

NINTH ANNUAL ACTIVITY REPORT



AHG/207 (XXXII)

NINTH ANNUAL ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS - 1995/96

I. ORGANIZATION OF WORK

A. Period Covered by the Report

B. Status of Ratification

C. Sessions and Agenda

D. Composition and Participation

II. ACTIVITIES OF THE COMMISSION

A. Consideration of Periodic Reports

B. Promotional Activities

C. Forthcoming Seminars and Conferences:

SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL EXECUTIONS IN AFRICA

SPECIAL RAPPORTEUR ON PRISON CONDITIONS IN AFRICA

SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN

LIST OF COUNTRIES WHICH HAVE SIGNED, RATIFIED/ADHERED TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

EIGHTEENTH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS PRAIA, CAPE VERDE, 2 - 11 OCTOBER, 1995 AGENDA

STATUS OF SUBMISSION OF PERIODIC REPORTS BY STATES PARTIES TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

RESOLUTIONS OF THE 19TH SESSION

COMMUNICATIONS

I.ORGANIZATION OF WORK

A.Period Covered by the Report

1.The Eighth Annual Activity report of the ACHPR was adopted by the 31st Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity in its resolution AHG/Res.240 (XXXI).

The Ninth Annual Activity Report covers the 18th Ordinary Session held in Praia, Cape Verde, from 2-11 October 1995, the Second Extraordinary Session held in Kampala, Uganda from 18-19 December 1995 and the 19th Ordinary Session held in Ouagadougou, Burkina Faso from 26 March to 4 April 1996.

B.Status of Ratification

2.As of the 19th Ordinary Session of the Commission, all the members of the OAU, with the exception of Eritrea, Ethiopia and South Africa, had ratified or acceded to the Charter. The list of States and dates of signature, ratification/ accession and deposit of instruments is attached (Annex I).

C.Sessions and Agenda

3.The Commission held two ordinary sessions and one extraordinary session since the adoption of the Eighth Annual Activity Report. The 18th Ordinary Session held in Praia, Cape Verde, 2-11 October 1995; The 2nd Extraordinary Session held in Kampala, Uganda, 18-19 December 1995.

D.Composition and Participation

4.The following Commissioners attended the 18th Session:

- 1.Prof. Isaac Nguema, Chairman
- 2.Prof. Emmanuel V.O. Dankwa, Vice Chairman
- 3.Mr. Robert H. Kisanga

4.Dr. Mohamed H. Ben Salem

5.Dr. Vera V. Duarte Martins

6.Prof. U. Oji Umozurike

7.Mr. Atsu Koffi Amega

8.Mr. Kamel Rezzag-Bara

9.Mrs. Julienne Ondziel-Gnelenga

10.Mr. Youssoupha Ndiaye Mr. Alioune Blondin Beye was absent with apologies.

5.The representatives of the following States attended the Session and made statements before the Commission: Swaziland, Cameroon, Benin, Algeria, Zambia and Nigeria.

6.The following Commissioners attended the 2nd Extraordinary Session:

- Prof. Isaac Nguema, Chairman
- Prof. Emmanuel V.O. Dankwa, Vice Chairman
- Dr. Atsu Koffi Amega
- Mr. Hatem Ben Salem
- Mr. Robert H. Kisanga
- Mr. Kamel Rezzag-Bara
- Mrs. Julienne Ondziel-Gnelenga

The following members of the Commission were absent with apologies:

- Mr. Alioune Blondin Beye
- Mr. Youssoupha Ndiaye
- Dr. Vera Duarte Martins
- Prof. U. Oji Umozurike could not be contacted due to communication problems.

The Extraordinary Session was addressed by representatives of Uganda, Nigeria and the OAU.

7.The following members of the Commission attended the 19th Session:

1.Prof. Isaac Nguema, Chairman

2.Prof. Emmanuel V.O. Dankwa, Vice-Chairman

3.Mr. Robert Kisanga

4.Mrs. Julienne Ondziel-Gnelenga

5.Dr. Vera V.B.S. Duarte-Martins

6.Mr. Youssoupha Ndiaye

7.Mr. Kamel Rezzag-Bara

8.Mr. Prof. U. Oji Umozurike

The following members of the Commission were absent with apologies:

1.Mr. Alioune Blondin Beye

2.Mr. Atsu Koffi Amega

3.Dr. Hatem Ben Salem

8.The representatives of the following States attended the 19th Session:

1. Algeria

2. Burkina Faso

3. Egypt

4. Mauritania

5. Mozambique

6.Nigeria

7.Senegal

9.The three sessions were attended by many none-governmental organizations.

E.Adoption of the Ninth Annual Activity Report

10.At its 3rd April 1996 Session, the Commission considered and adopted its Ninth Annual Activity Report.

II.ACTIVITIES OF THE COMMISSION

A.Consideration of Periodic Reports

11. Under Article 62 of the African Charter on Human and Peoples' Rights, each State undertakes to submit a report every two years on the legislative and other measures it takes to give effect to the rights and freedoms enshrined in the Charter. The first periodic report of Tunisia was presented by the representatives of the State and was duly considered at the 18th Session. The Commission commended the representatives for a well prepared report which could serve as a model, reiterated its previous request that report should be submitted in the official languages of the OAU where possible, and called upon the Secretariat to translate reports into the other OAU languages.

12. The first periodic reports of Algeria and Mozambique were also considered at the 19th Session. The Commission took note of the high quality of the two reports.

13. As of the 19th Session the following States had submitted their reports: Libya, Rwanda, Tunisia (9th Session); Egypt and Tanzania (11th Session), The Gambia (12th and 16th Sessions); Senegal and Zimbabwe (12th Session); Togo and Nigeria (12th and 16th Sessions), Benin, Ghana, Cape Verde and Mozambique (14th Session); Mauritius and Seychelles (17th Session); Tunisia (18th Session and Algeria and Burkina Faso (19th Session). 31 States parties have not yet submitted their periodic reports. This list is attached (Annex V).

B. Promotional Activities

i) Report of the Chairman

14. The Chairman's Activity Report included his participation in various symposia and seminars within and outside Africa, work related to the Commission's publications and his participation in the 63rd Council of OAU Foreign Ministers. He also reported on his mission to Benin as the Chairman of the Francophone observer team of the 1996 elections.

ii) Activities of Other Members of the Commission

15. The other members of the Commission also attended conferences, seminars and symposia in Africa as well as outside Africa, and carried out promotional activities in States parties. Two Commissioners who were part of the OAU observer teams presented reports on election in Tanzania and the Comoro Islands. The allocation of African countries for promotional activities is attached (Annex VI).

iii) The Commission co-sponsored and participated in the following seminars:

a) Workshop on NGO participation in the African Commission on Human and Peoples' Rights, which was organized by the International Commission of Jurists and held in Praia, Cape Verde, from 29th September to 1st October 1995.

b) Impunity in Africa, held in Ouagadougou, Burkina Faso, 22nd - 23rd March, 1996 and organized in collaboration with, among others, the International Centre for Human Rights and Democratic Development, based in Montreal, Canada.

c) Workshop on NGO Participation in the African Commission, in Ouagadougou, Burkina Faso, from 23rd to 25th March 1996. this workshop was organized in collaboration with the International Commission of Jurists, and the Burkinabe Movement for Human and Peoples' Rights (MBDHP).

C. Forthcoming Seminars and Conferences:

16. The Commission decided to organize seminars and conferences on:

- a) Human Rights in the New South Africa
- b) Contemporary Forms of Slavery in Africa
- c) Prison Conditions in Africa
- d) The Right to a Fair Trial
- e) Popular Participation and Non-Formal Education
- f) Peaceful Resolution of Ethnic and Social Conflicts in the Context of Human Rights
- g) Freedom of Movement and Asylum in Africa
- h) Economic, Social and Cultural Rights and the Right to Development
- i) Seminar for African Ambassadors based in Addis Ababa, Ethiopia on the Human Rights Promotion and Protection System.

