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EXECUTIVE COUNCIL

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Sharm El-Sheikh, EGYPT

EX.CL/446(XIII)

ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, SUBMITTED IN CONFORMITY WITH ARTICLE 54 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, SUBMITTED IN CONFORMITY WITH ARTICLE 54 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

Introduction

1. The African Commission on Human and Peoples' Rights ("the African Commission", "the ACHPR") is presenting herewith, its Report to the Assembly of Heads of State and Government, in line with Article 54 of the African Charter on Human and Peoples' Rights ("the African Charter, "the Charter").

2. The Report covers the period May 2007 to May 2008.

3. During this period, the African Commission held two Ordinary Sessions, and one Extraordinary Session: the 42nd Ordinary Session of the Commission, the 43rd Ordinary Session of the Commission, and the 4th Extraordinary Session of the Commission.

4. The 42nd Ordinary Session was held from 15-28 November 2007, in Brazzaville, Republic of Congo. The Report of this Session, as well as the activities carried out in the Inter-Session period preceding it, are contained in the **23rd Activity Report** of the ACHPR, attached hereto as **Annex I.**

5. The 43rd Ordinary Session was held from 7-22 May 2008, in Ezulwini, in the Kingdom of Swaziland. The Report of that Session and the activities undertaken in the Inter-Session period preceding it are contained in the **24th Activity Report** of the African Commission, also attached hereto as **Annex II.**

6. The 4th Extraordinary Session was held in Banjul, The Gambia, from 17-23 February 2008, and is, therefore, an integral part of the 24th Activity Report of the African Commission.

7. The 23rd and 24th Activity Reports referred to above, describe developments within the African Commission, as well as some of the activities undertaken by the African Commission during the reporting period. The Reports also provide an overview of the general human rights situation on the continent during this period; some of the challenges facing the African Commission; the financial and administrative situation of the Secretariat of the Commission; and progress regarding the construction of the Commission's headquarters.

Swearing in of New Members of the Commission

8. It will be recalled that four new members of the African Commission were elected at the July 2007 Summit of the AU Heads of State and Government, and one member was re-elected. These five members of the Commission were duly sworn in during the 42nd Ordinary Session of the Commission. These members are:

i. Commissioner **Angela Melo** (re-elected);

ii. Commissioner **Catherine Dupe Atoki**;
iii. Commissioner **Soyata Maiga**;
iv. Commissioner **Kayitesi Zainabo Sylvie**;
v. Commissioner **Yeung Kam John Yeung Sik Yuen**.

Election of the Bureau

9. Also at its 42nd Ordinary Session, the Commission elected Honorable Justice **Sanji Mmasenono Monageng** and Dr. **Angela Melo**, as Chairperson and Vice-Chairperson, respectively, in accordance with its Rules of Procedure.

Review, Renewal, Reallocation of Mandates of Special Mechanisms, and Responsibility for Countries

10. During the 42nd Ordinary Session, the African Commission reviewed its Special Mechanisms, and reconstituted them as follows:

a. Focal Point and Coordinator on the Rights of Older Persons

i. Commissioner Yeung Kam John Yeung Sik Yuen – Chairperson (new appointment)
ii. Commissioner Reine Alapini - Gansou – old member
iii. Mr. Yassir Sid Ahmed El Hasssan – old member

b. Follow-up Committee on the Implementation of the Robben Island Guidelines

i. Commissioner Catherine Dupe Atoki – Chairperson (new appointment)
ii. Mr. Jean-Baptiste Niyizurugero - Vice Chairperson (membership renewed)
iii. Mrs. Hannah Forster – membership renewed
iv. Ms. Karen McKenzie – membership renewed
v. Mr.Malick Sow - membership renewed
vi. Ms. Leila Zerrougui – membership renewed

c. Working Group on Economic and Social Rights

i. Commissioner Angela Melo – Chairperson (old member)
ii. Commissioner Catherine Dupe Atoki – new member
iii. Mr. Ibrahim Kane – membership renewed

d. Working Group on Specific Issues Relevant to the Work of the Commission

i. Commissioner Angela Melo – Chairperson (old member)
ii. Commissioner Kayitesi Zainabo Sylvie – new member
iii. Commissioner Pansy Tlakula – membership renewed
iv. Mr. Alpha Fall – membership renewed
v. Ms. Julia Harrington – membership renewed
vi. Mr. Ibrahima Kane – membership renewed
vii. Mr. Chidi Anselme Odinkalu – membership renewed

e. *Working Group on Indigenous Populations/Communities*

i. Commissioner Musa Ngary Bitaye – Chairperson (old member)
ii. Commissioner Soyata Maiga – new member
iii. Commissioner Mumba Malila – membership renewed
iv. Ms. Marianne Jensen – membership renewed
v. Mr. Mohammed Khattali – membership renewed
vi. Ms. Naomi Kipuri – membership renewed
vii. Mr. Kalimba Zepharin – membership renewed
viii. Dr. Albert Barume – old member
ix. Mr. Melakon Tegegn – old member

f. *Working Group on the Death Penalty*

i. Commissioner Kayitesi Zainabo Sylvie – Chairperson (new appointment)
ii. Commissioner Bahame Tom Mukirya Nyanduga – old member
iii. Prof. Carlson E Anyangwe – old member
iv. Ms. Alya Cherif Chammari - old member
v. Mr. Mactar Diallo – old member
vi. Prof. Mohamed S. El-Awa – old member
vii. Prof. Philip Francis Iya – old member
viii. Ms. Alice Mogwe – old member

g. *Special Rapporteurs*

i. Commissioner Reine Alapini-Gansou - Special Rapporteur on Human Rights Defenders in Africa(renewed);
ii. Commissioner Mumba Malila - Special Rapporteur on Prisons and Conditions of Detention in Africa(renewed);
iii. Commissioner Soyata Maiga - Special Rapporteur on the Rights of Women in Africa (new appointment);
iv. Commissioner Bahame Tom Mukirya Nyanduga - Special Rapporteur for Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa(renewed);
v. Commissioner Pansy Tlakula - Special Rapporteur on Freedom of Expression in Africa (renewed NB: this mandate was also expanded to include Access to Information**,** to make it the Special Rapporteur on Freedom of Expression and Access to Information in Africa).

h. *Responsibility for countries*

i. Commissioner Sanji Mmasenono Monageng - Lesotho, Liberia, Mauritius and Mozambique;

ii. Commissioner Angela Melo - Angola, Cape Verde, Equatorial Guinea, Guinea Bissau, and Principe and Sao Tome;

iii. Commissioner Reine Alapini-Gansou - Cameroon, Democratic Republic

of Congo, Mali, Senegal, Togo and Tunisia;

iv. Commissioner Catherine Dupe Atoki - Djibouti, Egypt, Ethiopia, Somalia, and Sudan;

v. Commissioner Musa Ngary Bitaye - Ghana, Nigeria, Sierra Leone, and Zimbabwe;

vi. Commissioner Soyata Maiga - Central African Republic, Gabon, Guinea, Libya and Niger;

vii. Commissioner Mumba Malila - Kenya, Malawi, Tanzania and Uganda;

viii. Commissioner Bahame Tom Mukirya Nyanduga - Botswana, Eritrea, Rwanda, Seychelles and South Africa;

ix. Commissioner Kayitesi Zainabo Sylvie - Algeria, Burkina Faso, Burundi, Cote d'Ivoire and Mauritania;

x. Commissioner Pansy Tlakula - Namibia, The Gambia, Swaziland and Zambia;

xi. Commissioner Yeung Kam John Yeung Sik Yuen - Benin, Chad, Comoros, Madagascar, and Saharawi Arab Democratic Republic.

The 4th Extraordinary Session of the African Commission, 17-23 February, 2008, Banjul, The Gambia

11. Also during the 42nd Ordinary Session, the Commission decided to hold an Extra-Ordinary Session, as indicated in paragraph 3 of this Report. The outcome of this Session is incorporated in the 24th Activity Report attached hereto.

Human Rights Situation on the Continent

12. Generally, the picture of the human rights situation on the continent over the past one year remains bleak and a cause for concern. The African Commission continues to receive numerous reports of human rights violations of all sorts, including extrajudicial killings, torture and inhuman and degrading treatment and punishment; restriction on freedom of expression and the press, association, assembly, arbitrary detention and arrests of journalists, human rights defenders and political opponents.

13. During the reporting period, among other things, and in conformity with the African Charter, the Chairperson of the African Commission sent urgent appeals to some Member States to draw their attention to allegations of human rights violations received by the African Commission, and requesting their urgent intervention in order to avoid the risk of irreparable harm being occasioned to the alleged victims.

14. The Commission also sent letters to the Republic of Kenya in the aftermath of the last elections and the Transitional Federal Government of Somalia, requesting

authorisation to undertake fact-finding missions to their respective countries, to follow up on allegations of massive and serious violations of human rights in these countries.

15. In the same light, the Commission sent a letter to the Republic of Zimbabwe, requesting authorisation to undertake a pre-election mission to the country to discuss with relevant stakeholders, the measures put in place to protection of human rights before, during, and after the run-off Presidential election.

16. The Commission is still to receive authorisations from all 3 States Parties concerned.

Communications

17. During the 42nd Ordinary Session, 81 Communications were tabled before the African Commission for consideration: 11 on seizure, 42 on admissibility, 27 on merits, and 1 on review.

18. During the 43rd Ordinary Session, 80 Communications were tabled before the African Commission: 7 on seizure, 45 on admissibility, 28 on merits, and 1 on review.

19. The decisions on the Communications that were finalised during the reporting period are attached to the Report of the Session at which they were decided: 1 to the 23rd Activity Report, and 2 to the 24th Activity Report.

State Reports

20. At its 42nd Ordinary Session, the African Commission examined the Periodic Reports of Rwanda, Tunisia and Algeria.

21. At its 43rd Ordinary Session, the Commission examined the Periodic Reports of The Sudan and the United Republic of Tanzania.

22. The State Report of the DRC had also been programmed for consideration, but this did not take place because the Member State did not come to the Session to present its Report as scheduled.

23. After consideration of the State Reports of Rwanda, Tunisia, Algeria and Tanzania, the Commission adopted Concluding Observations and Recommendations on the Reports, which have been forwarded to the respective countries.

24. Due to time constraints, however, the Commission had not, as at the time of the preparation of this Report, finalised Concluding Observations and Recommendations in respect of the State Report of The Sudan.

25. The Republic of Namibia had submitted its State Report to the Commission. However, the Report could not be considered during the 43rd Session, due to the already congested agenda. Consequently, consideration of the State Report of Namibia would be included in the agenda of the Commission's 44th Ordinary Session.

26. **The African Commission would like to take this opportunity to congratulate those States that have complied with their reporting obligations under Article 62 of the African Charter; and also to encourage those States that have overdue reports to submit them as soon as possible.**

27. **The Commission would also like to reiterate the fact that it is important for States Parties to submit their reports because it enables the latter to establish the extent to which it is, in terms of complying with Article 62 of the Charter. In addition, the State reporting exercise facilitates experience sharing, best practices and lessons learnt.**

28. **The status of submission of State Reports as at the 43rd Ordinary Session of the Commission is as reflected in the Annexures to the present Report.**

Resolutions

29. During the reporting period, the Commission adopted 22 Resolutions: 18 during the 42nd Ordinary Session of the Commission; 2 during the 4th Extra-Ordinary Session; and 2 during the 43rd Ordinary Session of the Commission. These Resolutions are listed in **Annexes I and II**, and are also available on the Commission's website: www.achpr.org.

Promotional Missions

30. The African Commission undertook two promotional missions to 2 State Parties during the reporting period: to Malawi and to Zambia. The Reports of these missions are being prepared, and will be considered by the Commission during its 44th Ordinary Session.

31. It is imperative that States Parties respond to the requests of the Commission and authorise missions to be carried out in their countries, because this is the only way they can assist the Commission to carry out its mandate of promoting and protecting human rights.

Fact-Finding Missions

32. During the reporting period, the African Commission undertook 2 Fact-finding Missions: to Mali and to Mauritania.

33. The Reports of these Missions were considered and adopted at the 42nd Ordinary Session of the Commission, and were transmitted to the respective States Parties, for observations, comments and implementation. The comments of the two States on the Reports are still awaited.

Relations with partners

34. The African Commission continued to work closely with different human rights stakeholders, mostly through participation in Conferences, Workshops and Seminars. In addition, the Commission and its partners continued its tradition of organising a

series of promotional activities prior to both the 42nd and 43rd Ordinary Sessions.

Affiliate Status

35. Within the framework of its cooperation with different human rights stakeholders, to date, the African Commission has granted Affiliate Status to 21 National Human Rights Institutions.

Observer Status

36. Also within the same framework of cooperation with different human rights agents, the African Commission has also granted Observer Status to 380 NGOs.

