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**EXECUTIVE COUNCIL  
Eleventh Ordinary Session  
25 – 29 June, 2007  
Accra, GHANA**

**EX.CL/364 (XI)**

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

## TWENTY-SECOND ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

### INTRODUCTION

1. This Report is divided into three (3) sections: Section one deals with the holding of the 41<sup>st</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (hereinafter referred to as the ACHPR or the African Commission); Section two describes the activities undertaken by members of the Commission during the period covered by the Report; and Section three deals with Financial and Administrative matters of the Commission. The Report has three (3) annexes.<sup>1</sup>

2. The present Report covers the period November 2006 - May 2007.

### SECTION I

#### The 41st Ordinary Session

3. The African Commission held its 41<sup>st</sup> Ordinary Session in Accra, Ghana from 16 – 30 May 2007. The Agenda of the session is attached to the present Report as

#### *Annexure one (1).*

4. The 41<sup>st</sup> Ordinary Session was preceded by a series of events including three workshops organized by the Commission of the African Union, namely: a workshop on the implementation of AU decisions on human rights; a workshop on monitoring and documentation of human rights violations by national human rights institutions; and a round-table discussion on the Media in Africa. The ACHPR, in collaboration with local NGOs in Ghana, organised a two-mile march on the right to reproductive health and further held a round-table discussion on the subject. As it is customary, the NGO Forum was organised by the African Centre for Democracy and Human Rights Studies (ACDHRS), in collaboration with the African Commission.

5. The main objective of these events, which started on the 9<sup>th</sup> and ended on the 15<sup>th</sup> of May 2007 in Accra, Ghana was to underscore the importance of mainstreaming human and peoples' rights in Africa. They also provided NGOs working in the field of human rights in Africa with an opportunity to reflect, in partnership with the African Commission and other relevant stakeholders, on ways and means of enhancing the promotion and protection of human and peoples' rights on the continent.

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<sup>1</sup> Agenda of the 41<sup>st</sup> Ordinary Session held from 16 – 30 May 2007 in Accra, Ghana; Decision on communication finalised at the 41<sup>st</sup> Ordinary Session and the African Commission's Report of the Fact-finding mission to the Republic of The Sudan undertaken from 08 – 18 July 2004.

### Attendance at the Session

6. The following Members of the African Commission attended the 41st Ordinary Session-:

- Commissioner Salamata Sawadogo, Chairperson;
- Commissioner Yassir Sid Ahmed El Hassan, Vice-Chairperson;
- Commissioner Kamel Rezag-Bara;
- Commissioner Musa Ngary Bitaye;
- Commissioner Reine Alapini-Gansou;
- Commissioner Mumba Malila;
- Commissioner Angela Melo;
- Commissioner Sanji Mmasenono Monageng;
- Commissioner Bahame Tom Mukirya Nyanduga; and
- Commissioner Faith Pansy Tlakula.

7. In accordance with Article 39 (2), following a decision of the 40<sup>th</sup> ordinary session of the ACHPR the seat of Commissioner Mohamed Ould Babana was declared vacant by the Chairperson of the Commission of the African Union.

### Participation at the 41st Ordinary Session

8. During the opening ceremony, speeches were delivered by H.E Salamata Sawadogo, Chairperson of the African Commission, Honourable Osei Prempeh, Deputy Attorney General and Deputy Minister of Justice of the Republic of Ghana, Honourable Patrick Chinamasa, Minister of Justice, Legal and Parliamentary Affairs of the Republic of Zimbabwe on behalf of AU Member States, H.E. Julia Joiner Commissioner for Political Affairs of the Commission of the African Union, Mrs. Kahinde Ajoni on behalf of African National Human Rights Institutions (NHRIs), Mrs. Hannah Forster on behalf non-governmental organizations (NGOs). Finally, Honourable Joe Ghartey, the Attorney-General and Minister for Justice of the Republic of Ghana delivered an opening address on behalf of H.E. Dr. John Kufuor and officially opened the 41<sup>st</sup> Ordinary Session of the ACHPR.

9. The Session was attended by four hundred and eighty five (485) participants representing thirty two (32) States Parties,<sup>2</sup> eleven (11) National Human Rights Institutions<sup>3</sup>, and several African and International intergovernmental<sup>4</sup> and non-

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<sup>2</sup> Algeria, Angola, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Cote d'Ivoire, Democratic Republic of Congo, Egypt, Ethiopia, Gabon, Gambia, Ghana, Guinea (Conakry), Kenya, Lesotho, Libya, Mali, Mauritania, Niger, Nigeria, Rwanda, Senegal, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

<sup>3</sup> The National Human Rights Institutions were from: Algeria, Burkina Faso, Central African Republic, Democratic Republic of Congo, Ghana, Kenya, Malawi, Mauritius, Nigeria, Tanzania and Togo.

governmental organizations, including the UN family and specifically the Office of the High Commissioner for Human Rights.

10. H.E. Mrs. Salamata Sawadogo, the Chairperson of the African Commission, in her welcome address, thanked the government and the people of Ghana for hosting the 41<sup>st</sup> Ordinary Session of the African Commission. She also congratulated H.E. Dr. John Kufuor, the President of the Republic of Ghana for the successful celebration of the 50<sup>th</sup> Anniversary of Ghana's independence. She noted that it was Ghana's independence in 1957 that broke the backbone of colonialism in Africa, galvanized and inspired Africa to realise its dream of freedom.

11. She underscored the fact that though her term as Chairperson of the African Commission is coming to an end, the African Commission is at the crossroads of many changes and challenges that are presenting new opportunities to promote democracy and protect human rights. She stated that the Commission as the premier institution responsible for the promotion and protection of human rights in the continent is making use of the opportunities of change occasioned by the peoples' quest for freedom, African leaders' desire for change and the dynamism of civil society. She urged States Parties to mainstream human rights in their development policies. She noted that in the course of the past four years, the Commission has strengthened its relationship with States Parties through dialogue while at the same time preserving its independence.

12. She took the opportunity to express her gratitude to Member States of the AU, her colleagues, staff members of the Secretariat and all the partners of the ACHPR for the support during the period of her mandate.

13. In conclusion, she encouraged Member States of the AU to implement the provisions of the Constitutive Act of the AU in the promotion and protection of human rights on the continent.

14. Honourable leaders of delegations of Member States of the African Union, and representatives of intergovernmental organisations, national human rights institutions and non-governmental organisations read their statements on the situation of human rights on the continent.

### **Rapporteur of the 41<sup>st</sup> Ordinary Session**

15. The Members of the Commission appointed Commissioner Mumba Malila to serve as the Rapporteur for the 41<sup>st</sup> Ordinary Session.

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<sup>4</sup> The following Intergovernmental Organizations were also present at the 41<sup>st</sup> ordinary session: the Office of the High Commissioner for Human Rights (OHCHR), United Nations High Commissioner for Refugees (UNHCR), the Organisation Internationale de la Francophonie (OIF), the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO).

**Cooperation between the African Commission, National Human Rights Institutions (NHRIs) and Non-Governmental Organizations (NGOs)**

16. The African Commission considered the application for Affiliate Status of the National Commission for Human Rights and Freedoms of Cameroon and deferred the matter to its next session pending further clarification on the status of the National Human Rights and Freedoms Committee of Cameroon which already has an affiliate status with the Commission.

17. The African Commission appealed to States Parties that had not yet done so, to establish national human rights institutions in compliance with the Paris Principles and with its own resolution on national institutions and strengthen the capacities of existing ones.

18. During the session, the African Commission also considered the applications of seven (7) NGOs seeking observer status before it. In accordance with its Resolution ACHPR /Res.33(XXV)99: on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the field of Human and Peoples' Rights adopted in 1999, the African Commission, after consideration, granted observer status to the following NGOs:

- African Women Organisation in the Diaspora (AWODO) of The Gambia;
- Zimbabwe Association of Doctors for Human Rights of Zimbabwe;
- Zimbabwe Exiles Forum of South Africa;
- Federation of Women Lawyers of Kenya; and
- Centre for Democratic Governance in Burkina Faso of Burkina Faso.

19. This brings the number of NGOs with Observer Status before the African Commission to three hundred and sixty seven (367).

**SECTION II**

**a. Activities of Members of the Commission**

20. During the period under consideration, members of the Commission undertook several activities, in their capacity as Commissioners, and Special Rapporteurs or Chairpersons of Working Groups promoting and protecting human and peoples' rights on the continent.

**i. Participation at workshops, seminars and conferences**

21. During the reporting period the Chairperson undertook the following activities:

22. She took part in the 10<sup>th</sup> Ordinary Session of the Executive Council and the 8<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the African Union where she presented the 21<sup>st</sup> Activity Report of the Commission.

23. From 1 - 4 February 2007, she took part in the 3<sup>rd</sup> World Congress on the Death Penalty in Paris, France and attended some of the workshops and a round-table organized during the Congress. During this Congress, she gave an address on the status of the death penalty in Africa with a panel composed of lawyers and human rights experts from the Inter-American Commission, the European Commission and the International Commission of Jurists.

24. In Berlin, Germany from 22 - 23 February 2007, at the invitation of the German Government, she took part in a high-level meeting on the theme « Economic empowerment of women for intelligent economies ». This Conference was organized by the Federal Ministry of Economic Cooperation and Development (BMZ) in collaboration with World Bank, the Department for International Development of the United Kingdom and the Forum for Policy Development.

25. Consequently, Madam Heidemarie Wieczroek-Zeul, Federal Minister in charge of Economic Cooperation and Development (Germany) to invite her to provide details about the ACHPR and its work. The Minister was impressed by the enormous work done by the Commission and pledged to maintain contacts with the Commission in order to organize a major meeting in November 2007 in collaboration with the Commission and other partners on capacity building for women.

26. The Chairperson also took part in other activities such as the public meeting held on 25 April 2007, at the African Institute for Planning and Economic Development (IDEP) on the human rights systems in Africa. Contributing to the production of a documentary on the ACHPR, she granted an interview to the Ghana Broadcasting Corporation on the 28 April 2007.

27. From 3 - 5 May, 2007 together with 3 of her colleagues (Madam Angéla Melo, Mr. Bahame Tom Nyanduga and Mr. Ngary Mussa Bitaye), she attended a brainstorming session on the ACHPR organized by the Department of Political Affairs of the Commission of African Union, in Maseru, Lesotho.

28. Prior to the 41<sup>st</sup> ordinary session, the Chairperson took part in a series of activities organised by civil society organisations and the Department of Political Affairs of the Commission of the African Union in Accra, Ghana from 13 – 15 May 2007.

29. During the period under consideration, she sent urgent appeals addressing human rights situations in two African countries: Guinea and Zimbabwe. Regarding the appeal on the situation in Guinea, she drew the attention of the current AU Chairperson, the current Chairperson of ECOWAS and the Chairperson of the African Union Commission.

30. On his part, the Vice-Chairperson, Commissioner **YASSIR SID AHMED EL HASSAN** took part in the 10<sup>th</sup> Session of the Executive Council and in the 8<sup>th</sup> session of the Assembly of Heads of State and Government of the African Union in January 2007 in Addis Ababa along with the Chairperson. He took the opportunity of his presence in Addis Ababa to hold high level meetings with the delegations of **Egypt, Chad, Mali,**

**Sahrawi Arab Republic, Libya, The Sudan and Somalia.** The purpose of these meetings was to solicit support for the resolutions contained in the 21<sup>st</sup> Activity Report and to discuss the possibility of allowing promotional missions in their respective countries.

31. He took part in the workshops and the NGO Forum, which preceded the 41<sup>st</sup> Ordinary session in Accra, Ghana between 9 and 14 May 2007.

32. Commissioner **Kamel Rezag Bara** participated from 11 - 12 December 2006 in an international seminar on the theme « Parliament and the Media » organized in Algiers under the auspices of the National Council and the National Assembly with the collaboration of the United Nations Development Programme (UNDP) - Algeria.

33. From 9 – 14 January 2007 he participated in a seminar organized by the Libyan Academy of Higher Studies on the International Criminal Court, (ICC) in Tripoli (Libya). At this seminar, he presented a paper on the perspectives of ratification of the International Criminal Court statutes in Africa and in the Arab world.

34. From 28 January to 3 February 2007 he participated in a meeting of experts convened in Washington D.C. by Mrs. Gay MacDougall, United Nations independent expert on the question of minorities under the auspices of the United Nations Office of the High Commissioner for Human Rights in Geneva. The theme related to the « Regional standards and mechanisms for the protection of the rights of minorities and the fight against discrimination».

35. From 14 – 15 February 2007 he participated in a seminar organized in Algiers by the African Centre for Studies and Research on Terrorism (ACSRT), on the theme « Terrorist fanaticism, extremism and violence » and made a presentation on the subject of the compatibility of African anti-terrorist laws with the regional and international human rights protection standards.

36. On 21 March 2007 he participated in the opening ceremony of the Conference of Heads of State on the implementation of the New Partnership for Africa's Development (NEPAD), held in Algiers, in the presence of the members of the panel of eminent persons responsible for the African Peer Review Mechanism (APRM).

37. From 20 - 22 March 2007, he participated in a regional meeting on the Education and the Rights of Women in North Africa, organized under the auspices of the African Union.

38. From 26 – 30 March 2007, within the framework of his promotional activities, he carried out a mission to Burkina Faso.

39. From 19 February to 25 March and 7 May 2007 he held a series of meetings with the Director General and the staff of the African Centre for Studies and Research on Terrorism and had INTERIGHTS (London) and the International Security Studies (ISS)

for the purpose of organizing a seminar on Terrorism and Human Rights in Africa, at the Centre's headquarters in Algiers.

40. Commissioner **Angela Melo** took part in the following activities during the period under consideration in her capacity as Commissioner and Special Rapporteur on the rights of women in Africa.

41. From 12 - 16 February in Luanda, Angola, she participated in a Portuguese speaking camp on Human Rights during which she made a presentation on the Communications procedure of the African Commission, on the role of the special mechanisms of the Commission and the State periodic Report mechanism as well on the relationship with NGOs.

42. From 3 – 13 March in Washington D.C., USA, under the sponsorship of the Center for Human Rights of the University of Pretoria, South Africa, she led a mission to the Inter-American Human Rights Commission in her capacity as Chairperson of the Working Group on Specific Issues relative to the work of the African Commission.

43. From 3 – 5 May 2007 she took part at a brainstorming meeting organised by the Commission of the African Union in Maseru, the Kingdom of Lesotho.

44. From 9 - 10 May 2007 in Johannesburg, South Africa, she conducted a Training Course for the Portuguese speaking NGOs on the procedure for acquiring Observer Status and on the protection mandate of the African Commission.

45. Commissioner Sanji M. Monageng undertook the following activities during the period under consideration.

46. On 21 February 2007, she presented a paper on "Trafficking in Children and Women" and the rights of these two groups, with specific relevance to equality before the law and equal protection of the law, at a Seminar for Investigators on the Child Act 2005, in The Gambia.

47. From 3 to 13 March 2007, she was part of a group of five representatives of the African Commission which visited the offices of the Inter-American Commission on Human Rights (IACHR) in Washington, USA to observe how the IACHR discharges its promotion and protection mandate.

48. On 28 March 2007, she participated in a meeting held in Banjul, for the validation of the Draft Women's Bill of the Republic of The Gambia. The Women's Bill is the law that is meant to domesticate the Protocol on the Rights of Women into national legislation.

49. From 28 - 30 April, 2007 she took part in the Gambian Womens' forum co-organized by the African Commission, in collaboration with the Women's Bureau of the Republic of The Gambia and the University of The Gambia.



50. On May 2 2007, in Banjul, The Gambia, she attended an award given ceremony where Mrs Hannah Forster, Executive Director of the African Centre for Democracy and Human Rights Studies was given a “Woman of Courage Award” by the United States Government.

51. She also took part in the events which preceded the 41<sup>st</sup> ordinary session of the Commission in Accra, Ghana

52. During the period under review, Commissioner Bahame Tom Nyanduga, undertook a number of activities, organized mainly by the NGO partners. As it was the case during the previous intersession period, he could not undertake any promotion mission to States Parties, because of the restrictive budget at the disposal of the Commission.

53. He submitted a paper which was read to a Seminar organized by the Ministry of Justice of the Republic of Ghana and Africa Legal Aid, AFLA, an international NGO which enjoys observer status with the African Commission on the African Human Rights System, entitled, “The Interface between the African Commission and the African Court on Human and Peoples’ Rights”. The Seminar took place between 1 and 2 December 2006, in Accra, Ghana.

54. On 14 December 2006, he participated in a consultative meeting **organized by** the Tanzania Bar to formulate the position of the Bar regarding the question of abolition of the death penalty and the establishment of Kadhi Courts in Tanzania, being part of a survey by the Law Reform Commission on the two issues.

55. Between 17 and 20 December 2006, he attended a workshop in Cairo, Egypt, organized by the Egyptian Council for Human Rights, the NHRI of Egypt, on the subject of the Implementation of International Humanitarian law and Human Rights law in the protection of Civilian population during armed conflicts in Palestine and Lebanon following the Israeli invasion and occupation. He urged participants, mainly the members states of the Arab League to support the AU peace efforts in Darfur and Somalia.

56. Between 16 and 19 February 2007 he took part in a workshop on “Citizenship and Statelessness in Africa,” in Kampala, Uganda, which looked at the human rights and insecurity issues caused by denial of citizenship to individuals and groups of peoples in various countries on the continent.

57. Between 18 and 22 April he took part in the 36<sup>th</sup> FIDH Congress, in Lisbon, Portugal, which examined issues of Migration by African youth and the immigration regimes in Europe. The Congress urged states to ratify the UN Convention on the Protection of Migrants and members of their families.

58. Between the 23 and 26 April 2007 he participated in a seminar which took place in Nairobi Kenya, on “Enhancing Protection of Displaced Populations in the Great Lakes Region, ” pursuant to the adoption of the Great Lakes Pact in December 2006

59. On the 3 May 2007, he participated in a meeting to prepare presentations by the African Commission to the PRC in Maseru, the Kingdom of Lesotho. Between 4 and 5 May 2007, he took part in the Brainstorming meeting organized jointly by the African Union Commission and the ACHPR for representatives of AU Member States accredited to the African Union, the Permanent Representative Committee (PRC), in Maseru, the Kingdom of Lesotho, to explore ways and means of strengthening the African Commission.

60. On 10 and 11 May 2007 he took part in consultations between the African Union Commission and its cooperating partners, on the draft AU Convention on IDPs, which were held in Addis Ababa, Ethiopia.

61. From 13 - 15 May 2007, he took part in a Workshops, seminars and NGOs forum that preceded the 41<sup>st</sup> Ordinary session.

62. Commissioner Musa Ngary Bitaye participated in a workshop held in Harare, Zimbabwe from 24 - 25 February 2007 organized in by Zimbabwe Lawyers for Human Rights in partnership with OSISA and S.A.D.C Lawyer Association.

63. From 4 - 5 May 2007, in Maseru, Lesotho, he took part in the brainstorming meeting between the Permanent Representatives Committee (PRC) and the African Commission.

64. Prior to the 41<sup>st</sup> ordinary session, he attended the Forum of NGOs in Accra, Ghana, from 12 - 14 May, 2007.

65. Commissioner Mumba Malila participated in a consultative meeting of chairpersons of human rights non-governmental organisations (NGOs), held in Lusaka, Zambia from 10 - 13 January, 2007

66. He contributed to a journal article on Human Rights, published by the Law Faculty of Katholik University of Belgium.

67. From 17 - 19 April, 2007, he attended a conference in Bristol, England, on the Optional Protocol to the Convention Against Torture, where he presented a paper on "The Place of the Optional Protocol on Torture in the work of the African Commission on Human and Peoples' Rights".

68. He also attended on 18 April 2007, in Bristol, UK, a meeting with the Chairperson of the United Nations Working Group on Arbitrary Detention, Mrs Leila Zerrougui, Mr. Jean Baptiste from APT, Prof Malcom Evans, Dean of the Law Faculty, University of Bristol and others to strategise on how to mobilise resources and structure possible areas of cooperation between the subcommittee and OPCAT on the one hand and regional special mechanisms on the other.

69. From 12 - 15 May, 2007 he took part in the events preceding the 41<sup>st</sup> Ordinary session including the NGO Forum preceding held from 12 - 14 May, 2007.

70. Due to lack of funding he couldn't undertake all scheduled missions as a Commissioner and as Special Rapporteur on Prisons and Conditions of Detention in Africa.

71. During the period under review, Commissioner Pansy Tlakula, Special Rapporteur on the Freedom of Expression in Africa undertook a study on the status of freedom of expression in Africa and reported to the Commission at its 41<sup>st</sup> ordinary session in Accra, Ghana.

72. Commissioner Reine Alapini-Gansou took part in numerous activities during the period under consideration in her capacity as Commissioner and Special Rapporteur on Human Rights Defenders in Africa.

73. Hence, in her capacity as member of the African Commission on Human and Peoples' Rights she participated in four workshops in Benin, in a Validation Workshop on the draft law on individuals suffering from mental disorders in Brazzaville, the Republic of the Congo on November 30 2006.

74. On 14 December 2006 she also took part in a Validation Workshop of a Policy Document related to the Education and Training of the Girl Child in Benin at the invitation of the Ministry of Primary and Secondary Education and Professional Training of Benin.

