16TH ORDINARY SESSION
25 OCTOBER - 3 NOVEMBER 1994
BANJUL, THE GAMBIA

FINAL COMMUNIQUE OF THE
16TH ORDINARY SESSION
OF THE AFRICAN COMMISSION ON HUMAN
AND PEOPLES RIGHTS
1. The African Commission on Human and Peoples’ Rights held its 16th Ordinary Session at its Headquarters in Banjul, The Gambia from 25th October to 3rd November 1994 under the Chairmanship of Professor Isaac NGUEMA.

2. The Session was preceded by the seventh workshop on NGO participation in the work of the African Commission on Human and Peoples’ Rights, organized by the International Commission of Jurists (ICJ) in collaboration with the African Commission and the African Centre for Democracy and Human Rights Studies.

3. The following Commissioners attended the Session:
   i. Prof. Isaac Nguema, Chairman
   ii. Dr. Mohammed H. Ben Salem, Vice Chairman
   iii. Prof. Emmanuel V.O. Dankwa
   iv. Mr. Sourahata B.S. Janneh
   v. Mr. Robert H. Kisanga
   vi. Ms. Vera Valentina B. S. Duarte Martins
   vii. Dr. Ibrahim Ali Badawi El-Sheikh
   viii. Prof. U. Oji Umozurike

4. Mr. Alioune Beye, Mr. Atsu Koffi Amega and Mr. Youssoupha Ndiaye could not attend and sent their apologies.

5. The opening ceremony took place at 10.00 a.m. on 25th October 1994 at the "Kairaba Beach Hotel" in the presence of the Honourable Fafa E. Mbai, Attorney General and Minister of Justice of the Gambia, and Mr. Adama Dieng, Secretary General of the International Commission of Jurists.

6. Also present were:
   - Ambassadors and heads of diplomatic missions;
   - Officials of The Gambia Government;
   - Representatives of Other States;
   - Representatives of Inter-governmental and Non-Governmental Organizations;
- Members of the Press and Other Guests.

The Commission registered with satisfaction the participation, for the first time, of representatives of States Parties.

7. Prof. Isaac Nguema, Mr. Adama Dieng and the Hon. Fafa E. Mbai addressed the opening ceremony.

8. In his address, Prof. Nguema deplored the state of violence and the poor human rights situation in African countries. Prof. Nguema expressed that in order to resolve the crises in Africa new institutional structures should be established taking into account the present situation in Africa and the aspirations of the African people as well as the values of African civilisations.

9. In accordance with this new model of society, Prof. Nguema called for a revision of the African Charter laying emphasis on i) strengthening the mandate of the African Commission, ii) amending the organizational and operational rules of the Commission, iii) amending the procedure for the consideration of complaints, and iv) enhancing the logistics and the legal framework of the Commission.

10. In his address, Mr. Adama Dieng expressed concern about the 4 year transitional period which was announced by the present military government of The Gambia. Mr. Dieng called upon the Commission to request the Gambian military government to shorten the transitional period.

11. Mr. Dieng referred to the NGO workshop preceding the Session and called on the Commission to adopt the resolutions submitted by the NGOs.

12. In his address, the Hon. Fafa Mbai congratulated the African Commission on the efforts it has made to execute its mandate and assured the Commission of his government's continued cooperation and support.

13. The Hon. Fafa Mbai stated that the cooperation which exists between the African Commission and NGOs is commendable and encouraged the two to nurture and sustain the relationship. The Hon. Fafa Mbai also noted that one of the fruits of cooperation between the African Commission and NGOs is the recent appointment by the Commission of a Special Rapporteur on Extra-judicial Executions. The Hon. Fafa Mbai stressed the need for NGOs, the African Commission and the OAU to give the Special Rapporteur the necessary support and assistance in the execution of this very important mandate.
mandate.

14. During its proceedings the Commission dealt mainly with the following:

i. The Present Military Rule in The Gambia;
ii. Consideration of Applications for Observer Status
iii. Consideration of Communications;
iv. Examination of Periodic reports;
v. Examination of Extra-judicial Executions;
vi. Establishment of an African Human Rights Court;

15. The following non-governmental organizations were granted observer status:

i. African Network for the Prevention and Protection Against Child Abuse and Neglect (Kenya)
ii. Centre for Justice and International Law (CEJIL) (United States)
iii. DiH, Mouvement de Protestation Civique (France)
iv. International Society for Human Rights (Zaire Section)
v. Organization Sénégalaise d’Appui au Développement (OSAD) (Senegal)
vi. All African Conference of Churches (Kenya)

16. The following non governmental organizations were granted observer status subject to the provision of additional documents:

i. Swedish NGO Foundation for Human Rights (Sweden)
ii. The English International Association of Lund (Sweden)
iii. Centre for Applied Legal Studies, University of Witwaterstrand (South Africa)