The Commission sought the support of International Organizations and NGOs for the seminars/conferences and appointed Commissioners to follow up these matters.

I. SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL EXECUTIONS IN AFRICA

17. At the 18th Session, the Commission considered and adopted the mandate of the Special Rapporteur and the budget estimates for the project. However, since the Special Rapporteur was absent from the 19th Session, the Commission could not discuss progress in work related to extra-judicial executions in Africa.

II. SPECIAL RAPPORTEUR ON PRISON CONDITIONS IN AFRICA

18. The Commission agreed on the principle of appointing a Special Rapporteur on prison conditions in Africa, who will work under a designated Commissioner. The Commission called for the submission of C.V.'s from suitable candidates and decided to seek the support of NGOs and other institutions in this project.

III. SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN

19. The Commission decided to appoint at its next Session a Special Rapporteur on the rights of African women. The Special Rapporteur will work under Commissioners E.V.O. Dankwa and Vera V.B.S Duarte-Martins who have experience in this field. The Session invited C.Vs of suitable candidates for consideration and decided to seek the support of NGOs and other institutions in this project.

VI. MISSIONS TO STATES PARTIES

20. The Commission reaffirmed its decisions to conduct missions to Nigeria, Senegal, Sudan, Mauritania, Burundi and Rwanda. It will consider with the States concerned communications brought against the latter which had been declared admissible. The final dates for the missions will be confirmed with the States concerned.

The missions will be composed of the following Commissioners:

Nigeria:

- Prof. I. Nguema
- Prof. E.V. O. Dankwa
- Prof. U. Oji Umozurike

Senegal:

- Prof. I. Nguema
- Dr. V. Duarte-Martins

Sudan:

- Mr. R. Kisanga
- Mr. Kamel Rezza-Bara

Burundi:

- Prof. I. Nguema
- Mrs. Julienne Ondziel-Gnelenga
- Mr. Atsu Koffi Amega

Rwanda:

- Prof. I. Nguema
- Mrs. Julienne Ondziel-Gnelenga
- Mr. Atsu Koffi Amega

Mauritania:

- Prof. I. Nguema
- Mrs. Ondziel-Gnelenga
- Mr. Kamel Rezzag-Bara

VII. AMENDMENT TO THE RULES OF PROCEDURE

21. The Commission completed work on the amendments to its Rules of Procedure at its 18th Ordinary Session.

VIII. PUBLICATIONS

22. The Commission published two issues of its Review and is preparing the publication of its News Bulletin.

IX. RELATIONS WITH OBSERVERS

23. During the two Sessions, the Commission considered the application of, and granted observer status to 29 organizations. At present, the number of organizations with observer status is 183.

X. PROTECTIVE ACTIVITIES

24. The Commission received eleven new communications and concluded work on seven communications. Its recommendations and decisions are attached (Annex VII).

XI. ADMINISTRATIVE AND FINANCIAL MATTERS

a) Administrative Matters

i) Staffing

25. During the financial year under review, the work of the Commission was affected by a number of administrative problems including the following:

26. The Secretariat is still suffering from a shortage of staff, in spite of numerous appeals made by the Commission. The Commission appeals again to the Secretary-General of the OAU for an early and appropriate solution to this

problem.

27. The Secretary to the Commission is the only professional staff member who is entrusted with the technical and administrative duties of the Secretariat. In view of the Secretariat's volume of work, related to human rights promotional and protective activities, there is an urgent need to recruit four additional lawyers. There is also an urgent need to recruit a documentation officer to run the Documentation Centre which is currently closed because there is no staff member to run it.

ii) Equipment

28. Due to the increase in the volume of work at the Secretariat, it is necessary to procure adequate and proper equipment. The Commission is appealing to the OAU Secretariat to provide the Commission's Secretariat with the equipment it needs to carry out its functions, including computers, photocopiers, electronic mail, etc...

iii) Medical Coverage and Insurance

29. The problems of medical fees and the insurance of the Commissioners when travelling on duty for the Commission have still not been settled yet. The Commission is still waiting for the solution promised some years ago by the OAU Secretariat to materialize. The Commission is making an urgent appeal to the OAU Secretariat to look into this issue.

b) Financial Matters

30. During the financial year under review, the Commission was financed from the following resources:

i) OAU Budget

31. Due to financial problems, facing the OAU, several projects of the Commission had to be suspended. This only made worse the situation of the Commission.

ii) Subvention from UN Centre for Human Rights

32. The UN Centre for Human Rights provided the Commission with grants for its promotional activities.

iii) Subvention from Raoul Wallenberg Institute

33. The Raoul Wallenberg Institute continued to finance the promotional activities of the Commission, including missions undertaken by Commissioners and the publishing of the Commission's Review.

iv) Assistance from the African Society of International Comparative Law

34. The African Society provided the Commission with two jurists from 20th March for a period of 12 months.

XII. RESOLUTIONS ADOPTED AT THE 19TH SESSION

35. The Commission adopted the following resolutions at its 19th Session:

1. Resolution on Liberia
2. Resolution on the Respect for and Strengthening of the Independence of the Judiciary.
3. Resolution on the Role of Lawyers and Judges in the Integration of the Charter and the Strengthening of Commission's National and Sub-Regional Systems.
4. Resolution on the Elections in Benin, Comoros and Sierra-Leone.
5. Resolution on Burundi.

These resolutions are attached (Annex VIII).

XIII. ADOPTION OF THE REPORT BY THE ASSEMBLY OF HEADS OF STATE AND GOVERNMENT

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

LIST OF COUNTRIES WHICH HAVE SIGNED, RATIFIED/ADHERED TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

No.	Country	Date of Signature	Date of Ratification	Date Deposited
1.	Algeria	10/04/86	01/03/87	20/03/87
2.	Angola		02/03/90	09/10/90
3.	Benin		20/01/86	25/02/86
4.	Botswana		17/07/86	22/07/86
5.	Burundi		28/07/89	30/08/89
6.	Burkina Faso	05/03/84	06/07/84	21/09/84
7.	Cameroon	23/07/87	20/06/89	18/09/89
8.	Cape Verde	31/03/86	02/06/87	06/08/87
9.	Central African Rep.		26/04/86	27/07/86
10.	Chad	29/05/86	09/10/86	11/11/86
11.	Comoros		01/06/86	18/07/86

12.	Congo	27/11/81	09/12/82	17/01/83
13.	Cote d'Ivoire		06/01/92	31/03/92
14.	Djibouti	20/12/91	11/11/91	20/12/91
15.	Egypt	16/11/81	20/03/84	03/04/84
16.	Equatorial Guinea	18/08/86	07/04/86	18/08/86
17.	Eritrea			
18.	Ethiopia			
19.	Gabon	26/02/82	20/02/86	26/06/86
20.	Gambia	11/02/83	08/06/83	13/06/83
21.	Ghana		24/01/89	01/03/89
22.	Guinea	09/12/81	16/02/82	13/05/82
23.	Guinea-Bissau		04/12/85	06/03/86
24.	Kenya		23/01/92	10/02/92
25.	Lesotho	07/03/84	10/02/92	27/02/92
26.	Liberia	31/01/83	04/08/82	29/12/82
27.	Libya	30/05/85	19/07/86	26/03/87
28.	Madagascar		09/03/92	19/03/92
29.	Malawi	23/02/90	17/11/89	23/02/90
30.	Mali	13/11/81	21/12/81	22/01/82
31.	Mauritania	25/02/82	14/06/86	26/06/86
32.	Mauritius	27/02/92	19/06/92	01/07/92
33.	Mozambique		22/02/89	07/03/90
34.	Namibia		30/07/92	16/09/92
35.	Niger	09/07/86	15/07/86	21/07/86
36.	Nigeria	31/08/82	22/06/83	22/07/83
37.	Rwanda	11/11/81	15/07/83	22/07/83
38.	Sahrawi Arab Democratic Rep.	10/04/86	02/05/86	23/05/86
39.	Sao Tome & Principe		23/05/86	28/07/86
40.	Senegal	23/09/81	13/08/82	25/10/82
41.	Seychelles		13/04/92	30/04/92
42.	Sierra Leone	27/08/81	21/09/83	
43.	Somalia	26/02/82	31/07/85	27/01/84
44.	Sudan	03/09/82	18/02/86	20/03/86
45.	Swaziland		15/09/95	11/03/86
46.	Togo	26/02/82	05/11/82	02/10/95
47.	Tunisia		16/03/83	22/11/82
48.	Uganda	18/08/86	10/5/86	22/04/83
49.	Tanzania	31/05/82	18/02/84	27/05/86
50.	Zaire	23/07/87	20/07/87	09/03/84
51.	Zambia	17/01/83	19/01/84	28/07/87
52.	Zimbabwe	20/02/86	30/05/86	02/02/84
53.	South Africa	-	-	12/06/86

