

ASSEMBLY OF HEADS OF STATE AND GOVERNMENT
Thirty-fifth Ordinary Session
12 - 14 July, 1999 Algiers, Algeria

AHG/215 (XXXV)

TWELFTH ANNUAL ACTIVITY REPORT OF
THE AFRICAN COMMISSION ON HUMAN AND
PEOPLES` RIGHTS - 1998 – 1999

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PEOPLES' RIGHTS - 1998 - 1999

ORGANIZATION OF WORK

A. Period covered by the the Report

The Eleventh Annual Activity Report was adopted by the 34th Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU), meeting from 8 to 10 June, 1998 in Ouagadougou, Burkina Faso, by Decision AHG/Dec. 126 (XXXIV). The Twelfth Annual Activity Report covers the Twenty-fourth and Twenty-fifth Ordinary Sessions of the Commission held respectively in Banjul, The Gambia, from 26 April to 5 May, 1999.

B. Status of Ratification

2. All the OAU Member States have either ratified or acceded to the African Charter on Human and Peoples' Rights. Annex 1 contains the list of States Parties to the African Charter on Human and peoples' Rights, stating, among others, the dates of the signing, the ratification or accession as well as the depositing of the instruments of ratification or accession.

C. Sessions and Agend

3. The Commission held two Ordinary Sessions since the adoption in June 1998 of its Eleventh Annual Activity Report:

Twenty-fourth Ordinary Session held in Banjul, The Gambia, Headquarters of the Commission, from 22 to 31 October, 1998;

Twenty-fifth Ordinary Session held in Bujumbura, Burundi, from 26 April to 5 May, 1999;

The Agenda of each of these Sessions is attached as Annex II to this Report.

D. Composition and Attendance

4. The following members of the Commission participated in the deliberations of the 24th Session:

Mr. Youssoupha Ndiaye	Chairman
Dr. Vera Valentino Duarte-Martins	- Vice-Chairman
Mr. Atsu Koffi Amega	
Dr. Mohamed Hatem Ben Salem	
Professor E.V.O. Dankwa	
Professor Issac Nguema	
Mrs. Julienne Ondziel-Gnelenga	
Dr. Nyameko Barney Pityana	
Mr. M. Kamel Rezag-Bara	

5. Commissioner Ibrahim Ali Badawi El Sheikh was absent with apologies.

6. The Representatives of the following States Parties participated in the deliberations of the 24th Session and some of them made statements: Angola, Benin, Burkina Faso, Cameroon, Ethiopia, The Gambia, Mauritania, Nigeria, Rwanda, Senegal, The Sudan, Zambia.

Tribute to Mr. Alioune Blondin Beye

7. The Commission devoted part of the Fourth sitting of the 24th Session to remember the Late Commissioner Alioune Blondin Beye who was the victim in an air crash that occurred on 26 June, 1998 in Cote d'Ivoire. Tribute was paid particularly by Messrs Alioune Tine of the "Rencontre Africaine pour La Defense des Droits de l'Homme (RADDHO)" and Christophe Compaore of the "Mouvement Burkinabe des Droits de PHomme et des Peuples (MBDHP) on behalf of the NGO community as well as by Commissioner Atsu Koffi Amega and Chairman Youssoupha Ndiaye: on behalf of the Commission. The speakers pointed out the major qualities of Late Alioune Blondin Beye whose studious and sociable youth, his professional competence, his love for work, his devotion to the cause of peace in Africa and in the work, his faithfulness and particularly his generosity towards his brothers and friends. The Commission decided to call the 24th Session "The Alioune Blondin Beye Session" and to establish a Human Rights Prize "Alioune Blondin Beye Prize".

8. The following members of the Commission participated in the deliberations of the 25th Ordinary Session:

Mr. Youssoupha Ndiaye	Chairman
Dr. Vera Valentino Duarte Martins	Vice-Chairman
Dr. Ibrahim Ali Badawi El-Sheikh	
Dr. Mohammed Hatem Ben Salem	

Professor E.V.O. Dankwa

Professor Issac Nguema

Mrs. Julienne Ondziel-Gnelenga, Dr. Nyameko Barney Pityana

Mr. Kamal Rezag-Bara

9. Commissioner Atsu Koffi Amega was absent with apologies.

10. The Representatives of the following States participated in the deliberations of the 25th Ordinary Session and some of them made statements: Burkina Faso, Burundi, Chad, Egypt, Ethiopia, The Gambia, Mauritania, Mali, Rwanda, Senegal, South Africa, The Sudan, Zambia. The Secretary-General of the Organization of African Unity, Dr. Salim Ahmed Salim, graced the 25th Session and made a statement.

11. Many Non-Governmental Organizations (NGOs) and National Institutions also participated in the deliberations of the two Ordinary Sessions.

Adoption of Twelfth Annual Activity Report

12. The Commission considered and adopted the Twelfth Annual Activity Report at its sitting of 5 May, 1999.

II. ACTIVITIES OF THE COMMISSION

13. Under Article 62 of the African Charter on Human and Peoples' Rights, each State Party pledges to present every two years, as from the date of entry into force of the Charter, a Report on the legislative and other measures taken to give effect to the rights and freedoms guaranteed in the said Charter.

14. It was within that framework that the initial Report of Angola was considered by the Commission at its 24th Session and expressed satisfaction at the quality of the Report. It thanked the Representative of Angola for the efforts that his Government made in the field of human rights.

15. The initial Periodic Reports of the Republic South Africa, Burkina Faso and Chad were presented at the 25th Ordinary Session. Expressing satisfaction at the quality of the Reports submitted and the dialogue thus established, the Commission thanked the Representatives of the States concerned for their services and encouraged the said States to continue their efforts, to make the fulfilment of their obligations stated in the Charter a tangible reality.

16. The Republic of Seychelles deposited its initial Report since the 17th Ordinary Session held from 13 to 22 March, 1995 in Lome, Togo but still did not send anybody to present it despite the repeated reminders of the Commission. The latter deplored the negative attitude of Seychelles and had to adopt a Resolution (attached as Annex V to the Report) on this matter at the 251 Session.

17. The status of submission of Periodic Reports by the States is contained in Annex III attached to this Report.

18. The Commission strongly appeals to the States Parties that are still behind schedule with their Report to submit their Report as soon as possible and if necessary to compile all their Reports due into a single Report.

B. Promotion Activities

i) Report of the Chairman of the Commission

19. The Chairman of the Commission presented his Activity Report and particularly pointed out that he had participated in the Sixty-ninth Ordinary Session of the OAU Council of Ministers, 19

to 23 March, 1999, the First Ministerial Conference on Human Rights in Africa in Grand Bay, Mauritius, 12 to 16 April, 1999, the Second Conference of National Human Rights Institutions in Durban, South Africa, 1 to 3 July, 1998. He met with the United Nations High Commissioner for Human Rights and officials from other partner organizations of the Commission. The Chairman also met with the OAU Secretary-General, Ministers of various State parties and initiated contacts with the Governments of the Republic of Guinea and the Islamic Republic of Mauritania with regard to emergency situations. He also visited Mali following the demise of the late Alioune Blondin Beye and met with the family of the deceased and the authorities of the country.

ii) Activities of other members of the Commission

20. All the members of the Commission presented reports on human rights promotion and/or protection related activities which they carried out during the inter-sessions.

iii) Seminars and Conferences

21. The Commission was represented at the following meetings, seminars and conferences:

i) Seminar organized by the United Nations High Commission's

Office for Refugees (UNHCR) for officials of its offices in West and Central Africa, on African mechanism for the protection of human rights and the possibilities offered regarding the protection of refugees (Dakar, Senegal 1 - 4 December, 1998);

ii) Meeting of a Group of Experts on the strategy to be adopted regarding the speedy ratification of the

Protocol establishing the African Court of Human and Peoples' Rights, organized at the initiative of the International Commission of Jurists in Ouagadougou, Burkina Faso, from 7 to 9 December, 1998 under the auspices of the OAU Current Chairman, H.E. Mr. Blaise Compaore, President of Faso;

Meeting organized by the International Commission of Jurists on "Human Rights in Africa: challenges and prospects" as part of the activities marking the celebration of the Fiftieth Anniversary of the Universal Declaration on Human Rights (Ouagadougou, Burkina Faso, 17 - 19 December, 1998);

Meeting with the partners of the Commission organized by SIDA in Lund, Sweden, from 11 to 13 January, 1999 to explore possible ways of strengthening the capacity of the African Commission;

v) Forum of NGOs to prepare the contribution to the meeting of the First Ministerial Conference on Human Rights in Africa (Nairobi, Kenya, 7 - 9 April, 1999);

vi) First Ministerial Conference on Human Rights situation in Africa (Grand-Bay, Mauritius, 12 - 16 April, 1999).

C. NEXT SEMINARS AND CONFERENCES

22. The Commission decided to organize the following seminars and conferences:

i) peaceful resolution of ethnic and social conflicts from the human rights perspectives;

- ii) contemporary forms of slavery;
- iii) right to education: a sine qua non for development. The Commission decided that the Seminar on popular participation and informal education should be included in the seminar on the right to education;
- iv) Freedom of movement and right of asylum in Africa
- v) Right to fair trial and legal assistance (Senegal, September 1999);,
- vi) The rights of the disabled.

23. The Commission enlisted the support of the international organizations and NGOs in the organization of the above-mentioned seminars and conferences, and appointed commissioners to oversee the organization.

III. REPORT OF THE SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL, SUMMARY AND ARBITRARY EXECUTIONS IN AFRICA

24. Commissioner Ben Salem Special Rapporteur on Extra-judicial, Summary and Arbitrary Executions drew the Commission's attention to the new cases of extra-judicial executions in Chad, the Democratic Republic of Congo, Angola, the Comoros and Sierra Leone.

25. Commissioner Ben Salem presented a report to the 25th Ordinary Session on extra-judicial, summary and arbitrary executions in Rwanda, Burundi and Chad. The report makes mention of the difficulties encountered by the Special Rapporteur and the methodology used in the execution of his mandate.

IV. REPORT OF THE SPECIAL RAPPORTEUR ON PRISONS AND PRISON CONDITIONS IN AFRICA

26. Commissioner E.V.O DANKWA, Special Rapporteur on Prisons and Conditions of Detention in Africa presented a succinct report on his missions to Kenya, Cameroon, Zimbabwe and Uganda.

27. The Special Rapporteur presented a report to the Twenty-fifth Ordinary Session in which he expressed satisfaction at the follow-up and evaluation mission to Mali.

V. REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN IN AFRICA

28. Madam Julienne Ondziel-Gnelenga, Special Rapporteur on the Rights of Women in Africa, presented a preliminary report containing the proposed programme of activities, implementation strategies and draft budget.

29. She also presented a report on the activities she undertook within the purview of her mandate. She mentioned among other things the contacts she initiated to inform the various partners and mobilize the necessary resources for her activities.

VI. CONSIDERATION OF THE ADDITIONAL DRAFT PROTOCOL TO THE AFRICAN CHARTER ON THE RIGHTS OF WOMEN

30. Commissioner Dankwa presented a report on the work of the group charged to prepare the Additional Draft Protocol to the African Charter on the Rights of Women in Africa. The Commission asked the group to continue its work.

VI. RATIFICATION OF ADDITIONAL PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ESTABLISHING THE AFRICAN COURT OF HUMAN AND PEOPLES' RIGHTS

31. With regard to the strategy to be adopted for the rapid ratification of the Additional Protocol to the African Charter on Human and Peoples' Rights establishing the African Court of Human and Peoples' Rights, the Commission decided to continue with its efforts of sensitizing OAU Member States to the need to ratify the protocol as quickly as possible, and to involve the media in the campaign as well as all the actors who may contribute to its success.

VIII. MISSIONS TO THE STATE PARTIES

32. The Commission decided to publish the mission reports on Mauritania together with the observations of the government.

33. The 25th Ordinary Session considered the report on the mission to Nigeria and decided to send it to that country for its observations and comments.

IX. RELATIONS WITH THE OBSERVERS

34. For some time now, the NGOs have been pondering on how best to coordinate their activities in Africa in order to enhance the work of the African Commission.

35. For the first time, the NGOs organized themselves into geographical groups covering West Africa, Central Africa, Southern Africa, East Africa and North Africa and presented their declarations on the human rights situation to the Twenty-fifth Ordinary Session. The declarations dealt with human rights violations in the respective four sub-regions.

36. They also highlighted extra-judicial summary and arbitrary executions, arbitrary arrests and detentions, torture, inhuman prison and detention conditions, restrictions and breach of fundamental freedoms, of the right to participation in the democratic process as a result of military coups d'Etat, forced disappearances, impunity, the situation of the vulnerable groups, women and children in particular etc... These human rights violations are compounded by armed conflicts that are proliferating on the continent.

37. The NGOs urged the Commission to react fast to incidences of human rights violation.

38. The Commission commended the NGOs for the rationalization and quality of their contribution to the deliberation.

39. The Commission adopted a resolution conferring on National Human Rights Institutions the status of affiliated bodies, and decided to pursue consideration on the possibility of strengthening its cooperation with these institutions.

40. The Commission also adopted a resolution on the criteria, for granting observer status to and enjoyment of same by the NGOs which had submitted a request in these regards.

X. PROTECTION ACTIVITIES

41. A total of 114 complaints (eight (8) of which were new) were tabled before the Commission during its 24th, and 25th Ordinary Sessions. Six (6) of these communications were fully actioned. The decisions relating thereto are to be found in Annex V.

XI. ADMINISTRATIVE AND FINANCIAL MATTERS

a) Administrative Matters

42. The Commission expressed satisfaction at the significant progress made by its Secretariat in recent years. It commended the Secretary of the Commission and his staff for the improved quality of the Secretariats' work despite limited resources, and urged them not to relent in their endeavours.

43. The Commission expressed profound appreciation both for the measures already taken by the OAU Secretary-General, and for those he plans to take to give effect to the decisions of the Assembly of Heads of State and Government of the OAU, stipulating that the Commission be endowed with adequate financial, human and material resources to enable it function effectively.

44. The African Commission was also appreciative of the assistance provided by its partners, which made possible the implementation of a considerable part of its activities.

b) Financial Matters

1. OAU Budget

45. By virtue of Article 41 of the Charter, the functioning of the African Commission is ensured by the staff, facilities and services provided by Secretary-General of the OAU. Owing to the limited resources allocated to it by the OAU, the Commission had to have recourse to financial and material assistance from its partners.

2. Assistance from the African Society of Comparative International Law

46. With the assistance of the African Comparative International Law Society, the Secretariat secured the services of two (2) jurists for a period of one year. Publication of the Commissions Review was also ensured thanks to the technical assistance received from this society which was responsible for the publication's printing and distribution costs.

3. Assistance from the Danish Human Rights Centre

47. There has been notable improvement in the working conditions in the Secretariat thanks to the Danish assistance which made possible the recruitment of additional staff, procurement of computers with accessories and the funding of promotion activities such as documents production, and field missions by members of the Commission. The Danish Human Rights Centre is in the

process of helping the Commission and its Commissioners with the planning of their activities and with the mobilization of resources for implementation of these activities. This assistance will last for three years.

4. Assistance from the European Union

48. The European Union made funds available to the Commission for, among other things, the production and dissemination of its documents and other human rights promotion activities throughout the Continent. The European Union has expressed readiness to continue providing this assistance.

5. Assistance from the United Nations Commission for Human Rights

49. The United Nations Human Rights Commission extended financial aid to the African Commission for the elaboration of the Draft Protocol on the Rights of Women in Africa, for the organization of seminars on the right to fair trial, the preparation of human rights training manuals, and for the organization of training courses for two officials of the Secretariat on the processing of communications and periodic reports submitted by States Parties to the African Charter. This assistance which covers a period of twelve (12) months became effective from 1 April, 1999.

6. Assistance from the Friedrich-Naumann Foundation

50. The Friedrich-Naumann Foundation has continued to undertake measures to mobilize resources in favour of the Commission, especially at the level of the European Union and other European partners.

7. Assistance from the Raoul Wallenberg Institute

51. Publication of the Commission's Review has been realised up to now, thanks to the grants accorded by the Swedish Government through the Raoul Wallenberg Institute. Promotion missions to States Parties are also catered for under this grant subject to the limits of the budget provided.

8. International Commission of Jurists

52. The International Commission of Jurists has continued to provide the African Commission with assistance towards implementation of numerous activities such as the elaboration of the

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Draft Protocol on the Rights of Women, a studies pertaining to strategies for speedy ratification of the Protocol on the African Court on human and Peoples' Rights, assistance to the Special Rapporteur on the Rights of Women, etc...

9. Other Partners

53. The Commission was beneficiary of various forms of assistance from several partners, both African and non-African thus enabling it, with sizeable degree of success to discharge its human and peoples' rights promotion and protection mission on the Continent.

54. The Commission plans to further strengthen this cooperation.

ADOPTION OF THE REPORT BY THE ASSEMBLY OF HEADS OF STATE AND GOVERNMENT OF THE OAU

55. The Assembly of Heads of State and Government, after consideration, adopted the report by a resolution in which it expressed satisfaction at the Report and authorized its publication.

LIST OF ANNEXURES

Annex I: List of the Countries that have signed, ratified/acceded to the African Charter on Human and Peoples' Rights (as of 31 March, 1999). (10)

Annex II: Agenda of the Twenty-fourth Ordinary Session

(Banjul, The Gambia: 23 - 31 October, 1998). (12)

Agenda of the Twenty-fifth Ordinary Session Bujumbura, Burundi: 26 April - 5 May, 1999).

Annex III: Status of Submission of Periodic Reports to the African Commission on Human and Peoples' Rights (as of 31 May, 1999). (16)

Annex IV: Resolutions adopted by the Twenty-fourth and Twenty-fifth Ordinary Sessions. (25)

Annex V: Decisions on Communications. (48)

ANNEX I

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

(as at 31st March 1999)

No.	Country	Date of signature	Date of Ratification/ accession	Date deposited
1.	Algeria	10/04/86	01/03/87	20/03/87
2.	Angola		02/03/90	09/10/90
3.	Benin		20/01/86	25/02/86

4.	Botswana		17/07/86	22/07/86
5.	Burkina Faso	05/03/84	06/07/84	21/09/84
6.	Burundi		28/07/89	30/08/89
7.	Cameroon	23/07/87	20/06/89	18/09/89
8.	Cape Verde	31/03/86	02/06/87	06/08/87
9.	Central African Republic		26/04/86	27/07/86
10.	Comoros		01/06/86	18/07/86
11.	Congo	27/11/81	09/12/82	17/01/83
12.	Congo (RD)	23/07/87	20/07/87	28/07/87
13.	Côte d'Ivoire		06/01/92	31/03/92
14.	Djibouti	20/12/91	11/11/91	20/12/91
15.	Egypt	16/11/81	20/03/84	03/04/84
16.	Equatorial Guinea	18/08/86	07/04/86	18/08/86
17.	Eritrea		14/01/99	15/03/99
18.	Ethiopia		15/06/98	22/06/98
19.	Gabon	26/02/82	20/02/86	26/06/86
20.	Gambia	11/02/83	08/06/83	13/06/83
21.	Ghana		24/01/89	01/03/89
22.	Guinea	09/12/81	16/02/82	13/05/82
23.	Guinea Bissau		04/12/85	06/03/86
24.	Kenya		23/01/92	10/02/92
25.	Lesotho	07/03/84	10/02/92	27/02/92
26.	Liberia	31/01/83	04/08/82	29/12/82
27.	Libya	30/05/85	19/07/86	26/03/87
28.	Madagascar		09/03/92	19/03/92
29.	Malawi	23/02/90	17/11/89	23/02/90
30.	Mali	13/11/81	21/12/81	22/01/82
31.	Mauritania	25/02/82	14/06/86	26/06/86
32.	Mauritius	27/02/92	19/06/92	01/07/92
33.	Mozambique		22/02/89	07/03/90
34.	Namibia		30/07/92	16/09/92
35.	Niger	09/07/86	15/07/86	21/07/86

36.	Nigeria	31/08/82	22/06/83	22/07/83
37.	Uganda	18/08/86	10/05/86	27/05/86
38.	Rwanda	11/11/81	15/07/83	22/07/83
39.	Sahrawi Arab Democratic Republic	10/04/86	02/05/86	23/05/86
40.	Sao Tome & Principe		23/05/86	28/07/86
41.	Senegal	23/09/81	13/08/82	25/10/82
42.	Seychelles		13/04/92	30/04/92
43.	Sierra Leone	27/08/81	21/09/83	27/01/84
44.	Somalia	26/02/82	31/07/85	20/03/86
45.	South Africa	09/07/96	09/07/96	09/07/96
46.	Sudan	03/09/82	18/02/86	11/03/86
47.	Swaziland		15/09/95	09/10/95
48.	Tanzania	31/05/82	18/02/84	09/03/84
49.	Chad	29/05/86	09/10/86	11/11/86
50.	Togo	26/02/82	05/11/82	22/11/82
51.	Tunisia		16/03/83	22/04/83
52.	Zambia	17/01/83	10/01/84	02/02/84
53.	Zimbabwe	20/02/86	30/05/86	12/06/86

ADOPTED: - by the eighteenth session of the Assembly of Heads of State and Government, June 1981.

