TENTH ANNUAL ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS 1996/97

I. ORGANIZATION OF WORK

A. Period Covered by the Report

1. The Ninth Annual Activity report of the African Commission on Human and Peoples' Rights was adopted by the 32nd Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity in its resolution AHG/Res 250(XXXII). The Tenth Annual Activity Report covers the 20th Ordinary Session held in Grand Bay, Mauritius, from 21-31 October 1996 and the 21st Ordinary Session held in Nouakchott, Mauritania from 15 April to 24 April 1997.

B. Status of Ratification

2. As of the 21st Ordinary Session of the Commission, all the member states of the OAU, with the exception of Eritrea and Ethiopia 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 since the adoption of the Ninth Annual Activity Report.

- The 20th Ordinary Session held in Grand Bay, Mauritius, 21-31 October 1996; - The 21st Ordinary Session held in Nouakchott, Mauritania, 15-24 April 1997.

D. Composition and Participation

4. The following Commissioners attended the 20th 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
11. Mr. Alioune Blondin Beye

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

1. Cameroon	2. Burkina Faso	3. Senegal	4. Sudan
5. Tunisia	6. Nigeria	7. Mozambique	8. Burundi
9. South Africa	10. Egypt	11. Ethiopia	

6. The following members of the Commission attended the 21st Session:

1. Prof. Isaac Nguema, Chairman
2. Prof. Emmanuel V.O. Dankwa, Vice-Chairman
3. Mrs. Julienne Ondziel-Gnelenga
4. Mr. Youssoupha Ndiaye
5. Mr. Kamel Rezzag-Bara
6. Mr. Prof. U. Oji Umozurike
7. Dr. Hatem Ben Salem

The following members of the Commission were absent with apologies:

1. Dr. Vera V.B.S. Duarte-Martins
2. Mr. Robert Kisanga
3. Mr. Alioune Blondin Beye
4. Mr. Atsu Koffi Amega

7. The representatives of the following States attended the 21st Session:

1. Togo	6. Senegal	11. South Africa	16. Egypt
2. Chad	7. Nigeria	12. Algeria	17. Gambia
3. Tunisia	8. Mozambique	13. Burkina Faso	18. Ghana
4. Zimbabwe	9. Mauritania	14. Cameroon	19. Sahrawi Arab Democratic Republic

5. Sudan	10. Gabon	15. Cote d'Ivoire

8. The two sessions were attended by many non-governmental organizations and National Human Rights Institutions

E. Adoption of the Tenth Annual Activity Report

9. At its 24 April 1997 sitting, the Commission considered and adopted its Tenth Annual Activity Report.

II. ACTIVITIES OF THE COMMISSION

A. Consideration of Periodic Reports

10. Under Article 62 of the African Charter on Human and Peoples' Rights, each State Party undertakes to submit a report every two years on the legislative and other measures it takes to give effect to the rights and freedoms enshrined in the Charter.

11. The first periodic report of Mauritius was presented by the representatives of the State and was duly considered at the 20th Session. The Commission commended the representative for a well prepared report.

12. The second and third periodic reports of Zimbabwe were considered at the 21st Session. The Commission commended the representative for well prepared reports which could serve as a model.

13. The first periodic report of Sudan was also considered at the 21st Session. The Commission thanked the representative for the presentation.

14. As of the 21st Session the following State Parties had submitted their reports: Libya, Rwanda, Tunisia (9th Session); Egypt and Tanzania (11th Session), The Gambia (12th and 16th Sessions); Senegal (12th Session); Zimbabwe (12th and 21st Session); Togo and Nigeria (12th and 16th Sessions), Benin, Ghana, Cape Verde and Mozambique (14th Session); Tunisia (18th Session) and Algeria (19th Session); Mauritius (20th Session); Sudan (21st Session); 33 States parties have not yet submitted their periodic reports. Their list is attached (Annex IV).

15. Seychelles has submitted it's report to the Secretariat (18th Session), but has not yet presented it formally to the Commission.

B. Promotional Activities

i) Report of the Chairman

16. The Chairman's Activity Reports included his participation in various symposia and seminars within and outside Africa, work related to the Commission's publications and his participation in the 64th OAU Council of Ministers. He also reported on his mission to Madagascar to observe elections.

ii) Activities of Other Members of the Commission

17. The other members of the Commission also reported on their inter-sessional activities.

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

a) Prison Conditions in Africa, Kampala, Uganda, 19-21 September 1996 with Penal Reform International.

b) Mechanism for Early Warning in Emergency Situations under Article 58, Nairobi, Kenya 23-25 July 1996 with Interights.

c) Draft Protocol on the Establishment of an African Human Rights Court, Nouakchott, Mauritania 11-14 April 1997 with the International Commission of Jurists.

d) Draft Protocol concerning the Right of Women, Nouakchott; Mauritania, 13-15 April 1997 with the International Commission of Jurists.

III. SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL EXECUTIONS IN AFRICA

18. At the 20th Session, Dr. Ben Salem, the Special Rapporteur submitted a report on the progress on his work. The report of the Special Rapporteur can be found in Annex VI. At the 21st session the Commission considered a report on Extra- judicial, Summary and Arbitrary Executions and commended the Special Rapporteur for the work he had done so far.

IV. SPECIAL RAPPORTEUR ON PRISON AND DETENTION CONDITIONS IN AFRICA

19. At the 20th Session Prof. Dankwa was appointed Special Rapporteur on Prison and Detention Conditions in Africa. At the 21st Session the Special Rapporteur submitted the first report on his work to the Commission (See annex VII). The Special Rapporteur had among other things conducted a mission to Zimbabwe. The Commission commended the Special Rapporteur for the work he had done so far.

V. SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN

20. The Commission appointed three Commissioners, Mrs. Julienne Ondziel-Gnelenga, Dr. Vera V.B.S. Duarte-Martins and Prof. E.V.O. Dankwa to work on a draft Protocol on the Rights of Women.

VI. MISSIONS TO STATES PARTIES

21. The Commission conducted missions to the following member states:

Senegal (1-7 June 1996). The mission was composed of the Chairman Prof. Nguema and Commissioner Duarte-Martins. Mauritania (19-27 June 1996). The mission was composed of the Chairman Prof. Nguema, Commissioner Ondziel-Gnelenga and Commissioner Rezzag-Bara. Sudan (1-7 December 1996). The mission was composed of the Vice- Chairman Professor Dankwa, Commissioner Kisanga and Commissioner Rezzag-Bara. Nigeria (7-14 March 1997). The mission was composed of the Vice- Chairman Professor Dankwa and Commissioner Amega. Staff members of the Secretariat assisted the delegation to these missions.

22. Mission reports were submitted on Senegal and Mauritania and were discussed by the Commission.

23. Reports on Sudan and Nigeria were to be submitted to the next session.

IX. RELATIONS WITH OBSERVERS

24. During the two Sessions, the Commission considered the application of, and granted observer status to 23 organizations. At present, the number of organizations with observer status is 205.

X. PROTECTIVE ACTIVITIES

25. The Commission completed consideration on 8 communications during the 20th and 21st sessions. These are attached as appendix X.

XI. ADMINISTRATIVE AND FINANCIAL MATTERS

a) Administrative Matters

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

i) Staffing

27. 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.

28. 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 as well as press and information officer.

ii) Equipment

29. 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

30. 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

31. During the financial year under review, the Commission was financed from the following resources: i) OAU Budget

32. 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 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.

iii) 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.

iv) Assistance from the Danish Centre for Human Rights

35. The Danish Centre for Human Rights provided one jurist for a period of 9 months from 1 September 1996.Futhermore the Danish Centre assisted getting funding from the Danish Government for purchase of computer equipment and the recruitment of two legal officers, one documentation officer, one administrative officers, one press and information officer and one bilingual secretary for a period of three years.

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.

Annex I
RATIFICATIONS

State of ratification of the African Charter on Human and Peoples' Rights

The state of ratifications of the African Charter on Human and Peoples' Rights is the subject of the present annex. Reminders have been sent to OAU member states which have not done so to ratify the Charter as soon as possible. Countries which have not yet ratified the Charter are Eritrea and Ethiopia. Alongside the meeting of the OAU Council of Ministers in Tripoli, Libya, direct contacts were made with the delegates from these two countries, who indicated that the process of ratification of the Charter is at an advanced stage. No Country Date of Signature Date of Ratification Date Deposited1.Algeria10/04/8601/03/8720/03/872.Angola02/03/9009/10/903. Benin20/01/8625/02/864.Botswana17/07/8622/07/865.Burundi28/07/8930/08/ No Country Date of Signature Date of Ratification Date Deposited23.Guinea-Bissau04/12/8506/03/8624.Kenya23/01/9210/02/9225.Lesotho07/03/8410/02/ State of ratification of the Charter on the Rights and welfare of the African Child No Country Date of signature Date of Ratification1.Algeria2.Angola3.Benin27.02.924.Botswana5.Burundi6.Burki Annex II African Commission on Human and Peoples' Rights20th Ordinary Session21-31 October 1996, Grand Bay, Mauritius Agenda Opening ceremony (public session) Adoption of Agenda (private session) Organisation of work (private session) Observers: (public session)

a) Statements of the States' Delegates;

b) Consideration of applications for observer status;

c) Relationship with observers and statements by observers.

Consideration of periodic reports of the following states: (public session)

- Mauritius;
- Zimbabwe.

The setting up of an early intervention mechanism in case of massive human rights violations. (public session)

Administrative and financial matters: (private session)

a) Report of the Chairman of the Commission;

b) Report of the Secretary to the Commission;

c) Functioning of the Secretariat;

d) Implementation of recommendations of the previous sessions;

e) Draft Rules and Regulations on contracts with consultants;

f) Financing the translation of session and periodic reports;

g) The situation of the Documentation and Information Centre;

h) Appraisal of the work of the Commission and its future prospects; Examining the draft Plan of Action for the period 1996-2001;

i) Discussion of the Logo of the Commission (public session)

j) Preparation of the Commemoration of the 10th Anniversary of the African Commission on Human and Peoples' Rights; (public session)

k) Distribution of the OAU member States among members of the Commission. (private session)

Promotional activities: (public session)

a) Activity reports by Commissioners;

b) Consideration of the Report of the Special Rapporteur on extra judicial, summary and arbitrary executions;

c) Report on the implementation of Resolution AHG/Res. 230 (XXX) on the establishment of the African Court on Human and Peoples' Rights;

d) The Human Rights Situation in Africa;

e) Amendments of Guidelines on the Preparation of periodic reports;

f) Organisation of forthcoming seminars and conferences;

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

h) Follow-up of the decisions and recommendations of the International Conferences on human rights (the Vienna and Montreal Conferences as well as the Beijing Conference on Women);

i) Report on the Seminar on Prison Conditions in Africa (19-21 September, 1996, Kampala, Uganda)

j) Drawing up of the Draft Additional Protocol on Rights of Women in Africa.

Revision of the African Charter on Human and Peoples' Rights; The issue of incapability of Commission members. (private session)

Protective Activities. (private session)

Secretariat Building (private session)

Participation of the Commission on some activities of the O.A.U. (public session)

Date, venue and the agenda of the 21st Ordinary Session. (private session

) Any other business. (private session)

Preparation of:

-Report of the Session;

-Final CommuniquTheta;

-Declaration.

Adoption of the report of the 20th session. (private session)

Closing ceremony; Final CommuniquTheta and the Mauritius Declaration. (public session)

Press Conference of the Commission.

Annex III
African Commission on Human and Peoples' Rights
21st Ordinary Session 15-24 April 1997,
Nouakchott,
Mauritania

Agenda

1. Opening ceremony (public session);

2. Adoption of Agenda (private session); Doc.OS/1(XXI)

3. Organisation of work (private session); Doc.OS/2(XXI)

4. Observers (public session):

a) Statements of the States' Delegates;

b) Examination of applications for Observer Status; Doc.OS/3(XXI)

5. Consideration of periodic reports of States Parties (public session):

a) Second and Third Periodic Reports of Zimbabwe; Doc.OS/4(XXI)

b) Initial Report of Sudan. Doc OS/5(XXI)

6. The setting-up of an early intervention mechanism in case of massive human rights violations (public session). Doc. OS/6(XXI)

7. Promotional activities (public session) :

a) Activity reports by Commissioners; Doc.OS/7(XXI) Add.1
b) Examination of the Report of the Special Rapporteur on extra judicial, summary or arbitrary executions; Doc.OS/7(XXI) Add.2
c) Report on the implementation of Resolution AHG/Res. 230 (XXX) on the establishment of an African Court on Human and Peoples' Rights; Doc.OS/7(XXI) Add.3
d) Human Rights Situation in Africa and Statements of observers
e) Amendments of Guidelines on the preparation of the periodic reports; Doc.OS/7(XXI) Add.4
f) Organisation of forthcoming seminars and conferences; Doc.OS/7(XXI) Add.5
g) Publication of the Review and the Newsletter of the Commission; Doc.OS/7(XXI) Add.6 h) Report of the Special Rapporteur on Prisons; Doc.OS/7(XXI) Add.7
i) Elaboration of the Draft Additional Protocol on African Women's Rights; Doc.OS/7(XXI) Add.8
j) Strengthening the Cooperation between the Commission and National Human Rights Institutions (item proposed by Commissioner Rezzag-Bara). Doc.OS/7(XXI) Add.9

8. Participation of the Commission in certain activities of the O.A.U. (public session). Doc.OS/12(XXI)

9. Protective Activities :

a) Missions of the Commission for Protective Activities (public session); (item proposed by Interights, RADDHO and the CLO) Doc.OS/9(XXI) Add.1

b) Missions of the Commission

c) Consideration of communications (private session). Doc.OS/9(XXI) Add.2

10. Revision of the African Charter on Human and Peoples' Rights, the issue of incompatibility of the members of the Commission (private session). Doc. OS/8(XXI) Add.9

11. Administrative and Financial Matters (private session) : Doc.OS/10(XXI)

a) Report of the Chairman of the Commission; Doc.OS/10(XXI) Add.1

b) Report of the Secretary to the Commission; Doc.OS/10(XXI) Add.2

c) Examination of the project of the Logo of the Commission (public session); Doc.OS/10(XXI) Add.3

d) Preparation of the Commemoration of the 10th Anniversary of the African Commission on Human and Peoples' Rights (public session); Doc.OS/10(XXI) Add.4

e) Distribution of the OAU member States among members of the Commission. Doc.OS/10(XXI) Add.5

12. Question concerning the Headquarters of the Commission (private session). Doc.OS/11(XXI)

13. Dates, venue and agenda of the 22nd Ordinary session (private session).

14. Any other business (private session).

15. Preparation of:

a) the 10th Annual Activity Report

b) the Session Report

c) the Final CommuniquTheta

16. Adoption of the Session Report, the Annual Activity Report and Final CommuniquTheta (private session).

17. Reading of the Final CommuniquTheta and Closing Ceremony (public session).

18. Press Conference

Annex VI
African Commission on Human and Peoples' Rights Report on Extra judicial, Summary or Arbitrary Executions
By Dr Hatem BEN SALEM Special Rapporteur

Outline

IV Budget

Annex: progress on the report on extra judicial, summary or arbitrary executions: Rwanda, Burundi

I - INTRODUCTION

This report is presented in compliance with the decision of the African Commission on Human and Peoples' Rights (ACHPR), unanimously adopted during its 16th ordinary session (October 1994), designating M. Hatem BEN SALEM, member of the Commission, as Special Rapporteur on extra judicial, summary or arbitrary executions.

Far from being the result of chance or circumstance, the decision of the ACHPR was taken with courage and determination, taken in spite of a paucity of means. As it concerns one of the essential questions in relation to fundamental human rights, the decision of the signifies the profound conviction of all the members of the Commission that there is nothing more irreparable and more irreversible than the taking, outside the law, of the right to life, expressly guaranteed by Article 4 of the African Charter on Human and Peoples' Rights. Each human being thus has the right to the respect for their life and the integrity of their person and no one can deprive them of these arbitrarily. This principle is widely recognised by international instruments, particularly the Universal Declaration of Human Rights (Article 3) and the International Covenant on Civil and Political Rights (Article 6). Unfortunately, the ratification of the African Charter on Human and Peoples' Rights or the adherence to other international human rights treaties and conventions has not prevented states, groups, or individuals from attacking this fundamental human right, the right to life. Africa has, sadly, become a sort of "continent of predilection" of such acts because, on the soil of one of its countries, a party to the Charter, was perpetrated a genocide of atrocity rarely equalled in the course of human history. Encouraged by a good number of African and international NGOs, the ACHPR therefore designated one of its members with a view to assuring this mission of investigation, analysis and recommendation.

II - MANDATE OF THE SPECIAL RAPPORTEUR

The ACHPR, in designating the special rapporteur on extra judicial, summary or arbitrary executions, delimited his competence on the following fundamental points.

A - Mission

1. To propose the implementation of a reporting system on cases of extra judicial, summary and arbitrary execution in African states, specifically by keeping a register containing all information as to the identity of the victims.

2. To follow up, in collaboration with government officials, or failing that, with international, national or African NGOs, all enquiries which could lead to discovering the identity and extent of responsibility of authors and initiators of extra judicial, summary, or arbitrary executions.

3. To suggest the ways and means of informing the African Commission in good time of the possibility of extra-judicial, summary or arbitrary executions, with the goal of intervening before the OAU Summit.

4. To intervene with States for trial and punishment of perpetrators of extra-judicial summary or arbitrary executions, and rehabilitation of the victims of these executions.

5. To examine the modalities of creation of a mechanism of compensation for the families of victims of extra-judicial, summary or arbitrary executions, which might be doing through national legal procedures, or through an African compensation fund.

B. Field of investigation

In his mission, the Special Rapporteur will have as a priority to produce a report on extra-judicial execution of children, of women, of demonstrators, and of human rights activists/political opponents of their governments. The Rapporteur can decide to chose a country where he believes the incidence of execution are the most frequent or massive.

C - Duration of the Mandate

The Special Rapporteur will have a period of at minimum two years to finalise his mission, if the Commission does not decide to extend this time.

D - Methods of action

The Special Rapporteur can, for the execution of his mandate, have recourse to all methods of investigation, specifically by requesting the assistance of states and national, international and African NGOs. He can be assisted in his mission by any person whom he judges competent to perform this task well.

E - The Report

The Special Rapporteur will inform the Commission at each session of the progress of his mission. He will make an annual report which will be annexed to the activity report of the Commission to the Conference of Heads of State and government of the OAU.