Adopted:by the Eighteenth Session of the Assembly of Heads of State and Government, June, 1981. Requires:ratification or adherence of a simple majority of Member States, to come into force. Entered:into force on 21st day of October, 1986Registered: with the United Nations on 10/09/91, No. 26363

EIGHTEENTH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS PRAIA, CAPE VERDE, 2 - 11 OCTOBER, 1995 AGENDA

1. Opening Ceremony
2. Oath by the newly elected members of the Commission
3. Election of the Chairman and the Vice-Chairman of the Commission
4. Adoption of Agenda
5. Organization of Work
6. Observers:
 - a) Consideration of application for observer status;
 - b) Relationship with observers and statements of the latter.
7. Consideration of periodic reports of the following Member States: Mauritius
Mozambique Seychelles Tunisia
8. Methods of work of the Commission:
 - a) Consideration of amendments to the Rules of Procedure;
 - b) Examination of Article 58 of the Charter.
9. Promotional activities:
 - a) Activity Reports by Commissioners;
 - b) Examination of extra-judicial executions;
 - c) Report on the implementation of Resolution AHG/230 (XXX) on the establishment of an African Human Rights Court;
 - d) Report on the 4th World Conference on Women (Beijing, 1995);
 - e) Amendments of the guidelines on the preparation of the periodic States' reports;
 - f) OAU participation in monitoring elections in Member States;
 - g) Organization of forthcoming seminars and conferences;

h) Publication of the review and the Newsletter of the Commission;

i) Follow-up of the decisions and recommendations from the international conferences on Human Rights (the Vienna and Montreal Conferences);

j) Prison conditions in Africa;

k) Elaboration of the draft additional protocol on African Women's Rights.

10. Protective Activities

11. Administrative and Financial Matters:

a) Report of the Chairman of the Commission;

b) Report of the Secretary to the Commission;

c) Implementation of the recommendations of the previous sessions;

d) Draft Rules on contracts with consultants;

e) Financing of the translation of summaries and periodic reports;

f) Situation of the Documentation Centre of the Commission;

g) Appraisal of the work of the Commission and its future prospects;

h) Distribution of States between the members of the Commission for promotional activities.

12. Question concerning the Headquarters of the Secretariat of the Commission.

13. OAU activities relevant to the Commission.

14. Date, place and agenda of the 19th Session.

15. Any Other Business Holding of extraordinary sessions.

16. Preparation of:

a) Sessional Report;

b) Final Communiqué.

**AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS SECOND EXTRAORDINARY SESSION
18-19 DECEMBER, 1995 - KAMPALA, UGANDA AGENDA**

1. Opening Ceremony
2. Adoption of the Agenda - Doc. II/ES/ACHPR/1
3. Organization of Work
4. Human Rights report on the situation in Nigeria a) Arbitrary and summary executions Doc. II/ES/ACHPR/3 b) Compatibility between Nigeria's internal legislation and the provisions of the African Charter on Human and Peoples' Rights Doc. II/ES/ACHPR/4
5. Study of some emergency situations on human rights in Africa especially in Burundi Doc. II/ES/ACHPR/5
6. Study of practical measures to be taken in the prevailing situation in Nigeria Doc. II/ES/ACHPR/6 6. Adoption of the Session's Report
7. Closing Ceremony.

NINETEENTH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, OUAGADOUGOU 26TH MARCH - 4TH APRIL, 1996 AGENDA

1. Opening Ceremony
2. Adoption of Agenda
3. Organization of Work
4. Adoption of the Report of 18th Ordinary Session, held in Praia, Cape Verde, 2-11 October 1995
5. Adoption of the Report of the 2nd Extraordinary Session (18-19 December, 1995, Kampala, Uganda)
6. Observers:
 - a) Consideration of applications for observer status;
 - b) Relationship with observers and statements of the latter;
 - c) Statements by State Delegates.

7. Consideration of periodic reports of the following States: Mozambique Algeria
Mauritius Seychelles

8. Amendment to the African Charter on Human and Peoples' Rights;

9. Brainstorming on the setting-up of an early warning mechanism in case of
massive human rights violations.

10. Promotional activities:

a) Activity reports by Commissioners;

b) Examination of the Report of the Special Rapporteur on
Summary, Arbitrary, and Extra-judicial Executions;

c) Report on the Implementation of Resolution AHG/Res.230 (XXX)
on the Establishment of an African Human Rights Court;

d) Human rights Situation in Africa;

e) Amendments of Guidelines on the preparation of the Periodic
Reports;

f) Organization of forthcoming seminars and conferences;

g) Publication of the Review and the Newsletter of the Commission;

h) Follow-up of the decisions and recommendations from the
International Conferences on Human Rights (the Vienna and
Montreal Conference' as well as Beijing Conference on Women);

i) Prison Conditions in Africa; j) Elaboration of the Draft Additional
Protocol on African Women's Rights.

11. Protective Activities.

12. Administrative and Financial Matters:

a) Report of the Chairman of the Commission;

b) Report of the Secretary to the Commission;

c) Implementation of Recommendations of the Previous Sessions;

d) Draft Rules on Contracts with Consultants;

- e) Financing the Translation of Summaries and Periodic Reports;
- f) Situation of the Documentation Centre of the Commission;
- g) Appraisal of the Work of the Commission and its Future Prospects;
- h) Celebration of the 10th Anniversary of the entry into force of the African Commission on Human and Peoples' Rights.

13. Question of the Headquarters of the Secretariat of the Commission.

14. Participation of the Commission in some activities of the OAU.

15. Date, Place and Agenda of the 20th Ordinary Session.

16. Any Other Business.

17. Preparation of: 9th Annual Activity Report; Sessional Report; Final Communique.

STATUS OF SUBMISSION OF PERIODIC REPORTS BY STATES PARTIES TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

In accordance with Article 62 of the Charter reports are due from States Parties on the following dates:

No.	State Party	1st Report to be submitted on	2nd Report to be submitted on	3rd Report to be submitted on	4th Report to be submitted on	5th Report to be submitted on	Report submitted in
*1.	Algeria	20/06/89	20/06/91	20/06/93	20/06/95	20/06/97	1995
2.	Angola	09/01/92	09/01/94	09/01/96	09/01/98	09/01/2000	
*3.	Benin	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
4.	Botswana	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	
5.	Burundi	30/11/91	30/11/93	30/11/95	30/11/97	30/11/99	
*6.	Burkina Faso	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96	1996
7.	Cameroon	18/12/91	18/12/93	18/12/95	18/12/97	18/12/99	
*8.	Cape Verde	06/11/89	06/11/91	06/11/93	06/11/95	06/11/97	