REQUIRES: - ratification/adherence of a simple majority of Member States to come into force.

ENTERED - into force on 21st October, 1986.

Registered with the United Nations on 10/09/1991, No. 26363.

ANNEX II

Agenda of the 24th Ordinary Session (22-30 October 1998, Banjul, The Gambia)

1. Opening Ceremony (public session)
2. Adoption of the Agenda (private session)
3. Organisation of work (private session)
4. Introductory Note of the Secretary on the activities of the Commission (public session)
5. Observers : (public session)

- a. Statements by State Delegates.
 - b. Relationship and co-operation between the Commission and NGOs
6. Periodic Reports
- a. Amendment of guidelines for the preparation of State Parties' periodic reports (public session)
 - b. Consideration of Initial reports (public session)
 - i) Chad
 - ii) Seychelles
7. The setting up of an Early intervention Mechanism in cases of massive human rights violations.(Public session)
8. Promotional Activities (public session).
- a. Activity report of Commissioners
 - b. Human Rights situation in Africa
 - c. Examination of the report of the Special Rapporteur on summary, arbitrary and extra-judicial executions
 - d. Examination of the report of the Special Rapporteur on prisons and conditions of detention in Africa.
 - e. Examination of the report of the Special Rapporteur on the rights of women in Africa
 - f. Discussion of the Draft Additional Protocol to the African Charter on the Rights of Women in Africa
 - g. Co-operation between the Commission and the national human rights institutions
 - h. Celebration of the 50th Anniversary of the Universal Declaration of Human Rights
 - i. Organisation of Seminars and Conferences
9. Review of some provisions of the African Charter in the light of the Protocol establishing the African Court on Human and Peoples' Rights.
10. Review and Newsletter of the African Commission on Human and Peoples' Rights
11. The issue of incompatibility of the membership of the Commission
12. Protective Activities (private session)
- a. Consideration of the Mission report to Nigeria
 - b. Follow up of Mission reports to Senegal, Mauritania and Togo
 - c. Consideration of communications
13. Administrative and financial matters (private session)
- a. Report of the Chairman
 - b. Financial situation and functioning of the Secretariat
 - c. The issue of the construction of the headquarters
 - d. Participation of the Commission in certain activities of the OAU
14. Evaluation of the Implementation of the Mauritius Plan of Action (private session)
15. Logo of the Commission
16. Methods of work of the Commission (private session)
17. Date, venue and provisional Agenda for the 25th ordinary session
18. Any other business

19. Preparation of :
 - a. The session Report
 - b. The Final Communiqué
20. Adoption of the Session Report and the Final Communiqué (private session)
21. Reading of the Final Communiqué and Closing ceremony
22. Press Conference

Agenda of the 25th Ordinary Session (26 avril - 5 mai 1999, Bujumbura, Burundi)

1. Opening Ceremony (public session)
2. Adoption of the Agenda (private session)
3. Organisation of work (private session)
4. Introductory Note of the Secretary on the activities of the Commission (public session)
5. Observers : (public session)
 - a. Statements by State Delegates and guests.
 - b. Co-operation between the Commission and the National Human Rights Institutions.
 - c. Relationship and co-operation between the Commission and NGOs.
6. Consideration of Initial Reports :
 - i) Chad
 - ii) Seychelles
 - iii) South Africa
 - iv) Burkina Faso
7. The setting up of an Early intervention Mechanism in cases of massive human rights violations (Public session)
8. Promotional Activities (public session).
 - a. Activity report of the Chairman and Members of the Commission.
 - b. Examination of the report of the Special Rapporteur on summary, arbitrary and extra-judicial executions.
 - c. Examination of the report of the Special Rapporteur on prisons and conditions of detention in Africa.
 - d. Examination of the report of the Special Rapporteur on the rights of women in Africa.
 - e. Discussion of the Draft Additional Protocol to the African Charter on the Rights of Women (progress).
 - f. Strategy for a quick ratification of the Additional Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights.
 - g. Situation of peoples with disability..
 - h. Organisation of Seminars and Conferences.
 - i. Human Rights situation in Africa.
 - j. Situation of indigenous people
 - k. Situation of the African Child
 - l. World Conference on racism
 - m. Situation of Human Rights Defenders in Africa
9. Review of some provisions of the African Charter in the light of the Protocol establishing the African Court on Human and Peoples' Rights and mainly the issue of incompatibility of the membership of the Commission.
10. Review and Newsletter of the African Commission on Human and Peoples' Rights
11. Protective Activities (private session)
 - a. Consideration of the Mission report to Nigeria
 - b. Consideration of communications

12. Administrative and financial matters (private session)
 - a. Report of the Chairman
 - b. Financial and administrative situation of the Secretariat
 - c. The issue of the construction of the headquarters
 - d. Participation of the Commission in certain activities of the OAU
13. Methods of work.
14. Evaluation of the Implementation of the Mauritius Plan of Action (public session).
15. Logo of the Commission.
16. Dates, venue and provisional Agenda for the 26th ordinary session.
17. Any other business.
18. Preparation of :
 - a. The session Report
 - b. The Twelfth Annual Activity report
 - c. The Final Communiqué
19. Adoption of the Session Report, the Twelfth Annual Activity and the Final Communiqué (private session).
20. Reading of the Final Communiqué and Closing ceremony.
21. Press Conference.

ANNEXE III

STATUS ON SUBMISSION OF STATE PERIODIC REPORTS TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (as at 31st May 1999)

<i>NAME OF COUNTRIES</i>	<i>DATE OF RATIFICATION TO THE CHARTER</i>	<i>DATE WHEN THE REPORTS ARE DUE</i>	<i>DATE OF SUBM OF THE REI</i>
1. ALGERIA	01/03/1987	1 st Report 01/03/1988 2 nd Report 01/03/1990 3 rd Report 01/03/1991 4 th Report 01/03/1992 5th Report 01/03/1996 6st Report 01/03/1998 7 st Report 01/03/2000	1 ^{er} Report October 1995 combining previous Re 1988.
2. ANGOLA	02/01/1990	1 ^{er} Report 02/01/1992 2 nd Report 02/01/1994 3 rd Report 02/01/1996 4 st Report 02/01/1998 5 st Report 02/01/2000	1 st Report October 1998 combining previous Re 1992.
3. BENIN	20/01/1986	1 st Report 20/01/1988 2nd Report 20/01/1990 3rd Report 20/01/1992 4st Report 20/01/1994 5st Report 20/01/1996 6st Report 20/01/1998 7 st Report 20/01/2000	1 st Report February 1999.

4. BOTSWANA	17/07/1986	1st Report 17/07/1988 2nd Report 17/07/1990 3rd Report 17/07/1992 4st Report 17/07/1994 5st Report 17/07/1996 6st Report 17/07/1998 7 st Report 17/07/2000	
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5. BURKINA FASO.	06/07/1984	1 st Report 06/07/1988 2nd Report 06/07/1990 3rd Report 06/07/1992 4 st Report 06/07/1994 5 st Report 06/07/1996 6 st Report 06/07/1998 7 st Report 06/07/2000	1 st Report Octob combining previous Re 1988.
6. BURUNDI.	28/07/1989	1st Report 28/07/1991 2nd Report 28/07/1993 3rd Report 28/07/1995 4st Report 28/07/1997 5st Report 28/07/1999 6 st Report 28/07/2001	
7. CAMEROON.	20/06/1989	1st Report 20/06/1991 2nd Report 20/06/1993 3rd Report 20/06/1995 4st Report 20/06/1997 5 st Report 20/06/1999 6 st Report 20/06/2001	
8. CAPE VERDE	02/06/1989	1 st Report 02/06/1991 2nd Report 02/06/1993 3rd Report 02/06/1995 4st Report 02/06/1997 5st Report 02/06/1999 6 st Report 02/06/2001	1st Report Febru
9. CENTRAL AFRICAN REPUBLIC	26/04/1986	1st Report 26/04/1988 2nd Report 26/04/1990 3rd Report 26/04/1992 4st Report 26/04/1994 5st Report 26/04/1996 6st Report 26/04/1998 7 st Report 26/04/2000	
10. CHAD	09/10/1986	1 st Report 09/10/1988 2nd Report 09/10/1990 3rd Report 09/10/1992 4 st Report 09/10/1994 5 st Report 09/10/1996 6 st Report 09/10/1998 7 st Report 09/10/2001	1 st Report Augu combining previous Re 1998.
11. COMOROS.	01/06/1986	1st Report 01/10/1988 2nd Report 01/10/1990 3rd Report 01/10/1992 4st Report 01/10/1994 5st Report 01/10/1996 6st Report 01/10/1998	
12. CONGO	09/12/1982	1st Report 09/12/1988 2nd Report 09/12/1990 3rd Report 09/12/1992 4st Report 09/12/1994 5st Report 09/12/1996 6st Report 09/12/1998 7 st Report 09/12/2000	
13. CONGO (RDC)	20/07/1987	1st Report 20/07/1989 2nd Report 20/07/1991 3rd Report 20/07/1993 4st Report 20/07/1995 5st Report 20/07/1997 6st Report 20/07/1999 7 st Report 20/07/2001	

14. COTE D'IVOIRE.	06/01/1992	1st Report 06/01/1994 2nd Report 06/01/1996 3rd Report 06/01/1998 4 st Report 06/01/2000	
15. DJIBOUTI	11/ 11/ 1991	1st Report 11/11/1993 2nd Report 11/11/1995 3rd Report 11/11/1997 4st Report 11/11/1999 5 st Report 11/11/2001	
16. EGYPT	20/ 03/ 1984	1 st Report 20/03/1988 2nd Report 20/03/1990 3rd Report 20/03/1992 4st Report 20/03/1994 5st Report 20/03/1996 6st Report 20/03/1998 7 st Report 20/03/2000	1st Report Mar
17. EQUATORIAL GUINEA	07/04/1986	1st Report 23/01/1988 2nd Report 23/01/1990 3rd Report 23/01/1992 4st Report 23/01/1994 5st Report 23/04/1996 6st Report 23/04/1998 7 st Report 23/04/2000	
18. ETHIOPIA	16/06/1998	1 st Report 16/06/2000 2nd Report 16/06/2002	
19. ERITREA	14/01/99	1 st Report 14/1/2001	
20. GABON	20/ 02/ 1986	1st Report 20/02/1988 2nd Report 20/02/1990 3rd Report 20/02/1992 4st Report 20/02/1994 5st Report 20/02/1996 6st Report 20/02/1998 7 st Report 20/02/2000	
21. THE GAMBIA	20/2/1986	1 st Report 08/06/1988 2nd Report 08/06/1990 3rd Report 08/06/1992 4 st Report 08/06/1994 5st Report 08/06/1996 6st Report 08/ 06/1998 7 st Report 08/06/2000	1st Report March 1992 2nd Report October
22. GHANA	24/ 01/ 1989	1 st Report 24/01/1991 2nd Report 24/01/1993 3rd Report 24/01/1995 4st Report 24/01/1997 5st Report 24/01/1999 6 st Report 24/01/2001	1 st Report Septe
23. GUINEA	16/ 02/ 1982	1 st Report 16/02/1988 2nd Report 16/02/1990 3rd Report 16/02/1992 4 st Report 16/02/1994 5 st Report 16/02/1996 6 st Report 16/02/1998 7 st Report 16/02/2000	1 st Report Octo combining previous Re 1988.

24. GUINEA-BISSAU	04/ 12/ 1985	1st Report 04/12/1988 2nd Report 04/12/1990 3rd Report 04/12/1992 4st Report 04/12/1994 5st Report 04/12/1996 6st Report 04/12/1998 7 st Report 04/12/2000	
25. KENYA	23/01/1992	1st Report 23/01/1994 2nd Report 23/01/1996 3rd Report 23/01/1998 4 st Report 23/01/2000	
26. LESOTHO	10/02/1992	1st Report 10/02/1994 2nd Report 10/02/1996 3rd Report 10/2/1998 4 st Report 10/02/2000	
27. LIBERIA	04/08/1982	1st Report 04/08/1988 2nd Report 04/08/1990 3rd Report 04/08/1992 4st Report 04/08/1994 5st Report 04/08/1996 6st Report 04/08/1998 7 st Report 04/08/2000	
28. LIBYA	19/ 07/ 1986	1 st Report 19/07/1988 2nd Report 19/07/1990 3rd Report 19/07/1992 4st Report 19/07/1994 5st Report 19/07/1996 6st Report 19/07/1998 7 st Report 19/07/2000	1 st Report Janua
29. MADAGASCAR	09/ 03/ 1992	1st Report 09/03/1994 2nd Report 09/03/1996 3rd Report 09/03/1998 4 st Report 09/03/2000	
30. MALAWI	17/ 11/ 1989	1st Report 17/11/1991 2nd Report 17/11/1993 3rd Report 17/11/1995 4st Report 17/11/1997 5st Report 17/11/1999 6 st Report 17/11/2001	
31. MALI	21/ 12/ 1981	1 st Report 21/12/1988 2nd Report 21/12/1990 3rd Report 21/12/1992 4 st Report 21/12/1994 5 st Report 21/12/1996 6 st Report 21/12/1998 7 st Report 21/12/2001 8 st Report 21/12/2002	1 st Report May combining previous Re 1988.
32. MAURITANIA	14/ 06/ 1986	1st Report 14/06/1988 2nd Report 14/06/1990 3rd Report 14/06/1992 4st Report 14/06/1994 5st Report 14/06/1996 6st Report 14/06/1998 7 st Report 14/06/2000	
33. MAURITIUS	19/ 06/ 1992	1 st Report 19/06/1994 2nd Report 19/06/1996 3rd Report 19/06/1998 4 st Report 19/06/2000	1 st Report Noven
34. MOZAMBIQUE	22/02/1989	1 st Report 22/02/1991	1 st Report Septer

		2nd Report 22/02/1993 3rd Report 22/02/1995 4st Report 22/02/1998 5st Report 22/02/2000 6 st Report 22/02/2001	combining previous Re 1991.
35. NAMIBIA	30/07/1992	1 st Report 30/07/1994 2nd Report 30/07/1996 3rd Report 30/07/1998 4 st Report 30/07/2000	1 st Report Novem combining previous Re 1994.
36. NIGER	15/07/1986	1st Report 15/07/1988 2nd Report 15/07/1990 3rd Report 15/07/1992 4st Report 15/07/1994 5st Report 15/07/1996 6st Report 15/07/1998 7 st Report 15/07/2000	
37. NIGERIA	22/06/1983	1 st Report 22/06/1988 2nd Report 22/06/1990 3rd Report 22/06/1992 4st Report 22/06/1994 5st Report 22/06/1996 6st Report 22/06/1998 7 st Report 22/06/2000	1 st Report Augu
38. UGANDA	10/05/191986	1st Report 10/05/1988 2nd Report 10/05/1990 3rd Report 10/05/1992 4st Report 10/05/1994 5st Report 10/05/1996 6st Report 10/05/1998 7 st Report 10/05/2000	
39. RWANDA	15/07/1983	1 st Report 15/07/1988 2nd Report 15/07/1990 3rd Report 15/07/1992 4 st Report 15/07/1994 5 st Report 15/07/1996 6 st Report 15/07/1998 7 st Report 15/07/2000	1 st Report Augu 2nd Report Octo combining previous Re 1998.
40. SAHRAWI ARAB DEMOCRATIC REPUBLIC	02/05/1986	1st Report 02/05/1988 2nd Report 02/05/1990 3rd Report 02/05/1992 4st Report 02/05/1994 5st Report 02/05/1996 6st Report 02/05/1998 7 st Report 02/05/2000	
41. SAO TOME & PRINCIPE	23/05/1986	1st Report 23/05/1988 2nd Report 23/05/1990 3rd Report 23/05/1992 4st Report 23/05/1994 5st Report 23/05/1996 6st Report 23/05/1998 7 st Report 23/05/2000	
42. SENEGAL	13/08/1982	1 st Report 13/08/1988 2nd Report 13/08/1990 3rd Report 13/08/1992 4st Report 13/08/1994	1 st Report Octo 2nd Report Ap

		5st Report 13/08/1996 6st Report 13/08/1998 7 st Report 13/08/2000	
43. SEYCHELLES	13/04/1992	1 st Report 13/04/1994 2nd Report 13/04/1996 3rd Report 13/04/1998 4 st Report 13/04/2000	1 st Report Septen
44. SIERRA LEONE	21/09/1983	1st Report 21/09/1988 2nd Report 21/09/1990 3rd Report 21/09/1992 4st Report 21/09/1994 5st Report 21/09/1996 6st Report 21/09/1998 7 st Report 21/09/2000	
45. SOMALIA	31/07/1985	1st Report 31/07/1988 2nd Report 31/07/1990 3rd Report 31/07/1992 4st Report 31/07/1994 5st Report 31/07/1996 6st Report 31/07/1998 7 st Report 31/07/2000	
46. SOUTH AFRICA	09/07/1996	1 st Report 09/07/1998 2nd Report 09/07/2000 3 rd Report 09/07/2002	1 ^{er} Report 14 O
47. SUDAN	03/09/1982	1 st Report 03/09/1988 2 nd Report 03/09/1990 3 rd Report 03/09/1992 4 st Report 03/09/1994 5 st Report 03/09/1996 6st Report 03/09/1998 7 st Report 03/09/2000	1 st Report 24 Octo combining previous Re 1986.
48. SWAZILAND	15/09/1995	1st Report 15/09/1997 2nd Report 15/09/1999 3 rd Report 15/09/2001	
49. TANZANIA	18/02/1984	1 st Report 18/02/1988 2 nd Report 18/02/1990 3 rd Report 18/02/1992 4st Report 18/02/1994 5st Report 18/02/1996 6st Report 18/02/1998 7 st Report 18/02/2000	1 st Report July
50. TOGO	05/11/1982	1 st Report 05/11/1988 2 nd Report 05/11/1990 3rd Report 05/11/1992 4st Report 05/11/1994 5st Report 05/11/1996 6st Report 05/11/1998 7 st Report 05/11/2000	1 st Report Octol
51. TUNISIA	16/03/1983	1 st Report 16/03/1988 2 nd Report 16/03/1990 3 rd Report 16/03/1992 4 st Report 16/03/1994 5st Report 16/03/1996 6st Report 16/03/1998 7 st Report 16/03/2000	1 st Report M 2 nd Report O
52. ZAMBIA	19/01/1984	1st Report 19/01/1988 2nd Report 19/01/1990 3rd Report 19/09/1992	

		4st Report 19/09/1994 5st Report 19/09/1996 6st Report 19/09/1998 7 st Report 19/09/2000	
53. ZIMBABWE	30/05/1986	1 st Report 30/05/1988 2 nd Report 30/05/1990 3 st Report 30/05/1992 4 st Report 30/05/1994 5 st Report 30/05/1996 6st Report 30/05/1998 7 st Report 30/05/2000	1 st Report, Oct 2 nd Report, M 3 rd Report, Ma combining previous Re 1996.

- The over due reports are highlighted.
- Since the Note Verbale ACHPR/PR/A046 of 30 March 1995, several reports can be combined into one report.

ANNEX IV

RESOLUTION ON THE RATIFICATION OF THE CONVENTION ON ANTI-PERSONNEL MINES

The African Commission on Human and Peoples' Rights, meeting at its 24th Ordinary Session from 22 to 31 October 1998 in Banjul, The Gambia,

Taking Note of the various international and regional meetings ushering in the coming into force of the Ottawa Convention as September 1998, prohibiting the production, use, transfer and stockpiling of anti-personnel mines,

Emphasising that to date only five countries have ratified this Convention, and that more than 15 African Countries are yet to sign it,

Noting that the African continent remains the most heavily mined region of the world;

Observing that anti-personnel mines continue to kill and mutilate vast populations including a great number of women and children.

