

Chapter Five
Fifth Annual Activity Report of the
African Commission
1991 - 1992

I. ORGANISATION OF WORK

A. Period covered by the report

1. The Fourth Annual Activity Report was adopted by the Twenty-seventh ordinary session of the Assembly of Heads of State and Government of the OAU by its resolution AHG/Res. 202 (XXVII). The present report covers the tenth and eleventh ordinary sessions which were held in Banjul, from 8- 15 October 1991, and Tunis, from 2 - 9 March 1992 respectively.

B. Status of ratification

2. As at the 11th session, 43 Member States had ratified the Charter. The list of those which have ratified the Charter is attached to this Volume as Appendix III.

C. Sessions and Agendas

3. The Commission has held two ordinary sessions since its fourth annual activity report was adopted.
 - The Tenth ordinary session was held in Banjul, The Gambia, from 8 - 15 October 1991;
 - The Eleventh ordinary session was held in Tunis, Tunisia, from 2 - 9 March 1992.

The agenda of both sessions are attached hereto as Annexes I and II respectively.

D. Composition and participation

4. The following members of the Commission were re-elected by the 27th ordinary session of the Assembly of Heads of State and Government after their term of office expired:
 - Mr. Robert H Kisanga
 - Mr. CLC Mubanga-Chipoya
 - Professor UO Umozurike

The composition of the Commission has changed following the death of commissioner Mubanga-Chipoya in December 1991. The Chairman of the Commission duly notified the Secretary General of the OAU of the vacancy created by his death. The list of the remaining members of the Commission is attached hereto as Annex III.

6. The attendance at sessions has been as follows:

At the Tenth ordinary session, nine commissioners attended, namely:

1. Prof. Isaac Nguema
2. Ali Mahmoud Buhedma
3. Mr. Sourahata B.S Janneh
4. Justice Robert H. Kisanga
5. Dr. Ibrahim A Badawi EL Sheikh
6. Prof. U.O Umozurike
7. Mr. CLC Mubanga-Chipoya
8. Moleleki D Mokama
9. Alione Blondin Beye

Mr. Youssoupha Ndiaye was absent with apology, while Mr. Alexis Gabou did not attend.

7. At the Eleventh session, nine commissioners were present, namely:

1. Prof. Isaac Nguema
2. Ali Mahmoud Buhedma
3. Mr. Sourahata B.S Janneh
4. Justice Robert H. Kisanga
5. Dr. Ibrahim A Badawi EL Sheikh
6. Prof. U.O Umozurike
7. Mr. Youssoupha Ndiaye
8. Moleleki D Mokama
9. Alione Blondin Beye

Mr. Alexis Gabou did not attend.

E. Chairman and Vice-Chairman of the Commission

8. The mandate of the Chairman, commissioner Umozurike and Vice-Chairman Alexis Gabou expired.

9. At its Tenth ordinary session in October 1991, the Commission proceeded to elect its office bearers, the results were as follows:

Dr. Ibrahim A. Badawi El Sheikh was duly elected Chairman of the Commission in accordance with article 17 of the Rules of Procedure of the Commission.

Mr. CLC Mubanga-Chipoya was duly elected Vice-Chairman, but as already stated, commissioner Mubanga-Chipoya passed away in December 1991.

At its 11th session, commissioner Sourahata BS Janneh was elected Vice-Chairman.

F. Adoption of Annual Activity Report

10. On March 9, 1992, the Commission considered and adopted the fifth annual activity report.

II. ACTIVITIES OF THE COMMISSION

A. Examination of Reports

11. At its eleventh ordinary session, the Commission considered the initial reports submitted by Egypt and Tanzania pursuant to Article 62 of the Charter. The Commission expressed its appreciation to both governments for submitting their reports and sending representatives to have a dialogue with it. In the Commission's view, the conduct of Egypt and Tanzania reflected the will of both governments to co-operate in the implementation of the Charter.

The representatives of both governments promised to research further into the questions put forward by the commissioners and submit their answers when presenting their second periodic reports.

As at the eleventh session of the Commission, only eight States had submitted their periodic reports, namely; the Jamahiriya of Libya, Zimbabwe, Egypt, Nigeria, Tunisia, Tanzania, Rwanda and Togo. Accordingly, the Commission recommends to the Assembly of Heads of State and Government the adoption of a draft resolution on Overdue Reports.

B. Promotional Activities

i) Activities of the Commission

12. Commissioners undertook promotional activities in a number of African States. Such activities were undertaken with the co-operation of the competent States authorities in those countries. The object of the activities was to publicise the African Charter and explain the work of the African Commission.

