, the Headquarters of the Commission, from 2-11 November 1997;
  - The 23rd Ordinary Session held in Banjul, from 20-29 April 1998.
- The agenda of each of these sessions is attached to this report.

**D. Composition and Participation**

4. The following Commissioners attended the 22nd Session:

- a. Mr. Youssoupha Ndiaye, Chairman
- b. Dr. Vera V. Duarte Martins, Vice Chairman
- c. Dr. Mohamed Hatem. Ben Salem
- d. Prof. Emmanuel V.O. Dankwa
- e. Dr. Nyameko Barney Pityana
- f. Dr. Ibrahim Badawi El Sheikh
- g. Mrs. Julienne Ondziel-Gnelenga
- h. Mr. Kamel Rezzag-Bara
- i. Prof. Isaac Nguema

Messrs Alioune Blondin Beye and Atsu Kofi-Amega were absent from the proceedings However, Mr. Blondin Beye sent an apology.

5. The representatives of the following States attended the 22nd Session and made statements before the Commission:

- \* Burundi Cameroun
- \* Libya Mauritania
- \* Nigeria Niger
- \* Togo Gambia
- \* Burkina Faso

6. A number of Non Governmental Organizations (NGOs) and a national human rights institution also attended the proceedings.

#### 7. Swearing in

8. The newly elected members of the Commission were sworn in. They are:

- \* Mr. Ben Salem
- \* Dr. Nyameko Barney Pityana
- \* Dr. Ibrahim Badawi El Sheikh.

9. Commissioners Youssoupha Ndiaye and Vera Valentino De Melo Duarte Martins were elected Chairman and Vice Chairman of the Commission respectively at the 23<sup>rd</sup> session.

10. The following members of the Commission attended the 23rd ordinary session :

- a. Mr. Youssoupha Ndiaye, Chairman
- b. Dr. Vera V. Duarte Martins, Vice Chairman

- c. Prof. Isaac Nguema, member
- d. Prof. Emmanuel V.O. Dankwa, member
- e. Dr. Mohamed Hatem Ben Salem , member
- f. Mme Julienne Ondziel-Gnelenga, member
- g. Mr. Kamel Rezzag-Bara, member
- h. Dr. Nyameko Barney Pityana, member
- i. Dr. Ibrahim Badawi El Sheikh , member

11. Messrs. Atsu-Koffi Amega and Alioune Blondin Beye were absent with apologies.

12. The representatives of the following States participated in the proceedings of the 23rd session and some of them made statements : Gambia, Mauritania, Burkina Faso, Sudan, Namibia, the Republic of Guinea, Nigeria, Mozambique.

13. Many Non Governmental Organizations (NGOs) and National Institutions also took part in the proceedings of the 23rd session.

14. **Adoption of the 11th Annual Activity Report**

The Commission considered and adopted the eleventh annual activity report at its sitting of 29 April 1998.

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

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

15. Under Article 62 of the African Charter on Human and Peoples' Rights, each State Party undertakes to submit a report every two years on the legislative and other measures it takes to give effect to the rights and freedoms enshrined in the Charter.
16. The Republic of Chad and the Republic of Seychelles sent their periodic reports to the Secretariat, but these were not considered by the Commission as there were no official delegations to present them.
17. The periodic reports of the Republic of Namibia and the Republic of Guinea were presented at the 23rd session. The Commission praised the quality of the reports and thanked the representatives for their presentation.
18. The Commission considered several proposals for improving the operation of the reporting system and examined a draft amendment of the guidelines on the preparation of the said periodic reports.
19. As at the 22nd session, thirty-three (33) State parties had not yet submitted their periodic reports<sup>1</sup>.

### **B. Promotional Activities**

20. The Chairman met with the OAU Secretary General in Addis Ababa in December 1997 and discussed with him administrative, financial and other matters.

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<sup>1</sup> See list in annex

He also met with the President of the Republic of The Gambia in January 1998 and discussed with him the question of the Headquarters of the Commission.

The Chairman further intervened with the Governments of Mauritania and Djibouti in emergency situations.

21. All the members reported on the human rights promotional and/or protective activities they participated in during the intersession.
22. The Commission cosponsored or organized the following meetings, seminars and international conferences :
  1. The second workshop on the improvement of the regional human rights systems, 17-18 November 1997, Lisbon, Portugal;
  2. International Conference on Community Work, 24-28 November 1997, Kadoma, Zimbabwe with Penal Reform International (PRI);
  3. The meeting of government experts on the establishment of an African Human and Peoples' Rights Court, 8-12 December 1997, Addis Ababa, Ethiopia;
  4. The African contexts of the rights of the child, 12-14 January 1998, Harare, Zimbabwe, with CODESRIA, Redd Barna-Zimbabwe and the Centre for Family Research of the University of Cambridge;
  5. Working Group on the additional protocol to the African Charter on women's rights, 26- 28 January 1998, Banjul, The Gambia, with the African Centre for Democracy and Human Rights Studies and the International Commission of Jurists (ICJ);
  6. International Conference on HIV/AIDS in African Prisons, 16-18 February 1998, Dakar, Senegal, with the International Observatory of Prisons (OIP);

7. Regional Seminar on Economic, Social and Cultural Rights, 9-12 March 1998, in Abidjan, Côte d'Ivoire.
23. The Commission heard the statements of several NGOs on the human rights situation in Rwanda, Burundi, Congo (Brazzaville), Mauritania, Algeria, Gambia, Sierra Leone, Sudan, Nigeria, Democratic Republic of Congo and Cameroon.
24. Among the issues raised were those concerning women's rights in general, female genital mutilation, refugees, prison conditions, slavery, extrajudicial executions, restriction of the freedom of association, assembly, expression, torture, poverty, unemployment, discrimination.
25. Following the information provided by representatives of Amnesty International on the imminent execution of 23 persons in Rwanda accused of participation in the genocide of 1994, the Commission immediately requested the Rwandan government to stay this execution in order to enable it to take a position on the matter on the basis of the complaint submitted by Amnesty.
26. The Commission discussed the Celebration of the 50th anniversary of the Universal Declaration of Human Rights of the United Nations, as well as the preparation of the next Ministerial Conference on Human Rights in Luanda.
27. The Commission also discussed the distribution of States parties among its members for the purpose of promotion, organisation of seminars and conferences, the establishment of the International Criminal Court, the publication of its Review and other aspects of promotional work.
28. The resolution adopted by the Commission on the International Criminal Court is attached as an annex.

**III. REPORT OF THE SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL EXECUTIONS IN AFRICA**



29. At the 23rd session, Commissioner Ben Salem presented the final report on the summary, arbitrary and extrajudicial executions in Rwanda, Burundi, Chad, Comoros, and the Democratic Republic of Congo. This report contains the names of people about whom the special rapporteur is expecting information from the States concerned.