CALLS on African States to sign and ratify without delay the Ottawa Treaty on the prohibition, production, use, transfer, stockpiling of anti-personnel mines.

WELCOMES the International campaign against anti-personnel mines urged by the Human Rights activists and contribute to the implementation of the various action plans against the use, production, transfer and stockpiling of anti-personnel mines.

Banjul, 31st October 1998.

RESOLUTION ON THE RATIFICATION OF THE TREATY ON THE INTERNATIONAL CRIMINAL COURT

The African Commission on Human and Peoples' Rights, meeting at its 24th Ordinary Session from 22 to 31 October 1998 in Banjul, The Gambia,

Considering that the 67th ordinary session of the OAU Council of Ministers, meeting at Addis Ababa in February 1998, adopted the Dakar Declaration on an International Criminal Court;

Considering that the 34th Assembly of Heads of State and Government of the OAU, meeting at Ouagadougou in June 1998, also adopted the Dakar Declaration on an International Criminal Court;

Considering that around 43 States Members of the OAU participated in the Diplomatic Conference on the International Criminal Court (ICC) in Rome, June / July 1998, and that African countries supported the creation of a permanent, independent, impartial and effective ICC;

Considering that the statute of the ICC was adopted at Rome on 16 July 1998 by 120 states, of which more than 40 were African Countries;

Considering that 19 African states have signed the statute, demonstrating the will of African countries to create an effective ICC;

Considering the serious and troubling situation of human rights in Africa, especially in zones of armed conflict, and taking note of the universal consensus to end impunity for crimes which shock the conscience of humanity;

CALLS ON all States Parties to the African Charter on Human and Peoples' Rights to carry out all the appropriate constitutional procedures to sign and ratify the Rome treaty on the International Criminal Court; and

INVITES THEM to take all necessary legislative and administrative steps to bring national laws and policies into conformity with the statute.

Banjul, 31st October 1998.

RESOLUTION ON NIGERIA'S RETURN TO A DEMOCRATIC SYSTEM

The African Commission on Human and Peoples' Rights, meeting at its 24th Ordinary Session from 22 - 30 October 1998 in Banjul, The Gambia.

Considering paragraph two of the preamble to the African Commission on Human and Peoples' Rights which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples",

Recalling the firm conviction of the States Parties to the African Commission on Human and Peoples' Rights of their duty "...to promote and protect human and peoples' rights and freedoms, taking into account the importance traditionally attached to these rights and freedoms in Africa";

Notes with satisfaction the positive evolution in the field of human rights, the promises and democratic advances made by the Nigerian Government since the end of June 1998;

WELCOMES the release of the Ogoni prisoners and other detainees previously held in the Port Harcourt central prison and the gradual return to the country of numerous political exiles in favour of democratic transition in Nigeria;

EXHORTS the Government of Nigeria to persist in its efforts the course of democracy, respect for, and protection of human rights;

ASSURES the Government of its total support and readiness to help it in its task of rebuilding in Nigeria a democratic society which respects human rights.

Banjul, 31st October 1998.

RESOLUTION ON THE RATIFICATION OF THE ADDITIONAL PROTOCOL ON THE CREATION OF THE AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS

The African Commission on Human and Peoples' Rights, meeting at its 24th Ordinary Session from 22 - 30 October 1998 in Banjul, The Gambia.

Recalling the adoption of the protocol by the 34th Ordinary Session of the Assembly of Heads of State and Government of the OAU, held from 8 - 10 June 1998, in Ouagadougou, Burkina Faso, and its signature by 32 African countries;

Considering that the protocol on the African Court has been ratified by only two States, out of the 53 States Parties to the African Charter;

Also considering the serious and troubling state of human rights in Africa, especially, in zones of conflict, and taking into account the need to guarantee and protect human rights by an effective, independent and impartial African Court, which would perfectly complement the mission of the African Commission;

APPEALS to the States Parties to the African Charter on Human and Peoples' Rights to activate the appropriate constitutional procedures in order for them to sign and ratify the protocol on the African Court of Human and Peoples' Rights within the shortest possible time.

Banjul, 31st October 1998.

RESOLUTION ON THE CO-OPERATION BETWEEN THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND NGOs HAVING OBSERVER STATUS WITH THE COMMISSION

BACKGROUND

1. Article 45 of the African Charter on Human and Peoples' Rights maps out the mandate of the Commission as follows:
 - i) to promote human rights;
 - ii) to protect human rights;
 - iii) to interpret provisions of the African Charter;
 - iv) any other tasks that may be referred to the Commission by the OAU.
2. In the performance of its tasks and to enhance its efficiency, the Charter also makes provision for the Commission to work with other partners in the field of human rights. Article 45 (1) (c) of the African Charter on Human and Peoples' Rights provides that the Commission shall co-operate with other African and International Institutions concerned with the promotion and protection of human and peoples' rights. In accordance with this article, the African Commission on Human and Peoples' Rights has since its inception granted observer status to 231 human rights NGOs.
3. The granting of this status enables the NGOs to participate directly in the Commission's activities. Rules 75 and 76 of the Rules of Procedure of the African Commission ensure this participation in the Commission's Sessions by requesting the Secretary to the Commission to inform all NGOs with observer status of the days and agenda of the forthcoming Session, at least four weeks before the Session. NGOs with observer status can then authorize their representatives to attend and participate in the public Sessions of the Commission and its subsidiary bodies. Participation can be in either written or oral forms.
4. Apart from participating in the sessions, all documents such as final communiqués of the session and other relevant documents have to be sent by the Secretariat to all NGOs with observer status.
5. Another benefit enjoyed by NGOs with observer status is the preparation of 'shadow' reports on the human rights situation in their countries. These 'shadow' reports enable the Commission to have a constructive dialogue with a State representatives when that country's periodic report is being considered.
6. During its 11th Ordinary Session held in Tunis, Tunisia, the Commission reiterated its desire to co-operate with NGOs in the promotion and protection of human and peoples' rights on the continent. In order to encourage and ensure reciprocal commitment on the part of its NGO partners, it was decided that all NGOs that have observer status with the Commission should submit their activity reports once every two (2) years from the date the said status was granted.
7. The Commission's readiness to co-operate with national, regional and international Human Rights NGOs is further emphasized, and its importance stressed in the Mauritius Plan of Action 1996 - 2001, which was adopted at the Commission's 20th Session. The said Plan proposes the creation of an exchange and communication network, especially with regards to NGOs operating in Africa, to establish an appropriate mechanism for promotional and protective activities in Africa. This network is intended to enhance co-operation amongst NGOs and the Commission concurrently.
8. The present status of submission of the activity reports of NGOs in compliance with the decision taken at the 11th Session of the Commission, indeed leaves much to be desired. Out of 231 NGOs that had been granted observer status by October 1998, 197 were expected to have submitted all due and overdue reports. Out of this number, only 26 have submitted all their reports up to date, 48 have submitted some of the reports and 114 have submitted none at all. This clearly shows the extent of the lack of commitment on the part of these NGOs.

9. It is also clear that the Commission continues granting observer status to NGOs, while it is not adequately informed by most of them about what work they are doing in the sphere of human rights or how they are helping to promote and/or protect human rights in Africa. The very essence of having NGOs as partners in creating a culture of recognition of and respect for human rights on the African continent is thereby betrayed.
10. Note must also be taken of the fact that some of these NGOs on occasion, have been found to use their granted status to raise funds which is sometimes totally misused, or is used for purposes other than the promotion and protection of human rights. The fear, therefore, that some of them may have either changed their mandate or shifted their focus to issues other than human rights becomes legitimate.
11. To address this situation, it is hereby recommended that the Commission revise its criteria for granting and enjoying observer status.
12. The Conference of the Heads of States and Governments of the Organization of Africa (OAU), as its Thirty-Fourth Ordinary Session [AHG/Dec. 126 (XXXIV) para. 3], requested the African Commission to review its criteria for granting and enjoying observer status to NGOs.

Therefore,

The African Commission on Human and Peoples' Rights, meeting at its 24th Ordinary Session from 22nd to 31st October 1998, in Banjul, The Gambia,

Recalling that the African Charter on Human and Peoples' Rights, which entered into force on 21 October 1986, mandates the African Commission on Human and Peoples' Rights under Article 45 (1)(c) to co-operate with other African national and international institutions concerned with the promotion and protection of human and peoples' rights;

Recalling further its decision taken during its Second Ordinary Session held in Dakar, Senegal, in February 1988, to grant observer status to NGOs working in the field of human rights in Africa;

Also recalling Rules 75 and 76 of the Commission's Rules of Procedure which further emphasise this co-operation;

Aware of the Mauritius Plan of Action which emphasises the importance of co-operation with NGOs,

Convinced that such co-operation will provide NGOs with the support and opportunity to work closely with the Commission, and recognising the invaluable role institutions such as NGOs can play in the enhancement of human rights in Africa;

Further convinced that for any meaningful co-operation to take place, there has to be commitment and reciprocity on the part of all parties;

Bearing in mind the decision taken at its 11th Ordinary Session requiring all NGOs having observer status to submit their activity reports to the Commission at least once every two years;

Convinced that the submission of activity reports by NGOs is a way of enhancing the protection of human rights, and the co-operation between the Commission and NGOs;

Firmly convinced that the said reports can be very invaluable not only to the Commission, but also to the ever increasing number of human rights workers around the world;

Considering the request of the Conference of Heads of State and Governments of the OAU to review the criteria for granting observer status to NGOs;

EXPRESSES its profound appreciation to those NGOs which have submitted their reports regularly;

NOTES WITH CONCERN the fact that the majority of NGOs whose reports are due have not done so, and have ceased communicating with the Commission;

DECIDES that representatives of NGOs that have applied for observer status should be present to be interviewed during the consideration of their application;

DECIDES ALSO to review, in conformity with the Decision AHG/Dec.126(XXXIV) by the Conference of the Heads of State and Government, the criteria for obtaining and enjoying observer status with the Commission;

INVITES NGOs which have observer status with the Commission but which have not yet submitted their overdue reports, to do so before the 27th Ordinary Session of the Commission.

DECIDES FINALLY to revoke observer status of any NGOs that do not submit any activity reports at the 27th Ordinary Session.

REQUESTS the Secretary to the Commission to submit a report on the implementation of this resolution at each Session.

Banjul, 31st October 1998.

RESOLUTION ON GRANTING OBSERVER STATUS TO NATIONAL HUMAN RIGHTS INSTITUTIONS IN AFRICA

BACKGROUND

In the preamble of the African Charter on Human and Peoples' Rights adopted at the 18th Conference of Heads of State and Government in Nairobi in June 1981, Member States of the Organization of African Unity reaffirmed

"their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and United Nations."

In the same preamble, African Countries pledged to "...coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights."

With the aim of concretizing this commitment, Article 26 of the African Charter on Human and Peoples' Rights stipulates that :

"States Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter."

The use of the word "allow" suggests not just encouraging and promoting the establishment of National Institutions but also developing a mutually cooperative relationship in order to "promote and ensure, through teaching, education and publication, respect for the rights and freedoms contained in the present charter ..." (Article 25).

National Institutions, therefore, are an essential partner in the implementation of the Charter at National Level. It is noted that the Mauritius Plan of Action (1996-2001) envisage workshops on national institutions as one of its promotional activities. It also seeks the cooperation of national institutions in fulfilling its mandate of promoting and protecting human and peoples' rights.

Finally, the 2nd Seminar of Ambassadors of African States to the OAU held in Addis Ababa, 8th - 9th September 1998 recognized the importance of National Institutions and urged Governments to accord them appropriate support.

African States in general and the African Commission on Human and Peoples' Rights in particular took an active part in the deliberations of the World Conference on Human Rights which was held in Vienna in June 1993. The Vienna Conference's Declaration and Programme of Action reaffirmed :

"the important and constructive role played by national institutions for the promotion and protection of Human Rights, in particular in their advisory role to the competent authorities, their role at remedying human rights violations, in the dissemination of information and education in human rights."

The World Conference on Human Rights also encouraged:

"the establishment and strengthening of national institutions..." and recognized "... that it is the right of each State to choose the framework which is best suited to its particular needs at the national level..."

At this Conference a formal status was granted to the International Committee for Coordination of National Institutions as a statutory liaison instrument of the United Nations system. This Committee shall organize a biennial world meeting of national institutions.

At the International level, the United Nations Human Rights Commission approved by its Resolution 1992/54 of the 3rd of March 1992 under the heading "**Principles Relating to the Status of National Institutions**", also known as the Paris Principles, rules which define the mandate of such institutions. The General Assembly of the United Nations endorsed these principles in its Resolution 48/144 of 20th of December 1993.

The objective of these principles is to guarantee the independence of national institutions in their work and pluralism in their composition. The central mission of the national institutions is to play an advisory role to the government, parliament and other relevant bodies and authorities involved in giving opinion and making recommendations on all issues related to the promotion and protection of human rights.

In Africa, the trend to establish national institutions has continued to develop especially after 1991. At present Africa has more than twenty (20) national human rights institutions which are represented in the International Coordination Committee by Cameroon, Morocco, South Africa and Togo.

At the first conference of national human rights institutions in Africa held in Yaounde, Cameroon, from 5th to 7th February 1996 participants adopted the Yaounde Declaration which commended "...the creation of new National Institutions in Africa..." and expressed the hope that these institutions will be given "... a proper representative status on the African Commission." At the 2nd Conference of African National Institutions held in Durban, 1st - 3rd July 1998, the need for a clear relationship and a unique status in the African Commission were reiterated.

Since the Mauritius session, the issue of African national human rights institutions has always been included on the agenda of meetings of the Commission. A paper on this subject was presented by Commissioner K. Rezag-Bara at the 21st Ordinary Session of the Commission held in Nouakchott, Mauritania in April 1997. The Commission decided at its 22nd Session held in Banjul in November 1997 to entrust Commissioners K. Rezag-Bara and N. Barney Pityana with the task of preparing a draft resolution on the advisory status of national institutions in the African Commission on Human and Peoples' Rights. The matter was deferred for finalization at this session.

Therefore,

The African Commission on Human and Peoples' Rights, meeting at its 24th Ordinary Session from 22nd to 31st October 1998, in Banjul, The Gambia,

Considering the preamble of the African Charter on Human and Peoples' Rights which reaffirms the adherence of African States to "human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the organization of African Unity, the Movement of Non-Aligned countries and the United Nations";

Considering that Article 26 of the African Charter on Human and Peoples' Rights stipulates that "States Parties to the present Charter shall have the duty to ... allow the establishment and the improvement of appropriate national institutions entrusted with the promotion and protection of rights";

Considering the recommendation adopted in the Programme of Action of the World Conference on Human Rights held in Vienna, Austria in June 1993 and United Nations resolutions on human rights, particularly resolution 1992/54 of 3rd March 1992 of the Commission Human Rights and resolution 48/134 of 20th of December 1993 of the United Nations General Assembly;

Considering the decisions, resolutions, recommendations and the final declaration adopted by the first conference of national human rights institutions in Africa held in Yaounde, Cameroon from 5th to 7th February 1996 and the 2nd Conference held in Durban, South Africa on 1st - 3rd July 1998;

Convinced of the importance of the role of national institutions in the promotion and protection of human rights and in creating public awareness in Africa with regard to the institutional defense of human rights;

1. **COMMENDS** the increasing interests shown by African states in establishing and strengthening national institutions for the protection and promotion of human rights based on the principles of independence and pluralism.
2. **RECOGNIZES** that it is the right of each state to establish, according to its sovereign prerogatives and within the most appropriate legislative framework, a national institution charged with the promotion and protection of human rights according to internationally recognized norms.
3. **NOTES WITH SATISFACTION** the significant participation of African National Institutions in the deliberations of the sessions of the African Commission on Human and Peoples' Rights and registers positively the wish expressed by several institutions to be granted an observer status with the Commission.
4. **DECIDES** to grant special observer status to any African national institution established in Africa and functioning according to internationally recognized norms and standards.

(a) that the following criteria for the status of affiliated institution shall apply:

- the national institution should be duly established by law, constitution or by decree;
- that it shall be a national institution of a state party to the African Charter;
- that the national institution should conform to the Principles relating to the Status of National Institutions, also known as the Paris Principles, adopted by the General Assembly of the United Nations under Resolution 48/144 of 20th December 1993.
- that a National Institution shall formally apply for status in the African Commission.

(b) that such institutions shall have the following rights and responsibilities.

- be invited to sessions of the African Commission according to rule 6 of the Rules and Procedures,
- be represented in public sessions of the commission and its subsidiary bodies,
- participate, without voting rights, in deliberations on issues which are of interest to them and to submit proposals which may be put to the vote at the request of any member of the Commission.

- (c) that any national institution shall be required to submit reports to the Commission every two years on its activities in the promotion and protection of the rights enshrined in the Charter and;
- (d) that the National Institution will assist the Commission in the promotion and protection of human rights at a national level.

Banjul, 31st October 1998

RESOLUTION ON THE PEACE PROCESS IN GUINEA BISSAU

The African Commission on Human and Peoples' Rights meeting at its 24th Ordinary Session in Banjul, The Gambia, from 22nd to 31st October 1998.

Concerned by the situation prevailing in Guinea Bissau and especially by the numerous violations of human rights resulting from the situation of war (conflict) in this country since June 1998,

Noting with satisfaction the favourable evolution of the conflict towards direct dialogue between the belligerents,

RECOGNIZES the efforts initiated by the Economic Community of West African States (ECOWAS) and the Portuguese speaking countries community (PSCC) in order to find a peaceful settlement of the Guinea Bissau conflict,

COMMENDS the continuation of negotiations between parties to the conflict and pays tribute to H.E. Colonel (Rtd) Yahya Jammeh, President of the Republic of the Gambia for his mediation,

EXPRESSES ITS SUPPORT to the ongoing peace process and calls on parties to the conflict and Member States of the ECOWAS and PSCC to take necessary measures to ensure restoration of peace in Guinea Bissau.

Banjul, 31st October 1998

RESOLUTION ON THE CRITERIA FOR GRANTING AND ENJOYING OBSERVER STATUS TO NON-GOVERNMENTAL ORGANISATIONS WORKING IN THE FIELD OF HUMAN RIGHTS WITH THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights, meeting in its 25th Ordinary Session, held in Bujumbura, Burundi, from 26 April - 5 May 1999.

Considering the provisions of article 45 of the African Charter on Human and Peoples' Rights, which establishes the competence and determines the mandate of the Commission;

Considering the Grand Baie (Mauritius) declaration and plan of action, adopted at the 1st African Ministerial Conference on Human Rights (12-16 April 1999), which «recognises the contribution made by African NGOs to the promotion and protection of human rights in Africa ...»;

Considering the provisions of Chapter XIII (Articles 75 and 76) of the Rules of Procedure of the Commission regarding representation of, and consultation with NGOs by the African Commission on Human and Peoples' Rights;

Considering that since its establishment in October 1987, 231 African and international non-governmental organisations have been granted observer status with the African Commission on Human and Peoples' Rights;

Considering the Decision AHG/dec.126(XXXIV) of the Assembly of Heads of State and Government which requests the African Commission on Human and Peoples' Rights to «undertake a review of the criteria for observer status with the Commission, with a view to enhanced efficiency and co-operation, and to suspend the granting of the said status until the adoption of the new criteria ...»;

Convinced of the need to strengthen its co-operation and partnership with NGOs working the field of human rights;

ADOPTS the new criteria for granting and enjoying observer status, the text of which is annexed to the present resolution;

DECIDES that the new criteria shall immediately enter into force;

REQUESTS the Secretary to the Commission to report at every Ordinary Session on the implementation of the present resolution.