75. As Special Rapporteur on Human Rights Defenders in Africa she addressed the issue of the violations of human rights through appeals sent to several States. From 4 - 8 December 2006, she participated, in Gisenyi in Rwanda at a Consultative/Training workshop organized by the International Service on Human Rights in collaboration with the Great Lakes Human Rights League.

76. At the invitation of Government of Benin, she took part in the feedback Workshop on the Conclusions and Recommendations of the United Nations Commission on the Rights of the Child from 11 - 13 January 2007.

77. From the 6 - 12 February 2007, she was invited as a resource person to a workshop on the capacity building of the Human Rights Defenders in Kpalime, Togo.

78. She met with several State officials from Togo, the Democratic Republic of Congo, Rwanda as well as African and international NGO partners such as the Carter Centre.

79. On 14 March 2007, she launched, in collaboration with Mr. Sidiki Kaba, President of the International Federation for the League of Human Rights (FIDH), the Report of the Human Rights Defense Observatory on the situation of the rights of Human Rights

Defenders (joint programme of the FIDH and the World Organisations Against Torture) for the year 2006 in Ouagadougou, Burkina Faso.

80. From 17 - 20 March 2007 in Algiers, Algeria, she participated in a sub-regional workshop on the integration of the Rights of Women in the Educational System.

81. From 24 - 30 March 2007 she undertook a working mission to Geneva with the support of the International Service for Human Rights. The objective of this mission was to participate in the session of the Human Rights Council and to meet my colleague from the United Nations.

82. She also took part in the training workshop of Human Rights Defenders in Kinshasa the Democratic Republic of Congo (DRC) from the 21 - 24 April 2007 organized by the International Service for Human Rights based in Geneva.

83. She also took part in the events preceding the 41<sup>st</sup> ordinary session of the Commission from 12 - 14 May 2007.

#### **b. Presentation of periodic reports by States Parties**

84. In according with the provisions of Article 62 of the African Charter on Human and Peoples' Rights, the Republic of Zambia and the Republic of Kenya presented their Initial reports, while Zimbabwe presented its Periodic Report combining its 6<sup>th</sup> – 10<sup>th</sup> reports. The African Commission adopted Concluding Observations on the three reports mentioned above and transmitted them to the State Parties.

#### **c. Status of submission of State Reports**

85. The status of submission and presentation of State Reports as at the 41<sup>st</sup> ordinary session of the Commission stood as follows:

<b>No.</b>	<b>Category</b>	<b>Number of States</b>
1	States which have submitted and presented all the its reports	14
2	States which have not submitted any Report	15
3	States which have submitted all their Reports and have to present it at the 42 <sup>nd</sup> Ordinary Session of the African Commission	2
4	States which have submitted two (2) or more Reports but owe more	8
5	States which have submitted one (1) Report but owe more	14

6. The above status of submission of state reports is represented as follows:

No.	State Party	Number of Reports due
<b>States which have submitted and presented all their Reports (14)</b>		
1	Cameroon	-
2	Central Africa Republic	-
3	Egypt	-
4	Libya	-
5	Mauritania	-
6	Nigeria	-
7	Rwanda	-
8	Seychelles	-
9	South Africa	-
10	Sudan	-
11	Uganda	-
12	Kenya	-
13	Zambia	-
14	Zimbabwe	-
<b>States which have submitted all their reports and have to present at the 42<sup>nd</sup> Ordinary Session of the ACHPR (2)</b>		
1	Algeria	-
2	Angola	-
<b>States which have submitted two or more reports but owe more (8)</b>		
1	Benin	2 overdue reports
2	Burkina Faso	1 overdue report
3	Gambia	5 overdue reports
4	Ghana	2 overdue reports

5	Namibia	2 overdue reports
6	Senegal	1 overdue report
7	Togo	2 overdue reports
8	Tunisia	5 overdue reports
<b>States which have submitted one report but owe more (14)</b>		
1	Burundi	2 overdue reports
2	Cape Verde	4 overdue reports
3	Chad	3 overdue reports
4	Congo (Brazzaville)	1 overdue report
5	Congo(DRC)	1 overdue report
6	Guinea (Rep)	4 overdue reports
7	Lesotho	2 overdue report
8	Mali	3 overdue reports
9	Mauritius	5 overdue reports
10	Mozambique	4 overdue reports
11	Niger	1 overdue report
12	Sahrawi Arab Democratic Republic	1 overdue report
13	Swaziland	2 overdue reports
14	Tanzania	8 overdue reports
<b>States which have not submitted any report (15)</b>		

1	Botswana	10 overdue reports
2	Comoros	10 overdue reports
3	Côte d'Ivoire	7 overdue reports
4	Djibouti	7 overdue reports
5	Equatorial Guinea	11 overdue reports
6	Eritrea	3 overdue reports
7	Ethiopia	4 overdue reports
8	Gabon	10 overdue reports
9	Guinea Bissau	10 overdue reports
10	Liberia	11 overdue reports
11	Madagascar	7 overdue reports
12	Malawi	8 overdue reports
13	Sao Tome and Principe	10 overdue reports
14	Sierra Leone	11 overdue reports
15	Somalia	10 overdue reports

86. The African Commission continues to urge Member States of the African Union that have not yet done so, to submit their initial and periodic reports. Member States are also reminded that they can combine all the overdue reports into a single report for submission to the African Commission.

**d. Protection Activities:**

87. During the period covered by this report, the African Commission undertook several measures to ensure the protection of human and peoples' rights. These include

writing urgent appeals to States, in reaction to allegations of human rights violations received from individuals and NGOs.

88. The African Commission examined seventy three (73) communications: it was seized with ten (10) new communications; declared seven (8) admissible, finalised one (1), considered requests for review on three (3), deferred *sine die* consideration of one (1) and deferred fifty (50) to the next session for further consideration. The decision of the communication finalised on merits is attached to the present report as **annexure two (2)**.

89. The Commission also decided to attach to the present Activity Report, the Report of its Fact-finding mission undertaken to the Darfur Region of the Republic of The Sudan from 08 – 18 July 2004, including The Sudan's response thereto. The report is attached to the present report as **annexure three (3)**.

90. In accordance with Article 46 of the African Charter, the African Commission conducted a special hearing on the human rights situation in Zimbabwe.

#### **e. Adoption of Reports**

91. During the session, the African Commission adopted and transmitted to the respective States Parties, the following reports:

- Report of Promotion Missions to the Republic of Burundi;
- Report of Promotion Mission to the Republic of Rwanda;
- Report of the Promotional Mission to the Republic of Mali;
- Report of the Promotional Mission to the Republic of Cameroon;
- Report of Promotion Mission to the Republic of Uganda;
- Report of the Promotional Mission to the Kingdom of Swaziland; and
- Report of the Promotional Mission to Burkina Faso.

92. The African Commission also considered and took note of the Report of the Research and Information Visit to the Republic of Uganda and Central African Republic undertaken by its Working Group on Indigenous Populations/Communities in Africa.

93. The Commission also adopted an Advisory Opinion on the UN Declaration on the Rights of Indigenous Populations.

#### **f. Adoption of Resolutions**

94. The African Commission adopted the following resolutions -:

- Resolution on the rights of older persons in Africa;
- Resolution on the situation of human rights defenders in Africa;



- Resolution on the operationalisation of the United Nations – African Union Cooperation: framework for the Ten Year Capacity Building Programme for the African Union;
- Resolution on the situation in Somalia;
- Resolution on the health and reproductive rights of women;
- Resolution on the prevention and prohibition of torture and other cruel, inhuman or degrading treatment or punishment; and
- Resolution reiterating the importance of compliance with reporting obligations under the African Charter.

#### **g. Organization of Seminars**

95. During the intersession, the African Commission, in collaboration with the Rights and Democracy, the Women's Bureau of the Republic of The Gambia and the University of The Gambia (UTG) in Banjul, The Gambia organised a workshop of the rights of women in The Gambia entitled 'the Gambian Women Rights Forum' from 28 – 30 April 2007.

96. Due to lack of funds, the Commission could not organize all the seminars and conferences earmarked in its Strategic Plan.

97. The African Commission reiterated its intention to organize more seminars and conferences, in particular, a seminar on-:

- Terrorism and Human Rights in Africa;
- Islam and Human Rights in Africa;
- Contemporary Forms of Slavery;
- Refugees and Internally Displaced Persons in Africa;
- Seminar on Building the Culture of Peace and Human Rights for the Military / Police ;
- Regional Conference / Seminar for Journalists;
- Human Rights Education Seminar for Teachers;
- Peaceful settlement of ethnic and social conflicts from a human rights perspective;
- The right to education: an essential condition for development in Africa;
- The right of persons with disabilities;
- Freedom of movement and the right of asylum in Africa;
- Ethnic conflict resolution in a human rights context; and
- The right to development and the right to self-determination.

98. The African Commission invited its traditional partners and State Parties to collaborate with it in the organization of these seminars and conferences.

### SECTION III

#### Financial and administrative matters

99. Under Article 41 of the African Charter, the Commission of the African Union is responsible for meeting the cost of the African Commission's operations, including the provision of staff, financial and other resources, necessary for the effective discharge of its mandate. However, the funding/financial situation of the African Commission remains a cause for concern.

100. During the 2006 financial year, the Commission was allocated One million one hundred and forty-two thousand four hundred and thirty six United States Dollars (**USD 1,142, 436**). In the 2007 financial year, there has been a five per cent (5%) increase to the 2006 budget. This brings the 2007 budget of the Commission to about \$ **1,199,557.8**.

101. Out of this amount, only Forty-seven thousand United States Dollars (**USD 47,000**) has been allocated for programmes, including promotion and protection missions of the Commission. This amount is enough to cover only four promotion missions in a year, whereas the Commissioners are expected to undertake at east two missions each in any year. There is no allocation for research, training/capacity building, special mechanisms activities, projects, seminars and conferences, commemoration of human rights events, such as the Africa Human Rights Day, etc. This amount does not cover even a third of the cost of the promotion missions for Commissioners and special mechanisms earmarked for a year.

102. The work of the African Commission thus continues to be severely compromised due to inadequate funding. As a result of inadequate funding from the AU, the African Commission continues to resort to extra-budgetary sources to supplement AU funding.

103. During the period under review, the African Commission benefited from financial and material support from the following partners:

#### a. Danish Human Rights Institute

104. The Secretariat of the African Commission continues to be supported by the Danish Institute for Human Rights by financing the post of a an Expert ON Strategic Planning. The African Commission is also working with the Danish Institute to develop its next Strategic Plan.

#### b. Rights and Democracy

105. The Canadian NGO - Rights and Democracy has supported the Commission with personnel and has put at its disposal three Canadian *cooperants* since January 2006.

**c. Danish International Development Agency (DANIDA)**

106. DANIDA continues to support the activities of the Working Group on Indigenous Populations/Communities through the International Working Group on Indigenous Affairs (IWGIA). This support will continue until June 2007. The European Union, through the International Labour Organization (ILO) is also supporting the activities of the WGIP.

**d. Open Society Initiative for West Africa (OSIWA)**

107. The Open Society for West Africa has provided to Commission with computers and printers and made available money to improve the website of the Commission.

**e. The Republic of South Africa**

108. The Republic of South Africa has provided funding for activities of the Commission and also seconded one of its national to assist the Commission's Special Rapporteur on the Rights of Women in Africa.

109. The assistance received from donors can be summarized as follows:

No.	Organisation/State	Amount in US\$	Duration of contract	Remark
1.	Rights and Democracy	29,632.96	2005 - 2007	Balance as at 27 January 2007
2.	DANIDA/IWGIA	330,926.90	06/05 – 05/07	Possibility of renewal
3.	Danish Institute for Human Rights	51,995.55	05/06 – 07/07	Possibility of renewal
4.	OSIWA	125,000.00	04/07 – 03/09	
5.	Republic of South Africa	285,714.20	04/07 – 03/09	

110. The African Commission expresses its profound gratitude to all donors and partners, whose financial, material and other contributions have enabled it to discharge its mandate during the period under review.

111. The extra-budgetary resources, notwithstanding, the financial and human resource situation at the Secretariat of the African Commission remains critical. As at May 2007, the staff situation at the Secretariat of the African Commission stood as follows:

No.	Position	No. recruited	Funded by
1.	Secretary	Vacant since January 2006	AU
2.	Legal Officer Protection	1	AU
3.	Legal Officers Promotion	2	AU
4.	Legal Officer/ Special Mechanisms Coordinator*	1	AU
5.	Adm. and Finance Officer	1	AU
6.	Legal Officer (Promotion) - NGOs and NHRIs affairs *	1	AU
7.	Bilingual Secretary	1	AU
8.	Secretary*	1	AU
9.	Documentation Officer	Vacant since May 2006	AU
10	Computer Technician *	1	AU
11	Clerk*	1	AU
12	Drivers	2	AU
13	Receptionist *	1	AU
14	Cleaner	1	AU
15	Security guards	2	AU
16	Legal Officer – Secretary to the WGIP	1	International Working Group on Indigenous Affairs (IWGIA)
17	Legal Officers –Assistant to Special Rapporteurs	3	Rights and Democracy
18	Expert on Strategic Planning	1	Danish Institute for Human Rights
19	Assistant to the Special Rapporteur on Women	1	Republic of South Africa
	<b>Total</b>	<b>23</b>	

\* Positions outside the Maputo structure.

112. It is also worth noting that the Commission of the African Union has recruited staff members for some vital positions outside the approved Maputo structure. These positions are being paid for from the budget of the vacant positions, that is, the Secretary and the Documentation officer.

113. It is uncertain what will become of these positions with the recruitment of the Secretary and the impending recruitment of the Documentation Officer. Without additional financial support from the AU to pay for these posts there might be serious budgetary implications. Although the cleaner post is within the Maputo structure, the current post holder is also on temporary contract from the AU.

114. To promote human and peoples rights and ensure their protection in Africa – a vast continent of 53 independent States, the current staff strength is clearly inadequate. The Commission considers at least fifty communications at each ordinary session and a lot of research goes in finalizing a communication. Given the workload of the Special Mechanisms each of them should have a full time legal officer to coordinate their activities. At the moment however, only two Special Rapporteurs have been provided with legal officers on short term basis. The Commission considers at least fifty communications at each ordinary session and a lot of research goes in finalizing a communication.

115. The staff provided to the Commission by the AU is clearly inadequate to effectively supporting the very broad mandate of the Commission. At the same time, it must be stated that the effectiveness of the Secretariat is critical for the success of the African Commission.

116. For the Secretariat to effectively support the African Commission in the execution of its mandate, it would need the following proposed staff structure, made pursuant to Executive Council **Decision EX.CL/322 (X)** on the 21<sup>st</sup> Activity Report of the African Commission on Human and Peoples’ Rights adopted at its Tenth Ordinary Session held from 25 – 26 January 2007 in Addis Ababa, Ethiopia. The decision “**CALL[s] ON** the Commission of the African Union in collaboration with the ACHPR to propose a new Structure for the latter to the next Ordinary Session of the Executive Council taking into consideration the broad mandate of the ACHPR”.

**Proposed new structure (staff composition) of the African Commission on Human and Peoples’ Rights**

No.	Position	No. of staff needed	No. of Staff recruited
1.	Secretary	1	1
2.	Deputy Secretary	1	0
3.	Legal Officers Protection	3	1
4.	Legal Officers Promotion	3	2
5.	Legal Officers/ Special Mechanisms Coordinators	2	1
6.	Researchers	2	0
7.	Public Relations Officer (PRO)	1	0
8.	Administrative Officer	1	0
9.	Finance Officer	1	1
10.	Resource Mobilization Officer	1	0
11.	Projects, Planning, Monitoring and Evaluation Officer	1	0
12.	Revisers/Proof Readers	2	0
13.	Translators	3	0

14.	Documentation Officer	1	0
15.	Bilingual Secretary	2	1
16.	Computer Technician/IT Officer	1	1
17.	Finance Assistant	1	0
18.	Documentation Assistant	1	0
19.	Clerk	1	1
20.	Drivers	2	2
21.	Receptionist	1	1
22.	Cleaners	2	1
23.	Security guards	2	2
	<b>Total</b>	<b>36</b>	<b>16</b>

117. There is therefore an urgent need to recruit more staff to ensure the smooth and effective running of the Commission.

#### **Adoption of the Twenty Second Activity Report**

118. In accordance with Article 54 of the African Charter on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights submits the present Twenty Second Activity Report to the 11<sup>th</sup> Ordinary Session of the Executive Council of the African Union, for its consideration and transmission to the 9<sup>th</sup> Summit of Heads of State and Government of the African Union holding in Accra, Ghana.

## *LIST OF ANNEXURES*

*Annexure I Agenda of the 41<sup>st</sup> Ordinary Session held from 16 – 30 May 2007 in Accra, Ghana*

*Annexure II Decision on communication finalised at the 41<sup>st</sup> Ordinary Session*

*Annexure III The African Commission's Report of the Fact-finding mission to the Republic of The Sudan undertaken from 08 – 18 July 2004.*

*Annexure I*

*Agenda of the 41<sup>st</sup> Ordinary Session held  
from 16 – 30 May 2007 in Accra, Ghana*



**AGENDA OF THE 41<sup>st</sup> ORDINARY SESSION OF THE AFRICAN  
COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

*(16 – 30 May 2007, Accra, Ghana)*

**Item 1: Opening Ceremony** (Public Session)

**Item 2: Adoption of the Agenda** (Private Session)

**Item 3: Organisation of Work** (Private Session)

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

- a) Statements by State Delegates and Guests;
- b) Statements by Intergovernmental Organisations;
- c) Statements by National Human Rights Institutions; and
- d) Statements by NGOs.

**Item 5: Cooperation and Relationship with National Human Rights  
Institutions and NGOs** (Public Session)

- a) Relationship with National Human Rights Institutions;
- b) Consideration of applications for Affiliate status;
- c) Relationship with NGOs; and
- d) Consideration of applications for Observer status.

**Item 6:** (Private Session)

Hearings on the human rights situation in Zimbabwe

**Item 7: Consideration of State Reports** (Public Session):

- a) Status of Submission of State Party Reports
- b) Consideration of -:
  - I) The Periodic Report of Zimbabwe
  - II) The Initial Report of Zambia; and
  - III) The Initial Report of Kenya.

**Item 8: Promotion Activities** (Public Session)

- a) Presentation of the Activity Reports of the Chairperson, Vice-Chairperson and Members of the African Commission;
- b) Presentation of the Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa;

- c) Presentation of the Report of the Special Rapporteur on the Rights of Women in Africa and the status of ratification of the Protocol to the African Charter on the Rights of Women in Africa;
- d) Presentation of the Report of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa;
- e) Presentation of the Report of the Special Rapporteur on Human Rights Defenders in Africa;
- f) Presentation of the Report of the Special Rapporteur on Freedom of Expression in Africa;
- g) Presentation of the Report of the Chairperson of the Working Group on the Implementation of the Robben Island Guidelines;
- h) Presentation of the Report of the Chairperson of the Working Group on the Indigenous Populations/Communities in Africa;
- i) Presentation of the Report of the Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa;
- j) Presentation of the Report of the Working Group on Specific Issues Relevant to the Work of the African Commission;
- k) Report of the Working Group on the Death Penalty;
- l) Organisation of Conferences and Seminars; and
- m) Consideration of the UN Declaration on the Rights of Indigenous Peoples.

**Item 9: Consideration and Adoption of Draft Reports** (Private Session)

Consideration and adoption of mission reports of the African Commission:  
Draft Reports on the Promotional Missions to:

- a) Burundi;
- b) Rwanda;
- c) Mali;
- d) Cameroon;
- e) Uganda;
- f) Swaziland;
- g) Burkina Faso;
- h) Report of the Research and Information visit to the Republic of Uganda; and
- i) Report of the Research and Information visit to the Central African Republic.

**Item 10: Consideration of:** (Private Session):

- a) Mandate of Special Mechanisms;
- b) Report of Mission to the Inter-American Commission;
- c) Progress Report on the establishment of the Voluntary Contributions Fund;

- d) Progress report of the Strategic Plan for 2008 – 2012;
- e) Harmonisation of human rights activities among AU organs;
- f) Report of the retreat of the Secretariat;
- g) Relationship between the ACHPR and the African Court;
- h) Draft Report on the Study of Violence Against Women;
- i) Study on Human Rights Violation by non-State Actors;
- j) Progress Report on the “Know Your Rights” Project;
- k) Proposal on the Rights of the Elderly in Africa;
- l) 20<sup>th</sup> Anniversary of the ACHPR and the proposed Awards

**Item 11: Protection Activities:** (Private Session)

- a) Report on the Follow-Up of the cooperation between the African Commission and the International Criminal Tribunal for Rwanda;
- b) Consideration of the response of Sudan to the “Report of the ACHPR’s Fact Finding Mission to Darfur; and
- c) Consideration of Communications.

**Item 12: Methods of Work of the African Commission:** (Private Session)

Review of the mandate of the Special Rapporteur on Arbitrary Executions and Extra-Judicial Killings in Africa.