9.	Central African	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
10.	Republic Chad	11/02/89	11/02/91	11/02/93	11/02/95	11/02/97
11.	Comoros	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
12.	Congo	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
13.	Cote d'Ivoire	01/07/94	01/07/96	01/07/98	07/01/2000	01/07/2002
14.	Djibouti	20/03/93	20/03/95	20/03/97	20/03/99	20/03/2001
*15.	Egypt	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
16.	Equatorial Guinea	18/11/88	18/11/90	18/11/92	18/11/94	18/11/96
17.	Ethiopia (1)					
18.	Eritrea (1)					
19.	Gabon	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*20.	Gambia	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*21.	Ghana	01/06/91	01/06/93	01/06/95	01/06/97	01/06/99
22.	Guinea	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
23.	Guinea-Bissau	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
24.	Kenya	10/05/94	10/05/96	10/05/98	10/05/2000	10/05/2002
25.	Lesotho	27/05/94	27/05/96	27/05/98	27/05/2000	27/05/2002
26.	Liberia	27/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*27.	Libya	26/06/89	26/06/91	26/06/93	26/06/95	26/06/97
28.	Madagascar	19/06/94	19/06/96	19/06/98	19/06/2000	19/06/2002
29.	Malawi	23/05/92	23/05/94	23/05/96	23/05/98	23/05/2000
30.	Mali	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
31.	Mauritania	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*32.	Mauritius	07/10/92	07/10/94	07/10/96	07/10/98	07/10/2000
*33.	Mozambique	07/06/92	07/06/94	07/06/96	07/06/98	07/06/2000
34.	Namibia	16/12/94	16/12/96	16/12/98	16/12/2000	16/12/2002
35.	Niger	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*36.	Nigeria	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*37.	Rwanda	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
38.	SADR	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
39.	Sao Tome & Principe	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*40.	Senegal	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96

*41.	Seychelles	30/07/94	30/07/96	30/07/98	30/07/2000	30/07/2002
42.	Sierra Leone	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
43.	Somalia	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
44.	Sudan	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
45.	Swaziland					
*46.	Tanzania	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*47.	Togo	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*48.	Tunisia	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*49.	Uganda	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
50.	Zaire	28/10/89	28/10/91	28/10/93	28/10/95	28/10/97
51.	Zambia	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*52	Zimbabwe	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
53.	South Africa (1)					
45.	Swaziland					
*46.	Tanzania	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
47*.	Togo	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
48*.	Tunisia	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
49*.	Uganda	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
50.	Zaire	28/10/89	28/10/91	28/10/93	28/10/95	28/10/97
51.	Zambia	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
*52	Zimbabwe	21/10/88	21/10/90	21/10/92	21/10/94	21/10/96
53.	South Africa (1)					

* has presented its preliminary report

** has presented its preliminary report and second periodic report

(1) not yet ratified the African Charter

1. Professor Isaac Nguema - Gabon, Equatorial Guinea, Zaire and Burkina Faso
2. Professor E.V.O. Dankwa - Ghana, Zimbabwe, Malawi, Botswana and Namibia
3. Mr. Atsu-Koffi Amega - Togo, Rwanda, Central African Rep., Djibouti and

Seychelles

4. Mr. Mohamed Kamel Rezzag-Bara - Algeria, Comoros, Sahrawi Arab, Dem. Republic, Madagascar and Egypt
5. Justice Robert Habesh Kisanga - Tanzania, Ethiopia, Kenya, Somalia, Uganda and Zambia
6. Mme V.V.D.M. Duarte-Martins - Cape Verde, Mozambique, Angola, Guinea Bissau and Sao Tome & Principe
7. Mme J. Ondziel-Gnelenga - Congo, Burundi, Chad and Mauritius
8. M. Youssoupha Ndiaye - Senegal, Mali, Niger and Republic of Guinea
9. Prof. U. Oji Umozurike - Nigeria, Cameroon, Lesotho, Swaziland and South Africa
10. Prof. Mohamed H. Ben-Salem - Tunisia, Libya, Sudan, Eritrea and The Gambia
11. M. Alioune Blondin Beye -Benin, Cote d'Ivoire, Mauritania, Liberia and Sierra Leone

RESOLUTIONS OF THE 19TH SESSION

1. Resolution on Liberia.
2. Resolution on the Respect for and Strengthening of the Independence of the Judiciary.
3. Resolution on the Role of Lawyers and Judges in the Integration of the Chapter and the Strengthening of the Commission's National and Sub-Regional Systems.
4. Resolution on the Election in Benin, Comoros and Sierra-leone
5. Resolution on Burundi

RESOLUTION ON LIBERIA

The African Commission on Human and Peoples' Rights at its 19th Ordinary Session held from 26th March to 4th April 1996 in Ouagadougou, Burkina Faso.

Recalling the Abuja Agreement signed by all the parties to the Liberian conflict under which the Heads of the Warring Factions were allocated seats on the Governing Council of State in the hope that such an arrangement would facilitate

and ensure disarmament of their fighters, a prerequisite for free and fair election,

Taking Note that the Council of State of the Liberia Transitional Government, created in pursuance of the Abuja Agreement, has been installed into office and that the Government including the Judiciary and the Legislature has been freely constituted and is now functional,

Considering however, that notwithstanding the establishment of the Council of State, the Warring Factions have refused to disarm, and that Liberia contrary to the Abuja Agreement, still remains fragmented and partitioned among warring factions, and hostilities still exist, all of which have the potential to derail the peace process and prolong the suffering of the Liberian people and the strain on the West African Sub-Region,

Considering further that if peace is to be restored to Liberia, a civil government installed through a free and fair elections, and democratic institutions established with respect for human and democratic institutions established with respect for human rights under the rule of law, Liberians themselves, and with the support of the International Community, must exert efforts to cease all hostilities, disarm their combatants, have them encamped, demobilized and re-integrated into civil society,

Endorses the Abuja Peace Accord as the best means for the cessation of hostilities and the restoration of peace to Liberia and calls upon all parties to this Agreement to cooperate in good faith in its implementation,

Calls Upon the Warring Factions to take all necessary steps to disarm their fighters, cooperate with the West African Peace keeping Forces (ECOMOG) and United Nations Observer Mission in Liberia (UNOMIL) and have fighters encamped, demobilized and re-integrated into civil society so as to pave the way for a free and fair general election,

Calls also upon the Council of State to extend its authority over the whole of Liberia and to guarantee genuine respect for the rights and liberties of all its citizens and residents, and in this regard to observe the independence of the Judiciary,

Further Calls upon the Council of State to take all necessary measures to fight against impunity and ensure that all perpetrators of crimes against the Liberian people are brought to justice,

Appeals to the International Community especially the United Nations, to facilitate Liberia's transition from war to peace by enhancing the capacity of the West African Peace-keeping Force to encamp all combatants and to keep the peace through the provision of financial and logistic support; and to alleviate the suffering and the daily struggle of the Liberian people for survival through the provision of humanitarian relief and medical supplies.

RESOLUTION ON THE RESPECT AND THE STRENGTHENING OF THE INDEPENDENCE OF THE JUDICIARY

The African Commission on Human and Peoples' Rights at its 19th Ordinary Session held from 26th to 4th April 1996 at Ouagadougou, Burkina Faso,

Noting that Justice is an integral part of human rights and a necessary condition for democracy,

Considering the importance and the role of the judiciary, not only in the quest for the maintenance of social equilibrium, but also in the economic development of African countries,

Recognizing the need for African countries to have a strong and independent Judiciary enjoying the confidence of the people for sustainable democracy and development, Considering the need to train lawyers in human rights in order to enable them apply judiciously international human rights instruments:

1. **CALLS UPON** African countries to:

repeal all their legislation which are inconsistent with the principle of respect of the independence of the Judiciary, especially with regard to the appointment and posting of judges;

provide, with the assistance of the international community, the Judiciary with sufficient resources in order to enable the legal system fulfill its function;

provide judges with decent living and working conditions to enable them maintain their independence and realize their full potential;

incorporate in their legal systems universal principles establishing the independence of the Judiciary, especially with regard to security of tenure;

refrain from taking any action which may threaten directly or indirectly the independence and the security of judges and magistrates.