III - IMPLEMENTATION OF THE MANDATE OF THE SPECIAL RAPPORTEUR

It is only at the 18th session of the ACHPR, held at Praia, Cape Verde, in October 1995, that the mandate fixing the responsibilities of the Special Rapporteur was approved. This delay in the articulation of his duties was essentially due to the wish expressed by members of the Commission to begin this first experience on a solid foundation. In fact, from the beginning there was no question of creating a mechanism without concretising a specific role for it to play in the effective protection of human rights in Africa. Thus, all the parties together believed that it was imperative that the Special Rapporteur have minimum means, independent of the Secretary to the Commission, with the object of fulfilling his task in the best conditions. These conditions were not fulfilled until the beginning of 1996, thanks to a clarification of the mandate of the Special Rapporteur and to the logistical support of the North-South Centre of the Council of Europe, and the Swiss Directorate of Cooperation in Development and Humanitarian Aid.

A - Mission of the Special Rapporteur

In conformity with point 1 of his mandate (cf.II of the present report) the Special Rapporteur should propose the implementation of a system permitting the cataloguing of cases of extra judicial, summary or arbitrary executions in African countries, specifically through a register containing all information as to the identity of the victims.

1 - idea of the register of extra judicial executions From the first contact with available information and in light of the breadth of the task assigned to the Special Rapporteur to focus his first investigation on Rwanda--where a genocide was perpetrated the implementation of a database of

information is clearly necessary. An assessment of specialised NGOs permitted the identification of HURIDOCS (Geneva) to assist in the conceptualisation of the register. Written correspondence and contacts to this effect with M. Najib GHALI are in progress with the object of adapting from the HURIDOCS system a database accessible to the Secretariat of the Commission as well as to the Special Rapporteur.

The idea for a computerised database must take into consideration all the elements to establish the proof of an extra judicial execution, the date and place of execution or disappearance, the details of the circumstances of death, those state actors, paramilitaries or individuals responsible for the execution. It is also useful to include the address of families or next of kin even if they do not live any longer in the country where the executions took place. All inquiry or other form of investigation, whether they come from judicial or police authorities of the country of origin, must figure in the register of extra judicial executions. With collaboration with the Special Rapporteur of the UN, a teaching outline will be available soon and will be the object wide dissemination among concerned NGOs. The Secretariat of the ACHPR must be asked to assist in this respect and use will be made of email to coordinate and make more effective possible actions of the Special Rapporteur in relation to governments and NGOs.

2 - collection of information

The computerisation must be coupled with assistance in the collection of information. Contacts made have permitted the Special Rapporteur to undertake this task with Amnesty International. A meeting is expected very soon. Moreover, several African NGOs have been requested to furnish useful information to the Special Rapporteur. Correspondence has been addressed to this effect to the UIDH (Union Interafricaine des Droits de l'Homme), la RADDHO (Rencontre Africaine pour la DThetafense des Droits de l'Homme), whom the Special Rapporteur found very willing. It is envisioned that the next step will be to appeal to other NGOs (International Observatory of Prisons, Penal Reform International, Africa Watch..) Permanent contacts will be maintained with the ICJ (Geneva) and the Special Rapporteur will try to identify sources of credible information, above all on Rwanda and Burundi. The UN Special Rapporteur on extra judicial, summary or arbitrary executions, M. Bacre Waly NDIAYE has been solicited and has demonstrated great willingness to cooperate. Several meetings have been held at Dakar with the goal of indicating the field of investigation and means of action. The collection of information also requires material proof which can only be obtained by visits in loci, discussions with victims' families or eyewitnesses. On site visits can only take place with the agreement of the governments concerned. A strategy for making contact will government organs will be made in cooperation with the Secretary of the Commission. The Special Rapporteur has found, in the case Rwanda, much reticence on the part of witnesses to extrajudicial executions, who fear reprisals against their families or friends.

If in the first place the case of Rwanda and of Burundi will be a priority for the collection of information and creation of the computer database, as a matter of course all available information on extrajudicial executions in other African countries will be registered, especially for Liberia. To do so, and to collect more testimony, the reports submitted to the organs of the UN as well as the OAU will be taken into consideration.

3 - publication of information

The periodic publication of information collected should not pose a particular problem in the case of Rwanda. Actually, numerous reported cases have also been submitted to the General Prosecutor of the Criminal Tribunal for Rwanda and are the object of much publicity on the part of NGOs and Rwanda refugees living abroad. However, the question of state responses is risky to pose explicitly, since they wish to maintain confidentiality, and the testimony of families must not in any way be publicized for fear of putting the witnesses in danger. The solution adopted, in order to avoid all polemics, will be to publish a bulletin on the eve of each session of the

Commission, which will serve to inform African and international public opinion and will be distributed to the members of the Commission, to the different organs of the OAU, to international organs, to NGOs and to individuals concerned with the problem of extrajudicial executions.

The bulletin will be able thus to focus attention on particular situations of grave attacks on the right to life, and will render an account of the work of the Special Rapporteur and his contacts with African states and with national and international NGOs, without threatening the investigative procedures and without prejudging their result.

B - Methods of Work

The success of the mission of the Special Rapporteur on extrajudicial executions can be significant only if he is able, thanks to specific information, to convince states that the cases he submits are well-founded, and guarantee implementation of his recommendations, specifically for the punishment of executions and the compensation of victims. It is for this reason chiefly that the greatest efforts must be focused on the credibility of sources of information. In order to do this, the allegations of executions or threats of executions must be based on unquestionable criteria for the evaluation of facts concerning the victim and the exact circumstances in which the facts were perpetrated. With the object of being able to indicated allegations of extrajudicial executions and act upon them, the criteria fixed by the UN Special Rapporteur must be reiterated, specifically:

a) information concerning the victim: family name, age six, place of residence or origin, profession or activity, if it has a relation to the alleged execution or threat of extrajudicial execution; all other pertinent information, likely to aid in the identification of a person (for example, the certificate of a prisoner, or the number of his passport or identity card).

b) information concerning the alleged facts: date, place, description of the circumstances in which the events occurred, in the case of the violation of the right to life in relation to capital punishment, specific information on the insufficiencies in guaranteeing the right to have one's cause hear, the provisions of relevant laws, the sentence and the recourse available;

c) information concerning the alleged authors of the crime, including the reasons they are suspected: their name if it is known; if they are members of the security forces, their rank, their duties, the unit or service to which they belong, etc...; if they are members of a civil defence group, a paramilitary force or others, the relations between these groups or the government forces (for example, cooperation with the state security forces, especially hierarchical relationship; cooperation or toleration of the state with regard to their activities, etc...);

d) information concerning the measures taken by the victims or their families in particular any complaints they brought (and the organ before which such a complain was brought); if they have not brought any complaint, why not;

e) information concerning the measures taken by the authorities to inquire into the alleged violations of the right to life, or the measures adopted to protect endangered persons and to prevent such acts in the future, specifically: if a complainant was brought, the action undertaken by the competent organ which was seized; progress of the investigation at the present time or when the allegation was presented; if the results of the investigation are not yet satisfactorily completed, reasons for this dissatisfaction;

f) information concerning the source of allegations: name and complete address of the organisation or particulars in view of facilitating obtaining details on unclear points and measures taken.

The Special Rapporteur will be charged with inquiring into all serious allegations of extrajudicial, summary or arbitrary executions or threat of executions which are submitted to him, which will form entries in the register, whether they are committed by known persons or those whose identity could not be revealed. The principle objective of the Special Rapporteur must be to verify the facts contained therein, using facts provided to him by the responses of States, with the object of identifying those responsible for the extrajudicial execution and to determine the degree of implication of the authors or initiators of such acts.

An essential work will be undertaken with the governments of countries concerned with extrajudicial executions and the goal of bringing to light the circumstances of the executions, on the basis of the above-mentioned criteria and to encourage the initiation of national judicial procedures with the goal of indemnifying the families of victims and punishing those responsible for these crimes.

If the Special Rapporteur cannot, in any way, substitute for the police and judicial organs of the concerned country, nor play the role of detective, it nevertheless remains that he must evaluate the adequacy of the means of inquiry made by national organs and the credibility of the conclusions adopted by national investigative organs, and make a report to the Commission to summarize his opinion and recommendations. All means of investigation tending to inform the Special Rapporteur should be implemented, among them direct contact with families of victims and NGOs involved in the collection of information. The inquiries of the Special Rapporteur can take the form of visits to the relevant places, with cooperation and acceptance of the authorities of the country concerned; these could also during missions of the Commission and in connection with other international organs or in an independent fashion. After the recommendation of the ACHPR, independent and internationally recognised experts as well as NGOs having observer status can assist the Special Rapporteur in its missions or with other aspects of its mandate.

The observations of states concerned by extrajudicial executions as well as their responses on specific cases which are submitted to them must have all required attention. When a government responds that an inquiry has been opened on a particular case, the Special Rapporteur must take into account the following elements:

- The character of the inquiry (judicial or administrative) and its objectivity;

- The independence, impartiality and competence of the organ charged with the inquiry;

- The applicable procedures, particularly those what concern the collection and evaluation of elements of proof;

- The rights of victims or their families or of their representatives;

- The decisions that can be taken and the punishments which can e inflicted following and inquiry;

- The possibilities for victims or their families to obtain reparations;

- That the delay in which the inquiry has been begun and completed is not excessive/

It is probably that in cases submitted to the attention of the Special Rapporteur, the information provided by governments and other sources will be contradictory. In these cases, after analysis and verification, the Special Rapporteur will present his recommendation to the Commission which will decide what action to take on the case.

In the case of a government remaining silent in the fact of allegations transmitted to it, the situation in question will be transcribed in the report which the Commission submits to the Conference of Heads of State and Government of the OAU. The investigations of the Special Rapporteur will be most effective if an early warning mechanism is put in place in cooperation with NGOs having observer status. An instant information network must thus be functioning between NGOs, the Secretariat of the Commission and the Special Rapporteur with the goal of preventing an imminent execution, which will require urgent intervention with the state concerned. It is intended in this regard to hold an inclusive meeting with the interested NGOs on this question, to fix the contours of the system and reflect on the ways and means of implementing it.

Members of the Commission will be constantly informed by the bi-monthly bulletin of the Secretariat and the information bulletin of the Special Rapporteur. They can for their part communicate all useful information on the countries which they supervise and will be called to contribute either through their own investigations or their presence if this becomes necessary for the proper execution of on- site visits.

If a situation of urgency becomes known on the eve of sessions of the Commission, it will be integrated into the agenda of the session and debated by the whole Commission. Measures of safeguard can be decided upon in conformity with the provisions of the African Charter on Human and Peoples' Rights.

Taking into account the irreversible damage caused by an extrajudicial, summary or arbitrary execution, adequate means of compensation must be investigated with the object of sustaining the families of victims. This is the specific and chief duty of the Special Rapporteur inaugurated by the ACHPR. The possibility of creating a trust fund for compensation has been debated by the Commission and will perhaps be debated in more detail in the future.

The Special Rapporteur on extrajudicial, summary or arbitrary executions believes for his party that the idea of creation of the trust fund presages the evolution which the Commission must recognised by the African Commission in the wake of the 10th Anniversary of the African Charter on Human and Peoples' Rights. The direct implication of the Commission, through the basis of the question of extrajudicial executions, will be the best proof of the maturity of the Commission and a strong indication of its commitment to engage, in the context of its mandate, in a serious and beneficial effort to safeguard the interests of victims of human rights violations.

The conditions of implementation, of administration, of modalities of compensation will be the subject of a joint reflection with interested NGOs and a report will be submitted for the advice of the Commission, which will pronounce on this question.

C- Fields of investigation

Due to the civil wars and ethnic conflicts which grip it, the African continent finds itself in the front line of extrajudicial executions. In fact, conflict areas have seen, in addition to the regular armed forces, an increase in paramilitary groups which have systematically resorted to massacre of the innocent civilian population. The Special Rapporteur has decided, from the beginning of his mission, to dedicate himself as a matter of priority to populations vulnerable to becoming victims of extrajudicial executions. These are women, children, prisoners, human rights activists and demonstrators. Special attention will also be paid to ethnic minorities. This choice is likewise dictated by a concern for effectiveness, with the goal of avoiding all duplication of effort with the mission of the UN Special Rapporteur.

The Special Rapporteur will make an appeal for testimony, especially before the specialised NGOs and those having observer status before the Commission, which will be called to furnish all

information concerning an attack or a threaten attack on the right to life of the above-mentioned populations.

The ACHPR has already decided that Rwanda and Burundi, to which must be added Zaire, in light of the events which are occurring in the east of that country and which have the consequence of worsening the situation in Rwanda, must be the object of the first investigations of the Special Rapporteur. However, NGOs may submit all information at their disposal concerning extrajudicial executions in other African countries, notably Sudan, Nigeria and Liberia.

D - Duration of mandate

The 20th session must decide to extend the mandate of the Special Rapporteur for two years, that is to say, until October 1998.

E - The Report

To the present report will be jointed a note on the progress of the preliminary inquiry on Rwanda and Burundi which will be submitted for the advice of the Commission in the course of the 21st session (April 1997). If the Commission agrees, the report can be integrated into the annual activity report presented to the Summit of Heads of State and Government of the OAU.

IV - BUDGET

The 19th session of the Commission has approved the budget approved by the Special Rapporteur in collaboration with the Secretariat of the Commission. Thanks to person contacts of the Special Rapporteur with the North-South Centre of the Council of Europe, the Swiss Directorate of Cooperation for Development and Humanitarian Aide furnished the means to execute the first phase of the budget, to wit:

- a computer, a photocopier and accessories $7,000

- postage, telephone, fax, documentation, $9,000 temporary secretariat, register and various expenses

For the second phase, the provisional budget is:

- visits and inquiries in situ $25,000

- running expenses, keeping of the register, telephone, fax, temporary secretariat $16,000

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS PROGRESS OF THE REPORT ON EXTRAJUDICIAL,
SUMMARY OR ARBITRARY EXECUTIONS: RWANDA, BURUNDI

The Special Rapporteur on extrajudicial, summary and arbitrary executions several months ago began to prepare his report on Rwanda and Burundi.

The Special Rapporteur on extrajudicial, summary and arbitrary executions several months ago began to prepare his report on Rwanda and Burundi.

His work consisted, first, of the presentation of his mandate to potential partners. Each time it was possible, whether at the Lisbon Forum or the Congress of the UIDH in Dakar, the mission, the

mandate of the Special Rapporteur was conveyed to all NGOs present and they were asked to support, above all with information, the work of the Special Rapporteur. Next, correspondence was initiated with Amnesty, the UIDH, and RADDHO. Amnesty sent two reports in August 1996 (index AI: AFR 47/13/96- index AI : AFR 16/21/96), the two other organisation promised a close collaboration with the Special Rapporteur. In the meanwhile, contacts and meetings were organised the Rwandan refugees in Brussels, Abidjan, Bukav (Zaire) and Dakar. The following represented Rwanda:

F the government of Rwanda in exile (Ministry of Justice) F the community of Rwandan refugees in Central Africa F the Forces of Resistance for Democracy F the Assembly for the return of refugees and Democracy in Rwanda F the Association "Justice and Peace" for Reconciliation in Rwanda (AJPR)

For Burundi:

F representatives of the Giheta commune, Province Gitaga F Parti Sahwanga Frodebu, Front pour la DThetamocratie au Burundi F M. Norbert NDIHOKUBWAYO, Deputy of the National Assembly of Burundi (dissolved after the coup d'etat of 25//96).

Lists of names of several dozen individuals extra judicially executed were submitted to the attention of the Special Rapporteur of which was simultaneously also addressed to the Prosecutor General of the Criminal Court for Rwanda. It must be recognised, as a preliminary matter, that these lists were provided, for Rwanda as well as for Burundi, by one of the two parties to the conflict. This does not detract from the gravity of the facts, but it is imperative that the inquires into these executions be made with the greatest seriousness.

In order to do so, the Special Rapporteur has suggested that the Secretariat enter quickly into contact with the head of the Criminal Tribunal for Rwanda with the goal of informing it of the mandate of the Special Rapporteur and inviting it to enter into a close cooperation. In the second place, the Special Rapporteur has proposed a joint meeting with the ICJ, Amnesty, the UIDH and RADDHO in order to list the cases of executions in the context of the mandate. This action will permit the seizure of the government of Rwanda (and secondarily, Zaire) with the cases of extrajudicial executions thus catalogued and to organise, if need be, a mission to these two countries.

Annex VII
REPORT OF SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION TO THE 21ST SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Mandate

African Commission on Human and Peoples' Rights Report of the Special Rapporteur on Prisons and Conditions of Detention to the 21st Session of the African Commission on Human and Peoples' Rights 15-24 April 1997 Nouakchott, Mauritania

Introduction

In compliance with the decision of the Commission at its 20th Ordinary Session held at Grand Bay, Mauritius from 21-31 October 1996, the Terms of Reference of the Special Rapporteur on the above subject have been revised, and a copy of the revised text is attached to this report as appendix I. The Report comprises (i) Programme of Activities for the period January 1997-1999; (ii) Intersessional activities covering the 20th and 21st Sessions; and (iii) a budget for the period stated in (i) above. It was thought neater to fix the commencement of the work of the Special Rapporteur from January 1997 since the intervening period from the time of his appointment by the Commission and January 1997 not much could be done because of the imperative need to attend to work which had piled up at home during the period of the 20th Session in Mauritius and the holidays in December.

I. Programme of Activities- January 1997 - January 1999

The above period is divided into intersessional periods with the main activities planned to be undertaken as follows:

January - April 1997. Consultation on Revision of Terms of Reference and method of work. Planning and execution of first country visit.

May - October 1997. Senegal or Mali.

November 1997 - March 1998. Uganda or Mauritius.

May - October 1998. Mozambique or Sao TomTheta and Principe.

November 1998 - January 1999. Tunisia and South Africa. The feasibility of a visit to a Central African country will be closely studied, and if positive undertaken.

In drawing up this programme account was taken of the importance of covering the main geographical areas of Africa, the main languages of the OAU, big and small countries as well as island and mainland countries.

II. Intersessional Activities - 20th - 21st Sessions.

With a view to thinking through the Terms of Reference of the Special Rapporteur, his mode of operation, his relationship with inter-governmental agencies, non-governmental organisations and related matters, the Chairman of Penal Reform International, Mr. Ahmed Othmani, the Secretary of the Commission, Mr. Germain Baricako and I had a consultation in Banjul, the Gambia from 8-12 January 1997. The consultation found it desirable for a country visit to be undertaken before the 21st Session.

Factors which were to be taken into account in selecting the first country were Language (ease in communication); likelihood of co- operation from both government and non-governmental organisations, good road net-work which will not make internal travel difficult, and similar matters.

Assurance was given that Penal Reform International (PRI) would support the work of the Special Rapporteur (SR) as far as possible. Towards this end, PRI would endeavour to mobilise resources at local and international levels for the work of the SR. In particular, PRI will be able to offer assistance in three areas: alternatives to imprisonment; prison conditions and rehabilitation; and the strengthening of regional, sub-regional and local NGOs working on prisons.