**Item 13: Administrative and Financial Matters:** (Private Session):

- a) Report of the Secretary on the administrative and financial situation of the African Commission and its Secretariat; and
- b) Construction of the Headquarters of the African Commission.

**Item 14: Consideration and Adoption of Recommendations, Decisions, and Resolutions including:** (Private Session):

- a) Recommendations of the NGO Forum; and
- b) Concluding Observations on the initial reports of Zambia, Kenya and the periodic report of Zimbabwe.

**Item 15: Dates and Venue of the 42<sup>nd</sup> Ordinary Session of the African Commission** (Private Session):

**Item 16: Any Other Business** (Private Session)

**Item 17: Adoption of the:** (Private Session)

- a) Reports of the 39<sup>th</sup>, 40<sup>th</sup>, and 41<sup>st</sup> Ordinary Sessions;
- b) 22<sup>nd</sup> Activity Report of the African Commission; and
- c) Final Communiqué of the 41<sup>st</sup> Ordinary Session.

**Item 18: Reading of the Final Communiqué and Closing Ceremony**  
(Public Session)

**Item 19: Press Conference** (Public Session)

*Annexure II*

*Decision on communication finalised at the  
41<sup>st</sup> Ordinary Session*

**COMMUNICATION 275 / 2003- ARTICLE 19 / THE STATE OF ERITREA**

**Summary of Facts**

1. On 14<sup>th</sup> April 2003, the Secretariat of the African Commission received a communication brought by Article 19 against the State of Eritrea, a State Party to the African Charter.
2. Article 19 states that it is concerned especially about the continued detention incommunicado without trial of at least 18 journalists in Eritrea since September 2001.
3. The 18 journalists who are reportedly detained incommunicado are -:
  1. *Zemenfes Haile*, founder and manager of the private weekly Tsigenay;
  2. *Ghebrehiwet Keleta*, a news writer for Tsigenay;
  3. *Selamyinghes Beyene*, reporter for the weekly MeQaleh;
  4. *Binyam Haile* of Haddas Eritrea;
  5. *Yosef Mohamed Ali*, Chief Editor of Tsigenay;
  6. *Seyoum Tsehaye*, Free-lance Editor and photographer and former Director of Eritrean State Television (ETV);
  7. *Temesgen Gebreyesus*, Reporter for Keste Debena;
  8. *Mattewos Habteab*, Editor of Meqaleh;
  9. *Dawit Habtemicheal*, Assistant Chief Editor, Maqaleh;
  10. *Medhanie Haile*, Assistant Chief Editor, Keste Debena;
  11. *Fessahye Yohannes* (or Joshua) Editor-in-Chief of Setit;
  12. *Said Abdulkadir*, Chief Editor of Admas;
  13. *Amanuel Asrat*, Chief Editor of Zemen;
  14. *Dawit Isaac*, contributor to Setit;
  15. *Hamid Mohammed Said*, ETV;
  16. *Saleh Aljezeeri*, Eritrean State Radio; and
  17. *Simret Seyoum*, a writer and general manager for Setit
4. The Complainants alleges that on August 2001, a dozen senior officials and other members of the ruling elite, known as the G15 signed a public letter criticising President Isaias Afewerki's rule. This letter allegedly generated a political crisis which involved defections, resignations, the dismissal of top officials, the imprisonment of government critics and journalists and the cancellation of the general elections that had been planned for December 2001.
5. The Complainant further alleges that on 18<sup>th</sup> and 19<sup>th</sup> September 2001, 11 former Eritrean government officials including former the Vice President Mahmoud Sherifo and the former Foreign Minister Petros Solomon were arrested in Asmara.

6. Furthermore, on 18<sup>th</sup> September 2001, the Eritrean government banned the entire private press comprising of the following newspapers -: *Meqaleh, Setit, Tiganay, Zemen, Wintana, Admas, Keste Debona and Mana*. Subsequently, many journalists were arrested and detained, including the 18 journalists who are now being held incommunicado. The reasons given by the government for these actions ranged from threatening national security to failure to observe licensing requirements.
7. The Complainant asserts that *Hadas Eritrea*, a government owned daily newspaper, is the only publication allowed in the country
8. The Complainant states that on 4<sup>th</sup> October 2002, they sent appeal letters to the President of Eritrea and to the Chairman of the African Commission urging them to ensure the unconditional release or a fair trial of the detainees. On 12<sup>th</sup> November 2002, the Complainant sent a letter to the government requesting information on the detainees and permission to visit the country and the detainees. Article 19 alleges that all requests sent to the government have been ignored.

### **Complaint**

9. Article 19 alleges a violation of the following Articles of the African Charter -:  
Articles **1, 3, 5, 6, 7, 9, 13, 18, and 26** of the African Charter

### **Procedure**

10. By letter dated 21<sup>st</sup> April 2003, the Secretariat of the African Commission acknowledged receipt of the communication and informed the Complainant that the matter had been scheduled for consideration at the 33<sup>rd</sup> ordinary session of the African Commission.
11. At its 33<sup>rd</sup> Ordinary Session held from 15<sup>th</sup> to 29<sup>th</sup> May 2003, in Niamey, Niger, the African Commission considered the communication and decided to be seized of the matter.
12. On 10<sup>th</sup> June 2003, the Secretariat wrote informing the parties to the communication that the African Commission had been seized with the matter and requested them to forward their submissions on admissibility within 3 months.

13. On 27<sup>th</sup> August 2003, the Secretariat received a Note Verbale from the Respondent State requesting the African Commission to advise Article 19 to exhaust all domestic remedies.
14. On 10<sup>th</sup> September 2003, Article 19 forwarded by fax its submissions on admissibility.
15. On 15<sup>th</sup> September 2003, the Secretariat of the African Commission acknowledged receipt of the Note Verbale from the Respondent State and the submissions from the Complainant. The Secretariat of the African Commission additionally advised the Respondent State to forward its arguments supporting its assertion that the Complainant had not exhausted domestic remedies. Article 19 was also reminded to forward a copy of the Decree banning the entire private press.
16. At its 34<sup>th</sup> Ordinary Session held from 6<sup>th</sup> to 20<sup>th</sup> November 2003 in Banjul, The Gambia, the African Commission examined the communication and decided to defer further consideration on admissibility of the matter to its 35<sup>th</sup> Ordinary Session.
17. On 4<sup>th</sup> December 2003, the Secretariat of the African Commission wrote to inform the parties of the African Commission's decision. The Respondent State was furnished with another copy of the Complainant's written submissions on admissibility and further reminded to forward its written submissions on admissibility within 2 months.
18. On 23<sup>rd</sup> February 2004, the Secretariat of the African Commission received submissions on admissibility from the Respondent State. The Secretariat acknowledged receipt of the said submissions and transmitted a copy of the same to the Complainants on 3<sup>rd</sup> March 2004.
19. On 17<sup>th</sup> March 2004, the Secretariat received submissions from the Complainant in response to the submissions from the State of Eritrea. The Secretariat of the African Commission acknowledged receipt of the said submissions and transmitted a copy of the same to the Respondent State on 18<sup>th</sup> March 2004.
20. At its 35<sup>th</sup> Ordinary Session held from 21<sup>st</sup> May to 4<sup>th</sup> June 2004, in Banjul, The Gambia, the African Commission examined the communication and decided to defer further consideration on admissibility of the matter to its 36<sup>th</sup> Ordinary Session pending receipt of information from the Complainant on concrete steps taken to access domestic remedies in Eritrea. The parties to the communication were informed accordingly



21. By Note Verbale and letter dated 15 June 2004 the Respondent State and the Complainant were respectively informed of the Commission's decision.
22. By letter dated 15<sup>th</sup> September 2004, the Secretariat of the African Commission reminded the Complainant to send the information requested by the African Commission during the 35<sup>th</sup> Ordinary Session
23. At its 36<sup>th</sup> Ordinary Session held in Dakar, Senegal from 23<sup>rd</sup> November to 7<sup>th</sup> December 2004, the African Commission considered the communication and declared it admissible.
24. By Note Verbale of 13<sup>th</sup> December 2004 and by letter of the same date, the Secretariat of the African Commission notified the parties of the African Commission's decision and requested them to submit their arguments on the merits within three months of the notification.
25. By Note Verbale dated 27<sup>th</sup> January 2005, the State of Eritrea wrote to the Secretariat of the African Commission requesting the African Commission to dismiss the communication on the grounds that: one of the subjects of the communication had already been dealt in another communication (communication 250/2002) and therefore would constitute a case of double jeopardy, and that the Complainant had appeared before the African Commission only once despite repeated requests to 'face and question the accuser – a legal right which was denied them'...by the African Commission.
26. By Note Verbale dated 23<sup>rd</sup> February 2005, the Secretariat of the African Commission acknowledged receipt of the Respondent State's Note Verbale and informed the Respondent State that its request would be put before the African Commission for consideration during the 37<sup>th</sup> Ordinary Session.
27. By letter dated 24<sup>th</sup> February 2005, the Secretariat of the African Commission informed the Complainant that the Respondent State had requested the African Commission to reconsider its decision on the communication and declare the latter inadmissible.
28. By letter dated 30<sup>th</sup> March 2005, the Complainant acknowledged receipt of the Secretariat's letter of 24<sup>th</sup> February 2005. The Complainant indicated that they were of the belief that the African Commission had thoroughly examined the communication before arriving at the decision on admissibility and therefore urged the African Commission to consider the communication on its merits.

29. By letter dated 5<sup>th</sup> April 2005, the Secretariat of the African Commission acknowledged receipt of the Complainant's letter of 30<sup>th</sup> March 2005 and requested it to submit its arguments on the merits or confirm whether the arguments contained in its complaint were sufficient.
30. By letter dated 13<sup>th</sup> April 2005, the Complainant acknowledged receipt of the Secretariat's letter of 5<sup>th</sup> April 2005 and indicated that in their earlier submissions they had addressed themselves on the merits the communication but further indicated that they were available to make oral submissions on the same.
31. By letter dated 13<sup>th</sup> April 2005, the Secretariat acknowledged receipt of the Complainant's letter and informed them that the communication had been scheduled for consideration at the 37<sup>th</sup> Ordinary Session of the African Commission.
32. At its 37<sup>th</sup> Ordinary Session held in Banjul, The Gambia, the African Commission deferred further consideration of the communication due to the absence of the rapporteur of the communication.
33. By Note Verbale and a letter dated 10<sup>th</sup> June 2005, the Respondent State and the Complainant were respectively notified of the African Commission's decision.
34. At its 38<sup>th</sup> Ordinary Session held from 21<sup>st</sup> November to 5<sup>th</sup> December 2005, in Banjul, The Gambia, the African Commission considered the Respondent State's request that the communication be dismissed but decided to confirm its decision on admissibility.
35. By Note Verbale and a letter dated 15<sup>th</sup> December 2005, the Respondent State and the Complainant were respectively notified of the African Commission's decision and requested the parties to submit their arguments on the merits of the communication.
36. On 6<sup>th</sup> March 2006, the Secretariat of the African Commission wrote to the parties reminding them to submit their arguments on the merits before the end of March 2006.
37. By electronic mail dated 3 May 2006, the complainant re-submitted its arguments on the merits of the communication, which was immediately communicated to the respondent state for its comments.

38. By Note Verbale dated 19 May 2006, the respondent State submitted its arguments on the merits of the communication.
39. At its 39<sup>th</sup> Ordinary Session held from 11<sup>th</sup> to 25<sup>th</sup> May 2006, the African Commission decided to defer consideration of the merits to the 40<sup>th</sup> Ordinary Session, in order to allow the Secretariat to consider the parties' arguments and draft an opinion on the merits.
40. By Note Verbale and letter dated 31<sup>st</sup> May 2006, the Respondent State and the Complainant were respectively notified of the African Commission's decision.
41. By letter dated 17<sup>th</sup> October 2006 and Note Verbale dated 18<sup>th</sup> October 2006, the Complainant and the Respondent State respectively were reminded that the African Commission would consider the merits of the communication at its 40<sup>th</sup> Ordinary Session.
42. By Note Verbale and letter dated 10 February 2007, the Respondent State and the Complainant were respectively notified that the African Commission had deferred the communication, as it was unable to consider the said communication at its 40<sup>th</sup> Ordinary Session because of lack of time. Both the Complainant and the Respondent State were informed that the communication would be considered at the 41<sup>st</sup> Ordinary Session of the African Commission.

***The Law***  
***Admissibility***

43. The current communication is submitted pursuant to Article 55 of the African Charter which allows the African Commission to receive and consider communications, other than from States Parties. Article 56 of the African Charter provides that the admissibility of a communication submitted pursuant to Article 55 is subject to seven conditions.<sup>5</sup> The African Commission has stressed that the conditions laid down in Article 56 are conjunctive, meaning that if any one of them is absent, the communication will be declared inadmissible.<sup>6</sup>
44. The parties to the present communication seem to agree that six of the conditions set out in Article 56 have been met. They are however in

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<sup>5</sup> See Article 56 of the African Charter on Human and Peoples' Rights.

<sup>6</sup> See African Commission, Information Sheet No. 3 Communication Procedure.

- dispute over the application of one of the conditions – Article 56(5), which provides that communications relating to human and peoples' rights referred to in Article 55 received by the African Commission shall be considered if they “*are sent after the exhaustion of local remedies, if any, unless it is obvious that this procedure is unduly prolonged*”.
45. The exhaustion of local remedies rule is a principle under international law of permitting States to solve their internal problems in accordance with their own constitutional procedures before accepted international mechanisms can be invoked. The particular State is thus enabled to have an opportunity to redress the wrong that has occurred there within its own legal order. It is a well established rule of customary international law that before international proceedings are instituted, the various remedies provided by the State should have been exhausted.
46. The African Commission has held in previous communications that for local remedies to be exhausted, they must be *available, effective* and *sufficient*. In communication Nos. 147/95 and 149/96, the African Commission held that a remedy is considered *available* if the Complainant can pursue it without impediment, it is deemed *effective* if it offers a prospect of success, and it is found *sufficient* if it is capable of redressing the complaint.<sup>7</sup>
47. In terms of Article 56(5) therefore, the law on exhaustion of domestic remedies presupposes: (i) the existence of domestic procedures for dealing with the claim; (ii) the justiciability or otherwise, domestically, of the subject-matter of the complaint; (iii) the existence under the municipal legal order of provisions for redress of the type of wrong being complained of; and (iv) available effective local remedies, that is, remedies sufficient or capable of redressing the wrong complained of.
48. The second part of Article 56(5) which is the subject of contention between the parties provides that a communication shall be considered if they are sent after the exhaustion of local remedies “*...if any, unless it is obvious that this procedure is unduly prolonged*”. It follows therefore that the local remedies rule is not rigid. It does not apply if:
- (i) local remedies are inexistent;
  - (ii) local remedies are unduly and unreasonably prolonged;
  - (iii) recourse to local remedies is made impossible;

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<sup>7</sup> Communication Nos. 147/95 and 149/96, Sir Dawda K Jawara / The Gambia, African Commission on Human and Peoples' Rights.

- (iv) from the face of the complaint there is no justice or there are no local remedies to exhaust, for example, where the judiciary is under the control of the executive organ responsible for the illegal act; and
- (v) the wrong is due to an executive act of the government as such, which is clearly not subject to the jurisdiction of the municipal courts.

### **Issues before the African Commission**

- 49. The parties to the present case are in dispute over the question of the exhaustion of domestic remedies in Eritrea and it is therefore for the African Commission to make a determination on the matter.
- 50. On the one hand, the State argues that the stipulated requirement in Article 56(5) has not been fulfilled by the Complainant and that none of the abovementioned exceptions should therefore apply. On the other hand, the Complainant alleges that the exception rule in Article 56(5) should apply.
- 51. Whenever a State alleges the failure by the Complainant to exhaust domestic remedies, it has the burden of showing that the remedies that have not been exhausted are available, effective and sufficient to cure the violation alleged, i.e. that the function of those remedies within the domestic legal system is suitable to address an infringement of a legal right and are effective.<sup>8</sup> When a State does this, the burden of responsibility then shifts to the Complainant who must demonstrate that the remedies in question were exhausted or that the exception provided for in Article 56(5) of the African Charter is applicable.

### **Submissions by the Complainant**

- 52. The Complainant in the present communication argues that domestic remedies are not available and notes that the fact that the victims have been held for over three years (since September 2001) incommunicado “is a manifestation of the fact that the administration of justice in Eritrea is extremely abnormal”.
- 53. The Complainant further points to the fact that Section 17 of the Eritrean Constitution provides safeguards against the arbitrary arrest and detention of persons, and the Government of Eritrea has failed to abide by these

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<sup>8</sup> Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 63.

- safeguards.<sup>9</sup> The Complainant claims that the “deliberate failure of the government to abide by its own Constitutional obligation shows that it is hopeless and impractical or unreasonable for the detainees to seize the domestic courts by way of *habeas corpus*.”
54. The Complainant further argues that the Executive Branch of Government in Eritrea interferes in the affairs of the Judiciary thus rendering the latter’s independence and effectiveness suspect. They cite the removal of the Chief Justice by the President of the Republic when the former allegedly requested the Executive not to interfere in the Judiciary. The Complainant noted that “if the Chief Justice could be removed from office for merely asking the Executive Branch of Government not to interfere with the independence of the Judiciary, what will happen to any judge who dares to order the release of the detainees marked out as ‘traitors’ and ‘State enemies’ by the highest authority, the President”?
55. The Complainant notes further that the human rights violations complained of are serious and massive and in terms of the jurisprudence of the African Commission, such violations do not necessitate the exhaustion of local remedies.
56. The Complainant concludes by stating that in fact, they had sent a writ of *habeas corpus* to the Minister of Justice requesting that the victims be brought to court but received no response from the Minister, and that they had requested to visit the victims but were not granted permission by the responding State.

### **Submissions by the State**

57. The Respondent State in its submission maintains that the Eritrean Judiciary is independent and that the Complainant should have exhausted local remedies either directly or through local legal representatives. The Respondent State submits that it informed the Complainant that they should take the initiative to approach the courts directly in order to seek justice for the detainees but no such efforts were made by the Complainant.

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<sup>9</sup> See Article 17 (1) No person may be arrested or detained save pursuant to due process of law. (3) Every person arrested or detained shall be informed of the grounds for his arrest or detention and the rights he has in connection with his arrest or detention in a language he understands. (4) Every person who is arrested and detained in custody shall be brought before the court within forty-eight (48) hours of his arrest, and if this is not reasonably possible, as soon as possible thereafter, and no such person shall be detained in custody beyond such period without the authority of the court. (5) Every person shall have the right to petition the court for a Writ of Habeas Corpus. Where the arresting officer fails to bring him before the court of law and provide the reason for their arrest, the court shall accept the petition and order the release of the prisoner.

58. The Respondent State further submits that the claims by the Complainant that there is an “information black out” and that the Eritrean Judiciary lacks independence are unfounded as they are not substantiated by concrete examples indicating that there has been no interference in the actual work of the judges and in the dispensation of justice in the country. With respect to the dismissal of the Chief Justice, the Respondent State argues that in Eritrea the President appoints the Chief Justice and therefore has the power to dismiss him.<sup>10</sup>
59. Article 52 of the Eritrean Constitution provides for the removal and suspension of judges. Sub article 1 provides that a judge may be removed from office before the expiry of his tenure of office by the President *only, acting on the recommendation of the Judicial Service Commission*, pursuant to the provisions of Sub-Article 2 of this Article *for physical or mental incapacity, violation of the law or judicial code of ethics*. Sub article 2 provides that the Judicial Service Commission *shall investigate whether or not a judge should be removed from office on grounds of those enumerated in Sub-Article 1* of this Article. In case the Judicial Service Commission decides that a judge should be removed from office, it shall present its recommendation to the President. And Sub article 3 provides that the President may, on the recommendation of the Judicial Service Commission, suspend from office a judge who is under investigation. The Stae did not indicate whether these procedural safeguards had been followed but simply intimated that the Chief Justice is appointed by the President and can be dismissed by the President
60. In his oral submission during the 35<sup>th</sup> Ordinary Session, the Representative of the Respondent State reiterated that the allegations made by the Complainant were false and unfounded as they had been made without any serious attempts by the Complainants to ascertain the facts before bringing the matter before the African Commission. Furthermore, the Complainants had not submitted themselves to the courts in Eritrea and as such it is the responsibility of the Complainant to find ways and means of utilising the domestic courts prior to bringing the matter before the African Commission. He reminded the African Commission that all conditions of Article 56 must be met in order for a matter to be admitted and if any one of the conditions is not met, the communication must be declared inadmissible.
61. The Representative of the Respondent State informed the African Commission that the incarcerated journalists had been arrested by the police and were being held by executive authorities. However, following

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<sup>10</sup> Article 52 (1) of the Eritrean Constitution.

investigation, an administrative decision was reached to release two of the journalists and that the decision with respect to the remaining incarcerated journalists would be forthcoming.

62. He conceded that the detainees on whose behalf this communication is brought have not been brought before a court of law because of the nature of the criminal justice system in Eritrea. He stated that the criminal justice system in Eritrea does not have the institutional capacity to handle cases expeditiously and as such there is huge backlog of cases in all the courts in the country.
63. The Respondent State further stated that contrary to the claims by the Complainant that they were not able to visit Eritrea in order to assist the victims, everyone who was involved in the matter relating to the detained journalists and the political detainees was invited to Eritrea including the Complainant who chose not to visit the country.