2. URGES African judges to organize nationally and regionally periodic meetings in order to exchange experience and evaluate efforts undertaken in various countries to bring about an efficient and independent judiciary.

RESOLUTION ON THE ROLE OF LAWYERS AND JUDGES IN INTEGRATION OF THE CHARTER AND ENHANCEMENT OF THE COMMISSIONS' WORK IN NATIONAL AND SUB-REGIONAL SYSTEMS

At the 19th Ordinary Session of The African Commission on Human and Peoples' Rights held from 26th March to 4th April 1996 at Ouagadougou, Burkina Faso:

Noting the central role that lawyers play in advocacy in the Judicial and other adjudicative processes in national legal systems and considering further how such roles can be used to promote reference to and reliance on the Charter in the Judicial and other adjudicative processes,

Considering the mandate and judicial competence of judges to base their reasoning and judgements on all relevant human rights instruments, either as applicable authoritative laws or as persuasive aids to interpretation of constitutional and legislative provisions on fundamental rights, freedoms and duties,

Recognizing the importance of specialized and continuing training in human and peoples' rights for legal practitioners, judges, magistrates and the Commissioners,

Appreciating the initiative of the Commonwealth judges to incorporate and further develop Human Rights instruments and principles in their work:

1.URGES Judges and magistrates to play a greater role in incorporating the Charter and future jurisprudence of the Commission in their judgements thereby promoting and protecting the rights and freedoms guaranteed by the Charter;

2.CALLS UPON lawyers to place greater reliance on the Charter and other international and regional human rights instruments in their various legal advocacy roles;

3.URGES law societies, legal and human rights, Non-Governmental Organizations with Observer Status with the Commission, associations or organizations of judges and magistrates to initiate specialized and comprehensive training for judicial officers, lawyers at national and sub-regional levels.

RESOLUTION ON ELECTORAL PROCESS AND PARTICIPATORY GOVERNANCE

The African Commission on Human and Peoples' Rights meeting at its 19th Ordinary Session held in Ouagadougou, Burkina Faso from 26 March to 4 April 1996,

Having taken note of the report on recent elections in the Republic of Benin,

Taking note of the report on the smooth organization of elections in the Comoro Islands,

Further noting the satisfactory manner in which the Presidential Elections were held recently in the Republic of Sierra Leone:

1.ASSERTS that elections are the only means by which the people can elect

democratically the Government of their choice in conformity to the African Charter on Human and Peoples' Rights;

2.COMMENDS the Governments and the people of the Republic of Benin, the Comoros and the Republic of Sierra Leone for having organized successfully free and fair elections and hopes that their example will encourage and motivate other countries in transition to democratic rule;

3.EMPHASIZES that it is the duty of States Parties to the Charter to take the necessary measures to preserve and protect the credibility of the electoral process. These measures should include the presence of national and international observers during the elections and guarantee them access to the electoral process and personal safety to enable them to fulfil their mission and prepare their report on elections in a proper manner;

4.FURTHER EMPHASIZES that it is the responsibility of State Parties to provide electoral commissions and other organs entrusted with the task of organizing elections in their countries with adequate material, resources and any items necessary for the preparation and holding of elections;

5.REAFFIRMS the importance of African countries and institutions to participate in observation of elections in States Parties; and reasserts its willingness to place at the disposal of States Parties and other institutions its expertise and that of its members in observing elections.

RESOLUTION ON BURUNDI

The African Commission on Human and Peoples' Rights, at its 19th Ordinary Session held from 26th March to 4th April 1996, in Ouagadougou, Burkina Faso,

Extremely Concerned with the serious human rights violations and abuses occurring in Burundi, especially extrajudicial executions by some members of the security forces, armed gangs and militias,

Considering that impunity is one of the main causes of the worsening human rights situation in Burundi,

Considering that the independence of the judiciary is the cornerstone of the effective struggle against human rights violations in general and impunity in particular,

Concerned with the plight of refugees and displaced persons and their vulnerability to human rights violations and abuses,

Considering that the Burundi crisis is made worse by the hate media and that the high point of the message of hatred was reached with the launching of "Radio Democratie la Voix du Peuple",

1. URGES the Government of Burundi to:

- a) conduct transparent and impartial investigations into all human rights violations and abuses;
- b) take the necessary steps to guarantee the independence of the judiciary by ensuring, *inter alia*, that there is no interference in its functioning by the executive and that judges and magistrates are protected in the carrying out of their duty;
- c) ensure that persons accused of human rights violations and abuses are tried in compliance with international fair trial standards;
- d) improve the living conditions of refugees and displaced persons, ensure their safety and security and create conditions to enable them to return to their homes in collaboration with International Governmental and Non-Governmental Organizations;
- e) allow the Mission Internationale d'Observation au Burundi (MIOB), human rights monitors and special rapporteurs from the United Nations, African Commission on Human and Peoples' Rights and other International Bodies freedom of movement throughout the country and take adequate and effective steps to guarantee their safety and security without compromising their independence;

2. FURTHER URGES the Government of Burundi and the concerned political parties to respect the spirit and the letter of the Government Agreement which they signed in 1994 in the supreme national interest of Burundi;

3. CALLS UPON the OAU to strengthen MIOB and to include human rights monitoring in its mandate;

4. REQUESTS the UN to provide adequate resources to enable its Commission of inquiry sent to Burundi to function efficiently and to complete its tasks as soon as possible;

5. CALLS UPON the International Community to assist the Governments of Burundi and neighbouring countries to rid the sub-region of media which propagate hatred and fuel communal conflict in Burundi especially the Radio Station "Radio Democratie, la voix du Peuple" or "RUTOMORANGINGO";

6. DECIDES to involve itself more in efforts to resolve the crisis afflicting Burundi by, among other things, sending a mission to Burundi and participating actively in the process of national reconciliation.

COMMUNICATIONS

Nos. 25/89, 47/90, 56/91, 100/93 (joint) Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah vs Zaire;

No. 70/92 Ibrahim dioumessi, Sekou Kande, Ousmane Kaba vs Guinea No. 74/92 Commission Nationale des Droits de l'Homme et des Libertes vs Chad

No. 129/94 Civil Liberties Organization vs Nigeria No. 135/94 Kenya Human Rights Organization vs Kenya.

Communications 25/89, 47/90, 56/91, 100/93 (Joined) Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homee, Les Temoins de Jehovah/Zaire

THE FACTS

1.Communication 25/89 is filed by the Free Legal Assistance Group, the Austrian Committee Against Torture, and the Centre haitien des Droits et Libertes, all members of the World Organization Against Torture (OMCT).

The submission of the Free Legal Assistance Group was dated 17 march 1989, that of the Austrian Committee Against Torture dated 29 March 1989, that of the Centre Haitien dated 20 April 1989.

The Communication alleges the torture of 15 persons by a Military Unit, on or about 19 January 1989, at Kinsuka near the Zaire river. On 19 April 1989 when several people protested their treatment, they were detained and held indefinitely.

2.Communication 47/90, dated 16 October 1990, is filed by the Lawyers' Committee for Human Rights in New York. It 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.

3.Communication 56/91 is submitted by the Jehovah's Witnesses of Zaire and dated 27 March 1991. It alleges the persecution of the Jehovah's Witnesses, including arbitrary arrests, appropriation of church property, and exclusion from access to education.

4.Communication 100/93 is submitted by the Union Interafricaine des Droits de l'Homme and dated 20 March 1993.

It 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.

5. The African Commission, when it determined that the communications, taken together, evidenced a grave and massive violation of human rights in Zaire, brought the matter to the attention of the Assembly of the Heads of State of the Organization of African Unity, in December 1995.

6. The Commission also requested that a mission consisting of two members of the Commission be received in that country, with the objective of discovering the extent and cause of human rights violations and endeavouring to help the government to ensure full respect for the African Charter. The government of Zaire has never responded to these requests for a mission.