**IV. REPORT OF THE SPECIAL RAPPORTEUR ON PRISON AND  
DETENTION CONDITIONS IN AFRICA**

30. Commissioner E.V.O. Dankwa, Special Rapporteur on Prison and Detention Conditions in Africa submitted his second report. He spoke about his activities during the intersession when he attended various symposia and visited several detention centres inter alia in Mozambique and Madagascar.
31. The special rapporteur visited inter alia the prisons in Mali and studied the prison conditions of this country. His recommendations for the improvement of the Malian prison conditions will be submitted to the government. The special rapporteur expressed appreciation for the assistance rendered to him by the NGO Penal Reform International (PRI).
32. At the 23d session, Commissioner Dankwa presented his third report. In it he mentions his visits to prisons and other places of detention, meetings with government authorities, participation in seminars on African prisons.

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

33. The working group already set up for the elaboration of an additional protocol to the Charter on the rights of women met from 26-28 January 1998. The group was expanded to include the International Commission of Jurists and the African Centre for Democracy and Human Rights Studies. The said group prepared the terms of reference of the special rapporteur and presented a report at the 23rd

session. Upon its proposal, Mme Julienne Ondziel-Gnelenga was appointed special rapporteur on the rights of women. She is expected to present an interim report at the 24th session.

## **VI. MISSIONS TO STATES PARTIES**

34. The Commission deferred to the 23<sup>rd</sup> ordinary session consideration of the reports on the missions undertaken in Sudan and Nigeria. This session discussed Commissioner Dankwa's report on Sudan.

## **VII. RELATIONS WITH OBSERVERS**

35. At the 23<sup>rd</sup> session, observer status was granted to nineteen Non Governmental Organizations (NGOs), which brings the number of NGOs with observer status to 224. The 23<sup>rd</sup> session granted such status to 7 NGOs. This gives a total of 231.

36. With regard to the relations with National Human Rights Institutions, the Commission deferred the consideration of applications for observer status from National Human Rights Institutions.

37. On the same issue of relations between the Commission and observers, it was noticed that only thirty percent of observers complied with the obligation to submit reports on their activities to the Commission every two years. The Commission further noticed that some of these NGOs cut off all contact with it once they obtained observer status. The Commissions decided to review the criteria for granting observer status.

## **VIII. PROTECTIVE ACTIVITIES**

38. The Commission considered seventy-two communications. It made a ruling on the merits of four of them. For the others, it acknowledged receipt or ruled on their admissibility<sup>2</sup>.

In this regard, the Commission invited reflection on the reasons for the reduction in the number of communications submitted to it. It also noted that the non compliance by some States parties with the Commission's recommendations affects its credibility and may partly explain that fewer complaints are submitted to it.

## **IX - ADMINISTRATIVE AND FINANCIAL MATTERS**

### **a. Administrative matters**

39. The Commission examined the resources at its disposal for its functioning and expressed satisfaction at the improvement of its working conditions thanks to the additional human and financial resources provided by its partners.

The Commission also expressed its appreciation for the measures taken by the Council of Ministers of the OAU at its 67th Ordinary Session with a view to implementing the decisions and resolutions of the Assembly of the Head of States and Government of the OAU directing that the African Commission be provided with adequate financial, human and material resources for its efficient functioning

### **b) Financial Matters**

40. During the financial year under review, the Commission obtained funding from the following sources:

#### **1) OAU Budget**

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<sup>2</sup> For rulings on merit see annex

\* Due to financial problems facing the OAU, several projects of the Commission had to be suspended. This only slowed down the activities of the Commission and worsened its situation.

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

\* The African Society provided the Commission with two jurists from 30th August 1997 for a renewable period of one year. It also provided two computers and a printer. This somewhat improved the working conditions in the Secretariat.

**3) Assistance from the Danish Centre for Human Rights**

\* The Danish Centre for Human Rights provided a computer expert for a period of 9 months. He is responsible for the setting up of a computerised data base on the Commissions jurisprudence, the management of its relations with States parties and NGOs with observer status, the dissemination of information on human rights in Africa for the general public... etc.

**4) Assistance from the European Union**

\* The European Union in collaboration with the African Society for International Comparative Law provided the Commission with a jurist responsible inter alia for the dissemination of the African Charter on Human and Peoples' Rights, the human rights promotional activities, the organization of sensitization seminars intended for target groups across the continent, etc.

**5) Assistance from the United Nations High Commission for Human Rights**

\* The United Nations High Commission for Human Rights granted financial assistance to the African Commission on Human and Peoples' Rights for the preparation of a Protocol on the African Court on Human and Peoples' Rights, the organisation of the Ministerial

Conference on Human Rights in Africa to be held in November 1998 in Luanda, Angola, the preparation of human rights training manuals, of training courses and seminars on human rights, as well as for the improvement of the system for handling communications and periodic reports of States parties, etc.

**6) Assistance from the Friedrich Naumann Foundation**

\* The Friedrich Naumann Foundation assists the Commission in its fund raising efforts with foreign partners, as well as in the strengthening of its relations with the latter.

40. The Commission considered several proposals for improving working methods.

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

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

**Annex I**

**RATIFICATIONS****Status of ratification of the African Charter on Human and Peoples' Rights**

<b>No.</b>	<b>Country</b>	<b>Date of Signature</b>	<b>Date of Ratification</b>	<b>Date Deposited</b>
1.	<b>Algeria</b>	10/04/86	01/03/87	20/03/87
2.	<b>Angola</b>		02/03/90	09/10/90
3.	<b>Benin</b>		20/01/86	25/02/86
4.	<b>Botswana</b>		17/07/86	22/07/86
5.	<b>Burundi</b>		28/07/89	30/08/89
6.	<b>Burkina Faso</b>	05/03/84	06/07/84	21/09/84
7.	<b>Cameroon</b>	23/07/87	20/06/89	18/09/89
8.	<b>Cape Verde</b>	31/03/86	02/06/87	06/08/87
9.	<b>Central African Rep.</b>		26/04/86	27/07/86
10.	<b>Chad</b>	29/05/86	09/10/86	11/11/86
11.	<b>Comoros</b>		01/06/86	18/07/86
12.	<b>Congo</b>	27/11/81	09/12/82	17/01/83
13.	<b>Cote d'Ivoire</b>		06/01/92	31/03/92
14.	<b>Djibouti</b>	20/12/91	11/11/91	20/12/91
15.	<b>Egypt</b>	16/11/81	20/03/84	03/04/84
16.	<b>Equatorial Guinea</b>	18/08/86	07/04/86	18/08/86
17.	<b>Eritrea</b>			
18.	<b>Ethiopia</b>			
19.	<b>Gabon</b>	26/02/82	20/02/86	26/06/86
20.	<b>Gambia</b>	11/02/83	08/06/83	13/06/83