Budgetary matters

37. In accordance with Executive Council **Decision EX.CL/322 (X),** adopted at its Tenth Ordinary Session held from 25 – 26 January 2007 in Addis Ababa, the African Commission presented and defended its budget for the first time before the relevant AU Policy Organs.

38. The budget approved for the African Commission for the 2008 fiscal year is **US$6,003,856.86,** comprising an Operational Budget of **US$4,584,390.00,** and a Programme Budget of **US$1,419,466.86**.

39. The basis for the increased resources was three-fold: to facilitate the Commission's effective implementation of its mandate; to remove the Commission's reliance on donor funding; and to ensure that the Commission is seen as being independent.

Staff matters

40. **Decision EX.CL/322 (X)** further requested the African Commission, in collaboration with the AUC, to propose a new structure for the Secretariat of the ACHPR.

41. A new Structure was duly proposed for the consideration of the AU Policy Organs, and the Sub-Committee on Structures has reviewed the proposals and made recommendations to the PRC. However, consideration of these recommendations has been put on hold, while waiting for the new management team at the AUC to present its own structural requests, so that these can be considered together.

Extra-Budgetary Resources

42. As in the past, during the period May –December 2007, the Commission continued to rely on extra-budgetary resources received from various partners, as reflected in **Annexes I and II** of this Report. However, this changed following the new financial year, after the ACHPR had been granted resources to carry out its mandate.

43. This notwithstanding, the financial support arrangements which had previously

enabled the Commission to function, are presently on hold, while ways are being explored to regularise them and bring them into mainstream AU budgetary processes.

Adoption of the Strategic Plan of the ACHPR

44. During the 42nd Ordinary Session, the African Commission adopted its Strategic Plan for the period 2008 – 2012.

Construction of the Headquarters of the Commission

45. The Commission has continued to engage with the Host Authorities on the issue of the construction of the Commission's Headquarters, including, among other things, the Chairperson of the Commission and the Secretary meeting with the Vice-President of the Republic of The Gambia to discuss the matter.

46. The Commission has been assured that the Government is taking steps to have the Headquarters of the Commission constructed, and that a plot of land has been allocated for the construction of the Commission's Headquarters, and the Line Ministry is in the process of establishing whether a lease agreement already exists in favour of the Commission.

47. In addition, the Commission has been informed that the lease on the current building where the ACHPR is operating expires at the end of August 2008, and that, therefore, the Secretariat will have to be relocated to new premises. Consequently, the Secretariat has identified a new rental building, and communicated the same to the Host Authorities, for necessary action, pending the construction of a more permanent Headquarters for the Commission.

48. A response is still being awaited regarding the rental building.

5th Extraordinary Session and proposed venue of the 44th Ordinary Session

49. The African Commission decided to hold its 5th Extraordinary Session from 21-29 July 2008, to further consider its Revised Rules of Procedure, and deal with the backlog of Communications and other outstanding matters.

44th Ordinary Session of the Commission

50. The African Commission also decided to hold its 44th Ordinary Session in the Federal Republic of Nigeria, from 10 – 24 November 2008.

Adoption of this Activity Report

51. In accordance with Article 54 of the African Charter on Human and Peoples' Rights, the African Commission submits this Activity Report to the 13th Ordinary Session of the Executive Council of the African Union, for its consideration and transmission to the 11th Summit of Heads of State and Government of the African Union.

EX.CL/446(XIII)
Annex I

23RD ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

AFRICAN UNION
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ANNEX I

23RD ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

INTRODUCTION

2. This is the Twenty-Third (23rd) Activity Report of the African Commission on Human and Peoples' Rights (the "African Commission", the "Commission", the "ACHPR").

3. This report covers the period, May 2007-November 2007, and has two (2) annexures.

4. The 42nd Ordinary Session of the ACHPR was held in Brazzaville, Republic of Congo from 15-28 November 2007.

EVENTS ON THE MARGINS OF THE SESSION

5. The 42nd Ordinary Session was preceded by a series of events. These events include the following:

    i. The Workshop on African Constitutions organized by the African Union Commission (AUC) from 5 – 6 November 2007;
    ii. The Seminar to commemorate the 20th Anniversary of the African Commission, organised by the AUC in collaboration with the African Commission from 8 – 9 November, 2007;
    iii. The NGO Forum organised by the African Centre for Democracy and Human Rights Studies, in collaboration with the African Commission from 10 – 12 November, 2007;
    iv. The Meeting of the African Commission's Working Group on Indigenous Populations/Communities in Africa, held from 10 – 11 November, 2007;
    v. The Seminar on Elections Observation in Africa, organised by the AUC from 12 – 13 November, 2007;
    vi. The Consultative Meeting on Indigenous Issues in Africa organised by the UN Office of the High Commissioner for Human Rights in collaboration with the African Commission, from 12 – 13 November, 2007;
    vii. The meeting of the African Commission's Working Group on Specific Issues which took place on the 16th, 18th and 22nd November 2007, to discuss the Revised Rules of Procedure of the African Commission; and
    viii. A Musical Concert on 17th November organised by the African Commission to celebrate the Commission's Silver Jubilee.

6. The objectives of these events were, on the one hand, to commemorate the twentieth anniversary of the African Commission, and on the other, to enhance the promotion and protection of human and peoples' rights on the Continent.

DELAYED START TO THE SESSION

7. At the request of the Host Authorities, the 42nd Ordinary Session which was to start on 14 November 2007, commenced on 15th November. The Agenda of the Session is attached to the present Report as **Annex I.**

ATTENDANCE AT THE SESSION

8. The following members of the African Commission attended the Session:

   - Commissioner **Sanji Mmasenono Monageng** - Chairperson;
   - Commissioner **Angela Melo-Vice-**Chairperson;
   - Commissioner **Reine Alapini-Gansou**;
   - Commissioner **Catherine Dupe Atoki**;
   - Commissioner **Musa Ngary Bitaye**;
   - Commissioner **Zainabo Sylvie Kayitesi**;
   - Commissioner **Soyata Maiga**;
   - Commissioner **Mumba Malila**;
   - Commissioner **Bahame Tom Mukirya Nyanduga**;
   - Commissioner **Pansy Tlakula**;
   - Commissioner **Yeung Kam John Yeung Sik Yuen**.

9. Outgoing Vice -Chairperson, Commissioner Yasser Sid Ahmed El Hassan also attended part of the Session, and presided over the Opening Ceremony, on behalf of the outgoing Chairperson, Commissioner Salimata Sawadogo, who could not attend.

OPENING CEREMONY

10. At the Opening Ceremony, speeches were delivered by the out-going Vice Chairperson of the African Commission, Mr. Yasser Sid Ahmed El Hassan; the representative of Non-Governmental Organizations (NGOs), Ms. Collette Letlojane; the representative of the AU Commission, H.E Julia Dolly Joiner - Commissioner for Political Affairs; and a representative of AU member States, Honourable Minister of Justice from Central African Republic.

11. H.E. Mr. Isidore Voumba, Prime Minister of the Republic of Congo in Charge of Coordination of Government Action and Privatisation, delivered the welcome address and officially opened the 42nd Ordinary Session of the ACHPR.

12. A total of five hundred and fifty seven (557) participants attended the 42nd Ordinary Session of the Commission, including four(4) National Human Rights Institutions, forty one(41) African and International NGOs, seven (7)International and Intergovernmental Organizations and twenty-three(23) States Parties.[1]

13. In his address, Commissioner El-Hassan stated that the 42nd Session marks twenty years of existence of the African Commission. He noted that despite the efforts made by the international community, the human rights situation in Somalia, the Darfur region of the Sudan, Chad, the Democratic Republic of Congo and Zimbabwe remains a challenge, due to the persistence of armed conflicts and political crisis. He also stated that human rights defenders should be protected

[1] Angola, Algeria, Botswana, Burkina Faso, Cameroon, Cote d'Ivoire, DRC, Egypt, Ethiopia, Ghana, Libya, Mali, Nigeria, Rwanda, Saharawi Arab Democratic Republic, Republic of Congo, Senegal, South Africa, Sudan, United Republic of Tanzania, Tunisia, Uganda, and Zimbabwe.

from human rights violations when undertaking their activities.

14. The Vice-Chairperson welcomed the decision of the AU to allow the ACHPR to prepare and defend its own budget and to present a new Structure before the Permanent Representative Committee (PRC), to enhance the capacity of human resources of the Secretariat of the African Commission. He also welcomed the revised Rules of Procedure, and the Strategic Plan which the Commission intended to adopt at the Session. He indicated that while the ACHPR has been confronted with challenges, it remains steadfast and determined to execute the mandate entrusted to it.

15. The Vice-Chairperson also emphasized that respect for fundamental human rights should be the foundation of the AU Government that is currently being debated by AU policy organs.

16. He also paid tribute to the outgoing Chairperson, Mrs. Salamata Sawadogo, and wished her well in her new position as the Minister of Human Rights in her country, Burkina Faso.

17. In his opening speech, the Prime Minister, stated that a large number of African people are ignorant of the existence of the Charter, and that the dissemination of this legal tool is very important to all African countries. He noted that by hosting the 42nd Session, the Congolese Government is proud to contribute to the dissemination of the Charter and promotion of the rights enshrined therein.

18. The Prime Minister also stated that, the January 2002 Constitution of the Republic of Congo domesticated all treaties ratified by the Republic of Congo, but conceded that a lot still remains to be done to ensure the enjoyment by all the Congolese people of the rights guaranteed under these treaties. He said the Government is strongly committed to peace and security, and that adherence to the enjoyment of other rights such as the right to health, to development, including women and children's rights, remains on the agenda of the State.

19. The Prime Minister concluded by congratulating the newly elected Commissioners, as well as the re-elected Commissioner and declaring the Session officially opened.

SWEARING IN OF NEW COMMISSIONERS

20. Four new members of the Commission elected at the July 2007 Summit of the AU Heads of States and Government, and the re-elected member, were duly sworn in. These are;

- Commissioner **Angela Melo** (re-elected);
- Commissioner **Catherine Dupe Atoki**;
- Commissioner **Soyata Maiga**;
- Commissioner **Zainabo Sylvie Kayitesi**;
- Commissioner **Yeung Kam John Yeung Sik Yuen**.

ELECTION OF THE BUREAU

21. The Commission elected Commissioners Sanji Mmasenono Monageng and Angela Melo as Chairperson and Vice-Chairperson, respectively, in accordance with its Rules of Procedure.

COOPERATION AND RELATIONSHIP WITH NATIONAL HUMAN RIGHTS INSTITUTIONS AND NGOS

22. During the Session, the Commission considered the applications of two (2) National Human Rights Institutions (NHRIs) seeking Affiliate Status before it, and in accordance with its Resolution ACHPR/Res.31(XXIV)98, granted Affiliate Status to the following National Human Rights Institutions:

    i. The National Human Rights Commission of Mali; and
    ii. The National Commission for Human Rights and Liberties of Cameroon.

23. This brings the number of NHRIs with Affiliate Status before the African Commission to twenty - one (21).

24. The African Commission appealed to State Parties to the African Charter that had not yet done so, to establish NHRIs, and to strengthen the capacities of existing ones, in compliance with the Paris Principles, and with its own Resolution on National Institutions.

25. The African Commission also considered the applications of eight (8) NGOs seeking Observer Status before it. In accordance with its Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the field of Human and Peoples' Rights, ACHPR /Res.33 (XXV) 99**,** adopted in 1999, the African Commission granted Observer Status to the following NGOs:

    i. Forum des Organisations nationales des droits de l'homme (FONADH/Mauritania);
    ii. Centre for Environment and Development (Cameroon);
    iii. Droits de l'homme sans frontière (DHSF- Chad);
    iv. SOS-Kinderdorf International (the Gambia);
    v. African Policing Civilian Oversight (APCOF-South Africa);
    vi. Nigerian Bar Association (NBA-Nigeria);
    vii. Associacao Justica, Paz e Democracia (Angola); and
    viii. People Opposing Women Abuse (POWA- South Africa).

26. This brings the number of NGOs with Observer Status before the African Commission to three hundred and seventy-five (375).

ACTIVITIES OF COMMISSIONERS DURING THE INTER-SESSION

Commissioner Sanji Mmasenono Monageng

Report on activities as Commissioner

27. During the intersession, Commissioner Monageng attended a conference organized by the Commonwealth Magistrates and Judges Association in Bermuda, where she presented a paper on "Gender Issues in the context of Human Rights in the Wider Commonwealth". Her presentation focused on the Commission and its work.

28. She represented the Commission as a judge in the final stage of the Africa Moot Court Competition in Dakar, Senegal, on 10 September 2007, at the invitation of the Centre for Human Rights, University of Pretoria, South Africa.

29. She also represented the Commission in the activities organised by the Secretariat of the ACHPR in Banjul, The Gambia, to mark the Africa Human Rights Day on 21 October 2007, as well as in the week-long series of the activities to commemorate the 20th Anniversary of the African Commission.