PROCEDURE BEFORE THE COMMISSION

7. Communication 25/89 was received by the Commission in June 1989. The Commission was seized of the communication at its 11th Session in October 1989 and the State of Zaire was notified on 14 March 1990.

8. Between 1990 and 1993, numerous reminders were sent by the Secretariat to the Government of Zaire, but no response was received.

9. The Secretariat also sent the complainants regular updates on the status of the communications.

10. On 23 September 1993, the Ministry of Justice of Zaire wrote that no copy of the communication had ever been received.

11. A copy was sent on 3 March 1994 by registered post to the Embassy of Zaire in Dakar but no response was forthcoming.

12. At the 16th Session, held in April 1994, the Commission decided to send a mission to Zaire in order to create a dialogue.

13. At the 17th Session, held in March 1995, the Communications against Zaire were declared admissible.

14. The Government of Zaire was notified of this decision on 26 April, 1995.

15. At the 18th Session, held in October 1995, the Commission decided to apply Article 58 (1) of the Charter and to draw the attention of the Heads of State and Government to the serious and massive violations of human rights in Zaire.

16. On 12 January 1996, a note verbale was sent to the Ministry of Foreign Affairs of Zaire informing the Ministry of the proposed mission to Zaire to be undertaken by Commissioner Nguema and Ben Salem.
17. Communication No. 47/90 was received by the Commission in October, 1990.
18. On 20 October 1990, at its 8th Ordinary Session in Banjul, the African Commission was seized of the communication and decided to notify the State of Zaire of the complaint and invite its written comments on the admissibility.
19. On 6 November 1990, the Secretariat of the Commission informed the Ministry of Zaire of this decision by registered post. No response was forthcoming.
20. At its 11th Ordinary Session, the Commission decided to send a reminder to Zaire. The Secretariat sent this reminder on 30 March 1992. No response was forthcoming.
21. At its 12th Ordinary Session, held in Banjul in October 1992, the Commission declared the communication admissible and decided that it would be examined on the merits.
22. The notice of this decision was sent on 16 November, 1992. No response was forthcoming.
23. In 1993 and 1994, the Secretariat sent several reminders to the government of Zaire. No response was received.
24. From August 1994 to the present, the correspondence in respect of this communication is identical with that in the communication 25/89, above.
25. Communication No. 56/91 was received by the Commission in Summer 1991.
26. The Commission was seized of the communication at its 10th Session in October 1991 and a notification was sent to the state on 14 November, 1991. No response was forthcoming.
27. Two reminders were sent by the Secretariat to the Government of Zaire in 1992.
28. In a letter dated 14 September 1993, the Ministry of Justice of Zaire claimed that a copy of the communication had never been received.
29. A copy of the communication was sent 3 March 1994 by registered post to the Embassy in Dakar, but no response was received.
30. From August 1994, the correspondence in respect of this communication is

identical with that in communication 25/89, given above.

31. Communication No. 100/93 was received by the Commission in April 1993.

32. The Commission was seized of the communication at its 13th Session in April 1993 and it was brought to the attention of the State on 12 April 1993. No response was forthcoming.

33. In 1993 and 1994, reminders were sent to the Government of Zaire but no response was forthcoming.

34. As from August 1994, the correspondence in respect of this communication is identical with that in communication 25/89, given above. THE LAW Admissibility

35. After deliberations, as envisioned by Article 58 of the African Charter, the Commission considered that communications 25/89, 47/90, 56/91 and 100/93 against Zaire reveal the existence of serious and massive violations of human rights.

36. Article 56 of the African Charter requires that complainants exhaust local remedies before the Commission can take up a case, unless these remedies are as a practical matter unavailable or unduly prolonged. The requirement of exhaustion of local remedies is founded on the principle that a government should have notice of a human rights violation in order to have the opportunity to remedy such violations before being called before an international body. In this case, the government has had ample notice of the violation.

37. The Commission has never held the requirement of local remedies to apply literally in cases where it is impractical or undesirable for the complainant to seize the domestic courts in the case of each violation. This is the situation here, given the vast and varied scope of the violations alleged and the general situation prevailing in Zaire.

38. For the above reasons, the Commission declared the communications admissible.

THE MERITS

39. The main goal of the communications procedure before the Commission is to initiate a positive dialogue, resulting in an amicable resolution between the complainant and the State concerned, which remedies the prejudice complained of. A pre-requisite for amicably remedying violations of the Charter is the good faith of the parties concerned, including their willingness to participate in a dialogue.

40. In the present case, there has been no substantive response from the Government of Zaire, despite the numerous notifications of the communications

sent by the African Commission. The African Commission, in several previous decisions, has set out the principle that where allegations of human rights abuse go uncontested by the government concerned, even after repeated notifications, the Commission must decide on the facts provided by the complainant and treat those facts as given. This principle conforms with the practice of other international human rights adjudicatory bodies and the Commission's duty to protect human rights. Since the Government of Zaire does not wish to participate in a dialogue, the Commission must, regrettably, continue its consideration of the case on the basis of facts and opinions submitted by the complainants alone.

41. Article 5 of the African Charter prohibits torture and inhuman or degrading treatment. The torture of 15 persons by a military unity at Kinsuka, near the Zaire river, as alleged in communication 25/89, constitutes a violation of this article.

42. Article 6 of the African Charter guarantees the right to liberty and security of person. The indefinite detention of those who protested against torture, as described in communication 25/89, violates Article 6.

43. Article 4 of the African Charter protects the rights to life. Communication 47/90, in addition to alleged arbitrary arrests, arbitrary detention and torture, alleges extrajudicial executions which are a violation of Article 4.

44. Article 7 of the African Charter specifies the right to have one's cause heard. The unfair trials described in communication 47/90 constitute a violation of this right.

45. Article 8 of the African Charter protects freedom of conscience. The harassment of the Jehovah's Witnesses, as described in communication 56/91, constitutes a violation of this article, since the government has presented no evidence that the practice of their religion in any way threatens law and order. The arbitrary arrests of believers of this religion likewise constitutes a contravention of Article 6, above.

46. The torture, executions, arrests, detention, unfair trials, restrictions on freedom of association and freedom of the press described in communication 100/93 violate the above Articles.

47. Article 16 of the African Charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health, and that States Parties should take the necessary measures to protect the health of their people. The failure of the Government to provide basic services such as safe drinking water and electricity and the shortage of medicine as alleged in communication 100/93 constitutes a violation of Article 16.

48. Article 17 of the Charter guarantees the right to education. The closures of universities and secondary schools as described in communication 100/93 constitutes a violation of Article 17.

FOR THESE REASONS, THE COMMISSION

holds that the facts constitute serious and massive violations of the African Charter, namely of Articles 4,5,6,7,8,16 and 17. Taken at the 18th Ordinary Session, Praia, Cape Verde, October 1995. Communication No. 70/92 Ibrahima Dioumessi, Sekou Kande, Ousmane Kaba/Guinea

- [THE FACTS](#)
- [THE PROCEDURE](#)
- [THE LAW DECISION](#)

THE FACTS

1.The communication was submitted by Ibrahima Dioumessi, Sekou Kande, Ousmane kaba, and received by the Commission on 15 November 1991. It contains no mailing address for the complainants.

2.The communication alleges that following the coup d'etat of 4 July 1984 in Guinea, the complainants were arrested, tortured and incarcerated for three years without charge or trial.

3.The complainants allege violation of the right to security of persons and the right to fair trial. The former detainees request compensation for the moral and material prejudice they have suffered.

PROCEDURE BEFORE THE COMMISSION

4.The Commission was seized of the communication at its 12th Session in November 1992.

5.The Ministry of Foreign Affairs of Guinea was notified on 13 November 1992. The Secretariat also requested the complainants' address.

6.In 1993 and 1994, numerous reminders were sent by the Secretariat to the Government of Guinea, but no response was received.

7.On 21 October 1994, the Guinean Government sent a note verbale to the Commission requesting that the Commission delay consideration of the communication until the 17th Session, in order to allow the government to submit its memorandum in response.