PRI will make available to the SR relevant data and other material. The Secretary to the Commission gave assurance of Secretarial support to the work of the SR.

Following from this consultation, the SR selected Zimbabwe for his first country-visit. That arrangements for the visit were completed within a short time and the visit undertaken from 23 February to 3 March was due to the indefatigable work of Mr. Ahmed Othmani and the great co-operation and assistance of the Commissioner of Zimbabwe Prisons, Mr. L. Chigwida as well as other officials with responsibility for Prisons in Zimbabwe. To them all I am extremely grateful.

A separate report on this visit is attached to the present Report as Appendix II. I took advantage of my participation in a conference on the Future of the United Nations System of Human Rights in Cambridge University, England 21-23 March to have consultation in Geneva with the United Nations Special Rapporteur on Torture, Prof. Nigel Rodley on his method of work. To Mr. Ahmed Othmani who facilitated this encounter, and the Association for the Prevention of Torture headed by Claudine Haenni which nicely arranged the Geneva end of my mission, I am very grateful.

Budget

- Equipment
  Computer, Printer and Accessories $ 5,000.00 .
- Secretarial Support

  Emolument $ 2,400.00
  Transport $ 1,200.00

Telephone, fax, correspondence etc. $ 3,000.00
Publication of Report $ 2,000.00

- Travel and related expenses $ 25,000.00
- Miscellaneous $ 1,400.00 $ 40,000.00

Submitted by Prof. E.V.O. Dankwa, Special Rapporteur on Prisons and Conditions of Detention in Africa.

TERMS OF REFERENCE FOR THE SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

MANDATE

1. In accordance with its mandate under Article 45 of the African Charter on Human and Peoples' Rights (the Charter) the African Commission on Human and Peoples' Rights (The Commission) hereby establishes the position of Special Rapporteur on Prisons and Conditions of Detention in Africa

2. The Special Rapporteur is empowered to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples' Rights.

METHODS OF WORK

The Special Rapporteur shall

3.1 examine the State of the prisons and conditions of detention in Africa and make recommendations with a view to improving them;

3.2 advocate adherence to the Charter and international human rights norms and standards concerning the rights and conditions of persons deprived of their liberty, examine the relevant national law and regulations in the respective States Parties as well as their implementation and make appropriate recommendations on their conformity with the Charter and with international law and standards;

3.3 At the request of the Commission, make recommendations to it as regards communications filed by individuals who have been deprived of their liberty, their families, representatives, by NGOs or other concerned persons or institutions;

3.4 propose appropriate urgent action.

4. The Special Rapporteur shall conduct studies into conditions or situations contributing to human rights violations of prisons deprived of their liberty and recommend preventive measures. The Special Rapporteur shall co-ordinate activities with other relevant Special Rapporteurs and Working Groups of the African Commission and United Nations.

5. The Special Rapporteur shall submit an annual report to the Commission. The report shall be published and widely disseminated in accordance with the relevant provisions of the Charter.

Duration of mandate

6. This mandate will last for an initial period of two years which may be renewed by the Commission.

7. The Special Rapporteur shall seek and receive information from States Parties to the Charter, individuals, national and international organisations and institutions as well as other relevant bodies on cases or situations which fall within the scope of the mandate described above.

8. In order to discharge his mandate effectively the Special Rapporteur should be given all the necessary assistance and co- operation to carry out on-site visits and receive information from individuals who have been deprived of their liberty, their families or representatives, form governmental or non-governmental organisations and individuals.

9. The Special Rapporteur shall seek co-operation with State Parties and assurance from the latter that persons, organisations, or institutions rendering co-operation or providing information to the special rapporteur shall not be prejudiced thereby.

10. Every effort will be made to place at the disposal of the Special Rapporteur resources to carry out his/her mandate.

MANDATE PRIORITIES FOR THE FIRST TWO YEARS

11. In order to establish his/her mandate in the first two years, the Special Rapporteur shall focus on the following activities, while paying special attention to problems related to gender:

11.1 Make available an evaluation of the conditions of detention in Africa highlighting the main problem areas. This should include areas such as: prison conditions; health issues; arbitrary or extra-legal detention or imprisonment; treatment of people deprived of their liberty; and conditions of detention of especially vulnerable groups such as: refugees, persons suffering from physical or mental disabilities, or children. The Special Rapporteur shall draw on information and data provided by the States.

11.2 Make specific recommendations with a view to improving the prisons and conditions of detention in Africa, as well as reflect on possible early warning mechanisms in order to avoid disasters and epidemics in places of detention

11.3. Promote the implementation of the Kampala Declaration.

11.4 Propose revised terms of reference if necessary, at the end of this two year period to the African Commission and an overall programme for the following stage.

REPORT ON VISIT TO PRISONS IN ZIMBABWE BY PROFESSOR E.V.O. DANKWA, SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION

Introduction and Acknowledgement

At its 20th Ordinary Session which was held at Grand Bay, Mauritius from 21-31 October 1996 the African Commission on Human and Peoples' Rights appointed me as Special Rapporteur on the above subject and charged me with the responsibility of revising the Draft Terms of Reference of my office which was considered by the Commission at that session. Taken the view that a report to the 21st Session on my activities over 6 months which consisted of only procedural matters should be less that adequate. I decided to study the prison regime and related matters of one of the State Parties to the African Charter on Human and Peoples' Rights.

My decision for so doing stemmed from the fact that whatever controversy there might be on the text to be revised the study of prisons as contemplated by me would be incontrovertible function of my office. Whatever portions which are exercised from the original draft or amended, the study of prisons will remain.

I was further fortified in my decision by the unanimous decision of a Consultation on the Draft Terms of Reference and matters connected therewith held in Banjul, The Gambia from 8-12 January 1996 that a visit to the prisons of a country was a course of action worthy of pursuit.

Being the first visit, and having to be planned within a short time, I took into account, in the selection of country, factors such as language with which I am familiar, the likelihood of agreement from the relevant officials for my visit, the co-operation I was likely to get from the state officials and NGOs working in the area of my study as well as good communication and road network which would make possible the accomplishment of much within a relatively short time.

Mr. L. Chigwida, Commissioner of Prisons, Zimbabwe and other officials were ready to receive me within a very short time of notification of my interest in visiting prisons in Zimbabwe. They extended to me every assistance I needed, and thus eased the burden of my task considerably.

February 1995, the Attorney-General, Mr. P.A. Chiwamasa found time to have discussions with me, on the subject of my instant visit in particular and the Commission in general. Mr. Y. Omerjee, Secretary for Justice, Legal and Parliamentary Affairs briefed me about the open nature of Zimbabwean prisons especially its prisons regime including the efforts being made to sustain a

humane penal system. My understanding of the subject of my study was broadened by meetings with J. G. Mutombikwa; Mr. Mhiribidi, Director of Social Welfare and one of his deputies Mrs. Dhiembeu who has responsibility for child welfare. The Deputy Commissioner of Prisons, Washington Chimbeza and Mr. T. Mahema, Chief Magistrate contributed in no small measure in this direction.

Generally non-governmental organisations provide additional perspectives to matters within their domain, and I found those in Zimbabwe no exception. Indeed it was my fortune to have found NGOs working in the area of penal reform. But I am indebted to Mr. Chigwida, Commissioner of Prisons, who scheduled meetings with the NGOs for me at which there were no government. I acknowledge the assistance I had from Samuel Myanibo and Ernest Maigwara, Chief Executive and President respectively of Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender; Peter Mandianike, Executive Director of Prison Fellowship; and John Reid Rowland, Chief Legal Adviser of Legal Resources Foundation. To Officials of Harare, Chikurubi and Kadama Prisons and many others I express my gratitude.

Mr. Ahmed Othmani, Chairman of Penal Reform relied on his knowledge of personnel in the penal system in Zimbabwe to set in motion the planning of my visit, and I am extremely grateful to him.

Charter Basis for Appointment of Special Rapporteur

That prisons in Africa as elsewhere have serious problems was put beyond dispute by the First All-African Conference On Prison Conditions which was held in Kampala, Uganda from 19 to 21 September 1996. Restriction of the Liberty of the individual and problems arising out of it or related to it are par excellence human rights problems. Studies and researchers such as a Special Rapporteur will undertake, will contribute towards the solution of the problems. Therein lies the justification for the appointment to my present office, and Article 45.1 (a) provides a legal basis, for the creation of the Office of Special Rapporteur on Prisons and Conditions of Detention:

"The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular: (a) To collect documents, undertake studies and researches on African problems in the field of human and peoples' rights."

The Prisons

Zimbabwe has 40 prisons, and "the official holding capacity of all the prisons is 16,000" (E. Mupfiga, Characteristics of Criminal Offenders in Zimbabwe During 1991 (1993) p. 4). A recent amnesty reduced a prison population of 22,000 to 16,000, but the rising trend of criminality makes overcrowding an ever present problem for the 11 million people of Zimbabwe including 4,000 prison officers 300 of which are professionals such as doctors, nurses and artisans.

Consistent with a universal trend, female prisoners in Zimbabwe with their low figure have lesser fear of overcrowding. Although females constitute 51% of the national population they account for only 5% of the total prison population.

Indeed at Kadoma Prisons a small female section with a holding capacity for 30 had 17 prisoners with 8 officers. However this is to be contrasted with Chikurubi Female Prison which had 375 inmates although its capacity is 287; and in 1991, Mupfiga calculated that female offenders admitted into prisons represented 8.6% of total admission (op.cit. p.7). In terms of space, male prisoners at Kadoma Prisons had more room that planned for: 564 occupied space constructed for 670. They also had a staff of 160.

As partial solution to the problem of overcrowding a former military barracks with a holding capacity of 6,000 has been acquired.

Remand

Out of the total of 16,000 prisoners 4,500 of them were on remand. 4,000 of the latter figure may generally be on remand for 6 months, and the remaining 500 beyond six months. At Kadoma Prison while some prisoners on remand may stay for less that one year, others stay for 12 or 18 to 24 months. It was said that screening by psychiatrists to determine the mental state of entrants is not fast enough and it accounted in part for long demand; delay by the police and prosecutors being the other major contributory factor.

At Chikurubi Female Prison and Kadoma Farm Prison, prisoners on remand were distinguishable from those serving sentences by their uniform, and at the latter by sitting arrangement when I met and talked to them in a Hall about my assignment.

Labour, Trade and Skills

Harare Prison has an impressive set of workshops which provide training and working at known trades by the inmates. A mechanic section gives training in engine-tune ups, engine overhauls, suspension, steering overhauls, gearbox repairs, brakes overhaul, wheels, clutch overhauls, auto-electric and general service. A Prison Officer who is a qualified mechanic, and was assisted by five other officers with similar qualifications, was in charge of the mechanics section. Understudying the officers were 37 prisoners. Most of these had no previous knowledge of mechanics, but, as part of the scheme they would be trade-tested by the Ministry of Higher Education and the successful ones issued with certificates which would enhance their prospects of employment, or give them the confidence to start their own small trade.

Under a welding section were moulding and forging sectors. There were also a panel beating and spay painting section.

A carpentry section whose supply of logs comes from prison farms make filing shelves for the Ministry of Justice, and repair furniture of the Prisons, Army and Ministry of Justice. Corner stands, beds and display cabinets, chairs and doors are also made at this carpentry. 74 prisoners in the carpentry had 2 prison officers as supervisors. A prisoner with experience in carpentry shared his skills with his mates.

Television sets, wireless and iron were repaired at an electrical repair wing of the workshop.

Carving engaged the attention of some prisoners

A large tailoring shop with 106 machines had 170 prisoners working in it. Some of the items sown were male and female prison Officers uniforms, gowns for judges, magistrates and prosecutors. Others were prisoners uniforms, computer covers, hospital theatre towels and nurse aid uniforms. The skills imparted to the prisoners went beyond sewing to repair of sewing machines.

A book binding section had upholstery and cobblers wings. Pneumatic tyres served as material for making sandals for prisoners. 75 prisoners worked under 2 officers with qualification in the trades being learnt. As regards the binding of books, the Ministry of Education supplied materials with which books of government schools were bound.

Built in 1928 the workshops must have served over the years to make the Harare Prison not only a place of detention but a setting where some appreciable measure of rehabilitation of the offender could be expected of those who worked there.

Chikurubi Female Prison which was established in 1967 has set up projects for the training of the inmates through on a small scale. Training is given in typing from the intermediate to the advanced stages. Computer literacy is also encouraged. Prison Officers also can take advantage of these projects to either learn or improve their skills in the above areas.

A sewing section was under two officers, and uniforms of female officers were sown here.

A knitting section produced jerseys, some of which were said to be worn by the inmates during the winter months of May-August.

It is noted that a clinic is attached to the female wing while the Chikurubi maximum security prison which began operation in 1979 has a hospital attached to it.

Chikurubi Farm Prison

Under the command of Superintendent Mutongi, a farm manager oversees dairy animals and piggery which provide food for inmates of Zimbabwe prisons.

Unlike the prisons at Chikurubi and in Harare, Kadoma Prison was built after the independence of Zimbabwe.With 122 hectares of arable land reduced under cultivation, farming is the main activity at this prison. It has also a diary of 70. The excess produce of the farm is made available to other prisons. Maize is the main crop grown here, but an orchard and a vegetable garden make a balance diet attainable.

Grass on the compound of government institutions is cleared by the inmates.

Young Offenders and Juveniles. Young Offenders (13-25 years old) who are sentenced to 3 or more years of imprisonment are sent to a prison at Gweriu called "Whawha Prison" where they are trained in skills such as welding, carpentry and mechanics. They are also encouraged to take the "O" and "A" Levels examination with the assistance of "teacher-prisoners".

In Zimbabwe juveniles are under the jurisdiction of the Social Welfare Department. Within this Department, a Deputy Director is responsible for child welfare. The Department has facilities for detention of juveniles before trial. Juveniles may appear before both criminal and juvenile courts but in the case of the former the hearing may be without the public. After trial juveniles are placed either in homes or reformatory. There are 8 government homes which accept the care of children while NGOs and Churches have 40. The latter are concentrated in the urban areas. Each of the 10 administrative provinces has at least one home. There are about 3,000 juveniles in all the institutions.

If a child under 18 is arrested, the Police refer the case to the Department of Social Welfare if investigation and custody when necessary. Reports on the child compiled by the Department help the court decide on an appropriate sentence for him/her. The 200 officers of the Department throughout the country are all probation officers. The release of the child to the parents may be recommended by the Department get involved with the parents in the supervision of the child. One of the recommendations may be the caning of the child.

Juveniles are detained for a maximum of 3 years during which they will be educated. Those who are beyond the control of social workers are kept in a juvenile wing of prisons. Such must have been the case of 7 convicted juveniles who were at Kadoma Prison.

Community service currently in operation in Zimbabwe has not been extended to cover juveniles although the Social Welfare Department is involved in the community service with magistrates.

Community based care of children has been tried in Zimbabwe. 11,000 children have been identified within this context as requiring care. A prominent category among them are orphans. In a district in Mashingo Province the Department of Social Welfare tried to revive the community's interest in looking after children in need.

Community service

Concerned about overcrowding in prisons resort was had to community service. It started in 1994, and a success rate of 90% is claimed, and the scheme is catching on. Opening the High Court Session in February 1997, Chidyausiku J. exhorted judges to impose non-custodial sentence as far as possible (Sunday Mail 22 February 1997).

A National Committee on Community Service first constituted in 1992 by the Minister of Justice originally had representatives from a number of ministries. Presently it consists of a High Court Judge, the Commissioner of Prisons, a representative of ODA, Chief Magistrate of the biggest Magisterial district and representatives from the Ministry of Social Welfare, Police and non-governmental organisations such as Prison Fellowship, Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender and Legal Resource Foundation.

The National Committee on Community Service meets once a month on the last Thursday in each month.

At a lower level a District Committee composed of the local or provincial magistrate, representatives of the Police, Prison, Local NGOs, Civil leaders as well as representatives from the Ministry of Social Welfare supervise the service.

Funded for the first 18 months with the funds from the European Union, ODA provided the funds for a similar period thereafter with effect from August 1997 the Government of Zimbabwe will take it over.

Community Service operates throughout the country, and relies for its successful implementation mainly on volunteers. A mark of its success is the request form its study from diverse countries like Swaziland, Lesotho, Malawi, Zambia, Kenya, Cambodia and the government of Trinidad.

New guidelines have been issued, in consultation with the judiciary as in the case of earlier ones to guide the courts in administering the scheme. There are guidelines for supervisors also. A training programme has been carried out for supervisors with a view to achieving uniformity of treatment of offenders who are sentenced to Community Service.

I visited two locations where Community Service was being performed.

RUTSANAN CLINIC

Located about 15 kilometres from Harare, the Sisters on charge of the clinic stated that first offenders are sentenced by the court to 60, 180 or 300 hours. An offender who reports for community service in counselled by the Sisters under whose supervision he/she signs for the

hours done each day. One such offender was seen working in a garden of the clinic at the time of my visit.

As far as possible the skills of the offender are utilised: an electrician or painter will be assigned jobs in their areas of expertise. !8 offenders had been sent to the clinic of which number 3 defaulted.

GLENVIEW CLINIC

It is located about 20 kilometres from Harare. Offenders sent here work either 3 weekdays of 2 weekends.

Finally I attended a meeting of the National Committee which reviewed the past and looked into the future after foreign support ceases.

TRAINING

Chikurubi Training Depot

It offers in-service training. Initial training, promotion and refresher courses. Conversion Courses are also run by the depot. They enable technicians to join the Prison Service at the appropriate level.

The Depot also trains dogs for use within the prison service. Attached to the depot is an 800 acre maize farm which is under the headship of a female officer. 900 male prisoners work under the female prison officer's supervision.

Legal resources Foundation has been involved in training some Police Officers at the request of the Commissioner of Prisons. A Training of Trainees 5-10 May 1996. It was limited to 20 senior Police Officers drawn from all over Zimbabwe because of limited financial resources. Three objectives were to be met by the Workshop (training): (a) human rights education; (b) trainees were to be equipped to train others; and (c) highlighting the rights of specific groups of prisoners - juveniles, women and the elderly.

Six months after the workshop an evaluation exercise was undertaken to assess the impact of the training.

A second workshop with in-depth training of techniques of human rights education and substantive human rights involving mere prison officers is being planned.

Prison Fellowship International This NGO facilitates visits of relatives to prisoners. It also has an economic outreach, GEO-GLOBAL ECONOMIC OUTREACH. Under this scheme 104 families have been given loans. The scheme which was embarked upon on discovery of the plight of families of prisoners has been a success. In terms of repayment of loans, rate of over 80%.