30. Together with Commissioner Bitaye, she accompanied the Secretary to the Commission in engaging the authorities in Banjul, The Gambia, to follow up on progress regarding the construction of the Commission's Headquarters.

31. Between 5 and 6 of November 2007, she attended a Workshop on African Constitutions organized by the AUC, in Brazzaville, Republic of Congo.

32. She also attended the Workshop jointly organized by the Secretariat of the Commission and the (Political Affairs Directorate) PAD, in Brazzaville, Republic of Congo, from 8 -9 November 2007, to commemorate the 20th Anniversary of the African Commission. She presented the keynote address at the Workshop.

Report of activities as Chairperson of the Follow -Up Committee on the Implementation of the Robben Island Guidelines on Prevention and Prohibition of Torture

33. Commissioner Sanji Mmasenono Monageng, in her capacity as the Chairperson of this Special Mechanism, stated that during the intersession, the Committee was engaged in popularizing the Robben Island Guidelines through Commissioners who undertook promotional missions to respective countries. She indicated that a continental conference is being planned for 2008, to review progress and chart a way forward.

Commissioner Angela Melo

Report of activities as Commissioner

34. Commissioner Melo sent Notes Verbales to the Government of the Democratic Republic of Congo requesting authorisation for a promotional mission. She is awaiting a response.

35. In March 2007, the Government of Algeria agreed to a joint mission of the Chairperson of the Commission, and the Special Rapporteurs on the Rights of Human Rights Defenders and the Rights of Women. However, this was not possible due to logistical constraints.

36. The Government of the Federal Republic of Ethiopia has invited Commissioner Melo to Ethiopia for a mission; the dates are still to be agreed upon.

37. The Government of Mauritania has invited Commissioner Melo to carry out a mission in the country, which she will do as soon as a date is agreed upon. The Commissioner also indicated that she plans to carry out missions in Lesotho, Equatorial Guinea and Tunisia.

38. Commissioner Melo attended and participated a number of Workshops, Seminars and Conferences during the intercession period, including the following:

    i. Workshop on "Reviewing an Analysis of Experiences and Lessons from other Human Rights Institutions from the Continent", organised by the Centre for Conflict Resolution in Cape Town, South Africa, from 28-29 June 2007;
    ii. Seminar organised by the UN Special Rapporteur on Torture, held in Geneva, Switzerland on 24 September 2007; and
    iii. NGO Forum organised by the African Centre for Democracy and Human Rights Studies from 10-12 November 2007 in Brazzaville, Congo.

Report of activities as Special Rapporteur on the Rights of Women in Africa

39. Commissioner Angela Melo, in her capacity as Special Rapporteur on Women, reported on the status of ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Protocol).

40. During the intersession, she sent the following correspondences on various matters relating to the Protocol:

    i. Women Lawyers Association in Kenya, Tanzania and Zambia proposing collaboration, especially regarding discriminatory laws;
    ii. COMESA and ECOWAS, regarding collaboration on issues relating to gender issues in Africa;
    iii. the IPAS African Alliance, thanking the Alliance for its collaboration during the Seminar for African Women Ministers and Parliamentarians on Unsafe

Abortion Maternal Mortality in Africa;

iv. the Centre for Conflict Resolution, requesting formal collaboration with them, with regards to Article 10 of the Protocol;
v. Minister of Foreign Affairs in Tanzania, thanking the State Party for ratifying the Protocol;
   - the Minister of Defence in Mozambique, encouraging him to include women in the Mozambican Armed forces deployed in AU and UN Peace Keeping in Darfur;
vi. the Minister of Women and Social Action in Mozambique, to organise a National Seminar to discuss a program for harmonisation of all Regional instruments; and
vii. the Minister of Home Affairs in Mozambique, to encourage the implementation of Articles 4, 8, and 9 of the Protocol.

41. Commissioner Melo also sent Notes Verbales to all Member States of the AU asking them to provide input into the development of a matrix of constitutional provisions regarding gender equality and women's rights in their respective countries.

42. In addition, Commissioner Melo attended and participated in a number of Workshops, Seminars and Conferences during the intercession period, including the following:

i. Workshop for Regional Women Leaders, Ministers and Parliamentarians, organised by IPAS African Alliance in collaboration with the ACHPR from 26-29 June 2007, where she delivered a speech and a Press Statement in Nairobi, Kenya;
ii. Conference on Global Safe Abortion, organised by the Marie Stopes International Foundation in collaboration with IPAS and Abortion Rights, in London from 23-24 October 2007, where she delivered a speech;
iii. Seminar in Maputo, Republic of Mozambique on the Prevention of Trafficking in Women in the SADC region, organised by UNESCO from 6-7 November 2007; and
iv. FIDH campaign for the ratification and implementation of the Protocol on the Rights of Women, held in Brazzaville, Republic of Congo, on 13 November 2007.

43. Commissioner Melo also collaborated with other Institutions and Partners such as the Fundacao para o Desenvolvimento of the Communities in Mozambique (FDC), which will start supporting the Special Rapporteur in disseminating the Protocol on radio in Mozambique; and Oxfam which has indicated its willingness to cooperate on the dissemination of the Protocol.

Commissioner Musa Ngary Bitaye

Report on activities as Chairperson of the Working Group on the Indigenous Populations/Communities in Africa

44. Commissioner Musa Ngary Bitaye, in his capacity as Chairperson of this Working

Group, indicated that the Group had undertaken the following activities among others, during the intersession:

i. Publication of the Advisory Opinion of the African Commission on the United Nations Declaration on the Rights of Indigenous Peoples in English and French;
ii. Distribution and dissemination of the Working Group's Report, and its Summary;
iii. Seminar for Journalists on the Rights of Indigenous Peoples, held in Arusha, Tanzania, in November 2007. This Seminar brought together journalists from the East and the Horn of Africa, particularly from Ethiopia, Kenya, Rwanda, Tanzania, and Uganda, and identified strategies for involving journalists in the advocacy for the rights of indigenous peoples. As a follow-up, the Working Group has planned a Regional Seminar for Central Africa and a National Media Seminar in Tanzania, for December 2007;
iv. Research and Information visit to Gabon in October 2007, to hold meetings with relevant stakeholders, gather information and undertake research on indigenous issues in the country;
v. Joint Seminar with the Office of the UN High Commissioner for Human Rights on the implementation of the UN's 2nd Decade on the Rights of Indigenous Peoples, organised from 12-13 November 2007 in Brazzaville, Republic of Congo, drawing participants from Kenya, Burundi, Mali, Ethiopia, Cameroon, Rwanda and the DRC;
vi. Meeting in Brazzaville, Republic of Congo, from 10-11 November 2007, where several issues were considered; and
vii. Publication of the Working Group's Report in Portuguese.

45. The Working Group's country mission to the Republic of Burkina Faso planned between 15 - 26 of October 2007 could not be carried out because of logistical constraints.

46. Furthermore, the Working Group planned to undertake country missions in Kenya, Rwanda and Tanzania, but there was no indication of acceptance from them. He therefore urged these countries and their representatives during the 42nd Session to kindly respond to the requests positively.

Commissionner Reine Alapini-Gansou

Report of activities as Commissioner

47. On 14 of June and 8 of July 2007, Commissioner Gansou moderated two sessions of popularization in Benin, using the local Beninese language called nago, on the relevant provisions of the Beninese Persons and Family Code.

48. On 22nd June 2007, she participated in a Consultative session between non-state actors, representatives of the Government of Benin and the EU representatives, to prepare activities for the launching of the 10th European Development Fund (EDF).

49. She made a presentation for the African Systems of the Protection of Human Rights at a Regional Training Seminar organised by the UNESCO Office and other development partner s on 10 July 2007 in Cotonou, Benin.

50. She carried out a working mission, with Commissioner Nyanduga, from 22-28 September 2007, in Montréal, Canada at the invitation of the Centre, “Rights and Democracy”.

51. She participated in setting up a coalition for the enhanced representation of women in the decision making process in Benin from July 2007.

52. She also participated in a Regional Seminar on the role of Parliamentarians in the promotion and protection of human rights in Ouagadougou, Burkina Faso, from 30 September to 2 October 2007, where she made presentations on the African Charter and the Rights of Women in Africa, and on the role of the Special Mechanisms of the Commission.

53. She participated in a sub-regional Seminar on the follow-up to the recommendations of the Committee of Experts on the Rights of the Child in Burkina Faso, from 6-8 November 2007, where recommendations were made for a better implementation of the UN Convention on the Rights of the Child.

54. She reported that press releases were also issued on the human rights situations in the DRC, Cote d’Ivoire and Zimbabwe.

55. She stated that the Republic of Congo has reacted positively to her Note Verbale pertaining to her visit to the country, and those preparations for the visit are underway.

Report of the activities as Special Rapporteur on Human Rights Defenders in Africa

56. Commissioner Reine Alapini-Gansou, in her capacity as the Special Rapporteur for this Special Mechanism, participated in the NGO forum held in Brazzaville, Congo, from 10-12 November 2007 where she also met with Human Rights Defenders Organisations to find out about the challenges they have faced in their activities.

57. She participated in a sub-regional seminar in Sierra Leone on “Building the Capacities of Human Rights Defenders,” organised by the International Service for Human Rights (ISHR) in collaboration with the members of civil society from 23-27 July 2007, and another one in Bujumbura, Burundi, from 15-18 October 2007.

58. She participated in a national workshop in Lome, Togo, on “The role of National Human Rights Institutions in the Protection of Human Rights Defenders,” from 3-4 September 2007. During this workshop, she made a presentation on the African system of promotion and protection of the rights of Human Rights Defenders in general, as well as on her specific mandate.

59. She also launched, in the context of the international campaign on the rights of Women Defenders, the posters prepared by the Women Defenders of Togo.

60. On the 16 of October 2007, during the sub-regional workshop on Human Rights Defenders organised in the Great Lakes region in Bujumbura, Burundi, she held a meeting with the Minister of Human Rights of Burundi on the human rights situation in that country.

61. She also presented a Report on the mandate of the Special Rapporteur, in which she made some recommendations.

Commissioner Mumba Malila

Report of activities as Commissioner

62. In his capacity as a member of the Commission, he participated in the following seminars and workshops:

i. Female Judges Association of Zambia Seminar in June 2007 in Lusaka, Zambia, on "Access to Justice";
ii. AU workshop on Post - Conflict Reconstruction and Development Policy, 17 -19 July 2007, organised by the AU in Lusaka, Zambia. The Workshop dealt with issues of reconciliation, amnesties, peace building and economic development for countries emerging from political conflict;
iii. Workshop on Trial Observation, held on 27-28 July 2007, organised by SADC Lawyers Association and Zimbabwe Lawyers for Human Rights, held in Lusaka. Commissioner Malila presented two papers at this Workshop;

iv. Training Seminar of Franciscans International, organised for South African Countries, in Lusaka, held on 15-22 September 2007. He presented a paper on the ACHPR as a Mechanism for the Promotion and Protection of Human Rights.

63. In September 2007, he wrote the foreword to the ZARAN AIDS Law Manual, in which he highlighted the Commission's position on HIV and AIDS and human rights.

64. On 25 October 2007, he participated in the launching of the HIV and AIDS Charter and Phase Five Research Report of the Women and Law in Southern Africa.

Report of activities of the Special Rapporteur on Prisons and Conditions of Detention in Africa

65. Commissioner Mumba Malila, in his capacity as Special Rapporteur on this Mechanism, reported that, notwithstanding the potential of this Special Mechanism and its capacity for making a real difference in the rights of prisoners in Africa,

there is a backlog in its activities due to lack of resources. In particular, planned missions to Tunisia and Malawi, for instance, could not be undertaken for financial reasons.

66. He reported that since the last Session in Ghana, in May 2007, numerous requests have been received to undertake prison inspection. However, visits to various countries including Liberia, Ethiopia, Zimbabwe, Congo Brazzaville and Cameroon have been impossible due to lack of resources.

Commissioner Bahame Tom Mukirya Nyanduga

Report of activities as Commissioner

67. Commissioner Nyanduga attended a workshop on "Effective and Accountable Policing Oversight," organised jointly by the Kenya National Human Rights Commission and the African Police Civilian Oversight Forum from 11 to 14 June 2007 in Nairobi, Kenya.

68. On 21 and 22 July 2007, he took part in an Experts Meeting convened by the Commonwealth Secretariat in London. The objective of this meeting was to prepare a Commonwealth Model National Plan on Human Rights, scheduled to be launched in Kampala, Uganda, in mid-November 2007.

69. From 28 to 29 July 2007, he participated in a Policy Advisory Seminar organised by the Centre for Conflict Resolution of the University of Cape Town, South Africa.

70. On 31 August 2007, he presented a paper entitled, "Monitoring and Enforcement Mechanisms: Sharing Experiences on the Work of Special Mechanisms and Complaint Procedures of African Commission on Human and Peoples' Rights," at a Training Workshop organised by the Southern African Human Rights Trust, SAHRIT, in Pretoria, South Africa.

