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**EXECUTIVE COUNCIL**  
**Ninth Ordinary Session**  
**25 – 29 June 2006**  
**Banjul, THE GAMBIA**

**EX.CL/279 (IX)**

**REPORT OF THE AFRICAN COMMISSION ON HUMAN**  
**AND PEOPLES' RIGHTS**

**TWENTIETH ACTIVITY REPORT OF THE AFRICAN COMMISSION  
ON HUMAN AND PEOPLES' RIGHTS**

**Section I:**

**Period covered by the Report**

1. The 20<sup>th</sup> Activity Report covers the period from January to June 2006.
2. It is important to recall that the 19th Activity Report of the African Commission on Human and Peoples' Rights (the African Commission) had been adopted by decision *Assembly/AU/DEC.101 (VI)* during the 6th Ordinary Session of the Assembly of Heads of State and Government of the African Union held from 23<sup>rd</sup> to 24<sup>th</sup> January 2006 in Khartoum, Sudan, after having been considered by the Executive Council.

**Section II:**

**Holding of the 39th Ordinary Session**

3. Since the adoption of the 19th Activity Report in January 2006, the African Commission held a Session, the 39th Ordinary Session, which was held in Banjul, The Gambia, from the 11th to 25th May 2006. The Agenda of the 39<sup>th</sup> Ordinary Session is attached as ***Annex One (1)*** of this Report.
4. The 39th Ordinary Session was preceded by the following meetings:
  - The NGO Forum, whose objective was to prepare the contribution of the Members of the Commission and that of the partners to the deliberations of the said Session. The NGO Forum was held from 6th to 8th May 2006, in Banjul, The Gambia.
  - From 7<sup>th</sup> to 8<sup>th</sup> May 2006, the African Commission held a two day Preparatory Meeting during which they discussed their contributions towards the Brainstorming Meeting on the African Commission organised by the African Union and held from 9<sup>th</sup> to 10<sup>th</sup> May 2006 in Banjul, The Gambia. The Brainstorming Meeting discussed the functioning of the African Commission and its relationship with the Organs of the African Union and its cooperating partners and came up with recommendations that were addressed to various stakeholders.
  - The Brainstorming Session on the African Commission on Human and Peoples' Rights organized by the Commission of the African Union was held from 9th to 10th May 2006, in Banjul, The Gambia, was presided over by Mrs. Salamata Sawadogo, Chairperson of the African Commission. The consultation meeting brought together participants among whom were the representative of the Republic of The Gambia, Members of the African

Commission, the Commissioner for Political Affairs of the African Union and members of the staff of the Department of Political Affairs, the Acting Director of Administration of the African Union, the representatives of the Pan African Parliament, the Committee of Permanent Representatives, Representatives from the Peace and Security Council, ECOSOCC, the United Nations Office of the High Commissioner for Human Rights, international and intergovernmental organisations, the Chairperson of the National Human Rights Institutions, and representatives of NGOs. The report of the Brainstorming is attached as **Annex two (2)** of this Report

5. The following Members of the African Commission participated in the deliberations of the 39th Ordinary Session:

- Commissioner Salamata Sawadogo, Chairperson;
- Commissioner Yassir Sid Ahmed El Hassan, Vice-Chairperson;
- Commissioner Reine Alapini-Gansou;
- Commissioner Mumba Malila;
- Commissioner Angela Melo;
- Commissioner Sanji Mmasenono Monageng;
- Commissioner Bahame Tom Mukirya Nyanduga;
- Commissioner Musa Ngary Bitaye;
- Commissioner Kamel Rezag-Bara;
- Commissioner Faith Pansy Tlakula.

Commissioner Mohammed Abdellahi Ould Babana was absent.

### **Renewal of the Mandate**

6. During the 39th Ordinary Session the African Commission renewed and extended the mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa for a period of two years. The mandate was extended to cover migration issues.

### **Participation**

7. Delegates from thirty two (32) States Parties, Nineteen (19) National Human Rights Institutions, six (6) International Organisations and Intergovernmental Organisations and one hundred and twenty eight (128) African and International NGOs were represented at the 39<sup>th</sup> Ordinary Session of the African Commission. Altogether a total of four hundred and nineteen (419) participants attended the 39<sup>th</sup> Ordinary Session.

### **Presentation of Initial/Periodic Reports by Member States**

8. It is important to recall that all the Member States of the African Union are State Parties to the African Charter on Human and Peoples' Rights. According to the provisions of Article 62 of the African Charter on Human and Peoples' Rights, each

State Party undertakes to present, every two years from the date of entry into force of the African Charter, a Report on the legislative or other measures taken to give effect to the rights and liberties recognized and guaranteed by the said Charter.

9. The state of presentation of the Initial and Periodic Reports by the State Parties is as follows:

<b>The following 13 States are up to date in the submission of their Reports</b>	<b>The following 16 States have never submitted a Report</b>	<b>The following 13 States have already submitted Reports but have 1 or 2 outstanding Reports</b>	<b>The following 11 States have already submitted Reports but have more than 2 outstanding Reports</b>
South Africa	Botswana	Algeria	Angola
Burkina Faso	Comoro Islands	Benin	Cape Verde
Cameroon	Côte d'Ivoire	Burundi	The Gambia
Central African Republic	Djibouti	Congo (Brazza)	Guinea
Egypt	Eritrea	Congo (DRC)	Mali
Libya	Ethiopia	Ghana	Mauritius
Mauritania	Guinea Bissau	Lesotho	Mozambique
Niger	Gabon	Namibia	Nigeria
Rwanda	Equatorial Guinea	Sahrawi Demo. Republic	Tanzania
Seychelles	Kenya	Senegal	Tunisia
Sudan	Liberia	Swaziland	Zimbabwe
Uganda	Malawi	Chad	
Zambia	Madagascar	Togo	
	Sao Tomé and Príncipe		
	Sierra Leone		
	Somalia		

10. The African Commission continues to invite those Member States which have not yet done so, to present their Initial and Periodic Reports. Member States are further reminded that all the outstanding Reports can be consolidated into a single Report for submission to the Commission.

11. During its 39th Ordinary Session, the African Commission considered the Periodic Reports of the following countries and adopted the relevant concluding observations and recommendations: the Republic of Cameroon, the Central African Republic, the Republic of the Libyan Arab Jamahiriya. The Commission expressed satisfaction with the discussions held with the delegations of these States. The Republic Rwanda, Uganda and Zambia presented their Periodic reports, which will be examined during the 40<sup>th</sup> ordinary session of the Commission.

12. The Initial Report of the Republic of Seychelles was considered in the absence of the State since the State of Seychelles did not send a representative to the Session. The Initial Report of the Republic of Seychelles was received by the Secretariat of the Commission on 21<sup>st</sup> June 2004 and was scheduled for consideration at the 36<sup>th</sup>, 37<sup>th</sup> and 38<sup>th</sup> Ordinary Session. However, this Report was not considered due to the absence of the Republic of Seychelles to present the Report, despite several reminders.

13. Consequently, the African Commission decided to examine this Report in the absence of the Seychelles delegation. The Commission regretted the fact that it had not been afforded the opportunity to have constructive discussions with the Member State.

### **Adoption of Mission Reports**

14. During its 39<sup>th</sup> Ordinary Session, the African Commission adopted the following Reports:

- a) *Report on the fact finding mission to the Republic of Togo;*
- b) *Reports on the missions of the Special Rapporteur on Women's Rights in Africa to the Democratic Republic of Congo;*

### **Organisation of Seminars**

15. Depending on the availability of funds, the African Commission plans to organise seminars on the following topics in 2007:

- Terrorism and Human Rights in Africa;
- Islam and Human Rights;
- Contemporary Form of slavery;
- Refugees and internally displaced persons in Africa ;

### **Resolutions**

16. In accordance with decision *Assembly/AU/DEC.101(VI)* of the 6th ordinary session of the Assembly of Heads of State and Government of the African Union, the African Commission received written responses from Ethiopia, Uganda, Sudan and Zimbabwe on the resolutions concerning the Human Rights situation in their countries adopted by the African Commission at its 38<sup>th</sup> Ordinary Session. The full text of the Resolutions and the responses from the States of Ethiopia, Uganda, Sudan and Zimbabwe are attached as ***Annex three (3)*** of this Report. During its 39th Ordinary Session, the African Commission granted audiences to the States of Ethiopia Uganda, and Zimbabwe who requested to make oral presentations and seek clarifications on the said Resolutions.

## **Cooperation between the African Commission and Human Rights National Institutions and NGOs**

17. During the Session, the African Commission discussed co-operation with the National Human Rights Institutions and Non Governmental Organisations. The African Commission urged State Parties that are yet to establish National Human Rights Institutions to do so and build the capacity of existing ones, in accordance with the Paris Principles and its own resolution on these Institutions.

18. The 2<sup>nd</sup> African Union Conference of National Human Rights Institutions was held along with the Ordinary Session of the African Commission from the 12<sup>th</sup> to 14<sup>th</sup> May 2006, in Banjul, The Gambia. The Conference was organised in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Coordinating Committee of National Human Rights Institutions. Members of the African Commission participated in this Conference.

19. During the 39th Ordinary Session, the African Commission granted Observer Status to 7 (seven) Non Governmental Organisations :

- Prison fellowship of Ethiopia (Ethiopia)
- Institut Panos de l'Afrique de l'Ouest (Senegal)
- WITNESS (USA)
- Foundation for Women's Health Research and Development (United Kingdom)
- Citizens for a Better Environment (Zambia)
- Cameroon Environmental Protection Association (Cameroon)
- Stop Poverty (Mauritania)

20. This brings the number of NGOs with Observer Status to the Commission to three forty nine (349) as of May 2006.

### **SECTION III:**

#### **Promotion Activities**

#### **Promotion Activities of the Chairperson and Members of the African Commission during the Intersession**

21. In their capacities as Members of the Bureau of the African Commission, The Chairperson, Commissioner Salamata Sawadogo and the Vice Chairperson, Commissioner El-Hassan supervised the operations of the African Commission during the Intersession. The Chairperson, Commissioner Sawadogo sent two appeals to the Heads of States of Botswana and Zimbabwe relating to human rights.

22. Due to lack of funds, the Members of the African Commission were unable to conduct most of the missions scheduled for the period covered by this Report.

Nevertheless, some promotion activities were undertaken, and workshops and seminars attended, at the invitation of the Partners of the African Commission.

23. The Chairperson of the African Commission, **Commissioner Salimata Sawadogo** undertook the following activities:

- From 16<sup>th</sup> to 23<sup>rd</sup> December, 2005, in Addis Ababa, she undertook a mission with the Vice Chairperson and the Acting Secretary of the Commission, to hold discussions with the Chairperson of the Commission of the African Union and the Commissioner for Political Affairs on urgent problems of the Secretariat of the Commission that needed to be resolved. The issues included: the Staffing and Administrative problems of the Commission as well as the need for co-operation between the African Commission and the Organs of the African Union;
- From 17<sup>th</sup> to 23<sup>rd</sup> January in Khartoum, Soudan, she participated in the meeting of the Executive Council preceding the Khartoum Summit whereby the 19<sup>th</sup> Activity report was considered. During the Summit, the Chairperson had a meeting with Mrs Gertrude Mongela, Chairperson of the Pan African Parliament on how to foster fruitful cooperation between the two Institutions;
- On 8 April, 2006, in Dakar, Senegal, the Chairpersin Conference at the Interstate Institute for Tertiary Education (CESAG). She delivered a paper on: "Human Rights: the African Experience". This afforded her the opportunity to inform the students and participants from diverse sectors of the activites of the African System of Human Rights and to promote existing mechanisms and instruments especially those related with the African Commission and the African Charter on Human and Peoples' Rights;
- From the 9<sup>th</sup> to 13<sup>th</sup> April, 2006, the Chairperson undertook a mission to Addis Ababa with the Vice Chairperson Mr. El Hassan on the situation of the Secretariat, which far from being resolved in a sustainable manner was deteriorating. The Delegation raised the following salient points including: the vacant post of the Secretary, the contracts of the Legal Officers paid by the African Union which was drawing to an end and the same applying to Legal Officers paid from extrabudgetary funds, and vacancy of the post of Documentation Officer. At the meeting, the delegation dilated on all these issues with The Chairperson of the Commission of the African Union, His Excellency Alpha Konaré, the Vice Chairperson of the Commission of the African Union, Mr Patrick Mazimahaka, the Commissioner for Political Affairs, Mrs Julia Dolly Joiner and the Human Resources Manager, Mrs. Masire;
- On 27<sup>th</sup> April 2006, in Dakar, Senegal, the Chairperson was a resource person at a Conference organised by the Embassy of South Africa to commemorate the 12<sup>th</sup> anniversary of the Liberation and the 30<sup>th</sup> anniversary of the Women's march. The topic of the meeting was "the current and future role of women in government and the judiciary"

24. **Commissioner Yassir El Hassan**, Vice Chairperson of the African Commission undertook the following activities:

On 5<sup>th</sup> November 2004 the Bureau held a meeting with the Minister of Justice of the Republic of The Gambia to discuss various issues.

- From 9<sup>th</sup> to 13<sup>th</sup> April 2006, Commissioner El Hassan and the Chairperson of the African Commission in Addis Ababa, Ethiopia. They also met with the Commissioner for Political Affairs and staff of the Recruitment Section of the AU Commission. Administrative issues as well as other matters relating to human rights were discussed during these meetings;
- On the 14<sup>th</sup> of April 2006, the vice chairperson Commissioner El Hassan held a meeting with the Vice Chairperson of the AU Commission in Addis Ababa, Ethiopia in the presence of the A.U Commissioner for political affairs. The meeting discussed mainly staff administrative matters and problems of recruitment at the Secretariat of the ACHPR;
- From 17<sup>th</sup> to 23<sup>rd</sup> of January 2006, in Khartoum, Sudan, he attended the extra- ordinary session and the 9<sup>th</sup> ordinary session of the Executive council of AU, as well as the 6<sup>th</sup> Assembly of Head of State and Government. He took the opportunity during this meeting and met with the Ministers and delegates from some countries which fall under his responsibility for promotional activities and discussed with them the future cooperation with the African Commission. He met together with the Chairperson and the acting Secretary of the African Commission, upon their request, members of the Zimbabwe delegation to the Executive Council meeting in Khartoum and discussed issues of mutual concerns;
- From 27<sup>th</sup> to 28<sup>th</sup> March 2006, he participated in a United Nations Regional Consultation on Human Rights Responsibilities of Transnational Corporation and Other Business Enterprises. The meeting took place in Johannesburg, South Africa;
- From 6<sup>th</sup> to 9<sup>th</sup> March 2006, he attended the 2<sup>nd</sup> Arab National Human Rights Institutions Conference held in Doha, State of Qatar. The meeting was held in collaboration with International Coordinating Committee of the Human Rights National Institutions, the UNHCHR, the Arab League, the UNESCO and the national commission on Human rights of the State of Qatar;
- He has been nominated by the Chairperson to represent the African Commission at the African Peace and Security Council meeting held in Addis Ababa in March 2006. He could not undertake this mission;

- On the 25<sup>th</sup> of April 2006 in Khartoum Sudan, he participated in a one day Seminar organized by the Women Division of the Sudan Advisory Council of Human Rights. He spoke as the main commentator on a Paper entitled “the Legal Protection of HIV/AIDS Infected Persons in International and National Instruments” presented by Mr. Uostaz Badria Souliman former Legal Advisor on Legal Affairs of the President of the Republic and Current Member of Parliament.
- On the 14<sup>th</sup> of February, 2006 in Khartoum Sudan he participated in a one day consultation on the Sudanese new draft law establishing the National Institution on Human Rights.