ANNEX - CRITERIA FOR THE GRANTING OF AND FOR MAINTAINING OBSERVER STATUS WITH THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Chapter I

1. All Non-Governmental Organisations applying for observer status with the African Commission on Human and Peoples' Rights shall be expected to submit a documented application to the Secretariat of the Commission, with a view to showing their willingness and capability work for the realisation of the objectives of the African Charter on Human and Peoples' Rights.
2. All organisations applying for observer status with the African Commission shall consequently:
 - (a) Have objectives and activities in consonance with the fundamental principles and objectives enunciated in the OAU Charter and in the African Charter on Human and Peoples' Rights;
 - (b) Be organisations working in the field of human rights;
 - (c) Declare their financial resources.
3. To this effect, such an Organisation shall be requested to provide:
 - (a) A written application addressed to the Secretariat stating its intentions, at least three months prior to the Ordinary Session of the Commission which shall decide on the application, in order to give the Secretariat sufficient time in which to process the said application;
 - (b) Its statutes, proof of its legal existence, a list of its members, its constituent organs, its sources of funding, its last financial statement, as well as a statement on its activities.
4. The statement of activities shall cover the past and present activities of the Organisation, its plan of action and any other information that may help to determine the identity of the organisation, its purpose and objectives, as well as its field of activities.
5. No application for Observer Status shall be put forward for examination by the Commission without having been previously processed by the Secretariat.
6. The Commission's Bureau shall designate a rapporteur to examine the dossiers. The Commission's decision shall be notified without delay to the applicant NGO.

Chapter II: PARTICIPATION OF OBSERVERS IN PROCEEDINGS OF THE AFRICAN COMMISSION

1.
 - a) All observers shall be invited to be present at the opening and closing sessions of all Sessions of the African Commission.
 - b) An observer accredited by the Commission shall not participate in its proceedings in any manner other than as provided for in the Rules of Procedure governing the conduct of sessions of the African Commission.
2. All observers shall have access to the documents of the Commission subject to the condition that such documents:
 - a) shall not be of a confidential nature;
 - b) deal with issues that are of relevance to their interests.

The distribution of general information documents of the African Commission shall be free of charge; the distribution of specialised documents shall be on a paid-for basis, except where reciprocal arrangements are in place.
3. Observers may be invited specially to be present at closed sessions dealing with issues of particular interest to them.
4. Observers may be authorised by the Chairman of the African Commission to make a statement on an issue that concerns them, subject to the text of the statement having been provided, with

sufficient lead-time, to the Chairman of the Commission through the Secretary to the Commission.

5. The Chairman of the Commission may give the floor to observers to respond to questions directed at them by participants.
6. Observers may request to have issues of a particular interest to them included in the provisional agenda of the African Commission, in accordance with the provisions of the Rules of Procedure.

Chapter III: RELATIONS BETWEEN THE AFRICAN COMMISSION AND OBSERVERS

1. Organisations enjoying observer status shall undertake to establish close relations of co-operation with the African Commission and to engage in regular consultations with it on all matters of common interest.
2. NGOs enjoying observer status shall present their activity reports to the Commission every two years.
3. Administrative arrangements shall be made, whenever necessary, to determine the modalities of this co-operation.

Chapter IV: FINAL PROVISIONS

1. The provisions of the General Convention on the privileges and immunities of the OAU and those of the Headquarters Agreement of the African Commission shall not apply to observers except as regards the granting of visas.
2. The Commission reserves the right to take the following measures against NGOs that are in default of their obligations:
 - non-participation in sessions;
 - denial of documents and information;
 - denial of the opportunity to propose items to be included in the Commission's agenda and of participating in its proceedings.
3. Observer status may be suspended or withdrawn from any organisation that does not fulfil the present criteria, after deliberation by the Commission.

Bujumbura, 5 May 1999.

RESOLUTION ON THE SITUATION IN COMOROS

The African Commission on Human and Peoples' Rights, meeting in its 25th Ordinary Session, in Bujumbura, Burundi, from 26 April – 5 May 1999;

Recalling the military *coup d'état* which took place on 30 April 1999 in Comoros, which resulted in the overthrow of the Government of the interim President, Mr. TADJEDDINE BENSALD by the Army Chief of Staff, Colonel AZALI ASSOUMANE;

Recalling its resolution on military regimes in Africa, adopted at its 16th Ordinary Session, held in Banjul (The Gambia), from 25 October – 3 November 1994;

Noting that the Declaration and Plan of Action of Grand Baie (Mauritius), adopted by the First Ministerial Conference on Human Rights in Africa (12 – 16 April 1999) recognises that the causes of human rights violations in Africa include unconstitutional changes of government;

Reaffirming the fundamental principle that for a government to be legitimate it must be freely chosen by the people and through democratically elected representatives;

Recognising that the take-over of power by force is contrary to the provisions of articles 13(1) and 20(1) of the African Charter on Human and People's Rights and that accession to power by military regimes through *coups d'état* constitutes an intolerable infraction of the democratic principles of the rule of law;

DECLARES that the military *coup d'état* in Comoros is a grave and unacceptable violation of the rights of the Comorian People to freely choose their government;

CALLS ON the *de facto* military authorities in this country to ensure that:

- 1) The fundamental rights and freedoms contained in the constitutional provisions of Comoros are given pre-eminence over any other form of legislation that may emanate from the authorities in place.
- 2) The independence of the judicial power, especially as regards its mission to guarantee inalienable human rights, is respected.
- 3) The reinstatement of democratically instituted civilian rule is initiated without delay.

Bujumbura, 5th May 1999

RESOLUTION ON THE SITUATION IN NIGER

The African Commission on Human and Peoples' Rights, meeting in its 25th Ordinary Session, in Bujumbura (BURUNDI), from 26 April – 5 May 1999;

Recalling the military *coup d'état* which took place on 9 April 1999 in Niger, which during of President IBRAHIM MAINASSARA BARE was assassinated and his Government overthrown by the Presidential Guard under the Command of Colonel WANKE;

Recalling its resolution on military regimes in Africa, adopted at its 16th Ordinary Session, held in Banjul (The Gambia), from 25 October – 3 November 1994;

Noting that the Declaration and Plan of Action of Grand Baie (Mauritius), adopted by the First Ministerial Conference on Human Rights in Africa (12 – 16 April 1999) recognises that the causes of human rights violations in Africa include unconstitutional changes of government;

Reaffirming the fundamental principle that for a government to be legitimate it must be freely chosen by the people and through democratically elected representatives;

Recognising that the take-over of power by force is contrary to the provisions of articles 13(1) and 20(1) of the African Charter on Human and People's Rights and that accession to power by military regimes through *coups d'état* constitutes an intolerable infraction of the democratic principles of the rule of law;

DECLARES that the military *coup d'état* in Niger is a grave and unacceptable violation of the rights of the Nigerien People to freely choose their government;

CALLS ON the *de facto* military authorities in this country to ensure that:

- 1) The fundamental rights and freedoms contained in the constitutional provisions of NIGER are given pre-eminence over any other form of legislation that may emanate from the authorities in place.
- 2) The independence of the judicial power, especially as regards its mission to guarantee inalienable human rights, is respected.
- 3) The reinstatement of democratically instituted civilian rule is initiated without delay.

Bujumbura, 5th May 1999

RESOLUTION ON THE RATIFICATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

The African Commission on Human and Peoples' Rights, meeting in its 25th Ordinary Session, in Bujumbura, Burundi, from 26 April – 5 May 1999;

Taking note that the persistence of situations of war, famine and underdevelopment bring about particularly negative consequences for the African child population, especially their physical, intellectual and psychological development;

Considering that one of the consequences of this situation is manifested all over the continent, with thousands of displaced, refugee, handicapped, orphaned children, living in conditions of malnutrition, sickness, even misery, are obliged to do illegal labour, prostitution and delinquency, without any prospects;

Convinced that the promotion and defence of the rights of the child is the only way of safeguarding the future of the African continent;

Considering that the African Charter on the Rights and Welfare of the Child constitutes a prime legal framework towards this end, and that, consequently, its entry into force is urgent;

INSTANTLY CALLS ON all States Parties to the African Charter on Human and Peoples' Rights that are yet to do so to ratify the said Charter, to allow its entry into force without further delay.

Bujumbura, 5 May 1999

RESOLUTION ON THE EXTENSION OF THE MANDATE OF THE SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

The African Commission on Human and Peoples' Rights, meeting in its 25th Ordinary Session, in Bujumbura, Burundi, from 26 April – 5 May 1999,

Recalling its decision to designate Professor E.V.O. Dankwa to the post of Special Rapporteur on prisons and conditions of detention in Africa, taken at its 20th Ordinary Session;

Considering that the mandate of the Special Rapporteur is of two years' duration, subject to renewal;

Considering further that the initial term of two years of the Special Rapporteur comes to an end with the 24th Ordinary Session;

Emphasising the importance of the work of the Special Rapporteur as regards the search for solutions to the problems arising from the restriction of the freedom of the individual, in particular;

DECIDES TO EXTEND the mandate of the Special Rapporteur on prisons and conditions of detention in Africa for a period of two years, with effect from 31 October 1998.

Bujumbura, 5th May 1999

RESOLUTION ON THE DESIGNATION OF A SPECIAL RAPPORTEUR
ON THE RIGHTS OF WOMEN IN AFRICA

The African Commission on Human and Peoples' Rights, meeting in its 25th Ordinary Session, in Bujumbura, Burundi, 26 April – 5 May 1999,

Recalling the United Nations Convention on the Elimination of all Forms of Discrimination against Women;

Recalling further the provisions of article 18.3 of the African Charter on Human and Peoples' Rights;

Referring to the provisions of article 45.1(a) of the African Charter on Human and Peoples' Rights;

Recognising the need to place particular emphasis on the problems and rights specific to women in Africa;

Recalling further the decision taken by the Commission at its 23rd Ordinary Session, held in Banjul (The Gambia) to designate Mrs. Julienne Ondziel-Gnelenga to the post of Special Rapporteur on the Rights of Women in Africa;

DESIGNATES Mrs. Julienne Ondziel-Gnelenga to the post of Special Rapporteur on the Rights of Women in Africa for a period of two years, subject to renewal, with effect from 31st October 1998.

Bujumbura, 5th May 1999

Resolution concerning the Republic of Seychelles refusal to present its initial report

The African Commission on Human and Peoples' Rights, meeting in its 25th Ordinary Session, in Bujumbura, Burundi, 26 April – 5 May 1999,

Considering that, in accordance with article 62 of the Charter, the Republic of Seychelles has been summoned, at several occasions, to present at its 17th session, its initial report submitted on September 1994;

Considering that the Republic of Seychelles, despite repeated demands made to its Government, has refused, on several occasions, to abide by the Commission's request, under the pretext that the resources to implement such an obligation were not provided by the State;

Considering that such a persistent behaviour represents a deliberate violation of the Charter to which the Republic of Seychelles is party;

Considering that the Commission, at its 25th ordinary session in Bujumbura, Burundi, firmly condemned this unspeakable behaviour on behalf of an OAU Member State, party to the Charter;

INVITES the Heads of State and Government Conference to be held in Algiers, in July 1999, to express their disapproval of such a persistent refusal that amounts to a deliberate violation of the Charter by the Republic of Seychelles

REQUESTS the Conference to invite Seychelles to abide by the Charter and to consider the appropriate measures to be taken against the Republic of Seychelles.

Bujumbura, 5th May, 1999.

ANNEX V

102/93 Constitutional Rights Project and Civil Liberties Organisation/Nigeria

Rapporteur: 17th Session: Commissioner Umozurike
18th Session: Commissioner Kisanga
19th Session: Commissioner Umozurike
20th Session: Commissioner Dankwa
21st Session: Commissioner Dankwa
22nd Session: Commissioner Dankwa
23rd Session : Commissioner Dankwa
24th Session : Commissioner Dankwa

Facts as submitted by the Author:

1. On 12 June 1993 a presidential election was held in Nigeria. Both foreign and local election monitoring groups observed the conduct of the election and were generally satisfied that the elections was free and fair.
2. Three days later, the National Electoral Commission began announcing the election results. The National Electoral Commission announced the results from 14 states including the Federal Capital Territory, Abuja, before it was restrained by an Abuja High Court from announcing the election results. On June 23 the Federal Military Government announced the annulment of the June 12 election results. Various reasons were given for this action. The

communication alleges that these reasons included the fact that the military government was not happy that Abiola, the Social Democratic candidate, appeared to have won the election.

3. Dissatisfied with the decision of the Federal Military Government to annul election results, Abiola, together with the Governors of all the States controlled by the Social Democratic Party, went to the Supreme Court to seek redress. Shortly thereafter the Federal Military Government promulgated several Decrees ousting the jurisdiction of the courts and restating the decision of the Nigerian government to annul the election results.
4. Decree No. 41 of 1993 states in part:
“Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, the African Charters on Human and Peoples’ Rights (Ratification and Enforcement) Act or any other enactment, no proceeding shall lie or be instituted in any court for, or on account of any act matter or thing done or purported to be done in respect of this Decree.”
5. The other Decrees promulgated are Presidential Election (Basic Constitutional and Transitional Provisions) (Repeal) Decree No. 39, 1993; Transition to Civil Rule (Disqualification and Prohibition of certain Presidential Aspirants)(Repeal) Decree No. 42 1993. These Decrees gave legal backing to the annulment of 12 June election results and ensure that the two presidential candidates were banned from contesting any Presidential elections in the country.
6. When activists and journalists protested the annulment of the elections, the government arrested and detained many persons, several of whom are named in the communication.
7. The government also seized thousands of copies of magazines. “The News” Magazine was proscribed by military decree in June 1993. Even prior to its proscription, copies of the magazine were seized by security agents and four of its editors declared wanted by the police. 50,000 copies of “Tempo”, a weekly news magazine, were seized by security agents and the police.

The State party’s response and observations:

8. The government has made no written submission in respect of this case. In an oral submission before the Commission (31 March 1996, Ouagadougou, Burkina Faso, Chris Osah, Head of Delegation), the government stated that the elections were held in circumstances that “the government felt were not propitious”. The representative of the government stated that “[A]nnulling the election and setting up a government, as was done, to all intents and purposes, was a coup”. The government admitted that many people were arrested and detained at the time the elections were annulled, but that “many have now been released”.
9. The government contends that it was within its own constitutional rights to make laws for the order and good governance of the country, which it did in annulling the election results. The government felt that there were irregularities which may not have been detected by the observers and that although the elections may have been adjudged to be free and fair by all, there were fundamental problems which the government could not brush aside. In such circumstances the government decided that rather than put in place a government that was going to create more problems, it should form a different government. The government formed was in any case not a military government but an interim national government in which people from both parties were appointed to serve.
10. The government maintains that these actions were justified because some people abandoned their offices and went to their villages, creating a chaotic situation. “What the government did was to salvage a situation that was bad. And whatever laws it made at that

time, I want this Commission to look at it in terms of [the government] holding a solution to the problem, not as if this were geared to any particular group of people or human rights activities...The government felt that it had to avoid chaos and it restored an interim government, rather than even perpetuating its own regime. I think the Commission should look rather carefully into that because it was not an ordinary situation. I could say it was just a military coup.”(See above statement of Chris Osah).

The Complaint:

11. The complainant alleges violation of the following Articles of the Charter 6 and 13.

Procedure before the Commission:

12. The communication was received on 29 July 1993.
13. On 6 January 1994 the Secretariat of the Commission notified the government of Nigeria.
14. On 22 September 1994 the Secretariat of the Commission sent a reminder to the Ministry of Foreign Affairs.
15. At the 16th Session, the Commission reiterated the need to send a mission to Nigeria. The Commission also decided to invoke Article 58 of the Charter by writing to the Chairman of the OAU, drawing his attention to the grave violations of human rights in Nigeria.
16. At its 16th session, the Commission has decided that the communication should be added to the other files that its Members going to Nigeria were to discuss with the military authorities of this country.
17. At the 17th session, held in March 1995, it was decided that the communication should be added to the cases to be taken up with the authorities by members of the mission to Nigeria.
18. On 20 April 1995 the Secretariat of the Commission sent letters to both complainants to inform them of this decision.
19. On 7 June 1995 the Secretariat to the Commission sent a letter to this effect to the Ministry of Foreign Affairs.
20. At the 18th session, held in Praia, Cape Verde, the Commission renewed its decision to join this file with those to be considered by the mission to Nigeria.
21. On 20 December 1995 the Secretariat of the Commission sent a letter to each complainant to this effect.
22. On 20 December 1995 a letter was sent to the government of Nigeria to this effect.
23. At the 19th session, held in March 1996, these cases were due for a decision on admissibility. The Commission heard Mr. Chidi Anselm Odinkalu who was duly instructed to appear for the complainants in all the cases except the International PEN, and heard Mr. Osah and Mr. Bello for the Nigerian Government in reply.
24. At the end of the hearing the Commission took a general view on the cases and deferred taking final decision in each case pending the accomplishment of its proposed mission to Nigeria.

25. The Commission declared the communication admissible. It further decided that all the ten files on Nigeria in respect of which the parties were heard during this session should be entrusted to its mission to Nigeria for consideration during the proposed visit.
26. On 9 May 1996 a letter was sent to the Nigerian Government informing it that at the 19th session it renewed the decision taken at the 17th session to send a mission to the country. It also stated that the communication would be considered on the merits at the 20th session in October 1996.
27. On 9 May 1996 letters were sent to both complainants informing them that the communication had been declared admissible at the 19th session and that the Commission had decided to undertake a mission to Nigeria. The merits of the case would be examined at the 20th session.
28. At the 20th session held in Grand Bay, Mauritius, October 1996, the Commission decided to postpone the final decision on the merits of the case to the next session, awaiting the result of the planned mission to Nigeria.
29. On 10 December 1996 the Secretariat sent a note verbale to this effect to the government.
30. On 10 December 1996 the Secretariat sent letters to this effect to the complainants.
31. On 29 April, the Secretariat received a letter from Mr. Olisa Agbakoba entitled **Preliminary objections and observations** to the Mission of the Commission which visited Nigeria from March 7-14 1997. The document was submitted on behalf of Interights with regard to 14 communications, including this one.
32. Among the objections raised and or observations made were: the neutrality, Credibility and Relevance; and composition of the Mission.
33. At its 21st session held in April 1997, the Commission postponed taking decision on the merits to the next session, pending the submission of scholarly articles and court case by the complainants to assist it in its decision. The Commission also awaits further analysis of its report of the mission to Nigeria.
34. On 22 May 1997, the complainants were informed of the Commission's decision, while the State was informed on May 28 1997.
35. At the 22nd Ordinary session, the Commission postponed taking a decision to the next session pending a discussion of the Nigerian Mission report.
36. At the 23rd Ordinary session held in Banjul, The Gambia from 20-29 April 1998, the Commission postponed consideration of this case due to lack of time.
37. On 25 June 1998, the Secretariat of the Commission sent letters to the parties involved informing them of the status of the case.
38. During the 24th Ordinary session, the complainants furnished the Commission with a "supplementary submission on pending communications on Nigeria", basically urging the Commission to continue consideration of communications against Nigeria including the instant one because the violations have not abated, and the change in government following the death of General Sani Abacha has not changed any State responsibility of Nigeria.

THE LAW

Admissibility

39. Article 56 of the African Charter reads:

"Communications...shall be considered if they:

Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,..."

40. The annulment of the elections was brought before various Nigerian courts by various parties, as was the seizure of the magazines. None of these actions resulted in a remedy of the prejudice alleged, either reinstatement of the election results or compensation for the confiscated magazines.

41. Additionally, the jurisdiction of the courts to entertain these actions in the first place is in serious question. Decree No. 43, like almost all decrees promulgated by the military government, contains ouster clause which specifies that the Decree cannot be challenged in the national courts. The ouster clauses create a legal situation in which the judiciary can provide no check on the executive branch of government. A few courts in the Lagos district have occasionally found that they have jurisdiction; in 1995 the Court of Appeal in Lagos, relying on common law, found that courts should examine some decrees notwithstanding ouster clauses, where the decree is "offensive and utterly hostile to rationality." (Reprinted in Constitutional Rights Journal). In a unanimous opinion the court of Appeal Holden at Lagos on December 12 1996 in the case of Chief Gani Fawehinmi v General Sani Abacha, Attorney-General of the Federation, State Security Services, Inspector General of Police, held that the African Charter being the joint effort of States, no legislative body in Nigeria could oust its operation and application in Nigeria. Dr. A.H. Yadudu, Special Adviser (Legal Matters) to the head of State of Nigeria underscored the importance of this case in a written address to the members of the Commission to Nigeria on Friday, March 14 1997. However, it is fair to state that at the time the case came before the Commission no effective legal remedy existed in Nigeria of which the appellants could avail themselves.

42. Furthermore, the Constitution (Modification and Suspension) specifies that even decrees that may lack an internal ouster clause cannot be challenged. Thus, Nigerians face huge legal obstacles in challenging any new law.

43. The Commission, in its decision on communication 129/94, decided that in this situation, "it is reasonable to presume that domestic remedies will not only be prolonged but are certain to yield no results."(ACHPR\S1\129/94:8).