21.	<b>Ghana</b>		24/01/89	01/03/89
22.	<b>Guinea</b>	09/12/81	16/02/82	13/05/82
23.	<b>Guinea-Bissau</b>		04/12/85	06/03/86
24.	<b>Kenya</b>		23/01/92	10/02/92
25.	<b>Lesotho</b>	07/03/84	10/02/92	27/02/92
26.	<b>Liberia</b>	31/01/83	04/08/82	29/12/82
27.	<b>Libya</b>	30/05/85	19/07/86	26/03/87
28.	<b>Madagascar</b>		09/03/92	19/03/92
29.	<b>Malawi</b>	23/02/90	17/11/89	23/02/90
30.	<b>Mali</b>	13/11/81	21/12/81	22/01/82
31.	<b>Mauritania</b>	25/02/82	14/06/86	26/06/86
32.	<b>Mauritius</b>	27/02/92	19/06/92	01/07/92
33.	<b>Mozambique</b>		22/02/89	07/03/90
34.	<b>Namibia</b>		30/07/92	16/09/92
35.	<b>Niger</b>	09/07/86	15/07/86	21/07/86
36.	<b>Nigeria</b>	31/08/82	22/06/83	22/07/83
37.	<b>Rwanda</b>	11/11/81	15/07/83	22/07/83
<b>No.</b>	<b>Country</b>	<b>Date of Signature</b>	<b>Date of Ratification</b>	<b>Date Deposited</b>
38.	<b>Sahrawi Arab Democratic Rep.</b>	10/04/86	02/05/86	23/05/86
39.	<b>Sao Tome &amp; Principe</b>		23/05/86	28/07/86
40.	<b>Senegal</b>	23/09/81	13/08/82	25/10/82
41.	<b>Seychelles</b>		13/04/92	30/04/92
42.	<b>Sierra Leone</b>	27/08/81	21/09/83	27/01/84
43.	<b>Somalia</b>	26/02/82	31/07/85	20/03/86
44.	<b>South Africa</b>	09/07/96	09/07/96	09/07/96
45.	<b>Sudan</b>	03/09/82	18/02/86	11/03/86

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46.	<b>Swaziland</b>		15/09/95	09/10/95
47.	<b>Togo</b>	26/02/82	05/11/82	22/11/82
48.	<b>Tunisia</b>		16/03/83	22/04/83
49.	<b>Tanzania</b>	31/05/82	18/02/84	09/03/84
50.	<b>Uganda</b>	18/08/86	10/5/86	27/05/86
51.	<b>Zaire/D.R.C.</b>	23/07/87	20/07/87	28/07/87
52.	<b>Zambia</b>	17/01/83	19/01/84	02/02/84
53.	<b>Zimbabwe</b>	20/02/86	30/05/86	12/06/86



**State of ratification of the Charter on the Rights and welfare of the African Child**

<b>No.</b>	<b>Country</b>	<b>Date of signature</b>	<b>Date of Ratification</b>
1.	<b>Algeria</b>		
2.	<b>Angola</b>		
3.	<b>Benin</b>	27.02.92	
4.	<b>Botswana</b>		
5.	<b>Burundi</b>		
6.	<b>Burkina Faso</b>	27.02.92	08.06.92
7.	<b>Cameroon</b>	16.09.92	
8.	<b>Cape Verde</b>	27.02.92	20.07.93
9.	<b>Central African Rep.</b>		
10.	<b>Chad</b>		
11.	<b>Comoros</b>		
12.	<b>Congo</b>	28.02.92	
13.	<b>Côte d'Ivoire</b>		
14.	<b>Djibouti</b>	28.02.92	
15.	<b>Egypt</b>		
16.	<b>Equatorial Guinea</b>		
17.	<b>Eritrea</b>		
18.	<b>Ethiopia</b>		
19.	<b>Gabon</b>	27.02.92	
20.	<b>Gambia</b>		
21.	<b>Ghana</b>		

22.	<b>Guinea</b>		
23.	<b>Guinea-Bissau</b>		
24.	<b>Kenya</b>		
25.	<b>Lesotho</b>		
26.	<b>Liberia</b>		
27.	<b>Libya</b>		
28.	<b>Madagascar</b>		
29.	<b>Malawi</b>		
30.	<b>Mali</b>		
31.	<b>Mauritania</b>		
32.	<b>Mauritius</b>	07.11.91	14.02.93
33.	<b>Mozambique</b>		
34.	<b>Namibia</b>		
35.	<b>Niger</b>		
36.	<b>Nigeria</b>		
37.	<b>Rwanda</b>	02.10.91	
38.	<b>Sahrawi Arab Democratic Rep.</b>	23.10.92	

<b>No.</b>	<b>Country</b>	<b>Date of signature</b>	<b>Date of Ratification</b>
39.	<b>Sao Tomé &amp; Príncipe</b>		
40.	<b>Senegal</b>	18.05.92	
41.	<b>Seychelles</b>	27.02.92	13.02.92
42.	<b>Sierra Leone</b>	14.01.92	
43.	<b>South Africa</b>		
44.	<b>Somalia</b>	01.06.91	
45.	<b>Sudan</b>		
46.	<b>Swaziland</b>	29.06.92	
47.	<b>Togo</b>	27.02.92	
48.	<b>Tunisia</b>	16.06.95	
49.	<b>Tanzania</b>		
50.	<b>Uganda</b>	26.02.92	17.08.94
51.	<b>Zaire/D.R.C.</b>		
52.	<b>Zambia</b>	28.02.92	
53.	<b>Zimbabwe</b>	28.02.92	19.01.95

**ANNEX II**

**Communications**

**No: 40/90 - Bob Ngozi vs Egypt;**

**No: 144/95 - William Curson (acting on behalf of Severo Moto) vs Equatorial Guinea;**

**No: 162/97 - Mouvement des Réfugiés Mauritanien au Sénégal vs Sénégal**

**No: 159/96 - UIDH, FIDH, RADDHO, ONDH, ANDH vs Angola**

**40/90 Bob Ngozi Njoku/ Egypt**

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**Facts as alleged by the complainant:**

1. The communication is submitted by a Nigerian student who was in transit from New Delhi to Lagos. He complains that at the Cairo airport, on 20 September 1986, while he was waiting for his connecting flight, Colonel Mohamed El Adile of the Egyptian police stamped a false entry visa for Egypt on his travel papers.
2. As a consequence, his luggage was searched. A suitcase bearing another person's name, of a different weight than that recorded on his ticket, and for which he had no key, was ascribed to him. The Egyptian police did not ask the airline to identify the owner of the suitcase. Drugs were found in the suitcase.
3. In the presence of two Nigerian diplomats, Mr. Njoku denied that the suitcase was his. A police officer wrote down a statement in Arabic, which the three signed, without it having been translated for them. The subsequent trial was held behind closed doors, without a translator being present for the defendant.
4. Apparently, the Arabic statement signed by the complainant contained the admission that the suitcase was his. The complainant did have a lawyer, but complains that the lawyer was ineffective and appeared afraid of the judge. The trial lasted only 5 minutes and there was no translator present. The complainant was given a life sentence under a law specifying this punishment for importers of drugs who have visas for Egypt, whose final destination is Egypt and who cross into Egyptian territory. The complaint argues that none of these three conditions applies to him, as he was a transit passenger with no Egyptian visa who wished to remain in the airport. The complainant's appeal was rejected.
5. Article 33 of the Egyptian criminal code prohibits the searching of transit passengers. The complainant argues that the interception and search of transit passengers is a common practice by the Egyptian police, and has been condemned by Dr. Adwar Gali of the Legal Commission of Egypt. The former director of the Drug Enforcement Agency has stated that the Egyptian criminal code nowhere provides for transit related cases and that Egypt is intercepting people only because of international conventions on drug abuse.
6. The complainant argues that the judge who sentenced him, Mr. Anwe Gebali, believed the testimony of the police colonel who forged the Egyptian visa in the complainant's passport. The complainant exhausted his last appeal in March 1991.