25. **Commissioner Kamel Rezag Bara** undertook the following activities:

- He represented the African Commission at the European Union NGO Forum on Human Rights devoted to freedom of Expression, held in London on 8<sup>th</sup> and 9<sup>th</sup> December, 2005;
- On 28<sup>th</sup> and 29<sup>th</sup> January 2006, at the invitation of the Minister Delegate for Family and Women’s Affairs, the Commissioner attended a Seminar on the implementation of the National Strategy to fight against violence on women and children in Algeria;
- From 14 to 24 February 2006, Commissioner Rezag Bara undertook a fact finding mission to the Republic of Niger in his capacity as Chairperson of the Working Group on Indigenous people and Communities;
- From 8<sup>th</sup> to 12<sup>th</sup> March, 2006 in Rabat, Morocco, at the invitation of the United Nations Institute for Training and Research (UNITAR), he participated in the regional capacity building programme for Representatives of Indigenous Peoples and Communities in the areas of Conflict Prevention and the Consolidation of Peace. The Commissioner made a presentation on the African Approach to the promotion and protection of the right to citizenship of the Indigenous Populations and Communities as a factor of social stability and cohesion;
- From 19<sup>th</sup> to 25<sup>th</sup> March 2006, the Commissioner held a meeting with the Head of the Department for economic and social affairs and responsible for the technical Secretariat of the UN, New York office on the preparation of the Permanent Forum of the United Nations on issues of indigenous populations, scheduled to be held from 15 to 25 May, in New York, USA;
- From the 3<sup>rd</sup> to 5<sup>th</sup> May 2006, in Algiers, Algeria, the Commissioner was invited to participate in the meeting of African Experts on Migration. The opening remarks were made by Mr. Alpha Omar Konaré, Chairperson of the Commission of the African Union. Mrs Bience Philomina Gawana,

Commissioner of the African Union responsible for Social Affairs, was also present.

26. **Commissioner Musa N. Bitaye** undertook the following activities:

- He participated from 2<sup>nd</sup> to 7th January, 2006 in Dakar, Senegal, in an intensive institute organised by the International Centre for Ethics, Justice and Politic Life of Brandeis University for International Judges in recognition of the African Court on Human and People's Rights coming into force. Presentations were made at this institute by reknowned International Judges. Mr. Hans Correll, former Under Secretary General for Legal Affairs at the United Nations volunteered to arrange financing to facilitate communications between the Commissioners of the African Commission;
- He attended the Donors Round Table Conference in Nouakchott, Mauritania for the funding of the Mauritanian elections scheduled for the end of this year or early 2007. This Roundtable Conference was well-attended by Donors including France, United States of America, and the European Union. The outstanding amount for the funding of the elections was 7 million US Dollars and the meeting noted several official pledges that would cover over half of the required amount. Senegal pledged 200.000 US dollars and the AU 100.000 US dollars. At the end of the round table, the African Union Delegation, including Commissioner Bitaye was received by His Excellency, Mr. Mohammed Ould Val, the Mauritanian Head of State.

27. **Commissioner Mumba Malila** reported that he was not able to carry out promotional missions to any country since he took office at the 38<sup>th</sup> Ordinary Session. A request to the Ugandan Government to visit Uganda had not been responded to, probably due to the elections that took place in that country during the period proposed for the visit. The Ugandan government has now expressed willingness to receive the Commissioner in July 2006. Commissioner Malila reported that he however was able to carry out promotional activities in his own country where he requested the Government to submit its State report under Article 62 of the Charter. He also held discussions with some NGOs in the country to explain the importance of obtaining observer status.

28. **Commissioner Bahame T. Nyanduga** undertook the following activities:

- Between 9 and 11 February 2006, in Kampala, Uganda, took part in a workshop, on the International Criminal Court, aimed at sensitizing Ugandan lawyers and NGOs from Northern Uganda on the ICC universal criminal jurisdiction, following the referral of the LRA by the government of Uganda.
- Between 27 February and 1 March 2006, in Nairobi, Kenya, he took part in a Judicial Colloquium on Domestic Application of International Human Rights norms, at the invitation of the OHCHR. The Judicial Colloquium brought together Supreme, Appellate, and High Courts judges from Kenya, Mauritius, Uganda, Rwanda, South Africa, Tanzania and Zambia. The Colloquium

addressed the need to strengthen the implementation of human rights treaty bodies' recommendations through enhancement of national protection mechanisms and domestication of regional and international human rights instruments.

- Between 7 and 9 March 2006, he was at the Centre for Human Rights, of the University of Pretoria, Tswane, South Africa, and gave lectures to the 2006 LL.M Human Rights and Democratization programme, on the mandate and mechanisms of the African Commission.
- On the 7<sup>th</sup> April 2007, he gave a lecture to graduate students from the Centre for African Studies, Gothenburg University, Sweden, visiting Tanzania and gave a presentation on the Africa Commission, its mandate, and mechanisms, and the situation of human rights in Tanzania.
- Between 9<sup>th</sup> and 10<sup>th</sup> May, 2006, I attended the Brainstorming meeting on the African Commission, organized by the African Union in Banjul, The Gambia.

29. **Commissioner Sanji M. Monageng** reported that she undertook a promotional mission from 3<sup>rd</sup> to 7 April 2006 to the Kingdom of Lesotho, during which she had fruitful discussions with the government authorities, international organisations and local non governmental organisations.

### **Activities of the Special Mechanisms during the Intersession**

30. In her capacity as **Special Rapporteur on the Rights of Women** in Africa,

Commissioner Melo undertook the following activities:

- In December, 2005, she addressed a letter to Honourable Gertrude Mongella, Chairperson of the African Parliament to set in motion co-operation in the domestication of the Protocol in the National Laws;
- From 27<sup>th</sup> to 28<sup>th</sup> January, 2006 in London, UK, she participated at the 14th session of the Board of Directors meeting of Penal Reform International (PRI) in London and was nominated with six other persons as a Member of the Committee of Experts;
- In March 2006, in Abuja Nigeria, Commissioner Melo attended a workshop to design a Strategic Plan for the ECOWAS region on violence against Women;
- From 6 to 8 May 2006, in Banjul, The Gambia, she participated in the NGO Forum of the African Centre for Democracy and Human Rights Studies and lobbied for the ratification of the Protocol by all Member States and for the enforcement of Women's Rights in Africa.

31. As **Special Rapporteur for Refugees, Asylum Seekers and Internally Displaced Persons in Africa**, Commissioner Nyanduga, said that the situation of refugees in Africa is improving in some areas with the consolidation of peace in post-conflict situations such as, in South of Sudan and Burundi. Fighting between factions in Somalia is paralyzing the Transition Institutions, affecting security and the efforts at stabilizing the situation as well as the return of refugees.

- On the issue of Asylum seekers, the Rapporteur mentioned the situation of migrants who leave for Europe where immigration/asylum policies are becoming restrictive and intolerant;
- He described the situation of displaced persons in Africa, estimated at 13 million- that is more than half the total number of displaced persons the world over. He stated that these statistics may not reflect the actual situation of Africa, because development induced displacement under the urban generation programmes which occur in almost all African countries and natural disasters such as the drought in Burundi and the Eastern Africa has affected many people. Most displaced people included in the Statistics for Africa have been displaced as a result of conflict;
- He commended Angola, Burundi, Liberia and Uganda for adopting legislations and national IDP policies based on the UN Guiding Principles on Internally Displacement;
- The Rapporteur reminded the partners of the Commission, namely the National Human Rights Institutions and the NGOs to sensitize the State Parties which have not done so to adopt the legislation national policies on internal displacement;
- He mentioned positive points which is the recent signature of the Darfur Peace Agreement between the Government of the Republic of Sudan and SLAM and hoped that this Agreement will put an end to the suffering of the people of Darfur;
- The Rapporteur commended the States of the Great Lakes region for adopting a Protocol on IDPs.

32. In her capacity as **Special Rapporteur on the Freedom of Expression in Africa**, Commissioner Pansy Tlakula received information concerning arrests and detentions of journalists, administrators and staff of certain Radio Stations and Newspapers in some African countries.

- On the 10<sup>th</sup> May 2006, the Special Rapporteur seized the opportunity of her presence in The Gambia to meet the members of the Gambia Press Union as well as the competent Government Authorities to inform them about her mission and to discuss the situation on the right to the freedom of expression in the country;

- On the 3<sup>rd</sup> May 2006, the Special Rapporteur on the Freedom of Expression, Ms. Pansy Tlakula together with the United Nations Special Rapporteur on the promotion and protection of the right to the freedom of opinion and expression, Mr. Ambeyi Ligabo, the Special Rapporteur on the freedom of expression of the Organisation of American States, Mr. Ignacio Alvarez, the Representative of the freedom of the media of the Organisation for Security and Cooperation in Europe, Mr. Miklos Haraszti prepared and issued a statement in commemoration of World Press Freedom Day.

33. In her capacity as **Special Rapporteur on Human Rights Defenders in Africa**, Commissioner Reine Alapini-Gansou reported on the situation of these men and women who, in spite of the risks they run, continue to denounce the violations of human rights which they have witnessed with the hope of building a world of greater justice and respect for fundamental freedoms. The Rapporteur pointed out that these past few months have been marked by an upsurge of threats and harassment against human rights defenders, and by the increasing use of the judicial system to sanction their activities. She called on the NGOs to work hand in hand with their Governments in order to eliminate the tensions and climate of suspicion. The Rapporteur also launched an appeal to the Member States to engage in constructive dialogue and to guarantee a conducive environment for the work of the human rights defenders in the Continent. The Rapporteur carried out various activities during the intersession period comprising:

- From the 12th to 21st December 2005, a fact finding mission to Togo with Commissioner Tom Nyanduga;
- From the 2<sup>nd</sup> to 7th January 2006, in Dakar, Senegal, participated, in a programme organized by the International Centre for Ethics, Justice and Public Life of Brandeis University;

34. In his capacity as **Special Rapporteur on Prisons and Conditions of Detention in Africa**, Commissioner Mumba Malila presented a brief Report on prisons and conditions of detention in Africa. He urged the Member States to strengthen the measures guaranteeing good detention conditions in the prisons as well as in Police cells.

- The Special Rapporteur reported that he held meetings with several partners, including a delegate from the French Foreign Affairs, Association for the Prevention of Torture and Penal Reform International who are interested in working with the Special Rapporteur mechanism.

35. The **Working Group on Economic, Social and Cultural Rights** reported that the Group had appointed two experts to prepare the draft guidelines on the implementation of the economic, social and cultural rights in Africa. However, considering that the two experts have not yet finalized the drafting of the guidelines, the Working Group intends to hold at least one meeting to examine the contents of the last version of the guidelines before submitting it to the African Commission for adoption at its next session.

36. The **Working Group on Indigenous Populations/Communities in Africa** presented its Report describing the activities carried out in relation to the missions to countries, research and information visits, conferences, the publication and dissemination of the Report of the Working Group, the finalization of the Reports adopted during the 38th Ordinary Session of the African Commission, the preparation of a data base, the information index card (booklet), the bulletin and preparation for a regional seminar in September 2006. The Working Group also outlined the activities that are to be carried out in the next six months.

37. The **Working Group on the Death Penalty** submitted a report stating that during the intersession the Working Group had not been able to meet not only for financial reasons but also because the consultations for the appointment of the independent experts have not yet been concluded. The process of identifying the five experts to be recommended to the Commission for appointment is concluded. Work on improving the draft document on the death penalty in Africa is on course. Considering the controversy surrounding the subject of death penalty, as is the case everywhere else in the world, the Working Group tried to get experts representing various cultures, religions and legal systems in the Continent. The Working Group also intends to pursue its efforts in collecting contributions and ideas from partners, from the public and from as many sources as possible.

38. The **Working Group on Specific Issues relating to the work of the African Commission** held a meeting in April 2006 in Pretoria, South Africa at which the following issues were discussed:

- The Review of the Rules and Procedures of the African commission;
- The Relationship between the African Commission and the African Court on Human and Peoples' Rights.

39. The **Working Group on the implementation of the Robben Island Guidelines** was not able to carry out any activities during the intersession period due to lack of funds. It is important to point out that all the activities undertaken by the Working Group had been funded by the Association for the Prevention of Torture (APT) which is a member of the Working Group but which is currently in financial difficulties. Commissioner Monageng, Chairperson of the Working Group had, thus, launched an appeal to the Secretariat to set up efforts for the acquisition of funds and to all the Organizations concerned present at the 39th Ordinary Session to help support the work of the Working Group in this regard.

#### **SECTION IV:**

##### **Protection Activities**

40. During its 39<sup>th</sup> Ordinary Session, the African Commission considered fifty nine (59) Communications three (3) of which were for review, eight (8) were decisions on seizure, thirty one (31) were decisions on admissibility and seventeen (17) were decisions on the merits. Besides, after consideration, it decided to strike off two

Communications from its register. The list of Communications figures in **Annex four (4)** of this Report. For various reasons, the Commission deferred consideration of the other Communications to the 40<sup>th</sup> Ordinary Session.

### **Entry into force of the Protocol to the African Charter on the Rights of Women in Africa**

41. It is important to recall that the Protocol to the African Charter on the Rights of Women had been adopted by the 2<sup>nd</sup> Ordinary Session of the Assembly of Heads of State and Government of the African Union on the 11<sup>th</sup> July 2003 in Maputo, Mozambique. To date, eighteen (18) State Parties have deposited their instruments of ratification of the said Protocol. These are:

1. Benin
2. Cape Verde
3. Comoro Islands
4. Djibouti
5. The Gambia
6. Libya
7. Lesotho
8. Malawi
9. Mali
10. Mauritania
11. Mozambique
12. Namibia
13. Nigeria
14. Rwanda
15. Senegal
16. Seychelles
17. South Africa
18. Togo

42. The African Commission invites the Member States of the African Union who have not yet done so to ratify this Protocol as early as possible.