In this context, commissioners gave lectures, attended seminars, and initiated contacts in Africa and elsewhere.

ii) Seminars

13. At its Tenth ordinary session, the Commission decided to organise a number of seminars. These included:

1. Implementation of the African Charter in the domestic legal systems;
 2. Status of women under the African Charter in relation to specific socio-economic problems;
 3. The right to a fair trial with specific reference to legal assistance;
 4. The situation of refugees and displaced persons in Africa;
 5. The role of the African Media in the promotion and protection of human rights;
- and

6. Post-Apartheid South Africa.
14. The Commission, at its eleventh session decided to organise a seminar on popular participation and non-formal education. In addition, the Commission adopted a Programme of Action which includes several other seminars.

iii) Publications

15. The Commission published the first edition of its publication, "The African Review on Human and Peoples' Rights" in October 1991. The Commission will publish subsequent editions in accordance with its Programme of Action.
16. In addition to the Review, the Commission, is preparing to publish a Brochure of the African Charter as well as a Bulletin on the activities of the African Commission.
17. The Commission decided to embark on a project for the purposes of distributing widely its public documents such as the Rules of Procedure of the Commission and annual reports. Furthermore, the Commission decided to establish a Documentation and Information Centre at its Secretariat in Banjul, the objectives of which include; research on human rights problems in Africa.

iv) International co-operation

18. The Commission conducted a number of activities which were supported financially by the UN Centre for Human Rights, the European Community, the Swedish and the Danish governments.

v) Observers

19. In pursuance of Rule 76 of its Rule of Procedure, the Commission granted observer status to a number of non-governmental organisations. The NGOs which have so far been granted observer status are shown in the list attached to this Volume as Appendix VI.
20. At its eleventh session, the Commission reaffirmed its wish for the continued co-operation with NGOs in the performance of its functions but emphasised the need to observe the limits within which that co-operation is to be rendered, bearing in mind the independence of the Commission and its nature as a Commission of experts operating within the context of the African Charter.
21. The Commission has always taken the view that the NGOs which have been granted observer status should from time to time inform the Commission of their activities in the field of human rights to assist the Commission in its work. In line with this view, the Commission at its eleventh session, reiterated that such NGOs should, at least once every two years, report to the Commission on their activities which are relevant to the work of the Commission.

C. Consideration of Substantive Rights

22. In accordance with its policy to deepen the understanding of substantive rights guaranteed by the Charter, the Commission at its eleventh session discussed:

- The right to recourse procedure and fair trial (article 7) and
- The right to freedom of association (article 10), and adopted resolutions in this respect. The two resolutions are attached hereto as Annexes IV and V, respectively.

D. Protective Activities

i) Consideration of communications

23. At its Tenth and Eleventh sessions, the Commission received a total of 16 communications. With regards to these communications, the Commission took preliminary and provisional measures in accordance with the provisions of the African Charter and the Commission's Rules of Procedure. The Commission made a follow up on the old communications.

ii) Establishment of inter-session working group

24. Considering that the Commission usually meets only twice a year, at its eleventh session, it established an inter-session working group for the purpose of expediting its work.

E. Programme of Activities

25. At its Tenth and Eleventh sessions, the Commission adopted a Programme of Activities which has a number of components including, the establishment of a documentation and information centre, organising seminars and workshops, and training courses.

F. Observer Mission to Mali

26. At its Eleventh session, the Commission received a request from the Government of Mali for the Commission to send observers during the Presidential Elections in that country which was scheduled for 12 and 26 April 1992. The Commission acceded to the request and appointed commissioner Youssoupha Ndiaye as leader of its mission to Mali, and entrusted him with the responsibility of working out modalities for carrying out this exercise.

G. Conclusions and Recommendations

27. The Commission has been functioning for only five years. During this short period and despite the financial constraints, the Commission has successfully carried out a number of promotional and protective activities. However, the Commission realises that it has a lot more to accomplish.

To this end, the Commission has adopted a programme of activities, and has underlined the need that the OAU budget caters for the requirements of the Commission.

28. The Commission reaffirms its commitment to the protection of human rights in Africa and will continue to rely on the co-operation of States, inter-governmental and non-governmental organisations.