#### **Decision of the African Commission on admissibility**

64. To determine the question of admissibility of this communication, the African Commission will have to answer, among others, the following questions -:
  - who is required under the African Charter to exhaust local remedies – the author of the communication or the victim of the alleged human rights violations?;
  - does the removal of a Chief Justice render domestic remedies unavailable and insufficient?;
  - does the fact that a State has failed to abide by its own laws render domestic remedies “hopeless, impractical and unreasonable?”;
  - does the communication reveal massive and serious violations of human and peoples’ rights?; and
  - does the continuous incommunicado detention of the victims render domestic remedies unavailable, ineffective and inefficient?
65. As regards who is required to exhaust local remedies, the African Charter is clear. It indicates in Article 56(1) that the authors of the communication must indicate their identity even if they claim anonymity. This presupposes that domestic remedies are to be exhausted but by the authors. In the consideration of communications, the African Commission has adopted an *actio popularis* approach where the author of a communication need not know or have any relationship with the victim. This is to enable poor victims of human rights violations on the continent to receive assistance from NGOs and individuals far removed from their locality. All the author needs to do is to comply with the requirements of Article 56. The African



- Commission has thus allowed many communications from authors acting on behalf of victims of human rights violations. Thus, having decided to act on behalf of the victims, it is incumbent on the author of a communication to take concrete steps to comply with the provisions of Article 56 or to show cause why it is impracticable to do so.
66. As regards the removal of the Chief Justice, the Complainant fails to demonstrate sufficiently how this removal prevented them from approaching the domestic remedies or how it rendered such domestic remedies unavailable, ineffective, "hopeless, impractical and unreasonable?" The Independence of the Judiciary is a crucial element of the rule of law. Article 1 of the UN Basic Principles on the Independence of the Judiciary<sup>11</sup> states that "the independence of the Judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of judiciary." Article 11 of the same Principles states that "the term of office of judges, their independence, security ... shall be adequately secured by law." Article 18 provides that "Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties." Article 30 of the International Bar Association (IBA)'s Minimum Standards of Judicial Independence<sup>12</sup> also guarantees that "A Judge shall not be subject to removal unless, by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity, he has shown himself manifestly unfit to hold the position of judge" and Article 1(b) states that "Personal independence means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control." Article 52 (1) of the Eritrean Constitution provides an almost similar provision.
67. The issue however is, does the removal of a Chief Justice in a manner inconsistent with international standards render the judiciary in a State unavailable and ineffective? The Complainant was simply casting doubts about the effectiveness of the domestic remedies. The African Commission is of the view that it is incumbent on the Complainant to take all necessary steps to exhaust, or at least attempt the exhaustion of local remedies. It is not enough for the Complainant to cast aspersion on the ability of the domestic remedies of the State due to isolated incidences. In this regard, the African Commission would like to refer to the decision of

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<sup>11</sup> Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>12</sup> IBA Minimum Standards **Of** Judicial Independence (Adopted 1982)

- the Human Rights Committee in *A v Australia*<sup>13</sup> in which the Committee held that “mere doubts about the effectiveness of local remedies or prospect of financial costs involved did not absolve the author from pursuing such remedies.”<sup>14</sup> The African Commission can therefore not declare the communication admissible based on this argument.
68. As regards the Complainant’s argument that the Government has failed to abide by its own constitutional obligations as provided for in Article 17 of the Eritrean Constitution. The African Commission is of the view that the whole essence why human rights violations occur is because Governments fail to abide by their domestic as well as international obligations. When this happens, individuals whose rights have been, are being or are likely to be violated seize the local courts to invoke their rights in order to compel Governments to abide by these obligations. The Eritrean Constitution provides ample safeguards against persons who are arrested and detained without charge or trial. Apart from sub-articles 1, 3, and 4 of Article 17, sub article 5 of the same article is very instructive. It provides that “every person shall have the right to petition the court for a *Writ of Habeas Corpus*. Where the arresting officer fails to bring him before the court of law and provide the reason for their arrest, the court shall accept the petition and order the release of the prisoner”.
69. In the instant case therefore, the Complainant could, at the very least, have seized the local courts by way of a *writ of habeas corpus* to draw the court’s attention to the constitutional provision they claim the government has breached. Lawyers often seek the release of detainees by filing a petition for a *writ of habeas corpus*. A *writ of habeas corpus* is a judicial mandate to an arresting officer ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. A *habeas corpus* petition is a petition filed with a court by a person who objects to his own or another's detention or imprisonment. The *writ of habeas corpus* has been described as “the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.”<sup>15</sup> It serves as an important check on the manner in which the courts pay respect to constitutional rights.

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<sup>13</sup> Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997).

<sup>14</sup> See also *L Emil Kaaber v Iceland*, Communication No. 674/1995. UN Doc. CCPR/C/58/D/674/1995 (1996). See also *Ati Antoine Randolph v. Togo*, Communication No. 910/2000, UN Doc. CCPR/C/79/D/910/2000 (2003).

<sup>15</sup> *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969).

70. The Complainant in their submissions does acknowledge that they did send a *writ of habeas corpus* to the Minister of Justice. The African Commission is of the view that even though it expected the Minister to advise the Complainant on the proper procedure to follow, the failure to do so does not constitute a breach of the law. The Ministry of Justice is the same arm of Government that has failed to “abide by its own constitutional obligations...” and it is only the courts that can order it to do so. By sending the writ to the Minister of Justice, the Complainant cannot claim they were attempting the exhaustion of domestic remedies as Article 56(5) requires the exhaustion of legal remedies and not administrative remedies.
71. As regards the argument that the communication reveals serious and massive violations of human rights, the African Commission would like to reiterate its earlier decisions in communication Nos. 16/88,<sup>16</sup> 25/89, 47/90, 56/91, 100/93,<sup>17</sup> 27/89, 46/91, 49/91, 99/93<sup>18</sup> that it [...] cannot hold the requirement of exhaustion of local remedies to apply literally in cases where it is impractical or undesirable for the Complainant to seize the domestic courts in respect of each individual complaint. This is the case where there are a large number of victims. Due to the seriousness of the human rights situation and the large number of people involved, such

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<sup>16</sup> Comité Culturel pour la Démocratie au Bénin/ Bénin, 1988. Communication 16/88 concerns the arrest of students, workers and pupils and their detention without trial (some for several months), during which they were tortured and maltreated.

<sup>17</sup> Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah / Zaïre, African Comm. Hum. & Peoples' Rights. Communication No. 25/89, 47/90, 56/91, 100/93 Comm. 25/89 alleges the torture of 15 persons by a Military Unit, on or about 19 January 1989, in Kinsuka near the Zaïre River. On 19 April 1989 when several people protested their treatment, they were detained and held indefinitely. Comm. 47/90, alleges arbitrary arrests, arbitrary detentions, torture, extra-judicial executions, unfair trials, severe restrictions placed on the right to association and peaceful assembly, and suppression of the freedom of the Press. Comm. 56/91 alleges the persecution of the Jehovah's Witnesses, including arbitrary arrests, appropriation of church property, and exclusion from access to education. Comm. 100/93, makes allegations of torture, executions, arrests, detention, unfair trials, restrictions on freedom of association and freedom of the press. It also alleges that public finances were mismanaged; that the failure of the Government to provide basic services was degrading; that there was a shortage of medicines; that the universities and secondary schools had been closed for two years; that freedom of movement was violated; and that ethnic hatred was incited by the official media.

<sup>18</sup> OMCT, Association Internationale des Juristes Démocrates, Commission Internationale des Juristes and Union Interafricaine des droits de l'homme / Rwanda, Communication 27/89, 46/91, 49/91, 99/93. The communications allege the expulsion of Burundi nationals who had been refugees without the opportunity to defend themselves at trial; arbitrary arrests and summary executions; the detention of thousands of people by the armed forces on the basis of ethnic origin; the destruction of Tutsi villages and massacre of Tutsis.

- remedies as might theoretically exist in the domestic courts are as a practical matter unavailable ...”
72. However, as regards the continuous incommunicado detention of the detainees, the African Commission would like to note the State Party’s acknowledgement that the victims are still being held in detention because of the poor state of the criminal justice system in the country. With respect to this argument by the State Party, the African Commission notes that whenever there is a crime that can be investigated and prosecuted by the State on its own initiative, the State has the obligation to move the criminal process forward to its ultimate conclusion. In such cases, one cannot demand that the Complainants, or the victims or their family members assume the task of exhausting domestic remedies when it is up to the State to investigate the facts and bring the accused persons to court in accordance with both domestic and international fair trial standards.
73. The African Commission would also like to note that the State party has made a general refutation of the claims alleged and has insisted that domestic remedies do exist and that the Complainant did not attempt to exhaust them. The African Commission notes however, that the State party has merely listed *in abstracto* the existence of remedies without relating them to the circumstances of the case, and without showing how they might provide effective redress in the circumstances of the case.<sup>19</sup>
74. In the instant communication therefore, the fact that the Complainant has not sufficiently demonstrated that they have exhausted domestic remedies does not mean such remedies are available, effective and sufficient. The African Commission can infer from the circumstances surrounding the case and determine whether such remedies are in fact available, and if they are, whether they are effective and sufficient.
75. The invocation of the exception to the rule requiring that remedies under domestic law should be exhausted provided for in Article 56(5) must invariably be linked to the determination of possible violations of certain rights enshrined in the African Charter, such as the right to a fair trial enshrined under article 7 of the African Charter.<sup>20</sup> The exception to the

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<sup>19</sup> Albert Womah Mukong vs. Cameroon. Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991 of 10 August 1994.

<sup>20</sup> Inter-American Court of Human Rights, *Case of Velásquez Rodríguez. Preliminary Exceptions*, cit., para. 91. See in this connection also *Judicial Guarantees during States of Emergency* ( Articles 27.2, 25 and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A. Nº 9, para 24.

- rule on the exhaustion of domestic remedies would therefore apply where the domestic situation of the State does not afford due process of law for the protection of the right or rights that have allegedly been violated. In the present communication, this seems to be the case.
76. Holding the victims incommunicado for over three years demonstrates a *prima facie* violation of due process of the law and in particular, Article 7 of the African Charter. By not taking any action to remedy the situation more than twelve months after the African Commission had been seized of the communication goes to demonstrate that the State has equally failed to demonstrate that domestic remedies are available and effective.
77. Another rationale for the exhaustion requirement is that a government should have notice of a human rights violation in order to have the opportunity to remedy such violation, before being called to account by an international tribunal. The African Commission is of the view that the State has had ample time and notice of the alleged violation to at least charge the detainees and grant them access to legal representation. However, if it is shown that the State has had ample notice and time within which to remedy the situation, even if not within the context of the domestic remedies of the State, as is the case with the present communication, the State may still be said to have been properly inform and is expected to have taken appropriate steps to remedy the violation alleged. The fact that the State of Eritrea has not taken any action means that domestic remedies are either not available or if they are, not effective or sufficient to redress the violations alleged.
78. The African Commission would like in this regard to refer to its decision in Communication 18/88<sup>21</sup> which concerned the detention and torture of the Complainant for more than seven years without charge or trial, the denial of food for long periods, the blocking of his bank account, and the use of his money without his permission. The African Commission held that in such circumstances it is clear that the State has had ample notice of the violations and should have taken steps to remedy them. The African Commission would also like to restate the position taken in communication **250/2002**.<sup>22</sup> In that communication, the African Commission was of the view that the situation as presented by the Respondent State does not afford due process of law for protection of the rights that have been alleged to be violated; the detainees have been denied access to the remedies under domestic law and have thus been prevented from

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<sup>21</sup> El Hadj Boubacar Diawara/Benin, July 1988.

<sup>22</sup> Liesbeth Zegveld and Mussie Ephrem/Eritrea, (2003).

- exhausting them. Furthermore, there has been unwarranted delay in bringing these detainees to justice.
79. The situation as presented by the Respondent State does not afford due process of law for protection of the rights that have been alleged to be violated; the detainees have been denied access to the remedies under domestic law and have thus been prevented from exhausting them. Furthermore, there has been unwarranted delay in bringing these detainees to justice.
80. In the *Albert Mukong case*, the Human Rights Committee held that “a State party to the Covenant, regardless of its level of development, must meet certain minimum standards *regarding conditions of detention*”.<sup>23</sup> This reasoning of the Human Rights Committee can also include the fact that a State party to the African Charter regardless of its level of development must meet certain minimum standards *regarding fair trial or due process conditions*”. The Committee concluded that “the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle ... democratic tenets and human rights”.<sup>24</sup>
81. The continuous incommunicado detention of the victims without charge bars them from any legal representation and makes it difficult for the Complainant or any person interested in assisting them from attempting whatever domestic remedies might be available. To leave the detainees to languish in detention forever because of the inadequacy of the State’s criminal justice system or because there is no one to access the domestic courts on their behalf would be grossly unjust, if not unfair.
82. In the absence of any concrete steps on the part of the State to bring the victims to court, or to allow them access to their legal representatives three years after their arrest and detention, and more than one year after being seized of the matter, the African Commission is persuaded to conclude that domestic remedies, even if available, are not effective and/or sufficient.

For this reason, the African Commission declares the communication admissible.

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<sup>23</sup> Communication No. 458/1991, para 9.3.

<sup>24</sup> *Albert Mukong supra*.

**Decision of the African Commission on request by the Respondent State to dismiss the communication**

83. The present communication was declared admissible at the 36<sup>th</sup> Ordinary Session of the African Commission's held in Dakar, Senegal from 23<sup>rd</sup> November to 7<sup>th</sup> December 2004. In response to the African Commission's request for written submissions on the merits, the Respondent State in a Note Verbale dated 27<sup>th</sup> January 2005 wrote requesting the African Commission to dismiss the communication. The Respondent State's grounds for such dismissal were that -:
- One of the 18 journalists in this matter had been the subject of another communication – communication 250/2002 – Zegveld & Ephrem/Eritrea which the African Commission had already disposed of. The Respondent State therefore argued that dealing with that person in this matter constitutes double jeopardy
  - The Complainant had appeared before the African Commission only once despite repeated requests to 'face and question the accuser – a legal right which was denied them'...by the African Commission.
84. In dealing with the Respondent State's request that the communication be dismissed the African Commission noted that Rule 118(2) of the African Commission's Rules of Procedure stipulate that:  
If the Commission has declared a communication inadmissible under the Charter, it may reconsider this decision at a later date if it receives a request for reconsideration...
85. No provision is made therein for the African Commission to dismiss a matter after having declared it admissible. In any case, the victims who are the subject of this communication are still being held in incommunicado detention by the Respondent State and are accordingly unable to access domestic remedies whether on their own or through legal representatives. It is for these reasons that the African Commission has decided not to dismiss the communication and will therefore consider it on the merits.

**Decision on the merits**

86. The African Commission will not deal with any issue already decided upon in Communication 250/2002.

87. Eritrea submits that the acts alleged were undertaken “against a backdrop of war when the very existence of the nation was threatened” and that, as a result, the Government was “duty bound to take necessary precautionary measures (and even suspend certain rights).” However, unlike other human rights instruments,<sup>25</sup> and as emphasised in Communication 74/92,<sup>26</sup> the African Charter does not allow States Parties to derogate from it in times of war or other emergency. The existence of war, international or civil, or other emergency situation within the territory of a state party cannot therefore be used to justify violation of any of the rights set out in the Charter, and Eritrea’s actions must be judged according to the Charter norms, regardless of any turmoil within the State at the time.
88. The complainant alleges, and Eritrea does not deny, that 11 political dissidents and 18 journalists have been detained, incommunicado and without trial, since September 2001. It is also alleged by the complainant, and admitted by the respondent state, that private newspapers were banned from September 2001. Although Eritrea maintains that this ban was temporary, it is not clear from the information available whether or when the ban was lifted.
89. The basic facts are not therefore in dispute. However, the versions of the parties vary as regards the motivation for the detention of the individuals concerned and the ban on the press. According to the complainant the arrests were due to the detainees having expressed their opinions and spoken out against the Government; the respondent state on the other hand claims that the 11 political opponents were arrested for breaching Articles 259 (attacks on the independence of the state), 260 (impairment of the defence powers of the state) and 261 (high treason) of the Transitional Penal Code of Eritrea. As regards the ban on the press and the detention of the 18 journalists, the respondent state claims that these occurred because, “the stated newspapers and the leading editors were recruited into the illegal network organised for the purpose of ousting the Government through illegal and unconstitutional means.”

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<sup>25</sup> For example, the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

<sup>26</sup> Commission Nationale des Droits de l’Homme et des Libertés v. Chad, paragraph 21: “The African Charter, unlike other human rights instruments, does not allow for states parties to derogate from their treaty obligations during emergency situations. Thus, even a civil war in Chad cannot be used as an excuse by the State violating or permitting violations of rights in the African Charter.”



90. Eritrea's argument, then, is that its actions were justified by the circumstances prevailing within its territory during the relevant period, and permissible under its domestic law. Reference is made to Articles 6 and 9 of the African Charter, the relevant sections of which provide respectively that:
- No-one may be deprived of his freedom *except for reasons and conditions previously laid down by law*; and
  - Every individual shall have the right to express and disseminate his opinions *within the law*. [Emphasis added]
91. Such provisions of the Charter are sometimes referred to as "claw-back clauses," because if "law" is interpreted to mean any domestic law regardless of its effect, States Parties to the Charter would be able to negate the rights conferred upon individuals by the Charter.
92. However, the Commission's jurisprudence has interpreted the so-called claw-back clauses as constituting a reference to international law, meaning that only restrictions on rights which are consistent with the Charter and with States Parties' international obligations should be enacted by the relevant national authorities.<sup>27</sup> The lawfulness of Eritrea's actions must therefore be considered against the Charter and other norms of international law, rather than by reference to its own domestic laws alone.<sup>28</sup>
93. The arrest and detention of the journalists and political opponents is claimed by the complainant to breach Articles 6 and 7 of the Charter. Article 6 provides that "no-one shall be arbitrarily arrested or detained." The concept of arbitrary detention is one which both the Commission and other international human rights bodies have previously expounded upon. In the *Albert Mukong Case*,<sup>29</sup> the United Nations Human Rights Committee stated that,

Arbitrariness' is not to be equated with 'against the law' but must be interpreted more broadly to include elements of inappropriateness,

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<sup>27</sup> See for example Communication 101/93 – Civil Liberties Organisation in respect of the Nigerian Bar v. Nigeria, paragraph 16, and Communication 212/98 – Amnesty International v. Zambia, paragraph 50.

<sup>28</sup> See Communications 147/95 and 149/96 – Sir Dawda K Jawara v. The Gambia, paragraphs 57-59.

<sup>29</sup> Human Rights Committee, Communication 458/1991 *Albert Mukong v. Cameroon*, 10 August 1994, paragraph 9.8.

injustice, lack of predictability and due process of law...remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances...remand in custody must also be necessary in all the circumstances.

From this case it can be inferred that an arrest or detention may be legal according to the letter of domestic law, but arbitrary and therefore illegal by reason of its inappropriate, unjust or unpredictable nature.

94. The Eritrean detainees have not been charged, or brought to trial. This in itself constitutes arbitrariness, as the Commission has previously stated. In Communication 102/93,<sup>30</sup> the Commission held that, “where individuals have been detained without charges being brought...this constitutes an arbitrary deprivation of their liberty and thus violates Article 6.”
95. Furthermore, the length of time for which the detainees have been kept in custody must be considered. Both parties agreed that the arrests occurred in September 2001. The journalists and political opponents have therefore been detained, without charge or trial, for a period of over 5 years.
96. Article 7(1)(d) of the Charter provides that all individuals shall have, “the right to be tried within a reasonable time by an impartial court or tribunal.” The Commission has expanded upon this provision in its Resolution on the Right to Recourse and Fair Trial, which states that, “Persons arrested or detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or be released.”<sup>31</sup>
97. The question of what is reasonable cannot be expressed in terms of a blanket time limit which will apply in all cases, but rather must depend on the circumstances. This approach has also been espoused by the European Court of Human Rights, which has held that the reasonableness of the length of proceedings is to be assessed in accordance with all the circumstances of a case. The European Court will look in particular at the complexity of the case, and the conduct of the applicant and of the relevant authorities.<sup>32</sup>

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<sup>30</sup> Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, paragraph 55.

<sup>31</sup> ACHPR /Res.4(XI)92: Resolution on the Right to Recourse and Fair Trial (1992), paragraph 2(c).

<sup>32</sup> See Decision of the Human Rights Committee, *Buccholz v. Germany*, 7759/77 [1981] ECHR 2 (6 May 1981).