### **SECTION V:**

#### **Administrative and Financial matters**

43. Under Article 41 of the African Charter, the Commission of the African Union is responsible for meeting the costs of the African Commission's operations, including the provision of staff, financial resources and services. However, the work of the Secretariat of the African Commission continues to be severely compromised due to lack of funding. Even for its staffing requirements, the African Commission continues to depend more on extra-budgetary resources than on the AU for funding. Notwithstanding the extra-budgetary resources, the staffing situation still remains inadequate, given the increasing

workload of the African Commission. There is an urgent need to recruit more staff of all categories to ensure the smooth running of the Commission.

44. In order to supplement the limited resources allocated to it by the African Union, the African Commission continues to seek financial and material assistance from external partners.

45. During the period under review, the African Commission benefited from such financial and material support from the following partners -:

**a) Danish Human Rights Institute**

46. The Secretariat of the African Commission received extra-budgetary resources from the Danish Human Rights Institute (former Danish Human Rights Centre) to finance the post of a Policy Phasing and Resource Mobilisation Officer, as well as research activities.

**b) Rights and Democracy**

47. The Canadian NGO, Rights and Democracy-made a grant to the African Commission for the following activities -:

- Campaign for the Ratification of the Protocol to the African Charter on the establishing an African Court of Human and Peoples Rights;
- Ratification of the Protocol to the African Charter on the Rights of Women in Africa;
- Meeting on democracy and elections in Africa; and
- The services of 4 Fellows to the Special Rapporteurs on the Rights of Women, Freedom of Expression, Prisons and Refugees, Internally Displaced Persons, Asylum Seekers and Migrants in Africa.

**c) Danish International Development Agency (DANIDA)**

48. DANIDA continues to support activities of the Working Group on Indigenous Populations/Communities. This support will continue until 2007.

**d) The Office of the UN High Commissioner for Human Rights (OHCHR)**

49. The OHCHR continues to finance the activities of the Special Rapporteur on Human Rights Defenders in Africa and for an Assistant to this mechanism; however, these funds will come to an end in June 2006.

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

**SECTION VI:**

**Adoption of the Twentieth Activity Report**

51. After consideration of the present Twentieth Activity Report by the Executive Council of the African Union the latter will submit it to the 7th Ordinary Session of the Assembly of Heads of State and Government of the African Union, meeting in Banjul, The Gambia in July 2006. This is for the purpose of enabling the Assembly to adopt the said Report and to authorize its publication.

**LIST OF ANNEXES**

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## **Annex I**

**Agenda of the 39<sup>th</sup> Ordinary Session  
11<sup>th</sup> to 25<sup>th</sup> May 2006,  
Banjul, The Gambia**

**AGENDA OF THE 39<sup>th</sup> ORDINARY SESSION OF THE AFRICAN  
COMMISSION ON HUMAN AND PEOPLES' RIGHTS  
(From 11<sup>th</sup> May to 25<sup>th</sup> May 2006, Banjul, The Gambia)**

**Item 1: Opening Ceremony** (Public Session)

**Item 2: Adoption of the Agenda** (Private Session)

**Item 3: Organisation of Work** (Private Session)

**Item 4: Human Rights Situation in Africa** (Public Session)

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

**Item 5: Cooperation and Relationship with National Human Rights Institutions and NGOs** (Public Session)

1. Cooperation between the African Commission on Human and Peoples' Rights and National Human Rights Institutions:
  - a) Relationship with National Human Rights Institutions; and
  - b) Consideration of applications for affiliate status from National Human Rights Institutions.
2. Cooperation between the African Commission on Human and Peoples' Rights and NGOs.
  - a) Relationship with NGOs; and
  - b) Consideration of applications of NGOs for Observer Status.

**Item 6: Consideration of State Reports** (Public Session):

- a) Status of Submission of State Party Reports
- b) Consideration of -:
  - I) The Initial Report of Seychelles;
  - II) The Periodic Report of Cameroon;
  - III) The Periodic Report of Libya; and
  - IV) The Initial Report of the Central African Republic

**Item 7: The Establishment of the African Court on Human and Peoples’**

**Rights:** (Public Session)

Status of ratification of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples’ Rights and the effective establishment of the same.

**Item 8: Promotion Activities** (Public Session)

- a) Presentation of the Activity Reports of the Chairperson, Vice-Chairperson and Members of the African Commission;
- b) Presentation of General Report on the Brainstorming / Consultation meetings;
- c) Presentation of the Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa;
- d) Presentation of the Report of the Special Rapporteur on the Rights of Women in Africa and the status of ratification of the Protocol to the African Charter on the Rights of Women in Africa;
- e) Presentation of the Report of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa;
- f) Presentation of the Report of the Special Rapporteur on Human Rights Defenders in Africa;
- g) Presentation of the Report of the Special Rapporteur on the Freedom of Expression in Africa;
- h) Presentation of the Report of the Chairperson of the Working Group on the Implementation of the Robben Island Guidelines;
- i) Presentation of the Report of the Chairperson of the Working Group on the Situation of Indigenous Peoples/Communities in Africa;
- j) Presentation of the Report of the Chairperson of the Working Group on Economic, Social and Cultural rights in Africa;
- k) Presentation of the Report of the Working Group on Specific Issues Relevant to the Work of the African Commission;
- l) Report of the Working Group on the Death Penalty; and
- m) Organisation of Conferences and Seminars.

**Item 9: Appointment/Renewal of the term of the Special Rapporteur on Refugees, Asylum Seekers and Internally displaced Persons in Africa** (Private Session)

**Item 10: Consideration and Adoption of draft Reports** (Private Session)

1. Consideration and adoption of mission reports of the African Commission:
  - a) Draft Reports on the Promotional Missions to *Burundi, Rwanda and Mali*;

- b) Draft Report of the Missions of the Special Rapporteur on the Rights of Women in Africa to *Democratic Republic of Congo* and *Cape Verde*;
- c) Draft Report of the Fact-finding Mission to *Togo*;
- d) Draft reports of the mission of the Working Group on Indigenous Populations/Communities to *Niger*.

2. Consideration and adoption of -:

The final report of the Working Group on Specific Issues Relevant to the Work of the African Commission.

**Item 11: Establishment of a Hotline on Prisons in Africa:** Modalities of Status of Establishment and operationalisation of the Hotline on Prisons in Africa (Private Session)

**Item 12: Consideration of:** (Private Session)

- a) The Working Document on the relationship between the African Commission and the proposed African Court of Justice and Human Rights;
- b) The Paper on *Locus standi* before the African Commission;
- c) The Proposed Project by the international Centre for Ethics, Justice and Public Life at Brandeis University on “Promoting the knowledge of Rights in African languages”;
- d) The Report of Studies on Violence Against Women in Africa;
- e) The Guidelines for States Reports on the implementation of the Protocol on the Rights of Women

**Item 13: Protection Activities:** (Private Session)

Consideration of Communications

**Item 14: Methods of Work of the African Commission:** (Private Session)

- a) Review of the mandate of the Special Rapporteur on Arbitrary Executions and Extra-Judicial Killings in Africa;
- b) Follow-up, implementation and publication of the African Commission’s decisions, resolutions and recommendations; and
- c) Matters arising from the consideration of the 19<sup>th</sup> Activity Report of the African Commission by the 8<sup>th</sup> Ordinary Session of the Executive Council of the African Union (20<sup>th</sup> - 21<sup>st</sup> January 2006) and the 6<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the African Union (23<sup>rd</sup> - 24<sup>th</sup> January 2006) in Khartoum, Sudan.

**Item 15: Administrative and Financial Matters:** (Private Session)

- a) Report of the Secretary on the administrative and financial situation of the African Commission and its Secretariat; and
- b) Construction of the Headquarters of the African Commission.

**Item 16: Consideration and Adoption of Recommendations, Decisions, and Resolutions including:** (Private Session):

- a) Recommendations of the NGO Forum; and
- b) Concluding Observations on the initial reports of Seychelles and the Central African Republic and the periodic reports of Cameroon and Libya.

**Item 17: Dates and Venue of the 40<sup>th</sup> Ordinary Session of the African Commission** (Private Session)

**Item 18: Any Other Business** (Private Session)

**Item 19: Adoption of the 20<sup>th</sup> Activity Report of the African Commission, the report of the 39<sup>th</sup> Ordinary Session and Final Communiqué of the 39<sup>th</sup> Ordinary Session** (Private Session)

**Item 20: Reading of the Final Communiqué and Closing Ceremony** (Public Session)

**Item 21: Press Conference** (Public Session)

**ANNEX II**

**REPORT OF THE BRAINSTORMING MEETING ON THE  
AFRICAN COMMISSION**

**Report of the meeting of the Brainstorming Meeting on the African Commission  
on Human and Peoples' Rights (ACHPR): 9-10 May 2006,  
Corinthia Atlantic Hotel, Banjul, The Gambia**

**INTRODUCTION:**

1. The African Union Commission organized a two day brainstorming session on the African Commission on Human and Peoples' Rights (ACHPR) on 9-10 May 2006 in Banjul, the Gambia. The session brought together participants who included a representative of the government of the Republic of the Gambia, the Commissioner for Political Affairs of the African Union, members of the ACHPR, representatives of the Pan African Parliament, Permanent Representative Committee, members of staff of the Department for Political Affairs, the Acting Director for Administration of the AU, the Peace and Security Department, ECOSOCC, representatives of the OHCHR, UNHCR, the Chairperson of the Coordinating Bureau of National Human Rights Institutions, and Civil Society<sup>1</sup>.

**Opening Ceremony:**

2. H.E. Ambassador Salamata Sawadogo, Chairperson of the ACHPR welcomed the participants to the Brainstorming meeting and stated that it was a very important initiative by the AU Commission, to discuss highly important matters pertaining to human rights.

3. She declared that recommendations of the 2001 Mauritius Plan of Action, the 2003 Addis Ababa Retreat, and the 2004 Uppsala International Conference were aimed at the enhancing the efficiency of the African Commission. She expressed the hope that the brainstorming would clarify various issues relating to the mandate of the African Commission, and the role of the various AU organs and institutions.

In that regard, she welcomed the presence of the Commissioner for Political Affairs and officials from the AU Commission, AU organs as well as partners of the ACHPR. She added that the ACHPR would raise all relevant matters for discussion, and propose recommendations.

4. The Chairperson of the ACHPR added that urgent steps should be taken to give effect to the result of the meeting, in the areas of funding, staff matters and other areas because the prevailing situation seriously hampers the work of the ACHPR. She added that in the past, the ACHPR has set up a Working Group and organised a number of meetings with relevant actors from institutions and partners to enhance the efficiency of the ACHPR.

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<sup>1</sup> The list of participants is attached to this report.

5. In his address, the representative of the Government of the Gambia, Dr. Andrew Carroll stressed the high the importance of the Brainstorming meeting to the ACHPR. He pointed out that human rights are universal, and that their violation should be the concern of everyone, especially the ACHPR, which is the main African institution created in that regard. State Parties to the African Charter should abide by the African Charter, which they adopted.

6. Dr. Carroll further declared that all Conventions on human rights should be respected by all States, whether or not they have ratified them.

7. H.E Mrs. Julia Joiner, Commissioner for Political Affairs, delivered the keynote address and observed that the Brainstorming is expected to enhance the relationship between the ACHPR and other organs of the AU. She pointed out that the representatives from the PAP, the ACRWC, the ECOSOCC, PSC, PRC Sub Committee on Structures, independent experts, former members of the ACHPR, representatives from UN agencies, National Human Rights Institutions have been invited to attend the meeting.

8. She said that the African Union recognizes the constraints and challenges facing the African Commission She urged the meeting to identify new synergies, existing gaps, appropriate responses, and opportunities in the protection of human rights in Africa. She assured the meeting that State Parties were committed to translate the African regional human rights instruments into practical reality. She expressed the commitment of the African Union to implement the recommendations of the meeting.

9. Prior to the Brainstorming, the ACHPR held a two day consultation meeting in preparation for the same. The meeting was also preceded by a meeting of experts in Addis Ababa, Ethiopia, organised by the OHCHR.

### **Progress of the Brainstorming meeting**

10. The meeting elected a Bureau composed of the H.E Salamata Sawadogo, Chairperson of the ACHPR and HE Ambassador Emile Ognimba, Director for Political Affairs, Vice Chairperson. Commissioner Bahame Tom Nyanduga, was appointed as the Rapporteur.

### **Program of work**

11. The brainstorming session discussed the following themes and topics;
- The legal framework and operational arrangements,
    1. the status , mandate and independence of the African Commission;
    2. reports on the African Commission;
      - (a) ACHPR Evaluation report,
      - (b) Addis Ababa Retreat,

- (c) Uppsala International Conference Report;
- The functioning of the African Commission;
  - (a) the financial, administrative and staff matters,
  - (b) construction of the headquarters;
- Relationship with cooperating partners;
- Relationship with other organs of the African Union;
- Networking between the African Union and organs.

12. The thematic discussions were introduced by members of the African Commission, who identified constraints, challenges and made recommendations. Participants contributed to the discussions. The representatives from the African Union Commission made clarifications on the policy and administrative issues.

**Item 1: The status, the mandate and the independence of the ACHPR**

13. Discussions on the status, independence and impartiality of the ACHPR raised the following challenges:

- a) incompatibility of Members of the ACHPR in the context of Articles 31 and 38 of the African Charter;
- b) Some current Members of the ACHPR hold official positions in their respective State, thereby creating a perception of lack of independence.
- c) The effect of Assembly/AU/Decision 101(VI) on the preparation and publication of the Annual Activity reports under articles 59 (1) and (3) in relation to the mandate of the ACHPR under Article 45;

14. Constraints arising out of the insufficiency of resources that the African Union provides to the ACHPR for the discharging of its mandate under Article 41 of the Charter.

15. Some State Parties have accused the ACHPR of being too much dependent on donor funds thereby affecting its independence and credibility.

16. The ACHPR considers that the decision adopted by the Assembly of Heads of State and Government of the AU during the Khartoum Summit needs to be revisited, bearing in mind its impact on the publication of its decisions and resolutions under the terms of Article 59(1) of the Charter, and the independence of the ACHPR.