**Facts according to the Government of Egypt:**

7. The government agrees that on the date in question the complainant was arrested in the transit lounge at Cairo airport, and that the visa for Egypt was stamped in his passport only so that he could be admitted into Egypt for investigations of the case, but that the time at which he acquired the visa was found irrelevant by the courts. The government representative stated at the 19th session that the transit area is "a free zone for customs only", not for crime, and under the anti-drug convention of New York states parties may not permit individuals to carry drugs into another state party.
8. The government states that the validity of the complainant's arrest in the transit lounge was raised by his lawyer during his trial, and that this was his first grounds for overturning his conviction on appeal, but the Supreme Court refused his appeal and the conviction became final.
9. The government states that the complainant then availed himself of a special process by which appeal to the attorney general is possible, and raised the point that the confession attributed to him was not valid. The government said that in the attorney general's review of the case it was found that the court did recognise that the complainant had denied guilt in the case; no confession was used.
10. The government states that the complainant had access to all the protections of Egyptian law, that during the investigations he was represented by a private attorney, a representative of the Nigerian consulate, and during the trial he had a lawyer chosen by the bar association and paid for by the court. As evidenced by the appeals brought before the high court, the supreme court, and the court of cassation, the lawyer did a competent job.
11. The government states that the complainant was tried and convicted under the 1961 Egyptian drug law, which was in force in 1986. This law was revised in 1995, but the changes made the law more harsh and would not be to the advantage of the complainant.
12. The government further claims that the communication is inadmissible because the Working Group of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN decided not to take any action in respect of a communication from Mr. Njoku.

**Procedure :**

13. The communication is dated 10 October 1989. It was originally sent to the Secretary General of the OAU, who forwarded it to the Commission. It was received on 12 April 1990.
14. The Commission was seized of the communication at the 7th Ordinary Session, and the Ministry of External Affairs and Ministry of Justice of Egypt were notified on 31 May 1990. The complainant was also notified of this decision.

15. Between 1990 and 1995, several letters were exchanged between the Secretariat and the parties to ascertain the various issues raised by the protagonists as well as the exhaustion of local remedies.
16. At the 17th session, held in March 1995 the Commission declared the Communication admissible and it was decided that the case should be heard on its merits at the 18th session.
17. On 31 March 1995, a letter was sent to the complainant stating that his case had been declared admissible at the 17th session.
18. On 31 March and 20 May 1995 letters were sent to the government of Egypt requesting further information.
19. On 23 June 1995 copies of the letter of 31<sup>st</sup> March and decision were sent to him.
20. On 1 September 1995, a letter was sent to the complainant requesting him for further information with regard to the legal basis for the sentence he received.
21. On 11 September the complainant responded to the Secretariat's letter of 1 September.
22. On 30 November 1995 the Secretariat sent a note verbale to the Ministry of Foreign Affairs of Egypt informing it that it would examine the case at the 19th session.
23. On 19 December 1995 a letter was sent to the complainant acknowledging receipt of his previous three letters, and informing him that his case would be heard on its merits at the 19th session.
24. On 20 December 1995 the complainant wrote to the Secretariat with details on a court judgement relating to transit cases, enclosing a photocopied newspaper article describing the judgement, and a translation of it that he had made.
25. On 23 January 1996, the Secretariat of the Commission sent a copy of the complainant's 20 December 1996 letter and a copy of the newspaper article to the Ministry of Foreign Affairs of Egypt.

26. On 13 February 1996 the Commission received a letter, dated 6 February 1996, from the Embassy of Egypt in Dakar with a copy of the government's submission on the case.
27. At the 19th session, in March 1996, the Commission heard the representative of the Egyptian Government, but deferred taking a final decision, pending receipt from the Egyptian Government of the Egyptian law or laws under which the complaint was dealt with.
28. On 26 July 1996 the Secretariat received a letter from the complainant acknowledging receipt of the letter of 8 May 1996 and stating that as he could not appear in person at the session in October 1996, he requested that the Secretary or an NGO represent him.
29. On 1 August 1996 a copy of the Secretariat's last letter to the complainant was sent to the priest indicated by the complainant. With it was sent a summary of the presentation of the government at the 19th session.
30. On same date a copy of the Secretariat's letter of 8 May 1996, requesting copies of laws, was sent to the government of Egypt. With it was sent a summary of the presentation of the government at the 19th session, for the government's approval.
31. On 13 August 1996 the Secretariat acknowledged receipt of the letter dated 22 June and informed the complainant that as neither the Secretary nor the Commission could represent him at the session, a list of NGOs was attached whom he could contact.
32. On 13 August 1996 the Secretariat sent a letter to the Egyptian Organisation for Human Rights requesting that they represent Mr. Njoku at the session.
33. On 13 August 1996 the Secretariat received a letter from the complainant informing it that he had already contacted the Egyptian Human Rights Organisation who had agreed to represent him at the session.
34. On 27 August 1996 the Secretariat received a letter from the complainant giving the names of the two lawyers who would be representing him at the 20th session, in their private capacities.
35. On 23 September 1996 the Secretariat received a letter from the Egyptian Organisation for Human Rights with the complainant's power of attorney.
36. On 8 October 1996 the Secretariat received a letter from the complainant stating that his punishment was harsher than authorised by Egyptian law.



37. On 9 October 1996 the Secretariat received a note verbale from the Embassy of Egypt in Dakar giving additional information and asking whether it would still be necessary to send a representative to the 20th session of the Commission.
38. The same date, the Secretariat sent a letter to the Embassy of Egypt in Dakar acknowledging receipt of the latter's note verbale of the 9 October 1996 and answering that the Secretariat still found it important that Egypt send a representative to the 20th session.
39. On 21 October 1996 the Secretariat received a letter from the representative of the complainant asking the Commission to postpone the consideration of the communication because of new information.
40. At the 20th session held in Grand Bay, Mauritius, October 1996, the Commission decided to postpone the decision to the following session.
41. On 10 December 1996 a note verbale to this effect was sent to the government. The note verbale also asked the government to send relevant laws to the Secretariat.
42. On the same date, the Secretariat sent a letter to the complainant, informing him of the decision of the Commission to postpone the consideration of the Communication.
43. On 10 January 1997 the Secretariat sent a letter to Mr. Monieb, informing him of the decision taken by the Commission at its 20th Session.
44. On 23 January 1997 the Secretariat received a note verbale from the Embassy of Egypt in Dakar, informing the Secretariat that the Working Group on Communications of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN had decided not to take any action in respect of a communication submitted by Mr. Njoku.
45. On 31 January 1997 the Secretariat received a letter from Mr. Njoku summarising his case and giving examples of Egyptian case-law in drug related cases.
46. On 3 February 1997 the Secretariat sent an acknowledgement of receipt to Mr. Njoku, enclosing a copy of the Embassy's letter of 23 January 1997.
47. On 11 February 1997 the Secretariat sent a letter to the Embassy of Egypt in Dakar informing it that all relevant information would be taken up by the Commission at its 21st session and requesting it once more to send copies of the relevant laws.