17. The granting of observer status to the 9 NGOs increases to 140 the number of NGOs which have observer status with the African Commission.
Commission also heard statements from several African and international NGO representatives including:

1. Mr. Mutombo Mulami, All Africa Conference of Churches;
2. Mr. Ahmed Motala, Lawyers for Human Rights;
3. Mr. Koumo Gopina, Association Tchadienne pour la Protection des Droits de l’Homme
4. Mr. Akouete Akakpo Vidah, Centre International des Droits de la Personne et du Développement Démocratique;
5. Dr. Galal Ragab, Union des Avocats Arabes;
6. Dr. K.G. Kwawang, Sudan Human Rights Organization;
7. Mr. Mamadou Sarr, Association des Réfugiés Mauritaniens au Sénégal;
8. Mr. Julien Tobgadja, Union International des Droits de l’Homme;
9. Mr. Clement Nwankwo, Constitutional Rights Project, Nigeria;
10. Mr. Aboubacry Mbodj, Rencontre Africaine pour la Défense des Droits de l’Homme;
11. Mr. Boudjema Chechir, Ligue Algérienne des Droits de l’Homme;
12. Prof. Shadrack Gutto, Centre for Applied Legal Studies;
13. Mr. Moshen Awad, Arab Organization for Human Rights;
14. Mme. Seny Diagne, Women in Law and Development (WILDAF);
15. Mr. Cheikh Tidjane, Collectif des Réscapes de Mauritanie;
17. Mr. Salem Mezhoud, Anti Slavery International
18. Mr. Harold Doe, International Society for Human Rights (Gambia);
19. Mr. Frans Viljoen, The Centre for Human Rights at the University of Pretoria.
Ms. Mona Rishmawi presented the Conclusions and Recommendations of the NGO workshop. The workshop welcomed the positive developments in the work of the African Commission and the publication of the Commission’s 7th activity report which includes the communications that have been considered by the Commission. The Conclusions and Recommendations of the NGO workshop called on the Commission to begin the establishment of an African human rights jurisprudence. The Conclusions and Recommendations also draw the Commission’s attention to the human rights situation in Africa and condemned the deteriorating human rights situations in a number of African countries. Accordingly, the workshop presented for the consideration of the Commission draft resolutions on The Gambia, Algeria, Nigeria, Rwanda, the Military, Contemporary forms of Slavery and the Human rights situation in Africa.

The Cote d’Ivoire representative, the country’s Ambassador to Senegal, The Gambia, Mauritania and Cape Verde congratulated the Commission for its work and assured the Commission of his country’s support and cooperation.

The representative of Burundi, the Minister for Human Rights, Social Affairs and Promotion of Women’s Rights, informed the Commission of the human rights situation in her country.

The representative from Swaziland, a Legal Adviser of the Ministry of Justice informed the Commission that his government has signed the African Charter and is considering its ratification. He sought advice from the Commission on the implications which ratification of the Charter could have on his country’s monarchy.

The Commission considered the State reports of Benin, The Gambia and Cape Verde.

The purpose of State reports is to encourage States to implement voluntarily their human rights obligations; States parties are urged to ensure that their representatives are present to defend their reports before the Commission.

Benin sent its representative, a magistrate and an official of the Ministry of Justice to present its initial report to the Commission.

The Chairman of the Commission thanked the government of Benin for presenting its report and for sending a representative to this Session. However, the Chairman noted with concern that Benin’s report was due in 1988 but was not submitted until 1992. Furthermore, the Commission could not examine the report until 1994 because Benin did not send a representative to present its report at previous Sessions.
27. In this respect the Chairman stressed that the purpose of the State reporting mechanism is to establish constructive dialogue between the Commission and States parties. The States are therefore required to inform the Commission about the legislative and other measures taken to protect human rights in their respective countries. The Commission on its part provides advice and assistance in areas where the States encounter difficulties in protecting human rights.

28. The representative of Benin informed the Commission that the African Charter has been incorporated in the Constitution of Benin. He also indicated that the human rights situation in Benin has improved since the end of the one party rule which lasted 17 years. He further informed the Commission of his government's efforts to protect human rights, as well as the difficulties encountered in areas such as education because of the country's limited resources.

29. After the presentation of Benin's report, several members of the Commission posed various questions regarding the realities of human rights in Benin. Members of the Commission also noted that the written report which was submitted in French was not translated in the other working languages of the Commission. The Commission reiterated its appeal to States parties to ensure as far as possible that the written reports are submitted in the three working languages of the Commission.

30. The representative responded to the questions posed by the Commission. The Commission requested the representative to submit the response to the questions in writing and thanked the representative and the government of Benin.

31. The Commission also examined the initial report of Cape Verde which was presented by a senior magistrate of the country.

32. The Chairman thanked the government for submitting its report and sending a representative to present it to the Commission. It was noted that the initial report of Cape Verde was due in 1989 but was not submitted until 1992. The Commission could not examine the report until 1994 because Cape Verde did not send a representative to discuss the report in previous Sessions. The Commission also noted that the report was not translated in all three working languages of the Commission.