17. The current number of Members of the ACHPR is insufficient to adequately implement its mandate.

**Recommendations:**

- a) In order to safeguard the independence and impartiality of ACHPR, State Parties should comply strictly to the AU Eligibility criteria on the nomination of candidates and election of members of the ACHPR, and not elect candidates holding portfolios and positions that might impede their independence as Members of the ACHPR.
- b) The AU criteria shall apply to members of the ACHPR, whose status shall change after their election.
- c) The AU should provide adequate funding to the ACHPR for it to successfully discharge its mandate.
- d) Extra budgetary resources allocated to the ACHPR for its activities should be channelled through the African Union Commission.
- e) The number of members of the ACHPR should be increased from 11 to between 15 or 18 in order to enable the institution efficiently discharge its mandate.
- f) The ACHPR should attend the budgetary meetings of the AU in order to present and defend its budget.
- g) The AU Commission should ensure that the ACHPR takes part effectively in the meetings of the policy organs of the AU bearing in mind the AHG/AU 2003 decision in Maputo recognised its status as an organ of the AU.
- h) The ACHPR should submit to the AU Commission its opinion on the interpretation of Article 59 (1) of the Charter concerning the publications of its reports.
- i) The ACHPR requests that the Executive Council of Ministers recommends the AHG/AU to revisit its decision adopted in Khartoum as far as it concerns activities of the ACHPR that do not fall within the scope of protection mandate of the ACHPR.

**Item 2:       Reports on the work of the ACHPR:**

18. The meeting discussed the presentation on the Evaluation Report, the Addis Ababa Retreat report and the Uppsala conference Report, which identified challenges to the efficient functioning of the ACHPR since its inception

**Challenges:**

19. The ACHPR has barely 30 days in a year to reflect on a lot of issues relating to reports, communications and others. These constraints are critical to its efficiency.

20. There is a necessity to establish a follow up mechanism on the publication of the Annual Activity Reports of the ACHPR.
21. There is lack of visibility and lack of public awareness on the work of the ACHPR, due to lack of resources to publish the reports of the ACHPR.
22. Failure by States to comply with requests for adoption of provisional measures under communication procedure. The delay in States replies under the communications procedure has negative impact on the speed of consideration of the communication by the ACHPR.
23. There is insufficient expertise at the Secretariat, due to insufficient number of Legal Officers, to deal with communications.
24. States do not understand fully what is expected from them in their reports. Some do not comply with the requirement of Article 62.
25. Special mechanisms of the ACHPR have been doing a good work but are facing constraints of inadequate financial and administrative support, and the successful special mechanisms have been fully funded by donors.
26. The Strategic plan of the ACHPR comes to an end by December 2006 and it would be necessary to ensure that a new plan is prepared taking into account specific needs of the ACHPR within the broad framework of the AU Strategic Plan.

**Recommendations:**

- a) States should appoint Focal Points, to deal with issues related to Human Rights.
- b) The capacities of the Website of the ACHPR should be enhanced in order to ensure more visibility of its work. AU should allocate more resources to the ACHPR to enable it publish, disseminate and publicise its reports.
- c) The guidelines on State reporting should be made user friendly to enable State Parties to understand better what is required from them in their reports under Article 62 of the Charter. States should cooperate with NGOs and NHRI in the preparation of their reports.
- d) The ACHPR should consider the human rights situation in States that do not comply with Article 62, with the information available.
- e) The AU should consider a review of the Charter to render the submission and presentation of State reports under Article 62 from 2 years to 4 years.

**Item 3: Administrative and financial matters and the construction of the Headquarters of the ACHPR**

27. The meeting discussed the presentation on the administrative and financial situation of the Secretariat and the construction of the Headquarters of the ACHPR. A number of concerns were raised, particularly the delay in the recruitment of the Secretary to the ACHPR and its impact on the effective implementation of the mandate of the ACHPR. The participants regretted the situation affecting the staff of the Secretariat and urged the relevant authorities to address all issues affecting staff benefits and conditions of service.

**Challenges:**

28. Problems relating to adequacy of the budget, its preparation and presentation through the administrative and political organs of the AU.

29. The Secretary and staff of the Secretariat of the ACHPR are presently recruited by the AU Commission without due consideration of the Rules of Procedure of the ACHPR.

30. The position of Secretary to the ACHPR has been vacant over the past five months and this seriously affects the work of the Secretariat.

31. Only 2 Legal Officers are presently paid by the AU. 5 Legal Officers have always been paid from extra budgetary resources and the funding of these staff is running out by end of 2006.

32. The terms of service and conditions of work for the staff of the Secretariat are deplorable and do not always comply with the regulation in force. There is very low moral among the staff.

33. The functions of Administration and Finance Officer are presently discharged by one staff and this has implications as far as transparency in the management of resources is concerned.

34. The AU allocates USD 45000 for promotional missions per annum. This is enough to cover just 4 missions whereas at least 2 missions per Commissioner are necessary annually.

35. The DSA and honoraria paid to Commissioners since the inception of the ACHPR for their administrative expenses are not enough to cover the expenses they face.

36. When an activity of the ACHPR is undertaken in a country where a member of the ACHPR is resident, he takes part in those activities without receiving per diem.

37. The AU allocates USD 200000 per ordinary session of the ACHPR, which is inadequate to cover the cost of conducting a session. The amount is short by USD 50000 for the costs of conducting the 2006 sessions. State Parties have not sufficiently hosted sessions of the ACHPR, thus imposing an additional burden on the Republic of The Gambia to host successive sessions.

38. The special mechanisms of the ACHPR function exclusively on extra budgetary resources.

39. The Gambia has not been able to construct the Headquarters of the ACHPR.

40. There is need to rationalise the efficacy of location of the ACHPR in relation to the AU Sirte Criteria for hosting African Union organs in view of the different locations for the Court. That should reflect the rational utilisation of resources for the sake of better promotion and protection of human rights.

41. Transparency and integrity should be the guiding principles in the management of the Secretariat. There should not be differences in salaries, terms and conditions of service for staff working at the same level.

**Recommendations:**

- a) For the efficient functioning of the ACHPR, the Secretary to the ACHPR should be appointed without delay by the AU Commission in consultation with the Bureau of the ACHPR.
- b) The authority of the AU Commission over the Secretary and staff of the Secretariat of the ACHPR should be exercised in consultation with the Bureau of the ACHPR.
- c) The ACHPR shall submit to the PRC proposals to enable the recruitment by the AU Commission of more staff at the secretariat, including at least 11 Legal Officers and a Public Relation Officer. Recruitment of staff of the ACHPR should always be done in consultation with the Bureau of the ACHPR.
- d) The AU Commission should allocate adequate resources, necessary for promotional and protection missions of the ACHPR, Special Mechanisms of the ACHPR after being presented and defended in the PRC and the Executive Council by the ACHPR Bureau.
- e) The honorarium of the Members of the ACHPR should be raised. Honorarium should be paid to Members of the ACHPR when they participate in an activity of the ACHPR. At least half per diem should be paid to members of the ACHPR who attend activities in countries where they reside.

- f) The Chairperson of the ACHPR should be invited to present and defend the budget of the ACHPR at AU budgetary meetings.
- g) Urgent steps must be taken to ensure that the functions of Finance and Administrative Officers at the ACHPR are separated.
- h) The Government of the Republic of The Gambia should take appropriate steps to construct the Headquarters of the ACHPR.
- i) The AU Commission should speed up the process of setting up of a Voluntary Fund on Human Rights to assist funding the activities of the ACHPR and other human Rights Institutions. The Fund should be managed by the AU Commission.
- j) The Republic of The Gambia and the AU should review the Headquarters Agreement in line with the Sirte Criteria on the hosting of AU organs.

#### **Item 4: Relationship between the ACHPR and its partners**

42. The ACHPR described the cooperation it enjoys with its partners, namely the State Parties, the National Human Rights Institutions (NHRI), the international cooperating partners and the NGOs. Appreciation was expressed for the support received from partners, namely the OHCHR, the UNHCR, the ICRC, international development assistance agencies and NGOs, in the discharge of the mandate of the ACHPR, evolution of its jurisprudence and support for special mechanisms.

43. The ownership of the activities of the ACHPR was however emphasised. The meeting identified challenges experienced in relationship with partners.

#### **State Parties**

#### **Challenges:**

- 44. Need for State Parties to fulfil their financial obligations to the AU.
- 45. Certain State Parties do not grant the ACHPR authorisation to undertake missions in their countries.
- 46. There is no formal relation between the ACHPR and national Parliaments.
- 47. Certain State Parties do not accept to work with NGOs and do not facilitate the work of the NGOs.
- 48. Certain State Parties do not comply with the recommendations of the ACHPR and this impedes on the work of the ACHPR

**Recommendations:**

- a) The ACHPR should explore the possibility of the Peace and Security Council of the AU (PSC) to enforce the decisions of the ACHPR within the framework of Article 19 of the PSC Protocol.
- b) State Parties to favourably consider granting authorisation to requests from the ACHPR to visit their countries.
- c) ACHPR should develop and execute an implementation plan for the follow up of their decisions, resolutions and recommendations.
- d) State Parties should be encouraged to host sessions of the ACHPR, alternating with The Gambia in order to give visibility to the ACHPR and promote the African Charter.
- e) State Parties should involve NHRI in the drafting of State reports at national level.
- f) The ACHPR should reflect on ways and means to establish formal relationship with African national Parliaments in the human rights areas, including the domestication of human rights instruments.

**National Human Rights Institutions (NHRI):**

**Challenges:**

- 49. NHRI need to enhance the role of NHRI through their regular and active participation in ordinary sessions of the ACHPR.
- 50. NHRI enjoying affiliate status with the ACHPR, do not send reports to the ACHPR on a regular basis and do not fulfil their obligations under the Resolution on Affiliate status.
- 51. Lack of independence and autonomy by some NHRI and the problem of inadequate funding, which makes them inefficiency.
- 52. Lack of an appropriate forum between the NHRI and the ACHPR to exchange experiences.

**Recommendations:**

- a) ACHPR should provide the NHRI with an enhanced affiliate status and establish a Focal Point in the Secretariat in order to communicate easily with NHRI

- b) NHRI should endeavour to file shadow reports to the ACHPR and they should encourage their States to comply with recommendations of the ACHPR and the African Charter in general.
- c) NHRI should be involved in the meetings of the ACHPR on a regular basis
- d) NHRI should set up a Forum to reflect on their contribution to the work of the ACHPR.

### **Non Governmental Organisations (NGOs)**

#### **Challenges:**

- 53. The information supplied by NGOs on human rights situation in African countries may, in certain cases, be inaccurate, and this affects the credibility of the work of the NGOs. Many NGOs do not comply with the principles of cooperation with the ACHPR
- 54. Many NGOs face the problem of the orientation imposed by donor on the financial assistance they grant them. Some State Parties also view NGOs funding of certain activities of the ACHPR as compromising the credibility of the ACHPR
- 55. Grave cases of violations of human rights in Africa are in certain cases done by powerful non state actors within and outside Africa, in particular violating economic, social and cultural rights.
- 56. There is need for the setting up of a triangular relationship between the ACHPR, NGOs and relevant AU organs.
- 57. Certain States do not cooperate with NGOs at national or international levels: Governments do not provide them with funding or information. Human rights activists are sometimes arrested for their activism.
- 58. NGOs are not involved in the drafting of State reports under Article 62 of the African Charter

#### **Recommendations:**

- a) The ACHPR should enforce the existing provisions regarding its relations with NGOs and take appropriate action against those that do not comply with the said provisions.
- b) NGOS should provide accurate information in their draft resolutions and the ACHPR should set up a verification mechanism to that extent
- c) NGOs should assist in disseminating information on the work of the ACHPR

- d) Organisations working in the promotion and protection of women rights should be encouraged to bring more communications before the ACHPR.
- e) NGOs should work with the ACHPR to enhance mechanisms for the better protection of economic, social and cultural rights, and the rights of indigenous minorities in Africa.
- f) The ACHPR should reflect with the AU Commission and NGOs on the setting up of a relationship between the three entities.
- g) The ACHPR should address the human rights violations committed by non state actors including those based within and outside Africa.

**International Cooperating partners:**

**Challenges:**

- 59. More non African interns are funded by donors, which leads to development of non local talents.
- 60. The perception that donors impose conditions on the utilisation of the resources, which they grant the ACHPR, and NGOs in Africa.
- 61. There is need for better use of skills, experience and expertise of UN and other intergovernmental institutions to strengthen the capacity of the ACHPR and develop closer working relationship with the OHCHR.

**Recommendations:**

- a) International partners should be encouraged to fund more African interns to the ACHPR, over and above those from outside Africa, so that Africa develops capacity and expertise.
- b) The Bureau of the ACHPR should be fully involved in the process of soliciting for external funding by the Secretariat of the ACHPR and the execution of agreements with donors.
- c) The ACHPR and AU should develop guidelines on donations to be received by the ACHPR and their utilisation.
- d) The OHCHR should assist in fostering the cooperation between the Special mechanisms of the ACHPR and the UN.

**Item 5: Relationships between the ACHPR and other UA organs and Institutions:**

62. The presentation highlighted the historical and legal basis upon which the ACHPR was requested to examine its relationship with the various organs and programmes of the AU. It also highlighted the areas of complementarity and the need for mutual engagement between the ACHPR and the various organs and programmes of the AU. The participants recognised the need to urgently establish cooperation among the various organs and programmes in order to avoid inefficient utilisation of scarce resources, duplication, mutual suspicion and lack of knowledge about the programmes, mandates and activities of the respective organs. They recalled their respective obligations to ensure the fulfilment of the objectives and principles provided for under the Constitutive Act of the AU. A number of practical recommendations were made to address these concerns.

**Challenges:**

63. The ACHPR is yet to finalise the item on its relationships between the other AU organs and institutions. As such, there are no formal relationship with the PAP, the ECOSOCC, the PSC, the African Court on Human and Peoples' Rights, the African Committee on the Rights and Welfare of the Child, the NEPAD, the CSSDCA/CIDO, the Division on Refugees, IDPs and Humanitarian Affairs, as well as other relevant regional organisations.

64. There is need for a rationalisation of the utilisation of resources for the promotion and the protection of human rights in Africa.

65. There is need for regular interaction between the ACHPR and its partners, to reflect in a coordinated manner on the functioning of the African human rights system.

66. There is uncertainty relating to which category the decisions and recommendations of the ACHPR belong within the framework of the AHG/AU Decisions, (Directives, Declarations or Recommendations) and this causes problem as to the legal status and the implementation of the said decisions and recommendations.

**Recommendations:**

- a) In order to ensure sustainable coordination of human rights activities discharged by different organs of the AU, cooperating partners shall assist the Department for Political Affairs of the AU Commission to built its capacity to coordinate the expanding scope of institutions dealing with human rights issues in Africa, by *inter alia* seconding and/or funding a post to that effect.
- b) There is an overriding and urgent need for the ACHPR to initiate consultations with the organs of the AU, namely, the PAP, the PSC and the ECOSOCC, with a

view to establishing modalities to formalise their relationship and develop common programmes.