48. On 8 April 1997, the Secretariat received letters from the complainant reiterating the facts of the case and indicating cases of individuals prosecuted on similar grounds and who, according to the complainant, received lighter sentences.
49. On 23 April 1997, the Secretariat renewed its request to the Embassy of Egypt in Senegal for the provision of the relevant legislative enactment against drug trafficking, as well as examples of case-law dealing with passengers on transit charged with drug trafficking. The Embassy was also informed of cases presented to the Secretariat by Mr. Ngozi Njoku.
50. On 21 May 1997, the Secretariat received a note verbale from the Embassy of Egypt in Senegal forwarding copies of the legislative instruments in force relating to drug trafficking in Arabic (as well as amendments made thereto) as requested by the Commission. The Note verbale also underscored that there was no special law applicable to passengers on transit in Egypt and therefore that the latter were subject to the same law.
51. On 28 May 1997, the Secretariat informed the complainant of the defendant's response.
52. On 9 July 1997, the Secretariat acknowledged receipt of the complainant's last letter and on the same day sent a note verbale to the Embassy of Egypt seeking the reaction of its government to the information provided by Mr. Ngozi Njoku.
53. At the 22<sup>nd</sup> Ordinary Session held in Banjul, (The Gambia) from 2 to 11 November 1997, the Commission took a decision on the merits of the case.

## **The Law**

### **Admissibility:**

54. Article 56, paragraph 7 of the African Charter on Human and Peoples' Rights stipulates inter alia that "communications ..... shall be considered if they do not deal with cases which have been settled in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter."
55. The defendant state maintains that the communication should be declared inadmissible on the grounds that the working group of the United Nations sub-commission on the prevention and protection of minorities seized of the matter by Mr. Ngozi Njoku decided not to entertain the case.

56. The Commission, considering the provisions of the above-mentioned article, observes that the said text talks about “cases which have been settled .....” It is therefore of the view that the decision of the United Nations sub-commission not to take any action and therefore not to pronounce on the communication submitted by the complainant does not boil down to a decision on the merits of the case and does not in any way indicate that the matter has been settled as envisaged under article 56 paragraph 7 of the African Charter on Human and Peoples' Rights. The Commission therefore rejected the arguments of the defendant.

57. On the issue of exhaustion of local remedies as provided for by article 56 paragraph 5, the Commission observes that the complainant has exhausted all local remedies provided for by Egyptian Law, including the possibility of having the case reviewed. Moreover, the government has not indicated existence of remedies other than those used by the complainant.

58. For all these reasons, the Commission declared the communication admissible.

**Merits:**

59. Both the complainant and the defendant (State) admit that Mr. Ngozi Njoku was arrested in the transit zone of Cairo airport on 20 September 1986, whilst he was on his way to Lagos from New Delhi. They also admit that drug was found in a suitcase which was alleged to belong to the Complainant, the latter was tried and sentenced to life imprisonment, that he was provided with the services of a Lawyer and that he exhausted all local remedies in 1991.

60. Apart from these points of convergence, the rest of the communication contains serious divergences as regards the information provided by the parties. It does not however behove the Commission to judge the facts. This is the responsibility of the Egyptian courts.

61. The role of the Commission in such a case is to ensure that during the process from the arrest to a the conviction of Mr. Ngozi Njoku, no provision of the African Charter on Human and Peoples' Rights was violated. It is also incumbent on it to ensure that the defendant state respected and indeed enforced its own law in total good faith. To all these questions, the Commission responded in the affirmative.

**On these grounds,**

1. The Commission considers that no provision of the African Charter on Human and Peoples' Rights has been violated and therefore declares the communication closed.

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2. Gives mandate to Commissioner Isaac Nguema to pursue his good offices with the Egyptian government with a view to obtaining clemency for Mr. Ngozi Njoku on purely humanitarian grounds.

**Taken at the 22<sup>nd</sup> Ordinary Session, Banjul (Gambia) on 11 November 1997.**

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**I. Complainant's allegations**

**Facts as submitted by the author:**

1. The complainant alleges that one Mr. Moto Nsa, along with 12 others, both military and civilian personnel, was tried and sentenced on charges of attempting to overthrow the Government of Equatorial Guinea and high treason. He was sentenced to imprisonment rather than the death penalty as an act of lenience on the part of the court.
2. Mr. Moto Nsa was officially arrested on 6 March 1995, but had already been imprisoned for two and a half years on charges of insulting the President. At the time of his arrest, Mr. Moto Nsa was planning to participate in Equatorial Guinea's planned May 1995 municipal elections, after having led an opposition boycott of the country's first multiparty national elections, which were criticized by United Nations and European Union observers for lack of transparency and impartial administration.
3. From the time of his arrest until the trial he was denied the right to consult with the defense counsel and not permitted to examine the evidence against him.
4. Although the victim has now been released as a result of a presidential pardon, the complainant wishes the Commission to declare that Mr. Nsa's conviction and imprisonment were violations of the African Charter.

**II - The Government's Version**

5. In its response to the accusations levelled against it, the Equato-Guinean government asserts that human rights are fully protected by the country's constitution and according to the Government, the complainant's accusation are based on unfounded information. It agrees that Equatorial Guinea has a legislation governing the activities of political parties, freedom of religion, freedom of assembly and freedom of the press.

6. Furthermore, Government maintains that all ethnic groups in Equatorial Guinea live in harmony, without any discrimination; the Prime Minister as well as other members of the government belong to ethnic groups different from that of the Head of State. The impartiality of the Courts, according to him, are fully guaranteed by the laws of Equatorial Guinea. He further asserted that the law on the press and information was recently revised by the Parliament. It henceforth authorizes private individuals and associations to possess their own papers and radio and television stations. According to the government all political parties have access to the media during electoral campaigns and political meetings are freely organized throughout the country.
7. According to the government, Mr. Moto was assisted by three “great” lawyers during his trial. And pursuant to the practice in Equatorial Guinea, when there are loopholes in the domestic law, to ensure a proper administration of justice, the courts resort to Spanish law. It further asserted that inspite of being the leader of The Progress Party, one of the fourteen recognized political parties in Equatorial Guinea, Mr. Moto was tried as an ordinary citizen and convicted for “insults and endangering state security and the form of government “Finally, the Government finally emphasized that Mr. Moto Nsa appealed against the sentence, of twenty eight years imprisonment imposed on him and after serving only three months in prison “he was granted an amnesty. In a view of the foregoing, the Government concludes that the complainant’s accusations have no legal basis.