44. For these reasons the Commission declared the communication admissible.

Merits

45. In his presentation at the 19th session, the representative of the complainants expressed his view that an amicable resolution of the alleged violation of Article 13, concerning the annulled elections, was impossible because the government had already indicated that the issue was not negotiable. The representative of the complainant requested the Commission to clarify the legal situation by indicating if there had been a violation of the Charter.

46. The government of Nigeria, through its official representative, referred to "irregularities that may not have been detected by the [international] observers" and that "though the elections may have been adjudged free and fair by all", they were held in "circumstances that the government felt were not propitious." (See statement of Osah, above.) The government stated that "[A]nulling the elections and setting up a government, as was done, to all intents and purposes, was a coup". These statements accord with the complainant's argument that the question of the election can no longer be the subject of meaningful negotiation.

47. Although the present government contends that there were "irregularities" in the elections, it fails to explain what these were. The government acknowledges that international observers of the elections, applying international standards, judged them to be free and fair. Yet it discounted the judgement of these international observers and substituted its own, unsupported, judgment.
48. A basic premise of international human rights law is that certain standards must be constant across national borders, and governments must be held accountable to these standards. The criteria for what constitutes free and fair elections are internationally agreed upon, and international observers are put in place to apply these criteria. It would be contrary to the logic of international law if a national government with a vested interest in the outcome of an election, were the final arbiter of whether the election took place in accordance with international standards. In the case the government does not even attempt to defend its decision to overrule the judgement of international observers.
49. Article 13.1 of the Charter reads:
"Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law."
50. To participate freely in government entails, among other things, the right to vote for the representative of one's choice. An inevitable corollary of this right is that the results of free expression of the will of the voters are respected; otherwise, the right to vote freely is meaningless. In light of this, the annulment of the election results, which reflected the free choice of the voters, is in violation of Article 13.1.
51. Article 20.1 of the Charter provides:
"[All peoples] shall freely determine their political status...according to the policy they have freely chosen."
52. The right of a people to determine their "political status" can be interpreted as involving the right of Nigerians to be able to choose freely those persons or party that will govern them. It is the counterpart of the right enjoyed by individuals under Article 13.
53. The election at issue here, held in conditions adjudged to be free and fair by international observers, was an exercise of the right of Nigerians to freely determine this political status. The subsequent annulment of the results by the authority in power is a violation of this right of the Nigerian people.
54. Article 6 of the African Charter guarantees that:
"Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."
55. The government does not dispute that many people, including human rights activists and journalists, were detained without having charges brought against them and without the possibility of bail. The government maintains that "many" of these individuals have since been released. Where individuals have been detained without charges being brought, particularly since the time of the elections, a period of now over three years, this constitutes an arbitrary deprivation of their liberty and thus violates Article 6.
56. In the words of Article 9 of the African Charter:
*"1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law."*
57. The government justifies its actions with regard to the journalists and proscription of publications by reference to the "chaotic" situation that transpired after the elections were annulled. The Commission decided, in its decision on communication 101/93, with respect to freedom of association, that "competent authorities should not enact provisions which limit the

exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards" (ACHPR/A/101/93:18).

58. With these words the Commission states a general principle that applies to all rights, not only freedom of association. Government should avoid restricting rights, and take special care with regard to those rights protected by constitutional or international human rights law. No situation justifies the wholesale violation of human rights. In fact, general restrictions on rights diminish public confidence in the rule of law and are often counter-productive.

59. Given that Nigerian law contains all the traditional provisions for libel suits, a governmental proscription of a particular publication, by name, is of particular concern. Ad hominem Legislation, that is laws made to apply to specifically one individual or legal entity raise the acute danger of discrimination and lack of equal treatment before the law guaranteed by Article 2. The proscription of "The News" thus constitutes a violation of Article 9. Equally, the seizure of 50,000 copies of "Tempo" and "The News" Magazine justified in the face of Article 9 of the Charter.

FOR THE ABOVE REASONS, THE COMMISSION

holds violations of Articles 1,6, 9 and 13 of the African Charter;

appeals to the government of Nigeria to release all those who were detained for protesting against the annulment of the elections; and to preserve the traditional functions of the court by not curtailing their jurisdiction.

Banjul, 31 October 1998.

Rapporteur: 17th Session: Commissioner Janneh
18th Session: Commissioner Umozurike
19th Session: Commissioner Umozurike
20th Session: Commissioner Dankwa
21st Session: Commissioner Dankwa
22nd Session: Commissioner Dankwa
23rd Session: Commissioner Dankwa
24th Session: Commissioner Dankwa

Facts as submitted by the complainant:

1. Communications 105/93, 128/94 and 130/94 state that after the annulment of the Nigerian elections of 12 June 1993, several decrees were issued by the government. These proscribed the publication of two magazines. State officials sealed the premises of the two magazines embarking upon frequent seizures of copies of magazines critical of its decisions and arrest of newspaper vendors selling such magazines.
2. By decree, the government also proscribed 10 newspapers published by four different media organisations. The complainant alleges that the newspapers and their operators were not previously accused of any wrongdoing either publicly or before a court of law or given any opportunity to defend themselves before their premises were sealed up on July 22 and they were subsequently outlawed by Decree 48 of 1993, which was released on 16 August 1993.
3. Constitution (Suspension and Modification) Decree no. 107 of 17 November 1993 Article 5 specifies: "No question as to the validity of this Decree or any other Decree made during the period 31st December 1983 to 26th August 1993 or made after the commencement of this Decree or of an Edict shall be entertained by a court of law in Nigeria."
4. On 16 August 1993, the Government also announced the promulgation of the Newspaper Decree No. 43 of 1993. By virtue of Section 7 of the Decree, it is an offence, punishable with either a fine of N250.000 or imprisonment for a term of 7 years or both for a person to own, publish or print a newspaper not registered under the Decree. The registration of existing newspapers under a previously subsisting law (the Newspaper Act) is extinguished by the Decree.
5. The decision whether or not to register a newspaper is vested exclusively in the Newspapers Registration Board set up under the Decree. Compliance with the formal pre-registration requirements stipulated in the Decree does not guarantee registration of a newspaper because the Newspaper Registration Board has total discretion to decide whether the registration of a newspaper is "justified having regard to the public interest". There are no procedures for challenging the Board's decision not to register a newspaper.
6. If the Board decides to register a newspaper, N100.000 must be paid as registration fee. Furthermore, N250.000 must be deposited into a fund to meet the amount of any penalty imposed on or damages awarded against the owner, printer, or publisher of the newspaper by a court of law in the future. Under the Newspapers Act (now repealed by Decree 43), a bond for N500 with sureties was sufficient security for possible penalties or damages which might be imposed on or awarded against a newspaper.
7. Although released by the Government on 16 August 1993, the Decree is given a retroactive commencement date to 23 June 1993 and persons intending to own, print or publish newspapers in Nigeria are obliged to apply for registration within three weeks of the commencement of the Decree (i.e. by 14 July 1993) after complication with pre-registration

requirements, thus making all newspapers in Nigeria immediately “illegal”, and owners, printers and publishers liable to be arrested and detained.

8. Communications 128/94 and 130/94 deal specifically with the events of 2 January 1994 when 50,000 copies of TELL magazine were seized by heavily armed policemen and other security officers on the printer’s premises. In addition, twelve films and fourteen plates, used for processing, were also confiscated. TELL is a popular weekly magazine whose aim is to promote and protect human rights in Nigeria. That week’s issue was entitled: “The Return of Tyranny - Abacha bares his fangs”. The story involved a critical analysis of certain legislation enacted by the military government which ousts the jurisdiction of the courts. The complainant stated that no remedies were available at the local level, the jurisdiction of the courts having been ousted in considering the validity of such actions.
9. Communication 152/96 was submitted by Constitutional Rights Project. It states that on 23 December 1995 Mr. Nosa Igiebor, the Editor in Chief of TELL Magazine was arrested and detained. The Constitutional Rights Project alleges that he was not told the reason for his arrest and that no charge has been made against him. Furthermore, Constitutional Rights Project alleges that he has been denied access to his family, doctors and lawyers and that he has received no medical help even though his health is deteriorating.
10. Constitutional Rights Project also claim that TELL Magazine was declared illegal and in violation of Decree No. 43 of 1993 which requires all newspapers to register with the Newspaper Registration Board and to pay a pre-registration fee of N250,000 and a non-refundable fee of N100,000. These payments would be put into a fund for payment of penalties from libel actions against the owner, publisher or printer. Constitutional Rights Project stated that Decree No. 43 of 1993 had been declared null and void by two different courts, namely the Ikeja High Court on 18 November 1993, and the Lagos High Court on 5 December 1993. The Nigerian Government did not appeal against these decisions.
11. In his oral arguments before the Commission, the complainants’ representative emphasised that the government’s prerogative to make laws for peace and good government does not entitle it to evade its obligations under international law.

The State Party’s Response and Observations:

12. The government has made no written submissions in respect of this communication. At the 19th session, held in March 1995 in Ouagadougou, Burkina Faso, the government sent a delegation of several persons. Mr. Chris Osah, Assistant Director General of the Legal and Treaties Department at the Ministry of Foreign Affairs, made the following statements in his presentation on the communication.
13. He stated that “Decree No. 43 of 1993 was made to underscore not only the government’s sovereign rights but also its policy of free enterprise. Registration fees are payable to an independent board. It is in the public interest that all newspaper providers or publishers should ensure registration of their enterprises. The government is convinced that such registration fees are reasonable and justifiable in any democratic society. In any case, many newspapers and magazines operate although they have not registered”.
14. On ouster of the jurisdiction of the courts, the government stated that “there is nothing particularly new about this. It is the nature of military regimes to provide for ouster clauses, the reasons being that for a military administration which has come in, the resources of litigation become too cumbersome for the government to do what it wants to do”.
15. As for retroactive effect, the government maintained that, although the decree technically did have retroactive effect, not a single newspaper was declared illegal or harassed for violating the decree.

The Complaint:

16. The communications allege violations of Articles 6, 7, 9, 14 and 16. of the Charter.

Procedure before the Commission:

17. **Communication 105/93** is dated 1 September 1993. The Commission was seized of the communication at the 14th Session. The state concerned was notified on January 1994.
18. **Communication 128/94** is not dated but was received at the Secretariat between January and April 1994. The Commission was seized of the communication at the 15th session. The text of the communication was sent to the state concerned on 29 July 1994.
19. **Communication 130/94** is dated 5 January 1994. The Commission was seized of the communication at its 15th session and the text was sent to the state on 29 July 1994. The procedure relating to these three cases is the same.
20. On 14 September 1994 a letter was sent to the complainants concerning communications no. 105/93, 128/94 and 130/94, asking whether all domestic remedies had been exhausted and whether any further seizures of TELL Magazine has occurred since 2 January 1994.
21. A reminder was sent by the Secretariat of the Commission to the government of Nigeria on 22 September 1994.
22. At the 16th session, held in October 1994 in Banjul, The Gambia, the Commission declared the communications admissible.
23. At the 17th session, held in March 1995 in Lomé, Togo, it was decided to delay final decision on the cases so that they might be taken up with the Nigerian authorities when the Commission undertook its mission to that country. It was also declared that the chairman of the OAU should be informed of the situation in Nigeria.
24. On 20 April 1995, a letter was sent by the Secretariat of the Commission to the complainants stating that the communications were declared admissible, and that a mission would be sent to Nigeria, and that a decision on the merits would be taken at the 18th session.
25. On 7 June 1995, a letter was sent by the Secretariat of the Commission to the government of Nigeria stating that the communications were declared admissible and that a mission would be sent to Nigeria.
26. On 1 September 1995, a letter was sent to the government of Nigeria stating that the communications would be heard on the merits at the 18th session of the Commission and inviting the government to send a representative.
27. At the 18th session of the Commission it was decided that the communications would be taken up by the mission to Nigeria, and if the government did not facilitate the visit, the Commission would at the next session adopt a decision on the facts available.
28. On 30 November 1995 a letter was sent to the complainants reflecting this decision.
29. On 30 November 1995 a note verbale was sent to the government of Nigeria reflecting this decision.
30. At the 19th session, the Commission heard Mr. Chidi Anselm Odinkalu, who was duly instructed to appear for all the complainants in all cases against Nigeria, except that brought by International PEN. The Commission heard Mr. Osah and Mr. Bello for the Nigerian

Government in reply. At the end of the hearing the Commission took a general view on the cases and deferred taking final decision in each case pending the accomplishment of its proposed mission to Nigeria.

31. On 9 May 1996 letters were sent to the Nigerian Government, Constitutional Rights Project and Media Rights Agenda informing them of the Commission's renewed decision to take a mission to the country and that the three communications detailed above would be considered on their merits at the 20th session in October 1996.
32. At the 20th session held in Grand Bay, Mauritius, October 1996, the Commission decided to postpone the final decision on the merits of the communications to the 21st session, awaiting the result of the planned mission to Nigeria.
33. On 10 December 1996 the Secretariat sent a note verbale to this effect to the government.
34. On 10 December 1996 the Secretariat sent letters to this effect to the complainants.
35. **Communication 152/96** is dated January, 1996.
36. On 5 February 1996 a letter was sent to the complainant acknowledging receipt of the communication and that the admissibility of the case would be examined at the 20th session in October 1996.
37. At the 19th session the communication was not examined.
38. At the 20th session held in Grand Bay, Mauritius October 1996, the Commission declared the communication admissible, and decided that it would be taken up with the relevant authorities by the planned mission to Nigeria. At the same time it was joined with communications 105/93, 128/94 and 130/94.
39. On 29 April, the Secretariat received a letter from Mr. Olisa Agbakoba entitled **Preliminary objections and observations** to the Mission of the Commission which visited Nigeria from March 7-14 1997. The document was submitted on behalf of Interights with regard to 14 communications including this one.
40. Among the objections raised and or observations made were on: the neutrality, Credibility and Relevance; and, composition of the Mission.
41. At its 21st session held in April 1997, the Commission postponed taking decision on the merits to the next session, pending the submission of scholarly articles and court case by the complainants to assist it in its decision. The Commission also awaits further analysis of its report of the mission to Nigeria.
42. On 22 May, the complainants were informed of the Commission's decision, while the State was informed on May 28.
43. From this date on, the procedure in respect of the communication is identical to that in communication 105/93, 128/94 and 130/94, above.
44. At the 22nd Ordinary session the Commission postponed taking a decision on the cases pending the discussion of the Nigerian Mission report.
45. At the 23rd ordinary session held in Banjul, The Gambia, the Commission postponed consideration of the case to the next session due to lack of time.
46. On 25 June 1998, the Secretariat sent letters to the parties concerned informing them of the status of the case.

THE LAW

Admissibility

47. Article 56 of the African Charter reads:

"Communications...shall be considered if they:...

Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged"

48. Specifically, in the four decisions the Commission has already taken concerning Nigeria, Article 56.5 is analyzed in terms of the Nigerian context. Communication 60/91 (Decision ACHPR/60/91) concerned the Robbery and Firearms Tribunal; Communication 87/93 (Decision ACHPR/87/93) concerned the Civil Disturbances Tribunal; Communication 101/93 (Decision ACHPR/101/93) concerned the Legal Practitioners Decree; and Communication 129/94 (ACHPR/129/94) concerned the Constitution (Modification and Suspension) Decree and the Political Parties (Dissolution) Decree.

49. All of the Decrees in question in the above communications contain "ouster" clauses. In the case of the special tribunals, these clauses prevent the ordinary courts from taking up cases placed before the special tribunals or from entertaining any appeals from the decisions of the special tribunals. (ACHPR/60/91:23 and ACHPR/87/93:22). The Legal Practitioners Decree specifies that it cannot not be challenged in the courts and that anyone attempting to do so commits a crime (ACHPR/101/93:14-15). The Constitution Suspension and Modification legal prohibited their challenge in the Nigerian Courts (ACHPR/129/94:14-15).

50. In all of the cases cited above, the Commission found that the ouster clauses render local remedies non-existent, ineffective or illegal. They create a legal situation in which the judiciary can provide no check on the executive branch of government. A few courts in the Lagos district have occasionally found that they have jurisdiction; in 1995 the Court of Appeal in Lagos, relying on common law, found that courts should examine some decrees notwithstanding ouster clauses, where the decree is "offensive and utterly hostile to rationality" (Reprinted in the Constitutional Rights Journal). It remains to be seen whether any Nigerian courts will be courageous enough to follow this holding, and whether the government will abide by their rulings should they do so.

51. In communication 152/96 the complainant states that Decree no. 43 has been declared null and void by two different courts, but these decisions have not been respected by the government. This is a dramatic illustration of the futility of seeking a remedy from the Nigerian courts.

52. For these reasons, consistent with its earlier decisions, the Commission declared the communications admissible.

Merits

53. Article 9 of the African Charter reads:

"1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law."

54. This Article reflects the fact that freedom of expression is a basic human right, vital to an individual's personal development, his political consciousness, and participation in the

conduct of public affairs in his country. The problem at hand is whether the decrees requiring the registration of newspapers, and prohibiting many of them, violate this Article.

55. A payment of a registration fee and a pre-registration deposit for payment of penalty or damages is not in itself contrary to the right to the freedom of expression. The government has argued that these fees are "justifiable in any democratic society", and the Commission does not categorically disagree.
56. However, the amount of the registration fee should not be more than necessary to ensure administrative expenses of the registration, and the pre-registration fee should not exceed the amount necessary to secure against penalties or damages against the owner, printer or publisher of the newspaper. Excessively high fees are essentially a restriction on the publication of news media. In this case, the fees required for registration, while high, are not so clearly excessive that they constitute a serious restriction.
57. Of more concern is the total discretion and finality of the decision of the registration board, which effectively gives the government the power to prohibit publication of any newspapers or magazines they choose. This invites censorship and seriously endangers the rights of the public to receive information, protected by Article 9.1. There has thus been a violation of Article 9.1.
58. Also of serious concern is the retroactivity of the decree. The government bases its defense on the non-enforcement of this aspect of the decree. The government representative offered this defense: "Article 7.2 of the Charter is very specific: "no one may be condemned", and we are saying that no one has been condemned. Second, it says "no penalty may be inflicted" we are also submitting that there has been no penalty inflicted...We are even going further to say that more than 3/4 of the newspapers in Nigeria have registered and yet nobody has taken them to court."
59. While it is reassuring to hear that no one has suffered under the retroactivity clause of the Decree No. 43, the Commission must take a stand on the issue of justice underlying Article 7.2 and condemn the literal, minimalist interpretation of the Charter offered by the representative of Nigeria. Article 7.2 must be read to prohibit not only condemnation and infliction of punishment for acts which did not constitute crimes at the time they were committed, but retroactivity itself. It is expected that citizens must take the laws seriously. If laws change with retroactive effect, the rule of law is undermined since individuals cannot know at any moment if their actions are legal. For a law-abiding citizen, this is a terrible uncertainty, regardless of the likelihood of eventual punishment.
60. Furthermore, the Commission unfortunately cannot rest total confidence in the assurance that no one and no newspaper has yet suffered under the retroactivity of Decree 43. Potential prosecution is a serious threat. An unjust but un-enforced law undermines, as above, the sanctity in which the law should be held. The Commission must thus hold that Decree no. 43 violates Article 7.2.
61. Communication 152/96 states that two different courts have declared Decree no. 43 null and void, without any result.
62. This shows not only a shocking disrespect by the Nigerian government for the judgments of the courts, it is also a violation of Article 7.1. The right to have one's cause heard by competent and independent courts must naturally comprise the duty of everyone, including the state, to respect and follow these judgments.
63. Decree No. 48 proscribes approximately 10 newspapers published by four different media organizations without having subjected them to the due process of the law. Decree No. 48 likewise permitted the newspapers and their operators to have their premises sealed

without being given any opportunity to defend themselves and without previously being accused of any wrongdoing before a court of law.