71. From 20 to 30 September 2007, he travelled with Commissioner Reine Alapini-Gansou to Canada at the invitation of Rights and Democracy, where he gave lectures to a number of Canadian universities. He also held discussions with professors, policy research institutions as well as students human rights groups in Montreal and Toronto.

72. On 19 October 2007, he represented the African Commission at a hearing before the High Level Panel on the Audit of the AU Organs in Addis Ababa. His presentation covered key areas that will enhance the mandate of the Commission.

73. On 26 October 2007, he presented a paper to the "Annual Conference of the East Africa Law Society", held in Mombasa, Kenya. His paper covered the relationship between the African Commission and the African Court on Human and Peoples' Rights.

74. On 11 and 12 November 2007, he participated in the NGO Forum preceding the

42nd Ordinary Session of the Commission.

75. He gave an interview on the situation of refugees and displaced people in Africa, and other related human rights issues, which appears in a book titled, "Africa's Long Road to Rights-Reflections on the 20th Anniversary of the African Commission on Human and Peoples' Rights."[2]

Report of the activities as Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons (IDPs) and Migrants in Africa

76. Commissioner Bahame Nyanduga reported on the situation of refugees, asylum seekers, IDPs and Migrants in Africa, in particular in countries affected by conflicts, namely: the DRC, Darfur-Sudan, Central African Republic, Chad, Somalia, Northern Uganda and Cote D'Ivoire. He observed that the conflict in these countries impacts negatively on the human rights of these people, in particular women and children.

77. From 19 to 27 August 2007, he undertook a Fact-Finding Mission to Mali and Mauritania regarding the question of Mauritanian refugees in Mali. He, *inter alia* commended the Government of Mauritania for the successful implementation of the democratisation process ushered in following the Parliamentary elections in November 2006 and Presidential elections in March 2007, which had enabled the government to adopt a new policy of bringing all Mauritanian refugees back to Mauritania.

78. The Special Rapporteur noted that on 12 November 2006, a tripartite agreement was signed between the UNHCR, Senegal and Mali, respectively, to facilitate the repatriation of refugees from Senegal and Mali.

79. He commended the adoption by the United Nations Security Council of Resolution 1769(2007) of 31st July 2007 which establishes the AU-UN Hybrid Operation in Darfur, (UNAMID). He welcomed the UN-backed Peace Agreement in the Cote d'Ivoire, and called on the ACHPR to monitor the negotiations between the Government of the Republic of Uganda and the Lord Resistance Army (LRA).

80. From 19 to 20 September 2007, he participated at an IDP Conference in Geneva at the invitation of the Representative of the UN Secretary General on the Human Rights of IDPs.

81. On 20 September 2007, he held discussions with the Sudan Contact Group on 19 September 2007, composed of special mechanisms of the UN, on the fringes of the UN Human Rights Council September Session, in Geneva.

82. On 20 September, he attended a meeting of the Steering Committee established by the Representative of the UN Secretary General on the rights of IDPs, to examine the studies undertaken in relation to the draft manual legislators on the protection of IDPs' rights.

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[2] Hakima Abbas(ed) 2007, published by FAHAMU, a Human Rights NGO based in Nairobi, Kenya.

83. From 8 to 10 October 2007, he attended the 6th Conference of African National Human Rights Institution; held in Kigali, Rwanda. The theme of the Conference was "The Role of NHRIs in the Protection of Refugees and IDPs in Africa."

Report on the Working Group on the Death Penalty

84. Commissioner Bahame Nyanduga reported that the Working Group on the Death Penalty continued to monitor the trend in Africa whereby some States have abolished the death penalty, while others have continued to observe a moratorium on the death penalty.

Commissioner Pansy Tlakula

Report of activities as Commissioner

85. Commissioner Tlakula was invited by the Human Rights Development Initiative (HRDI) to a workshop on "The African System for the Promotion and Protection of Human Rights and the Protection of the Rights of People Living With AIDS (PLWAs)" held in Pretoria, South Africa on 24 July 2007.

Report of activities as the Special Rapporteur of Freedom of Expression in Africa

86. Commissioner Pansy Tlakula, in her capacity as Special Rapporteur for this Special Mechanism, gave a report of activities undertaken during the period under review. These activities included the following:

    i. The Workshop, co-hosted with the Electoral Commissions Forum of SADC Countries (ECF), on "Elections, Freedom of Expression and Information in the SADC Region". The Workshop took place from 20-21 August 2007, in Luanda, Angola;
    ii. The 15th Annual General Meeting of the Southern African Broadcasting Association (SABA) held in Windhoek, Namibia, from 21 - 24 October 2007 which addressed the theme of "Public Broadcasting and Regional Integration". During this workshop, she presented a paper on "Principles of Freedom of Expression as the Basis for Broadcasting Reforms on the African Continent"; and
    iii. The Workshop on Access to Information, Media and Accountability, at the Lake Naivasha Sopa Resort in Kenya, from 2-3 November 2007, where she gave the keynote address on the state of Freedom of Expression and Access to Information in Africa, in which she underlined the timely nature of the Workshop, in view of the upcoming December 2007 elections.

87. Commissioner Tlakula carried out a written interview with Fahamu: Networks for Social Justice, to feature in the special issue of Pambazuka News on human and peoples' rights, to commemorate the 20th Anniversary of the ACHPR. This interview has been published in "Africa's Long Road to Rights: Reflections on the

20th Anniversary of the African Commission on Human and Peoples' Rights."[3]

88. She also reported that she has strengthened her working relationship with Mr Ambeyi Ligabo, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.

89. She noted with great concern in her report the situation of the right to freedom of expression in The Gambia, Niger and Somalia, where reports of allegations of violations of the right to freedom of expression were brought to her attention.

90. She thanked all Member States that are making efforts to promote the right to freedom of expression, and made some observations and recommendations that will enable these States to implement this right. These included making an appeal to States that will hold elections in the coming months, to ensure that the right of freedom of expression and access to information, which are prerequisites for free, fair and credible elections, are respected.

SPECIAL MECHANISMS

Distribution of special mechanisms

91. The African Commission appointed the following Commissioners and independent experts as set out hereunder:

b. Focal Point and Coordinator on the Rights of Older Persons

iv. Commissioner Yeung Kam John Yeung Sik Yuen - Chairperson
v. Commissioner Reine Alapini - Gansou - Member
vi. Mr. Yassir Sid Ahmed El Hasssan - Member

b. Follow-up Committee on the Implementation of the Robben Island Guidelines

i. Commissioner Catherine Dupe Atoki - Chairperson
ii. Mr. Jean-Baptiste Niyizurugero - Vice Chairperson (membership renewed)
iii. Mrs. Hannah Forster – member (membership renewed)
iv. Ms. Karen McKenzie – member (membership renewed)
v. Mr.Malick Sow - member (membership renewed)
vi. Ms. Leila Zerrougui – member (membership renewed)

e. Working Group on Economic and Social Rights

i. Commissioner Angela Melo - Chairperson
ii. Commissioner Catherine Dupe Atoki - Member
iii. Mr. Ibrahim Kane - Member

[3] Hakima Abbas (ed), Africa's Long Road to Rights: Reflections on the 20th Anniversary of the African Commission on Human and Peoples' Rights, 2007.

f. Working Group on Specific Issues Relevant to the Work of the Commission

viii. Commissioner Angela Melo – Chairperson
ix. Commissioner Zainabo Sylvie Kayitesi – member
x. Commissioner Pansy Tlakula - member
xi. Mr. Alpha Fall - member
xii. Ms. Julia Harrington - member
xiii. Mr. Ibrahima Kane - member
xiv. Mr. Chidi Anselme Odinkalu - member

e. Working Group on Indigenous Populations/Communities

x. Commissioner Musa Ngary Bitaye – Chairperson
xi. Commissioner Soyata Maiga – member
xii. Commissioner Mumba Malila - member
xiii. Ms. Marianne Jensen – member
xiv. Mr. Mohammed Khattali - member
xv. Ms. Naomi Kipuri - member
xvi. Mr. Kalimba Zepharin – member
xvii. Dr. Albert Barume – member
xviii. Mr Melakon Tegegn - member

f. Working Group on the Death Penalty

i. Commissioner Zainabo Sylvie Kayitesi - Chairperson
ix. Commissioner Bahame Tom Mukirya Nyanduga – member
x. Prof. Carlson E Anyangwe
xi. Ms. Alya Cherif Chammari
xii. Mr. Mactar Diallo
xiii. Prof. Mohamed S. El-Awa
xiv. Prof. Philip Francis Iya
xv. Ms. Alice Mogwe

Renewal of appointments

92. The African Commission renewed the appointments of the following:

i. Commissioner Reine Alapini-Gansou as Special Rapporteur on Women Rights Defenders in Africa;
ii. Commissioner Mumba Malila**,** as Special Rapporteur on Prisons and Conditions of Detention in Africa;
iii. Commissioner Soyata Maiga as Special Rapporteur on the Rights of Women in Africa;
iv. Commissioner Bahame Tom Mukirya Nyanduga as Special Rapporteur for Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa; and
v. Commissioner Pansy Tlakula, as Special Rapporteur on Freedom of Expression in Africa - this mandate was also expanded to include Access to Information**,** so that it is now the Special Rapporteur on Freedom of

Expression and Access to Information in Africa.

RE-ALLOCATION OF COUNTRIES OF RESPONSIBILITY

93. The Commission reviewed the countries for which individual Commissioners would be responsible as follows;

xii. Commissioner Sanji Mmasenono Monageng**:** Lesotho, Liberia, Mauritius and Mozambique;

xiii. Commissioner Angela Melo**:** Angola, Cape Verde, Equatorial Guinea, Guinea Bissau, and Principe and Sao Tome;

xiv. Commissioner Reine Alapini-Gansou: Cameroon, Democratic Republic of Congo, Mali, Senegal, Togo and Tunisia

xv. Commissioner Catherine Dupe Atoki: Djibouti, Egypt, Ethiopia, Somalia, and Sudan;

xvi. Commissioner Musa Ngary Bitaye**:** Ghana, Nigeria, Sierra Leone, and Zimbabwe;

xvii. Commissioner Soyata Maiga: Central African Republic, Gabon, Guinea, Libya and Niger;

xviii. Commissioner Mumba Malila: Kenya, Malawi, Tanzania and Uganda;

xix. Commissioner Bahame Tom Mukirya Nyanduga: Botswana, Eritrea, Rwanda, Seychelles and South Africa;

xx. Commissioner Zainabo Sylvie Kayitesi: Algeria, Burkina Faso, Burundi, Cote d'Ivoire and Mauritania;

xxi. Commissioner Pansy Tlakula: Namibia, The Gambia, Swaziland and Zambia;

xxii. Commissioner Yeung Kam John Yeung Sik Yuen: Benin, Chad, Comoros, Madagascar, and Saharawi Arab Democratic Republic.

CONSIDERATION OF STATE REPORTS

94. In accordance with the provisions of Article 62 of the African Charter, the Republic of Algeria, the Republic of Tunisia and the Republic of Rwanda, all presented their Periodic Reports to the African Commission. During the examination of these State Reports, the Commission engaged the respective States Parties in a constructive dialogue with regards to the enjoyment of human rights in their countries.

95. At the end of the examination, the African Commission adopted Concluding

Observations, and Recommendations with respect to the Rwanda State Report, and transmitted the same to the State Party. Due to time constraints, the Commission was not able, at the time of this Report, to adopt the Concluding Observations and Recommendations, in respect of Algeria and Tunisia.