- c) The ACHPR should invite representatives from the above named organs to attend its sessions and vice versa, in order to reinforce mutual cooperation.
- d) The OHCHR and other similar organisations as appropriate, should support the AU Commission to convene a donor conference to mobilise resources for the implementation of its Agenda on Democracy, Good Governance and the promotion and protection of human and peoples' rights.
- e) The ACHPR, while reviewing its Rules of Procedure, should start consultations with the African Court on Human and Peoples' Rights, immediately after its operationalisation, in order to establish modalities of cooperation and consultation.
- f) The ACHPR should establish formal relationship with the African Committee of Experts on the Rights and Welfare of the Child. This should be done in line with the necessity of rational utilisation of the resources for the promotion and protection in Africa.
- g) The ACHPR and the APRM should formalise modalities of cooperation with the view to enabling the ACHPR participating in the APRM Review process, in order to ensure that all human rights and international humanitarian law indicators are taken in to account.
- h) Focal Points should be appointed within regional organisations to enhance cooperation with the ACHPR in the area of human rights.
- i) The AU Commission should enhance the cooperation already established between the Special Rapporteur on Refugees, IDPs and Asylum Seekers in Africa and the Division on Refugees, IDPs and Humanitarian Affairs of the AU. Similar arrangements should be developed between other special mechanisms of the ACHPR and relevant AU departments or organs.
- j) The ACHPR should reflect on how to interact on a regular basis with its partners, on ways and means to enhance its work and relationship with other relevant organs.
- k) The ACHPR should provide information on its work to all relevant AU organs including the PRC.
- l) The AU Commission should clarify the legal status of the ACHPR decisions and recommendations, within the context of Rule 33 of the AHG/AU Rules of Procedure, in order to facilitate implementation of decisions of the ACHPR and respect of the African Charter.

- m) The AU Commission shall facilitate briefing sessions on human rights once every two years or as the need arises to brief the members of the PRC and other relevant organs of the AU.

**CONCLUSION:**

67. All participants acknowledged the importance of the Brainstorming meeting and urged the AU to institutionalise a mechanism for dialogue among the various organs, institutions and programmes of the AU, every two years before the session of the ACHPR, in order to ensure that similar concerns are addressed in future.

68. The participants emphasised the need for the AU and the ACHPR to immediately finalise the process of recruiting the Secretary to the ACHPR so that the implementation of these recommendations are not delayed.

*Banjul, The Gambia, 10 May 2006*

## **ANNEX III**

### **Resolutions Adopted During the 38<sup>th</sup> Ordinary Session and Responses from States**

- **Resolution on the human rights situation in Ethiopia;**
- **Resolution on the human rights situation in the Darfur region in Sudan;**
- **Resolution on the human rights situation in Uganda;**
- **Resolution on the human rights situation in Zimbabwe**

## RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN ETHIOPIA

The African Commission on Human and Peoples' Rights meeting at its 38<sup>th</sup> Ordinary Session held in Banjul, The Gambia from 21 November to 5 December 2005;

**Considering** that the Democratic Federal Republic of Ethiopia is a State Party to the *African Charter on Human and Peoples' Rights*;

**Recalling** that freedom of opinion and expression as well as the right to assembly are fundamental rights enshrined in international instruments ratified by Ethiopia, and notably Articles 9 and 11 of the *African Charter on Human and Peoples' Rights*;

**Recalling** Article 7 of the *Charter* which ensures the right to a fair trial and the Guidelines and Principles on the Right to a Fair Trial and to Judicial Assistance in Africa developed by the African Commission on Human and Peoples' Rights;

**Deeply concerned** about the situation going on in Ethiopia since June 2005 and notably the arbitrary arrests and other serious human rights violations directed at suspected members and supporters of opposition groups, students and human rights defenders;

**Recalling** that on 8<sup>th</sup> June and 1st November 2005 security forces killed and injured demonstrators during a demonstration protesting the results of the parliamentary elections in Addis Ababa and other towns;

**Concerned** by the arbitrary detention of opposition leaders and journalists in Ethiopia;

**Noting** the creation by the government of Ethiopia of a National Parliamentary Commission to investigate the facts concerning the acts of violence in the country;

1. **Deplores** the killing of civilians during confrontations with security forces;
2. **Requests** that the Ethiopian authorities release arbitrarily detained political prisoners, human rights defenders and journalists;
3. **Calls** on the Ethiopian government to guarantee, for any accused individual, the right to a fair trial as provided by the *African Charter on Human and Peoples' Rights* and other relevant international human rights instruments, including the right to seek pardon or commutation of sentence;
4. **Calls** on the Ethiopian government to ensure the impartiality, independence and integrity of the National Parliamentary Commission investigating the recent acts of violence in the country and to bring the perpetrators of human rights violations to justice;
5. **Urges** the Ethiopian government to guarantee, at all times, freedom of opinion

and expression as well as the right to hold peaceful demonstration and political assembly;

6. **Requests** that the Ethiopian government guarantees, in all circumstances, the physical and psychological integrity of human rights defenders in compliance with international instruments especially the *Declaration of Human Rights Defenders* adopted by the U.N. General Assembly in December 1998;
7. **Calls** on the Ethiopian government to comply with the international instruments ratified by Ethiopia, most notably the *African Charter on Human and Peoples' Rights* (ACHPR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

**Done at Banjul, The Gambia, December 5<sup>th</sup> 2005**

**SUBMISSION BY**

**THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA**

**IN ACCORDANCE WITH RESOLUTION NO. EX.CL/DEC. 257(VIII)**  
**OF THE EXECUTIVE COUNCIL OF THE AFRICAN UNION**

**CONCERNING THE 16<sup>TH</sup> ACTIVITIES REPORT OF**  
**THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**



**April 2006**

## 1. INTRODUCTION

The Government of the Federal Democratic Republic of Ethiopia presents, in this report its views on the resolution passed by the African Commission on Human and Peoples' Rights (hereinafter referred as the Commission) during its 38<sup>th</sup> Ordinary Session held from 21 November to 5 December 2005 in Banjul, the Gambia on human rights situation in Ethiopia. The report is prepared on the basis of the decision adopted by the 8<sup>th</sup> Ordinary Session of the Executive Council of the African Union wherein the Council requested the concerned governments against whom the Commission passed a resolution to submit their clarifications on the resolution.

During the 8<sup>th</sup> Ordinary Session of the Executive Council held in the Sudan in July 2006, H.E. the Minister of Foreign Affairs of the Federal Democratic Republic of Ethiopia made it clear that by raising its objection on the resolution, Ethiopia does not question the Commission's competence to exercise its mandate as stipulated under the African Charter on Human and Peoples' Rights (hereinafter referred as the Charter), its rules of procedure and other legal instruments. In this report, Ethiopia rather aims at providing the Commission with relevant and necessary facts relating to some of the salient developments in the country following the May 2005 federal and regional legislative elections for the Commission to be acquainted with reality on the ground.

The report incorporates ten sections covering major developments connected with the May 2005 elections. Section One introduces the structure and content of the report. Section Two discusses the nature of the Commission's resolution on human rights situation in Ethiopia, and Ethiopia's position on the resolution based on the Commission's Rules of Procedure and other relevant legal instruments. Section Three highlights the background and salient features of the May 2005 election starting from the pre-election phase to post election developments. An attempt is made to focus on issues that are relevant to the points covered by the Commission's resolution. These include conduct of voter's registration, amendment of electoral laws, campaigning, voters education, voting, vote counting and election related dispute settlement mechanisms. Section Four provides an overview of the legal and institutional aspect of Ethiopia's electoral regime concerning the role of the National Electoral Board, domestic courts, and domestic and international election monitors.

Section Five to Section Nine discuss the post election violence in the country and the role of some members of the opposition political parties, the press and non-governmental organizations in masterminding the street violence that seriously endangered the constitutional order. These sections also explain the background for measures taken by the government in the interest of peace, order and democracy. Section Ten provides for an overview of the newly established independent parliamentary inquiry mandated to investigate the circumstance surrounding the post-election violence that resulted in the death of scores of civilians, law enforcement officers, and destruction of million USD worth of public property. Section Eleven

provides the concluding remarks and Ethiopia's submissions regarding the Commission's resolution.

## **2. Ethiopia's Position on the Procedure and Nature of the Resolution**

During its 38<sup>th</sup> Ordinary Session held in the Gambia from 21 November to 5 December 2005, the Commission adopted a resolution on human rights situations in a number of member states including Ethiopia. Even though the Ethiopian delegation participating at the 38<sup>th</sup> Ordinary Session of the Commission made statements, had discussions with members of the Commission and distributed relevant documents informing the Commission on the accurate picture of developments in the Country, the Commission, nonetheless, adopted the resolution in a manner that is inconsistent with the Charter and the Commission's Rules of Procedure.

At the consideration of the 19th annual activity report of the Commission during the 8<sup>th</sup> Ordinary Session of the Executive Council of the African Union held in the Sudan between 20-21 January 2006, Ethiopia and other concerned countries objected to the manner in which the Commission adopted the contentious resolution and the baseless allegations contained in the resolution, distorting government measures which are in fact taken with the view to ensuring law and order. Due to the objection forwarded by Ethiopia and other concerned states, the Council, in its decision entitled Decision on the 19<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights<sup>1</sup> decided to exclude the resolutions against the objecting countries from the activity report of the Commission and gave the concerned governments three months to submit a report regarding the Commission's resolution for the latter's consideration.

This section would analyze the procedure of adoption of resolutions by the African Commission. A brief recollection of the discussion during the 38 Ordinary Session of the Commission is also included. Ethiopia argues that the Commission's decision to publicize the resolution in its website is also inconsistent with acceptable practice.

### **2.1. African Commission's Procedure**

The Commission often adopts, following the conclusion of its ordinary sessions, resolutions on human rights issues. The nature and content of these resolutions tend to vary. Occasionally they focus on procedural issues, i.e. requesting the particular state to create the modality of working with the Commission in investigating certain human rights violations in that country. At times, its resolutions take a stand on allegations of certain human rights violations and incorporate statement of condemnation. In other occasions, the Commission used resolutions to create special mechanisms or working groups for the implementation of its broad mandate by adopting resolutions. The mandate of the Commission to establish the aforementioned mechanisms is clearly provided for in

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<sup>1</sup> EX.CL/Dec.257 (VIII)

Article 28 of the Rules of Procedure of the Commission. Even though there is no specific provision in the Commission's Rules of Procedure that clearly empowers the Commission to adopt a resolution. Adopting resolutions has now become standard practice in passing its decisions.

## **2.2. The Nature of Dialogue between Ethiopia's delegation and the Commission at its 38<sup>th</sup> Ordinary Session**

The 38<sup>th</sup> Ordinary Session of the Commission was held in Banjul, the Gambia from 21 November to 5 December 2005. In its opening remarks, the Ethiopian delegation briefed the Commission on the various measures that the Government has been taking to further advance human rights protection in the country and updated the Commission on the circumstances surrounding recent human rights developments following the May 2005 federal and regional legislative elections.

A number of non-governmental organizations made statements during the Commission's public session that made reference to human rights developments in Ethiopia.

The delegation of Ethiopia responded to all the allegations and claims made by non-governmental organizations. It was stated that the legislative and administrative measures were put in place to settle election related disputes. Nonetheless, the opposition parties opted for their illegal street protest aimed at overthrowing the constitutional order. The Ethiopian delegation further stated that the measures taken by law enforcement agencies were aimed at protecting law and order. It was also made clear that the Government has not closed down private news papers and that there are several private news papers that are on print currently in the country. The delegation also made it clear that the House of Peoples' Representatives of FDRE (the House) has established an Independent Inquiry Commission to investigate the circumstance surrounding the confrontations in Addis Ababa and some other towns in the country.

## **2.3. The Commission's Resolution on Human Rights Situation in Ethiopia**

The Commission's resolution covers a number of human rights related developments in Ethiopia following the May 2005 elections. One remarkable feature of the resolution is its stark similarity with the resolution passed by the NGO Forum that was held immediately preceding the meeting of the Commission.

In its resolution, the Commission expressed its concern on "...notably the arbitrary arrests and other serious human rights violations directed at suspected members and supporters of opposition groups, students and human rights defenders." It charges that Government security forces killed and injured demonstrators on 8<sup>th</sup> June and 1<sup>st</sup> November 2006. It also stated that journalists and human rights defenders are arbitrarily arrested.

**The resolution calls the Government to:**

- a. release arbitrarily detained political prisoners, human rights defenders and journalists,
- b. to guarantee, for any accused individual, the right to a fair trial as provided by the African Charter on Human and Peoples' Rights and other relevant international human rights instruments, including the right to seek pardon or commutation of sentence,
- c. to ensure the impartiality, independence and integrity of the National Parliamentary Commission investigating the recent acts of violence in the country and to bring the perpetrators of human rights violations to justice,
- d. to guarantee, at all times, freedom of opinion and expression as well as the right to hold peaceful demonstration and political assembly, and
- e. guarantees, in all circumstances, the physical and psychological integrity of human rights defenders in compliance with international instruments especially the Declaration of Human Rights Defenders adopted by the U.N. General Assembly in December 1998.

The Government of Ethiopia indicates that the duplicate nature of this resolution compared to the resolution adopted at the non-governmental organization forum held immediately preceding the meeting of the Commission demonstrate the flawed nature of the procedure the Commission followed in replicating the resolution from the non-governmental forum. It showed that the Commission adopted the non-governmental resolution without further scrutiny and assessment.

**2.4. Publicity Given to the resolution at the Commission's Website**

Following the adoption of the resolutions, the Commission immediately publicized them through its communiqué and particularly via its official website.<sup>1</sup> The Government of Ethiopia submits that the manner in which the Commission gave publicity to its resolutions contravenes the Commission's Rules of Procedure.

Resolutions which are often part and parcel of annexes to the Commission's Annual Activity Report are confidential documents until they are adopted by the relevant organ of the African Union. Article 77 of the Rules of Procedure clearly stipulates that such a report shall be confidential. The Commission can only publish them after such reporting and only when the African Union's relevant organ does not give instructions otherwise.<sup>2</sup> Regarding the specific issue of the Commission's activity report, the

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<sup>1</sup> See the Commission's website at < [www.achpr.org](http://www.achpr.org)>.

<sup>2</sup> Ibid, Article 77 (2).

Chairman of the Commission can only publish them after the Assembly of the African Union considered it.<sup>1</sup>

The Government of Ethiopia is of the view that the publication of the resolutions in the Commission's official website prior to their consideration by the Commission contravenes the aforementioned provision of the Rules of Procedure.