64. The Commission decided, in its decision on communication 101/93, with respect to freedom of association, that "competent authorities should not enact provisions which limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards."(ACHPRA\101/93:18).
65. With these words the Commission states a general principle that applies to all rights, not only freedom of expression. Governments should avoid restricting rights, and have special care with regard to those rights protected by constitutional or international human rights law. No situation justifies the wholesale violation of human rights. In fact, general restrictions on rights diminish public confidence in the rule of law and are often counter-productive.
66. According to Article 9.2 of the Charter, dissemination of opinions may be restricted by law. This does not mean that national law can set aside the right to express and disseminate one's opinions; this would make the protection of the right to express one's opinions ineffective. To allow national law to have precedent over the international law of the Charter would defeat the purpose of the rights and freedoms enshrined in the Charter. International human rights standards must always prevail over contradictory national law. Any limitation on the rights of the Charter must be in conformity with the provisions of the Charter.
67. In contrast to other international human rights instruments, the African Charter does not contain a derogation clause. Therefore limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies or special circumstances.
68. The only legitimate reasons for limitations to the rights and freedoms of the African Charter are found in Article 27.2, that is that the rights of the Charter "shall be exercised with due regard to the rights of others, collective security, morality and common interest."
69. The reasons for possible limitations must be founded in a legitimate state interest and the evils of limitations of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained.
70. Even more important, a limitation may never have as a consequence that the right itself becomes illusory.
71. The government has provided no evidence that the prohibition was for any of the above reasons given in Article 27.2. Given that Nigerian law contains all the traditional provisions for libel suits, so that individuals may defend themselves where the need arises, for the government to proscribe a particular publication, by name, is disproportionate and uncalled for. Laws made to apply specifically to one individual or legal personality raise the serious danger of discrimination and lack of equal treatment before the law, guaranteed by Article 3. The proscription of "The News" cannot therefore be said to be "within the law" and constitutes a violation of Article 9.2.
72. Communications 128/94 and 130/94 allege that 50,000 copies of TELL magazine were seized without any possibility of having the decision judged by a court of law, because of an article critical of the government.
73. In the present case, the government has provided no evidence that seizure of the magazine was for any other reason than simple criticism of the government. The article in question might have caused some debate and criticism of the government, but there seems to have been no information threatening to, for example, national security or public order in it. All of the legislation criticized in the article was already known to members of the public information, as laws must be, in order to be effective.

74. The only person whose reputation was perhaps tarnished by the article was the head of state. However, in the lack of evidence to the contrary, it should be assumed that criticism of the government does not constitute an attack on the personal reputation of the head of state. People who assume highly visible public roles must necessarily face a higher degree of criticism than private citizens; otherwise public debate may be stifled altogether.
75. It is important for the conduct of public affairs that opinions critical of the government be judged according to whether they represent a real danger to national security. If the government thought that this particular article represented merely an insult towards it or the head of state, a libel action would have been more appropriate than the seizure of the whole edition of the magazine before publication. The seizure of the TELL therefore amounts to a violation of Article 9.2.
76. Article 14 of the Charter reads
- "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."*
77. The government did not offer any explanation for the sealing up of the premises of many publications. Those affected were not previously accused in a court of law, of any wrongdoing. The right to property necessarily includes a right to have access to property of one's own and the right not for one's property to be removed. The Decrees which enabled these premises to be sealed up and for publications to be seized cannot be said to be "appropriate" or in the interest of the public or the community in general. The Commission holds a violation of Article 14. In addition, the seizure of the magazines for reasons that have not been shown to be in the public need or interest also violates the right to property.
78. In his oral argument, the complainant specifically raised the ouster of the court's jurisdiction over the decrees at issue here, denying the alleged victims the right to challenge the acts which affected them. The government offered the surprising defense that "[I]t is in the nature of military regimes to provide for ouster clauses", because without such clauses the volume of litigation would make it "too cumbersome for the government to do what it wants to do".
79. This argument rests on the assumption that ease of government action takes precedence over the right of citizens to challenge such action. It neglects the central fact that the courts are a critical monitor of the legality of government action, which no lawful government acting in good faith should seek to evade. The courts' ability to examine government actions and, if necessary, halt those that violate human rights or constitutional provisions, is an essential protection for all citizens.
80. It is true that if national tribunals are not deprived of their powers, they will almost certainly eventually pronounce on the legality of military government itself. The government representative's argument implicitly admits what the Commission has already said in its decision on communication 102/93, which is that military regimes rest on questionable legal ground. Government by force is in principle not compatible with the rights of peoples' to freely determine their political future.
81. A government that governs truly in the best interest of the people, however, should have no fears of an independent judiciary. The judiciary and the executive branch of government should be partners in the good ordering of society. For a government to oust the jurisdiction of the courts on a broad scale reflects a lack of confidence in the justifiability of its own actions, and a lack of confidence in the courts to act in accordance with the public interest and rule of law.

82. The Commission must therefore reject the defense of "the nature of military regimes" offered by the government's representative, and holds that the ouster of the court's jurisdiction violates the right to have one's cause heard, under Article 7.1.
83. Article 6 of the African Charter reads:
- "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."*
84. Communication 152/96 alleges that Mr. Nosa Igiebor was arrested and detained without being told any reason and without any charges being made.
85. The government has offered no substantive response to this allegation.
86. The Commission, in several previous decisions, has set out the principle that where allegations of human rights abuses go uncontested by the government concerned, even after repeated notifications, the Commission must decide on the facts provided by the government at treat those facts as given (See, e.g., the Commission's decisions in communications 59/91, 60/91, 64/91, 87/91 and 101/93). Therefore the Commission finds that there has been a violation of Article 6.
87. Article 7.1 (c) of the African Charter reads:
- "1. Every individual shall have the right to have his cause heard. This comprises:*
-
- (c) The right to defense, including the right to be defended by counsel of his own choice;"*
88. Constitutional Rights Project alleges that Mr. Nosa Igiebor was denied access to lawyers. The government has made no response to this allegation. Therefore the Commission must take a decision on the facts as presented by the complainant. To be denied access to a lawyers is a violation of Article 7.1(c) even if there were no charges against Mr. Igiebor. People who are detained in violation of the Charter must not have lesser rights that those detained in conformity with the rules in Article 7.
89. Article 16 of the African Charter reads:
- "1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.*
- 2. States Parties to the present Charter shall take the necessary measures to protect the health go their people and to ensure that they receive medical attention when they are sick."*
90. Constitutional Rights Project alleges Mr. Nosa Igiebor was denied access to doctors and that he received no medical help even though his health was deteriorating through his detention. The government has made no response to this allegation. Therefore the Commission must take a decision on the facts as presented by the complainant.
91. The responsibility of the government is heightened in cases where the individual is in its custody and therefore someone whose integrity and well-being is completely dependent on the activities of the authorities. To deny a detainee access to doctors while his health is deteriorating is a violation of Article 16.

FOR THESE REASONS, THE COMMISSION

holds a violation of Article 6, 9.1, 9.2, 7.1(c), 7.2, 14, et 16 of the African Charter;

requests that the Government of Nigeria take the necessary steps to bring its law into conformity with the Charter.

Banjul, 31st October 1998.

Rapporteurs: 17th Session: Commissioner Badawi
18th Session: Commissioner Kisanga
19th Session: Commissioner Kisanga
20th Session: Commissioner Kisanga
21st Session: Commissioner Dankwa
22nd session: Commissioner Dankwa
23rd Session: Commissioner Dankwa
24th Session: Commissioner Dankwa

Facts as submitted by the authors:

1. These communications were submitted to the African Commission by International Pen, the Constitutional Rights Project, Interights [and Civil Liberties Organisation] respectively. They were joined because they all concern the detention and trial of Kenule Beeson Saro-Wiwa, a writer and Ogoni activist, president of the Movement for the Survival of the Ogoni People. The communications 139/94 and 154/96 also complain of similar human rights violations suffered by Mr. Saro-Wiwa's co-defendants, also Ogoni leaders.
2. The communications 137/94 and 139/94 were submitted in 1994 before any trial began. After the murder of four Ogoni leaders on 21 May 1994, following riot during a public meeting organised by Movement for the Survival of the Ogoni Peoples (MOSOP) representing the rights of those who lived in oil producing areas of Ogoni land, Saro-Wiwa and many hundreds of others were arrested, Saro-Wiwa himself on 22 May 1994 and the vice-president of MOSOP, Ledum Mitee, shortly thereafter. Both communications allege that Mr Saro-Wiwa was severely beaten during the first days of his detention and was held for several days in leg irons and handcuffs. He was also denied access to his lawyer and the medicine he needed to control his blood pressure, at times prevented from seeing his family, and held in very poor conditions.
3. In its communication, submitted on 9 September 1994, the Constitutional Rights Project included a list of 16 other Ogonis who had been held without charge or bail for what was at that time over three months. Both communications alleged that Mr. Saro-Wiwa had been detained because of his political work in relation to MOSOP. He had been detained five times for brief periods since the beginning of 1993, and released each time without charge, except on one occasion in mid-1993 where he was held for several weeks and charged with unlawful assembly.
4. The State Military Administrator declared that Mr. Saro-Wiwa and his co-defendants had incited members of MOSOP to murder four rival Ogoni leaders, but no charges were brought until 28 January 1995. In the months between arrest and the beginning of the trial, the defendants were not allowed to meet with their lawyers, and no information on the charges was provided to the defence.
5. In February 1995 the trial of the defendants began before a tribunal established under the Civil Disturbances Act. The three members of this tribunals were appointed directly by General Abacha in November 1994, although counsel for the Rivers State Administrator argued in August that the cases were within the exclusive jurisdiction of the Rivers State High Court, since Rivers State is where the offences occurred.
6. In June 1995 the Constitutional Rights Project submitted a supplement to its communication, alleging irregularities in the conduct of the trial itself: harassment of defence counsel, a military officer's presence at what should have been confidential meetings between defendants and their counsel, bribery of witnesses, and evidence of bias

on the part of the tribunal members themselves. In October 1995 PEN also copied to the Commission a letter it sent to General Abacha protesting the lack of concrete evidence and the unfair conduct of the trial.

7. On 30 and 31 October 1995, Ken Saro-Wiwa and eight of the co-defendants (Saturday Dabee, Felix Nuate, Nordu Eawo, Paul Levura, Daniel Gbokoo, Barinem Kiobel, John Kpunien and Baribor Bera) were sentenced to death, while six others including Mr. Mitee were acquitted. The CRP submitted an emergency supplement to its communication on 2 November 1995, asking the Commission to adopt provisional measures to prevent the executions.
8. The Secretariat of the Commission faxed a note verbale invoking interim measures under revised Rule 111 of the Commission's Rules of Procedure to the Ministry of Foreign Affairs of Nigeria, the Secretary General of the OAU, the Special Advisor (Legal) to the Head of State, the Ministry of Justice of Nigeria, and the Nigerian High Commission in The Gambia. The note verbale pointed out that as the case of Mr. Saro-Wiwa and the others was already before the Commission, and the government of Nigeria had invited the Commission to undertake a mission to that country, during which mission the communications would be discussed, the executions should be delayed until the Commission had discussed the case with the Nigerian authorities.
9. No response to this appeal was received before the executions were carried out.
10. On 7 November 1995 the Provisional Ruling Council (PRC) confirmed the sentences of death and on 10 November 1995 all the accused persons were executed in secret at the Port Harcourt Prison. By section 7 of the Civil Disturbances (Special Tribunals) Decree No. 2 of 1987, under which the executed persons were tried, the PRC are required to receive the records of the trial Tribunal before confirmation of the decision is possible. These records were not prepared by the Tribunal and so were not available for the PRC.
11. In 1996 the Secretariat received a communication from Interights representing Ken Saro-Wiwa Jr. It alleged that the condemned persons had been detained arbitrarily prior to and during the trial and that they had been subjected to torture in the Army camp. Furthermore it alleged serious irregularities concerning the conduct of the trial: that the tribunals that convicted the accused persons were not independent; that there was no presumption of innocence; that the accused persons had not been given time or facilities in which to prepare their defence; that they had been denied legal representation by a counsel of their choice; that there was no right of appeal and that following the sentencing the persons were held incommunicado. Interights asserted that they were tried, convicted and sentenced to death for the peaceful expression of their views and opinions on the violations of the rights of the Ogoni people.
12. In December 1996 the Secretariat received a communication from the Civil Liberties Organisation, alleging that the Civil Disturbances (Special Tribunal) Decree is invalid because it was made without participation of the people; that its composition with military officers and members of the Provisional Ruling Council meant that it could not be impartial; and that the lack of judicial review of the decisions of this tribunal amount to a violation of the right to appeal and fair trial. The communication alleges that the trial, conviction and sentencing of Ken Saro-Wiwa and others violated Articles 7.1(b)(c) and (d) of the African Charter, and that the execution of these persons violates Article 4. The communication alleges that the arraignment of 19 more alleged suspects constitutes another potential violation of the Charter.]

The Complaint:

13. The Communications allege violation of Articles 1, 4, 5, 7, 9, 10, 11, 16 and 26 of the African Charter.

The State Response and Observations:

14. The government argues that its actions were necessary to protect the rights of the citizens who had been murdered; that the tribunal which tried Saro-Wiwa was competent because two of its three members were lawyers; that the process of confirmation by a state government was an adequate appeal; that the Civil Disturbances Decree had not been protested upon its enactment in 1987 and that it had been set up to deal with a crisis situation.

Procedure before the Commission:

15. **Communication 137/94** is dated 28 September 1994 and was submitted by International Pen.
16. **Communication 139/94** is submitted by Constitutional Rights Project and dated 9 September 1994.
17. The Commission was seized of the communications at its 16th Session in October 1994, but deferred its decision on admissibility pending notification and receipt of additional information from the Nigerian Government.
18. At the 16th session the Commission decided to merge the communications.
19. On 9 November 1994, a notification of the two communications was sent to the Nigerian Government and Rule 109 of the Rules of Procedure was invoked, requesting the Nigerian Government not to cause irreparable prejudice to Mr. Saro-Wiwa.
20. On 6 February 1995 a letter was received from International Pen stating that Mr. Saro-Wiwa was being ill-treated and that he was facing the death penalty.
21. On 13 February a letter was sent to the Nigerian Government re-emphasising the need for Rule 109 to be applied.
22. On 22 February 1995, a letter was received from complainants stating that Ken Saro-Wiwa had been charged and was scheduled to appear before a three person tribunal from which there was no right of appeal. The tribunal members are chosen by General Abacha in violation of international fair trial standards. The complainant recognised that local remedies had yet to be exhausted and announced its intention to present an update of the case to the Commission once the trial was completed.
23. At the 17th session the Commission declared the communications admissible. They were to be heard on their merits at the 18th session.
24. On 20 April 1995, letters were sent to the Government of Nigeria and the complainants informing them of this.
25. On 28 June 1995 a letter was received from the Constitutional Rights Project describing developments in the case.
26. On 1 September 1995, a letter was sent to the government of Nigeria stating that the communication would be heard on the merits at the 18th session of the Commission and inviting the government to send a representative.
27. At the 18th session the Commission decided that the communications should be taken up by the mission planned for Nigeria.

28. On 9 October 1995 a letter was received from PEN American Centre expressing concern for the state of health of Mr. Saro-Wiwa.
29. On 1 November 1995, upon hearing that a death sentence had been passed on Mr. Saro-Wiwa and eight of his co-defendants, the Secretariat faxed a note verbale to the government of Nigeria, invoking the revised Rule of Procedure 111 (formerly 109) asking that the executions should be delayed until the Commission had taken its mission and spoken with the competent authorities. This note verbale was also faxed to the Secretary General of the OAU, the Nigerian High Commission in Banjul, and the Special Adviser (Legal) to the Head of State of Nigeria.
30. On 2 November 1995 a letter was received from the Constitutional Rights Project notifying the Secretariat of the death sentences and requesting that provisional measures be invoked.
31. On 9 November 1995 Commissioner Dankwa, hearing that the death sentence had been confirmed, wrote to the Secretariat requesting such action. He was faxed a copy of the note verbale.
32. On 20 November 1995 the Secretariat received a note verbale from the Nigerian High Commissioner in Banjul, attempting to justify the executions.
33. On 21 November 1995 the Secretariat wrote a note verbale to the Nigerian High Commission in Banjul, requesting the official judgement in the Saro-Wiwa case, which had been mentioned in the note verbale.
34. On 30 November 1995 a letter was sent to the complainants stating that the communications would be taken up by the Commission's mission to Nigeria.
35. On 13 December 1995, the Secretariat received a letter dated 13 November 1995 from the office of the Special Adviser to the Head of State, attempting to justify the executions.
36. On 18 and 19 December 1995, the Commission held an extraordinary session on Nigeria in Kampala.
37. On 26 January 1996 a letter was sent to the Constitutional Rights Project informing it of the interim measures taken with regard to Ken Saro-Wiwa.
38. At the 19th session, held in March/April 1996 in Ouagadougou, Burkina Faso, the Commission heard statements from the government of Nigeria and the complainants. Mr. Chidi Anselm Odinkalu was duly authorised to appear for the complainants, and Mr. Osah and Mr. Bello appeared for the Nigerian Government. At the end of the hearing the Commission took a general view on the cases and deferred taking final decision in each case pending the accomplishment of its proposed mission to Nigeria. The Commission proposed May 1996 as the dates for the visit. The Nigerian delegation said they will communicate these dates to the Government of Nigeria for confirmation.
39. On 8 May 1996 the Commission wrote to the Nigerian Government, Constitutional Rights Project and International PEN informing them that a decision had been taken at the 19th session to send a mission to the country where the cases would be taken up.
40. At the 20th session held in Grand Bay, Mauritius, October 1996, the Commission decided to postpone the final decision on the merits of the communications to the next session, awaiting the result of the planned mission to Nigeria. The Commission also decided to join communication 154/96 with these communications.

41. On 10 December 1996 the Secretariat sent letters to the complainants informing them of the decisions of the Commission.
42. On 10 December 1996 the Secretariat sent a note verbale to the government informing it of the decisions of the Commission.
43. On 29 April, the Secretariat received a letter from Mr. Olisa Agbakoba entitled **Preliminary objections and observations** to the Mission of the Commission which visited Nigeria from March 7-14 1997. The document was submitted on behalf of Interights with regard to 14 communications, including this one.
44. Among the objections raised and or observations made were: a) the neutrality, credibility and relevance; and composition of the Mission.
45. At its 21ST session held in April 1997, the Commission postponed taking decision on the merits to the next session, pending the submission of scholarly article and court decisions by the complainants to assist it in its decision. The Commission also awaits further analysis of its report of the mission to Nigeria. It must be stated that Mr. Chidi Odinkalu did send the article mentioned above.
46. On 22 May, the complainants were informed of the Commission's decision, while the State was informed on May 28.
47. **Communication 154/96** is dated 6 November 1995 and received at the Secretariat on 4 March 1996.
48. The communication requested the Commission to take interim measures to prevent the executions. A supplementary submission was sent with the communication informing the Commission that the executions had taken place on 10 November but that the communication was reaffirmed.
49. On 13 November 1995 the Nigerian Government wrote to the Commission informing it of the Government's view of the situation.
50. On 20 November 1995 the High Commission of Nigeria in the Gambia giving its opinion on the matter.
51. On 21 November 1995 the Commission wrote to the High Commission of Nigeria in the Gambia requesting a copy of the Justice's judgement in the case.
52. On 12 March 1996 a confirmation was sent to this effect by the complainant.
53. At the 19th session in March 1996 the communication was not considered, but the Commission took a general view of all the communications against Nigeria and deferred any decision on cases pending the accomplishment of its proposed mission to Nigeria.
54. On 13 August 1996 a complete copy of the communication was sent to the government of Nigeria.
55. On 13 August 1996 a letter was sent to the complainant informing him of the status of the case.
56. On 4 February 1997, the Secretariat received a letter entitled supplementary submissions with respect to communication No. 154/96
57. On 4th April, the Secretariat acknowledged receipt of the letter.