STATUS OF SUBMISSION OF STATE PARTY REPORTS

96. The status of submission and presentation of State Reports as at the 42nd Ordinary Session of the Commission stood as follows:

No.	Category	Number of States
1.	States which have submitted and presented all Reports	15
2.	States which have submitted all their Reports and will present the next Report at the 43rd Ordinary Session of the African Commission	3
3.	States which have submitted two (2) or more Reports but still owe more Reports	7
4.	States which have submitted one (1) Report but still owe more Reports	13
5.	States which have not submitted any Report	15

97. Details of the above Status of Submission of State Reports are as follows**:**

a. States which have submitted and presented all their Reports (15)

No.	State Party
1.	**Algeria**
2.	**Cameroon**
3.	**Central African Republic**
4.	**Egypt**
5.	**Kenya**
6.	**Lybia**
7.	**Mauritania**
8.	**Nigeria**
9.	**Rwanda**
10.	**Seychelles**
11.	**South Africa**
12.	**Tunisia**
13.	**Uganda**
14.	**Zambia**
15.	**Zimbabwe**

b. States which have submitted all their Reports and will present the next

Report at the 43rd Ordinary Session of the ACHPR (3)

No.	State Party
1.	**Congo(DRC)**
2.	**Sudan**
3.	**Tanzania**

c. States which have submitted two or more Reports but owe more Reports (7)

No.	State Party	Status
1.	Benin	3 overdue Reports
2.	Burkina Faso	1 overdue Report
3.	Gambia	6 overdue Reports
4.	Ghana	3 overdue Reports
5.	Namibia	2 overdue Reports
6.	Senegal	1 overdue Report
7.	Togo	2 overdue Reports

d. States which have submitted one report but owe more (13)

No.	State Party	Status
1.	Angola	4 overdue Reports
2.	Burundi	3 overdue Reports
3.	Cape Verde	5 overdue Reports
4.	Chad	3 overdue Reports
5.	Congo(Brazzaville)	2 overdue Reports
6.	Guinea Republic	4 overdue Reports
7.	Lesotho	2 overdue Reports
8.	Mali	4 overdue Reports
9.	Mauritius	5 overdue Reports
10.	Mozambique	5 overdue Reports
11.	Niger	1 overdue Report
12.	Saharawi Arab Democratic Rep	1 Overdue Report
13.	Swaziland	3 overdue Reports

e. States which have not submitted any Report (15):

No.	State Party	Status
1.	**Botswana**	**10 overdue Reports**
2	**Comoros**	**10 overdue Reports**
3	**Côte d'Ivoire**	**7 overdue Reports**
4	**Djibouti**	**8 overdue Reports**
5	**Equatorial Guinea**	**10 overdue Reports**
6	**Eritrea**	**4 overdue Reports**
7	**Ethiopia**	**4 overdue Reports**
8	**Gabon**	**10 overdue Reports**
9	**Guinea Bissau**	**11 overdue Reports**

10	**Liberia**	**12 overdue Reports**
11	**Madagascar**	**7 overdue Reports**
12	**Malawi**	**7 overdue Reports**
13	**Sao Tome and Principe**	**10 overdue Reports**
14	**Sierra Leone**	**12 overdue Reports**
15	**Somalia**	**10 overdue Reports**

98. The African Commission continues to urge States Parties to the African Charter that have not yet done so, to submit their Initial and Periodic Reports. States Parties are also reminded that they can combine all the overdue Reports into a single Report, for submission to the African Commission.

PROTECTION ACTIVITIES

99. Pursuant to Articles 46-59 of the African Charter, during the period covered by the 23rd Activity Report, the African Commission undertook several measures to ensure the protection of human and peoples' rights on the continent. This included, among others, writing Urgent Appeals to Member States, in reaction to allegations of human rights violations received from stakeholders.

100. During the 42nd Ordinary Session, the African Commission considered eighty-one (81) Communications, eleven (11) on seizure, forty-two (42) on admissibility, twenty- seven (27) on merits, and one (1) on review. Further consideration of the above Communications was deferred to the 43rd Ordinary Session, for various reasons.

101. The Commission considered Communication 307/2005 – **Obert Chinhamo v Republic of Zimbabwe,** and decided to declare it inadmissible. The decision is attached to the present Report as ANNEX III.

ADOPTION OF REPORTS

102. During the Session, the African Commission adopted the Report of the Fact-finding Missions to the Republics of Mali and Mauritania. These will be transmitted to the respective States Parties for their comments.

ADOPTION OF THE STRATEGIC PLAN

103. The Strategic plan of the African Commission for the period between 2008-2012 was adopted during the 42nd Ordinary Session of the African Commission.

ADOPTION OF RESOLUTIONS

104. During the Session, the African Commission adopted the following Resolutions:

i. Resolution on the Renewal of the Mandate and Appointment of Chairperson and Members of the Follow-up Committee on the implementation of the Robben Island Guidelines;
ii. Resolution on the Renewal of the Mandate and Appointment of the Special Rapporteur on Prisons and Conditions of Detention in Africa;
iii. Resolution on the Renewal of the Mandate and the Appointment of the Chairperson of the Working Group on the Death Penalty;
iv. Resolution on the Appointment of the Chairperson and Members of the Working Group on Economic, Social and Cultural Rights in Africa;
v. Resolution on the United Nations Declaration on the Rights of Indigenous Peoples;
vi. Resolution on the Establishment and Appointment of Focal Point on the Rights of Older Persons in Africa;
vii. Resolution on the Ratification of the African Charter on Democracy, Elections and Governance;
viii. Resolution on the Expansion of the Mandate and Re-appointment of the Special Rapporteur on Freedom of Expression and Access to Information in Africa;
ix. Resolution on the Situation of Human Rights Defenders in Africa;
x. Resolution on the Renewal of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa;
xi. Resolution on the Renewal of the Mandate and Composition of the Working Group on Specific Issues Relevant to the Work of the Commission;
xii. Resolution on the Renewal of the Mandate and Appointment of the Special Rapporteur on the Rights of Women in Africa;
xiii. Resolution on freedom of expression and the upcoming elections in Zimbabwe;
xiv. Resolution on the Composition and Renewal of the Mandate of the Working Group on Indigenous Populations/Communities in Africa;
xv. Resolution on the Renewal of the Appointment of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;
xvi. Resolution on the Right to a remedy and reparation for Women and Girl Victims of Sexual Violence;
xvii. Resolution on Migration and Human Rights in Africa;
xviii. Resolution on Strengthening the Responsibility to Protect in Africa

ORGANIZATION OF CONFERENCES AND SEMINARS

105. During the intersession, the Secretariat of the African Commission, in collaboration with the University of The Gambia (UTG) organised a lecture on the African Human Rights System in Banjul, The Gambia on 19 October 2007.

106. A meeting was also jointly organised between the Commission and the Department of Political Affairs of the AUC from 8-9 November 2007, to commemorate the 20th Anniversary of the African Commission.

107. An Orientation Seminar was organised on 14 November 2007 in Brazzaville, Republic of Congo. The objective of the Seminar was to welcome the newly elected Commissioners and introduce them to the work of the Commission.

108. Due to lack of funds, the Commission could not organize other seminars and conferences earmarked for the period under consideration.

109. The African Commission reiterated its intention to organize more seminars and conferences on selected human rights issues, and called upon its traditional partners and State Parties to collaborate with it in the organization of these activities.

FINANCIAL AND ADMINISTRATIVE MATTERS

110. Under Article 41 of the African Charter, the AUC is responsible for meeting the cost of the African Commission's operations, including the provision of staff, financial and other resources, necessary for the effective discharge of its mandate.

Staffing

111. The following 13 staff are approved for the ACHPR Secretariat as per the Maputo Structure:

- Executive Secretary 1
- Senior Legal Officer Protection 1
- Senior Legal Officers Promotion 2
- Adm. and Finance Officer 1
- Bilingual Secretary 1
- Documentation Officer Vacant since May 2006
- Clerk 1
- Drivers 2
- Cleaner 1
- Security guards 2

112. Despite this staff complement and several staff members availed to the Secretariat by various partners, the Commission continues to experience acute capacity constraints. This is exacerbated by the expanded scope of work of the Commission since its establishment. The staffing situation will worsen with the departure of 6 short-term staff, 3 Legal Experts, and 2 interns at the end of December 2007.

Budgetary allocation

113. During the 2007 financial year, the Commission was allocated one million, one hundred and ninety-nine thousand, five hundred and fifty seven United States Dollars and eighty cents ($ 1,199,557.80).

114. Out of this amount, forty-seven thousand United States Dollars (USD 47,000) was allocated for promotion and protection missions of the Commission. No budgetary allocations were made for programmes such as research, training/capacity building, activities of Special Mechanisms, seminars/workshops/conferences, or commemorative activities to mark important events, like the Africa Human Rights Day.

115. In accordance with Executive Council Decision EX.CL/322 (X**)**, the African Commission submitted its proposed budget for 2008, to the relevant AU Policy Organs for consideration, and decision.

Extra-budgetary resources

116. The African Commission endeavoured to mobilize extra-budgetary resources to supplement AU funding. In this regard, the African Commission benefits financially and materially from the partners discussed below.

Danish Human Rights Institute

117. The Secretariat of the African Commission is supported by the Danish Institute for Human Rights by financing the post of a Legal Expert to develop the ACHPR Strategic Plan (2008-012). A total amount of 51,995.5 (fifty-one thousand, nine hundred and ninety-five point five USD) for the period 2005/2006 and 2006/2007 with possibility of renewal has been given to the Commission for this purpose.

Rights and Democracy

118. The Canadian NGO, Rights and Democracy, continued to support the Commission with two Canadian Legal Officers. It also provided partial funding for the participation of the ACHPR Secretariat in the AU Regional Officers Budget Workshop organised by the AU Headquarters, the Orientation Seminar for the New Commissioners, as well as meetings of the Commission to elaborate its Rules of Procedure and harmonization of these Rules with those of the African Court on Human and Peoples' Rights.

Danish International Development Agency

119. DANIDA, through the International Working Group on Indigenous Affairs (IWGIA), supports the activities of the Commission's Working Group on Indigenous Populations/Communities (WGIP) through the International Working Group on Indigenous Affairs (IWGIA). The European Union, through the International Labour Organization (ILO) is also supporting the activities of the WGIP. Details of support from partners is attached to this Report as **Annex II.**

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

121. The extra-budgetary resources notwithstanding, however, the financial and human resource situation at the Secretariat of the African Commission still remains a matter of grave concern.

PROPOSED VENUE FOR THE 43RD ORDINARY SESSION

122. The African Commission decided that the 43rd Ordinary Session will be held between 15-29 May 2008 at a venue still to be determined.[4]

ADOPTION OF THE TWENTY THIRD ACTIVITY REPORT

123. In accordance with Article 54 of the African Charter on Human and Peoples' Rights, the African Commission submits the present Twenty Third Activity Report to the 12th Ordinary Session of the Executive Council of the African Union, for its consideration and transmission to the 10th Summit of Heads of States and Government of the African Union, to be held in Addis Ababa, Ethiopia.

[4] The Secretariat was informed after the Session that the 43rd Ordinary Session will be hosted by Swaziland from 15-29 May 2008.

LIST OF ANNEXURES

Annex I

Agenda of the 42nd Ordinary Session held from 15-28 November 2007 in Brazzaville, Republic of Congo

AGENDA OF THE 42nd ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

(From 15th to 28th November. 2007, Brazzaville, Republic of Congo)

Item 1: Opening Ceremony (Public Session)

Item 2: Swearing in of new Members of the African Commission (Public Session)

Item 3: Election of the Bureau of the African Commission (Private Session)

Item 4: Adoption of the Agenda (Private Session)

Item 5: Organisation of Work (Private Session)

Item 6: Human Rights Situation in Africa (Public Session)

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

Item 7: Cooperation and Relationship with National Human Rights Institutions and NGOs (Public Session)

i. Relationship with National Human Rights Institutions;
ii. Consideration of applications for Affiliate status;
iii. Relationship with NGOs; and
iv. Consideration of applications for Observer status.

Item 8: Consideration of State Reports (Public Session):

a) Status of Submission of State Party Reports
b) Consideration of -:
    i. The Periodic Report of Algeria;
    ii. The Periodic Report of Tunisia; and
    iii. The Periodic Report of Rwanda.

Item 9: Promotion Activities (Public Session)

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

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

Item 10: Appointments of: (Private Session)

a) Special Rapporteurs

- The Special Rapporteur on Prisons and Conditions of Detention in Africa;
- The Special Rapporteur on the Rights of Women in Africa;
- The Special Rapporteur on Freedom of Expression in Africa;
- The Special Rapporteur on Human Rights Defenders in Africa; and
- The Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants.

b) Members of Working Groups

- Working Group on Indigenous Populations;
- Working Group on Death Penalty;
- Working Group on Specific Issues Relevant to the Work of the ACHPR ;
- Working Group on Economic and Social Rights; and
- Follow-up Committee on the Robben Island Guidelines.

c) Focal Person on the Rights of Older Persons

Item 11: Consideration and Adoption of Draft Reports (Private Session)

Consideration and adoption of Mission Reports of the African Commission:
Draft Reports on the Promotional and Fact-Finding Missions to:

a) Mali and Mauritania; and

b) Egypt

Item 12: Consideration of: (Private Session):

a) Revised Rules of Procedure;
b) Mandate of Special Mechanisms;
c) Progress Report on the Strategic Plan for 2008 – 2012;
d) Progress Report on the "Know Your Rights" Project;
e) Reports of NGOs and NHRIs; and
f) The status and presentation of Expert Reports

Item 13: Protection Activities: (Private Session)

Consideration of Communications.

Item 14: Administrative and Financial Matters: (Private Session):

Report of the Secretary, including on the construction of the Headquarters of the African Commission.

Item 15: Consideration and Adoption of: (Private Session):

a) Recommendations, Resolutions and Decisions; and
b) Concluding Observations on the Periodic Reports of Algeria, Rwanda and Tunisia.