8.At the 17th Session in March 1995, the memorandum of the Government of Guinea had not been received, but it was decided to wait for it, and in the meanwhile to ask the complainants if they had exhausted all domestic remedies.

9.All attempts to get the addresses of the complaints were of no avail.

10. At the 18th Session, the memorandum of the Government of Guinea still had not been received.

THE LAW DECISION

11. The problem posed here is one of admissibility. To be admissible, a communication must fulfill all the conditions of article 56 of the Charter, in particular, the identity of the complainants so that they may be sent notifications.

12. In the present case, the Secretariat has not been able to remedy this lack of the complainants' address.

FOR THESE REASONS, THE COMMISSION

Declares the communication inadmissible. Done in Praia, Cape Verde, October, 1995.

Communication 74/92 Commission Nationale des Droits de l'Homme et des Libertes/Chad

- [THE FACTS](#)
- [THE PROCEDURE](#)
- [THE LAW DECISION](#)

THE FACTS

1. The communication is brought by La Commission Nationale des Droite de l'Homme et des Libertes de la Federation Nationale des Unions de Jeunes Avocats de France. The complaint alleges several massive and severe violations in Chad.

2. The complaint alleges that journalists are harassed, both directly and indirectly. These attacks are often by unidentified individuals who the complainants claim to be security service agents of the Government. The Government denies responsibility.

3. The complaint alleges the arbitrary arrest of several people, among those four members of the opposition party, R.D.P., by the security services. These people were never brought before a court, although they were eventually set free. 15 more people were illegally detained, but have now been liberated.

4. There are several accounts of killings, disappearances and torture. 15 people are reported killed, 200 wounded, and several persons tortured as a result of the civil war between the security services and other groups.

5. The communication alleges the assassination of Bisso Mamadou, who was attacked by armed individuals. The Minister responsible was warned of the

danger to Mr. Bisso, but he refused to issue protection. Subsequently, the Minister did not initiate investigation into the killing.

6. The communication also alleges the assassination of Joseph Betudi, Vice-President of Ligue Tchadienne des Droits de l'Homme. It also contains allegations of inhuman treatment of prisoners.

PROCEDURE BEFORE THE COMMISSION

7. The communication is dated 11 May 1992 and includes a report based on an observation mission to Chad made by the Association "Agir ensemble pour les droits de l'Homme" and the Federation Nationale des Unions de Jeunes Avocats.

8. The Commission was seized of the communication at its 12th Session and on 16 November 1992 the Government of Chad was notified of the communication.

9. On 10 March 1993, the Ministry of Justice responded to the communication.

10. On 12 April 1993, the Chairman of the Commission wrote to the Ministry of Foreign Affairs and requested its permission to conduct an on-the-spot investigation in Chad.

11. The Government did not reply to that letter, nor to the following reminders.

12. A letter was sent to the Government on 3 February 1995, and to the complainant on 17 February 1995, stating that the communication would be considered at the 17th Session.

13. At the 17th Session in March 1995, the communication was declared admissible. The Government and complainant were informed of that decision.

14. On 1 September 1995, a letter was sent to the Government stating that the communication would be heard on its merits at the 18th Session of the Commission and inviting the Government to send a representative.

15. At the 18th Session, the Commission heard Ms. Febiene Trusses-Naprous, de la Federation Nationale des Unions de Jeunes Avocats, Commission Nationale des Droits de l'Homee et des Libertes of France. She reiterated the information in the original communication, both verbally and by way of a memoire. This memoire, in addition to summarizing the information in the original communication, affirmed that the human rights situation in Chad has not seen improvement to the present day. The Commission decided the communication on the merits, resolving that there was evidence of serious and massive violations of human and peoples' rights. Article 58 was invoked to draw the attention of the Assembly of Heads of State and Government of the OAU to this fact.

16. On 27 November 1995 a letter was received from the Ministry of External

Affairs of Chad with regard to the Secretariat's letter of 1 September 1995. This letter stated that the National Human Rights Commission of Chad could find no record of the communication.

THE LAW DECISION

17. Article 1 of the African Charter reads: "The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them".

18. In this case, the complainant claims that not only did Government agents commit violations of the African Charter, but that the state failed to protect the rights in the Charter from violation by other parties.

19. The Government claims that no violations were committed by its agents, and that it had no control over violations committed by other parties, as Chad is in a state of civil war.

20. The Charter specifies in Article 1 that the States Parties shall not only recognize the rights duties and freedoms adopted by the Charter, but they should also "undertake.....measures to give effect to them". In other words, if a state neglects to ensure the rights in the African Charter, this can constitute a violation, even if the State or its agents are not the immediate cause of the violation.

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.

22. In the present case, Chad has failed to provide security and stability in the country, thereby allowing serious and massive violations of human rights. The national armed forces are participants in the civil war and there have been several instances in which the Government has failed to intervene to prevent the assassination and killing of specific individuals. Even where it cannot be proved that violations were committed by government agents, the government had a responsibility to secure the safety and the liberty of its citizens, and to conduct investigations into murders. Chad therefore is responsible for the violations of the African Charter.

23. The complainant claims that the events in Chad constitute violations of Articles 4 (right to life), Article 5 (Prohibition of Torture, inhuman and degrading treatment), 6 (Right to Life and Security of Persons), 7 (Right to a Fair Trial), and 10 (Right to Freedom of Expression).

24. In the present case, there has been no substantive response from the Government of Chad, only a blanket denial of responsibility.

25. The African Commission, in several previous decisions, has set out the principle that where allegations of human rights abuse go uncontested by the Government concerned, Commission must decide on the facts provided by the complainant and treat those facts as given . This principle conforms with the practice of other international human rights adjudicatory bodies and the Commission's duty to protect human rights. Since the Government of Chad does not wish to participate in a dialogue, that the Commission must, regrettably, continue its consideration of the case on the basis of facts and opinions submitted by the complaints alone.

26. Thus, in the absence of a substantive response by the Government, in keeping with its practice, the Commission will take its decisions based on the events alleged by the complainants.

FOR THESE REASONS, THE COMMISSION

Finds that there have been serious and massive violations of human rights in Chad. Finds that there have been violations of Articles 4,5,6,7. Taken at the 18th Ordinary Session, Praia, Cape Verde, October, 1995. Communication No. 129/94 Civil Liberties Organization/Nigeria

- [THE FACTS](#)
- [THE PROCEDURE](#)
- [ADMISSIBILITY](#)
- [MERITS](#)
- [THE LAW DECISION](#)

THE FACTS

1.The communication is filed by the Civil Liberties Organization, a Nigerian NGO. The communication alleges that the military government of Nigeria has enacted various decrees in violation of the African Charter, specifically the Constitution (Suspension and Modification) Decree No. 107 of 1993, which not only suspends the Constitution but also specifies that no decree promulgated after December 1983 can be examined in any Nigerian Court; and the Political Parties (Dissolution) Decree No. 114 of 1993, which in addition to dissolving political parties, ousts the jurisdiction of the courts and specifically nullifies any domestic effect of the African Charter.

2. The communication complains that the ousting of the jurisdiction of the courts in Nigeria to adjudicate the legality of any decree threatens the independence of the judiciary and violates Article 26 of the African Charter.

3. The communication also complains that this ouster of the jurisdiction of the courts deprives Nigerians of their right to seek redress in the courts for government acts that violate their fundamental rights, in violation of Articles 7 (1) (a) of the African Charter.

PROCEDURE BEFORE THE COMMISSION

4. The complaint is dated 31 December 1993.
5. On 29 July 1994 a copy of the communication was sent to the State concerned for its comments.
6. At the 16th Ordinary Session of the Commission, the communication was declared admissible.
7. On 10 January 1995, the parties were informed of the admissibility decision.