H. Recommendations

i). Draft Resolutions to the OAU Assembly

29. The Commission recommends the following draft resolutions for consideration and adoption by the Assembly of Heads of State and Government:

- Draft Resolution on Ratification of the African Charter on Human and Peoples' Rights
- Draft resolution on overdue reports
- Draft resolution on promotional activities.

ii) Resolutions adopted by the Commission

30. The Commission at its Eleventh session adopted the following resolutions:

- Resolution on the right to recourse procedure and fair trial
- Resolution on the right to freedom of association.

ANNEXES

ANNEX I

AGENDA OF THE TENTH ORDINARY SESSION 8TH-15TH OCTOBER 1991
(Banjul, The Gambia)

1. Opening Session
2. Oath by the newly elected members of the Commission
3. Election of Chairman and Vice-Chairman of the Commission
4. Adoption of the Agenda
5. Organisation of work
 - a) Appointment of rapporteur
 - b) Working hours
6. Observers
 - a) Request for observer status
 - b) Consideration of the conclusions of the workshop on NGO participation in the work of the African Commission
7. Matters arising from preceding session:
 - a) Report of the Chairman
 - b) Report of the members of the Commission
 - c) Report of the Secretary
8. Activities of the Commission:
 - a) Protective activities
 - b) promotional activities
9. Consideration of Periodic Reports
10. Report of consultants on programme of activities
11. Consideration of Rules of Procedures
12. Report of the activities of the OAU relevant to the Commission
13. Any other Business
14. Date, Venue and agenda of the 11th session
15. Adoption of the report of the 10th session
16. Final Communiqué
17. Closing Ceremony

ANNEX II

**AGENDA OF THE ELEVENTH ORDINARY SESSION 2-9 MARCH 1992
(TUNIS, TUNISIA)**

1. Opening Session
2. Adoption of Agenda
3. Election of the Vice-Chairman of the Commission
4. Organisation of work
 - a) Appointment of rapporteur
 - b) Working hours
5. Observers
6. Consideration of Periodic reports
7. Promotional activities
8. Protective activities
9. The right to freedom of Association (article 10 and 11 of the African Charter)
10. The Right to Recourse Procedure and Fair Trial (article 7 of the African Charter)
11. Administrative and Financial matters
12. Methods of work of the Commission including Rules of Procedure
13. Report of the activities of the OAU relevant to the Commission
14. Any other Business
15. Date, Venue and agenda of the 12th session
16. Adoption of the report of the 11th session
17. Adoption of the Fifth Annual Activity report
18. Adoption of the Annual report
19. Final Communiqué and Closing Ceremony

ANNEX III

LIST AND ADDRESSES OF MEMBERS OF THE COMMISSION

1. **Dr. Ibrahim Ali Badawi EL Sheikh** CHAIRMAN
Embassy of Egypt
7, Aberdeen Road
Avondale
A 433 AVODALE
HARARE/ZIMBABWE
Tel office: 30 34 45 /30 34 47 (2634)
telex: 24653 Boutsta ZW
Fax: 2634) 303 115

2. **Mr. Sourahata Baboucar Semega Janneh** Vice-Chairman
15 Hagan Street
PO Box 212
Banjul, The Gambia
Tel. Office : 220 228174
Tel. Res. : 220 495117
Telex : 996 2216 GV (NOVOTEL)

3. **Mr. Isaac Nguema** Member
BP 963
Libreville/Gabon
Tel. Office : 241 73 24 20
Tel. Res. : 241 73 20 27
Telex : 5255 GO
Fax : 241 76 09 93

4. **Mr. Alione Blondin Beye** Member
BP 487 Cedex 1
Abidjan/Cote d'Ivoire
Tel. office : 225 33 28 33
Tel Res. : 41 58 91
Fax. : 225 21 74 71

5. **Mr. Buhedma Ali Mahmoud** Member
N0. 7 Elmagroun Street
14 Fueihat
PO Box 889
Benghazi/Libya
Tel: : 2186121215
Telex : 40341 HILAL LY (BENGHAZI)

6. **Mr. Robert Habesh Kisanga** Member
Court of Appeal
PO Box 9004
Dar-ES-Salaam, Tanzania
Tel. Office : 255 51 27843/26011
Telex : 989 41838 RCA TZ