Item 16: Dates and Venue of the 43rd Ordinary Session of the African Commission (Private Session):

Item 17: Any Other Business (Private Session)

Item 18: Adoption of: (Private Session)

a] The Report of the 42nd Ordinary Session;
b] The 23rd Activity Report; and
c] The Final Communiqué of the 42nd Ordinary Session

Item 19: Reading of the Final Communiqué and Closing Ceremony (Public Session)

Item 20: Press Conference (Public Session)

Annex II

SUPPORT FROM PARTNERS

The assistance received from donors can be summarized as follows:

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

Annex III

Decision On Communication Brought Before The African Commission

Communication 307/2005- Mr. Obert Chinhamo/Zimbabwe

Summary of the Facts:

1. The African Commission on Human and Peoples' Rights, (the African Commission) received a Complaint/Communication on 26 September 2005, from Mr. Obert Chinhamo, (also referred herein as the complainant) an employee of Amnesty International – Zimbabwe Section and an active human rights defender. The Complaint is submitted in accordance with the provisions of Article 55 of the African Charter on Human and Peoples' Rights (the African Charter).

2. The Complaint is submitted against the Republic of Zimbabwe, (also referred herein as the respondent state), a State Party to the African Charter.[5] The complainant alleges among others that, through the acts of the agents of the respondent State his rights protected under the African Charter have been violated. Mr. Chinhamo lists a number of separate incidents to justify his allegations.

3. The Complainant alleges that on 28 August 2004, while investigating and documenting human rights abuses at Porta Farm, he was allegedly surrounded by more than 10 uniformed police officers that assaulted him, poked his face with batons, shouted abusive language and accused him of working for a foreign organisation which works against the respondent State. The complainant was then arrested, forcibly removed from the premises, detained at Norton Police Station, threatened and banned from returning to Porta Farm and other farms. Upon his release several hours later, the complainant declares that he was neither charged nor furnished with reasons for his arrest.

4. The Complainant alleges further that he and two others were again arrested on 2 September 2004 while visiting Porta Farm and believe that this arrest was perpetrated in order to prevent them from documenting the human rights abuses occurring there. They were given no explanation for the arrest by the arresting officer but the complainant was later charged with incitement of public violence and released on One Hundred Thousand (100,000) Zimbabwean Dollars bail. On 21 February 2005, the case was withdrawn for lack of evidence.

5. The Complainant also alleges that provisions of the Public Order and Security Act were used, in contravention of the African Charter, to deny him access to Porta Farm, prevent the documentation of human rights abuses there and of holding meetings with residents, and to justify his arrest, detention and the threaten him against publishing reports and press releases about the human rights abuses discovered.

6. The Complainant informs the Commission that in September 2004, all files were deleted from his laptop, while a number of Amnesty International – Zimbabwe Section Reports disappeared from his office. The Complainant believes that there is

[5] Zimbabwe ratified the African Charter on 30 May 1986.

a reasonable probability the Respondent State, through its agents, invaded his right to privacy.

7. Prior to the withdrawal of the case against him, the Complainant alleges that Court remands were abused in order to deny him the right to be tried within a reasonable time limit, psychologically torture him and deplete his resources. He argues that members of the Central Intelligence Organisation (CIO) took pictures of him on several occasions, thereby intimidating him.

8. In addition, the Complainant notes that the conditions in which he was detained caused him to suffer torture. These conditions, according to the complainant, include being locked up in an extremely small, unhygienic cell, infested with parasites where he was denied blankets, denied permission to visit the toilet or to bath. According to him, all of these caused him to develop a cold, breathing problems and a cough which lasted for about six months.

9. The Complainant further alleges that after his release on bail, he was tracked by security agents and received several threats, including death threats against himself and his brother, which caused him to fear for his life and the safety of his family. Due to this fear, he fled the country in January 2005 – forcing him to abandon his studies and his job – and is currently residing in the Republic of South Africa as an asylum seeker. He added that the Respondent State continues to refuse to issue passports to his family members so that they can join him in South Africa.

The Complaint

10. The Complainant alleges that Articles **5, 6, 7, 8, 9, 11, 12, 16, 17** and **18** of the African Charter on Human and Peoples' Rights have been violated.

The Procedure

11. By letter ACHPR/LPROT/COMM/ZIM/307/2005/ARM of 4 October 2005, the Secretariat of the African Commission acknowledged receipt of the Communication and informed the complainant that the matter would be considered for seizure at the 38th Ordinary Session of the African Commission, scheduled from 21 November - 5 December 2005, in Banjul, The Gambia.

12. During the 38th Ordinary Session held from 21 November - 5 December 2005, the African Commission considered the Communication and decided to be seized thereof.

13. On 15 December 2005, the Secretariat of the African Commission informed the parties accordingly, and requested the Respondent State to submit its arguments on the admissibility of the Communication. The Secretariat of the African Commission forwarded a copy of the Complaint to the Respondent State.

14. On 13 March 2006, a reminder was sent to the Respondent State requesting it to submit its arguments on the admissibility of the Communication.

15. On 10 April 2006, the Secretariat received the complainants' submissions on admissibility.

16. During the 39th Ordinary Session held from 11 - 25 May 2006, the African Commission decided to defer consideration of the Communication on admissibility to its 40th Ordinary Session scheduled to take place from 15 - 29 November 2006, pending the Respondent State's submission on admissibility.

17. By letter of 14 July 2006, the Secretariat of the African Commission informed the parties of the Commission's decision.

18. During the 40th Ordinary Session held from 15 - 29 November 2006, the African Commission decided to defer consideration of the Communication on admissibility to the 41st Ordinary Session.

19. On 24 November 2006, the Secretariat received the Respondent State's submission on admissibility.

20. By letter dated 11 December 2006, both parties were informed of the Commission's intention to consider the Communication on admissibility during its 41st Ordinary Session.

21. On 3 May 2007, the Secretariat received additional submissions on admissibility from the complainant in response to the Respondent State's submission on admissibility.

22. During the 41st Ordinary Session of the African Commission held from 16 – 30 May 2007, the African Commission decided to further deferred to its 42nd Ordinary Session a decision on admissibility to enable the Secretariat prepare a draft decision.

Summary of Parties' Submissions on admissibility

Summary of Complainant's submission on Admissibility

23. The Complainant submits that he has *locus standi* before the Commission as the Communication is brought by himself, a citizen of Zimbabwe. Regarding compatibility, the complainant submits that the Communication raises *prima facie* violations of the Charter, committed by the Respondent State.

24. He submits further that in accordance with Article 56(4), the evidence he has submitted reveal that the Communication is not based exclusively on news disseminated by the mass media, adding that it is based on first hand evidence from him, including reports by reputable human rights organizations.

25. On the requirement of exhaustion of local remedies in accordance with Article 56(5), the complainant states that the remedy in his particular circumstance is not available because he cannot make use of local remedies, that he was forced to flee Zimbabwe for fear of his life after surviving torturous experiences in the hands of the Respondent State due to his activities as a human rights defender. The complainant submits that the onus is on the Respondent State to demonstrate that remedies are

available, citing the Commission's decisions on ***Communications 71/92[6] and 146/96[7].***

26. The Complainant draws the African Commission's attention to its decision on **Rights International v Nigeria[8]** where the Commission held that a complainant's inability to pursue local remedies following his flight for fear of his life to Benin, and was subsequently granted asylum was sufficient to establish a standard for constructive exhaustion of local remedies. He concludes by noting that considering the fact that he was no longer in the Respondent State's territory where remedies could be sought, and the fact that he fled the country against his will due to threat to his life, remedies could not be pursued without impediments.

27. The Complainant also challenges the effectiveness of the remedies, noting that remedies are effective only where they offer a prospect of success. He claims the Respondent State treats court rulings that go against it with indifference and disfavour, and says he does not expect that in his case, any decision of the court would be adhered to. He says there was a tendency in the Respondent State to ignore court rulings that went against it and adds that the Zimbabwe Lawyers for Human Rights has documented at least 12 instances where the state has ignored court rulings since 2000. He cites the ruling of the High court in the Commercial Farmers Union case and the Mark Chavunduka and Ray Choto case where the duo were allegedly abducted and tortured by the army. He concludes that given the prevailing circumstances in the Respondent State, the nature of his complaint, and the Respondent State's well publicized practice of non-enforcement of court decisions, his case has no prospect of success if local remedies were pursued, and according to him, not worth pursuing.

28. The Complainant submits further that the Communication has been submitted within a reasonable time as required by article 56 (6) and concludes that the Communication has not been settled by any other international body.

Summary of Respondent State's submission on Admissibility

29. The Respondent State briefly restates the facts of the Communication and indicates that the facts as submitted by the complainant 'have a number of gaps'. The State submits that the complainant makes general allegations without substantiating, citing for example, the complainant's allegation that he was assaulted, abused and was denied access to the toilet when remanded. The state wonders why the complainant did not bring all these alleged degrading treatment to the attention of the Magistrate when he was brought before the latter. The State also questions why the complainant or his lawyer did not raise the alleged threats to the complainant's life before the Magistrate when he made **four appearances** before the latter. The State concluded that the complainant has failed to substantiate his alleged fear and threats to his life

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6 Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia.

7 Sir Dawda Kairaba Jawara v The Gambia.

8 Communication 215/1998.

and is of the opinion that the complainant left the country on his own volition and not as a result of any fear occasioned by any of its agents.

30. On the question of admissibility, the State submits that the Communication should be declared inadmissible because, according to the State, it is not in conformity with Article 56 (2), (5) and (6) of the Charter.

31. The State submits further that the Communication is incompatible because it makes a general allegation of human rights violations and does not substantiate the violations, adding that the facts do not show a *prima facie* violation of the provisions of the Charter, noting that 'basically the facts and issues in dispute do not fall within the *rationae materae* and *rationae personae* of the jurisdiction of the Commission.

32. On the exhaustion of local remedies under Article 56 (5), the State submits that local remedies are available to the complainant, citing section 24 of its Constitution which provides the course of action to be taken where there are allegations human rights violations. The State adds that there is no evidence to prove that the complainant pursued local remedies. The State further indicates that in terms of Zimbabwe law, where one is engaged in acts that violate the rights of another person, that other person can obtain an interdict from the court restraining the violator from such act.

33. On the effectiveness of local remedies, the State submits that the Constitution provides for the independence of the judiciary in the exercise of its mandate in conformity with both the UN Principles on an independent Judiciary, and the African Commission's Guidelines on the right to a fair trial.

34. The State dismisses the complainant's argument that his case is similar to those brought by Sir Dawda Jawara against the Republic of The Gambia, and Rights International (on behalf of Charles Baridorn Wiza) against the Federal Republic of Nigeria, adding that in the latter cases, there was proof of real threat to life. The State goes further to indicate instances where the government has implemented court decisions that went against it, adding that even in the present case involving the complainant, the government respected the Court's decision.

35. The State further indicates that in terms of Zimbabwe law, it is not a legal requirement for a complainant to be physically present in the country in order to access local remedies, adding that, both the High Court Act (Chapter 7:06) and the Supreme Court Act (Chapter 7:05) permit any person to make an application to either court through his/her lawyer. The State adds that in the *Ray Choto* and *Mark Chavhunduka* case, the victims were tortured by state agents and they applied for compensation while they were both in the United Kingdom, and succeeded in their claim. The state concludes that the complainant is not barred from pursuing remedies in a similar manner.

36. The State also argues that the Communication does not comply with Article 56 (6) of the Charter which provides that a Communication should be lodged within a reasonable time after exhaustion of local remedies, but where complainant realizes that local remedies shall be unduly prolonged he/she must submit the complaint to the Commission immediately. According to the State, although the Charter does not

specify what constitutes a reasonable time, the Commission should get inspiration from the other jurisdictions, including the Inter-American Commission which has fixed six months as reasonable time, adding that even the draft protocol merging the African Court of Justice and the African Court on Human and Peoples' Rights provides for a six months period.

37. The State concludes its submissions by noting that 'no cogent reasons have been given for the failure to pursue local remedies or remedies before the Commission within a reasonable time' and as such the Communication should be declared inadmissible.

The Law on Admissibility

Competence of the African Commission.

38. In the present Communication, the Respondent State raises a preliminary question regarding the competence of the African Commission to deal with this Communication. The state avers that: "basically the facts and issues in dispute do not fall within the *rationae materae* and *rationae personae* of the jurisdiction of the Commission". This statement questions the competence of the African Commission to deal with this Communication. The Commission will thus first deal with the preliminary issue of its competence raised by the Respondent State.

39. Black's law dictionary defines ***rationae materae*** as **"by *reason of the matter involved; in consequence of, or from the nature of, the subject-matter."*** While ***rationae personae*** is defined as ***"By reason of the person concerned; from the character of the person."***

40. Given the nature of the allegations contained in the Communication, notably, allegations of violation of personal integrity or security, intimidation and torture, the Commission is of the view that the Communication raises material elements which may constitute human rights violation, and as such it has competence *rationae materae* to entertain the matter, because the Communication alleges violations to human rights guaranteed and protected in the Charter. With regards to the Commission's competence *rationae personae,* the Communication indicates the name of the author, an individual, whose rights under the African Charter, the Respondent State is committed to respecting and protecting. With regards to the State, the Commission notes that Zimbabwe, the Respondent State in this case, has been a State Party to the African Charter since 1986. Therefore, both the complainant and the Respondent State have *locus standi* before the Commission, and the Commission thus has competence *rationae personae* to examine the Communication before it.