### III - The Procedure before the Commission

8. The Communication is dated 5 May 1995. It was filed by Mr. William Andrew Courson, member of Magnus F. Hirschfeld Centre for Human Rights, an organisation based in the US. The matter was brought before the Commission on 23 May of the same year and on 30 May, it wrote to the Equato-Guinean Government to inform it of the Communication.
9. On 22 September 1995, the complainant wrote to the Secretariat of the Commission to inform it that Mr. Moto Nsa had been released following a presidential amnesty. He however requested that his qualification of the facts, that is, the arrest and detention of Mr. Moto constitute a violation of the provisions of the Charter, be maintained. In other words, he requested the Commission not to close the matter. He further requested that the Commission orders the payment of damages to Mr. Moto for the period spent in detention.
10. At its nineteenth session held in March 1996, the Commission declared the communication admissible and decided to rule on its merits at its twentieth session; the complainant and government have been informed accordingly.

11. At its twentieth Session, after hearing from an official delegation from Equatorial Guinea, the Commission deferred the consideration of the case on its merits to its 21<sup>st</sup> Session and requested for additional information on the exhaustion of local remedies.
12. During its twenty first Session, the Commission decided to postpone the consideration of the case on its merits pending the outcome of the appeal that Mr. Moto, according to the Government, is reported to have lodged against the decision sentencing him to a prison term.
13. At its 22<sup>nd</sup> Session held from 2 to 11 November 1997 in Banjul (Gambia), the Commission ruled on the merits of the communication.

#### IV - **The Law**

##### a) **Admissibility:**

14. Article 56 paragraph 5 of the Charter requires that Communications be brought before the Commission only “after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.”
15. What the complainant is seeking is a ruling by the Commission that Mr. Moto’s arrest and detention constitute a violation of the Charter. As for the Government, it maintains that Mr. Moto has appealed against the two charges for which he was prosecuted. The Commission notes that the outcome of this appeal remains unknown.
16. Moreover, given that Mr. Moto has been granted amnesty, it appears most unlikely for any domestic court to entertain this appeal as, this would only be a purely theoretical exercise. However, certain elements of the case seem to indicate procedural of laws during the trial and the Commission would like these issues clarified to enable it come to a valid decision on the case. On these grounds, the Commission declares the communication admissible.

##### b. **On the Merits:**

17. The complainant invokes the violation of articles 2 (enjoyment of the rights and freedoms recognized and guaranteed in the Charter without discrimination), 9, paragraph 2 (the right to express disseminate has opinions), 10 paragraph, (the right to free association), 13 paragraph 1 (the right to participate freely in the government of his country) and 20 paragraph 1 (to right to self determination).

18. All these allegations are founded on the assertion that Mr. Moto Nsa was arrested, detained, tried and sentenced because of his political opinion. The Commission is of the view that, although this could be the case, the communication does not however contain elements likely to reasonably lead to such a conclusion.
19. The information relating to the arrest of another opposition leader contained in the complainant's submission are rather circumstantial and does not enable the commission to clearly establish that Mr. Moto was arrested because of his political opposition to the government of the day. The information does not also indicate how Mr. Moto allegedly tried to express his political opinions or set up associations with other persons. In view of the foregoing, the Commission is of the view that the violation of the above-mentioned provisions of the Charter has not been established.
20. The complainant then goes on to base his complaint on certain provisions of article 7 of the Charter, which stipulates that:
  1. Every individual shall have the right to have his cause heard. This comprises:
    - a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
    - b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
    - c) the right to defence, including the right to be defended by counsel of his choice;
    - d) the right to be tried within a reasonable time by an impartial court or tribunal.
  2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.
21. The Commission notes that the submission made by the complainant contains certain elements outlining the circumstances of the trial of Mr. Moto. It notes that as regards the right to defence that the latter includes the right to be informed of the charges against him, as well as the



evidence of the said charges; all sorts of elements required to prepare his defence, if all these elements were not brought to the knowledge of the accused (as alleged by the complainant) then article 7 paragraph 1 - C of the Charter had been violated.

22. The Commission recalls that the right to defence, including the right to a counsel is exercised not only during the trial, but also during detention. Unfortunately, once again, the information at its disposal does not allow it to clearly establish whether article 7 paragraph 1 - C has been violated.

23. Moreover, the Commission deplores the silence maintained by the parties in spite of its repeated request for information relating to the exhaustion of local remedies and other procedural aspects of the case. It is of the view that such lack of co-operation does not help the Commission to have a clear and precise understanding of the case brought before it.

**On these grounds, the Commission:**

**decides** that no provision of the African Charter on Human and Peoples' Rights has been violated.

**Taken at the 22<sup>nd</sup> Ordinary Session, Banjul (Gambia), on 11 November, 1997.**

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**Communication No 162/97 - Mouvement des Réfugiés Mauritanien au Sénégal v/ Sénégal**

**The facts:**

1. The complainant alleges that during the operations carried out from 16-29 October 1996 in the region of Podor, Mauritanian refugees established there were the main targets of the Senegalese security forces. Refugees were reportedly arrested and subjected to all sorts of humiliating treatment during identity checks. The green card the Senegalese State had issued to them were allegedly not regarded as valid by the security forces who considered them expired.

2. The complainant further alleges that a group of individuals described as Mauritanian refugees were arrested by the Senegalese gendarmerie in Mboumba and on the Island of Morphil in October 1996.
3. The communication finally alleges that these Mauritanian refugees are still being held at the Central Prison in Saint Louis, whilst Senegalese nationals arrested together with them have been set free.
4. In a note verbale dated 24 July 1997, addressed to the Secretariat of the Commission, the Senegalese Ministry of Foreign Affairs and Expatriate Senegalese maintains that since the month of December 1995, when the United Nations High Commission for Refugees stopped distributing food, the majority of Mauritanian refugees voluntarily returned to Mauritania and those who remained are moving about freely, that they are shuttling between Rosso/Senegal and Rosso/Mauritania trying to reach an agreement with the Waly of Trarza in order to arrange for their final repatriation. The Ministry of Foreign Affairs insists that, in spite of the fact the refugees do not carry green cards they are nevertheless free to go about their business on both sides of the common border.
5. The Ministry of Foreign Affairs also claims that the following four Mauritanian refugees: Samba Mbare, Alassane Bodia, Oumar Bodia and Balla Samba arrested by the Senegalese gendarmerie for allegedly taking part in the murder of an officer of the Mauritanian gendarmerie, were set free for lack of evidence. The Ministry of Foreign Affairs therefore argues that the communication should be declared inadmissible on the grounds that the allegations it contains are unfounded.
6. In reaction to the arguments of the defendant State, the complainant reiterated the facts alleged and rejected the Senegalese government's claim that the refugees voluntarily returned to their home country. According to the complainant, the refugees decided to return not individually but as a group and only after obtaining assurances about their security and reintegration into Mauritanian society.