## 2.5. Decision of the AU Executive Council

During its 8<sup>th</sup> Ordinary Session, the Executive Council of the African Union passed resolution no EX.CL/Dec.257 (VIII) entitled Decision on the 19<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights. This follows the submission of the annual activity report of the Commission to the African Union decision making organ in accordance with article 41 of the Commission's Rules of Procedure.

In the Resolution the Council requested;

1. the Commission to exclude the resolution on human rights situation in Ethiopia, Eritrea, Zimbabwe, Uganda and the Sudan from the annexes to its 19<sup>th</sup> Activity Report;
2. the concerned member states to make available to the Commission, within three months since the adoption of the Council's decision, their views on the resolutions, and
3. the Commission to ensure that in future, it enlists the responses of all States parties to its Resolutions and Decisions before submitting them to the Executive Council and/or the Assembly for consideration.

## 3. May 2005 National and Regional Legislative Elections in Ethiopia

The first democratic and multi-party legislative elections were held in Ethiopia in 1995. These elections marked a turning point as political parties were able to participate in contested elections for the first time in the country's history. These were followed in 2000 by the holding of the second multi-party elections<sup>2</sup>. Both elections were generally endorsed as free and fair and as tangible proofs that the country was successfully pursuing its democratisation process<sup>3</sup>.

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<sup>1</sup> Ibid, Article 79.

<sup>2</sup> Facts about the Parliamentary Elections in Ethiopia, News Release, November 2005, Ethiopian Embassy website in the United Kingdom  
<http://www.ethioembassy.org.uk/news/press%20releases/Facts%20about%20the%20Recent%20Ethiopian%20Parliamentary%20Elections.htm>;

<sup>3</sup> GFN- SSR, Resource Centre, Wellington Hall, Cranfield University, Shrivenham, [http://www.gfn-ssr.org/gfn\\_papers\\_pages.cfm?id=5](http://www.gfn-ssr.org/gfn_papers_pages.cfm?id=5);

The May 2005 federal and regional legislative elections held in Ethiopia have heralded a new and crucial chapter in the democratization process that the country has embarked upon over the last fifteen (15) years and was characterized by the participation of thirty-five (35) political parties, four-hundred twenty three independent candidates, record number voter turnout, a level playing field for all contending parties and candidates, the active role played by election monitors and observers, and an inclusive as well as free and fair complaints investigation mechanism. The Government left no stone unturned in endeavouring to ensure that these elections were free, fair and orderly.

What transpired during the pre-election phase, on the ballot day and in the post-election period as well as the active role and assessment of election monitors and observers in the entire electoral process are testimonials of the unequivocal commitment of the Government.

### **3.1. Pre-election Phase**

According to the National Electoral Board (NEB), some thirty-five (35) eligible and certified political parties, some having formed coalitions, and four hundred twenty-three (423) independent candidates at the federal and regional levels, participated in the elections<sup>1</sup>. The NEB further indicated that more than twenty-six (26) million eligible voters were registered to cast their ballots, constituting by far the largest number of voters to have ever registered for elections in the country<sup>2</sup>.

As acknowledged by the numerous international and local election monitors and observers,<sup>3</sup> the Government put in place, during the pre-election phase a level playing field for all contending parties and independent candidates so as to enable them compete on an equal footing.<sup>4</sup>

The pre-election phase was, thus, characterized by:

- a) dialogue and heated debate between the ruling and opposition parties on the existing electoral law and the necessary amendments made thereto;

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<sup>1</sup> NEB holds first press conference, Press release, National Electoral Board, 29 March 2005, "Kemal also indicated that a total of 1,845 and 3,662 candidates have been registered to contest seats in the House of peoples' Representatives and regional councils respectively. Some 423 of the candidates for federal and state legislatures are independent, while the remaining are fielded by 35 political parties", <http://www.electionsethiopia.org/Whats%20New5.htm>; National Electoral Board, List of registered political parties, <http://www.electionsethiopia.org/Election%20Results.html>;

<sup>2</sup>Ibid, 13 May 2005.

<sup>3</sup> Please find attached in the Annex the African Union Election Observation and Monitoring Mission Report

<sup>4</sup> Supra, at 7, 14 May 2005.

- b) free and vibrant political campaigning,
- c) allotment of equitable airtime to all contending parties and;
- d) the active role of election monitors and observers.

### ***3.1.1. Amendments to the Electoral Legislation***

In preparation for the federal and regional legislative elections of May 2005, the ruling party and the opposition parties held numerous negotiations and discussions on the existing electoral law and on the ways and means of ensuring that the election process would be free, fair and orderly. As a result of these negotiations, the House, passed an amendment to the existing electoral legislation, Proclamation no. 111/1995<sup>1</sup>.

Accordingly, provisions pertaining to voter registration were amended in order to ensure the participation of the maximum number of voters in an inclusive approach aimed at encouraging higher voter turnout. In this regard, the requirement of a minimum of two (2) years residence for the registration of voters was reduced to six (6) months.<sup>2</sup>

As regards to contending political parties and private candidates, amendments designed to facilitate participation in these elections were passed by the House. Hence, political party candidates were allowed to register without the five-hundred (500) endorsement signatures required previously. This amendment, by removing a restrictive condition for candidates' registration, allowed for even greater participation in the elections by political parties and candidates.

These amendments greatly enhanced the ability of contending political parties and private candidates to campaign freely without any restriction or interference.

From the aforementioned, it is evident that the amendments to the electoral legislation ensured the holding of democratic elections by increasing voter participation and facilitating the registration and the free campaigning by political parties and candidates.

### ***3.1.2. Political Campaigning***

Election campaigns were conducted for more than six months throughout the country. Hotly contested debates between the opposition and ruling party candidates were conducted. Town hall meetings and huge rallies were organized. Political parties had been presenting their programmes to the public through unpaid media airtime and newspaper space. They had also been using public rallies and street campaigning to convey their policy platforms to the electorate.

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<sup>1</sup> Please find attached in Annex no. No. 1 a copy of the amendment Electoral Legislation Proclamation;

<sup>2</sup> Id.

The electoral law allows campaigning in all places except churches and mosques, military camps, educational institutions during class time and public institutions where regular work is underway.<sup>1</sup>

The Ministry of Information allotted equitable television and radio airtime to all contending political parties and candidates. The Ministry allotted fifty-six (56) percent of airtime to the opposition parties and forty-four (44) percent to the ruling party. The opposition parties and candidates were given significantly more television and radio airtime at the detriment of the ruling party, despite their very low representation in the outgoing federal and regional parliaments. This was done in order to allow the competing opposition parties and candidates to have sufficient media space to present their political programs to the electorate and for the latter to be able to make an informed choice.

Thus, during the pre-election phase both the public and private media were intensely engaged in the dissemination of election-related information to the electorate.

Equally, with the objective of affording the electorate an informed choice between the different political parties and candidates vying for public office, a series of live televised as well as radio transmitted debates were organized between the ruling party and the opposition parties. These debates were centred around the main policies and programs that the contending parties and candidates were proposing in order to gain the support of the electorate and concentrated, *inter alia*, on their economic, educational, urban development, foreign and national security policy options.

The Government spared no effort in ensuring that these debates were free, fair and open with all the contending parties and candidates being given ample opportunity to convey to the electorate their political message. This transparent, open and fair airtime allotment was deservedly lauded by the international and national election monitors and observers.

### **3.1.3. Voter Education Campaign**

It is with the same objective of allowing the electorate to make an informed choice that the Government, numerous civil society and non-governmental organizations conducted various voter education programs both in urban and rural areas:

“...The National Election Board of Ethiopia (NEBE) implemented these reforms and adopted other important measures to increase transparency and responsiveness to political parties. Civil society organizations contributed greatly to the electoral process by organizing public forums, conducting voter education training, and

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<sup>1</sup> Supra, at 7, 13 May 2005;

deploying domestic observers. Most importantly, the Ethiopian public demonstrated their commitment to democracy through their active and enthusiastic participation in the May5 poll. As a result of these efforts and others by diverse Ethiopian actors and institutions, the overwhelming majority of Ethiopians had the opportunity to make a meaningful choice in the May 15 elections. This significant accomplishment has the potential to lead to further democratization and to consolidate multiparty competition...”<sup>1</sup>

As the irreversible democratization process the country has embarked upon is relatively new to the country, these voter education programs were quite opportune in sensitising the voters on their rights as citizens, at what was at stake during the federal and regional legislative elections and about the overall conduct of free, fair and orderly elections.

Undoubtedly, these voter education campaigns also contributed their share in the success of the elections as exemplified by the record number of voter registration and turnout on balloting day.

### **3.2. Election Day**

On 15 May 2005, the federal and regional legislative elections were conducted as planned throughout Ethiopia. These elections, as attested by all international and national election monitors and observers, including the African Union, the European Union and the Carter Centre, were peaceful and regular.<sup>2</sup>

No significant or major irregularity was witnessed either by the NEB or the election observers and monitors. The reports of the observers and the media coverage show the irrefutable fact that these elections were peaceful and orderly.

#### **3.2.1. Record number turnout**

After the casting of the ballots, the NEB indicated that some ninety (90) percent of the twenty-six (26) million registered voters had actually participated in the elections, a record number turnout and an unequivocal testimony of the voters' confidence in the entire electoral process.<sup>3</sup>

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<sup>1</sup> Final Statement, Carter Center Observations of the Ethiopia 2005 National Elections, 15 September 2005, <http://72.14.207.104/search?q=cache:oNsRXjrswwUJ:www.cartercenter.org/documents/2199.pdf+voter+education+in+the+may+2005+election+in+ethiopia&hl=en&gl=et&ct=clnk&cd=6>;

<sup>2</sup> Former US President Jimmy Carter, one of the 319 international election observers, said on Sunday the elections had gone smoothly, IRINnews.org (IRIN), 16 May 2005, [http://www.irinnews.org/report.asp?ReportID=47123&SelectRegion=Horn\\_of\\_Africa&SelectCountry=ETHIOPIA](http://www.irinnews.org/report.asp?ReportID=47123&SelectRegion=Horn_of_Africa&SelectCountry=ETHIOPIA;);

<sup>3</sup> Supra, at 7, 16 May 2005;

This extremely high turnout by any measure, even if compared to elections in countries where there is a long and deeply entrenched democratic culture, is an unambiguous proof of the truly democratic nature of the electoral process.

### **3.2.2. Free and fair conduct of ballot counting**

With the aim of ensuring the scrupulous respect of the will of the electorate as expressed through its record turnout on 15 May 2005, joint committees comprising of representatives from both the ruling and opposition parties were set up in each of the electoral districts across the country.

Thus, in each of the electoral districts, the actual counting of the ballots was conducted by NEB election officials in the presence of representatives of the ruling and opposition parties. This, more than anything else, despite allegations by some opposition parties to the contrary, is a clear substantiation of the fact that the ballot counting and tallying process was largely free, fair and open to the scrutiny of all the contending parties.

In addition, international and national election monitors and observers were deployed throughout the country to witness the free, fair and orderly nature of the counting process. The African Union, the Carter Centre as well as hosts of other international observers and national observers hailed and praised the counting process as being free and fair, and as reflecting the will of the voters.

Naturally, grievances were bound to arise after such hotly contested elections. In order to address these complaints, which emanated both from the ruling and opposition parties, inclusive investigation complaints mechanism was established by the NEB based on agreement reached by all the contending parties.

## **3.2. Post Election Development**

Given the tense political situation that followed the hotly contested elections, it was imperative that a mechanism be devised with a view to addressing the allegations of irregularities and vote rigging emanating from all parties.<sup>1</sup>

Thus, the NEB devised a mechanism for investigating complaints based on agreement between all the parties. The NEB established Complaint Investigation Panels where all parties were represented with international observers and monitors.

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<sup>1</sup> Supra, at 7: NEB reviewing complaints in 299 constituencies, Press Release, National Electoral Board, “*Complaints investigating committees drawn from contending parties, international observers and the Board will be established by the end of this week,*” says Kemal. “*The number and size of the committees will be determined based on the number of complaints decided to be investigated.*” “*The committees will present their findings to the Board, which will pass final decisions. After reviewing the findings, the NEBE may uphold provisional results or order revote or recounting...*”

Twenty-six Complaints Investigation Panels (CIPs) established under the NEB to look into alleged election irregularities were deployed to disputed constituencies. Each CIP has three voting members drawn from the NEB (Chair), the complainant and the other interested party (declared winner in provisional results). Where the CIP has more than one complainant as a member, the voting members would be two members of the NEB, representatives of complainants and the other interested party.

The CIPs carried out their investigations by examining witnesses brought by each party and by hearing the cases of party nominated agents as well as by examining any NEB documentation or other relevant documentary evidence relating to the elections, where necessary. The CIPs finalized their investigation and dispatched a copy of the Summary of Facts and Notes of Recommendation to the NEB after the conclusion of the hearing in a constituency.

A CIP could recommend to the NEB to reject a complaint, or to allow a complaint but not to take further actions, or to order rerun in specific polling stations of a constituency or to order rerun across the constituency depending on the nature of the irregularities committed.

Upon the receipt of the Summary of Facts and Note of Recommendation, the NBE decided on whether to accept the recommendation of the CIP and on whether to accept or reject the complaint. The Complaints Review Body of the NEB had recommended for investigation complaints submitted on 140 constituencies out of the 299.<sup>1</sup> Determinations of the panels were subject to an appeal to the NEB and the NEB's decisions could be submitted to the judiciary. International observers represented by the European Union, the Carter Center and African Union observed the complaints investigation process.

The NEB, in cooperation with the election monitors, conducted extensive investigations into the complaints made by the opposition. As a result of this investigation, the NEB conducted election re-runs in thirty-one (31) constituencies where major problems had been found.

Hence the investigation mechanism put in place ensured that a fair and transparent evaluation of each complaint was conducted and accordingly in those constituencies where the evidence substantiated serious irregularities in the counting and tallying of the vote, rerun elections were conducted.

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<sup>1</sup> Supra, at 7, 30 June 2005

After the holding of rerun elections, the NEB certified that the ruling party, the Ethiopian Peoples' Revolutionary Democratic Front, had won the largest share of the seats in the federal legislative elections enabling it to form the Government<sup>1</sup>.

As to the opposition parties, they made strong gains in the elections with the Coalition for Unity and Democracy (CUD) winning a clean sweep in the capital Addis Ababa.<sup>2</sup>

Despite having made unprecedented gains and winning in the capital city, the opposition parties and in particular the CUD, with complete disregard and contempt to the will of voters; orchestrated violent street confrontations that lead to numerous fatalities on law enforcement officers and innocent civilians as well as to severe destruction of public property.<sup>3</sup>

These actions were instigated by the CUD for the sole purpose of seizing power illegally and dismantling the constitutional order through street violence as the actual vote had unambiguously been in favor of the ruling party.