33. The representative of Cape Verde informed the Commission that the African Charter has direct applicability in Cape Verde because under the country's Constitution, international treaties ratified by Cape Verde have direct applicability. He informed the Commission that Cape Verde has abolished the death penalty. The representative also informed the Commission that Cape Verde has several rules
applicability. He informed the Commission that Cape Verde has abolished the death penalty. The representative also informed the Commission that Cape Verde has several rules governing the protection of human rights, but the main concern lies in the actual realization of the rights.

34. The representative stated that the full realization of economic and social rights are problematic and this was due to lack of resources.

35. Several members of the Commission asked questions regarding the realities of human rights in Cape Verde. The representative responded to some of the questions. The Commission requested the representative to submit written answers to all the questions.


37. In his presentation, the representative stated that the former civilian government has been replaced by a military government through a peaceful coup. The representative informed the Commission that following the coup, certain parts of the constitution have been suspended or modified, but these do not include the right to life. He informed the Commission of the government’s efforts to ensure many of the rights set forth in the Charter. The representative stated that the government is working towards the return of civilian rule and in the transitional period, it will ensure full respect of human rights.

38. The Commission asked several questions and made certain comments concerning the report. In particular, it found that some of the assertions made were contradictory and inconsistent with the present situation in The Gambia. The Commission also noted that the oral presentation addressed issues which were not dealt with in the written report. Accordingly, the representative was requested to put those statements in writing as a supplement to the report. The Commission also expressed concern about the suspension of various parts of the Constitution by the military regime. In the interim, the government was requested to ensure the respect of human rights with special reference to the rights of arrested and detained persons.

39. The representative responded to some of the questions and comments of the Commission. The Commission requested the representative to put the response in writing and thanked the government and its representative for the report.

40. The report of Mozambique was scheduled for examination. Like the previous Session, the Commission noted with regret
that it could not proceed with the examination because Mozambique did not send a representative to present the report to the Commission.

41. The Commission considered the issue of the establishment of an African Human Rights Court and constituted a working group consisting of Commissioners Nguema, Badawi, and Umozorike to discuss the proposed court.

42. The Commission considered the problem of extra-judicial executions. Commissioner Ben Salem, the Special Rapporteur for extra-judicial executions will present a draft on the terms of reference at the 17th Session on the basis of drafts prepared on this issue.

43. The Commission reiterated its decision to organize a Seminar on the right to fair trial and legal assistance.

44. The Commission noted with regret that the Seminar on the Status of Women Under the African Charter did not take place as planned. The Commission requested its Secretary to contact the other organizers in order to reschedule and inform the members of the Commission accordingly.

45. A member of the Commission presented a report on its Seminar held in Tunis on the State Reporting procedure. This was the Francophone version of a seminar held earlier in Harare. Commissioner Dankwa was entrusted to examine the Commission's Guidelines for the preparation of State reports taking into account the Conclusions and Recommendations of the two seminars.

46. The Commission considered and adopted resolutions on Algeria, The Gambia, Nigeria, Rwanda, the Military, Contemporary Forms of Slavery, and the Human Rights Situation in Africa.

47. With respect to its protective activities, the Commission had before it 54 old communications and 8 new communications. The status of the communications is as follows:

i. Communications decided on the merits 9
ii. Communications declared admissible 5
iii. Communications declared inadmissible 7
iv. Communications withdrawn 1
v. Cases in which the Commission decided to send missions to the States concerned 11
vi. Cases in which decisions were deferred pending receipt of additional information 8
vii. Cases in which notification was to be sent to the government concerned for comments 7
viii. Cases in which the file was closed 1
ix. Communications which were not dealt with
during the 16th Session due to time constraints.

48. It should be pointed out that for the first time victims of human rights violations or their representatives came to defend their cause before the Commission.

49. The Commission welcomed the appointment of its new Secretary Mr. Germain Baricako and noted with satisfaction the considerable improvement in the functioning of the Secretariat.

50. During this Session, a delegation consisting of the Chairman and Vice Chairman of the Commission was received in audience by the Head of State of The Gambia. The delegation expressed the Commission's concern about the military takeover in The Gambia, the headquarters of the Commission.

51. The Commission calls on Algeria, Angola, Botswana, Burundi, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Cote d'Ivoire, Djibouti, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Namibia, Niger, Sahrawi Arab Democratic Republic, Sao Tome & Principe, Seychelles, Sierra Leone, Somalia, Sudan, Zaire and Zambia, to submit their initial reports as soon as possible.

52. The Commission calls on Eritrea, Ethiopia, South Africa and Swaziland to ratify the African Charter as soon as possible.

53. The Commission decided to hold its next Session from 6-15 March 1995 at a venue to be determined.

Done in Banjul, 3 November 1994