58. On 29 April, the Secretariat received a letter from Mr. Olisa Agbakoba entitled **Preliminary objections and observations** to the Mission of the Commission which visited Nigeria from March 7-14 1997. The document was submitted on behalf of Interights with regard to 14 communications, including this one.
59. Among the objections raised and or observations made were: a) the neutrality, credibility and relevance; and composition of the Mission.
60. At its 21ST session held in April 1997, the Commission postponed taking decision on the merits to the next session, pending the submission of scholarly articles and court case by the complainants to assist it in its decision. The Commission also awaits further analysis of its report of the mission to Nigeria.
61. On 22 May, the complainants were informed of the Commission's decision, while the State was informed on May 28.
62. On May 27, the Secretariat received a letter from the complainant entitled **Additional Information on Ouster Clauses in Nigerian Law** in which he promised to furnish the Secretariat with the information requested by the Commission at its 21st session " within the next three weeks".
63. From this day on the procedure is identical to communications 137/94 and 139/94.
64. **Communication 161/97** was received on 10 January 1997.
65. On 14 January 1997 a note verbale with a copy of the communication was sent to the Ministry of External Affairs, copy to the Special Legal Adviser to the Head of State, the Nigerian High Commission, and the Embassy of Nigeria in Addis Ababa.
66. On 23 January 1997 an acknowledgement of receipt was sent to the complainant.
67. At its 21ST session held in April 1997, the Commission postponed taking decision on the merits to the next session, pending the submission of scholarly articles and court case by the complainants to assist it in its decision. The Commission also awaits further analysis of its report of the mission to Nigeria.
68. On 22 May, the complainants were informed of the Commission's decision, while the State was informed on May 28.
69. At the 22nd Ordinary session, the Commission postponed taking a decision on the cases pending the discussion of the Nigerian Mission report.
70. At the 23rd Ordinary session held in Banjul The Gambia, from 20-29 April 1998, the Commission was unable to consider the communication due to lack of time.
71. On 25 June 1998, letters were sent from the Secretariat of the Commission to all parties concerned regarding the status of the communications.

LAW

Admissibility

72. Article 56 of the African Charter reads:

"Communications...shall be considered if they:

...

5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,..."

73. This is just one of the 7 conditions specified by Article 56, but it is that which usually requires the most attention. Because Article 56 is necessarily the first considered by the Commission, before any substantive consideration of communications, it has already been the subject of substantial interpretation; in the jurisprudence of the African Commission, there are several important precedents.
74. Specifically, in the four decisions the Commission has already taken concerning Nigeria, Article 56.5 is analysed in terms of the Nigerian context. Communication 60/91 (Decision ACHPR/60/91) concerned the Robbery and Firearms Tribunal; Communication 87/93 (Decision ACHPR/87/93) concerned the Civil Disturbances Tribunal; Communication 101/93 (Decision ACHPR/101/93) concerned the Legal Practitioners Decree; and Communication 129/94 (ACHPR/129/94) concerned the Constitution (Modification and Suspension) Decree and the Political Parties (Dissolution) Decree.
75. All of the Decrees in question in the above communications contain "ouster" clauses. In the case of the special tribunals, these clauses prevent the ordinary courts from taking up cases placed before the special tribunals or from entertaining any appeals from the decisions of the special tribunals. (ACHPR/60/91:23 and ACHPR/87/93:22). The Legal Practitioners Decree specifies that it cannot not be challenged in the courts and that anyone attempting to do so commits a crime (ACHPR/101/93:14-15). The Constitution Suspension and Modification legally prohibited their challenge in the Nigerian Courts (ACHPR/129/94:14-15).
76. In all of the cases cited above, the Commission found that the ouster clauses render local remedies non-existent, ineffective or illusory. They create a legal situation in which the judiciary can provide no check on the executive branch of government. A few courts in the Lagos district have occasionally found that they have jurisdiction; in 1995 the Court of Appeal in Lagos, relying on common law, found that courts should examine some decrees notwithstanding ouster clauses, where the decree is "offensive and utterly hostile to rationality" (Reprinted in the Constitutional Rights Journal). It remains to be seen whether any Nigerian courts will be courageous enough to follow this holding, and whether the government will abide by their rulings should they do so.
77. In the present case, while the above reasoning was used in the initial decisions on admissibility, it is at the present time unnecessary. In light of the fact that the subjects of the communications are now deceased, it is evident that no domestic remedy can now give the complainants the satisfaction they seek. The communications are thus admissible.

Merits

78. Article of the Charter 5 reads:

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

79. Article 5 prohibits not only torture, but also cruel, inhuman or degrading treatment. This includes not only actions which cause serious physical or psychological suffering, but which humiliate the individual or force him or her to act against his will or conscience.
80. International PEN alleges that Ken Saro-Wiwa was kept in leg irons and handcuffs and subjected to ill-treatment including beatings and being held in cells which were airless and dirty, then denied medical attention, during the first days of his arrest. There was no

evidence of any violent action on his part or escape attempts that would justify holding him in irons. Communication 154/96 alleges that all the victims were manacled in their cells, beaten and chained to the walls in their cells.

81. The government has made no written submission in these cases, and has not refuted these allegations in its oral presentation. It is well-established jurisprudence of the Commission that where allegations go entirely unchallenged, it will proceed to decide on the facts presented (See, e.g., the Commission's decisions in communications 59/91, 60/91, 64/91, 87/93 and 101/93). Thus, the Commission holds a violation of Article 5 of the Charter.

82. Article 6 of the African Charter reads:

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

83. All the victims were arrested and kept in detention for a lengthy period under the State Security (Detention of Persons) Act of 1984 and State Security (Detention of Persons) Amended Decree No. 14 (1994), that stipulates that the government can detain people without charge for as long as three months in the first instance. The decree also states that the courts cannot question any such detention or in any other way intervene on behalf of the detainees. This decree allows the government to arbitrarily hold people critical of the government for up to 3 months without having to explain themselves and without any opportunity for the complainant to challenge the arrest and detention before a court of law. The decree therefore prima facie violates the right not to be arbitrarily arrested or detained protected in Article 6.

84. The government has made no defence of this decree, either for its general validity or its justice as applied in this case. Thus, the Commission holds a violation of Article 6.

85. Article 7 of the African Charter reads:

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

- (a) The right to appeal to competent national organs against acts of violating his fundamental rights
- (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
- (c) the right to defence, including the right to be defended by counsel of his choice;
- (d) the right to be tried within a reasonable time by an impartial court or tribunal."

86. As regards the conduct of the trial itself, it is unnecessary for the Commission to delve into the specific circumstances, because by the Commission's own precedent the tribunal was defective. As will be recalled, in its decision on Communication 87/93, the Commission considered that special tribunals established under the Civil Disturbances Act violate Article 7.1(d) of the African Charter, because their composition is at the discretion of the executive branch. Removing cases from the jurisdiction of the ordinary courts and placing them before an extension of the executive branch necessarily compromises their impartiality, which is required by the African Charter. This violation of the impartiality of tribunals occurs in principle, regardless of the qualifications of the individuals chosen for a particular tribunal.

87. The note verbale of the Nigerian High Commissioner in The Gambia points out that the tribunal was not a military one, but was presided over by a judge of the Nigerian Court of Appeal, and that tribunals are properly constituted in the Nigerian judicial system to deal with specific issues and for speedier dispensation of justice. The note verbale makes other specific points on the conduct of the trial, arguing for its fairness: the placement of evidence, its conduct in public, and the fact that some of the defendants were ultimately acquitted.

88. In its oral presentation at the 19th session, the government argued that the confirmation of sentence given by the state governors is an adequate appeal.
89. The Commission might cite opposing facts, casting doubt upon the fairness of the tribunal. For example, The Head of State personally chose its members consisting of three instead of the five persons required by the Civil Disturbances Act. When defence counsel wrote to the Chief Judge of the Federal High Court on 27 November 1994 for information on when the trial would begin, the judge responded, "This Court has nothing to do about the Tribunal. It is the responsibility of the Presidency".
90. There is a great deal of information available from Nigerian and international sources on the day-to-day conduct of the tribunal and the significance of its legal rulings. Yet in reaching its decision, the Commission need only rely upon its earlier holding, made in less politically charged circumstances, that the special tribunals established under the Civil Disturbances Act are in violation of the African Charter. As a result, it finds that Ken Saro-Wiwa and his co-defendants were denied the right to a fair trial, in violation of Article 7.1(d).
91. Section 7 of the Civil Disturbances (Special Tribunals) Decree No. 2 of 1987 decides that the confirming authority of judgments given under the act is the PRC, that is the ruling council of the Federal Military government, the members of which are exclusively members of the armed forces.
92. Section 8(1) of the same Decree stipulates:
- "The validity of any decision, sentence, judgement, confirmation, direction, notice or order given or made, as the case may be, or any other thing whatsoever done under this Act shall not be inquired into by any court of law."
93. In this case, it is not safe to view the Provisional Ruling Council as impartial or independent. Section 8(1) effectively ousts all possibility of appeal to the ordinary courts. Thus, the accused persons had no possibility of appeal to a competent national organ, and the Commission finds a violation of Article 7.1(a).
94. Article 26 of the African Charter reads:
- "States parties to the present Charter shall have the duty to guarantee the independence of the Courts...."
95. As stated above, the Special Tribunal and the Provisional Ruling Council are not independent. The Commission also finds that there is a violation of Article 26 of the African Charter.
96. The government has not contradicted the allegations contained in communication 154/96 that at the conviction in October 1995 the Tribunal itself admitted that there was no direct evidence linking the accused to the act of the murders, but held that they had each failed to establish that they did not commit the crime alleged. Communication 154/96 has also affirmed that prior to and during the trial, leading representatives of the government pronounced MOSOP and the accused guilty of the crimes at various press conferences and before the United Nations. As the allegations have not been contradicted, the Commission find a violation of the right to be presumed innocent, Article 7.1(b).
97. Initially, the accused were defended by a team of lawyers of their own choice. According to Communication 154/96 and Communication 139/94, this team withdrew from the case because of harassment, both in the conduct of the trial and in their professional and private lives outside. Communication 154/96 alleges that two of the lawyers were seriously assaulted by soldiers claiming to be acting on the instruction of the military officer responsible for the trial. On three

occasions defence lawyers were arrested and detained and two of the lawyers had their offices searched. When these lawyers withdrew from the case, the harassment subsided.

98. After the withdrawal of their chosen counsel, the accused were defended by a team assigned by the Tribunal. However, this team also resigned, complaining of harassment. After that, the accused declined to accept a new team appointed by the Tribunal, and the court proceedings were closed without the accused having legal representation for the duration.

99. **Communication 154/96** also claims that the defence was denied access to the evidence on which the prosecution was based and that files and documents which were required by the accused for their defence were removed from their residences and offices when they were searched by security forces on different occasions during the trial.

100. The government claims that: "Their [the accused] defence team which comprised sly human rights activists such as Femi Falana and Gani Fawehinmi, known to be more disposed towards melodrama than the actual defence of their clients, inexplicably withdrew from the Special Tribunal at a crucial stage of the trial in order to either play to the gallery or delay and frustrate the process".

101. This statement does not contradict the allegations of Communication 154/96, that two different defence teams were harassed into quitting the defence of the accused persons; it merely attributed malicious motives to the defence. The government has not responded to the allegations of withholding evidence from the defence. The Commission therefore finds itself with no alternative but to conclude that a violation of Article 7.1(c) has occurred.

102. Article 4 of the African Charter reads:

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

103. Given that the trial which ordered the executions itself violates Article 7, any subsequent implementation of sentences renders the resulting deprivation of life arbitrary and in violation of Article 4. The violation is compounded by the fact that there were pending communications before the African Commission at the time of the executions, and the Commission had requested the government to avoid causing any "irreparable prejudice" to the subjects of the communications before the Commission had concluded its consideration. Executions had been stayed in Nigeria in the past on the invocation by the Commission of its rule on provisional measures (Rule 109 now 111) and the Commission had hoped that a similar situation will obtain in the case of Ken Saro-Wiwa and others. It is a matter of deep regret that this did not happen.

104. The protection of the right to life in Article 4 also includes a duty for the state not to purposefully let a person die while in its custody. Here at least one of the victims' lives was seriously endangered by the denial of medication during detention. Thus, there are multiple violations of Article 4.

105. Article 11 of the African Charter provides:

"Every individual shall have the right to assemble freely with others..."

106. Communication 154/96 alleges that Article 11 was violated because the murder trial directly followed public meetings of MOSOP. In its judgement, the Tribunal held that the condemned persons "created the fire that consumed the four Ogoni chiefs" by wrongfully organising election campaign rallies and permitting a large crowd of fanatical MOSOP and NYCOP youths to congregate. It appears that the Tribunal holds the accused responsible for the murders because they organised the rally after which the murders took place, although Ken Saro-Wiwa for one was prevented by government officials from attending the rally. The Commission has considerable difficulty with this position as it can adversely affect the right to assembly.

107. Article 10.1 of the African Charter reads:

“Every individual shall have the right to free association provided that he abides by the law.”

108. Communication 154/96 alleges that Article 10.1 was violated because the victims were tried and convicted for their opinions, as expressed through their work in MOSOP. In its judgement, the Tribunal held that by their membership in MOSOP, the condemned persons were responsible for the murders, guilt by association, it would seem furthermore that, government officials at different times during the trial declared MOSOP and the accused guilty of the charges, without waiting for the official judgement. This demonstrates a clear prejudice against the organisation MOSOP, which the government has done nothing to defend or justify. Therefore the Commission finds a violation of Article 10.1.

109. Article 9.2 of the African Charter reads:

“Every individual shall have the right to express and disseminate his opinions within the law.”

110. There is a close relationship between the rights expressed in the Articles 9.2, 10.1 and 11. Communication 154 alleges that the actual reason for the trial and the ultimate death sentences was the peaceful expression of views by the accused persons. The victims were disseminating information and opinions on the rights of the people who live in the oil producing area of Ogoniland, through MOSOP and specifically a rally. These allegations have not been contradicted by the government, which has already been shown to be highly prejudiced against MOSOP, without giving concrete justifications. MOSOP was founded specifically for the expression of views of the people who live in the oil producing areas, and the rally was organised with this in view. The Government’s actions is inconsistent with Article 9.2 implicit when it violated Articles 10.1 and 11.

111. Article 16 of the Charter reads:

- “1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”

112. The responsibility of the government is heightened in cases where an individual is in its custody and therefore someone whose integrity and well-being is completely dependent on the actions of the authorities. The state has a direct responsibility in this case. Despite requests for hospital treatment made by a qualified prison doctor, these were denied to Ken Saro-Wiwa, causing his health to suffer to the point where his life was endangered. The government has not denied this allegation in any way. This is a violation of Article 16.

113. Nigeria has been a State Party to the African Charter for over a decade, and is thus bound by Article 1 of the African Charter.

114. The Commission assists States parties to implement their obligations under the Charter. Rule 111 of the Commission’s Rules of Procedure (revised) aims at preventing irreparable damage being caused to a complainant before the Commission. Execution in the face of the invocation of Rule 111 defeats the purpose of this important rule. The Commission had hoped that the Government of Nigeria would respond positively to it’s request for a stay of execution pending the former’s determination of the communication before it.

115. This is a blot on the legal system of Nigeria which will not be easy to erase. To have carried out the execution in the face of pleas to the contrary by the Commission and world opinion is

something which we pray will never happen again. That it is a violation of the Charter is an understatement.

116. The Nigerian Government itself recognises that human rights are no longer solely a matter of domestic concern. The African Charter was drafted and acceded to voluntarily by African States wishing to ensure the respect of human rights on this continent. Once ratified, States Parties to the Charter are legally bound to its provisions. A state not wishing to abide by the African Charter might have refrained from ratification. Once legally bound, however, a state must abide by the law in the same way an individual must.

FOR THE ABOVE REASONS, THE COMMISSION

decides that there has been a violation of Articles 5 and 16 in relation to Ken Saro-Wiwa's detention in 1993 and his treatment in detention in 1994 and 1995;

decides that there has been a violation of Articles 6 in relation to the detention of all the victims under the State Security (Detention of Persons) Act of 1984 and State Security (Detention of Persons) Amended Decree no. 14 (1994). The government therefore has the obligation to annul these Decrees;

Reiterates its decision on communication 87/93 that there has been a violation of Article 7.1(d) and with regard to the establishment of the Civil Disturbances Tribunal. In ignoring this decision, Nigeria has violation Article 1 of the Charter;

decides that there has been a violation of Articles 4 and 7.1 (a), (b) (c) and (d) in relation to the conduct of the trial and the execution of the victims;

holds that there has been a violation of Articles 9.2, 10.1 and 11, 26, 16;

holds that in ignoring its obligations to institute provisional measures, Nigeria has violated Article 1.

Banjul, 31st October 1998.

Rapporteur: 22nd session: Commissioner Ondziel-Gnelenga
23rd session: Commissioner Ondziel-Gnelenga
24th session: Commissioner Ondziel-Gnelenga
25th session: Commissioner Ondziel-Gnelenga

The Facts as Presented by the Complainant:

1. SOS – Esclaves alleges that slavery remains a common practice in Mauritania, regardless of its prohibition under the law. According to this NGO, in a considerable number of cases, the Mauritanian government is informed about these practices, and in some of those cases, it occasionally supports the authors of those practices. SOS – Esclaves cites some concrete examples in support of its allegations.
2. In its report of March 1996, SOS – Esclaves provides the following illustrations:
 - ten Mauritanian adults sold and bought as slaves (M'barka mint Said, Temrazguint mint M'Barek, Nema mint Ramdane, Aïchana mint Abeid Boïlil, Mbarka mint Meriême, Zgheilina, Bakary, Abeid, Aïcha mint Soélim, Kneïba);
 - children from four families enslaved by the masters of their parents (the daughter of M'barka mint Meriême, the five children of Aïchana mint abeid Boïlil, the daughter of Messaoud oud jiddou, and the two sons of Fatma mint Mama);
 - four other children sold as slaves (Baba oud Samba, Houssein, Mohamed Ould Maouloud, Sidi oud Matallah);
 - two Mauritanian women married to their masters against their will (Aïchetou mint M'Boyrík and Temrazguint mint M'Bareck);
 - finally, six Maritaniens and their families dispossessed of their ancestral property by the masters of their parents, following the death of the latter (Mohamed oud Bilal, Oum El Hella mint Bilal, Bah oud Rabahl, Biram oud Abd Elbarka and M'Boyrík would Maouloud).
3. SOS – Esclaves requested the Mauritanian government to carry out investigations into these acts and to take necessary measures for their eradication. However, its request was never followed up.

The Complaint:

4. The communication alleges violation of articles 2, 3, 4, 5, 6, 7, 9, 11 and 15 of the African Charter.

Procedure:

5. The communication is dated 11 April 1997 and was received by the Commission meeting at its 21st Ordinary Session, which was seized of the matter.
6. On 7 July 1997, a letter of notification was addressed to the Mauritanian government informing it of the content of the communication and requesting it to give its reaction.
7. On 7 July 1997, a letter was sent to the complainant acknowledging receipt of the complaint.
8. At the 22nd ordinary session held from 2 – 11 November 1997, the Commission decided to defer action on all communications submitted against Mauritania until the 23rd session. This was due to the fact that it was still awaiting the reaction of the government to the mission report that had been given to it during the 21st session.
9. At the 23rd session, the Commission determined that some of the information contained in the report submitted in conjunction with the communication did not help it to establish conclusively whether internal remedies had been exhausted. In particular, the Commission emphasised that SOS – Esclaves should supply copies of all judicial decisions on all the cases that it brings up in its report, and to point out those

cases that were still pending before Mauritanian jurisdictions. This would enable it to decide on a firm basis of knowledge as the admissibility of the communication.

10. On 25 April 1998, a copy of the communication and the letters requesting additional information on internal procedure were given to the Mauritanian representative at the 23rd session.
11. On 19 August 1998, correspondence was dispatched to the complainant communicating the Commission's position to it.
12. At its 24th ordinary session, the Commission deferred consideration of the this communication to the following session.
13. On 12 November 1998, the Secretariat addressed letters to both parties informing them of this decision.

Law:

Admissibility:

14. In terms of the provisions of article 56, 5 of the African Charter on Human and Peoples' Rights, "communications [.....] relating to Human and Peoples' Rights received by the Commission, shall be examined if they [.....] are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged."
15. The facts alleged in the communication submitted by SOS – Esclaves are very grave and from all appearances, contrary to the provisions of the African Charter on Human and Peoples' Rights, in particular articles 2, 3 and 5. However, the complainant, having indicated that there are internal procedures initiated by the supposed victims, does not say anything regarding the status of those procedures. Hence, the Commission is unable to determine whether the said procedures have been concluded or otherwise; nor whether they have allowed the supposed victims to have their rights restored.
16. To enable it to reach an objective determination, the Commission requested the complainant to supply the additional information it required. Faced with the silence observed by the latter, it is unable to form a precise opinion regarding the facts of which it has been seized. This would seem to indicate that the internal remedies have not been exhausted; the Commission is of the view that if they had been, the complainant would have made it known.

For these reasons, the Commission:

17. **Declares the communication inadmissible** due to non-exhaustion of internal remedies;
18. It however acknowledges that the complainant still enjoys the opportunity to seize the Commission again once the conditions of article 56, 5 have been fulfilled.

Bujumbura, 5 May 1999.