ZIMBABWE ASSOCIATION FOR CRIME PREVENTION AND REHABILITATION (ZACRO)

It has bee registered as a charitable institution in 1968 with branches throughout the country. ZACRO works closely with the Police and Prison administration. It aims at the rehabilitation of the offender and the prevention of crime. ZACRO involves the community and individuals on the pursuit of its objectives. It also targets the youth, and organises street boys to sew and learn how to make soap. Thereafter they are placed in commercial entities. Those taught these trades are either ex- or non-offenders In schools, ZACRO is concerned about drug and alcohol abuse.

ZACRO passes on to the governments complaints of prisoners. A noticeable change for the better resulted from making government aware of maltreatment by prison officers of those awaiting trial as well as convicts.

Poor quality plates were also replaced about five years ago when ZACRO brought it to the government's attention. ZACRO also claimed some credit for the extension of vocational training from male to female prisoners.

PRISON TALK, THE LAW VERSUS THE PRACTISE, A REPORT ON PRISON CONDITIONS IN ZIMBABWE BY THE CATHOLIC COMMISSION FOR JUSTICE AND PEACE IN ZIMBABWE.

I came across this work in the course of my study. Although undated since work published in 1992 is cited in it, the report must have been prepared in or after that date.

A very frank and critical report, it states the prison population as 22,600 at the time of writing. It lists 41 prisons and refers to Bulawayo Prison to underscore the problem of overcrowding. Built to accommodate 445 prisoners on the occasion of the author(s) visit there were 758 inmates.

PROBLEMS

Officials of the Prison Service found overcrowding to be a problem. Consequently a judicial sentencing conference was held in 1996 to consider alternatives to imprisonment. The perennial problem of limited financial resources was also stated. While food and toiletries were available, replacement of equipment on workshops and the building of more workshops are beyond the means of the Prisons, a direct result of the financial constraints on the nation.

Sources outside official circles viewed the staying of children with their mothers throughout their sentences in prison as a serious problem. The problem is exacerbated by the fact that the immediate family are reluctant to take on the children of a convict, even is closely related to them. Some were if the view that the training of prison officers was too security oriented, and that the training should concentrate on rehabilitation. The Prison Administration Manual has to be revised for more humane provisions. Illustration of a regulation that ought to be amended for the better is the 20 minutes per month visit a prisoner is entitled to, or the one page letter per month which is the limit for a prisoner. Attempts should also be made to replicate the workshop at Harare at other prisons. To encourage society to accept convicts who are released, and to illustrate the rehabilitation of prisoners can be achieved, the Prison Administration should begin to employ ex-convicts who have acquired skills in prison.

CONCLUSION

For me to able to visit the prisons in Zimbabwe that I did at a very short notice and for the author(s) of PRISONS TALKS etc. to have access to all the prisons on Zimbabwe speak volumes of the openness of the Prison regime in Zimbabwe.

The novel institution of community service which by the end of 1996 had seen 12,000 convicts going through the scheme will no doubt have an impact on overcrowding in prisons. That others beyond Africa, in Asia and the Americas will look to Zimbabwe for reform of their penal system is reason for satisfaction and justifiable pride. Equally co-operation between governmental organisations towards a more humane prison regime is worthy of commendation. For this very reason, criticisms from the later must be takes seriously.

RECOMMENDATIONS

1. The majority of the inmates (about 97% or so) were decently attired. A minority who nevertheless should not be dismissed were found in torn prison garments. That attempts were not made to spirit them out of sight is evidence that there was no stage management.

2. The observations and criticisms contained in the Prisons Talks should receive sober reflection, and wherever necessary remedial measures should be adopted.

3. The importance of reducing the period for which prisoners are remanded should be constantly raised by the Prison Service with the Police and Prosecution authorities with a view to the latter acting to achieve this goal.

4. The decision to revise the standing orders of the Commissioner of Prisons should be carried out as has been done in the case of Prison Act, Chapter 7:11 (revised edition 1996).

5. Human Rights Training of Prison officers which was organised in May 1996 and evaluated after six months should be continued as planned.

6. Supervision of the community Service Scheme should not be relaxed for the danger of increase in criminality is real if it is perceived by the public as a very soft option to fine or custodial sentence.

7. The prison service should help orient public attitude to accepting that rehabilitation does occur in the prisons of Zimbabwe by employing ex-convicts whenever there is the opportunity to do so.

8. The Department of Social Welfare should consider the appropriateness of extending community service to juveniles.

9. (i) While welcoming the sentencing conference involving the judiciary in August 1996, a future conference involving the judiciary, police and prisons will advance further the redressing of the concerns which led to the former conference, and should therefore be seriously pursued.

9. (ii) Towards the same end a conference of the Bench, Bar, Faculty of Law, Police and Prison is likely to serve similar end, and the Prison Service is encouraged to take the initiative to bring it to fruition.

Annex VIII
REPORT ON THE MISSION OF GOOD OFFICES TO SENEGAL OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (1-7 June 1996)

I. OBJECTIVE

On 12 October 1992, the African Commission on Human and Peoples' Rights was seized by an NGO called, "Rencontre Africaine Pour la DThetafense des droits de l'Homme" (RADDHO). In its communication, brought against Senegal, it described grave and massive violations of human rights at Kaguitt, in Casamance, following a clash between the Senegalese army and the rebels of the Mouvement des Forces DThetamocratiques de la Casamance (MFDC).

At its 17th, 18th and 19th ordinary sessions, the African Commission decided to send a mission of good offices to Senegal, with a view to contributing to the amicable resolution of the conflict.

With the aim of attaining this objective by the appropriate ways and means, the mission went to Senegal, collected all useful information and interviewed the principle parties likely to bring significant clarification to the events of Casamance.

II. DURATION AND COMPOSITION OF THE MISSION

Scheduled 1-7 June 1996 and conducted by Professor Isaac NGUEMA, Chairman of the African Commission, the mission also comprised Dr. Vera Valentina de Melo DUARTE MARTINS and Mr. Marcel BUZINGO, member and legal adviser to the Commission, respectively.

III IMPLEMENTATION OF THE MISSION

The mission took place at two locations: Dakar and Ziguinchor (Casamance).

(a) DAKAR

The mission was received for a meeting with:

1. The President of the Constitutional Council, Mr. Yousoupha NDIAYE; the Guardian of Seals and Minister of Justice, Mr. Jacques Baudin; the General Secretary of Government, Mr. Ousmane NDIAYE; the Diplomatic Counsellor of the President of the Republic, Mr. Amadou DIOP; the Legal Adviser to the President of the Republic, Mr. Yann AGUILA.

2. The Prime Minister, His Excellency Mr. Habib THIAM, who gathered for the occasion the Guardian of Seals and Minister of Justice, the General Secretary of Government, the Diplomatic and Legal Counsellors to the President of the Republic, and the Special Counsellor Minister of the Prime Minister, Mr. Daniel KABOU.

3. The delegation of the Commission participated in a working session presided over by the Guardian of Seals and Minister of Justice, which encompassed the Minister of the Interior, Mr. Abdouahmane SOW; the Minister of the Armed Forces, Mr. Cheikh Hamidou KANE; Professor Assane SECK, President of the National Committee for the Administration of Peace in Casamance; the General Secretary of Government, Mr. Ousmane NDIAYE; Mr. B. Diallo, Diplomatic and Legal Counsellor to the President of the Republic.

4. The Commission also had interviews with the following persons: The Honorable Deputy Landing SAVANE, leader of the opposition; His Eminence Cardinal Yacinthe THIANDOUM, His Excellency Ambassador Moustapha CISS+, General Kaliph of Pire, Personal Counsellor of the Head of State for islamic affairs.

(b) ZIGUINCHOR

The delegation of the Commission was received and interviewed by:

1. Mr. Famara Ibrahima SAGNA, former Minister, President of the Economic and Social Council.

2. The Regional Governor, Mr. Mame SARR, accompanied by Colonel BOISSY, responsible for the regional arm for the Administration of Peace in Casamance.

3. Mr. Sidy BADJI, former commander of the North Front, who was accompanied notably by two of his lieutenants from the bush

4. Father DIAMACOUNE, accompanied by several of his followers, of whom some were former rebels

5. Monseigneur MAIXENT-COLY, Bishop of the diocese of Ziguinchor.

6. Two priests who are members of the clerical committee established to restore peace to Casamance

IV THE FACTS

1) The Origin of the conflict

Without going into details, the Casamance was occupied first by the Portuguese, who took possession of Ziguinchor in 1845. They ceded the territory to France forty years later, on 12 May 1886, in exchange for the north of Guinea-Bissau, as well as fishing rights at Terre-Neuve.

Covering 28,350 square km, one seventh of the area of Senegal, Casamance is situated between Gambia in the north, Guinea-Bissau and Guinea Conakry to the south, the Atlantic Ocean to the west and the Kouloutou, a tributary to the Gambia River, to the east. Thus, it is isolated from the rest of Senegal. In the course of its history, Casamance developed a cultural identity especially marked by resistance to different colonisations and foreign cultures. In the economic sphere, the inhabitants of Casamance have traditionally practiced an economy of subsistence essentially based on fishing and agriculture. Evoking notably arguments which he considers founded on the history of the territory, Father DIAMACOUNE has not hesitated to affirm the existence of historical documents tending to justify the calling of Casamance to independence. According to him, the administration of Casamance was conferred on Senegal by France, from which comes the following formulation used by this priest: "Casamance with Senegal, but not in Senegal".

2) The Evolution of the Conflict

At demonstrations organised in December 1982 in Ziguinchor at the instigation of movements desirous of expressing the frustrations felt in Casamance to the central government (but not without separatist ulterior motives) the forces maintaining public order intervened when certain demonstrations lowered the national flag from public buildings.

Skirmishes followed, and further, loss of human life on both sides, which set off the beginning of violence and the joining with the rebels of separatist groups under the leadership of the Movement of Democratic Forces of Casamance (MFDC) having at its head Father DIAMACOUNE as spiritual leader.

The conflict evolved unevenly, marked sometimes by grave violations of human rights by one side as by the other, sometimes by cessation of hostilities following cease-fires. In this regard it is necessary to emphasize the unmistakable will of the Senegalese head of state, President Abdou Diouf, concerned to resolute the conflict through negotiated means, not by arms, while remaining first on respect for national unity and territorial integrity.

The following initiatives to this effect have been revealed:

- The creation of a National Committee for the Administration of Peace in Casamance

- The liberation of a good number of persons arrested due to the conflict
- The prosecution of elements of the army accused of having violated human rights
- The adoption of the law bringing code of the local communities

Further, it is important to consider as an initiative in the search for peace the unilateral cease-fire declaration of 3 December 1995, made by Father Augustin DIAMACOUNE SENGHOR which declares itself "given for eternity, to place in the world truth, charity, justice and peace".

Even more, it is important to note that certain former warriors, such as sidy BADJI, commander of the North Front of the MFDC, have deposited their arms after having realised that the revelations of Father DIAMACOUNE relating to the calling of Casamance to independence are without foundation.

This accords furthermore with the point of view contained in the CHARPY report made following the arbitration asked of France, in its capacity as former colonial ruler of Senegal.

According to the report, rejected by the separatist camp, "Casamance did not exist as an independent territory before colonisation".

In any case, this conclusion has not dampened the conviction of Father DIAMACOUNE for whom "the independence of Casamance is a fixed idea" to use the words of a high personality who knows him well. Still less has it deterred the deputy Secretary General of the MFDC, Monsieur Nkruma SANE, who is presently a refugee in France. He has likewise persisted in developing the separatist platform, while opposing the declaration of unilateral cease-fire of 3 December 1995.

For their part, although they have responded favorably to this declaration of Father Diamacoune, the rebels of the South Front still remain in the bush, awaiting the outcome of these events.

3) Present Situation

The present situation is characterised by four principal elements:

1. The will affirmed by both sides to sit down at the negotiation table.

2. This will is manifested by the departure abroad of elements of the separatist movement following the decision of the Senegalese government to grant their passports so that they might go meet with their activists exiled in Europe, in order to determine the object and place of the negotiations to be undertaken with the government.

3. The mutual suspicion of each party as to the sincerity of the other. For its part, the government of Senegal fears being deprived of the present of the principle interlocutor, if Father DIAMACOUNE leaves the country and remains abroad, like others who have left and have not yet returned.

For its part, the MFDC does not believe the intention of the Senegalese authorities to negotiate because it notes that they have refused Father DIAMACOUNE his passport to leave the country and even in Ziguinchor he is kept under surveillance.

4. The existence of occult influences, difficult to identify, which pull the strings of the conflict on which they are based, and which have not, consequently, any interest in the return of peace.

5. The divisions and inconsistency of the MFDC which is reflected in the contradictory and fluctuating declarations of its leaders.

It is in this general context that one fears that the cease fire will not be renewed, and the combatants will recommence with further violence and determination.

In consequence, the prospects for negotiations find themselves presently at an impasse. Only significant initiative, without equivocation, can renew the dynamic of peace, that which assumes a good comprehension and a deep analysis of the existing phenomena.

V ANALYSIS OF THE FACTS

Upon analysis of the facts, two opposing themes appear.

1) Separatist position

The separatist thesis propounded by Father DIAMACOUNE and his unconditional followers advocates the accession of Casamance to international sovereignty. They articulate a number of arguments, of which the following are notable:

1. Historical legitimacy.

2. Feelings of frustrations for having been deprived of their lands, being governed by outsiders, not truly sharing their cultural traditions or their aspiration (the example of a hotel constructed on the site of a former cemetery, which was destroyed for this purpose, was given).

3. Revolt against living in poverty despite the natural riches of their region, these being neglected for many years by the central power which has only exploited them for the benefit of other regions.

4. The will to put an end to the injustices that they continue to undergo, which make the rejects in a state whose sovereignty over Casamance they contest.

5. The firm conviction of being able to live better in the future in a free and independent Casamance, occupied chiefly with the well- being of its population, with cooperation accords with other states, Senegal among them.

2) Government Position

The authorities of the Senegalese state oppose this separatist position with a series of arguments of which these are the principals:

1. No more than for other regions of Senegal does any historical argument support the separatist claims in Casamance, which was never an autonomous territory under colonisation.

2. In the sociological plan, Casamance is composed of a mosaic of ethnic and cultural groups, while the MFDC rests its base on an ethno- cultural minority; thus this movement cannot legitimately claim to speak in the name of all Casamancais, the vast majority of whom, furthermore, do not want independence. According to this hypothesis, if independence came out, it would inevitably plunge the region into civil war without precedent.

3. The principle of maintenance of national unity and territorial integrity cannot be questioned. Should Casamance by misfortune become independent, there would be no reason for the other regions of Senegal not to claim the benefits of the same status, using similar arguments.

4. Senegal is a republic, respecting the principle of non- discrimination, equality for all its citizens and all national communities before the law. Casamance has never been the object of discrimination in relation to other regions. Much the contrary, it has received more investments than the others.

3) Elements of analysis of the two positions presented

1. Given the separatist position, it is easy to demonstrate that the reasons advanced are not unique to the Casamance, but can be invoked with a certain measure of profit by other regions of Senegal.

2. Furthermore, it is not possible to rule out that the volume of investments from which Casamance has benefitted might be more important than those granted to other regions.

3. As for the question of lands, of which certain natives have been deprived, it is important to emphasis this has in no way been the result of a conspiracy, but simply the consequence of the application of new legislation installing a system of private property.

4. Also, this situation is explained by the drought which provided the movement of populations from the semi-arid zones of the north towards Casamance, better endowed by rain patterns and having more fertile land.

5. The newly-arrived have practiced market economics while the natives limited themselves to an economy of subsistence. The former have thus become riches than the latter, and the frustrations felt at seeing these "strangers" coming from outside to make fortunes with the local lands and materials (agriculture, fishing, etc.) are not surprising.

6. Furthermore, these migratory movements have naturally introduced other cultures into Casamance, particular Wolof culture, without imposing itself by force.

7. As for the argument drawn from historical identity, without it being necessary to have reference to the study of CHARPY, it is simple to demonstrate that each people had in its history a cultural identity. Furthermore, the wise founders of the OAU in 1963 pronounced themselves in favour of territorial integrity and the immutability of the borders inherited from colonisation.

8. In sum, the arguments developed to support the separatist positions lack pertinence. They cannot justify the grave attacks against human rights in the course of the conflict.

9. Concerning the arguments developed by the government authorities, it is not sure that they are more pertinent. In effect, it is clear that Senegal has just endowed itself with a law on regionalisation, while at the moment that the conflict ignited in Casamance, the Senegalese state had a mechanical and static conception of national unity.

10. Furthermore, the principle of territorial integrity and inviolability of borders seen to perpetuate the arbitrary and artificial divisions affected by the former colonial powers, without consulting the concerned populations.

11. As for the principle of equality of citizens and communities, it is clear that this means not a mathematical equality, but above all an equality of participation in the administration of public affairs.

12. In total, it appears that neither the position of the separatists, nor that of the state authorities, can be taken in its entirety. For this reason, a frank and constructive dialogue must be instituted between the two parties, from which a solution can emerge, a solution which will assure the cohesion and continuity of the people of the unified Senegalese state in a community of interest and destiny.

VI CONCLUSIONS AND RECOMMENDATIONS

With the goal of bringing about a constructive dialogue, it is recommended on the one hand that certain conditions be fulfilled, and on the other hand that certain objectives be aimed at.

Conditions Favorable for negotiations

The Commission recommends:

1. The Government should:

- consider lifting the measures which confine Father DIAMACOUNE to his residence, to permit him to move freely and involve himself more easily in the negotiations and the search for peace.

- free all political prisoners detained for reasons connected to the conflict

- assist all displaced persons and refugees, encouraging them to return to their homes by guaranteeing their security

- fight impunity by prosecuting those implicated in torture and summary executions

2. The separatists should:

- ensure that their leaders based in Europe and abroad return to Senegal where guarantees of their safety will be given

- accept that future negotiations will take place on African soil

- work for coherence in statement of their positions

3. Both parties should:

- do their best to identify and isolate those who oppose a return to peace, who have made the conflict the foundation of their business

B. Objectives of negotiation

- The Commission recommends that each of the parties put all in place to realise the following objectives:

- To resolve the problem on the ground

- To post in Casamance so far as possible, officials native to the region

- To elaborate a vast programme of investment with the object of further developing the region

- To establish a system of social integration, to help unemployed youth, and encompassing demobilised rebels.

- To create a joint committee of follow-up to supervise the realisation of these objectives

Before concluding this report, it is important to note the quality of facilities placed at the disposal of the mission by the Senegalese authorities.

The Commission maintains its expression of profound gratitude with the hope that the sincerity, the loyalty, and the transparency which the authorities demonstrated throughout the mission will contribute to re-establish peace, justice and well-being of the populations of Senegal in general and of the people of Casamance in particular.