98. Eritrea contends that the delay in bringing these particular detainees to trial is due to the complexity and gravity of the offences committed, and to the “precarious war situation” existing within the state. However, as already stated, it must be borne in mind that States Parties cannot derogate from the Charter in times of war or any other emergency situation. Even if it is assumed that the restriction placed by the Charter on the ability to derogate goes against international principles, there are certain rights such as the right to life, the right to a fair trial, and the right to freedom from torture and cruel, inhuman and degrading treatment, that cannot be derogated from for any reason, in whatever circumstances.
99. The existence of war in Eritrea cannot therefore be used to justify excessive delay in bringing the detainees to trial. Furthermore, a backlog of cases awaiting trial cannot excuse unreasonable delays, as the European Court of Human Rights has held.<sup>33</sup> Further, in the case of *Albert Mukong*, referred to above, the Human Rights Committee stated that States Parties to the ICCPR must observe certain minimum standards as regards the condition of detention, regardless of their state of development. The Commission considers that the same principle applies to the length of detention before trial, and that states parties to the Charter cannot rely on the political situation existing within their territory or a large number of cases pending before the courts to justify excessive delay.
100. Moreover, the detainees are being held incommunicado, and have never been brought before a judge to face charges. In these circumstances, the Commission finds that Eritrea has breached the requirement of trial within a reasonable time set out in Article 7(1)(d). This is consonant with its previous decisions, such as Communication 102/93<sup>34</sup>, in which 3 years detention was found to be unacceptable, and Communication 103/93<sup>35</sup>, in which the Commission stated that 7 years detention without trial, “clearly violates the ‘reasonable time’ standard stipulated in the Charter.”
100. The fact that the detainees are being held incommunicado also merits further consideration in terms of international human rights law. The United Nations Human Rights Committee has directed<sup>36</sup> that states should make provisions against incommunicado detention, which can amount to a

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<sup>33</sup> Union Alimentaria Sanders SA, 7 July 1989, Series A Number 157.

<sup>34</sup> Ibid.

<sup>35</sup> Alhassan Abubakar v. Ghana, paragraph 12.

<sup>36</sup> General Comment No. 20, 44<sup>th</sup> Session, 1992.

- violation of Article 7 (torture and cruel treatment and punishment) of the International Covenant of Civil and Political Rights, to which Eritrea has acceded. Furthermore, the Commission itself has stated that, “holding an individual without permitting him or her to have contact with his or her family, and refusing to inform the family if and where the individual is being held, is inhuman treatment of both the detainee and the family concerned.”<sup>37</sup>
101. Eritrea has not denied the complainant’s contention that the detainees are being held incommunicado, with no access to legal representation or contact with their families, and as the Commission has enunciated in many of its previous decisions, where allegations are not disputed by the state involved, the Commission may take the facts as provided by the complainant as a given.<sup>38</sup> Nor does the political situation described by Eritrea excuse its actions, as Article 5 permits no restrictions or limitations on the right to be free from torture and cruel, inhuman or degrading punishment or treatment. The Commission thus finds that Eritrea has violated Article 5, by holding the journalists and political dissidents incommunicado without allowing them access to their families.
102. In keeping with its earlier decisions on similar cases,<sup>39</sup> the Commission also finds that such treatment amounts to a breach of Article 18, as it constitutes violation of the rights of both the detainees and their families to protection of family life. Finally, the Commission holds that there has been a violation of Article 7(1)(c), since the detainees have been allowed no access to legal representation, contrary to the right to be defended by counsel which is protected by that provision of the Charter.
103. The Commission turns its attention now to the question of whether there has been a violation of the detainees’ rights to express and disseminate their opinions, as alleged by the complainant. The events which give rise to this allegation are the ban by the Eritrean government of the private press, and the arrest and detention of the 18 journalists. The respondent State argues that these actions were justified by the activities of the journalists and the newspapers in question, which it considered were aimed at overthrowing the government. Further, the Eritrean government

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<sup>37</sup> Communications 48/90, 50/91, 52/91 and 89/93, Amnesty International, Comite Loosli Bachelard, Lawyers Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan.

<sup>38</sup> Communication 74/92 – Commission Nationale des Droits de l’Homme et des Libertés v. Chad.

<sup>39</sup> See for example Communications 143/95 and 150/96 – Constitutional Rights Project and Civil Liberties Organisation v. Nigeria.

- claims that its actions did not constitute a breach of the Charter, as Article 9 only protects the expression and dissemination of opinions within the law.
104. As explained above, permitting States Parties to construe Charter provisions so that they could be limited or even negated by domestic laws would render the Charter meaningless. Any law enacted by the Eritrean Government which permits a wholesale ban on the press and the imprisonment of those whose views contradict those of the Government's is contrary to both the spirit and the purpose of Article 9. The Commission reiterates its own statement in Communications 105/93, 128/94, 130/94 and 152/96.<sup>40</sup> According to Article 9(2) of the Charter, dissemination of opinions may be restricted by law. This does not mean that national law can set aside the right to express and disseminate one's opinions; this would make the protection of the right to express one's opinions ineffective. To allow national law to have precedence over the international law of the Charter would defeat the purpose of the rights and freedoms enshrined in the Charter. International human rights standards must always prevail over contradictory national law. Any limitation on the rights of the Charter must be in conformity with the provisions of the Charter.
  105. By applying norms of international human rights law, the Commission has previously found, and finds in this case, that the imprisonment of journalists "deprives not only the journalists of their rights to freely express and disseminate their opinions, but also the public, of the right to information. This action is a breach of the provisions of Article 9 of the Charter."<sup>41</sup>
  106. Moreover, banning the entire private press on the grounds that it constitutes a threat to the incumbent government is a violation of the right to freedom of expression, and is the type of action that Article 9 is intended to proscribe. A free press is one of the tenets of a democratic society, and a valuable check on potential excesses by government.
  107. No political situation justifies the wholesale violation of human rights; indeed general restrictions on rights such as the right to free expression and to freedom from arbitrary arrest and detention serve only to undermine public confidence in the rule of law and will often increase, rather than prevent, agitation within a state. The Commission draws on the findings of the UN Human Rights Committee:

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<sup>40</sup> Media Rights Agenda, Constitutional Rights Project, Media Rights Agenda and Constitutional Rights Project v. Nigeria.

<sup>41</sup> Communications 147/95 and 149/96 – Sir Dawda Jawara v. the Gambia.

The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights.<sup>42</sup>

**For the reasons given above the Commission:**

**Holds** a violation of Articles 1, 5, 6, 7(1), 9 and 18 by the State of Eritrea;

**Urges** the government of Eritrea to release or to bring to a speedy and fair trial the 18 journalists detained since September 2001, and to lift the ban on the press;

**Recommends** that the detainees be granted immediate access to their families and legal representatives; and

**Recommends** that the government of Eritrea takes appropriate measures to ensure payment of compensation to the detainees.

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<sup>42</sup> Mukong case, supra note 2, paragraph 9.7.

## **ANNEXURE III**

**THE AFRICAN COMMISSION'S REPORT OF THE FACT-FINDING MISSION TO THE REPUBLIC OF THE SUDAN UNDERTAKEN FROM 08 – 18 JULY 2004.**

**REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS'  
FACT-FINDING MISSION TO THE REPUBLIC OF SUDAN IN THE DARFUR REGION**

**(08 TO 18 JULY 2004)**

**I- INTRODUCTION.**

1. The African Commission on Human and Peoples' Rights was established in 1987, by the Organisation of African Unity - OAU - (currently the African Union, AU), upon the adoption of the 1981 African Charter on Human and Peoples' Rights, with the mandate of ensuring the promotion and protection of human and peoples' rights on the African continent. Within the framework of its mandate and in order to maintain close contacts with State Parties and gather information about the prevailing human rights situation on the ground, the African Commission dispatches regular promotional and protection missions, as situations demand, to the State Parties to the African Charter on Human and Peoples' Rights.
2. The African Commission has followed closely, events in Sudan, especially the humanitarian and human rights situation in the Darfur region. The African Commission has been receiving reports from human rights NGOs, specialized agencies of the United Nations and other reliable sources, drawing its attention to the continuous deterioration of the human rights situation in the Darfur region, mainly due to armed conflict which has persisted for more than a year, involving the armed forces of the government of Sudan, armed rebel groups and armed tribal militias.
3. The reports highlighted the killing of civilians, particularly men from the Fur, Marsalit, and Zaggawa ethnic groups, who are indigenous to the Darfur region. Attacks by government forces involving ground forces and bombing raids, and in certain cases, allegations of coordinated government forces' attacks, involving armed Arab militias, have led to the destruction of hundreds of villages, looting crops, livestock and other goods, reportedly forcing hundreds of thousands of often impoverished, starving and terrorized villagers, to flee to other parts of Darfur, or outside the Sudan, in particular to the Republic of Chad.
4. International specialized agencies and humanitarian non governmental organizations, wishing to provide humanitarian aid to hundreds of thousands of displaced persons were, due to a number of reasons, particularly during the period prior to the signing of the N'djamena Humanitarian Ceasefire Agreement on the 8th April, 2004, reported to have faced numerous constraints, to deliver and distribute emergency relief supplies, whilst famine or epidemics were on the increase or about to start in the region, in view of the onset of the rainy season. The situation however improved when the government of Sudan lifted travel and work restrictions, which it had imposed against the agencies.



5. The tens of thousands of Sudanese refugees currently in refugee camps in Chad are also said to be living in extremely difficult conditions, with very little food, water or shelter.
6. Under these circumstances, the African Commission on Human and Peoples' Rights is obliged to investigate and establish the human rights situation affecting the people of Darfur, as a result of the conflict.
7. Article 45(2) of the African Charter on Human and Peoples' Rights mandates the African Commission to ensure the protection of human rights in the State Parties to the Charter and in accordance with the provisions stipulated by the said Charter.
8. The Republic of Sudan ratified the African Charter on 18/02/1986 and is consequently a State Party to the said Charter.
9. Cognizant of the information briefly outlined above and desirous of the need to fulfil the mandate under the African Charter and its Rules of Procedure, and in accordance with its practices<sup>43</sup>, the African Commission on Human and Peoples' Rights, at its 35<sup>th</sup> Ordinary Session<sup>44</sup>, adopted a resolution to send a fact-finding mission to the Republic of Sudan, especially to the Darfur region, with a view to establishing the facts regarding allegations of serious and massive human rights violations in the said region.
10. The Fact-finding mission to Sudan was undertaken with the full approval of the Republic of Sudan, whose consent was officially sought and obtained by the Secretariat of the African Commission before dispatching the mission.
11. The objectives of the mission to Sudan were:
  - To discuss with the authorities in Sudan the human rights situation in the Darfur region;
  - To consult and discuss with all other relevant stakeholders (United Nations' agencies, national and international humanitarian NGOs, etc.) the human rights situation in the Darfur region;
  - To hear all actors, stakeholders and victims, capable of providing the mission with evidence to throw light on the human rights situation in the

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<sup>43</sup> Within the framework of its protection mandate, the African Commission has already conducted fact-finding missions in some State Parties, notably Senegal (1-7 June 1996); Mauritania (19-27 June 1996); Sudan (1-07 December 1996); Nigeria (7-14 March 1997) and Zimbabwe (24-28 June 2002).

<sup>44</sup> The 35<sup>th</sup> Ordinary Session of the African Commission was held from 21<sup>st</sup> May to 4<sup>th</sup> June 2004 in Banjul, the Gambia.

Darfur, particularly concerning allegations of serious and massive human rights violations;

- To verify allegations/facts relating to the human rights situation in the Darfur and consider with all actors, possible medium and long term solutions for arresting the situation;
- To arrange with the authorities in Sudan and, eventually the Embassy of Chad in Khartoum and officials of relevant specialized agencies of the United Nations, visits to camps of displaced persons within the Darfur region, and refugee camps located in Chad, and gather from displaced persons and refugees evidence on their situation as well as information on their needs.

12. The delegation of the African Commission on Human and Peoples' Rights mission to Sudan comprised the following:

- H.E Mrs. Salamata Sawadogo, Chairperson of the African Commission: Head of mission;
- Commissioner Angela Melo, Special Rapporteur on Women's Rights in Africa;
- Commissioner Bahame Tom Mukirya Nyanduga: Special Rapporteur on Refugees, Internally Displaced Persons, in Africa;
- Commissioner Mohammed Abdellahi Ould Babana: Commissioner in charge of promotional activities in the Republic of Sudan; and
- Mr. Robert Ayéda Kotchani, Legal officer at the Secretariat of the African Commission, who accompanied and assisted the mission.

13. The mission of the African Commission on Human and Peoples' Rights to Sudan took place from 8th to 18th July 2004. An earlier mission, which was planned to take place in early March 2004, could not proceed due to communication problems resulting in the late receipt of the request for authorization sent by the Secretariat of the African Commission to the authorities in Sudan.

14. Due to logistical, mainly transport, and security constraints, the mission was unable to visit all the places it intended to. The mission was, for instance, unable to visit the Sudanese refugee camps situated in Chad, because it was logistically not possible to cross the border from El Geneina into Abeche, Chad, without the prior authorisation of the Chadian government. The mission was unable to meet members of opposition political parties in Sudan. Several attempts to meet the opposition parties through both official and informal contacts did not yield the expected results.

15. Given the urgency of some issues observed by the mission, particularly: insecurity, sexual and gender based violence, problems of access to IDPs in the rural areas, involuntary repatriation of IDPs, the need to grant access to human

rights monitors to the Darfur region and the arbitrary detention of members of the political opposition and human rights activists opposed to the government handling of the Darfur conflict, the Chairperson of the Commission sent a letter to His Excellency Mr. Omar El Bashir, President of the Republic of Sudan, and copied to His Excellency Alpha Oumar Konaré, Chairman of the African Union Commission on 27<sup>th</sup> July 2004, requesting the adoption of urgent provisional measures regarding the issues outlined above.

16. After a brief introduction on the origin of the crisis in Sudan, this report outlines the essence of consultations held with different political and administrative leaders, representatives or members of national and international organizations operating in Sudan. The report then makes analytical observations on the various issues, including the mission's visits to camps for displaced persons and recommendations.

## II- A BRIEF INTRODUCTION TO THE CRISIS IN DARFUR.

17. Sudan is situated in the north-east of Africa and covers a surface area of 2,505,810 km<sup>2</sup>. It is the largest State on the African continent. It stretches about 2,250 km from north to south and about 1,950 km from east to west. Sudan has a population of over 30 million inhabitants and is divided into 26 states, which form a federal system of government. The southern part of the country, which has recently come out of a long civil war, has important petroleum reserves.
18. With natural borders extending over 700 km along the red sea, Sudan has borders with Kenya, Uganda and the Democratic Republic of Congo on the south; Central African Republic, Chad and Libya on the west, Eritrea and Ethiopia on the east and Egypt on the north.
19. Khartoum, the capital comprises Khartoum North, Khartoum and Omdurman, with an estimated population of about 6 million inhabitants. There are other major towns such as Port Sudan (the country's only major port situated on the Red Sea), Wad Medani (administrative centre of the most fertile region in the country), Gezira, Juba (capital of Equatoria region and the only major town in the south), El Obeid, (capital of Kordofan region) and El Fasher (capital of North Darfur on the western part of the country). Other major towns in the Darfur region are, Geneina, (capital of West Darfur), and Nyala, (capital of South Darfur).
20. The Darfur region is situated on the western part of Sudan. The region is semi-desert covering an area of about 500,000 km<sup>2</sup> and comprises the three States of Sudan: West Darfur, North Darfur and South Darfur. Darfur had a population of about 5 millions inhabitants composed of mainly the Massalit, Zaggawa, Fur, Tama, Masharia, Gemer of the African tribes, the majority of whom are farmers. There are also Arabs who are mainly pastoralists.

21. Immediately after attaining its independence (in 1956), Sudan became a victim of a civil war between the North and the South, which ravaged the country. An interim peaceful period prevailed from 1972 to 1983. The civil war wrecked the Sudanese economy, which is now classified as one of the poorest countries in the world. Following the imposition of Sharia law by the Sudan government, and the adoption of Islamist policies, in the early 1980s, a civil war broke out once again between the Government of Sudan and the SPLM/A of Dr. John Garang representing the African and Christian tribes of Southern Sudan.
22. The civil war in the south of Sudan ended effectively following the IGAD sponsored talks and the signing of the Naivasha Peace Agreement in Kenya, in May, 2004 between the SPLM/A and the Government of Sudan.
23. While the Machakos and Naivasha peace process was gaining momentum for more than a year, commencing February 2003, an armed conflict broke out in the Darfur region, involving armed rebel groups which attacked government garrisons and security infrastructures, which included police stations, military aircrafts and other government properties. Official account and reports received by the Commission, corroborated by NGOs, indicate that small armed groups existed in the region in the past. However their influence on the frequent communal conflicts between pastoralist livestock keepers, and farmers was limited and, were often resolved through traditional mediation.
24. The present situation which is characterized by an all out civil war between the Government and the two rebel movements operating in the Darfur region, namely the Sudanese Liberation Movement (SLM) and Justice and Equality Movement (JEM), has seen the escalation of the conflict through the involvement of heavy military hardware, regular and indiscriminate bombing by the Sudanese air force helicopter gunships and Antonov planes, and the rampant abuses, specified below, committed by the *Janjawid* militia.
25. The rebel movements claim to be fighting against the Khartoum Government because of political and economic marginalisation of the Darfur region, and to defend the marginalized black population against attacks by Arab militia commonly known as the *Janjawid*. The government on the other hand says that it is fighting a rebellion, and it has a responsibility to re establish law and order in the Darfur region. This conflict has resulted in the killing of an estimated 30,000 to 50,000 civilians. Hundreds of villages have been destroyed, crops, livestock and other goods have been looted, forcing about 1,200,000 people to move to internal camps for displaced people within Darfur and about 150,000 refugees to flee to Chad.
26. Allegations of massive human rights violation by *Janjawid* militia, apparently the only force, which fought the rebels, when the violence broke out in early 2003 have been rampant. The *Janjawid*, were allegedly recruited among Sudanese tribes claiming to be of "arabic" origin. According to Roland Marchal, Researcher

for studies and international research (CERI), an expert on the Horn of Africa, using such types of armed groups "*dates back to the first Ottoman colonization in the XIXth century. The British were also said to have resorted to the same practice to destroy the Darfur sultanate in 1915. This practice resurfaced in 1991, when a rebel leader in Southern Sudan attempted to take control of the Darfur.*"

27. Specialized agencies and NGOs seeking to channel humanitarian assistance to the affected people are, for many reasons, said to be facing enormous difficulties in doing so whilst famine and epidemic are on the increase in the region and that refugees and displaced persons are reportedly living in extremely difficult conditions with the imminent arrival of the rainy season: little food, difficult access to drinking water, makeshift shelter, cold weather etc.
28. When the government of Sudan officially announced the lifting of the travel, visa and work permit restrictions, international humanitarian organizations started organizing, in relatively safe conditions, relief for the affected people. But the situation is far from normal in the region as fighting continues in spite of the on-going peace negotiations under the auspices of the African Union and international community.

### **III- ORGANISATION OF THE MISSION.**

29. At the start of its mission the African Commission's mission met Dr. Abdelmonem Osman Taha, the Rapporteur of the Advisory Council for Human Rights, the organisation designated by the Government of Sudan to coordinate the mission's programme. The mission then met H.E Ali Mohammed Osman Yassin, Minister of Justice, H.E. Najeep Elkhair the State Minister of Foreign Affairs of Sudan, Honourable Judge Abdel Diem Zumrawi, the Under Secretary, Ministry of Justice, as well as senior civil servants and representatives of national and international humanitarian organizations in Khartoum. The mission then visited the Darfur region where it was able to visit camps for displaced persons and hold discussions with political and administrative heads, humanitarian organizations operating on the ground and IDPs.
30. Upon its return to Khartoum, the mission held meetings with various Sudanese political and administrative leaders including, H.E Gen. Abdel Rahim Mohammed Hussein, the Minister of Interior, Hon Mubark Al Fadii Al Mahadi, Assistant to the President, Hon Dafalla El Haj Yousif, (former Chief Justice), Head of the National Commission of Inquiry on the Human Rights Abuses in the Darfur region, and officials of national and international humanitarian organizations.
31. While in Khartoum, the mission visited the African Union Mission in Sudan, and held discussions with the Administrative Officer for AUMS with regard to transportation logistics to and from, and within Darfur. The Government of Sudan in cooperation with the WFP had arranged flight schedules, which the mission utilised to go to El Fasher. Once the mission got into El Fasher, the daunting task

of transportation within Darfur became a major problem. However through the coordination between the AUMS in Khartoum, and the Chairman of the African Union Ceasefire Commission (CFC), in El Fasher, Brigadier General Okonkwo, the CFC provided an aircraft which enabled the Mission to visit the three Darfur states and back to Khartoum.

32. The CFC also facilitated with ground transport when the mission visited an IDP camp in Tawila, about one and half hour drive outside El Fasher, and Nyala. Otherwise, ground transport was facilitated by the Sudanese authorities.

**A - Meetings and discussions with government officials.**

33. Upon arrival in Darfur, the mission held discussions with the three Wallis (Governors) of North, West and South Darfur, who were accompanied by various state officials. The mission also met officials of the Office of the Coordinator for Humanitarian Affairs (OCHA) and a number of humanitarian agencies, which provided the mission with information on the Darfur crisis. A number of issues concerning the conflict were raised.