In this regard, the tremendous damage caused by the European Union electoral observation mission report leaked to opposition party leaders can never be underestimated. The Mission's report based on a deeply flawed and unrepresentative census conducted in just a few polling stations out of the existing tens of thousands envisaged an opposition win and was used by the CUD to justify its unjustifiable violent actions.

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<sup>1</sup> Supra, at 5: May 2005 Parliamentary Facts Sheet: Members of the AU Observer Team participated fully in the observation activities and submitted a comprehensive report to the AU Chairperson. In the report, issued on 14<sup>th</sup> September, they concluded that: "*the election of 2005 and subsequent investigation processes were conducted and organized in accordance with the country's electoral laws.. The AU wishes to commend the Ethiopian people's display of genuine commitment to democratic ideals and urges them to accept the outcome of the results in order to build on the gains that have been recorded.*", 16 January 2006, May 2005 Parliamentary Facts Sheet: The Carter Center expressed its pleasure at being invited to observe the elections. In a 15th September statement it said: "*The elections process demonstrated significant advances in Ethiopia's democratization process, including most importantly the introduction of a more competitive electoral process...*" May 2005 Parliamentary Facts Sheet: A press statement dated 13<sup>th</sup> September endorsed by twenty-four representatives of the donor countries residing in Ethiopia stated: "*The final results of Ethiopia's historic 2005 elections issued by the NEBE.. confirm the Ethiopian Peoples' Revolutionary Democratic Front's majority in Parliament...*"

<sup>2</sup> Ethiopia ruling party claims victory, BBC News, Tuesday 17 May 2005

<sup>3</sup> Ibid, More violence in Ethiopia capital, BBC News, Thursday 3 November 2005,: "...*The city's streets are littered with debris, and many businesses are closed. The riots were part of protests against the general election in May, which the governing party won...*"

## 4. Institutions, Laws and Procedures of Settling Election Related Disputes

### 4.1. Overview of Ethiopian Electoral Law

The legal instruments that govern elections in Ethiopia have devised mechanisms with a view to addressing allegation of irregularities in the voting process. These legal instruments include the Constitution of the FDRE, the Proclamation to make the Electoral Law of Ethiopia conform with the Constitution of the FDRE,<sup>1</sup> the Proclamation to provide for the Amendment of the Proclamation to make Electoral Law of Ethiopia conform with the Constitution,<sup>2</sup> and the National Electoral Board of Ethiopia Regulation No.1, 1994 that defines the procedure for electoral execution and determination of decisions. These electoral laws provide for means through which complaints and disputes arising from the electoral process are to be regulated in the event of the occurrence of irregularities related to elector registration, candidate registration, voting and counting of ballots.

Accordingly, the National Electoral Board, federal and regional courts and election monitors play significant role in addressing allegation of irregularities in the voting process. As such, it would be necessary to highlight the role each of these organs play in settling election related disputes as envisaged by the electoral laws of Ethiopia.

### 4.2. The National Electoral Board

The National Electoral Board of Ethiopia is the responsible organ for administering elections and recall elections at federal and regional levels, as well as those of Zonal/Special *Woreda* (District) Councils, *Woreda* Councils, *Kebele* (Neighborhood) Councils and Municipal Elections.<sup>3</sup> The NEB was established in 1993 as an independent body for conducting, in an impartial manner, free and fair elections in federal and regional Constituencies.<sup>4</sup>

The NEB has seven members who are appointed by the House upon the recommendation of the Prime Minister on account of their allegiance to the Constitution, non-partisanship of any political organization and professional competence.<sup>5</sup> The term of office of members of the board is six years provided, however, that a member of the NEB may serve for a second term.<sup>6</sup> The NEB has been given the responsibility to draw up its own rules of procedure.<sup>7</sup> NEB's decisions are made by majority vote. In case of a tie, the Chairman has a casting vote.<sup>8</sup>

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<sup>1</sup> Supra, at 11

<sup>2</sup> Proclamation No. 438/2005

<sup>3</sup> Supra, at 11, Art. 5

<sup>4</sup> The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995

<sup>5</sup> Supra, at 24, Art. 3

<sup>6</sup> Id.

<sup>7</sup> Supra, at 11, Art. 6

<sup>8</sup> Ibid, Art. 3

The NEB has a Secretariat headed by Chief Executive and a Deputy Chief Executive that are appointed by the House upon recommendation of the Prime Minister in consideration of their experience and competence. The Secretariat has the duty to perform day to day electoral functions vested in the NEB under the electoral law and perform such other duties that are assigned to it by the NEB.<sup>1</sup>

The NEB's functions and powers are set out in the Constitution of FDRE and the Proclamation to make the Electoral Law of Ethiopia conform to the Constitution of the Federal Democratic Republic of Ethiopia No. 111/1995, as amended by Proclamation No. 438/2005 ahead of the May 2005 general election. In addition to appointing and training electoral officers, the powers and duties of the NEB include issuing the necessary regulations and directives to help conduct its duties, providing the public with civic education relating to the elections, confirming results and officially announcing them. It also has the power to rectify electoral irregularities and investigate complaints submitted to it. It may cancel election results and order rerun of elections where it finds that there have been violations of directives or fraudulent acts or disturbances of the peace of such magnitude, that they would create irregularities in the election process.

According to the electoral law of Ethiopia, a person who is denied registration as an elector or where an elector is denied of voting, has the right to lodge a complaint with the electoral office of the polling station, within limited hours of such occurrence, and receive a determination thereon. Complaint against this determination shall be decided by *Woreda* electoral office.<sup>2</sup> At this point, upon the determination made by the *Woreda* electoral office, electoral offices of the polling station shall proceed with the voting operation accordingly. Nonetheless, the individual or the elector may, upon dissatisfaction with the determination made by the *Woreda* electoral office, appeal to the *Woreda* court.<sup>3</sup>

In the same vein, where a person is denied registration for candidature, and when there is grievance on the counting of ballots, and the results thereof have individuals the right to lodge a complaint with the *Woreda* electoral office immediately upon the occurrence of such event and receive a reply thereon.<sup>4</sup> Complaint against this determination shall be decided by the Zonal or Regional electoral office in the case of the complaints related to candidature registration;<sup>5</sup> and to the NEB in the case of complaints relating to counting of ballots.<sup>6</sup> The individual may, upon dissatisfaction with the determination made, appeal to the Regional Supreme Court in the former case and the Federal High Court in the later case.<sup>7</sup>

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<sup>1</sup> Ibid, Art. 11(i), (k)

<sup>2</sup> Supra at 11, Art. 69(1), Art 71(1)

<sup>3</sup> Ibid, Art. 69(4), Art. 71(4)

<sup>4</sup> Ibid, Art 70(1), Art 72(1).

<sup>5</sup> Ibid, Art. 70(4).

<sup>6</sup> Ibid, Art. 72(3).

<sup>7</sup> Ibid, Art. 70(4), Art. 72(4), as amended by Proclamation 438/2005.

Both the ruling party and the main opposition had numerous complaints relating to the counting and tallying of the votes in several constituencies. The NEB, hence, devised a mechanism for complaint investigation based on agreement reached among the parties.<sup>1</sup> The NEB adopted rules of procedure and complaint investigation panels where all the parties are entitled to be represented. The NEB, based on the recommendations from the Panels, called for a rerun in a number of constituencies.

### **4.3. The Role of Courts**

As an impartial and independent institution, the role of courts in settling election related disputes could never be underestimated. As such, under the electoral law of Ethiopia, courts render the final juridical decision in settling complaints and disputes arising from the electoral process. Judicial power is vested in both the federal government and the regions. The jurisdiction of the courts is determined by law based on the Constitution.

According to Proclamation No. 438/2005, complaints relating to electoral registration, candidate registration and voting shall be brought to *Woreda* court, Zonal or Regional Court as the case may be. Individuals dissatisfied with the determination made by *Woreda*, Zonal or Regional offices, individuals have the right to appeal to courts. Even in cases where the NEB had examined and rendered decision on a complaint, such as counting of ballots, appeal may be taken to the Federal High Court, upon objection to the determination of the NEB.<sup>2</sup> In the case of any serious irregularities of operation, petition may be made to the Federal High Court against determinations made by the NEB.

A number of cases were brought to the courts as regards the election process. In charges filed before the Federal High Court by the CUD against the NEB<sup>3</sup> as regards copies of decisions of complaints hearing bodies, minutes, audio cassettes and other relevant documents, the Court passed its verdict ordering the NEB to give copies of decisions of complaints hearing bodies, minutes, audiocassettes and other relevant documents to CUD. The Court indicated in its decisions that CUD had submitted evidences that substantiated its charges.

### **4.4. The Role and Assessment of Election Monitors**

Generally international and national election observers and monitors played a positive and constructive role in the entire electoral process. Of particular importance is the exemplary role played by the election observation and monitoring mission of our continental organization, the African Union. The observation mission of the African Union expressed its appreciation on the manner the elections were conducted and praised the elections as being free, fair and orderly.

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<sup>1</sup> See 3.3.2. of Chapter 3.

<sup>2</sup> *Supra*, at 11, Art. 73.

<sup>3</sup> [www. ENA.gov](http://www.ENA.gov), 8/22/2005.

It is of the utmost importance to underline the presence of national and international election monitors and observers during the entire process. It is at the invitation of the Government, committed to the transparency of the elections process, that a number of governments and international organizations observed the conduct of the elections starting from the pre-election phase, to the election day, the counting and tallying of the vote to the post-election investigation mechanism.<sup>1</sup>

In order to give the appropriate legal framework to the electoral monitoring and observation missions, Memoranda of Understanding (MoU) were signed between the Government and international monitors and observers. These MoUs were designed to outline the role and duties of the international monitors and observers as well as the Government's obligations towards the latter.<sup>2</sup>

Furthermore, non-governmental organizations and associations based in Ethiopia were accredited to monitor and observe the elections. A new Code of Conduct was signed between the Government and election observation missions.<sup>3</sup>

All these endeavours had the same purpose, namely that of ensuring the conduct of free, fair and orderly elections by inviting and facilitating the work of electoral observation missions. Their active participation in the entire process from the pre-election phase, to the election day, the counting and tallying of the vote to the post-election investigation mechanism is a testimony to the Government's commitment to holding democratic elections and their praise of the electoral process definitively establishes the truly democratic nature of the elections.

## **5. Post-Election violence and Measures Taken by the Government**

As it has been laid out under Section 3 above, the May 2005 federal and regional legislative elections held in Ethiopia were hailed for being free and democratic with a level playing field for independent as well as party contenders, while winning praise both locally and internationally, for the record voters turn out it enjoyed.<sup>4</sup> All independent and party candidates were given wider opportunity to express their views without any restrictions before the election date. Although it was quite obvious that these candidates were expected to campaign genuinely respecting the tenets of the Constitution of FDRE, most of the opposition parties were campaigning in contravention to the supreme law of the land.

As campaigning started to gather pace, the leadership of the opposition parties officially declared a strategy to seize power if possible through the democratic process or if that fails through an insurrection. Opposition parties announced plans to imitate

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<sup>1</sup> Supra, at 7, 2 May 2005.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Supra, at 15.

Orange Revolution of Ukraine in Ethiopia.<sup>1</sup> Insurrection is a punishable offence according to the provisions in the Criminal Code and the FDRE Constitution. However, the government exercised maximum restraint against repeated pronouncement by the opposition, which made it abundantly clear that they will use violence to attain their objective of seizing power at whatever cost.

The difficulty encountered during the pre-election and election period was mainly limited to writings and speeches though occasionally there were small and minor offences. But soon the trend to launch an illicit campaign in writing and speech has transformed itself into wider illegal act following the elections. And owing to this, complex and exacerbated security set backs were encountered.<sup>2</sup>

The security problems following the polling date could be analyzed by dividing it into two separate periods. The first involves security problems encountered beginning the first few days after polling up day the formation of the government. At this particular period, the major task was to carry out the investigation process of alleged election irregularities and legally so as to identify the winning party to definitively determine the victorious party through a system devised for the purpose following disputes over rejection of election results by the opposition parties. The second is the period in which security problems were encountered following the formation of government after the announcement of the winning party by the NEB of FDRE.

In spite of the fact that the election was conducted successfully winning local and international recognition, opposition parties particularly the CUD in line with their plan to come to power either through the ballot box or insurrection were engaged in different illegal activities. In their bid to achieve their goals, particularly the CUD was busy issuing press statement at times twice a day since May 24, 2005 seeking to incite violence among the public. The parties have used as a pretext of what they alleged as a fraudulent vote counting, a complete fabrication, to incite violence despite unstinted efforts made by the government to make use of established systems to look into the allegations and take corrective measures if proven. Notwithstanding the efforts, the CUD, officially declared that it would act to reclaim what it called stolen votes through the use of force.<sup>3</sup>

The Government has time and again made it abundantly clear that the violence that the opposition particularly the CUD, chose to pursue was unconstitutional and punishable by law. The opposition were preoccupied with preaching violence mobilizing the unemployed youth in towns where cumulative effect of socio-economic problems and poverty is chronic. Though the Government has declared a one-month ban, which was effective from May 15, 2005 to June 15, 2005 and it could be renewed if the situation deems necessary, to ward off destruction that could result from riots and violence allowing strong feelings reflected during the elections to cool down, the CUD

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<sup>1</sup> Dr. Negede Gobezie, Constitution, Election and Democracy in Ethiopia, 2005.

<sup>2</sup> Report of the Federal Police Commission to the House is available on the web, <: [www. waltainfo.com](http://www.waltainfo.com)>, ( Accessible on 14 November 2005).

<sup>3</sup> AFP's Interview with Engineer Hailu Shawel, August 10, 2005.

and other opposition groups pursuing similar tactics irresponsibly called for violence declaring that they will not heed to the ban. They organized and carried out street violence on 8 June 2005 while the government ban was still in force.