Annex IX
Report of the Mission to Mauritania of the African Commission on Human and Peoples' Rights Nouakchott
19 - 27 June 1996

I. INTRODUCTION

1. Mandate of the Mission

After receiving communications that revealed disturbing violations of human rights in Mauritania, the African Commission applied Article 46 of the Charter, according to which "the Commission may resort to any appropriate method of investigation." The Commission decided at the 19th ordinary session to send a fact-finding and investigation mission to Mauritania, with a view to finding an amicable resolution to put an end to the situation.

As the head of the mission repeated to all the individuals who were met in the course of the mission, the goal was not to decide whether what was encountered was wrong or right, but above all to listen to all sides with the objective of bringing clarification to the Commission in its contribution to the search for an equitable solution through dialogue.

2. Duration and Composition of the Mission

Undertaken from the 19th to the 27th of June 1996 and conducted by Prof. Isaace NGUEMA, Chairman of the African Commission, the mission comprised also Commissioners Julienne ONDZIEL-GELENGA and REZZAG-BARA, as well as Mr. Marcel BUZINGO, members and legal adviser of the African Commission, respectively.

3. Implementation of the Mission

The mission was undertaken in Nouakchott where the delegation had interviews with government officials and representatives of civil society.

a) Government officials met:

- His Excellency Cheik El Avia Ould Khouna, Prime Minister;

- His Excellency Dieng Boubou Farba, President of the Senate;

- His Excellency Cheikh Sid Ahmed Ould Baba, President of the National Assembly

- His Excellency Dah Ould Abdel Jilil, Minister of the Interior, of Mail and Telecommunications;

- His Excellency Lemrabott Sidi Mahmoud Ould Cheik Ahmed, Minister of Foreign Affairs and Cooperation;

- His Excellency Ahmed Salem Ould Dah, Minister of Justice;

- Dr. Mohamed Salem Ould Merzoug, Commissioner of Food Security;

- Mr. Skhna, Counsellor to the President of the Republic on Human Rights;

- Mr. Mouhamed-Lamine Dahi, Director General of Legislation;

- His Excellency the Mediator of the Republic;

- The Rector of the University of Nouakchott;

- Her Excellency the Secretary for Women, who met with Commissioner Juliene Ondziel

-Gnelenga;

b) NGOs and representatives of civil society met with:

- the Bar: the Bat nnier of the Bar of Nouakchott;

- the Committee for Defence of the Republic (CDR): Professor Mohamed Kaber O/Hamoudi and Cheikh Ahmed O/Zahare, President and Secretary General, respectively;

- the Mauritanian Human Rights Association (AMDH): Mr. Kamara (President) and Mrs. Raki Kane;

- the National Committee for Struggle for the Eradication of Remnants of Slavery in Mauritania (CNESEM):
*Cheikh Saad Bout Kamara (President)
*Beibeni O/Ahmed Babou (Secretary General)
*Saleck O/Sidi Mouhamed, Treasurer
*Limam O/Sidi, Programme Secretary;

- the Mauritanian League for Human Rights (LMDH): Mr. Mine Abdel Kader Mohamedi (Secretary General) and Mr. Koita;

- the Collective of Survivors of the Repression of 1989-1991: Mr. Kebe Abdoulaye (Vice-President) and Mr. Wane Bechir (Secretary General);

- the National Independent Press Association (ANPI): Delegation led by the President of the Association;

- the Mauritanian League for the Defence of Women's Rights (LMDDF): represented notably by :
*Mrs. Malado Coulibaly (Secretary General)
*Mrs. Mintata Mint Hedeed
*Mrs. Oum El Id Fall
*Mrs. Aicha Mint Ghaddour;

- SOS Slavery: Mr. Yahya Ramdane, Mr. Oumar Ould Yali;

- the Widows' Collective:
* Mrs. Houleye Sall (President)
* Mrs. Maimouna Djibril (Vice-President)
* Mrs. Barou Dia Aminata Alassane SARR

- the Collective of Former Civil Detainees of 1996;

- the Collective of Government Officials Victims of the Events of 1989: being notably present Mrs. Raby Diallo and Mrs. Nene Kane;

- the Collective of Deported Family: Delegation headed by Mrs. Sarr, nThetae Diop Dewel;

- the Civil Initiative: Delegation headed by Dr. Mouhamoud Sahid.

II. GENERAL CONTEXT

A. Historical and Political Aspects

A former French colony, Mauritania became independent in 1960 and endowed itself in 1961 with its first constitution, consecrating the Islamic Republic, its population being one hundred percent Muslim.

The people of Mauritania are composed of four different ethnic groups, namely: the Moors or Arab-Berbers (75-80% of the population, according to certain estimates); the Peulaar (Peuls and Toucouleurs). the SoninkThetas and Wolofs, forming together the black Mauritanian group (20-25% of the population, estimated at 2.2 million inhabitants according to certain sources). This multi-ethnic composition constitutes the background which explains the political problems, struggles for influence and the phenomenon of exclusion which mark the history of the country, especially from 1986 when the attempted coup d'etats and arrests occurred.

According to certain observers, the ethnic tensions have their roots in the birth of extremist movements, on one side Arab (pro-Irakian Baathists, Nasseristes), on the other side black Mauritanian, when the Front for the Liberation of the Africans of Mauritania (FLAM) was founded in 1985.

Following the publication of a manifesto, black Mauritanians were arrested in September and October 1986. They were principally accused of belonging to an illegal organisation and of having distributed a racist document which planned the destruction of a whole people. They were submitted to physical and moral torture.

As the result of trials which did not guarantee the right to defence, some of them were freed, others were condemned but reprieved, while others were condemned to prison terms together with loss of civil righs, heavy fines and banishment.

As a consequence of the harsh imprisonment to which they were subjected, some, such as the writer Tene Yousouf GUEYE, died.

In 1987, an attempted coup, attributed to black Mauritanian elements in the army, was foiled.

After a series of arrests, following an abbreviated trial, severe penalties were pronounced, including the condemnation to death of three officers, who were immediately executed.

In 1988, another attempted coup d'etat, led by Arab nationalists who wanted to create a Baathist state, was crushed. However, their trial did not result in any death sentences, and this was resented by certain black Mauritanians as a double standard.

In 1989, in the quarrel over land, an incident occurred between Mauritanian Peul herders and Senegalese SoninkTheta farmers at Diawara, in the Senegal River valley. Lives were lost and the incident provoked an unprecedented crisis between Mauritania and Senegal.

In effect, on 24 and 25 April 1989, a collective murderous madness took place. Moorish Mauritanians living in Senegal were killed and hunted, while Senegalese and black Mauritanians suffered the same fate in Mauritania. In the face of the atrocities and the gravity of the crisis, the two governments concluded an exchange of endangered populations. Thus 60 to 70 thousand black Mauritanians arrived in Senegal, while 240 to 250 thousand Arab Berbers made the reverse trip.

Naturally, this situation exacerbated inter-ethnic tensions in Mauritania.

In effect, from November 1990 to April 1991, under the pretext that there was a conspiracy engineered from abroad to provoke civil massacres and seize power, the government arrested 503 soldiers and black Mauritanian civilians. Nearly all of them were subsequently killed.

All of these periods were marked by a totalitarian military regime under a single party.

B) Socio-cultural and economic aspects

To better understand the problem of ethnic and cultural tensions in Mauritania, it is necessary to recall the differences between the Moors of the north of the country, whose traditional way of life is nomadic, and the blacks, pastoralists and sedentary farmers living along the Senegal River in the south. In spite of their cultural homogeneity, the Moors are divided into several tribal groups and are composed of two groups of distinct racial origin, the white Moors called Beydanes, and the black Moors. The majority of the black Moors are Haratine, which means literally, "those who have been freed" although certain families of black Moors have never been subject to slavery. The "white Moors", of whom the majority have dark skin due to mixing with the groups of black Africans south of the Sahara, are chiefly found in government, in business and in the professional community.

For their part, the Peulaar, the Wolofs and the SoninkTheta are concentrated in the southern part of the country. They are under- represented in the military and security sectors.

At the level of culture, the Constitution stipulates that Arabic, Peulaar, SoninkTheta and Wolof are the national languages of Mauritania. Nevertheless, the regimes which have come to power,

civilian as well as military, have pursued several policies of arabisation at the level of schools and workplaces, which have been the object of protest on the part of non-Arabic-speaking ethnic groups.

The difficult economic situation across Mauritania also nourishes the above-mentioned ethnic tensions.

In effect, the drought has provoked migratory movements and pushed considerable numbers of nomads to become sedentary.

Also, it struck with full force the masters who had slaves in their service, because in most cases they could no longer retain them and were forced to let them go.

All these disturbances had placed part of the population in an economic dependance which naturally engendered frustrations with all their consequences of ethnic tensions.

C) Aspects connected to the respective internal difficulties of Mauritania and Senegal

The crisis of 1989 which occurred between Senegal and Mauritania is not strange in light of the situation which prevailed in each of the two states.

In effect, according to certain sources, in light of the successive coups d'etat and their consequent repressions that provoked divisions in the population, the Mauritanian government needed an external crisis in order to gain breathing space and to unify behind it all the people to fight an external enemy.

Furthermore, the legitimacy of the regime of President Abdou Diouf was being contested by opposition leaders whom he threw into prison, and the internal political situation in Senegal appeared unstable. Also, some were advocating the creation of a new port at Nouakchott, which would free Mauritania from its dependance on the port of Dakar, and this disturbed certain Senegalese intersts

. In the economic sphere, both countries were characterised by the deterioration of social conditions for large numbers of peoples following structural adjustment programmes. This was a factor favoring the exacerbation of tensions.

III. ANALYSIS OF COMMUNICATIONS BROUGHT AGAINST MAURITANIA

A) The complaints and their authors

The violations of human rights in Mauritania were the object of four communications introduced before the African Commission respectively on 16 July 1991 by the Malawi African Association, 21 August 1991 by Amnesty International, 12 March 1993 by Madame SARR DIOP, 30 March 1993 by the Rencontre Africaine pour la Defence des Droits de l'Homme, the Interafrican Union of Human Rights and the Mauritanian League for Human Rights. Thus, only one of the communications was submitted by an individual person; the others were presented by NGOs.

Concerning the object of the communications, the first concerns the massacres perpetrated against black Mauritanians. It concerns murders perpetrated by soldiers against unarmed villagers, and alleges also the expulsion of black Mauritanians from their lands, and the denial of their right to speak their local languages.

The second communication describes the death in detention of certain black Mauritanian prisoners following torture or extra-judicial executions.

The allegations contained in this communication are notably: the regular torture undergone by political detainees, the arbitrary judgments of which they were victims, without the opportunity to be defended by lawyers, the incapacity of specifying the confessions extracted by force.

The third communication denounces the deportation of black Mauritanians towards Senegal and Mali, forcing them to live in refugee camps; the arrest and arbitrary detention of black Mauritanians; the denial of the right to a fair trial, the use of torture and inhuman treatment during detention, and the summary execution of certain prisoners.

The last complaint deals with expulsion of thousands of black Mauritanians towards Senegal and Mali. Numerous deportees (55,000) found themselves thus in extremely difficult conditions, their goods having been confiscated or pillaged. In this same period, Mauritanian and Senegalese citizens were massacred, others disappeared. In November 1990, on the pretext of the discovery of an attempted coup, thousands of black Mauritanians were arrested, tortured and executed. It was established that 502 persons died in extra-judicial executions.

B) The problems of victims

With regard to the facts related, which denote grave violations of human rights, it is important to dwell on the subject of refugees, on the different categories of victims of the events of 1986, 1989 and 1990-1991, without forgetting to inquire into "slavery" or the problem of remnants of slavery.

Before finishing the examination of the democratic development opened by the new Mauritanian constitution, the violations of human rights undergone by women will be the object of particular consideration.

i) The problem of Mauritanian refugees in Senegal after the events of 1989.

After the tragic Senegal-Mauritania conflict occurred in 1989, close to 70,000 black Mauritanians were expelled by Mauritania, or fled. It is estimated that 20,000 of these have returned to their country.

Concerning the return of the others, the position of the refugees, specially expressed by the Association of Mauritanian Refugees in Senegal (ARMS) conflicts with that of the Mauritanian Government.

a) Position of the Refugees

To return to Mauritania, the refugees want a collective return organised on the basis of an agreement with the UN High Commissioner for Refugees (UNHCR), with Senegal taking part. In this context, they ask for the fulfillment of the following demands:

- Restoration of the goods lost, or failing that, the benefit of an indemnification
- The recovery of all their rights (citizenship, government jobs, reintegration of officials and workers...)
- The recovery of traditional lands and the inauguration of a national committee of welcome and reintegration.

Timed to coincide with the day of the African Refugee, the Association of Mauritanian Refugees in Senegal announced that the first contingent of 5,112 refugees were ready for self-repatriation

on 20 June 1996. The return did not take place: the authorities of the association declared two days before the appointed date, the UNCHR which had guaranteed the logistics transporting the refugees up to the Senegal River had retracted its guarantee with explanation.

In truth, officials of the UNCHR expressed their astonishment at these statements, because they had never been involved in the preparations for the return, which they learned of at the last minute, like everyone else. Finally, the Association of Mauritanian Refugees in Senegal maintains the position that there should be an organised, collective (rather than individual) return, and an officially mediated repatriation.

b) Government Thesis

It is necessary to recall above all that the Mauritanian government denies the existence of Mauritanian refugees as defined in the Geneva Convention.

According to the Mauritanian government, all the doors are open to every Mauritanian who wants to return. It is not acceptable to recognise refugee status because no one can reasonably believe that they have fear of persecution.

The government authorities prefer a voluntary return, non-politicized and not mediated. They insist that more than 15,000 persons have returned and been successfully integrated in the local population. Individuals and even complete villages have thus returned, without making it a formal act.

Invoking the UNHCR as a witness, the government adds that it makes efforts to assist returnees, issuing them identity cards, restoring their lands, houses and even personal possessions when these can be recovered and identified.

In truth, although some have not yet received their identity cards, it must be recognised that these delays relate to the structure of the government and to the few resources available for administration.

ii) The problem of indemnification and the rehabilitation of survivors

The Survivors' Collective

According to the representatives met, the surviving former black Mauritanian political prisoners who constitute the Collective continue to be the object of systematic exclusion seven years after their liberation and complete amnesty which took place in 1991.

In fact, former government employees for the most part, they have been completely excluded from the public sector and despair of ever recovering their jobs, given the hostility of the public authorities towards them. Moreover, their Arab counterparts who were liberated at the same time were rehabilitated in 1989 and 1990, and reintegrated into their work. What is more, some of them were given responsibilities in the government even before the general amnesty.

Faced with their distressing situation, the former detainees organised themselves into a "survivors' collective" with the goal of getting the Mauritanian authorities to pay attention to their fate and take positive measures assuring their rehabilitation, their reintegration in government service or other governmental organisations, with obvious benefit of a reconstituted career including the rights and privileges pertaining to it.

In addition to these demands, they ask that there be an inquiry into the reasons for their arrest and that the authors of maltreatment and torture be brought to justice. The government's position in this regard will be described below.

iii) The Problem of Widows

Widows' Collective

One will recall that between November 1990 and March 1991, hundreds of soldiers, of whom the majority were Halpeulaar, were arrested, killed, tortured or mutilated following allegations of an attempted coup d'etat. The military has never made public the results of its internal inquiry on the subject, done in 1991; nevertheless, in 1993, the National Assembly approved an amnesty law which excluded any possibility of judicial prosecution of the members of the armed forces or any other citizen implicated in the abuses committed in the period January 1990 to April 1992.

The refusal of the government to prosecute the officers having committed extra-judicial killings and other abuses contributed to the feelings of frustration of families of those who disappeared who never saw the bodies or the graves of their loved ones. The widows of these victims formed a collective.

In addition to all other reparation, this collective affirmed to us their will, above all, to see the prosecution of the members of the armed forces implicated in the massacres.

On the basis of information collected from several rare, surviving witnesses to these killings, the collective affirmed knowing the identity of the authors of the executions. Some of these have even been compensated and benefitted from promotion in their jobs, or seen to be given other responsibilities.

It is important to note that the mothers of unmarried soldiers who disappeared in these tragic events form part of the collective. Also, the collective claims for pensions. As for the indemnities given by the government, some members of the collective affirmed that they had refused them, because in their belief, accepting such a compensation would be like drinking their relatives' blood.

iv) Position of the Government on victims of Events of 1986, 1989, and 1990-1991

According to the Mauritanian Government, most of the questions brought up had already found solutions, while others were in the process of being resolved. Thus, as for the claims of the surviving government employees, the authorities asserted that most of them had already regained their jobs. As for those who were in the collective, the government said, it could not be ruled out that their actions resulted from manipulations for the opposition, with the object of opposing government action.

Likewise, concerning the problem of widows, the government affirmed that under the terms of the law adopted in June 1993, it had proceeded to award indemnities in July 1993, to benefit widows and families of the persons killed.

With the exclusion of members of soldiers' families who were not married, "as of law", all those entitled had received their pensions; the widows who were not legally married (common law marriages) and the children of these unions remained a subject of concern, because they were without means of subsistence.

To all those who asked for judicial prosecution of the soldiers who might be found guilty of torture, killings and other atrocities inflicted on their colleagues, the government repeated that it had been an affair internal to the army, that the army had carried out an investigation, by which the appropriate sanctions had been taken against those soldiers found guilty.

Finally, the government recalled that by virtue of the amnesty law voted by the National Assembly in 1993, all legal prosecution of the authors of abuses committed in the given period was definitively excluded. Justifying the sound foundation of this law, the authorities suggested that civilians had benefitted from an amnesty law in 1991, so the military wanted to obtain the same favours, and after all, they had ceded power by permitting the holding of presidential elections in 1992 and elections for the legislature in 1993.

IV THE PROBLEM OF "SLAVERY" OR ITS REMNANTS

Although legal slavery in all forms may have been definitively abolished on all territory of the Islamic Republic of Mauritania (Ordinance no. 81-234 of 9 November 1981), its existence remains a contested question to this day.

In this respect, two positions clash. One affirms its existence, while the other considers that there exists only remnants.

A) Affirmation of the existence of slavery

According to the members of "SOS-Slavery" (an NGO created in 1995 but having no legal recognition), slavery continues to exist in Mauritania and affects 60% of the population, Arab-Berbers as well as black Mauritanians. SOS-Slavery affirms the existence of men, women and children belonging to other human beings, who dispose of their persons and their lives.

Thus, "SOS-Slavery" refutes the official version of the government according to which there are no longer slaves in Mauritania, but merely remnants of slavery (see below).