**a) Origins of the conflict.**

34. Senior government Ministers, state and government officials identified different causes of the conflict, and in particular gave the historical context of the conflict arising as a result of natural factors, national and sub-regional geopolitical conflicts, which had affected the Sudan for much of its post colonial history.
- the drought and desertification problem which began in the 1970s affecting the Sahelian countries had worsened the economic situation in the Darfur region in recent years. This situation has led to massive migration of livestock owners towards greener pastures in the south of the Darfur region, which is inhabited by farming tribes. The cyclical movement of the Arabic pastoralist due to shortage of pasture and water, and the traditional divide between these nomadic tribes and tribes of African origin, who are generally sedentary farmers have been at the core of communal conflicts which previously involved loss of life, cattle and stock theft and loss of property at a low scale compared to the current situation,
  - a longstanding civil war in southern Sudan which has raged for over 20 years, and wars between and within neighbouring states (Chad, The Central Africa Republic, Ethiopia, Libya - Chad etc.) have encouraged the massive movement of all kinds of arms in the Darfur region and entrenched a culture of carrying firearms which already existed among the people. Furthermore, many irregular foreign armed groups were said to have used Darfur's vast region as their bases, particularly during the Chadian civil war. Chad and Sudan have similar tribes across their common border,

- furthermore, armed militia groups have, for the past years been intermittently formed the Darfur region to safeguard the interest of different tribes. To underline the culture of war and open possession and carrying of weapons, these groups have assumed such names as the *Pashtuns*, *the Tora bora*, *Peshmerga*, etc. In fact, 77% of persons aged 17 years and above living in the Darfur region possess a firearm. The very low level of education in the Darfur region and generalized poverty among the population, due to the region's enduring poor economic and social development performance indicators also represent key factors to be taken into consideration for a better understanding of the crisis affecting in the region, thereby making these youth to be easily enlisted by the armed groups,
- more recently, since 2002, political tensions within the ruling party and between the Government and opposition parties led to the withdrawal of a number of politicians from the Darfur region and other parts of Sudan sympathetic to the Darfur conflict from the ruling party (the National Congress Party) because of their opposition to the government handling of the Darfur crisis, in support of the armed rebel movements, which were fighting against the Government in Khartoum. The Sudan Liberation Movement (SLM) and the Justice and Equality Movement (JEM) were formed to defend interests of the people of Darfur, who claim to be marginalised by the central government.
- the rebellion started in early 2003 when rebels attacked police and military installations, which symbolised the Government's presence in the Darfur region. For a period of nine months the government had not mobilised to defend their positions. According to government ministers, at the beginning of the conflict the rebels killed about 100 military personnel, 64 police officers, and lost 6 military helicopters,
- as the conflict escalated, more than 80 police stations throughout the region were destroyed, leaving the people without adequate police protection. The government authorities saw their position weakened and overtaken. According to government ministers, the vacuum left by this situation allowed the pastoralist tribes to organise their own militia, the *Janjawids* to defend themselves against the rebels. At that point the *Janjawids* militia served the same military objectives, as that of the government.

**b) Consequences of the conflict.**

35. According to the Government:

- the number of displaced persons caused by the conflict in Darfur was estimated at about 1 million, who were split up among fifty or so camps identified in the Darfur region. The government has embarked on a repatriation programme, whereby it is « encouraging » internally displaced persons to go back to their villages.

- number of refugees: the conflict in Darfur has resulted in a refugee population estimated at close to 200,000. These refugees are living in camps situated in Chad, across its common border with Sudan. The government informed the mission that 100,000 refugees had voluntarily repatriated back to Sudan, information which the mission was unable to verify,
- serious and massive human rights violations: the conflict in Darfur has occasioned human rights violations: murders, rape, destruction, arson and plundering of villages. The government denied that rape had been committed, and stated that it had asked victims to report such cases to police stations. Government further stated that the victims could not identify the alleged offenders, therefore the rape allegations were not verifiable. The Government denied having deployed its military aircrafts and helicopters to attack villages indiscriminately, to have recruited or armed the *Janjawid* militia, or even to have coordinated military attacks with the said *Janjawid* militia,
- the government stated that genocide or ethnic cleansing were not committed in the Darfur, even though serious human rights violations might have been committed in the region, just like any other place in a situation of war,
- the government stated that the security situation had improved considerably compared to the period prior to the signing of the N'djamena Humanitarian Ceasefire Agreement, and due to the deployment of police. By July 2004, the government stated that it had deployed 3912 out of 6000 policemen, and was planning to rebuild the 89 police stations destroyed by the rebels, as part of government repatriation policy.

36. When asked to explain the problem concerning sexual and gender based violence, the government stated that it could not verify victims' allegations of rape by the *Janjawids*. The humanitarian agencies personnel however stated that they were receiving reports of rape from women, when they report at health centres for treatment.

37. Government ministers and officials explained to the mission that in the past when inter ethnic conflicts occurred in the Darfur, they were generally resolved by the government through the formation of traditional tribal Councils and Commissions of reconciliation. The Government ensured that damages were paid to victims and that the protagonists undertook to peacefully settle any future disputes. During the current crisis the Government has undertaken a number of measures to resolve the crisis. These include :

- The establishment of a Commission of Inquiry responsible for receiving complaints linked to the crisis in Darfur, commissioning of police



investigations, which led to the arrest and prosecution of several suspects including *Janjawids*. Those found guilty were sent to prison where they are currently serving different sentences. Some of the cases are still in court;

- The establishment of a Reconciliation Commission to reconcile communities affected by the crisis ;
- The establishment of Commissions for Humanitarian Affairs in each of the three Darfur states ;
- The establishment of a Ministry responsible for Humanitarian Affairs to specifically manage the crisis ;
- The establishment of three Women Committees composed of eminent Sudanese women lawyers to look into the gender dimension of the crisis and make concrete proposals to the authorities;
- Distribution of food and other humanitarian assistances to displaced communities, with support from the international community;
- The gradual deployment of units from the police and army in the area affected by the crisis in order to restore security;
- Gradual restoration of social and developmental services (as in El Geneina where the local government worked out a poverty alleviation plan), in consultation with tribal leaders, for the return of displaced communities to their villages of origin through the reconstruction of destroyed villages, water supply systems, restoration of security, and health services, etc.

**B- Meetings with national human rights organizations and international humanitarian organizations.**

38. The mission held meetings with officials of a number international and national humanitarian organizations on humanitarian crisis in the Darfur region and best ways of addressing it. The list of organizations met is annexed to this report. They informed the mission about the following:

- during the entire period of this crisis, neither the government of Sudan nor the international community has put in place an effective system of protection for the population in Darfur,
- human rights observers should be deployed in the region in order to protect the civilian population and investigate alleged crimes,
- since 2000, the UN and the international community have received through reliable sources accurate information on the situation in the Darfur, but nothing was done about it then,
- human rights violations in the Darfur region have been committed by all the actors on the ground, which include government forces, the rebel forces, tribal militias, and in particular the *Janjawid* militia,
- some of the humanitarian agencies on the ground stated that the crisis in the Darfur region could not be considered as ethnic cleansing or genocide, even if the human rights violations are a cause of concern,

- the delivery of humanitarian assistance to affected communities and displaced persons has, on the overall, been delayed, but had improved after the government of Sudan lifted restriction to work and travel to the Darfur,
- access to camps for displaced persons is relatively easy in the El Fasher and El Geneina towns ; but humanitarian organizations find it difficult to obtain the necessary authorization to do their work in the camps outside Nyala town,
- human rights violations are still going on in the South Darfur region where the *Janjawid* militia and rebel activity is still very active,
- the government's policy of forced repatriation of displaced persons to their villages of origin, is a problem in the sense that no practical arrangements for their return has been put in place; and lack of consultations with humanitarian agencies.

### **Security situation**

- the organisations stated that the security situation in Darfur remains precarious. The on-going fighting in the region has lead to loss of human life, destruction of villages and property, forcing the population to flee the villages and preventing the free movement of persons and goods. The agencies were continuing to receive displaced person in the various IDP camps throughout the Darfur region. The mission was for instance discouraged from making any visit outside Nyala, in South Darfur, because of recent fighting there,
- when the mission arrived in El Fasher on 11<sup>th</sup> July 2004 at around 12: 15 (local time), the Chairman of the CFC had just arrived from Nyala where he had gone to verify a ceasefire violation in South Darfur. While in El Fasher itself, a ceasefire violation was reported on the same day when rebels attacked a local community, about one hour drive from El Fasher and captured the local emir. We learned upon return to Khartoum, five days later that the emir had been released,
- at the time of the mission, there was scarcity of aviation fuel at the three major airports in the Darfur region. Local transporters had refused to send their trucks from Khartoum, fearing rebel attacks, after a number of vehicles, including trucks carrying fuel were looted in Darfur, allegedly by rebel forces,
- the humanitarian agencies personnel, while acknowledging that the security situation in the IDP camps had improved, they indicated that there was still insecurity in areas surrounding IDP camps, and that women were attacked and raped by *Janjawid* militia whenever they ventured 3 to 5 kilometres radius outside the camps to fetch water and the ever dwindling stock of firewood for their cooking,

- that notwithstanding the government's decision to lift work and travel restrictions for humanitarian agencies' staff, bureaucratic red tape, and roadblocks for security checks, restricted their capacity to deliver humanitarian assistance to IDPs, some of whom were still scattered across the vast Darfur region outside formal camps. The ICRC was conducting a survey to determine the exact number of IDPs who are still scattered in the rural areas, outside the established camps. OCHA identified a number of major concerns facing IDPs,

- (i) physical safety of the vulnerable population,
- (ii) the possibility of forced relocation and repatriation of IDPs,
- (iii) sexual and gender based violence,
- (iv) restriction to access to humanitarian assistance,
- (v) violence against the civilian population.

39. The mission was informed about the government repatriation policy. The humanitarian agencies staff observed that the policy is implemented without adequate preparations. They advised that repatriation must be conducted in a voluntary manner. They gave an example of the relocation of 5000 IDPs from Meshtal in North Darfur, within few hours, to the Abou Shouk camp without adequate consultations, preparation nor adequate sanitary and relief supplies, bringing the population of the Abou Shouk camp to more than 45000 IDPs.

40. The Commission took note of the existence of one government funded local Sudanese NGO, El Zubeir Charity Foundation which is assisting in relief assistance. This NGO is said to promote the government repatriation policy of IDPs to their villages. The international humanitarian agencies, while not opposed to repatriation as such, urge the Sudan authorities against forced repatriation, and to coordinate the said efforts with the humanitarian agencies in order to ensure that conditions of peace, security and stability are re established in the villagers, so that IDPs and refugees repatriate voluntarily.

41. The mission was also informed that the civilian population was targeted because:

- government believe that rebels often hide within the population. Some villages were therefore attacked to dislodge rebels that sought refuge there,
- some of the villages were burnt by rebel groups, which have every interest in ensuring that the international community maintains pressure on the Government of Sudan, whilst the latter is making efforts to repatriate the displaced persons to their villages so that it restores its authority.

42. The mission held a meeting with the Sudanese Women Union, which is a federation of Sudanese women organisations, organised from the grassroots level. They gave a detailed explanation of their work, and what they were doing in

the Darfur region, which includes intervention with police and government officials against cases of arbitrary arrest, providing legal aid to victims. They also organized seminars for the IDP's and government leaders in Nyala. They lamented the fact that the Sudanese Women Union is not taking part in the peace negotiations on the Darfur conflict. They also highlighted some of the problems they and other national NGOs face:

- national NGOs do what they can to deliver humanitarian assistance to displaced persons and morally support them in their moments of great difficulty,
- national NGOs launched a campaign against arbitrary arrest and detention as well as against human rights violations, in particular of women's rights,
- the humanitarian work done by local Sudanese NGOs towards the affected communities of Darfur is constrained by the difficulty in accessing the Darfur since the only practical and quick route to the region is by air.

#### **The Janjawid phenomenon.**

43. The mission enquired from the various personalities and actors to explain the *Janjawid* phenomenon and their role in the Darfur conflict. Government ministers and officials referred to them as outlaws, the name *Janjawid* being an Arabic word for outlaws. The *Janjawid* was commonly identified as the Arab militia which has been fighting on the side of government against the rebels, and is associated with massive human rights violation in the Darfur, such as the looting of property and cattle, burning of villages, rape, abduction of women, and wanton killing of defenceless civilian population in the Darfur region.
44. According to humanitarian agencies' workers, men who are commonly identified as *Janjawid* militia can be seen roaming streets of the three Darfur states, with impunity, wearing military uniforms, with guns on their backs riding donkeys, horses or camels, suggesting that they were known, and tolerated by the government. When asked to confirm their association with the *Janjawid*, the government denied either recruiting or arming the *Janjawid* militia, or coordinating military activity with them. On the other hand, a number of the IDPs interviewed by the mission at Dali near the Tawila village in North Darfur, and in Abou Shouk camp, stated that they were attacked by the *Janjawid* Arab militia, prior to the attacks which led to their eventual displacement, and again shortly after their villages were bombed by government aircrafts and helicopters.
45. Another problem relating to the *Janjawids* was the fact that, they are not a structured force, nor are they part of the humanitarian ceasefire Agreement, and are therefore not bound by it. They are not formally involved in the peace process. The general consensus among many people the mission spoke to seems to suggest that the *Janjawids* were armed by the Government of Sudan in order to fight the rebels. Now that the *Janjawids* have become very strong, disarming them seems problematic.

**C- Visits to camps for displaced persons and other places.**

**In the North Darfur region.**

46. In the North Darfur region, the mission visited camps for displaced persons in Dali (near the Tawila village) and Abu Shouk, as well as the burnt down village of Shekshegu. The Abu Shouk camp is located about 3 kilometres outside El Fasher and is managed by the ICRC. At the time of the visit, it had more than 40,000 IDPs. The camp appeared to be well managed, security was good, health and other services such as shelter, water supply and food distribution was well organised.
47. The IDPs in the Dali camp near the village of Tawila were living without any shelter, except for branches of shrub and cardboard cover, i.e. no cover at all. In other words they were living under the scorching sun and the open sky. This camp had not been visited by any government or international humanitarian agencies' officials for supply of any essential humanitarian assistance. This was a typical case of IDPs who are scattered through Darfur region who have not been reached because of the insecurity. The mission visited the burnt out village from where the Dali IDPs had escaped the bombardment by government aircrafts and helicopters and *Janjawid* militia. It also visited the burnt out compound of tribal headman.
48. The arrival of the mission in El Fasher coincided with news that members of an unidentified armed group violated the cease-fire in the region by attacking two towns the day before. The rebels were reported to have abducted a leader of the Berthi tribe, looted a bank and set a police station and houses on fire.
49. The Walli then notified the CFC representative (General Okonkwo and his Vice Chairperson were absent from El Fasher) that these attacks could end in inter-tribal conflicts because the targeted tribe might attempt to seek revenge against the tribes that attacked it. The CFC representative had promised to report to the CFC Chairperson so that necessary investigations are carried out.

**Visit to IDP camp in Dali ,the village burnt in Shekshegu Tawila, North Darfur.**

50. The camp is situated about an hour and a half drive, on a poor stretch of the road from El Fasher passing through the dry and semi desert conditions, to a local trading town called Tawila. The head of the camp, one Taher Adam Shugar, explained to the mission that the camp hosts about 1200 IDPs composed of tribes of African origin: the Fur and Zaggawa forming the majority, who arrived at the camp from 25 surrounding villages who were mainly engaged in farming.

51. The inhabitants of the camp, totally left to themselves, had no shelter and were consequently vulnerable to bad weather conditions. There was no infrastructure for water supply, food, health care or education.
52. The mission had a meeting with the head of the camp and some displaced persons, who gave accounts of air raids and land attacks by forces identified by the displaced persons as those of the government. The displaced persons were not able to provide exact dates for the attacks, contenting themselves with the fact that the attacks happened twice on Fridays, and peak market days. They also declared that men on horseback and camel provided support on the ground to the attacks by forces of the government army.
53. When questioned by the mission, whether these attacks were done by rebel forces, they stated that the attacks were mainly carried out by the armed forces of the Government of Sudan and men on horseback and camels, and not by other forces.
54. The displaced persons related cases of rape, abductions and disappearance of children and girls as well as beating by men in military uniforms, and by men on horseback and camel. They could not provide exact figures for victims, but stated that at least 216 people were killed, unspecified numbers were wounded. They stated further that, during the said attacks, houses were burnt and household goods plundered, cattle and other goods were stolen.
55. When asked about the likely reasons for the attacks on their villages, the displaced persons stated that they did not know any reasons why they were attacked, and put down their misfortune to bad luck. They categorically denied having any links to any rebel group opposed to the Government. They also denied having any problems with other tribes and held the Government responsible for their plight.
56. The displaced persons furthermore stated that few people had remained in the abandoned villages. They also stated that whenever women IDPs returned to the abandoned villages to tend their farms, they are often raped. As for the men, when they return to the abandoned villages, they are killed.
57. Commissioner Angela Melo met with about one hundred women living in the camp and interviewed 18 of them. These women essentially confirmed the information provided by the men, notably the attacks. The women also stated that rape and abduction of an unspecified number of women happened during the attacks. The women were locked up in a room and raped by the assailants. They said their children could not go to school and that there was no health facilities for them.

**Visit to the village burnt in Shekshegu.**

58. Located about 2 to 3 kilometres from the Dali camp, the village of Shekshegu, which is inhabited by the Fur, Zaggawa and Berti tribes, was attacked and partially destroyed by fire on 27/02/2004, according to the village head, Mr. Mohamed Abubakar Ahmed, whose hut was burnt down. The mission counted some 10 totally burnt down huts and had a meeting with the village head, in the presence of some inhabitants of the village.
59. The attackers were identified by the villagers as soldiers belonging to government armed forces, supported by men on horseback and camel who looted and burnt down the huts before escaping.
60. The mission asked the inhabitants how certain they were that attackers were members of the government armed forces when there were also armed rebel groups that were operating in the region. The villagers respond that they were able to identify the attackers because they were dressed in Sudanese army uniforms.
61. The villagers stated that they have heard about rebel groups opposed to the government, but they did not know the rebels because they do not have any links to the village.
62. When asked about their views on the reasons for these attacks, the villagers responded that the Government accuses them of being relatives of rebels and opposition politicians. The attacks, mass murder and destruction are in retaliation to the purported contacts between the villagers and the rebels.
63. The villagers declared that the village had an initial population of 1,300 inhabitants, which presently stands at 250. Everyone is afraid to venture far away from the village because some time ago men on horseback, *Janjawid militia*, attacked and raped women from that village.
64. The mission asked the villagers whether there were traces of these attacks: cartridges, bullet marks, bomb fragments, etc. The villagers stated that these could be seen at the nearby dry river valleys. Due to time constraints, and the distance and conditions for travelling early back to El Fasher, the mission was not able to have access to these elements before leaving the village.

**Visit to the camp for displaced persons in Abu Shouk.**

65. The camp for displaced persons in Abu Shouk is situated not far from El Fasher. The mission visited it in the presence of Mr. Al Fatah Abdelaziz, Assistant Director of the camp. The latter explained that the camp was established on 20/04/2004 and has 48,000 displaced persons of which 80% are women and children, that come from all the villages attacked.

66. The Assistant Director of the camp informed the mission about assistance that the camp receives from humanitarian agencies such as UNICEF, ICRC, WFP, etc., which provide water, food, shelter and medical care. The Sudanese government provides staff for education and health services to the displaced persons. The mission observed that the camp is well organised and provided with adequate facility and basic supplies as stated above.
67. The mission met and interviewed IDPs who are resident in the camp. A group of elders who agreed to talk with the mission stated that the majority of persons living in the camps were from the Fur and Zaggawa tribes which were living in the mount Djebel Mara region, whose villages were attacked and destroyed by bombs and land attack by men in military vehicles, or on horseback and camel. The raids and attacks were said to have been carried out regularly between the months of March to July 2003 by planes during the day and land attack at night.
68. The IDPs said that they did not know why they were attacked. They confirmed that there had been several cases of rape and abduction of women. They further stated that they were afraid to return to their abandoned villages. They said that, during previous communal conflicts, when pastoralists' herds had destroyed their crops, they did not have any fundamental problems with members of tribes of Arabic origin.
69. Commissioner Angela Melo interviewed over thirty women belonging to the Fur tribe. The women confirmed the information relating to the attacks, plundering and abduction of children by the armed forces identified as those of the Government. Some of the women spoke about having experienced cases of rape but did not give further details. The mission believes that it could not get further information because interpretation was conducted by a man. The women refused to return to their villages of origin as long as security is not fully restored there. They complained about idleness in the camp.
70. Before its departure from El Fasher, the mission witnessed a march organized by the inhabitants of the town to protest against rebel attack, which occurred 2 days earlier in the region. The protesters, who gathered in front of the offices of the Ceasefire Commission, were received by the CFC Chairperson and gave him their petition, which called on the latter to quickly and effectively act to stop the cease-fire violations. A delegation of elders from El Fasher also handed a similar petition to the Chairperson of the African Commission's mission.