41. Having decided that it has competence *rationae materae* and *rationae personae,* the Commission will now proceed to pronounce on the admissibility requirements and the contentious areas between the parties.

The African Commission's decision on admissibility

42. The admissibility of Communications before the African Commission is governed by the requirements of **Article 56** of the African Charter. This Article provides seven requirements which must all be met before the African Commission can declare a Communication admissible. If one of these conditions/requirements is not met, the African Commission will declare the Communication inadmissible, unless the complainant provides justifications why any of the requirements could not be met.

43. In the present Communication, the Complainant avers that his complaint meets the requirements under Article 56 sub-sections 1-4, 6 and 7. He indicates that he did not attempt to comply with the requirement under Article 56 (5) dealing with the exhaustion lf local remedies, because of the nature of his case and the circumstances under which he left the respondent State, and since he is presently living in South Africa, the exception rule should be invoked. He states that his inability to exhaust local remedies was due to the fact that he had to flee to South Africa for fear for his life.

44. The State on the other hand argues that the Complainant has not complied with the provisions of Article 56 sub-sections 2, 5 and 6 of the Charter, and urges the Commission to declare the Communication inadmissible based on the non-fulfillment of these requirements.

45. The admissibility requirements under Article 56 of the Charter are meant to ensure that a Communication is properly brought before the Commission, and seek to sieve frivolous and vexatious communications before they reach the merits stage. As indicated earlier, for a communication to be declared admissible, it must meet all the requirements under Article 56. Therefore, if a party contends that another party has not complied with any of the requirements, the Commission must pronounce itself on the contentious issues between the parties. This however does not mean that other requirements of Article 56 which are not contested by the parties will not be examined by the Commission.

46. **Article 56(1)** of the African Charter provides that Communications will be admitted if they indicate their authors, even if they request anonymity. In the present case the author of this Communication is identified as Mr. Obert Chinhamo, he has also not requested that his identity be hidden. The Respondent State has also been clearly identified as the Republic of Zimbabwe. Therefore the provision of Article 56(1) has been adequately complied with.

47. **Article 56(2)** of the African Charter provides that a Communication must be compatible with the Charter of the OAU or with the African Charter on Human and Peoples' Rights. In the present Communication, the Respondent State argues that the Communication does not comply with this requirement, that is, the Communication is not compatible with the provisions of the Constitutive Act of the African Union or the African Charter itself. The State asserts in this regard that, for a complaint to be compatible with the Charter or the Constitutive Act, it must prove a *prima facie* violation of the Charter.

48. Compatibility according to the Black's Law Dictionary denotes 'in compliance with' and 'in conformity with' or 'not contrary to' or 'against'. In this Communication, the complainant alleges among others, violations of his right to personal integrity and being subjected to intimidation, harassment and psychological torture, arbitrary detention, violation of freedom of movement and loss of resources occasioned by the actions of the respondent state. These allegations do raise a *prima facie* violation of human rights, in particular, the right to the security of the person or personal integrity and freedom from torture guaranteed in the Charter. Complainants submitting communications to the Commission need not specify which articles of the Charter have been violated, or even which right is being invoked, so long as they have raised the substance of the issue in question. Based on the above, the African Commission is satisfied that in the present Communication, the requirement of Article 56(2) of the African Charter has been sufficiently complied with.

49. **Article 56(3)** of the Charter provides that a Communication will be admitted if they are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity (African Union). In the present case, the Communication sent by the complainant does not, in the view of this Commission, contain any disparaging or insulting language, and as a result of this, the requirement of Article 56(3) has been fulfilled.

50. **Article 56(4)** of the Charter provides that the Communication must not be based exclusively on news disseminated through the mass media. This Communication was submitted by the complainant himself and is his account of his personal experience with the law enforcement agents of the Respondent State. For this reason he has fulfilled the provision of this sub- article of Article 56.

51. **Article 56(5)** provides that communications to be considered by the African Commission must be sent after local remedies have been exhausted. The Respondent State contends that the complainant has not complied with this requirement. The State argues that there are sufficient and effective local remedies available to the complainant in the State, and the complainant has not sought these remedies before bringing the present Communication before the Commission. On the other hand, the complainant argues that since he had to flee the country due to fear for his life, he could not come back to the country to pursue these local remedies.

52. The rationale for the exhaustion of local remedies is to ensure that before proceedings are brought before an international body, the State concerned must have the opportunity to remedy the matter through its own local system. This prevents the international tribunal from acting as a court of first instance rather than as a body of last resort.[9]

53. Three major criteria could be deduced from the practice of the Commission in determining compliance with this requirement, that is: the remedy must be ***available, effective*** **and** ***sufficient***.

5. See Communications 25/84, 74/92 and 83/92.

54. In **Jawara v The Gambia**,[10] the Commission stated that "*a remedy is considered available if the petitioner can pursue it without impediment; it is deemed effective if it offers a prospect of success and it is found sufficient if it is capable of redressing the complaint".* In the **Jawara Communication,** which both parties have cited, the Commission held that "t*he existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which, it will lack the requisite accessibility and effectiveness. …Therefore, if the applicant cannot turn to the judiciary of his country because of fear for his life (or even those of his relatives), local remedies would be considered to be unavailable to him".*

55. The Complainant in the present Communication claims that he left his country out of fear for his life due to intimidation, harassment and torture. He said due to the nature of his work, the agents of the Respondent State started tracking him with a view to harming and/or killing him. He has also described how he was treated while in detention, noting that he was denied food, he wasn't attended to when he complained of headache, he was refused visit to the toilet, that the conditions in the holding cells were bad – smelling, small, toilets could not flush, toilets were overflowing with urine and other human waste, the cells were infested with parasites such as mosquitoes which sucked complainant's blood for the duration of his stay and made sleep impossible for the complainant, the cell had a bad stench and was very cold, resulting in the complainant contracting breathing problems and a cough which lasted for six months, complainant was refused a blanket during the night and further refused permission to take his bath. According to the complainant, all these constituted torture and inhuman and degrading treatment.

56. The Complainant alleged further that the Respondent State used court remands to deny him of a trial within a reasonable time, thus psychologically torturing him and depleting his resources. According to the complainant, the matter was remanded at least five times – from 20 September 2004 – 21 February 2005 (within a period of six months), and he noted that these remands were calculated to harass and psychologically torture him. He said most of the time, the Central Intelligence Organization would come and take pictures of him thus, intimidating him.

57. Complainant added that when he continued publishing the respondent's human rights abuses in Porta Farm, the Respondent State sent its security agents to trail him and on various occasions, attempts were made to harm him. According to the complainant, on 12 September 2004, '*a man suspected to be a CIO official driving a white Mercedes went to the complainant's family and left threatening messages of death to complainant's brother'*. The message from the CIO official, according to the complainant was that the complainant was an enemy of the state and will be killed. Complainant was forced to call his brother to stay with him for security reasons. In another incident, the same man, this time accompanied by three others, paid a second visit and issued similar threats to the complainant.

58. He indicated that on 30 September 2004, he was stopped by men driving a blue Mercedes Benz who again threatened him. He said because this later incident took place near his house, it was enough reason for him to be afraid for his life. He added that in August 2004, on several occasions he received numerous telephone calls

[10] Communication 149/96.

where some of the callers threatened him with death and one caller said "we are monitoring you. We will get you. You are dead already". He said he informed the Board of Amnesty International – Zimbabwe, the Zimbabwe Lawyers for Human Rights and his Lawyer about the threatening calls. He added that vehicles with people acting strangely were observed parking around his residence and work place during what he termed *odd hours*, until he decided to go into hiding and subsequently fled to South Africa. He says he suspects the Respondent State wanted to abduct and kill him, adding that there are many cases in which people have been abducted and never seen again.

59. Other incidences which, according to Complainant, gave him reason to believe his life was threatened, include the fact that in January 2005 the Respondent State refused to issue passports to his family, even though he applied since November 2004. Because of this he was forced to leave his family behind who still reside in Zimbabwe. As at the time of submission of this Communication, they had not been given the passports. He also indicated that he was forced to abandon his studies with the Institute of Personnel Management of Zimbabwe (IPMZ) and at the Zimbabwe Open University. He said in October 2004, his daughter had to abandon school when the whole family went into hiding. He said at the end of September 2004, he received a great shock when he found all files in his laptop deleted, and suspected the disappearance of the files was linked to respondent's agents.

60. He concluded that "by reason of the arbitrary arrests and detentions, torture, inhuman and degrading treatment, delays in charging and trying him, surveillance by the respondent's agents and others cited in the afore-mentioned incidents, the complainant submits that the respondent flagrantly violated his rights and freedoms and those of his family…"

61. From the above submissions of the Complainant, the latter seeks to demonstrate that through the actions of the Respondent State and its agents, a situation was created which made him to believe that the respondent was out to harm and/or kill him. He thus became concerned about his safety and that of his family. Due to the fear for his life, he claims, he went into hiding and eventually fled into a neighbouring country, South Africa, from where he submitted this Communication.

62. In a complaint of this nature, the burden of proving torture and the reasons why local remedies could not be exhausted rests with the Complainant. The Complainant has the responsibility of proving that he was tortured and describing the nature of the torture or the treatment he underwent, and the extent to which each act of torture, intimidation or harassment alleged, instilled fear in the complainant to cause him to be concerned for his life and those of his dependants, to the extent that he could not attempt local remedies but preferred to flee the country. It is not enough for the Complainant to claim he was tortured or harassed without relating each particular act to the element of fear. If the Complainant discharges this burden, the burden will then shift to the Respondent State to show the remedies available, and how in the particular circumstance of the Complainant's case, the remedies are effective and sufficient.

63. To support his case, the Complainant cited the African Commission's decisions in the **Jawara Case** and the cases of **Alhassan Abubakar v Ghana**[11] **and Rights International v Nigeria**[12] in which he said the Commission found that the Complainants in these cases could not be expected to pursue domestic remedies in their country due to the fact that they had fled their country for fear of their lives.

64. Having studied the Complainant's submissions, and comparing it with the above cases cited in support of his claim, the Commission is of the opinion that the facts of the above cases are not similar to his case. In the **Jawara Case** for example, the Complainant was a former Head of State who had been overthrown in a Military coup. The complainant in this case alleged that after the coup, there was "blatant abuse of power by … the military junta". The military government was alleged to have initiated a reign of terror, intimidation and arbitrary detention. The Complainant further alleged the abolition of the Bill of Rights as contained in the 1970 Gambia Constitution by Military Decree No. 30/31, ousting the competence of the courts to examine or question the validity of any such Decree. The Communication alleged the banning of political parties and of Ministers of the former civilian government from taking part in any political activity. The Communication further alleged restrictions on freedom of expression, movement and religion. These restrictions were manifested, according to the complainant, by the arrest and detention of people without charge, kidnappings, torture and the burning of a mosque.

65. In the **Jawara case,** the Commission concluded that "the Complainant in this case had been overthrown by the military, he was tried in absentia, former Ministers and Members of Parliament of his government have been detained and there was terror and fear for lives in the country. There is no doubt that there was a ***generalised fear perpetrated by the regime*** as alleged by the Complainant. This created an atmosphere not only in the mind of the author but also in the minds of right thinking people that returning to his country at that material moment, for whatever reason, would be risky to his life. Under such circumstances, domestic remedies cannot be said to have been available to the Complainant". The Commission finally noted that, "it would be an affront to common sense and logic to require the complainant to return to his country to exhaust local remedies".

66. In the **Alhassan Abubakar Case**, it should be recalled that Mr. Alhassan Abubakar was a Ghanaian citizen who was arrested by the Ghanaian authorities in the 1980s for allegedly cooperating with political dissidents. He was detained without charge or trial for over seven (7) years until his escape from a prison hospital on 19 February 1992 to Cote d'Ivoire. After his escape, his sister and wife, who had been visiting him in Cote d'Ivoire, were arrested and held for two weeks in an attempt to get information on the Complainant's whereabouts. The Complainant's brother 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.

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11 Communication 103/1993.

12 Communications 215/1998.

67. In the early part of 1993 the United Nations High Commissioner for Refugees (UNHCR) in Côte 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 maintained 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. On the basis of the above**,** the Commission held that "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".