7. **Mr. Alexis Gabou** Member
Conseil constitutionnel an Min. AE.
PO Box 811
Brazzaville/Congo
Tel. office : (24312) 813311
Telex : 5210 PRECONGO KG
8. **Mr. Youssoupha Ndiaye** Member
C/O Cour d'Appel
Palais de Justice
Dakar, Senegal
Tel. Office : 01 22 03 67/217966
Tel. Res. : 01 21 72 57
Fax. :
9. **Mr. Moleleki D Mokama** Member
Private Bag 1 Lobatse
Gaborone/Botswana
Tel: Office : 26731 33 06 44
Tel. Res. : 353378
Telex 2758 COURT BD
Tel. FAX : 267 31 33 23 17
10. **Mr. U Oji Umozurike** Member
Faculty of Law
University of Calabar
Calabar, Nigeria
Tel. Office : 234 87224748/49 Ext. 9
Res. : 87220543
Telex : 65103 UNICAL, NG
Fax/Tel: 234 87220111
87220543
- OR
- c/o Liaison Officer
University of Calabar
Lagos Nigeria
Tel. : 234 1 835 615

SECRETARY TO THE COMMISSION

Mr. NGABISHEMA MUTSINZI

PO Box 673
Tel. : 220 392 962
Fax. : 220 390764
Telex : 996 2346 - OAU B JL GV
Banjul, The Gambia.

ANNEX IV

RESOLUTION ON THE RIGHT TO RECOURSE PROCEDURE AND FAIR TRIAL

The African Commission on Human and Peoples' Rights, meeting at its Eleventh Ordinary Session from 2 - 9 March 1992, in Tunis Tunisia;

Conscious of the fact that the African Charter on Human and Peoples' Rights is designed to promote and protect human rights in accordance with the provisions contained in the Charter and recognised international human rights standards;

Recognising that the right to a fair trial is essential for the protection of fundamental human rights and freedoms;

Bearing in mind Article 7 of the African Charter on Human and Peoples' Rights;

1. Considers that every person whose rights or freedoms are violated is entitled to have an effective remedy;
2. Considers further that the right to fair trial includes, among other things, the following:
 - a. All persons shall have the right to have their cause heard and shall be equal before the courts and tribunals in the determination of their rights and obligations;
 - b. Persons who are arrested shall be informed at the time of arrest, in a language which they understand of the reason for their arrest and shall be informed promptly of any charges against them;
 - c. 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;
 - d. Persons charged with a criminal offence shall be presumed innocent until proven guilty by a competent court;
 - e. In the determination of charges against individuals, the individual shall be entitled in particular to:
 - i) Have adequate time and facilities for the preparation of their defence and to communicate in confidence with counsel of their choice;
 - ii) Be tried within a reasonable time;

- iii) Examine or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
 - iv) Have the free assistance of an interpreter if they cannot speak the language used in court;
3. Persons convicted of an offence shall have the right of appeal to a higher court;
 4. **Recommends** to States Parties to the African Charter on Human and Peoples' Rights to create awareness of the accessibility of the recourse procedure and to provide the needy with legal aid;
 5. **Decides** to continue to be seized with the right to recourse procedures and fair trial with the view of elaborating further principles concerning this right.

ANNEX V

RESOLUTION ON THE RIGHT TO FREEDOM OF ASSOCIATION

The African Commission on Human and Peoples' Rights, meeting at its Eleventh Ordinary Session from 2 - 9 March 1992, in Tunis Tunisia;

Taking into consideration all rights stipulated in the Universal Declaration of Human Rights, with special reference to Articles 20 and 23 guaranteeing the right to freedom of peaceful assembly and association;

Recalling Article 22 of the International Covenant on Civil and Political Rights, and Article 8 of the International Covenant on Economic, Social and Cultural Rights assuring that everyone shall have the right to freedom of association with others;

Highly evaluating the UN Sub-Commission on the Prevention of Discrimination, Resolution No. 13 (XXXIII) on the 11th of September 1980 which adopted the right to freedom of association;

Taking into consideration the provisions of the African Charter on Human and Peoples' Rights, in particular Article 10(1), guaranteeing every individual the right to free association provided that he abides by the law;

Considers that:

1. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standards;
2. In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom;
3. The regulation of the exercise of the right to freedom of association should be consistent with State's obligations under the African Charter on Human and Peoples' Rights.

ANNEX VI

DRAFT RESOLUTION ON THE RATIFICATION OF THE AFRICAN CHARTER

The Assembly of Heads of State and Government of the Organisation of African Unity, recalling the 10th Anniversary of the adoption of the African Charter on Human and Peoples' Rights in June 1981 and the fifth Anniversary of its entry into force on October 1991;

Noting that the members of the African Commission are elected by the Organisation of African Unity;

Further recalling that all the Member States of the Organisation of African Unity have pledged in the preamble of the Charter of the Organisation of African Unity "to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights";

Remembering that the Assembly of Heads of State and Government of the Organisation of African Unity at its 24th ordinary session in May 1988 "strongly" urged Member States which had not yet ratified the African Charter "to do so as soon as possible".