**In the West Darfur region.**

71. The mission visited camps for displaced persons in Ardamata and Droti in El Geneina, West Darfur region.



**Visit to the displaced persons camp in Ardamata.**

72. The mission met the camp supervisor, Mr. Ahmed Oubeid Eissa who said that the Ardamata camp for displaced persons, hosted 34,000 persons mainly from tribes of African origin: Fur, Massalit, Zaggawa, Tama, Mashiria and Gemer. The camp was established in April 2003.
73. The displaced persons in this camp came from several villages following attacks they described, as air raids and land attacks, by government forces supported by men on horseback and camels. These attacks resulted in loss of human life, injuries, destruction of villages and houses and theft of livestock.
74. The displaced persons affirmed that humanitarian organizations provided them with relief in the form shelter, food, water and health services as a result of which the camp did not face major difficulties.
75. The displaced persons informed the mission of on-going preparations with the participation of tribal leaders for displaced persons to return to their villages of origin. The displaced persons assured the mission that 50% of them are ready to return to their villages of origin if the logistics and security conditions are effectively met.
76. During the interview that Commissioner Angela Melo had with a group of displaced women, the latter explained to her that during the attacks on their villages, an unspecified number of women were raped by men described as light skinned, who came on horse back and camels. These men were said to have abducted an unspecified number of women. The women also talked about theft of goods belonging to the women, such as jewellery, cash and other valuable items, during the attacks.
77. In response to a specific question by Commissioner Angela Melo about complaints against rape, the women said that they have lodged complaints concerning theft, rape and other offences committed against them at the nearby police station but that these complaints had not been investigated.
78. The mission was able to observe in the Ardamata camp the existence of a school that had an enrolment of about 700 school children that were supervised by teachers who also lived in the camp. The camp has a health centre with a capacity of 100 beds. Shelter in the camp consists of tarpaulin provided by international humanitarian organizations. The camp was relatively clean and well kept.

**Visit to the Drothi camp for displaced persons.**

79. The Drothi camp had 4,132 displaced persons at the time of the mission's visit. The camp did not have a school and children attended school at the Ardamata,

situated some two or three kilometres away. The camp had a health centre, and four water pumps, which were however inadequate due to the high number of displaced persons.

80. The inhabitants of the camp informed the mission that the people who attacked them were armed horsemen and men dressed in Khaki uniform, who identified themselves and claimed to be members of government forces. These attackers killed, looted and burnt down houses, destroyed crops and took away valuable objects and livestock during the day and at night. The attackers also shot those who dared to resist them. Many cases of rape, by horsemen of Arab origin, were reported.
81. The displaced persons also stated that there were cases where displaced persons were attacked within the camp and injured, security is not assured due to nightly attacks by armed men. The most recent attack however was reported to have taken place six months ago. According to one of the IDPs, unidentified people come into the camp to intimidate the inhabitants and prevent them from returning to their villages of origin.
82. The displaced persons consequently said that they were not in any way ready to return to villages that were destroyed and rendered insecure. According to them, some days before, one displaced person visited their village situated 20 km from Drothi and some militias of an armed group intimidated and accused him of being an opponent to the regime and he had to return to the camp, intimidated and frightened.
83. Commissioner Angela Melo asked whether rape cases were investigated. The displaced persons responded that complaints which were lodged since November 2003 had not been investigated to date. The police are accused of being indifferent.
84. The mission also wanted to know from the displaced persons the reasons why their villages were attacked and they responded that the government considered them as members of the opposition, whilst they considered themselves merely as poor farmers who are not in any way linked to the opposition or rebels. The displaced persons believe that they were attacked because they were black.
85. The mission wanted to know whether the displaced persons heard about the *Janjawid militia*, and they replied that these were bandits, Arabs or blacks, normally riding horses or camels, who are guilty of numerous atrocities and that even the police are afraid of them, justifying the abandonment of actions lodged against them.
86. Commissioner Angela Melo separately met with a group of women living in the camp. These women stated that 6 months ago their villages were attacked by government forces, supported by men riding horses and camels. The attacks

resulted in several deaths and injury of people. Some of these women who sustained injuries, showed their wounds to the Commissioner. The women furthermore stated that during the attacks, a number of cases of rape were committed, some of the raped women became pregnant. Complaints were lodged at the police but were yet to be investigated. They declared that the attackers came back at night to intimidate the villagers who had not fled, accusing them of supporting the opposition. Everyone had to run away from the villages.

87. The women indicated that they were traumatized by the violent nature of the attacks and said that they would not want to return to the villages as long as their security is not assured. They lamented lack of water and a school in the camp.
88. The mission visited the police station to verify complaints and the level of progress made on the reported cases of rape and other offences, but the mission was unable to have access to the files as the officer in charge of the said cases was absent at the time. At one of its meetings in El Geneina, the mission was informed by the authorities of West Darfur State that even though cases of rapes were reported to the police, investigations could not be conducted because the victims could not identify their attackers. Therefore the files were closed for lack of identification of the perpetrators.

#### **Visit to the hospital in El Geneina.**

89. Following reports received during discussions with the humanitarian agencies staff and a visit to the camp in Ardamata about most recent attacks, the mission visited the hospital in El Geneina where it was able to observe that there were two wounded civilians and a soldier. The mission interviewed one of the civilians identified as Sherif, who agreed to talk to the mission. He said that he was attacked together with other villagers by Arab horsemen who stole their goods before running away.

#### **South Darfur region.**

90. Due to some logistical security and communication problems in the South Darfur region, the mission was only able to visit the displaced persons at a makeshift camp known locally either as the *Deriberi* or « UNICEF camp», outside Nyala
91. Upon its arrival at Nyala airport, the mission saw a huge 747 Jumbo cargo plane which was unloading humanitarian relief supplies, which it learnt, was donated by the Government of Nigeria to the displaced persons in the region.

#### **Visit to the camp for displaced persons in Deriberi (UNICEF camp)**

92. The camp, which is located within a stone throw of the last street of Nyala towards the location of the local polytechnic, was set up on 03/07/2004, and was said to have about 4,700 inhabitants mainly blacks from the Hotya tribe, who said

to be of Arabic origin from the Deriberi village of South Darfur, and hence the name Deriberi camp. The camp is also known as the UNICEF camp, because the site it occupies used to be a holding ground for IDPs before they were moved to bigger IDP camps outside Nyala.

93. The makeshift camp had no shelter of any kind apart from shrubs and dried branches put together in the open air and no infrastructure or social services at all. The mission observed that the number of displaced persons reported was higher than the number of IDPs found on the ground, because, it was told that, most of the IDPs had gone to town in search of food. The camp had previously received visits by UNICEF and CARE staff, who made arrangements to supply them with water. However government officials were discouraging the permanent settlement of the said IDPs at the said site.
94. The displaced persons, who in times of peace are farmers, stated that they were attacked on 03/07/2004 by groups of heavily armed black men travelling in vehicles and identified as the *Torabora militia*. The displaced persons also claimed that their villages were destroyed.
95. The displaced persons told the mission that they did not receive any help from the government or humanitarian organizations. Only some good Samaritans, students from the local polytechnic, and the local mosque provide them with some food supplies. Food, water, shelter and health care are the main causes of concern to the camp dwellers. They did not know the reasons why their villages were attacked and confirmed that they were not involved in any dispute with the rebels.

#### IV- ANALYSIS OF THE SITUATION IN DARFUR.

96. The information gathered by the mission from the Sudanese authorities, the CFC, the international and national humanitarian agencies, the observations and interviews made with IDPs enabled the African Commission to make the following analysis.

##### **A- Origins of the conflict.**

97. The armed conflict in the Darfur region, began in February 2003, when two armed groups, the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), launched an armed rebellion against the government, attacked and destroyed military and police installations, killing many soldiers and police stationed in the various towns of the Darfur region.
98. The mission enquired through the Chairperson of the CFC whether it was possible to meet with representatives of the two rebel movements, a request, which was very difficult to implement because of the inaccessibility to the South

Darfur, an area that was still in active conflict. The Chairperson of the CFC advised against venturing outside Nyala because of the insecurity.

99. We are therefore unable to reflect any of their opinion concerning their understanding of the origins of the conflict. However, from the various interviews and discussions, it was very clear to the mission that, at the core of the military and armed conflict in the Darfur region, is a political power struggle, between the two armed groups, representing the three major tribes of the Darfur, which consider themselves to be of an African origin, namely the Fur, the Massalit and the Zaggawa, and the central Government of Sudan, for the control of Khartoum, and the Darfur region.
100. The Commission was told that the detention of 73 opposition politicians and other persons, by the government in Khartoum, including the influential politician, Mr. Hassan Al Tourabi, was a result of their support for the Darfur rebellion.

#### **Land, water and pasture disputes.**

100. A number of people whom the mission met, both in government and in the international humanitarian community, agree that the conflict for land pasture and water between the farmers and the pastoralists was a major problem. The government said that in the past, it had set up inter-ethnic/community based structures to resolve this type of conflict. However these structures were not suited for dealing with the massive conflict which flared up in February 2003, which involve large scale armament and indiscriminate killing of defenceless and innocent civilians, whose only fault was to belong to the ethnic communities of farming tribes in Darfur, whom the Government and the Arab *Janjawid* militia consider to be the backbone of the armed groups.
101. The Minister for Internal Affairs, who has been charged with the responsibility of overseeing the situation in the Darfur, said that 95% of the two rebel groups are from the Zaggawa ethnic group, even though there are about 18 other tribal groups in the Darfur, among whom are some African tribes which are pastoralists, similar to the Arab pastoralist tribes.

#### **Marginalisation and poverty.**

102. The government rejects the accusation of marginalising the Darfur region. Ministers and government officials argued that poverty affected the whole country. Poverty alone could not be a reason for the armed conflict which was started by the rebels and for that reason the government was arguing that the war in the Darfur region would stop only if the rebellion stopped. The drought and desertification which affects the Darfur region for long periods, was the main reason why pastoralist tribes stay longer in the south of Darfur (around

the Djebel Mara area) where there is more rain, and hence water and pasture, leading to conflict between farmers and pastoralists.

103. The government informed the mission that during the 1979-84 drought affecting the entire Sahel region, the World Bank assisted the Sahelian countries with US\$200million to address the consequences of the drought. The Islamic Development Bank donated US \$15 million. However this time around the international community has not addressed the drought affecting the Darfur.
104. The government was indirectly admitting the poverty and marginalisation question, but it stated that in the past ten years, it has built 3 universities in Darfur, (out of a total of 40 universities countrywide) enrolling 5800 students, out of a national total of 200,000. It admits that there are economic problems, but that they are not restricted to the Darfur region.

#### **Sub regional conflicts and the weapons culture.**

105. The civil or inter-state wars of the 1980s and 90s, in states bordering Sudan, along the Darfur region undoubtedly encouraged the uncontrolled trafficking and easy movement of arms in the region. Of particular significance were the civil wars in Chad, the war between Libya and Chad, and the period of military instability in Central Africa Republic. The ethnic composition along the border regions in all those countries, are similar to the tribes in the Darfur. The tribes got accustomed to carrying firearms to defend themselves leading to the development of a culture of carrying firearms, which has now taken root in the region.

#### **Suppression of political dissent.**

106. The new political dissent within the ruling party (National Congress Party), and support by the opposition for the Darfur rebellion, was viewed by the Khartoum authorities as a threat to national security and integrity, and hence the position taken to wage an indiscriminate all out war. In response to rebel attacks, the central government in Khartoum launched a counter-offensive that was often deadly against villages wrongly or rightly suspected of sheltering the rebels or rebel sympathisers. This resulted in deaths, destruction, plundering and other atrocities as well as a flood of refugees and displaced persons.

#### **B- The role of the government forces, irregular armed groups, rebel movements and the Janjawids.**

107. The armed forces of the government of Sudan, the rebel movements, namely the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), as well as all irregular armed groups and the

*Janjawids*, have generally taken an active part in fighting in Darfur, and have to a varying degree been accused of committing human rights abuses, against the civilian population.

108. The persistent allegations of massive abuses and violations of human rights by the *Janjawids*, which includes *inter alia* systematic murder, rape and abductions for purposes of slavery, against defenceless and innocent civilian population, constitute war crimes and crimes against humanity as per the Rome Statute.
109. The government armed forces have also been accused of committing massive human rights violations such as widespread murder through air bombardment of villages against defenceless civilian population, and this also constitutes war crimes and crime against humanity.
110. The general impression the mission got, when it met the displaced persons and the humanitarian agencies, sustains the view that the Sudanese Government supported the said militia, because they played a crucial defensive role, particularly at the beginning of the conflict, after the police stations and the military installations were destroyed. The fact that the *Janjawids* have not been disarmed by the government of Sudan, indicates that they still continue to play an auxiliary role in the conflict on the side of government. The attacks against villages by the government armed forces, though intended as a strategy to dislodge rebel strongholds or sympathisers ended up dislodging the civilian population.

### **Ethnicity**

111. The demographic structure of Sudanese society in the Darfur, from the mission's own observation, and from the account by government officials, does not render itself to a clear cut racial division. While it is quite clear that there are distinct tribes of African descent, particularly the Massalit, the Zaggawa in West and North Darfur, and the nomadic Arab tribes who are spread across the Darfur, there is a great deal of racial inter-relationship and inter-marriages over a long period of time among the tribes in the Darfur and Sudan generally. Similarly, the mission was told that there are those who said to have Arab ancestry who however bear pure African features. The tribes prefer to define themselves along those racial terms.
112. When the mission visited the IDP camps, it observed that there were no Arab IDPs in the said camps. However, at the Deriberi camp near Nyala in South Darfur, the IDPs that the mission met said they were of an Arab ancestry.

**C - Consequences of the conflict.**

113. The conflict in Darfur has had disastrous consequences on the human rights situation. It has caused displacement of thousands of refugees and more than 1.2 millions of displaced persons and tens of thousands of death and injured, denying them their basic rights. The right to life of those who were killed in the course of the conflict have been violated. The fundamental freedoms of the refugees and IDPs have been greatly curtailed. Families have been separated, with women and children suffering the most.
114. When the mission visited the Dali IDP camp near Tawila, it noticed that an open space had been converted into a praying area and a lone man was seen praying under the hot sun. The mission was later on informed by the IDPs that their village had been destroyed including the mosque. Their civil, political, economic, social and cultural rights have been violated. Children are not attending schools, and where they do, they face great constraints. The mission noticed that some of the health centres did not have adequate medical supplies.
115. The violations of the rights of women, rape and sexual violence, even though denied by government, have been committed during the Darfur conflict. Generally speaking, women would not talk about such painful experiences, because such acts violate their sense of dignity and honour. The culture of the Sudanese women in Darfur, who are Muslims, makes it even more difficult for the latter to talk in public about sexual violence they underwent. The mission however heard reliable accounts detailing numerous cases of rape, and that some of the women became pregnant as a result of the rape.
116. At the time of the mission, the rains had just started and the humanitarian agencies were concerned that there would be an outbreak of infectious diseases, affecting particularly children and women, who are the most vulnerable in any conflict. As for IDPs who were not in camp, ie. Dali near Tawila and Deriberi informal camps, the mission notified their existence to both the government authorities and the humanitarian agencies, and hopes that adequate humanitarian and protection measures were taken to address their immediate needs. The mission was informed about the existence of a large number of IDPs who are still scattered in the rural areas at the mercy of the elements and the *Janjawid*. At the Shekshegu village, which had been almost totally destroyed, there were still a number of elderly people who had remained behind with their families.
117. For the majority of displaced persons who were traumatized by the fighting, insecurity and an uncertain future, they can only count on the support of the authorities and other humanitarian organizations for their protection and survival since they have lost everything.



118. The social fabric has been badly affected by the crisis: tribal groups of African origin consider tribal groups of Arab origin, and vice versa, as their aggressors.
119. The scarce socio-economic infrastructure that existed in the Darfur, particularly in the rural areas, where the bulk of the displaced persons and refugees come from, have been destroyed, whilst the prevailing situation inhibits the implementation of development programmes, unless peace and security is restored. Apart from rehabilitation of the social and security services infrastructure, government must undertake a physical inventory of the destroyed properties and compensate the victims.

**D- Human Rights violations.**

120. The information provided by the victims established that the majority of the population that have been dislodged from their villages are from the African tribes, which are mainly farmers.
121. The mission was able, however to establish that there was a pattern of gross human rights abuses, which were committed during the armed conflict, by all parties to the conflict. Having said that though, the weight of information from the interviews conducted with the displaced persons, indicate that the *Janjawid* were responsible for massive violations of human rights of the civilian population, who are now living in the IDP camps. The IDPs in the Deriberi camp near Nyala, indicated that they have been attacked by a militia group known as the *Torabora*, which is one of several armed militia formed by the various ethnic groups involved in the Darfur conflict.
122. The crisis in the Darfur region has resulted in loss of life of an unspecified number of people. Some sources have estimated the number of dead people to be between 30000 and 50000 people. Many others were injured, lost their property, villages were set on fire, cattle and various household goods were plundered, and over a million people have been forced into exile as refugees and internally displaced persons.
123. The attacks on the civilian population are war crimes and crimes against humanity. The displaced persons spoken to stated that their villages were attacked indiscriminately by armed forces, using military aircrafts, helicopters and vehicle of the Sudanese army. These military attacks were then followed by attacks by militia, identified as the *Janjawid*, who killed people, burnt houses, looted property, stole cattle and other livestock, food, and raped women. The land is now allegedly occupied by the *Janjawid* militia

**E- Humanitarian assistance.**

124. The Commission commends the international and national humanitarian agencies, which have responded to the crisis, and have provided humanitarian assistance in the form of shelter, health services, water, food supplies and other basic social services, in spite of very difficult working conditions, particularly before the restrictions were lifted/eased by the Government of Sudan. The Commission also learnt about the existence of an undetermined number of IDPs who are still roaming the Darfur rural areas and to whom international humanitarian agencies do not have access, mainly because of the security situation.
125. Efforts by humanitarian agencies to reach these zones in order to determine the number of displaced persons and identify their needs are sometimes frustrated by authorities in the Darfur states, particularly South Darfur. The Commission urges the Government of Sudan to take all necessary measures to identify the scattered IDPs, and to render any assistance possible to the humanitarian agencies, to ensure that all displaced persons are identified and afforded the necessary protection and given the assistance they desperately need.

**F- Security and repatriation.**

126. The Government of Sudan informed the mission that (by mid July 2004) it had deployed 3,912 police officers, out of a total of 6,000 it intends to deploy, in the Darfur region. During the mission's visits to the IDP camps, the displaced persons expressed concern about the repatriation policy promoted by the government, because they do not trust the police and government. The displaced persons expressed lack of trust in the security forces, because of the trauma they suffered as a result of the indiscriminate attacks by government security forces in their villages. They also cited lack of action, or cooperation from the police, when they report *Janjawid* attacks, particularly complaints against gender based violence and case of rape against women. The government however rejected those accusations and said that, the fact that the major IDP camps were located within the outskirts of major towns in the Darfur, was an indication that the people fled the rebels to centres where security was still controlled and could be guaranteed by the government.
127. Attacks perpetrated by the *Janjawids* against civilians are continuing and women who venture outside the immediate vicinity of some IDP camps for water and firewood are physically and sexually abused. The men, when they venture outside the camps, are killed.
128. The Commission has found that the Government of Sudan did not pay proper attention to reported cases of rape and other forms of violence

against women, in the Darfur crisis. By denying the existence of these forms of sexual and gender based violence, and by stating that they could not be verified, it failed in its duty to protect women, who as citizens are entitled to government protection.

129. The establishment by the Government of the Commission of Inquiry is yet to have any impact in terms of restoration of the confidence and trust by the displaced persons. Up to the time the mission went to Sudan, the Commission of Inquiry had not visited the Darfur region.
130. The Government of Sudan has recently formed three Women's Committees to investigate allegations of rape and sexual violence against women in the Darfur during the crisis. These are steps in the right direction, but further efforts and measures need to be taken by the government to guarantee the independence of the two bodies, by giving them adequate financial resources and expertise, to facilitate their investigations.
131. The Government is implementing in consultation with tribal leaders a policy of repatriation of displaced persons to their villages of origin. The government has promised to provide them with security, social services and basic infrastructures and eventually reconstruction of houses. On the contrary a number of humanitarian agencies indicated lack of adequate preparation by the government.
132. The Commission is of the opinion that the government repatriation policy, must conform to the voluntary wishes of the displaced persons and refugees, upon the establishment of security and other favourable conditions. Consultations with humanitarian agencies on the ground will facilitate the restoration and promotion of the IDPs' confidence, which is currently lacking in government.
133. The government must compensate the people for the loss to their houses, cattle, and other goods, which were looted, burnt or stolen by the *Janjawid*, or destroyed during the military attacks.

#### **G- Detention of opposition politicians.**

134. Due to the crisis in Darfur, 73 persons including members of opposition political parties have been detained without trial for some months now. The Commission raised its concern that the detentions without trial were a violation of article 6 of the African Charter on Human and Peoples Rights.

#### **H- Upper Nile Situation.**

135. In the course of its consultations with different people, the mission learnt that an armed conflict is currently being fought in the Upper Nile state, where

massive human rights of the civilian population are equally violated. The tragedy of the situation is that the Darfur conflict has diverted attention from that civil war. One of the senior government Ministers said that, that conflict involves tribal factions of the former rebels movements in Southern Sudan opposed to the Naivasha Agreement, and were jockeying for the control of petroleum resources.