68. In **Rights International v. Nigeria,** the victim, a certain Mr. Charles Baridorn Wiwa, a Nigerian student in Chicago was arrested and tortured at a Nigerian Military Detention Camp in Gokana. It was alleged that Mr. Wiwa was arrested on 3 January 1996 by unknown armed soldiers in the presence of his mother and other members of his family, and remained in the said Military detention camp from 3-9 January 1996. While in detention, Mr. Wiwa was horsewhipped and placed in a cell with forty-five other detainees. When he was identified as a relative of Mr. Ken Saro - Wiwa he was subjected to various forms of torture. Enclosed in the Communication was medical evidence of Mr. Wiwa's physical torture. After 5 days in the detention camp in Gokana, Mr. Wiwa was transferred to the State Intelligence Bureau (SIB) in Port Harcourt. Mr. Wiwa was held from 9 -11 January 1996, without access to a legal counsel or relatives, except for a five minutes discussion with his grandfather. On 11 January 1996, Mr. Wiwa and 21 other Ogonis were brought before the Magistrate Court 2 in Port-Harcourt, charged with unlawful assembly in violation of Section 70 of the Criminal Code Laws of Eastern Nigeria 1963. Mr. Wiwa was granted bail, but while out on bail some un-known people believed to be government agents abducted him and threatened his life by forcing him into a car in Port-Harcourt. On the advice of human rights lawyers, Mr. Wiwa fled Nigeria on 18 March 1996 to Cotonou, Republic of Benin where the UN High Commissioner for Refugees declared him a refugee. On September 17 1996, the US government granted him refugee status and he has been residing in the United States since then.

69. In this case, the African Commission declared the Communication admissible on grounds that there was lack of available and effective domestic remedies for human rights violations in Nigeria under the military regime. It went further to assert that "the standard for constructive exhaustion of domestic remedies is satisfied where there is no adequate or effective remedy available to the individual. In this particular case, Mr. Wiwa was unable to pursue any domestic remedy following his flight for fear of his life to the Republic of Benin and the subsequent granting of refugee status to him by the United States of America".

70. The Communication under consideration must also be distinguished from **Gabriel Shumba v Republic of Zimbabwe[13].** In the **Shumba Case,** the Complainant, Mr. Gabriel Shumba, alleged that, he, in the presence of 3 others, namely Bishop Shumba, Taurai Magayi and Charles Mutama was taking instructions from one of his clients, a Mr. John Sikhala in a matter involving alleged political harassment by

13 Communication 288/2004.

members of the Zimbabwe Republic Police (ZRP). Mr. John Sikhala is a Member of Parliament for the Movement for Democratic Change (MDC), which is the opposition party in Zimbabwe. At about 11:00 pm riot police accompanied by plain-clothes policemen and personnel identified to be from the Central Intelligence Organization stormed the room and arrested everyone present. During the arrest, the complainant's law practicing certificate, diary, files, documents and cell phone were confiscated and he was slapped and kicked several times by, among others, the Officer in Charge of Saint Mary's Police Station.

71. Mr. Shumba and the others were taken to Saint Mary's Police Station where he was detained without charge and denied access to legal representation. He was also denied food and water. The Complainant claims that on the next day following his arrest, he was removed from the cell, a hood was placed over his head and he was driven to an unknown location where he was led down what seemed like a tunnel, to a room underground. The hood was removed, he was stripped naked and his hands and feet were bound in a foetal position and a plank was thrust between his legs and arms. While in this position, the complainant was questioned and threatened with death by about 15 interrogators. The Complainant further alleged that he was also electrocuted intermittently for 8 hours and a chemical substance was applied to his body. He lost control of his bodily functions, vomited blood and he was forced to drink his vomit. The complainant submitted a certified copy of a medical report describing the injuries found on his body. Following his interrogation at around 7pm of the same day, the complainant was unbound and forced to write several statements implicating him and several senior MDC members in subversive activities. At around 7.30pm he was taken to Harare Police Station and booked into a cell. On the third day of his arrest, his lawyers who had obtained a High Court injunction ordering his release to court were allowed to access him. The complainant was subsequently charged under Section 5 of the Public Order and Security Act that relates to organizing, planning or conspiring to overthrow the government through unconstitutional means. He then fled Zimbabwe for fear of his life.

72. In the four cases cited above, there is one thing in common – the clear establishment of the element of fear perpetrated by identified state institutions, fear which in the **Jawara Case**, the Commission observed that "it would be reversing the clock of justice to request the complainant to attempt local remedies". In the **Abubakhar Case,** the Complainant's sister and wife were arrested to force the complainant to return, his house was regularly surrounded and searched, and his mother's village was visited by state agents looking for him. In the **Shumba Case**, the State never refuted the allegations of torture or the authenticity of the medical reports, but simply argued that complainant could have seized the local courts for redress.

73. In the case under consideration, the Complainant, Mr. Obert Chinhamo has presented a picture of the conditions of detention, which without prejudice to the merits of the Communication, can be termed inhuman and degrading. He also pointed out instances of alleged intimidation and harassment by State agents.

74. Every reasonable person would be concerned and afraid for their life if they had State Security agents prying into their everyday activities. Complainant had every reason to be concerned for his safety and that of his family. However, it should be

noted that complainant did not identify any of the men tracking him to be State agents. According to his submissions, the people harassing him were anonymous, unknown or suspected CIO officials, and in some cases, he simply observed some strange men around his home and his place of work. In none of the instances of alleged harassment or intimidation mentioned by the complainant did he identify his alleged persecutors as agents of the Respondent State. He based his fear on suspicion, which was not corroborated.

75. Of particular importance here is to note that in spite all the threats, harassment, intimidations, threatening phone calls and alleged tracking by Respondent States' agents, complainant chooses not to report the matter to the police. From his submissions, he was harassed and intimidated for over six months, that is, from August 2004 when he claims he was first arrested, to January 2005, when he left the country. In his submissions, he did not indicate why he could not submit the matter to the police for investigation but preferred reporting to his employers and his lawyers. In the opinion of the Commission, the complainant has not substantiated his allegations with facts. Even if, for example, the detention of the complainant amounted to psychological torture, it could not have been life-threatening to cause the complainant flee for his life. Apart from the alleged inhumane conditions under which he was held, there is no indication of physical abuse like in the **Shumba and Wiwa cases**. Torture could not have been the cause for the complainants fleeing the country because the alleged inhumane and degrading or torturous treatment occurred in August/September 2004, and the complainant remained in the country until January 2005, and even made court appearances on at least four occasions to answer charges brought against him. The alleged intimidation and threat to the complainant's life occurred between August and October 2004. This means that by the time the complainant left for South Africa in January 2005, the alleged threats and intimidation had ceased. There is therefore no evidence to prove that his leaving the Respondent State was as a result of fear for his life occasioned by threats and intimidation, or that even if he was threatened and intimidated, this could be attributed to the Respondent State.

76. The Complainant has simply made general allegations and has not corroborated his allegations with documentary evidence or testimonies of others. He has not shown, like in the other cases mentioned above, the danger he found himself in that necessitated his fleeing the country. Without concrete evidence to support the allegations made by the complainant, the Commission cannot hold the Respondent State responsible for whatever harassment, intimidation and threats that the complainant alleges he suffered, that made him flee the country for his life. This is even so because complainant never bothered to report these incidences to the police or raise them with the magistrate when he appeared four times in the respondent court. If the intimidation and threats were not brought to the attention of the State for investigation, and if the State was not in a position to know about them, it would be inappropriate to hold the State responsible.

77. Having said that, the question is, could the complainant still have exhausted local remedies or better still, is he required to exhaust local remedies, even outside the Respondent State?.

78. The first test that a local remedy must pass is that it must be available to be exhausted. The word "available" means "readily obtainable; accessible";[14] or "attainable, reachable; on call, on hand, ready, present; . . . convenient, at one's service, at one's command, at one's disposal, at one's beck and call."[15]

79. According to this Commission, a remedy is considered to be available if the petitioner can pursue it without impediments or if he can make use of it in the circumstances of his case.[16] Were there remedies available to the complainant even from outside the respondent state?

80. The state indicates that in terms of its laws, a Complainant need not be physically present in the country in order to access local remedies, adding that both the High Court Act and the Supreme Court Act permit any person to make an application to either court through his/her lawyer. In support of this, the State cites the **Ray Choto** and **Mark Chavhunduka Case** where the victims were tortured by State agents, and they applied for compensation while they were both in the United Kingdom and succeeded in their claim. The state concluded that the complainant is not barred from pursuing remedies in a similar manner.

81. The Complainant does not dispute the availability of local remedies in the Respondent State, but argues that in his particular case, having fled the country for fear of his life, and now out of the country, local remedies are not available to him.

82. This Commission holds the view that having failed to establish that he left the country involuntarily due to the acts of the Respondent State, and in view of the fact that under Zimbabwe law, one need not be physically in the country to access local remedies; the complainant cannot claim that local remedies are not available to him.

83. The Complainant argues that even if local remedies were available, they were not effective because the State has the tendency of ignoring court rulings taken against it, citing among others the High Court decision in the **Commercial Farmers Union Case** and the **Ray Choto and Mark Chavhunduka case**, and added that the Zimbabwe Lawyers for Human Rights has documented at least 12 instances where the State has ignored court rulings since 2000.

84. It is not enough for a Complainant to simply conclude that because the State failed to comply with a court decision in one instance, it will do the same in their own case. Each case must be treated on its own merits. Generally, this Commission requires complainants to set out in their submissions the steps taken to exhaust domestic remedies. They must provide some *prima facie* evidence of an attempt to exhaust local remedies. This position is supported by other human rights bodies around the globe. The UN Human Rights Committee, for example, has stated that the mere fact that a domestic remedy is inconvenient or unattractive, or does not produce a result

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14 WEBSTER'S ENCYCLOPEDIC UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 102 (1989).

15 LONGMAN SYNONYM DICTIONARY 82 (1986).

16 Jawara v. The Gambia, supra.

favourable to the petitioner does not, in itself, demonstrate the lack or exhaustion of all effective remedies.[17] In the Committee's decision in **A v Australia,**[18] it was held that "mere doubts about the effectiveness of local remedies or prospect of financial costs involved did not absolve the author from pursuing such remedies."[19]

85. The European Court of Human Rights on its part has held that even if the applicants have reason to believe that available domestic remedies and possible appeals will be ineffective, they should seek those remedies since "it is generally incumbent on an aggrieved individual to allow the domestic courts the opportunity to develop existing rights by way of interpretation."[20] In **Article 19 v Eritrea,**[21] the Commission held that "it is incumbent on the complainant to take all necessary steps to exhaust, or at least attempt the exhaustion of local remedies. It is not enough for the complainant to cast aspersion on the ability of the domestic remedies of the State due to isolated incidences".

86. From the above analysis, this Commission is of the view that the complainant ignored to utilize the domestic remedies available to him in the Respondent State, which had he attempted, might have yielded some satisfactory resolution of the complaint.

87. The third issue of contention between the complainant and the Respondent State is the requirement under **Article 56(6)** of the Charter which provides that *"Communications received by the Commission will be considered if they are submitted within a reasonable period from the time local remedies are exhausted, or from the date the Commission is seized with the matter…"*

88. The present Communication was received at the Secretariat of the Commission on 26 September 2005. It was considered on seizure by the Commission in November 2005, that is, ten months after the complainant allegedly fled from the country. The complainant left the country on 12 January 2005.

89. The Commission notes that the complainant is not residing in the Respondent State and needed time to settle in the new destination, before bringing his complaint to the Commission. Even if the Commission were to adopt the practice of other regional bodies to consider six months as the reasonable period to submit complaints, given the circumstance in which the complainant finds himself, that is, in another country, it would be prudent, for the sake of fairness and justice, to consider a ten months

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17 Nos. 220/1987, T. K. v. France; 222/1987, M. K. v. France; 306/1988, J. G. v. The Netherlands, *in* 2 Report of the Human Rights Committee 188, 122; 127, 130; 180, 182–83, UN Doc. A/45/40 (1990) [hereinafter HRC 1990 Report].

18 Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997).

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

20 PHILIP LEACH, TAKING A CASE TO THE EUROPEAN COURT OF HUMAN RIGHTS 79 (2001) (quoting Earl Spencer and Countess Spencer v. United Kingdom, App. Nos. 28851/95, 28852/95 (Eur. Comm'n on H.R. 1998)).

21 Communication 275/2003.

period as reasonable. The Commission thus does not consider the Communication to have been submitted contrary to sub-section 6 of Article 56 of the Charter.

90. Lastly, **Article 56(7)** provides that the Communication must not deal with cases which have been settled by the states, in accordance with the principles of the United Nations, or the Charter of the OAU or the African Charter. In the present case, this case has not been settled by any of these international bodies and as a result of this, the requirement of Article 56(7) has been fulfilled by the complainant.

The African Commission finds that the Complainant in this Communication, that is**, Communication 307/05- Obert Chinhamo/the Republic of Zimbabwe,** has not fulfilled the requirement under Article 56(5) of the African Charter, and therefore declares the Communication **inadmissible**.

Done in Brazzaville, Republic of Congo, at its 42nd Ordinary Session held from 14 – 28 November, 2007.