7. The complainant claims that those refugees who left for Mauritania returned to Senegal because of threats they faced from Mauritanian authorities, the lack of assistance and the undisguised indifference of Mauritians concerning their situation. The complainant reiterates that the refugees continue to be handicapped by the fact that they do not possess green cards. The lack of this document prevents them for example from applying for employment within the Senegalese civil service.
8. The communication, however, does not indicate the provisions of the African Charter of Human and Peoples' the defendant State may have violated.

**The Procedure :**

9. The communication was received by the Secretariat on 9 January 1997.
10. On 16 January 1997, the Secretariat informed the defendant State by note verbale about the substance of the communication. On the same day, it wrote to the complainant requesting it to state whether the information contained in its letter of 4 November 1996 was to be considered as a communication under the terms of article 55 of the Charter.
11. On 21 January 1997, the complainant replied in the affirmative to the question asked by the Secretariat.
12. On 27 February 1997, the Secretariat informed the complainant that its complaint had been recorded under number 162/97 and that it would be submitted to the Commission for a decision on its admissibility at the 21st ordinary session scheduled for April 1997.
13. On the same day, a note verbale was addressed to the defendant, informing it that the communication had been recorded and requesting it to submit its views about its admissibility.
14. On 19 March 1997, the Secretariat received a note verbale emanating from the Senegalese High Commission in the Gambia, acknowledging receipt of its note of 16 January 1997 and informing it that the dossier had been referred to the competent Senegalese authorities.

15. At the 21st session, the Communication was submitted to the Commission which decided to postpone consideration of its admissibility until the 22nd session to be held in November 1997.
16. On 13 June 1997, the Secretariat addressed a note verbale to the Ministry of Foreign Affairs of Senegal, informing it of the Commission's decision and requesting it to send its government's observations and arguments concerning this matter.
17. On 24 July 1997, the Secretariat received a note verbale from the Ministry of Foreign Affairs of Senegal containing the observations and arguments of its government on this matter.
18. On 25 July 1997, The Secretariat wrote to the complainant sending it a copy of the defendant's reply and requesting its own response. This response was received by the Secretariat on 6 October 1997.
19. At the 22nd session held from 2-11 November 1997, the Commission reached a decision on the question of admissibility.

## **The Law**

### **Admissibility :**

20. The Commission recalls that under the terms of the provisions of article 56 par. 5, communications shall be considered by the Commission if they "are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged".

21. In this case, it should be noted that the complainant avoids saying that it has not used the remedies supposed to be available to it under the legal system of the defendant State. Further, it simply presents facts which, prima facie, do not show that the Senegalese State may be responsible.

22. Further, the complainant does not mention the provisions of the Charter which the Senegalese State may have violated.

**On these grounds, the Commission :**

**Declares** the communication inadmissible.

**Decision taken at the 22nd session, Banjul (The Gambia), 11 November 1997.**

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**Communication No: 159/96 - Union Inter Africaine des Droits de l'Homme, Federation Internationale des Ligues des Droits de l'Homme, Rencontre Africaine des Droits de l'Homme, Organisation Nationale des Droits de l'Homme au Sénégal and Association Malienne des Droits de l'Homme au Angola**

**The facts:**

1. The communication is jointly filed by UIDH, FIDH, RADDHO, ONDH and AMDH. All these NGOs are acting in this case on behalf of certain West African nationals expelled from Angola in 1996. According to the complainants, between April and September 1996, the Angolan government rounded up and expelled West African nationals on its territory. These illegal expulsions were preceded by acts of brutality committed against Senegalese, Malian, Gambian, Mauritanian and other nationals. Those affected lost in the process their belongings.
2. The complainants maintain that the Angolan State violated the provisions of articles 2, 7 paragraph 1 a, 12 paragraphs 4 and 5 of the African Charter on human and Peoples' Rights.

**The facts:**

**Procedure:**

3. The communication is not dated, but it was received during the 20<sup>th</sup> session of the Commission, held in Grand Bay, Mauritius in October, 1996.
4. On 24 October 1996 the Secretariat acknowledged receipt of the communication.
5. On 19 December 1996 the Secretariat notified the Angolan government of the communication..
6. During its 21<sup>st</sup> Session in Nouakchott (Mauritania) in April 1997, the Commission declared the communication admissible.
7. The government and the complainants were informed of this decision on 23 June 1997.

8. At the 22<sup>nd</sup> Session in November 1997, the Commission ruled on the merits of the case.

**The Law:**

**Admissibility:**

9. The Commission considered the issue of admissibility of this communication on the basis of information furnished by the complainants. It deplores the fact that the defendant State did not respond to the notification sent to it on 19<sup>th</sup> December 1996, following the decision of the seizure of the Commission.

10. Article 57 of the Charter implicitly indicates that the State Party to the said Charter against which allegation of human rights violations are levelled is required to consider them in good faith and to furnish the Commission with all information at its disposal to enable the latter to come to an equitable decision. In this case, in view of the defendant State's refusal to co-operate with the Commission, the latter can only give more weight to the accusations made by the complainants and this on the basis of the evidence furnished by them.

11. The evidence show that between April and September 1996, the government of the Republic of Angola embarked on mass expulsion of aliens from its territory, and that these expulsions were illegal and arbitrary, and in violation of article 12, paragraphs 4 and 5 of the African Charter on Human and Peoples' Rights.

12. According to information at the disposal of the Commission, it appears that those expelled did not have the possibility to challenge their expulsion in court. In communication No: 71/92 "Rencontre Africaine pour la Défense des Droits de l'Homme vs Zambia" (20<sup>th</sup> Session, October 1996), the Commission was of the view that "the massive nature of the arrests, the fact that the victims were kept in detention before the expulsions and the pace with which they were carried out did not leave any opportunity to the complainants to establish the illegality of these acts before the Courts ....." In view of the foregoing, the Commission notes that local remedies were not accessible to the complainants.

13. **On these grounds**, the Commission declared the communication admissible.

**The Merits:**

14. Article 12 paragraph 4 stipulates that a non national legally admitted in a territory of a State party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law. Paragraph 5 of the same article stipulates that “the mass expulsion of non nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.”
15. In communication 71/92 cited here above, the Commission indicated that “mass expulsion was a special threat to human rights. A government action specially directed at specific national, racial ethnic or religious groups is generally qualified as discriminatory in the sense that, none of its characteristics has any legal basis or could constitute a source of particular incapacity.
16. The Commission concedes that African States in general and the Republic of Angola in particular are faced with many challenges, mainly economic. In the face of such difficulties, States often resort to radical measures aimed at protecting their nationals and their economic from non-nationals. Whatever, the circumstances may be however, such measures should not be taken at the detriment of the enjoyment of human rights. Mass expulsions of any category of persons, whether on the basis of nationality, religion, ethnic, racial or other considerations “constitute a special violation of human rights”<sup>4</sup>.
17. This type of deportations calls into question a whole series of rights recognized and guaranteed in the Charter; such as the right to property (article 14), the right to work (article 15), the right to education (article 17 paragraph 1) and results in the violation by the State of its obligations under article 18 paragraph 1 which stipulates that “the family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical and moral health”. By deporting the victims, thus separating some of them from their families, the defendant State has violated and violates the letter of this text.
18. Article 2 of the Charter emphatically stipulates that “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.” This text obligates States Parties to ensure that persons living on their territory, be they their nationals or non nationals, enjoy the rights guaranteed in the Charter. In this case, the victims rights to equality before the law were trampled on because of their origin.
19. It emerges from the case file that the victims did not have the opportunity to challenge the matter before the competent jurisdictions which should have ruled on their detention, as well as on the regularity and legality of the decision to expel them by the Angolan government. Consequently, Article 7, paragraph 1 (a) of the Charter.