Rapporteur:

23rd session: Commissioner Pityana
24th session: Commissioner Pityana
25th session: Commissioner Pityana

Summary of Facts.

1. The communication is submitted by Amnesty International on behalf of William Steven Banda and John Lyson Chinula.
2. Complainant alleges that Zambia has violated the provisions of African Charter in that:
 - (a) Mr. William Steven Banda was served with a deportation order on 10 November 1991. The reason given was that "in my opinion by his presence he (is) likely to be a danger to peace and good order in Zambia". He contested the order through the courts of Zambia.
 - (b) On 25 October 1994, William Steven Banda was deported to Malawi unlawfully, wrongfully and out of political malice. He alleges that he was blindfolded and drugged, driven by Zambian immigration service and para-military police officers. He entered Malawi through Mchinji border post and later dumped at Lilongwe Police station.
 - (c) John Luson Chinula was removed from his home in Ndola on 31 August 1994. He was driven to Lusaka International Airport with the intention of deporting him. He was served with a deportation order signed by the Minister of Home Affairs alleging that he was a threat to Zambia's peace and security. He was forcibly sedated and later found himself at Lilongwe Police station in Malawi. His Warrant of Deportation also alleged that he was "by his presence, likely to be a danger to peace and good order in Zambia". No reason in law or in fact was advanced for this finding.
 - (d) Both complainants were prominent political figures in Zambia. They were leading members of UNIP, the party that had been in power since Independence in 1964. UNIP was defeated by MMD in the first multi-party elections of November 1991.
3. William Steven Banda exhausted all domestic remedies in that, his matter went to the Supreme Court of Zambia. John Lyson Chinula could not effect any remedies through the Zambian courts because he was deported and was given no opportunity to approach the Zambian courts.
4. It is alleged by the complainant that prior to his forcible expulsion from Zambia under order of deportation, William Banda exhausted local remedies through his appeal to the High Court of Zambia in 1992 and the Supreme Court of Zambia in 1994.
5. Complainant alleges that the Zambian government's deportation of the two men amounted to "forcible exile".
6. Complainant alleges that attempts to seek redress through existing national legal remedies both in Zambia and in Malawi have been futile.
7. Complainant also charges that John Chinula was not allowed recourse to the national courts of Zambia. He was prevented from returning to Zambia by threats of imprisonment by the Zambian authorities.
8. Complainant states that Banda and Chinula have obtained two judgements at the High Court of Malawi confirming that they were not citizens of Malawi. The government of Malawi has failed to comply with the judgement of the Court which ordered that they be assured to return to Zambia. They have therefore exhausted all available local remedies at their disposal.
9. Complainant prays that the Commission adopt interim measures to allow the deportees to return to Zambia immediately.

Complaint:

10. Complainant alleges that Articles 2, 5, 7(1)(a), 8, 9, 9(2), 10, 12(2), 13(1), 18(1), 18(2) of the African Charter have been violated.

Procedure:

11. Communication is dated 6 March 1998 and was sent by mail.

12. On 18 March 1998, a letter was sent to the complainant acknowledging receipt.

13. At its 23rd ordinary session held in Banjul, The Gambia, the Commission decided to be seized of this matter and declared the communication admissible. The Commission also requested that provisional measures be adopted by the Government of Zambia, namely to allow the burial of Mr. John L. Chinula, in Zambia and the return of Mr. William S. Banda to his family in Zambia pending the finalization of the matter by the Commission.

14. On 10 July 1998, the Secretariat of the Commission wrote to the Ministry of Foreign Affairs, Zambia, informing them of the decision of the 23rd Ordinary Session, drawing attention to the request for provisional measures to be taken by the government of Zambia.

15. A copy of the Note was also sent to the Embassy of Zambia in Addis Ababa. When there was no reply, the Secretariat sent a reminder on 17 September 1998. The Embassy replied on 21 September that the Note Verbale was received but did not enclose the communication referred to.

16. The representative of the Government of Zambia appeared before the Commission on 26th and 27th of October 1998 at the 24th ordinary session. He presented a statement in response to the communication.

17. At the 24th ordinary session, the Commission postponed consideration of this for a decision on the merits to the next session.

18. On 26th November 1998, the Secretariat conveyed the decision of the Commission to the parties concerned.

19. In preparation for a hearing on this matter, the Rapporteur for this communication requested the parties to address only some of the critical matters he had identified. Mr. Ahmed Motala represented Amnesty International. Mr. Clifford Msika of the Centre for Human Rights and Rehabilitation, Lilongwe, Malawi, assisted him. Mr. William Steven Banda was also present. The Zambian Government was represented by Mr. Palan Mulonda, Senior State Advocate in the Ministry of Legal Affairs accompanied by Mr. K.K. Nsemukila, Deputy Permanent Secretary, Home Affairs Department and Ms. Lucy M. Mungoma of Foreign Affairs Department with responsibility for Africa and OAU relations. The Commission also heard testimony from Mr. William Steven Banda.

The Argument:

20. Mr. Motala argued that Zambia was bound by the African Charter which it ratified in 1984. It, therefore, was obliged to extend the rights in the Charter to "every individual" except where political rights are specifically indicated as in Article 13 for example. He argued that Zambia was in violation of Article 12 especially sub article 2 which provides that "every individual" has a right to leave one's country and to return. It also says that a "non-national legally admitted in a territory of a State Party may only be expelled from it by virtue of a decision taken in accordance with the law...". He alleged discrimination on the basis of ethnic group and social origin (Article 2) and on the basis of political opinion. The treatment the complainants received violated the victims rights to human dignity and freedom of movement. In the case of Chinula, he was deprived of the right to have his cause heard (Article 7). He insisted that the actions against complainants were politically motivated. They have been left in a strange country destitute.

21. Mr. Mulonda, for the government, stated that the government did not act with political malice. It acted within the law. The investigations against Banda began in 1976 and against Chinula in 1974 long before the present regime came into power. He denied that the deportees were drugged and dumped across the border. He stated that the Malawi authorities received them. The government of Zambia was acting within its sovereign rights in ordering its internal affairs, regulating immigration and was within the provision or limitation of the right stipulated in Article 12: "This right may only be subject to restriction as provided for by law for the protection of nation security, law and order, public health and morality".

LAW

Admissibility:

22. Admissibility of communications under the African Charter is governed by Article 56, which sets out conditions that must be met before they are considered by the Commission.

23. **Article 56** of the Charter reads:

“Communications ... shall be considered if they:

...

(5) are sent after exhausting local remedies, if unless it is obvious that this procedure is unduly prolonged”.

24. This provision of the Charter is necessarily first considered before any substantive consideration of a complaint.

25. In the present case all local remedies have been exhausted and there is documentary evidence made available to the Secretariat of the Commission in support of this claim. As already stated in the case of Chinula, the arbitrary deportation prevented him from exercising this right.

26. The complainant has attached to the communication copies of the following judgements/orders obtained by William Banda and John Chinula;

- Consent Order of 13 March 1995, High Court of Lilongwe, in Miscellaneous Cause No. 2 of 1995;
- Judgement of 30 June 1997, High Court of Malawi in Lilongwe, in Miscellaneous Cause No. 2 of 1995;
- Judgement No. 16 of 1994, Supreme Court of Zambia in Lusaka, in Banda vs. Chief Immigration Officer and Attorney General;
- Judgement No. JH/12 of 1991, High Court of Zambia in Chipata, in Banda vs Chief Immigration Officer and Attorney General.

For these reasons the Commission declares the communication admissible.

MERITS:

27. Zambia ratified the African Charter on Human and Peoples' Rights in January 1984.

28. A number of supporting documents were submitted: On Banda, the transcript of the judgement by Kakusa J in the High Court of Zambia held at Chipata; the judgement on appeal by Bweupe DCJ in the Supreme Court in Lusaka. The various decisions of the Malawi Court and affidavits submitted in support. The Government also submitted documents on Banda and Chinula.

29. Regarding William Steven Banda, the judgement of Justice Kakusa in the High Court is instructive. The judge found that there was no evidence, on a balance of probabilities, to prove that Banda was born in Zambia of Zambian parents. He found that Banda was an unreliable witness. He, however, refused to rule as to where Banda originated from. He dismissed all evidence that suggested that Banda was from Malawi, as inadmissible and hearsay. He also noted that the government had failed to produce the alleged Malawian father of Banda. The judge also made the following *obiter dictum* without justifying his opinion, that “once it is shown on a balance of probabilities that a petitioner is not a citizen of this Republic he becomes a deportable person even if the country to which he must proceed is unknown ... possession of a National Registration Card ... does not confer citizenship...” (at p J25). It appears that the authorities relied on this statement in deporting William Steven Banda.

30. The judge also expressed himself in sympathy with Banda's predicament. He said “the petitioner has been in Zambia for a long time and has, in his own way, contributed in the political arena ... Zambia has become almost the petitioner's only home - a *de facto* situation - upon which the executive may exercise its discretion and, maybe, consider normalising the status of petitioner should he apply... If this court were empowered to declare persons like

petitioner be Zambians, the petitioner would have received a favourable declaration considering his long stay in Zambia and the role he played" (J25).

31. It is not denied that on the day of the judgement, William Steven Banda was taken into custody and deported to Malawi. In addition, Banda charges that his pleas that he be taken to South Africa were ignored including his request for a five-days stay of execution of the warrant.
32. It is evident that the Malawi Courts are irrelevant for purposes of deciding this matter against Zambia. The fact that they declared complainants not to be Malawi citizens is neither here nor there. Secondly, the Commission is not competent to substitute the judgements of the Zambian courts, especially on matters of fact. It must be accepted that the legal processes were appropriate and conducted in a manner that showed respect for the rule of law. The legal processes in Zambia did not violate the principles of the Charter. The Commission must, therefore, accept that William Steven Banda was not a Zambian by birth or descent.
33. This does not mean, however, that the Commission should not raise questions of law especially as the Zambian courts did not consider the obligations of Zambia under the African Charter. The court also failed to rule on the alleged reason for the deportation, namely, that his presence was likely "to endanger peace and good order in Zambia...". There was no judicial inquiry on the basis in law and in terms of administrative justice for relying on this 'opinion' of the Minister of Home Affairs for the action taken. The fact that Banda was not a Zambian by itself, does not justify his deportation. It must be proved that his presence in Zambia was in violation of the laws. To the extent that neither Banda nor Chinula were supplied with reasons for the action taken against them means that the right to receive information was denied to them (Article 9(1)).
34. The Rapporteur invited the parties to give guidance on the authority of the Charter where it was in contradiction to domestic law. That seems relevant because Zambia ratified the Charter by Executive Act. That means that there is legislative process that domesticates international human rights treaties. Mr. Mulonda affirmed Zambia's commitment to abide by the treaties it is party to. He also confirmed that Zambia operated a dual legal system and that the Charter is not considered to be a self executing measure. Nonetheless, Zambia accepted the binding character of the Charter in Zambia.
35. By all accounts, though, Banda was in possession of Zambian national registration certificate and a passport. For many years he freely used these without challenge. Immediately following the verdict of the Supreme Court, he voluntarily presented himself to the police but he was forcibly deported. This meant that he was denied the opportunity to pursue the option of applying for citizenship by naturalisation in terms of the Citizenship Act. Granted, the government argues that Banda had obtained the documents of registration and Passport by making false claims about his place of birth. He could not therefore, be approaching the court with clean hands. The unstated implication being that the chances of his obtaining naturalisation were negligible. In truth, of course, the Court did not say that Banda was an illegal immigrant. It simply disputed his claims to being Zambian by birth. It was not proved, therefore, that Banda was in Zambia illegally. It was not proved, therefore, that Banda was in Zambia illegally.
36. Zambia has contravened Article 7 of the Charter in that he was not allowed to pursue the administrative measures, which were opened to him in terms of the Citizenship Act. More importantly, Zambia is in breach of Article 7(2) which says that "no one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed..." By all accounts, Banda's residence and status in Zambia had been accepted. He had made a contribution to the politics of the country. The provisions of Article 12(4) have been violated.
37. The allegations of violations of Articles 2, 4, 5, 6, 9 and 10 may now be addressed. The evidence that William Steven Banda was a political opponent of the ruling MMD cannot be lost sight of. The manner in which he was treated was demeaning of the dignity and status of somebody of his standing in society. It appears that he was singled out for action because of his ethnic origin, which incidentally, is also found in Zambia. The authorities insisted on deporting him to Malawi even though, he told them that he knew nobody there. There was no compelling evidence that he had roots in Malawi having lived in Zambia, by their own admission, since about 1964. Counsel for Zambia argued that Banda was "accepted" by the Malawi immigration authorities. Whatever may have been the "legal" basis for such "acceptance", Malawi courts have ruled that they were not citizens of Malawi. In addition, unlawful deportation could not be said to obliterate their rights in Zambia.
38. John Lyson Chinula was in an even worse predicament. He was not given any opportunity to contest the deportation order. Surely, government cannot say that Chinula had gone underground in 1974 having overstayed his visiting permit. Chinula, by all account, was a prominent businessman and politician. If government wished to act against him

they could have done so. That they did not, does not justify the arbitrary nature of the arrest and deportation on 31 August 1994. He was entitled to have his case heard in the Courts of Zambia. Zambia has violated Article 7 of the Charter. Having made that finding, the findings in para 30 of above also obtain in this circumstance.

39. The Commission had requested provisional measures in terms of Rule 111 of the Rules of Procedure. Zambia must be required to allow the return of William Steven Banda with a view to making application for citizenship by naturalisation. No evidence was led before the Commission for compensation. The evidence is that Banda had lost his job as governor after the 1991 elections. No award for compensation is called for.

40. John Lyson Chinula died in Malawi. He was a prominent businessman. His deportation must have caused prejudice to his business interests. His family is requesting the return of his body for burial in Zambia. The Government of Zambia should be required to grant that wish.

41. The Government of Zambia has relied on the "caw-back" clause of Article 12(2):

"This right may only be subject to restrictions, provided for by law for the protection of national security, law or order, public health or morality..."

42. The deportation order also stated that the deportees were considered "a danger to peace and good order to Zambia". The Commission is of the view that the "claw-back" clauses must not be interpreted against the principles of the Charter. Recourse to these should not be used as a means of giving credence to violations of the express provisions of the Charter. Secondly, the rules of natural justice must apply. Among these are in the *audi alterm partem* rule, the right to be heard, the right of access to the Court. The Court in Zambia, in Banda's case failed to examine the basis of administrative action and as such, it has not been proved that the deportees were indeed a danger to law and order. In any event the suggestion that they were "likely" to be a danger was vague and not proved. It is important for the Commission to caution against a too easy resort to the limitation clauses in the African Charter. The onus is on the state to prove that it is justified to resort to the limitation clause. The Commission should act bearing in mind the provisions of Articles 61 and 62 of the Charter.

43. **Article 2** of the Charter reads:

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

44. By forcibly expelling the two victims from Zambia, the State has violated their right to enjoyment of all the rights enshrined in the African Charter. This Article imposes an obligation on the Zambian Government to secure the rights protected in the African Charter to all persons within their jurisdiction irrespective of political or any other opinion. This obligation was reaffirmed by the Commission in *Rencontre Africaine pour la Défense des Droits de l'Homme / Zambia (Communication 71/92)*. The arbitrary removal of one's citizenship in the case of Chinula cannot be justified.

45. Article 9(2) states:

"Every individual shall have the right to express and disseminate his opinions within the law".

46. Both Banda and Chinula were leading politicians and businessmen. Both had lived in Zambia for decades. Even if deportation action had been initiated against them in 1974 and 1976, it can be safely assumed that the action had been advanced unless it is proved that that was due to unlawfulness, fraud or obstruction of the course of justice. None of this was alleged. Action was accelerated upon the assumption of office of MMD government in 1991, we are therefore persuaded that the deportations were politically motivated. This provision of the Charter reflects the fact that freedom of expression is a fundamental human right, essential to an individual personal development, political consciousness and participation in the public affairs of his country. The Commission has to determine whether the "deportations", being politically, motivated violate the provisions of Article 9(2) of the African Charter as the two victims were denied the right to freedom of conscience as stipulated in Article 8 of the Charter.

47. **Article 8** of the African Charter states:

"Freedom of conscience, the profession and free practice of religion shall be guaranteed.
No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms".

48. **Article 10** of the Charter, which states;

"Every individual shall have the right to the free association provided that he abides by the law".

49. In deporting the two men, the government of Zambia has denied them the exercise of their right to freedom of association. This is so since they have been prevented from associating with their colleagues in the United National Independence Party and participating in their activities.

50. As the African Commission ruled in the case of **John K. Modise / Botswana**, by forcing Banda and Chinula to live as stateless persons under degrading conditions, the government of Zambia has deprived them of their family and is depriving their families of the men's support, and this constitutes a violation of the dignity of a human being. Thereby violating **Article 5** of the Charter, which guarantees the right to:

" the respect of the dignity inherent in a human being and to the recognition of his legal status".

51. The forcible expulsion of Banda and Chinula by the Zambian government has forcibly broken up the family unit which is the core of society thereby failing in its duties to protect and assist the family as stipulated in Article 18(1) and 18(2) of the Charter;

(1) "The family shall be the natural unit and basic of society. It shall be protected by the State..."

(2) "The State shall have the duty to assist the family which is the custodian of morals and traditional values recognised by the community".

52. **Article 7(1)(a)** states that:

"Every individual shall have the right to have his cause heard..."

...

(a) "the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed ..."

53. The Zambia government by denying Mr. Chinula the opportunity to appeal his deportation order has deprived him of a right to fair hearing which contravenes all Zambian domestic laws and international human rights laws.

FOR THESE REASONS, THE COMMISSION

holds a violation of Article 2

holds a violation of Article 7(1)(a)

holds a violation of Article 8

holds a violation of Article 9(2)

holds a violation of Article 10

holds a violation of Article 18(1) and (2)

Bujumbura, 5th May 1999.

Rapporteur: 24th session - Commissioner B. Pityana
25th session - Commissioner B. Pityana

The facts:

1. The complainant is a Ghanaian citizen, formerly employed at the Embassy of Ghana in Conakry, Guinea.
2. He alleges that his contract as translator/bilingual secretary at the said Embassy was wrongly terminated, by letter dated 24 June 1994.
3. He claims that his dismissal was based on a report produced by the Guinean authorities, describing him as the brains behind an attack against the Ghanaian Chancery and the Ghana Airways offices in Conakry, perpetrated by furious Ghanaian residents.
4. The complainant states that he did not have the opportunity of seizing any appellate authority before being dismissed for the above-mentioned reasons.
5. The complainant presented a decision handed down by the Commission on Human Rights and Administrative Justice of Ghana, dated 18 May 1997, to the effect that the complainant's dismissal without benefits was null and void and that Mr. Alfred Cudjoe was entitled to some compensation.
6. He further states that the Ministry of Foreign Affairs refused to comply with this decision.
7. He sent a copy of the said decision to the Commission.

Substance of Grievance:

8. The complainant alleges violation of articles 7, 4 and 15 of the African Charter on Human and Peoples' Rights.

Procedure before the Commission

9. At the 24th ordinary session held in Banjul, The Gambia, from 22 – 31 October 1998, the Commission decided to be seized of the communication and requested the complainant to provide it with more information as regards the exhaustion of all internal remedies.
10. On 26 November 1998, letters were dispatched to both parties to inform them of the Commission's decision.
11. At the 25th session, held in Bujumbura, Burundi, from 26 April – 5 May 1999, the Commission deliberated on the admissibility of the communication.

Law:

Admissibility:

12. In terms of the provisions of article 56, 5 of the African Charter on Human and Peoples' Rights, "communications [.....] relating to Human and Peoples' Rights received by the Commission, shall be examined if they [.....] are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged."

13. The African Commission observes that while the complainant has attached to his dossier the decision granted in his favour by the Ghanaian Human Rights Commission, he does not give any indication (despite the request made to him in this regard following deliberations at the 24th session) as to the procedure he has followed before the courts. For, it should be clearly stated, the internal remedy to which article 56, 5 refers entails remedy sought from courts of a judicial nature, which the Ghanaian Human Rights Commission is clearly not. From the African Commission's point of view, seizing the said Commission can taken as preliminary amicable settlement and should, in principle, considering the employer's failure to react, be followed by an action before the law courts.

For these reasons, the Commission:

14. In conformity with the above-mentioned provisions of the Charter, declares the communication inadmissible due to non-exhaustion of internal remedies.

Bujumbura, 5 May, 1999.