#### **VI- Recommendations.**

136. The mission is making the following recommendations to the Government.
137. The Government should accept the setting up of an International Commission of Enquiry, which would include international experts from the United Nations, African Union, Arab States, international humanitarian and human rights organisations with the following terms of reference:
  - a) to investigate the role and involvement of the military, the police, and other security forces in the Darfur conflict, and to establish those responsible for committing war crimes and crimes against humanity, violation of human rights and international humanitarian law and ensure that they are brought to justice;
  - b) to investigate the role of rebel movements, all armed militias, in particular the Janjawids, the Pashtun, the Pashmerga, and the Torabora, and to establish those responsible for war crimes, crimes against humanity and massive violation of human rights and international humanitarian law and ensure that they are brought to justice.
  - c) to rehabilitate the destroyed physical security infrastructure, and to suspend any police or security agents who are alleged to have been involved in the violation of human rights, pending the finalisation of investigations.
138. The Government should allow the International Commission of Inquiry unhindered access to the Darfur region to enable it to thoroughly investigate alleged human rights violations with a view of further investigating as to whether or not genocide has occurred.
139. The Government should immediately stop the military and aerial bombardment of the civilian population, and should take appropriate measures to protect the civilian population against attacks by armed groups, in particular the *Janjawids*, and rebel forces by accepting the deployment of African Union peacekeeping/protection forces.
140. The government should ensure that no more bombardment of civilian population occurs.

141. The Government should disarm all irregular armed groups, in particular the *Janjawid militia, the Pashtun, the Torabora, the Pashmerga*, and any such militias operating illegally within the Darfur.
142. The Government should undertake training programmes for the police and security forces on human rights and international humanitarian law principles.
143. In recognition of the existence of the weapon culture, which is a major problem in the Darfur, the international community should assist the government in a disarmament, demobilisation and rehabilitation programme (DDR) for the militia, by creating a special fund to buy back the weapons which are so readily available to the militia in Darfur.
144. The Government should provide the National Commission of Inquiry and the recently established Women's Committees with all the resources and expertise, and where possible, accept international technical assistance from the UN, AU, Arab League, or any international humanitarian and human rights organisations, needed to effectively perform their mission.
145. The Government should ensure that the terms of reference of the Commission of Inquiry set up on 08 May 2004, specifically include investigation of all human rights violations
146. The government should ensure that all reports on rape already lodged with the police should be immediately investigated by the police and the culprits are brought to justice.
147. The Government should bear the cost of medical care and psychological treatment for victims of violence and sexual abuse, notably rape.
148. The Government should take urgent measures to facilitate access by humanitarian agencies to IDP camps which have not been accessed and enable the supply of humanitarian assistance in the form of water, food, shelter and other essential needs to them.
149. The implementation of the government policy of repatriation should be strictly voluntary, on condition that the security and social infrastructure is repaired and the burnt out villages are rebuilt. To that end, the mission is recommending that Government fully cooperate with international humanitarian agencies and other relevant partners with a view to ensuring that the above-mentioned conditions are fully adhered to, thereby ensuring that displaced persons and the refugees return voluntarily to their villages of origin.

150. The arbitrary arrest and detention without trial of opposition politicians, on account of their political views concerning the Darfur conflict, under emergency powers, is a violation of the African Charter. The Government should either release the 73 political detainees including Mr. Hassan Al Turabi or immediately bring them before the courts so that they can defend themselves against the allegations made by the state.
151. The Commission therefore recommends to the Government of Sudan to abide by its international obligations under international human rights and humanitarian law, and in particular the African Charter on Human and Peoples' Rights to ensure that it guarantees the enjoyment by its people of their basic rights, in spite of their cultural and ethnic diversity.

#### **VII- General observations.**

152. The conflict in Darfur is but one of the persistent conflicts, which the Sudan has experienced since independence, almost fifty years ago. The recent peace agreements signed between the government of Sudan and the SPLM/A in Naivasha, Kenya, under the IGAD peace process show that the government of Sudan is capable of resolving its internal conflicts through peaceful means. As stated hereinabove, the Darfur conflict has diverted attention from another alleged crisis in the Upper Nile region of Sudan, which could unravel the good work of the Naivasha process.
153. The Commission is aware of the ongoing negotiations under the framework of the African Union, to find a comprehensive political solution to the Darfur conflict. The Commission calls on the Government of Sudan and the rebel movements to consider the negative human rights and humanitarian situation on the civilian population, arising out their delay in adopting a peace agreement on the Darfur conflict. The Commission urges them to resolve their differences through negotiations, in the interest of peace in the Darfur.

#### **VIII- ACKNOWLEDGEMENTS.**

154. The African Commission wishes to express its profound gratitude to the Government of Sudan for the valuable assistance it provided to the mission throughout its stay in Sudan. The Commission is particularly grateful for the warm reception the authorities accorded to it both in Khartoum and during visits in the Darfur region.
155. The Commission also wishes to express its deep appreciation to the African Union Commission for the valuable logistical support it provided through the Cease-Fire Commission (CFC). Without the dedication of the soldiers and the CFC pilots, the mission would not have been able to visit all the places and camps, situated in some cases hundreds of kilometres from each other in the

Darfur region, where means of transport and communication are scanty, within the limited time at its disposal.

156. To all the specialized agencies of the United Nations, national and international humanitarian organizations operating in Sudan that provided assistance to the mission, it expresses its gratitude.

**Done in Pretoria,  
Republic of South Africa,  
September 20, 2004**

**IX- LIST OF PERSONALITIES AND ORGANISATIONS MET BY THE MISSION**

**A- Authorities and civil servants:**

- H.E.Mr. Ali Mohammed O Yassin, Minister of Justice of Sudan
- H.E.Mr. Hon. Najeep Elkhair, Minister of Foreign Affairs of Sudan
- Major General Abdel Rahim Mohd Hussein, Minister of Interior of Sudan
- H.E.Mr. Al-Haj Adam Atta- Al Munam, Walli of South Darfur
- H.E.Mr. Osman Mohammed Yousif Kaber, Walli of North Darfur
- H.E.Mr. Suleymane Abdallah Adam, Walli of West Darfur
- Honourable Judge Abdel Diem Zumrawi, Under Secretary of the Ministry of Justice
- Dr. Abdul Moneim Osman Taha, Rapporteur of the Human Rights Consultative Council
- Dr Ali Hassan Taj Eldein, Adviser to the President of the Republic for African Affairs

**B- Others personalities:**

- General Festus Okonkwo, Chairperson of the African Union Ceasefire Commission (CFC)
- Dr. Wilfred Asombang, African Union Mission in Sudan-Khartoum
- Mr. Babukar Mohammed Babukar Al Tinighi, President of the Judicial Commission of the state of West Darfur
- M. Hassan Mohamed, Public Prosecutor of the state of West Darfur
- General Ahmed Imam Mohammed, Police Commissioner of West Darfur
- M. El Tayed Haroun Ali, member of the Sudan Bar Association and Assistant Director of the Committee against the Abduction of Women and Children (CEWAC).

**C- National and international humanitarian organizations and agencies:**

- ADVISORY COUNCIL FOR HUMAN RIGHTS
- SUDAN BAR ASSOCIATION
- SUDANESE WOMEN UNION
- CEASE FIRE COMMISSION (CFC)
- OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
- OFFICE OF COORDINATION OF HUMANITARIAN ACTIVITIES (OCHA)
- UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT
- UNITED NATIONS DEVELOPMENT PROGRAMME
- UNITED NATION CHILDREN FUND



- INTERNATIONAL COMMITTEE OF THE RED CROSS
- CARE
- MEDECINS SANS FRONTIERE-BELGIQUE
- MEDECINS SANS FRONTIERE-HOLLANDE

## **Response of the Republic of Sudan**

### **Response to the Report of African Commission on Human and Peoples' Rights Fact- finding Mission to the Republic of Sudan in the Darfur Region**

#### **Introduction:**

1. The Government of the Sudan would like to extend its thanks and gratitude to the African Commission on Human and Peoples' Rights for its sincere effort and interest in addressing the situation of human rights in the Sudan. The Government of Sudan takes this opportunity to reiterate its utmost willingness to cooperate with the Commission to discharge its mandate effectively and objectively.
2. Within the framework of its protection mandate, the African Commission on Human and Peoples' Rights adopted a resolution at its 35<sup>th</sup> ordinary session to send a fact- finding mission to Sudan with the view to establishing facts regarding allegations of human rights abuses in the region of Darfur.
3. Five objectives were set for the mission in order to discharge the above said mandate.
4. The mission visited Sudan in the period between 8<sup>th</sup> to 18<sup>th</sup> July 2004 and drafted its report and submitted it to the Government of Sudan with a number of recommendations to improve the situation in Darfur.
5. The report was then adopted at an extraordinary session of the African Commission on Human and Peoples' Rights held in Pretoria South Africa on 20 September 2004.

#### **The Mission's difficulties in addressing its mandate**

6. The time frame specified for the mission to take place was 10 days, namely: 8<sup>th</sup> to 18<sup>th</sup> July 2004, which is by far a short time with the view to the mandate and the objectives sought to be achieved.
7. In para 14 (page 3) the mission admitted the logical – mainly- transportation and security constraints it encountered in addressing its mandate. The mission conceded that 'due to logistical, mainly transport, and security constraints, the mission was unable to visit all the places it intended to'.
8. The delegation of the mission comprised only five commissioners unassisted by any additional staff of investigators and legal experts. A five member mission to investigate on an area the size of France and in only 10 days in an atmosphere of the above said obstacles to reach verified and concrete findings is but outrageous assertion.
9. Given the above facts, the Government of Sudan finds itself in a strong position to believe that the mission was unable to adequately and effectively discharge its mandate. It neither allocated reasonable time nor adequate resources to investigate into the many well documented abuses committed by the rebels. The mission couldn't even reach some IDPs camps or visit areas under control of the rebel and met with rebel leaders (see para 14, page3 of the report).

10. The report of the mission is therefore can never be said to have covered the whole areas it targeted nor addressed the situation in the required comprehensive and adequate manner.

#### **Alleged targeting of certain ethnic groups**

11. In para 2 (page 1), the mission stated that the African Commission has been receiving reports from human rights NGOs, specialize agencies of the United Nations and other credible sources.
12. In para 3 (page 1) the mission stated that the (above said) reports highlighted the killing of civilians, particularly, men from Fur, Marslit (Massalit) and Zaggawa ethnic groups. Such misleading information would raise the question of the criteria for assessing reports and other publications received by the mission, particularly, with regard to the fact the a number of these NGOs (to which the mission referred as credible sources) and in some time authors of these reports and publications are well-known of their hostile and political opposition to the Government of Sudan even before the crises of Darfur jumps to the surface. The fact which has escaped the attention of the mission is that the tribal clashes in the region of Darfur are not targeted against the ethnic groups mentioned in the report. Many of these clashes are between arab tribes and of one ethnic origins and even considerable numbers of those carrying weapons against the state including prominent leaders from the rebel groups are from the arab ethnic origin.
13. The credibility of these sources is well-documented. An example is the alleged employment of chemical weapons by the government in the military operations in Darfur which was published in a number of European countries media based on false information fabricated by rebels and some NGOs. The allegations soon proved to be unfounded and hence were immediately refuted by the American, German and British Governments as having 'seen no credible evidence'. This is but an example of false claims that the pro-rebels NGOs rumoured deliberately and just for the purpose of producing atrocity propaganda against the Government of Sudan.

#### **Selectivity in documenting human rights abuses Attacks against civilians**

14. It is a matter of record that the rebels have been harbouring within and launching attacks from villages inhabited by civilians and in many times used the civilians as human shield. In many cases the rebels deliberately gave wrong precautions to villagers that they would be attacked by the 'Jangaweed' in order to cause them flee their homes. That system of victimizing and displacing the large numbers of innocent civilians is often used by the rebels to inflate the magnitude of the crises in Darfur. Those who oppose this abhorrent attitude of the rebels were often killed.

15. The fact of the rebel's presence among civilians was admitted by the rebels themselves. The Sudan Liberation Movement (SPL) admitted the kill of 25 rebel fighters in an attack by the Government to a village 25 miles South elFashir in North Darfur. Unfortunately, the mission turned a blind eye to such warranted facts.

**Attack against aid workers.**

16. The systematic and persistent practice of the rebels in attacking and abducting humanitarian aid workers is also well documented. These attacks of the rebels often hinder and delay vital humanitarian assistance to reach the often desperately needy civilians whether in the IDPs camps or else where. UN officials as well NGOs staff practically condemned such practices of the rebels. Again and unfortunately enough, such facts were never mention in the mission's report.

**Killing of PWs.**

17. The mission failed to investigate a number of well documented cases of human rights abuses committed by the rebels brought to its attention. These cases include murdering of government soldiers fell in the hands of the rebels. A case in point is the burning alive of wounded soldiers in Buram hospital. This case and many other amounted to war crimes and crimes against humanity didn't find room in the mission report.

**Using of children as combatants.**

18. One of the major shortcomings of the mission's report is that it has ignored the use of child soldiers by the two rebel factions. The rebel's systematic abduction of children and their recruitment in their forces has been highlighted several times in the international media illegal and a serious war crime. Hundreds of children are now employed as fighters within the forces of the rebels, nevertheless, the mission omitted to record a single mention in this regard.

**Prosecuting human rights violation in Darfur.**

19. A major break through in its endeavors to seriously address the situation in the Darfur is the government decision dated 8<sup>th</sup> may 2004 establishing a ten member national commission of inquiry into human rights abuses in Darfur. This commission is chaired by an ex chief justice of Sudan and other prominent lawyers and human rights activists and administrators. The commission is mandated to collect information on alleged human rights abused committed by all parties to the conflict in Darfur and to determine responsibility for established abuse. The national commission submitted its report to the president of Sudan in January 2005.

20. Pursuant to the finding of the national commission, three senior commissioners were established to address three genuine issues:
1. Identification and prosecution of those guilty of human rights abuses.
  2. The compensation of war crimes.
  3. The issue of tribal boundaries.
21. Based on its commitment to bring to justice those responsible for human rights abuses in Darfur, and even before and during the work of the National Commission of Inquiry, the Government of Sudan arrested, charged and prosecuted many human rights violators in Darfur. A number of criminal reports were filed in the three Darfur states against many accused persons some of them are members of regular and semi-regular forces. Also many cases have been filed against persons accused of the 'Jangaweed' – type crimes and they are now in detention or under investigation waiting trial.
22. Enclosed to this response are statistics on cases pertaining to violence against women brought to court in the three Darfur states (for the years 2004, 2005 and 2006).

**Conclusion:**

23. The Government while recognizing the efforts exerted by the mission, yet, it is of the belief that the report falls short beyond addressing the situation in Darfur conceptually and methodologically. This may be attributable, in part, to the obstacles that the mission encountered which we mentioned in the introduction of this response.
24. The Government of Sudan takes note of the recommendations included at the end of the report and is delighted to state that considerable portion of these recommendations has already found its way to implementation.

No	Criminal Report No	Convict's Name	Date Of Verdict	Jugement
1	1237	Musa Mohamed Abdallah And Others	2/11/2004	Whipping 100 Lashes
2	137	Ahmed Yagoub Youssif	20/09/2004	Dismissal of report
3	1493	Tigani Hassan Omar	27/11/2004	Lodgement at the Reformatory In EIFashir For Two Years
4	16	Adam Abdella Haseebelnabi	30/09/2004	1. Imprisonment for 1 Year 2. 1Whipping 100 Lashes
5	1091	Abdella Musa Hamid Adam Edrees Ahmed	28/08/2004	Whipping 100 Lashes

		Year 2005 (West Darfur State Continued)		
1	1658	Anwar Abdelkreem Morsal	18/9/2005	1. Whipping 40 Lashes. 2. Imprisonment for 1 month
2	462	Haydar Hamad Abdella	23/06/2005	Whipping 20 Lashes
3	12	Hamid Mohamed Gassi	02/04/2005	Whipping 20 Lashes
4	1775	Elmardi AliKdawi	03/09/2005	Dismissal of the report
5	774	Musa AhmedSalaheldeen	28/05/2005	1. Imprisonment for 7 years and 6 months. (Consecutively) 2. Whipping 100 Lashes.
6	68	Ahmed Omar Abuta Noor	21/05/2005	
7	183	Mohamed Adam Abdella	09/06/2005	Whipping 100 Lashes
8	763	Abdelkhalig Abdella Elshekh	30/04/2005	Dismissal of report
9	71	Khalel Adam Mohamed Elhaj And Other	01/02/2005	Imprisonment for years
10	26	Elsaddig Musa Mohamed Essa And Others	01/03/2005	1. Whipping Lashes And Imprisonment for 2 years InThe First Convict. 2. imprisonment for 3 months To The Second Convict
11	12	Adam Sultan Elsayer	25/01/2005	Imprisonment for 1 year , And Whipping 100 Lashes.
		Year 2006 ( West Darfur State Continue)		
1	2006	Abaker Mohamed Adam Ali	03/05/2006	1. Whipping Lashes. 2. Imprisonment For Years As Of 1/ 9/2005
	140/ 2006	Adoar Ball Abdella	27/06/2006	Whipping Lashes
3	19/2006	Ali Abdelraheem Abaker	26/03/2006	Dismissal Of Report

		Judgments In Rape Cases In South Darfur State year 2004.		
1	1723/2004	Gaded Abdella Mohamed	14/12/2004	1. Imprisonment for 2 Years. 2. Whipping Lashes. 3. 3. Payment Of SD 199.700
2	1031/2004	Noreldeen Adam Abaker	27/2/2005	1. Whipping Lashes. 2. Imprisonment For 3 Years.
3	152/2004	Abdelrahman Mohamed Haren	25/5/2006	Pending
4	904/2004	Unis Tebeg Abood	27/11/2004	Pending
5	1817/2004	Ismaeel Adam	1/2/2005	Pending
		Year 2005 (South Darfur State Continued)		
1	1198/2005	Elsaddig Dawood Hussien And Other	29/ 6/ 2005	Lodgement At The Reformatory In El Fashir For 1 Year.
2	1731/2005	Abaker Hussien Yah	5/10/2005	1. Whipping Lashes. 2. Imprisonment For 2 Years
3	274/2005	Mokhtar Ahmed Yah Haroon Mohamed Haroon	9/5/2005	1. Imprisonment For 5Years. 2. Whipping Lashes
4	975/2005	Abdelazziz Hassan Babker	25/3/2005	1. Imprisonment For 5 Years. 2. .Whipping Lashes. 3. Payment Of100.000 SD To The Complainant
5	385/2005	Mohamed Elfadel Elnadeef	28/3/2005	Dismissal Of The Report
6	109/2005	Radwan Ali Suliman	28/9/2005	Imprisonment For 5Years.(The Appelate Court Ordered The Release Of The Accused
7	2052/2005	Adam Terab Adam Abaker		Under Trial

		Year 2006 (South Darfur State Continue)		
1	161/2006	Gamal Ali Suliman Abdelhameed Abdelmahmoud		Whipping 20 Lashes
2	181/2006	Hmid Gidoo Elesial	9/3/2006	Pending
3	541/2006	Bakheet Ahmed Mohamed	29/4/2006	Pending
4	903/2006	Mohamed Hassan Mohamed	26/6/2006	Pending
		Jugement InRape Cases In North Darfur State –Year 2004.		
1	13/8/2004		25/8/2004	1. Imprisonment For 7 Years. 2. Whipping 100 Lashes
2	1764/2004 256/2004		6/9/2004, 5/9/2004	Imprisonment For 1 Year
3	1589/2004		29/4/2006	1. Whipping 100 Lashes With Compensation For The Victim. 2. Imprisonment For 2 Years And Whipping 50 Lashes.
4			26/6/2006	Imprisonment For 2 Years With Whipping
5	370/2004		9/9/2004	Acquital
6				1. Imprisonment For 1 Year. 2. Whipping 100 Lashes.
7	2211/2004		2/12/2004	1. Imprisonment For 3 Years. 2. Whipping 100 Lashes.
8	256/2004			1. Imprisonment For 1 Year 2. Whipping 100 Lashe.
9	370/2004			Acquital.
10	1589/2004			1. Imprisonment For 2 Years . 2. Whipping 1000 Lashes



		Year 2005 (North Darfur State Continued)		
1	395/2005	Mohamed Abdelazziz Adam		Imprisonment For A Term Of 7 Days. 2. Whipping 100 Lashes.
2	115/2005	Yahi Abdelgadeer Abdalla	19/8/2005	Dismissal Of The Report.
3	2104/2005	Mosaab Eldaw Gsmalla	17/5/2005	1. Whipping 100 Lashes With Compensation For The Victim. 2. Imprisonment For 2 Years With Whipping 50 Lashes.
4	632/2005	Mohamed Ibraheem Mussa	18/8/2005	Imprisonment For 2 Years With Whipping.
5		Abubaker Mohamed Elzber (Armed Forces Member-Kutm)	27/9/2005	Acqital.
		Year 2006 (North Darfur State Continued)		
1	1254/2006	Gamal Mohamed Abaker (Armed Forces Member- Elfashir)	11/7/2006	1. Imprisonment For 3 Years. 2. Whipping 100 Lashes.
2	64/2006	Essam Ahmed Abdelraman (Armed Forces Member- Elfashir)	10/7/2006	Imprisonment For 4 Years.

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# Activity report of the African Commission on human and peoples' rights, (22nd)

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