ADMISSIBILITY

8. The communication meets all the specifications for admissibility set out in Article 56 of the Charter. With specific reference to Article 56 (5), the Commission accepted the complainant's argument that since the decrees complained of oust the jurisdiction of the courts to adjudicate their validity, "it is reasonable to presume that domestic remedies will not only be prolonged but are certain to yield no results."

THE MERITS

9. Article 7 of the African Charter provides: "1.

Every individual shall have the right to have his cause heard. This comprises:

a) the right to an appeal to competent national organs against acts violating his fundamental rights as guaranteed by conventions, law, regulations and customs in force."

10. The Constitution (Suspension and Modification) Decree 1993, (5) reads: "No question as to the validity of this Decree or any other Decree made during the period 31st December 1983 to 26th August 1993 or made after the commencement of this Decree or of an Edict shall be entertained by a court of law in Nigeria."

11. The Political Parties (Dissolution) Decree 12993, 13 (1) reads: "Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act or any other enactment, no proceeding shall lie or be instituted in any court for or on account of any act, matter or thing done or purported to be done in respect of this Decree."

12. The reference in Article 7(1) (a) to "fundamental rights as guaranteed by conventions...in enforce" signifies the rights in the Charter itself, among others. Given that Nigeria ratified the African Charter in 1983, it is presently a convention

in enforce in Nigeria. If Nigeria wished to withdraw its ratification, it would have to undertake an international process involving notice, which it has not done. Nigeria cannot negate the effects of its ratification of the Charter through domestic action. Nigeria remains under the obligation to guarantee the rights of Article 7 to all of its citizens.

13. The ousting of jurisdiction of the courts of Nigeria over any decree enacted in the past ten years, and those to be subsequently enacted, constitutes an attack of incalculable proportions on Article 7. The complaint refers to a few examples of decrees which violate human rights but which are now beyond review by the courts. An attack of this sort on the jurisdiction of the courts is especially invidious, because while it is a violation of human rights in itself, it permits other violations of rights to go unredressed.

14. Article 26 of the African Charter reiterates the right enshrined in Article 7 but is even more explicit about States Parties' obligations to "guarantee the independence of the Courts and .. allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter." While Article 7 focuses on the individual's right to be heard, Article 26 speaks of the institutions which are essential to give meaning and content to that right. This Article clearly envisions the protection of the courts which have traditionally been the bastion of protection of the individual's rights against the abuses of State power.

15. The communication notes that Nigeria fully incorporated the African Charter upon ratification in 1983. The African Charter upon ratification in 1983. The African Charter (Ratification and Enforcement Act) specified: "1. As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights... shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria." It is this Act that is repealed by clause 13 (1) of the Political Parties Dissolution Decree.

16. Any doubt that may exist as to Nigeria's obligations under the African Charter is dispelled by reference to Article 1 of the Charter, which reads: "The Member States ... Parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them."

17. The African Commission has to express its approval of Nigeria's original incorporation of the Charter, an incorporation that should set a standard for all Africa, and its sadness at the subsequent nullification of this incorporation. The Commission must emphasize, however, that the obligation of the Nigerian government to guarantee the right to be heard to its citizens still remains, unaffected by the purported revocation of domestic effect of the Charter. The Charter remains in force in Nigeria, and notwithstanding the Political Parties Dissolution Decree, the Nigerian government has the same obligations under the Charter as if it had never revoked. These obligations include guaranteeing the

right to be heard.

FOR THE ABOVE REASONS, THE COMMISSION

1. **holds** that the Decrees in question constitute a breach of Art. 7 of the Charter, the right to be heard;

2. **holds** the ouster of the courts' jurisdiction constitutes a breach of Art. 26, the obligation to establish and protect the courts;

3. **finds** the act of the Nigerian Government to nullify the domestic effect of the Charter constitutes a serious irregularity. Taken at the 17th Session, Lome, March 1995. Communication No. 135/94 Kenya Human Rights Commission/ Kenya

- [THE FACTS](#)
- [PROCEDURE](#)
- [THE LAW DECISION](#)

THE FACTS

1. The university academic staff from the four public universities in Kenya (University of Nairobi, Kenyatta University, Moi University and Egerton University) met and resolved to form an Umbrella Trade Union to represent their interests in negotiations with their respective employers. They decided to call their union, the Universities Academic Staff Union (UASU).

2. On 25 May 1992, they submitted an application for registration to the Registrar of Trade Unions. The Registrar acknowledged the receipt of the application documents the same day. However, there was no further replies from either the Registrar General, or the Attorney General.

3. In June 1993, the UASU interim officials wrote to the Attorney General seeking audience with him to discuss UASU's registration. The Attorney General did not reply to this letter.

4. Due to the lack of response, the UASU decided in November 1993 to go on strike 29 November 1993. The notice of the intended strike was issued to the Attorney General, the Registrar and the Vice-Chancellors of the public universities. A copy of notice was also delivered to Kenya's President Daniel Moi, who is also the Chancellor of all the public universities.

5. On 24 November 1993 the Registrar refused to register UASU on the grounds that "the union is used for unlawful purposes and as such peace, welfare and good order in Kenya would otherwise be likely to suffer prejudice..."

6. The strike began on 29 November 1993 and court proceedings initiated on 23

December 1993, challenging the Registrar's decision to reject their application for registration as a trade union.

7. On 27 December 1993, during the swearing-in of two newly appointed judges of the High Court of Kenya President Moi, who is also the Chancellor of the public universities, stated that the government would never register UASU despite the fact that the matter was already in court. He reiterated the government's position on 31 December in a public statement. He again repeated that the government would not allow the registration of UASU on 25 February 1994 and further stated that the government would take stern action against the leaders of the UASU.

8. Justice A.B. Shah, one of the new judges sworn in on 27 December 1993, and who was previously the President's lawyer, heard an application filed by University of Nairobi UASU chapter officials seeking to restrain eviction from their university housing until the cases against the Registrar challenging the rejection of registration, and their purported dismissal from the university were fully determined. Justice A.B. Shah rejected the application.

9. All the national officials of UASU have been arrested and harassed since the strike begun in November 1993. On 10 December 1993, the national interim officials were arrested while proceeding to Egerton University for a meeting. No charges were pressed and the officials were released the following day. Dr Korwa Adar was again arrested on 25 February 1994 from his house after the President warned that action will be taken against UASU leaders. Dr. Adar was charged with inciting students and colleagues to violence.

PROCEDURE BEFORE THE COMMISSION

10. The communication is dated 8 March 1994 and was received by the Commission on 2 May 1994.

11. The Commission was seized of the communication at its 16 Session in October 1994 and it was decided that the Government of Kenya should be notified of the complaint against it for comments.

12. On 10 January 1995, a letter was sent to the complainant asking what had been the outcome of the court case respecting the refusal of the Government to register the union in question. On the same date a notification was sent to the Government informing it of the seizure of the communication during the 16th Session and that the admissibility of the communication would be considered at the 17th Session.

13. At the 17th Session the 3 month period given to the Government of Kenya to respond to the communication had not yet elapsed. The case was therefore deferred to the 18th Session.

14. On the 20 April 1995, letters were sent to both the complainant and the Government of Kenya, stating that the case would be considered at the 18th

Session and requesting the Government of Kenya's response to the communication and information from the complainant on the pending court case.

THE LAW DECISION

15. Article 56 of the African Charter reads: "Communications ... shall be considered if they: (5) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged..." 1

6. The most recent information the Commission has, provided by the complainants themselves, states that the communication is still pending before the courts of Kenya. The complainant has therefore not exhausted all available local remedies.

FOR THE ABOVE REASONS, THE COMMISSION

declares the communication inadmissible without making any judgements as to the merits. 18th Session, Praia, Cape Verde, October, 1995.

ASSEMBLY OF HEADS OF STATE AND GOVERNMENT Thirty-Second Ordinary Session 7 - 10 July 1996 Yaounde, Cameroon AHG/207 (XXXII)

ORIGINAL: FRENCH

NINTH ANNUAL ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS - 1995/96

Last Updated: 22/07/2002