20. The Commission does not wish to call into question nor is it calling into question the right of any State to take legal action against illegal immigrants and deport them to their countries of origin, if the competent courts so decide. It is however of the view that it is unacceptable to deport individuals without giving them the possibility to plead their case before the competent national courts as this is contrary to the spirit and letter of the Charter and international law. On these grounds, the Commission.

1. Declares that the deportation of the victims constitute a violation of articles 2, 7 paragraph 1 - a, 12 paragraphs 4 and 5 as well as articles 14 and 18 of the African Charter on Human and Peoples' Rights.
2. With regards to damages for prejudice suffered, it urges the Angolan government and the complainants to draw all the legal consequences arising from the present decision.

**Taken at the 22<sup>nd</sup> Ordinary Session, Banjul (Gambia), on 11 November 1997.**

### **Annex III**

#### **Status on submission of State Periodic Reports**

<b>NO.</b>	<b>STATE PARTY</b>	<b>FIRST REPORT TO BE SUBMITTED ON</b>	<b>SECOND REPORT TO BE SUBMITTED ON</b>	<b>THIRD REPORT TO BE SUBMITTED ON</b>	<b>FOURTH REPORT TO BE SUBMITTED ON</b>	<b>FIFTH REPORT TO BE SUBMITTED ON</b>	<b>REPORTS SUB. BUT NO YET CONSIDERED</b>
*1.	<b>Algeria</b>	20/06/89	20/06/91	20/06/93	20/06/95	20/06/97	
2.	<b>Angola</b>	09/01/92	09/01/94	09/01/96	09/01/98	09/01/2000	
*3.	<b>Benin</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
4.	<b>Botswana</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
5.	<b>Burundi</b>	30/11/91	30/11/93	30/11/95	30/11/97	30/11/99	
6.	<b>Burkina Faso</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
7.	<b>Cameroon</b>	18/12/91	18/12/93	18/12/95	18/12/97	18/12/99	
*8.	<b>Cape Verde</b>	06/11/89	06/11/91	06/11/93	06/11/95	06/11/97	
9.	<b>Central African Rep.</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
10.	<b>Chad</b>	11/02/89	11/02/91	11/02/93	11/02/95	11/02/97	
11.	<b>Comoros</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
12.	<b>Congo</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	

<b>NO.</b>	<b>STATE PARTY</b>	<b>FIRST REPORT</b>	<b>SECOND REPORT</b>	<b>THIRD REPORT</b>	<b>FOURTH REPORT</b>	<b>FIFTH REPORT</b>	<b>REPORTS SUB.</b>
13.	<b>Côte d'Ivoire</b>	01/07/94	01/07/96	01/07/98	01/07/2000	01/07/2002	
14.	<b>Djibouti</b>	20/03/93	20/03/95	20/03/97	20/03/99	20/03/2001	
*15.	<b>Egypt</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
16.	<b>Equatorial Guinea</b>	18/11/88	18/11/90	18/11/92	18/11/94	18/11/96	
17.	<b>Ethiopia (1)</b>						
18.	<b>Eritrea (1)</b>						
19.	<b>Gabon</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
**20.	<b>Gambia</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
*21.	<b>Ghana</b>	01/06/91	01/06/93	01/06/95	01/06/97	01/06/99	
22.	<b>Guinea</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
23.	<b>Guinea-Bissau</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
24.	<b>Kenya</b>	10/05/94	10/05/96	10/05/98	10/05/2000	10/05/2002	
25.	<b>Lesotho</b>	27/05/94	27/05/96	27/05/98	27/05/2000	27/05/2002	
26.	<b>Liberia</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
*27.	<b>Libya</b>	26/06/89	26/06/91	26/06/93	26/06/95	26/06/97	

<b>NO.</b>	<b>STATE PARTY</b>	<b>FIRST REPORT</b>	<b>SECOND REPORT</b>	<b>THIRD REPORT</b>	<b>FOURTH REPORT</b>	<b>FIFTH REPORT</b>	<b>REPORTS SUB.</b>
28.	<b>Madagascar</b>	19/06/94	19/06/96	19/06/98	19/06/2000	19/06/2002	
29.	<b>Malawi</b>	23/05/92	23/05/94	23/05/96	23/05/98	23/05/2000	
30.	<b>Mali</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
31.	<b>Mauritania</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
*32.	<b>Mauritius</b>	07/10/92	07/10/94	07/10/96	07/10/98	07/10/2000	
*33.	<b>Mozambique</b>	07/06/92	07/06/94	07/06/96	07/06/98	07/06/2000	
34.	<b>Namibia</b>	16/12/94	16/12/96	16/12/98	16/12/2000	16/12/2002	
35.	<b>Niger</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
*36.	<b>Nigeria</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
*37.	<b>Rwanda</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
38.	<b>SADR</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
39.	<b>Sao Tomé &amp; Príncipe</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
**40.	<b>Senegal</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
*41.	<b>Seychelles</b>	30/07/94	30/07/96	30/07/98	30/07/2000	30/07/2002	Initial report
42.	<b>Sierra Leone</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
43.	<b>Somalia</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	

<b>NO.</b>	<b>STATE PARTY</b>	<b>FIRST REPORT</b>	<b>SECOND REPORT</b>	<b>THIRD REPORT</b>	<b>FOURTH REPORT</b>	<b>FIFTH REPORT</b>	<b>REPORTS SUB.</b>
44.	<b>South Africa</b>	09/07/98	09/07/2000	09/07/2002	09/07/2004	09/07/2006	
*45.	<b>Sudan</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	Initial report
46.	<b>Swaziland</b>	15/09/97	15/09/99	15/09/2001	15/09/2003	15/09/2005	
*47.	<b>Tanzania</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
*48.	<b>Togo</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
**49.	<b>Tunisia</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
50.	<b>Uganda</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
51.	<b>Zaire</b>	28/10/89	28/10/91	28/10/93	28/10/95	28/10/97	
52.	<b>Zambia</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
***53.	<b>Zimbabwe</b>	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	2nd & 3rd rep.

\*Has presented its preliminary report

\*\*Has presented its preliminary report and second periodic report

\*\*\*Has presented its preliminary, and submitted its second and third report

(1) Not yet ratified the African Charter

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1997-1998

# Activity Report of the African Commission on Human and Peoples` Rights 1997 – 1998, 11th

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