Emphasising the importance of adherence to the African Charter on Human and Peoples' Rights by all members of the Organisation of African Unity;

Expressing deep gratitude to the 47 Member States of the Organisation of African Unity which have become States Parties to the African Charter on Human and Peoples' Rights;

- (i) **Strongly urges** those Member States which have not yet ratified the African Charter on Human and Peoples' Rights to do so as soon as possible;
- (ii) **Directs** the Secretary-General of the OAU to transmit this resolution to each Member State of the Organisation of African Unity which has not yet ratified or acceded to the African Charter on Human and peoples' Rights;
- (iii) **Requests** the African Commission on Human and Peoples' Rights to report on the implementation of this resolution.

ANNEX VII

DRAFT RESOLUTION ON OVERDUE REPORTS

The Assembly of Heads of State and Government of the Organisation of African Unity, recalling the 10th Anniversary of the adoption of the African Charter on Human and Peoples' Rights in June 1981 and the fifth Anniversary of its entry into force on October 1991;

Noting with concern that as of 9 March 1992, only eight State Parties to the African Charter on Human and Peoples' Rights have submitted their initial reports in accordance with Article 62 of the Charter;

Realising the importance of the reporting procedure in helping the African Commission on Human and Peoples' Rights to assist States Parties to ensure that the rights and freedoms recognised by the African Charter on Human and Peoples Rights are given effect in national law and practice;

Expressing deep appreciation to the States Parties which have submitted their initial periodic reports: Egypt, Libya, Nigeria, Rwanda, Tanzania, Togo, Tunisia, Zimbabwe, Senegal, Cape Verde and The Gambia;

Takes note of the benefits of the dialogue between the African Commission on Human and Peoples' Rights and States Parties which occur during examination of periodic reports;

1. **Urges** the States Parties to the African Charter on Human and Peoples' Rights which have not yet submitted their initial reports to submit them as soon as possible;
2. **Requests** that the States should report not only on legislative measures, but also on other measures taken to give effect to each of the rights and freedoms recognised and guaranteed by the African Charter on Human and Peoples' Rights and on the problems encountered in giving effect to these rights and freedoms;
3. **Encourages** States Parties which encounter difficulties in preparing and submitting their periodic reports to seek help as soon as possible from the African Commission on Human and Peoples' Rights which will arrange for assistance in this task through its own or other resources.

ANNEX VIII

DRAFT RESOLUTION ON PROMOTIONAL ACTIVITIES

The Assembly of Heads of State and Government of the Organisation of African Unity, recalling the 10th Anniversary of the adoption of the African Charter on Human and Peoples' Rights in June 1981 and the fifth Anniversary of its entry into force on October 1991;

Recalling at its 27th ordinary session held in Abuja, Nigeria, from 3 - 5 June 1991 recommended in Resolution AHG/Res. (XXVII) that member States celebrate the anniversary of the entry into force of the African Charter on Human and Peoples' Rights on 21 October of every year "by organising activities aimed at promoting human and peoples' rights"

Further recalling and reaffirming its own resolution to the effect that member States should observe this anniversary each year on 21 October, and that all States Parties should incorporate the rights and freedoms recognised in their internal legal systems and guaranteed in the African Charter on Human and Peoples' Rights, that States Parties should establish and support national institutions with responsibility for promoting and protecting human and peoples' rights, and that human and peoples' rights should be included in the curriculum at all levels of education and that the press be encouraged to promote human and peoples rights;

1. **Urges** all States Parties to the African Charter on Human and Peoples' Rights to reflect the rights and freedoms recognised and guaranteed by the African Charter in their law and practice;
2. **Requests** that all States Parties should implement Article 26 of the African Charter on Human and Peoples' Rights by establishing national institutions with responsibility for promoting and protecting human and peoples' rights where they do not exist and strengthen all such institutions;
3. **Further requests** that all Member States should implement Article 25 of the African Charter on Human and Peoples Rights by ensuring, *inter alia*, that human rights are included in the curriculum at all levels of public and private education and in the training of all law enforcement officials;
4. **Invites** States Parties to ensure that the right of individuals to receive information and to freedom of expression recognised and guaranteed by Article 9 of the African Charter on Human and Peoples' Rights is fully respected;
5. **Calls upon** all States Parties to report on these questions in their periodic reports to the African Commission on Human and Peoples' Rights;

6. **Request** the African Commission on Human and Peoples' Rights to report on the implementation of this resolution.

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