To support their position, the members of this NGO articulated the following arguments:

1. Nature of the relationship between masters and slaves

The relations between masters and slaves are not always overtly conflictual. These relations depend on the state of ideological, economic and cultural alienation in which the slaves find themselves, and this depends on where they live (in the countryside or in the city).

In the country, relationships of domination are more clear and thus more constraining than in the city.

a) Ideological Alienation

Religion, monopolised by the masters, is used to justify slavery, perpetuate domination and contain any vague impulse to revolt or desire for liberation. In fact, it is inculcated in the slave that his health depends on the master, that his happiness is tied to obedience to the master. Thus, the submission of the slave is constructed as religious duty.

b) Economic and Political Alienation

In Mauritania, according to the members of "SOS-Slavery", masters are known and openly claim their status as masters. They exercise their "rights" over their slaves chiefly in the countryside.

The master possesses several slaves that he maintains under a domination that may be subtle (in cities) or open (in the countryside, but in the city as well), assured of total impunity by the public powers. The master disposes of the person and goods of his slave, it is he who decides on his work, on his food, and on his liberty or manumission.

In the countryside, the masters are owners of sources of water and control access to the traditional lands of the tribe. In the cities, constituting the heart of the managerial class, they control access to employment.

2) Illustration of the submission of slaves to their masters

According to the leaders of "SOS-Slavery", domination of masters over their slaves is demonstrated in several realms, notably:

a) Work

A slave, whether man, woman, or child, is obligated to perform all duties without compensation, any consent, or any form of written or verbal contract. The food he takes from his master can in no way be considered as a salary in exchange for the work performed. So far as land goes, the division of the products of agriculture is done according to the master's will.

The surplus of slaves not utilised or sold by the master appear to live in a free and independent fashion. For some, this apparently autonomous way of life dates far back in history, while for others this arrangement dates to the economic dislocation of the long drought. Yet, essentially, they remain closely tied to their master, who grants them all their rights: to be well received and maintained, they adopt what pleases him. The master decides if slaves shall have the opportunity to vote, and for whom.

In the countryside, the slave cultivates the land of the master, tends his palm groves, guards his herds, undertakes all the work that the master judges useful to himself. The slave can be the object of maltreatment and physical or moral torture each time the master is not satisfied with the services rendered.

b) Seizing and holding of children

Incapable of enduring any longer the maltreatment and torture and longer, some slaves (men, women and children) flee their masters and take refugee in towns. They can sometimes be made to return by force, occasionally with the complicity of certain authorities who intimidate, threaten and terrorise the "recalcitrants". The masters can also exercise pressure over the fugitive slaves by taking their children hostage to force them to return, and thus to have slave labour at their disposal.

c) Loans, inheritance and renting of slaves

The master can lend his slaves or their children to relatives and friends as he might bequeath them to his young married daughters who are setting up their households; it is a common form of gift, constituting a contribution to the equipping of a new household. This practice exists even in the capital of the country, and in the houses of government leaders. Slaves can be rented to other persons, and the pay for their work and services is given to the master. Children can thus be used, either in cities or the countryside, for watching herds and after a time be exported to certain countries of the Middle East.

d) Deprivation of property

By law, the slave does not possess any property. All the fruit of his labor belongs as of right to the master; the land which he has cleared and made useful belongs to the master. When a slave dies, the master is, according to tradition, his sole heir at law.

e) Kidnapping and sale of slaves

To recapture their slaves who have fled, masters resort to kidnapping. Furthermore, cases of kidnapping are still indications to maintain or renew slave labour. Slaves are still sold today in Mauritania; most "officially" when the sales are controlled by the religious authorities.

f) Marriage

The master decides on the marriage of his slaves. He may take female slaves as wives, according to his wish, without asking the consent of the woman, and abuse her.

3) Behavior of Government authorities in the face of slavery Members of "SOS-Slavery" allege that the administrative and judicial authorities manifest different attitudes and behavior when faced with slavery. The official discourse tries to obscure it to give a positive image to international opinion. It is thus that one can speak of "remnants" of slavery.

The state hides behind ordinance No. 81-234 of 9 November 1981 abolishing slavery, and the constitution, which refers to the UN Charter.

But according to "SOS-Slavery", the highest authorities of the country today maintain that this ordinance is without purpose because according to them there have been no slaves in Mauritania for a very long time. It is perhaps for this reason, the NGO thinks, that the decree of application of this law has never been made, and no campaign of explanation or information has been undertaken by the state, so much through the official media as in the discourse of leaders of popular meetings, political meetings and other gatherings.

Thus, the above-mentioned ordinance, like the implicit abolition which preceded or followed it, remains theoretical, without significant effect.

The judicial void reinforces slaveholders and certain authorities from feudal, slaveholding families.

In cases of conflict, conclude the activists of SOS-Slavery, the state has never punished the perpetrator of any seizure or holding of slaves, dispossession of inheritance or goods. Some officials have sent fleeing slaves back to their masters, other have contested their impotence in the face of the legal void, although others try timidly to resolve certain conflicts without leaving any traces that might attest to the existence of slavery.

B) The existence of vestiges of slavery Contrary to the affirmations of the activists of SOS-Slavery, several state officials and members of NGOs whom we met with maintained the positions that there was no longer slavery as such, but rather its remnants, in the form of dependence as much psychological as economic, deeply anchored in the ancestral traditions of Mauritanian society.

In fact, according to our interlocutors and other sources who swore by this thesis, of the tens of thousands of persons whose ancestors were slaves find themselves still in states of servitude or quasi- servitude, even if such practices as coercive servitude and commerce in slaves appears to have virtually disappeared. In the majority of cases, those who find themselves still in a state of non-compensated servitude are bound in this situation by lack of viable alternatives or by lack of knowledge of their correct legal status. Some freed slaves (Haratine) have decided, it may be, to

remain with the former master, to be rejoined with him and thus continue to furnish their work in exchange for room, board and the covering of other necessities.

Others live independent of their former master, but continue, in symbiosis, to maintain relations with them, in effect, from time to time a non-salaried work in exchange for provisions, clothes and medical care. There exist no reliable statistics on the number of Haratines who continue to work for the same family that they served before the abolition law of 1981, whether they are salaried or not. The case of reports of involuntary servitude are rare because, having been abolished, the administrative authorities and courts repress it when it presents itself.

To sum up, the Mauritanian public authorities refuse to apply the idea "slavery", which they believe is derogatory and likely to sow confusion in the minds of western partners who understand it in the classical sense.

C) Confrontation of the two positions To hold, like "SOS-Slavery", that slavery remains a living reality which touches 60% of the population of Mauritania is not credible. If one can admit the existence of several rare cases in the remote countryside, isolated from the competent authorities, it is insufficient to support such a thesis. That which is common and conforms with reality, is the persistence of vestiges of slavery. The executive and judicial powers cannot be reasonably accused of not acting in conformity with the spirit and the letter of the 1981 abolition law.

By way of example, the disputes over inheritance between the Haratines and the descendants of their former masters have often been heard and been resolved in court. Although the resolution of these cases is rests on the principles dictated by the law and practice, that is the transmission of an inheritance to the descendants of former slaves, the independent press brought to light one case of a decision taken in 1994 at NThetama by a qadi, in favour of the former master. The execution of this decision was stayed, thus permitting the descendants of the former slave to make an appeal to the competent court. In another case, the Supreme Council of the Magistrature removed a magistrate from his position for having violated the law by a decision attributing the estate of a slave to his former master instead of his descendants.

In its concern to eradicate the vestiges of slavery, and above all ignorance and extreme poverty, the executive branch has already initiated measures in the right direction, but which must be amplified and deepened.

It is relevant to cite the following: - participation of former slaves in the exercise of high political, administrative, military and trade union activities - raising the level consciousness of former slave by means of priority schooling of children in their dialects, and literacy for adults - agrarian reform, envisioning a better exploitation of the land for the benefit of those who till it.

Finally, the argument for the existence of remnants of slavery mobilises civil society with a view to finding a solution. Thus, for example, the El Hor (literally, "free man") movement continues to pursue its programme with the aim of eradicating the last vestiges of slavery and the mentality inherent in it, prevailing among former slaves as well as their masters. A new NGO, the National Committee for the Fight against the Vestiges of Slavery in Mauritania was created in 1995 to promote the rights of ex-slaves.

V. THE QUESTION OF RIGHTS OF WOMEN

Although they appear to be in decline, the traditional forms of treatments of women remain serious causes of concern, in most cases in isolated, rural communities. Such treatment comprises the feeding by force of adolescent girls and female genital mutilation.

These practices are widely condemned by international health experts because their effects are harmful to the physical and psychological health of their subjects.

Thus, for example, because obesity is considered a traditional form of beauty, feeding by force of adolescent girls consists of feeding them on a schedule, and exaggerated with foods intended to make them fat as quickly as possible during their adolescence, with a view to early marriage. This practice is dangerous for the health because it causes hypertension, diabetes, etc.

As for female genital mutilation most often practiced on young girls, it continues to be widespread among all the ethnic groups of the country, with the exception of the Wolofs. It is estimated that 95% of SoninkTheta and Peulaar women and 30% of Moorish women are subjected to these practices.

Also, the problems linked to early marriage, polygamy and divorce constitute a source of concern for the protection of women's rights in Mauritania where the traditions of the family prevail.

As for the enjoyment of the right to non-discrimination, Mauritanian women are participating in the economic sector of the country (they hold 80% of small commerce, including industries, indeed small manufacturing) and in teaching they are the majority.

By contrast, although they represent 51% of the population, they are notable for their absence in political and legal life. In fact, there is not a single woman at the centre of government, while the National Assembly and Senate have not a single female member. Likewise is the judiciary, which has not a single woman judge.

In sum, the promotion of women's rights is deficient in the country, and merits a particular attention.

VI CONCLUSIONS AND RECOMMENDATIONS

1. The Commission rejoices in the total willingness of the Mauritanian government to cooperate with it, in conformity with the principles of the African Charter on Human and Peoples' Rights.

2 The Commission appreciates the willingness of the Mauritanian authorities to reinforce democratic evolution in a pluralism context.

3. The Commission deplores all the tragic events that have occurred in Mauritania and their consequences. It recommends that all might be implemented so that the effects of these events might be repaired, with a view to the reconciliation of all elements of Mauritanian society.

4. The Commission calls on the sense of responsibility among the socio-political organisations and civil society to reinforce democratic equilibrium and construction.

5. The Commission finds that in spite of the amnesty laws of 1991 and 1993 adopted by the government to repair the prejudice caused, there still exists a certain number of unresolved matters, such as the situation of widows and black Mauritanian survivors.

The Commission recommends to the government to put into place mechanisms and procedures likely to accelerate the process of indemnification and reparation in a satisfactory manner and to maintain a dialogue with the organisation of civil society.

6. The delegation thanks the Mauritanian authorities for the warmth of their welcome and the quality of the hospitality which was accorded to them.

Annex X
Communications

No. 27/89, 46/91, 49/91, 99/93
Organisation Mondiale Contre La Torture and Association Internationale des juristes Democrates) Commission Internationale des
Juristes (C.I.J) Union Interafricaine des
Droits de l'Homme/Rwanda

No. 39/90
Annette Pagnoulle (on behalf of Abdoulaye Mazou)/Cameroon

No. 44/90
Peoples' Democratic Organisation for Independence and Socialism /The Gambia

No. 65/92
Ligue Camerounaise des Droits de l'Homme/ Cameroon

No. 71/92
Rencontre Africaine pour la Defence des Droits de l'Homme/Zambia

No. 103/93
Alhassan Abubakar/Ghana

No. 97/93
John K. Modise/Botswana

No. 108/93
Monja Joana/Madagascar

27/89, 46/91, 49/91, 99/93 Organisation Mondiale Contre La Torture and Association Internationale des juristes Democrates) Commission Internationale des Juristes (C.I.J) Union Interafricaine des Droits de l'Homme/Rwanda

FACTS

Communication 27/89 alleges the expulsion from Rwanda of Burundi nationals who had been refugees in Rwanda for many years (Bonaventure Mbonuabucya, Baudouin Ntatundi, Vincent Sinarairaye and Shadrack Nkunzwenimana). They were told on 2 June 1989 that they had a month to leave the country. The reason given for their expulsion was that they were a national security risk due to their "subversive activities". The refugees were not allowed to defend themselves before a competent court.

Communication 46/90 alleges arbitrary arrests and summary executions have occurred in Rwanda.

Communication 49/91 alleges the detention of thousands of people in various parts of the country by the Rwandan security forces. These arrests have been made on the basis of ethnic origin and peaceful political activities. The communication states that over 1000 people including women, children and the aged are held in deplorable conditions. A large number of villages have been destroyed and villagers, mostly Tutsis, have been massacred.

Communication 99/93 alleges serious and massive violations between October 1990 and January 1992. A report was submitted at the same time detailing such violations as widespread massacres, extrajudicial executions and arbitrary arrests against the Tutsi ethnic group.

PROCEDURE

Communication 27/89 was submitted on 22 June 1989 by Organisation Mondiale contre la Torture and Association Internationale des Juristes DThetamocrates. The letter 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 Commission was seized of the communication at the 6th Ordinary Session in October 1989.

On 14 March 1990 the Secretariat of the Commission notified the Ministry of Foreign Affairs of Rwanda.

From 1990 to 1995, the Commission attempted unsuccessfully to send a mission to Rwanda in order to carry out investigations on this cases.

Communication 46/90 was submitted by the International Commission of Jurists on 16 October 1990.

On 6 November 1990 a notification was sent to the Ministry of Foreign Affairs by registered mail.

At the 10th Ordinary Session, in October 1991, the communication was declared admissible. The Ministry of Foreign Affairs was notified on this decision on 23 October 1991.

Communication 49/91 was submitted by the Organisation Mondiale Contre la Torture (OMCT) on 28 November 1990.

Communication 99/93 was submitted by Union Interafricaine des Droits de l'Homme on 20 March 1993.

From 1993 to 1995, various letters and notifications were sent to Rwanda, to which there was no response from the government.

LAW Admissibility

It appears as stated under Article 58 of the African Charter, the communications 27/89, 46/90, 49/91 and 99/93 against Rwanda reveal the existence of a series of serious or massive violations of the provisions of the African Charter.

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, amongst others, 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 tribunal.

In accordance with its earlier decisions on cases of serious and massive violations of human rights, and in view of the vast and varied scope of the violations alleged and the large number of individuals involved, the Commission holds that remedies need not be exhausted and, as such, declares the communications admissible.

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

The Merits

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.

In the present case, there has been no substantive response from the Government of Rwanda, 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 (See, for example, the decisions of the Commission on communications 59/91, 60/91,64/91, 87/93 and 101/93). This principle conforms with the practice of other international human rights adjudicatory bodies and the Commission's duty to protect human rights. The fact that the Government of Rwanda does not wish to participate in a dialogue obliges the Commission to continue its consideration of the case regrettably on the basis of facts and opinions submitted by only one of the parties.

Article 2 of the Charter reads:

"Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group...national or social origin..."

There is considerable evidence, undisputed by the government, that the violations of the rights of individuals have occurred on the basis of their being Burundian nationals or members of the Tutsi ethnic group. The denial of numerous rights to individuals on account of their nationality or membership of a particular ethnic group clearly violates Article 2.

Article 4 of the Charter reads:

"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

The massacre of a large number of Rwandan villagers by the Rwandan armed forces and the many reported extra judicial executions for reasons of their membership of a particular ethnic group is a violation of Article 4.

Article 5 of the Charter reads:

"Every individual shall have the right to the respect of dignity inherent in a human being...torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

The conditions of detention in which children, women and the aged are held violates their physical and psychological integrity and therefore constitutes of violation of Article 5.

Article 6 of the Charter reads:

"Every individual shall have the right to liberty and security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."

The arrests and detentions of the Rwandan Government based on grounds of ethnic origin alone, in light of Article 2 in particular, constitute arbitrary deprivation of the liberty of an individual. These acts are clear evidence of a violation of Article 6.

Article 12 of the African Charter reads:

"3. Every individual shall have the right, when persecuted to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions." 4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law."

This provision should be read as including a general protection of all those who are subject to persecution, that they may seek refuge in another state. Article 12.4 prohibits the arbitrary expulsion of such persons from the country of asylum. The Burundian refugees in this situation were expelled in violation of Articles 2 and 12 of the African Charter.

Article 12.5 of the African Charter reads:

"The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups."

There is ample evidence in this communication that groups of Burundian refugees have been expelled on the basis of their nationality. This constitutes a clear violation of Article 12.5.

Article 7.1 of the Charter reads:

"Every individual shall have the right to have his case heard. This comprises: (a) The right to an appeal to competent national organs against acts violating his fundamental rights..."

By expelling these refugees from Rwanda, without giving them the opportunity to be heard by the national judicial authorities, the government of Rwanda has violated article 7.1 of the Charter.

The African Commission is aware of the fact that the situation in Rwanda has undergone dramatic change in the years since the communications were introduced. Furthermore, the Commission has to rule on the facts which were submitted to it.

FOR THE ABOVE REASONS, THE COMMISSION

Holds that the facts constitute serious or massive violations of the African Charter, namely of Articles 4, 5, 6, 7, 12.3 and 12.4 and 12.5 of the Charter. urges the government of Rwanda to adopt measures in conformity with this decision.

Taken at the 20th Ordinary Session, Grand Bay, Mauritius, October 1996.

39/90 Annette Pagnoulle (on behalf of Abdoulaye Mazou)/Cameroon

FACTS

This communication was submitted by Annette Pagnoulle of Amnesty International and concerns Abdoulaye Mazou, a Cameroonian national. Mr. Mazou was imprisoned in 1984 by a military tribunal without trial, without witnesses, and without right to defence. He was sentenced to 5 years imprisonment for hiding his brother who was later sentenced to death for attempted coup d'etat. Even after he had served his sentence in April 1989, he continued to be held in prison and was only freed by the intervention of Amnesty International on 23 May 1990. He continued to be under detention at his residence until the law of amnesty of 23 April 1991.

Although Mr. Mazou has now been freed, he has not been reinstated in his position as a magistrate. The complainant therefore requests action be continued on his behalf.

The government was represented by a delegation at the 20th session of the Commission held in Mauritius in October 1996, which asked that the communication should be declared inadmissible because it was still pending at the Supreme Court.

The alleged victim petitioned the President of the Republic in order to solicit his reinstatement as a magistrate. He then submitted an out of court settlement to the Ministry of Justice. When no response from the President or the Ministry was forthcoming the alleged victim made a submission for a legal settlement to the Administrative Chamber of the Supreme Court which rejected his case in principle. He submitted further petitions to the Supreme Court and seized the Ministry of Justice for reinstatement in his position. He has also undertaken to bring political pressure, jointly with others, to reclaim his profession. As yet, none of these actions has produced any result.

PROCEDURE

The Commission was seized of the communication at the 7th Session in April 1990.

On 31 May 1990, the Secretariat of the Commission notified the state of Cameroon of the communication and asked it for its views on admissibility.

On 1 March 1995, the Secretariat informed the complainant that the Commission takes note of the release of Mr. Mazou. The complainant was advised to inform the Commission whether or not his release was satisfactory reparation for Mr. Mazou no later than July 1, 1995.

On 8 June 1995, a fax was received from the complainant stating that although the victim, Mr. Abdoulaye Mazou, had been released he had not been reinstated in his position as a magistrate, to which he is legally entitled.

At the 19th session, in March 1996, the communication was declared admissible. The parties were notified of this decision

At the 20th Session, held in October 1996, a delegation of the government of Cameroon was present and submitted a written response to the effect that the communication was inadmissible. The delegation also admitted, however, that the conditions under which Mr. Mazou was tried by a military tribunal fell short of the standards provided for in the African Charter, but that the laws governing such tribunals had since been changed. The delegation promised to forward to the Commission the written judgement of the Military Tribunal, any judgement concerning the alleged disciplinary measures against Mr. Mazou, a document proving the existence of recourse as concerns disciplinary measures and the law after which Mr. Mazou was condemned. The Commission decided to postpone consideration of the case to the 21st session.

On 24 March the Secretariat received received a letter from the Ministry of Foreign Affairs of Cameroon informing the Secretariat that the question had been dealt with in the Administrative Chamber of the Supreme Court and that all interested parties had the possibility of exhausting local remedies. The Ministry also sent the Supreme Court judgment, the ordinnance no 304 which placed Mr. Mazou under surveillance, ordinnances no 72/5 and 72/20 concerning the compentence of the military court and law no. 74/4 modifying ordinnance no. 72/5, the judgment of the military court, ordinnance no. 72/13 concerning state of emergency, ordinnance 72/6 concerning the organisation of the Supreme Court and law no. 76/28 modifying this ordinnance, Decree no. 80/276 concerning the nomination of Secretary Generals of Ministries and Decree no. 82/467 relating to the judiciairy.

LAW Admissibility

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..."

In this case, the alleged victim petitioned the President of the Republic in order to solicit his reinstatement as a magistrate. He then subitted an out of court settlement to the Ministry of Justice. When no response from the President or the Ministry was forthcoming the alleged victim made a submission for a legal settlement to the Administrative Chamber of the Supreme Court. He submitted further petitions to the Supreme Court and seized the Ministry of Justice for reinstatement in his position. In light of the above actions taken by the victim and their failure to yield any results the Commission holds that local remedies have been duly exhausted.

Merits

Article 6 of the Charter reads:

"No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."

In conformity with Article 65 of the Charter, the Commission cannot pronounce on the equity of court proceedings that took place before the African Charter entered into force in Cameroon on 20 September 1989 (See the Commission's decision on communication 59/91). If however irregularities in the original sentence has consequences that constitute a continuing violation of any of the Articles of the African Charter, the Commission must pronounce on these.

Mr. Mazou was held in prison after the expiration of his sentence in April 1989 until 23 May 1990. After his release, he was placed under house arrest. The delegation of Cameroon at the 20th session stated that: "After serving his sentence he was released, but the problem is that he was the subject of purely administrative measures based on existing laws at that time. These laws were however abrogated only in 1989".

All parties agree that Mr. Mazou was held beyond the expiry of his sentence. No judgment was passed to extend his sentence. Therefore the detention is arbitrary, and the Commission finds that this constitutes a violation of Article 6.

Article 7 of the African Charter reads:

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

(b) the right to be presumed innocent until proved guilty by a competent court or tribunal;

(d) the right to be tried within a reasonable time by an impartial court or tribunal."

Mr. Mazou has not yet had a judgment on his case brought before the Supreme Court over 2 years ago, without being given any reason for the delay. At the 20th session the delegation held that the case might be decided upon by the end of October 1996, but still no news of it has been forwarded to the Commission. Given that this case concerns Mr. Mazou's ability to work in his profession, two years without any hearing or projected trial date constitutes a violation of article 7.1(d) of the African Charter.

At the 20th session, the delegation of Cameroon stated that "the administrative detention had not for its reason the fact that sentenced Mazou, it was not linked to the trial. When the state believes that an individual who is free can trouble public order we can take preventive measures, and this explains why he was detained administratively. This can be renewed at any time when the administrative authorities deem that there is a risk and therefore they deem need of preventive measures."

Detention on the mere suspect that an individual may cause problems is a violation of his right to be presumed innocent.

Article 15 of the African Charter reads:

"Every individual shall have the right to work under equitable and satisfactory conditions,..."

Article 2 of the Amnesty Law of 23 April 1992 reads:

"Have been amnestied: -All persons sentenced of subversion to penalty of imprisonment and/or fined; -All persons sentenced a punishment of detention or serving an penalty of detention; -All persons authors of offences of a political nature, condemned to death penalty."

Article 3 of the Amnesty Law of 23 April 1992 reads:

".... the persons condemned who have been granted amnesty and who had public employment will be reintegrated....."

Still after the Amnesty Law of 23 April 1992, Mr. Mazou has been denied reinstatement by the government in his former professional capacity as a magistrate.

The delegation of the government which appeared at the 20th session claimed the reason to be that he is not covered by the Amnesty law of 23 April 1992, because he has not been judged of subversion or sentenced to detention. It also stated that disciplinary action was taken against Mr. Mazou because of his sentence".

Although according to the delegation, Mr. Mazou was judged for an ordinary criminal offence in Cameroon, he was still judged by a Military Tribunal. The delegation answered the Commission's questions about this as follows: "Why he was tried by a Military Tribunal? Everybody knows that when you are involved in a problem which includes the attempt to violently, using arms, overthrow a government and a president, then you are actually taking actions in political acts, something of a political nature. The coup plotters of 1984 were judged by the Military Tribunal and since Mr. Mazou hid for some time a brother of his who was involved, then there was, there could have

been a connection between the coup attempt and the fact that Mr. Mazou had accepted to hide his brother."

To the Commission it still seems peculiar that Mr. Mazou was tried by a Military Tribunal like the coup plotters and that afterwards he is not given amnesty like them. The delegation promised to forward to the Commission the written judgement of the Military Tribunal. This has not yet happened.

The Commission finds that by not reinstating Mr. Mazou in his former position after the Amnesty Law, the government has violated Article 15 of the African Charter, because it has prevented Mr. Mazou to work in his capacity of a magistrate even though others who have been condemned under similar conditions have been reinstated.

FOR THE ABOVE REASONS, THE COMMISSION

declares the violations of Articles 6, 7.1(b), 7.1(d) and 15;

recommends that the government of Cameroon draw all the necessary legal conclusions to reinstate the victim in his rights.

Taken at the 21st Ordinary Session, Nouakchott, Mauritania, April 1997

44/90 Peoples' Democratic Organisation for Independence and Socialism / The Gambia Report on an Amicable resolution

FACTS

The complaint alleges that voter registration in the constituencies of Serrekunda West, Serrekunda East and Bakau was defective because those registering were not required by the law to give an address or identification. It argues that there was no control over voter registration since no documents have to be shown to the registration officer. The voter may be asked his name and citizenship, but there is no requirement to produce an address or compound number. Furthermore, the witness is not required to identify himself. The complainant argued that the absence of a requirement to produce an address or compound number makes it possible for the voter to forge his right to vote in the constituency, or to vote several times.

In the rural areas the registration of the voters and the voting procedure itself are controlled by the headman, the registration officer, representatives of different political parties, and village elders. In the urban areas the control is only done by the registration officer, who does not know the people. Without the street address or compound number it is impossible for the registration officer to control the identity of the voter, even though they must sign a form of registration and enclose a photograph, because the signature could be forged and the lack of communication between different constituencies could make it possible for the voter to register in several stations.

The complainant argues that the registration by street address/ compound number is possible, since most urban areas in the Gambia have street address or compound number.

The complainant argues that, based on its observations of voter registration, there is widespread fraud.

According to the Government

The government argued firstly that the case was inadmissible because it could be taken through the courts to the level of the (British) Privy Council.

The complainant pointed out that the (Gambian) Elections Act, Section 22(5), states that the judgment of the Gambian Supreme Court shall be final and conclusive; thus, appeal to the Privy Council is impossible.

As to the merits, the state originally claimed that the Gambia does hold free and fair elections. In the urban areas a form was signed and address / compound number, occupation, constituency and photo, were included wherever possible. These were checked by the registration officer both at registration and at the elections, providing adequate protection against fraud. Likewise, in the rural areas, the personal identification by the village headman took place both at registration and at the elections.

The state claimed that it is almost impossible in a developing country like the Gambia to ensure control by street addresses / compound number. Many dwellings in the Gambia, including in the urban areas, do not have street addresses / compound numbers, but are registered in the names of the owners. It is therefore impossible to make this requirement absolute.

The state further argued that it is impossible to require showing of identity papers at the time of registration and election as a high percentage of the population does not have identification papers. It was not before 1985 that a National Identity Card was introduced and now not more than 50% of the population has been registered.

In July 1994 there was a change of government in The Gambia. The present government strongly condemns the claims of the previous government that the streets of Serrekunda were not named with sufficient specificity to permit making an street address a mandatory requirement for voter registration. The present government calls this claim "inexcusable and indefensible."

The present government, by its "Admission of Communication No. 44/90 from the Peoples Democratic Organisation for Independence and Socialism-PDOIS Against the State of the Gambia" concedes that the grievances expressed by the complainants are valid and logical. It expressed its intent to change the current system to correct the present "anomalies."

PROCEDURE

The communication is dated 19 June 1990. The Commission was seized of the communication at the 8th Session and the government of The Gambia was notified on 6 November 1990.

From 1990 to 1995, the Commission proceded to verify the exhaustion of local remedies.

At the 17th session the communication was declared admissible on the basis that exhaustion of local remedies had been unduly prolonged.

On 20 April 1995 a letter was sent to the complainants and the Gambian Government, stating that the communication was admissible.

The Commission received a letter from the Attorney General's Chambers and Ministry of Justice of The Gambia, conceding that the grievances expressed by the complainants are valid and logical, and that the present electoral law is being reviewed with the objective of curing the present anomalies.

On 20 December 1995, the complainant was informed of this response with the specification that if the Secretariat does not receive arguments to the contrary before the 1 February 1996, the Commission would consider the communication to have been resolved amicably.

THE LAW
Admissibility

The PDOIS argued that it was beyond the jurisdiction of the judiciary to order Parliament to change defective procedures and laws; thus, recourse to the courts was not an option. The complainant alleged that, while the Elections Act provides for objections to voter lists to be made before a revising officer appointed by the Supervisor of Elections, the fact that the voter lists posted did not include a list of addresses made effective scrutiny impossible. The complaint noted that numerous letters had been addressed to the Supervisor of Elections and the President of the Republic as early as 1987 with no response.

The Government noted that in July 1990, the complainant did file a Notice of Objection and sent it to the Commissioner of Western Division. The document was forwarded to the Revising Court. No action appeared to have been taken by the court.

On the basis of these facts the communication was declared admissible.

LAW

Article 13 of The African Charter reads:

"Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provision of the law".

In 1994 there was a change of government in The Gambia. The present government recognizes that it has inherited the previous government's rights and obligations under international treaties.

The present government has a different view of voter registration. It concedes that the grievances expressed by the complainants are valid and logical. It describes that it is in the process of establishing an independent electoral commission and has commissioned a team of experts to review the present electoral law.

The African Commission welcomes the acceptance of the complainant's contentions and the government's stated determination to review the current electoral law, in order to ensure that elections are regular, free and fair.

FOR THESE REASONS THE COMMISSION

holds that the above communication has reached an amicable resolution.

Taken at the 20th Ordinary Session, Grand Bay, Mauritius, October 1996.

65/92 Ligue Camerounaise des Droits de l'Homme/ Cameroon

FACTS

The complaint is in two parts. The first, submitted by the Ligue Camerounaise des Droits de l'Homme, alleges a number of serious and massive violations in Cameroon committed by the

present government. The Ligue alleges that the prison conditions in Cameroon constitute cruel, inhuman and degrading treatment and that many people have been arbitrarily arrested and detained in these conditions. Between 1984 and 1989 at least 46 persons were tortured and deprived of food in the Central Prison of YaoundTheta. Further violations consist in the repression of freedom of expression, creation of special tribunals, denial of fair hearing, ethnic discrimination, and massacres of the civil population.

The second part relates to the situation of Mr Joseph Vitine, an ex- police officer. He stated that he has been persecuted by his former colleagues since March 1990. Subsequent to this submission Mr. Vitine re-submitted his case as a separate communication, no. 106/93.

The government of Cameroon responded in writing that the case of Mr. Vitine should be declared inadmissible because the author did not appear to be in possession of his full mental faculties. The government responded orally that the allegations of the Ligue Camerounaise should be declared inadmissible because they are posed in disparaging and insulting language

PROCEDURE

The communication is not dated but was received from the Ligue Camerounaise just before March 1992. The Commission was seized of the communication at the 11th Session.

The government of Cameroon was notified of the communication on 8 April 1992. No response was forthcoming.

On 13 November 1992 another notification was sent.

As of the 19th session, no information had been received from the government. The Commission declared the communication as regards Mr. Vitine inadmissible.

On 17 May 1996 the Commission sent a letter to Mr. Vitine informing him that his communication had been declared inadmissible at the 19th session.

At the 20th session, a delegation of the government of Cameroon was present and submitted a written response to the communication, dealing with the portion of the communication submitted by Mr. Vitine, which had already been declared inadmissible. The government delegation made an oral presentation concerning the allegations of the Ligue Camerounaise. The Commission decided to request more information from both the government and the complainant, and to postpone a decision on the merits of the case.

On 10 December 1996 the parties were informed of this decision.

LAW
Admissibility

Article 55.2 of the Charter reads:

"A communication shall be considered by the Commission if a majority of its members so decide."

This power of the Commission to consider communications naturally includes the lesser power to decline to hear them.

The allegations submitted by Mr. Vitine were in 1993 submitted separately to the Commission and registered as communication 106/93. The information in this communication did not give

evidence of prima facie violations of the African Charter. For this reason the Commission declared the communication inadmissible.

Article 56.3 of the Charter reads:

"Communication relating to Human and Peoples' Rights referred to in Article 55 received by the Commission, shall be considered if they:

3. are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity."

The allegations submitted by the Ligue Camerounaise are of a series of serious and massive violations of the Charter. The communication contains statements such as: "Paul Biya must respond to crimes against humanity", "30 years of the criminal neo-colonial regime incarnated by the duo Ahidjo/Biya", "regime of torturers", and "government barbarisms". This is insulting language.

In addition to the requirements of form, the Commission has a clear precedent that communications must contain a certain degree of specificity, such as will permit the Commission to take meaningful action. (See the Commission's decision on communication 104/94, 109 - 126/94 Center for the Independence of Judges and Lawyers/Algeria et al.)

FOR THESE REASONS THE COMMISSION

declares the communication inadmissible. Taken at the 21st Ordinary Session, Nouakchott, Mauritania, April 1997 71/92 Rencontre Africaine pour la Defence des Droits de l'Homme/Zambia

FACTS

The complaint is presented by a Senegalese NGO, Rencontre Africaine pour la Defence des Droits de l'Homme, on behalf of 517 West Africans who were expelled from Zambia on 26 and 27 February 1992, on grounds of being in Zambia illegally. Prior to their expulsion, most of the individuals had been subject to administrative detention for more than 2 months. The deportees lost all the material possessions they had in Zambia, and many were also separated from their Zambian families.

The communication was submitted on 28 February 1992. The Commission was seized of it at the 12th Session.

On 13 November 1992, the text of the communication was sent to the Zambian Ministry of Justice and ministry of External Affairs by registered post. No reply has been forthcoming.

At the 16th Session, the communication was declared admissible and the parties were informed that the merits of the case would be considered at the 17th Session.

At the 18th session in October 1995, a delegation of the Zambian government appeared and presented additional information dated 29 September 1995.

The complainant also appeared and presented a reply to the government's arguments.

The Commission decided to pursue an amicable resolution to the communication, which would involve further details being given to the Zambian government so that reparations might be effected.

On 2 August 1996, the Commission informed the Government of Zambia of its intention to contiue the efforts towards an amicable resolution of the case.

THE LAW
Admissibility

The Zambian government argues that the communication must be declared inadmissible because domestic remedies have not been exhausted.

Article 56 of the African Charter provides as follows:

"Communications shall be considered if they:

5. are sent after exhausting local remedies, if any, unless it is obvious that these procedures are unduly prolonged,..."

The rule requiring the exhaustion of local remedies as a condition of the presentation of an international claim is founded upon, amongst other principles, the contention that the respondent state must first have an opportunity to redress by its own means within the framework of its own domestic legal system, the wrong alleged to have been done to the individual.

This does not mean, however, that complainants are required to exhaust any local remedy which is found to be, as a practical matter, unavailable or ineffective.

When the Zambian government argues that the communication must be declared inadmissible because the local remedies have not been exhausted, the government then has the burden of demonstrating the existence of such remedies. The government of Zambia attempts to do so by referring to the Immigration and Deportations Act which provides for appeal of expulsion orders. The government states that actions for loss of property likewise can be brought under Zambian law.

14. The question is therefore whether, in the circumstances alleged, the Immigration and Deportation Act constitutes an effective and adequate remedy in respect to the complaints.

15. The mass nature of the arrests, the fact that victims were kept in detention prior to their expulsions, and the speed with which the expulsions were carried out gave the complainants no opportunity to establish the illegality of these actions in the courts. For complainants to contact their families, much less attorneys, was not possible. Thus, the recourse referred to by the government under the Immigration and Deportation Act was as a practical matter not available to the complainants. This was confirmed by the complainants during their arguments before the Commission, as well as by expert testimony. (See "RThetaplique du RADDHO a la RThetaponse du Gouvernement Zambien," p. 3; also letter of Executive Director of Afronet Zambia, 7 October 1995.)

16. The Zambian government argues that the victims were remiss in not taking advantage of the legal aid system in Zambia ("Additional Information," p.6.) However, complainants make clear, in their "RThetaplique" and through expert testimony contained in the file, that if the victims of deportation were in fact illegal as the government argues, they would be ineligible for legal aid (See "RThetaplique", p. 3; see also the letter of Chakota Beyani, Refugee Studies Program, Oxford Univerisity, p. 1).

!7. For the above reasons the Commission holds the communication admissible.

The Merits

18. Given that the process of arriving at an amicable resolution can take a substantial period of time, the Commission believes it is important to make a statement on the question of law raised by this communication.

19. Article 12, paragraph 5 of the Charter provides:

"The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups."

20. Clearly, the drafters of the Charter believed that mass expulsion presented a special threat to human rights.

21. The Charter makes this point clearly in Article 2, which states:

"Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social original, fortune, birth or other status."

22. This imposes an obligation on the contracting state to secure the rights protected in the Charter to all persons within their jurisdiction, nationals or non-nationals.

23. The government of Zambia argues that the expulsion of the west African was justified because they were in Zambia illegally, and that the African Charter does not abolish visa requirements and borders between African states. It is true that the African Charter does not bar deportations per se, but Zambia's right to expel individuals does not justify the manner in which it does so.

24. The victims on whose part RADDHO seized the Commission were all from West Africa, some from Senegal, some from Mali, Guinea Conakry, and other West African countries. The government of Zambia, in its "Additional Information" presented to the Commission at the 18th Session, argues that the expulsion was not discriminatory because nationals of several West African countries and other foreign countries were all subject to the same treatment (See "Additional Information", p.1; list of aliens repatriated between 25th November 1991 and 16 January 1992, attached).

25. The complainants respond that they are concerned only with the expulsion of West Africans, because it is these persons who appealed to them for help, but that simultaneous expulsion of nationals of many countries does not negate the charge of discrimination. Rather, the argument that so many aliens received the same treatment is tantamount to an admission of a violation of Article 12.5. ("RThetaplique," p.1-2)

26. It is clear from the government's own list of repatriated aliens, however, that after excluding nationals Zambia's immediate neighbors, Tanzania and Zaire, West Africans constitute the majority of those expelled.

27. The Zambian government disputes the characterization of the expulsions as "en masse" by arguing that the deportees were arrested over a two-month period of time, at different places, and served with deportation orders on different dates (Additional Information, p.4, pp iii.) Zambia, however, cannot prove that the deportees were given the opportunity to seek appeal against the decision on their deportation.

28. Zambia maintains that the two months during which some of the deportees were held were necessary to verify their nationality in some cases, and also that complainants might have used this time to contact their lawyers. The facts of this communication show that West Africans were arrested and assembled over time, with a view to their eventual expulsion. The deportees were kept in a camp during this time, not even an ordinary prison, and it was impossible for them to contact their lawyers.

29. Article 7 of the Charter specifies:

"Everyone 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 recognized and guaranteed by conventions, law, regulations and customs in force."

In holding this case admissible the Commission has already established that none of the deportees had the opportunity to seize the Zambian courts to challenge their detention or deportation. This constitutes a violation of their rights under Article 7 of the Charter and under Zambian national law.

31. The African Commission will not dispute that the Zambian state has the right to bring legal action against all persons illegally residing in Zambia, and to deport them if the results of such legal action justify it. However, the mass deportation of the individuals in question here, including their arbitrary detention and deprivation of the right to have their cause heard, constitute a flagrant violation of the Charter.

FOR THE ABOVE REASONS, THE COMMISSION

decides that the deportations constitute a violation of Articles 2, 7.1(a), and 12(5) of the African Charter resolves to continue efforts to pursue an amicable resolution in this case.

Taken at the 20th Ordinary Session, Grand Bay, Mauritius, October 1997. 97/93 John K. Modise/Botswana

FACTS

The complainant claims citizenship of Botswana under the following circumstances: His father was a citizen of Botswana who went to work in South Africa. While in South Africa, he married and the complainant was an issue of that marriage. Complainant's mother died shortly after birth and complainant was sent to Botswana where he grew up. Complainant therefore claims Botswana citizenship by descent.

The complainant alleges that in 1978 he was one of the founders and leaders of the Botswana National Front opposition party. He alleges it was as a result of these activities that he was declared a "prohibited immigrant" by the Botswana government.

On 17 October 1978, complainant was arrested and handed over to the South African Police, without being brought before any tribunal. He already had a court action in process in Botswana concerning a Temporary Occupation Permit, but due to his deportation was unable to attend the hearing.

When he returned to Botswana, he was arrested and deported again without hearing. After his third entry back into Botswana he was charged and convicted of unlawful entry and being a

prohibited immigrant. He was serving a ten-month sentence and appealing his conviction when he was deported for a fourth time to South Africa, before his last appeal could be heard.

Because the complainant was not a citizen of South Africa, he was forced to live in the "homeland" of Bophuthatswana. He remained there for seven years, until the government of Bophuthatswana issued a deportation order against him, which landed him in the no-man's land between Bophuthatswana and Botswana, where he remained for five weeks before he was admitted to Botswana on a humanitarian basis. He lived there on three-month resident permits, renewable at the absolute discretion of the minister concerned, until June 1995.

Complainant does not possess, nor has he ever possessed, a South African passport or Bophuthatswanan nationality.

Complainant alleges he has suffered financial losses, since much of his property and possessions was confiscated by the government. He cannot work because he is not permitted to, and is in constant danger of being deported. Complainant has made several efforts to assert his Botswana nationality and an appeal from his prison sentence is still pending, but has not been heard. He presently has no funds to continue in the courts.

He is asking the Government of Botswana to recognise him as a citizen by birth.

PROCEDURE

The communication is dated 3 March 1993 and is sent by John K. Modise. At the 13th Session in March 1993, the Commission was seized of the communication. On 12 April 1993, a notification of the communication was sent to the Botswana government.

At the 17th session the communication was declared admissible. It was found to be a fit subject for settlement by the Commissioner responsible for Botswana, that is, Commissioner Janneh. The parties were notified of this decision.

The government of Botswana was invited to consider the possibility of an amicable resolution.

On 19 October 1995 the Commission received a note verbale by fax from the Ministry of Foreign Affairs of Botswana, stating that Mr. Modise had been granted citizenship by the President. The citizenship certificate was posted to him on 26 June 1995.

On 30 November 1995 a copy of this note verbale was sent to Mr. Odinkalu with a letter asking if the granting of citizenship could be considered an amicable resolution of the case.

On 14 December 1995 the Commission received a letter from Mr Chidi Odinkalu, the complainant's counsel, indicating that he did not consider that a friendly settlement had been reached and requesting further action on the part of the Commission.

On 9 October 1996 the Secretariat of the Commission received a fax from Interights with a copy of a letter from Mr. Modise stating that all local remedies have been exhausted, and that even though the Government of Botswana had promised Commissioner Dankwa that they would issue a passport to Mr. Modise, his application to get a passport had still not been approved by the authorities.

LAW
Admissibility

Article 56.5 of the African Charter requires that communications shall be admissible only if the complainant has exhausted the remedies available domestically, provided these are not unduly prolonged. Other international human rights instruments have similar provisions.

The complainant affirms that he has been trying without success to establish his Botswana nationality legally since 1978 and his final appeal is still pending, 16 years later.

In this case the complainant brought his first action over 16 years ago, and the legal process was repeatedly interrupted the summary deportations of which he was the victim. The national legal procedures were willfully obstructed.

All the preceding elements lead to the conclusion that the complainant has exhausted all local remedies.

For all these reasons the Commission declared the communication admissible.

Merits

The Republic of Botswana ratified the African Charter on 17 July 1986. Although some of the events described in the communication took place before ratification, their effects continue to the present day. The current circumstances of the complainant is a result of a present policy decision taken by the Botswana government against him.

The complainant argues that he has been unjustly denied Botswana citizenship. In the brief submitted by the complainant's representative, it is explained that the complainant was born in Cape Town to a father and mother both from the Goo-Modultwa Ward in Kanye of the Bangwaketse in the former Protectorate of Bechuanaland.

The complainant furthermore alleges that in 1978 he was one of the founding members and leaders of the opposition party, National Front of Botswana. As a consequent of his activities he was declared an prohibited immigrant and expelled to South Africa, which also expelled him several times, with all the disturbing consequences described above.

Botswana became an independent country in 1966. Section 20 of its Constitution states:

"Every person who, having been born in the former Protectorate of Bechuanaland, is on 29 September 1966, a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Botswana on 30th September, 1966."

The complainant thus alleges that as a matter of law, by birth, he is a citizen of Botswana. The Government has nowhere contested the facts on which the complainant bases his claim.

Article 7 of the African Charter specifies:

"1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;..."

To this day, no court has remedied the effects of the complainant's original deportation, which constitutes a flagrant violation of Article 7.

The complainant's defence against deportation rests on the fact that he is by law a citizen of Botswana. In his trial for illegal re-entry into Botswana, this defence was not considered by the

court. To this day, there is no resolution in the courts of this essential issue. This constitutes another violation of Article 7.

Article 5 of the African Charter states:

"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly... torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

The complaint was deported to South Africa and was forced to live for eight years in the "homeland" of Bophuthatswana, and then for another seven years in "No-Man's Land", a border strip between the former south African Homeland of Bophuthatswana and Botswana. Not only did this expose him to personal suffering, it deprived him of his family, and it deprived his family of his support. Such inhuman and degrading treatment offends the dignity of a human being and thus violates Article 5.

The Government of Botswana, without acknowledging any responsibility did take some steps to remedy the complainant's situation by granting him a certificate of citizenship in June 1995, under section 9(2) of the Citizenship Act of Botswana.

However, subsequent information from the complainant indicates that the citizenship granted is in several ways inferior to citizenship by birth. Citizenship by birth is a right which cannot be taken away, whereas citizenship by registration is a privilege that is granted only at discretion of state officials.

When the complainant applied for an international passport to enable him to travel abroad for medical treatment, the Government of Botswana issued him a "Local Passport", #L213968, on 6 July 1995. This passport restricted his travelling to countries on mainland Africa south of Latitude 15 South. It expired on 5 January 1996.

Furthermore, a person who acquires citizenship under section 9(b) of the citizenship act, rather than by birth, is considered a citizen from the time of granting only. This means that prior to his registration the complainant was a stateless person, and his children are in the same situation.

Article 13 of the African Charter stipulates:

"1. Every citizen shall have the right to participate freely in the government of his county, either directly or through freely chosen representatives in accordance with the provisions of the law. 2. Every citizen shall have the right of equal access to the public service of his country."

Citizens by registration cannot be candidates for the presidency of the Republic. Taken together with his first deportation, soon after he founded an opposition political party, it appears that this is an action designed to hamper his political participation. Granting the complainant citizenship by registration has effectively deprived him of what is for him, one of the most valuable rights that Botswana citizenship affords.

Elements in the file show that the complainant did obtain Botswana nationality, but he is not satisfied. The Commission considers, however, that the other rights which the complainant is seeking, could be obtained through local judicial action.

If issues related to the acquisition of full citizenship are not resolved by competent domestic judicial authorities, or in the event of new facts coming to light, Mr. Modise can resort once more to the Commission.

FOR THE ABOVE REASONS, THE COMMISSION

Takes note of the granting of Botswana citizenship to Mr. Modise calls upon the Government of Botswana to continue with its efforts to amicably resolve this communication in compliance with national laws and with the provisions of the African Charter on Human and Peoples' Rights.

103/93 Alhassan Abubakar/Ghana

THE FACTS

Alhassan Abubakar is a Ghanaian citizen, presently residing in C te d'Ivoire. He was arrested on 16 June 1985 for allegedly cooperating with political dissidents. He was detained without charge or trial for 7 years until his escape from a prison hospital on 19 February 1992.

After his escape, his sister and his wife, who had been visiting him, were arrested and held for two weeks in an attempt to get information on the complainant's whereabouts. The complainant's brother has informed him that the police have been given false information about his return, and have on several occasions surrounded his house, searched it, and subsequently searched for him in his mother's village. In the early part of 1993 the UNHCR in C te d'Ivoire informed the complainant that they had received a report on him from Ghana assuring that he was free to return without risk of being prosecuted for fleeing from prison. The report further stated that all those detained for political reasons had been released.

Complainant on the other hand holds that there is a law in Ghana which subjects escapees to penalties from 6 months to 2 years imprisonment, regardless of whether the detention from which they escaped was lawful or not.

PROCEDURE

The communication is dated 26 July 1993. The complainant was sent a questionnaire concerning communications on 11 August 1993 and returned it completed. The Commission was seized at the 14th Session and the communication was sent to the state concerned on 6 January 1994. No response was forthcoming.

The Commission tried without success to resolve this communication amicably

THE LAW
Admissibility

Article 56.5 of the Charter requires that all local remedies be exhausted before the Commission can consider the communication, unless the procedure is unduly prolonged. In this case the complainant is residing outside the state against which the communication is addressed and thus where the remedies would be available. He escaped to C te d'Ivoire from prison in Ghana and has not returned there. Considering the nature of the complaint it would not be logical to ask the complainant to go back to Ghana in order to seek a remedy from national legal authorities. Accordingly, the Commission does not consider that local remedies are available for the complainant.

As the communication fulfills all the other requirements of Article 56, the Commission declares the communication admissible.

The Merits

Article 6 of the Charter reads:

"Every individual shall have the right to liberty and security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."

The complainant contends he was arrested by the Government for alleged collaboration with dissidents to overthrow the administration. He was arrested under section 2 of the Preventive Custody Law of 1992 (P.N.D.C.L. 4) in the interest of national security. However, the complainant states he was never charged with this offence nor brought to trial.

The Government failed to provide further details of the relevant laws on request, merely stating that "if the complainant has violated some laws, he must stand trial for them in the national courts." It is by now well-settled law before the Commission that where no substantive information is forthcoming from the government concerned, the Commission will decide on the facts as alleged by the complainant (see, e.g., decisions on communications 25/89, 59/91, 60/91, 64/92, 87/93 and 101/93).

Article 7.1 of the Charter reads:

"1. Every individual shall have the right to have his case heard. This comprises: (d)the right to be tried within a reasonable time..."

The complainant was detained in prison for seven years without trial before his escape. This period clearly violates the "reasonable time" standard stipulated in the Charter.

Article 12.2 of the Charter reads:

"2. Every individual shall have the right ... to return to his country. This right may only be subject to restrictions, provided for by law, for the protection of national security, law and order, public health or morality."

The complainant alleges the existence of a law in Ghana permitting the detention of escapees on their return to the country. The Government has denied that the complainant would be imprisoned on grounds of escape on his return, but concedes that he could be tried for any criminal offences that he may have committed. The government has stated that all political prisoners have been released, but the complainant provides evidence of other escapees who were arrested on their return to Ghana and that there is some indication that he would also be subject to the same treatment.

The facts provided are insufficient to find that the complainant's right to return to his country has been violated.

FOR THESE REASONS THE COMMISSION

holds there has been a violation of Articles 6 and 7.1(d) the Charter urges the Government to take steps to repair the prejudice suffered.

Taken at the 20th session, Grand Bay, Mauritius, October 1996 108/93 Monja Joana/Madagascar

THE FACTS

The complainant was a citizen of Madagascar, who was a prominent political figure and had been a candidate for president. He was arrested on 1 June 1993 under a special decree, which provided for his detention for an indefinite period of time without being told the reason and without the right to appear before a judge. His sons were also arrested.

According to the court judgment of 17 December 1993, the complainant is guilty of trespass in government buildings and acquisition of arms without authorization. He was given a one-year suspended sentence. His sons were acquitted. The communication does not include his address.

PROCEDURE

The communication is dated 20 July 1993. The state concerned was notified by mail on 6 January 1994.

The Commission proceeded to examine the necessary facts in order to be sure that the United Nations Human Rights Committee had not been seized of the same communication and in order to try to know the address of the complainant.

The information received revealed that this case had not been submitted to the United Nations and that the complainant had died.

THE LAW
Admissibility

Article 56.1 of the Charter requires that communications presented pursuant to Article 55 indicate their author, even if the author has requested anonymity. The Commission must be in communication with the author, to know his identity and status, to be assured of his continued interest in the communication and to request supplementary information if the case requires it. This is reflected in Rule 104 of the Rules of Procedure of the Commission.

In the past, the Commission made decisions on the admissibility in the case where the requirements of Article 56.1 had not been fulfilled.

The Commission closed communication 62/92 (Committee for the Defence of Human Rights in respect of Ms Jennifer Madike /Nigeria) because two letters of reminder to the complainant had gone unanswered. The Commission interpreted this prolonged silence on the part of the complainant as "loss of contact with the complainant."

In its decision on communication 70/92 (Ibrahima Dioumessi, Sekou Kande, Ousmane Kaba /Guinea), the Commission declared the communication inadmissible because the complainant had included no address and the address could not be located through other means.

In the present case, the Commission has not had contact with the complainant since the case was brought.

The Commission has tried various means in an attempt to contact the complainant through other individuals. The address of the complainant's family reached the Commission in the same letter as news of the complainant's death. Efforts made to contact the deceased's legal successor have not borne results.

FOR THESE REASONS, THE COMMISSION declares the communication inadmissible. Taken at the 20th session, Grand Bay, Mauritius, October 1996

Annex XI
Resolutions of the African Commission on Human and Peoples' Rights

Contents of Annex:

RESOLUTION ON ZAIRE

The African Commission on Human and Peoples' Rights meeting at its 21st ordinary session in Nouakchott,Mauritania between 15 -24 April,1997 views with grave concern the massive violations of human rights that continue to be perpetrated in Zaire by conflicting parties.

Desiring an immediate end to the harrowing suffering of people from various ethnic backgrounds and all walks of life,urgently appeals to all parties in the conflict in Zaire to respect the human rights of all peoples in Zaire,especially non- combattants,refugees and internally displaced persons.

It further calls upon the various political leaders to resolve their differences peacefully, and thereby avoid the inevitable bloodshed that an assault on Kinshasa and President Mobutu's Headquarters would entail.

The Commission expresses its appreciation for the efforts made at the level of the U.N., the OAU and the International Community at seeking a peaceful resolution to the conflict in Zaire and urges them not to relent in their efforts to achieve this goal.

24th April,1997

RESOLUTION ON THE PROTECTION OF THE NAME, ACRONYM AND LOGO OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS.

The African Commission on Human and Peoples' Rights, meeting at its 21st Ordinary Session in Nouakchott, Mauritania, from 15th to 24th April, 1997 ;

Recalling the relevant provisions of the African Charter on Human and Peoples' Rights, particularly Articles 30 and 45 (1-a and 2) ;

Noting with satisfaction the enthusiasm demonstrated by the civil society in Africa in the promotion of human and peoples' rights ;

Considering, however, the misuse by some NGOs of the name, logo and acronym of the Commission ;

Recalling the need to avoid any confusion which may result in an uncontrollable use of names, acronyms, logos or other external signs bearing resemblance to those belonging to the African Commission on Human and Peoples' Rights ;

Calls upon States Parties to do everything, in collaboration with the OAU Secretariat, to ensure the protection of the name, acronym and logo of the Commission throughout their countries ;

Calls on States Parties to refuse granting registration to NGOs whose names, acronyms or symbols could cause confusion prejudicial to the Commission;

Furthermore Calls upon organisations concerned to proceed to make the necessary rectification in conformity with the present resolution.