The violence, which occurred on 8 June 2005, has nothing to do with a peaceful demonstration. The whole exercise was a street violence called and organized by the CUD and carried out by destroying public property, rock pelting and tire burning at a time when there was a ban. Pieces of information presented below depict activities and movements of the CUD in the week before the 8 June violence proving beyond any doubt the whole unrest was the making of the party. For example:

1. On June 2, 2005, the leadership of the CUD has called on students of the Addis Ababa University to go on hunger strike. But facilitates most of the students refused to heed to the call, it was a failure.<sup>1</sup>
2. On June 3, 2005, the CUD leadership urged the Muslim faithful to denounce the government under the cover of religion. Similarly, on June 5, 2005, they called on the Christian faithful to denounce the government again using religion as a pretext. But both calls were ignored.<sup>2</sup>
3. Following incitation at the Sidist Kilo Campus of the Addis Ababa University by the CUD leadership, some students, followers of the party, blocked the gates on 6 June 2005 causing chaos, which disrupted free movement of the University community. Warning by the police to the CUD sympathizers went unheeded. A scenario that is similar to the Sidist Kilo Campus unfolded at Arat Kilo Campus through the instrumentality of Addis Ababa University students supporting the CUD and members of the party that somehow made it to the University. The security force, upon the request of the university management, was engaged in peacefully dispersing the strike. As a result, it rounded those students who were blocking the gates of the Campuses.<sup>3</sup>
4. On the same day, while police were transporting members and supporters of CUD who took part in the illegal activities to a police custody unemployed youth and members brought together by the CUD, carried out an assault smashing government vehicles and attacking the police force with stones after blocking the roads. A vehicle belonging to the Defense Force was set ablaze by the gangs while in regular patrol though it had nothing to do with the incident. When the situation begun to worsen and things were getting out of hand that included attempts to free those detained, police officers were forced to fire into the air to enforce law and order. Amidst the chaos a young woman was regrettably killed with a stray bullet. After causing such mayhem and damage to property and human life, the street action showed a sign of cooling down for the time being.<sup>4</sup>

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<sup>1</sup> Supra, at 46

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

5. On 7 June 2005, though peace prevailed in most of the localities of Addis Ababa, in a violence, which broke out around a Vocational School in the afternoon, rocks started to rain from every direction against policemen who were busy maintaining peace and order. In an effort to put the situation under control, and offer an effort to dispel the rioters peacefully, having been outnumbered by the gangs, the policemen had to pull back to defend themselves. In Addis Ababa, a situation was unfolding in which the rule of law could not be maintained. The government, realizing that the situation should not be allowed to continue unabated and that the violent gangs in addition to the large number of unemployed youth in the city were posing serious danger, a decision was made to stop the gangs and to use riot police to dispel them, supported by the appropriate action aimed at maintaining the rule of law.<sup>1</sup>

On 8 June 2005, violent forces from different directions were engaged in destroying public and private property violating the ban on demonstrations imposed by the Government. Moreover, obstructing unhindered movement of the inhabitants of the city by burning tyres and blocking the roads, they went on smashing buses, private cars, shops and government institutions, while trying to mount arson attacks on gas stations in the localities.<sup>2</sup>

Though police used water cannons and firing into the air to disperse the demonstrators, the gangs remained adamant in their illicit acts. Failing to disperse the rioters by firing into the air, the limited number of policemen were surrounded by the gangs directed and organized by the CUD and were exposed to eminent danger. Eventually, with concerted effort of the security forces, the rioters were put under control and relative calm and peace returned to Addis Ababa. On this day, some individuals those who were involved in the riot lost their lives. Many were wounded. In the mayhem 26 people died, including those who were killed by stray bullets.

On June 9, 2005 the situation was calming down as the dialogue between opposition and the ruling party under the mediation of the European Union continued and the parties signed a Joint Agreement on June 10, 2005.<sup>3</sup>

The Government, considering the unfortunate and regrettable death of 26 people in the violence instigated especially by the CUD on 8 June 2005, and taking into account the position of the opposition parties that could possibly instigate more violence as a tactic, had been making wide-ranging preparations to minimize the possibility of further casualties. Accordingly, since it is the belief of the government that violence can be put under control with minimal damage when the police force are trained adequately, a three-month training on riot-policing was given to members of the security force.

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<sup>1</sup> Id.

<sup>2</sup> Id.

<sup>3</sup> Id.

On the other hand, though CUD and United Ethiopian Democratic Forces (UEDF), especially CUD, had the opportunity to adhere to a peaceful engagement through the Constitutional system and seizing the opportunity the government has created for them by handling matters with restraint, they expressed unambiguously their determination to carry on with a series of riots they called to take place on October 2, 2005. This is a continuation of acts by the CUD, such as in August 2005 when holding meetings at public halls in the various sub-cities of Addis Ababa to build up a riot force and was bent on breaking and rendering useless the furniture in the public halls. As these acts of the party were evident, the government time and again demanded that they retract their call for violence on October 2, 2005 underlining that it was illegal and would have serious consequences. On the contrary, in their statements they remained adamant to pursue their violent ways. The CUD Chairman even asserted that between 10 to 15 thousand persons would die in the next unrest, indicating that he was planning an insurrection that could result in the death of countless people.<sup>1</sup>

On September 26, 2005, riotous forces organized by the CUD tried to instigate violence that could lead to bloodshed at *Meskel* Square while the Christian faithful were celebrating *Meskel*, the founding of the true cross.<sup>2</sup> The CUD leadership, tried to use the religious ceremony as a trial ground for violent act. They were determined to make use of every opportunity where there is a big gathering for their sinister motives. The government brought under control the leaders of the violence.

As a result of the government's strong stance in which it declared it would no longer tolerate incitement, opposition leaders were forced to cancel their plan for street action on 2<sup>nd</sup> October 2005 by giving three statements on October 1, 2005. The first statement announced that the demonstration they called to take place on October 2, 2005 was postponed indefinitely urging the public to remain alert in anticipation of their call. The second call, which came up a few hours later, declared that the demonstration was cancelled and that a stay-at-home strike would take place instead for three consecutive days, starting from October 3, 2005. The Government notified that both were statements postponing the strike for another schedule, that they were unacceptable, and that the opposition leadership who called the strikes would be legally accountable for their deed unless they refrain from such acts. Consequently, the leadership, through a statement they gave at midnight, made it clear that they would pursue their objectives democratically and within the parliamentary framework. Thus, the strikes planned for October 2, 2005 and the subsequent three days were aborted.

After the opposition declared that they would pursue their objectives democratically and within the parliamentary framework, the government facilitated forum for dialogue with them. Even though CUD, UEDF and the ruling party announced that they had agreed on eight agenda items at the forum, two days later, CUD announced that it would not continue as party to the negotiations unless other items are included in the agenda. The CUD, on the days that followed, changing its stance has decided not to take its

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<sup>1</sup> Id.

<sup>2</sup> [www.ena.gov.et](http://www.ena.gov.et), September 26, 2005.

parliament seats and rejected its responsibility to run the Capital-Addis Ababa.<sup>1</sup> The government on its part has made it clear that the issue of taking parliamentary seats and taking over of the Addis Ababa Administration by the winning party were matters of legal responsibility of those elected and not points for negotiation, and hence the precondition is unacceptable.

Meanwhile, the CUD leadership, which was persistent in the use of violence as an instrument of achieving political objectives, planned a series of unrests that would stretch from October 31 to November 14, 2005, and made public a detailed eight-point program.

In accordance with this program, the CUD called on the society to alienate groups of people subscribing to differing views on what they call government sympathizers, in an unprecedented move even unthinkable during the dictatorial military regime that was ousted from power in 1991 by the armed struggle of the Ethiopian people.<sup>2</sup> It called its followers to cut off the deep-rooted social interactions and to ostracize members and supporters of the ruling party, urging them not to attend their weddings and funerals.

CUD's attempt to implement its third scheme of violence was to begin to honking car horns at a time when the African Heads of State and Government converged in Addis Ababa to hold their 5<sup>th</sup> Extra Ordinary Session.<sup>3</sup> That particular moment required a peaceful atmosphere for it was the end of the fasting season for Muslim faithful and they were getting ready to celebrate Id-Al-Fitir. Though well aware of the fact, the leaders of the CUD, paying no attention to both holidays of the Christians and the Muslims did not refrain from making their calls for riots. But the people of Addis Ababa have unambiguously demonstrated their wish for peace in the city and only between 30-40 people were brought under control by police while attempting to disrupt peace by honking car horns as per CUD's call.

The CUD leadership, who have realized that the Monday's disturbance through honking car horns was unsuccessful, held a meeting in the afternoon of the same day, and took a firm stand that the defeat they encountered was never acceptable, and that it should not happen again. Moreover, they decided to further exacerbate the violence by mobilizing all the forces of destruction they had organized on November 1, 2005.

On November 1, 2005, they arranged a minibus to transport a few of their gangs to *Addis Ketema* Secondary School where the gangs threw stones in a bid to disrupt the teaching-learning process. As a result, the students panicked and were forced to leave the school compound. Parents gathered in the area to pick their children. The large crowd comprising students, their parents and bystanders, created a conducive environment for the gangs to launch street actions in the *Merkato* area of Addis Ababa.

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<sup>1</sup> Hailu Shawel's interview with the Voice of America, September 19, 2005; Ethiopian Review.Com, September 18, 2005; www.sudantribune.com, October 9, and 11, 2005.

<sup>2</sup> Press Release by Coalition for Unity and Democracy, October 29, 2005; Reuters, October 1, 2005.

<sup>3</sup> Press Release by Coalition for Unity and Democracy, October 29, 2005.

Thereafter, the violent leaders of the CUD mobilized their clandestine riotous forces, which they instigated and organized in 55 selected areas all over Addis Ababa. These rioters, set out to accomplish their mission by blocking roads with rocks, burning tyres, smashing and burning buses, looting and burning local *Kebele* offices, surrounding police stations so as to help prisoners escape, burning private houses and property, burning government owned factories, and other property, firing guns and throwing hand grenades at policemen, and snatching rifles from the policemen, to fire at the security forces and civilians. They attempted to set ablaze gas stations and big business institutions. Lives were lost due to these outrageous illegal acts.

After forces of the CUD unleashed their violent acts simultaneously in the various localities of Addis Ababa, it became apparent that the situation demanded no other alternative than arresting it swiftly. The security forces, though unable to attain the desired speed because of the blocked roads, have set out to control the riot first by clearing the roads. The security forces tried to bring the situation under control by pumping 75 thousand liters of water, firing 141 vollies of tear gas and numerous plastic bullets. The security forces paid huge sacrifices, as the gangs attacked them with grenades, guns shots, stones and inflammable objects.

What makes the recent street violence of November 2, 2005 different from the one that preceded it is the simultaneous launch of the street action at 55 different localities of Addis Ababa. This clearly shows it was done with the intention of weakening the security force, as it would have to stretch to all these areas. Modern communication technology, especially mobile telephones were used to coordinate the assaults. Some of the detained rioters have admitted during investigations that soldiers and officers of the defunct regime were among those CUD leadership masterminded the violence.<sup>1</sup> These individuals who possessed military expertise, have utilized financial resources of the CUD to purchase grenades, weapons, machetes and other instruments in addition to preparing homemade explosives.

The CUD tried to extend the violence to other parts of the country with the help of the violent local media, on the one hand, and by making use of the Amharic services of the Voice of America and Deuche Welle functioning under the full control of the opposition forces.<sup>2</sup> Accordingly, civil unrests called by the CUD took place in Amhara Region: Bahir Dar, Desie, Woldiya, etc; in Southern Nations, Nationalities and Peoples Region: Awassa and Arba Minch; and in Oromiya Region: Jima.

However, the violence provoked by OLF resulted in the loss of life; two in Ambo and one in Tikur Inchini towns. In general, the violence instigated by the CUD and similar other violent forces, which continued unabated until they were brought under control by the security forces working in tandem with the public, have caused mayhem and damages to property. The following is a list of damages incurred as a result of the violence orchestrated by the CUD.

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<sup>1</sup> Supra, at 46.

<sup>2</sup> Supra at 56, October 30, 2005.

**Casualties among civilians include:**

- Twenty four civilians lost their lives in Addis Ababa, 5 have died in Bahir Dar, 1 in Debre Tabor, 3 in Tikur Inchini, and 2 in Arba Minch. Totally, 35 civilians have lost their lives in the third scheme of street-riot.
- Some 156 civilians sustained injuries, out of which 11 were seriously wounded with the rest sustaining light injuries.

**Casualties among police officers include:**

- Seven policemen lost their lives.
- 338 members of the police force sustained injuries out of which 79 were serious and the rest light injuries.

**The extent and nature of the damage on property include:**

- Three city buses, two police vehicles and one vehicle belonging to the Ethiopian Telecommunications Corporation were burned. The public and the security forces rescued one vehicle belonging to the Ethiopian Airlines, while under fire.
- 103 city buses, 28 police vehicles and 22 other private and government vehicles, 153 in total were damaged, the glasses were smashed and the body parts heavily damaged.
- Three local *Kebele* offices, one *Kebele* recreation center, one city buses' coordination office were burnt and rendered out of use.
- Two private houses and three shops were burnt and were totally destroyed with all the properties inside.
- One government owned factory was set ablaze and destroyed partially.
- The doors and windows of 114 condominium houses built around a place called Gulelie were smashed while others were heavily damaged.
- 101 helmets, 101 shields, 18 staffs and two Kalashnikov guns were broken into pieces. Other public and private properties were broken into pieces on the roads.

The Government concluded that the tactic employed by the CUD was well thought and carried out according to plan and as a result has stretched the period of confrontation which significantly contributed to the rise in lose of human life and property. The Government rounded up as a useful means to curb the violence having learned the tactics of the rioters and later put under custody multitudes of them following a crack down launched on the basis of a careful study.

The police put under custody certain members of the leadership of the CUD determined to remain violent among the ranks that incited and organized the violence. It has left unscathed those who have distanced themselves from violence.

Each measure taken by the police were taken in line with the training it received and the capacity building it undertook regarding averting violence with minimum damage.

## 6. Detention and Trial of the Leadership and Members of the Main Opposition Parties

### 6.1. Detention and Condition of Detention of the Leadership and Members of the Main Opposition Parties'

It is universally accepted principle that, not only no one may be deprived of liberty except in cases or circumstances expressly provided by law, but further, any deprivation of individual liberty must strictly adhere to the procedures defined under the law. The failure to comply with such procedures creates the possibility, and eventually the probability of abuse of the rights of citizens.

The Constitution of the FDRE under its Chapter III dealing with fundamental rights and freedoms provides that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law and everybody is safeguarded by the Constitution from arbitrary arrest.<sup>1</sup> The leadership and members of the CUD were arrested in line with the requirements of the Constitution and the Criminal Procedure Code of Ethiopia.

Some of the leadership and members of the CUD were arrested *flagrant delicto* in accordance with the provisions of the Criminal Procedure Code of flagrant offences.<sup>2</sup> According to the provisions of the Criminal Procedure Code, a police officer can arrest without warrant a person who has committed a flagrant offence.<sup>3</sup> An offence is deemed to be flagrant where the offender is found committing the offence, attempting to commit the offence or has just committed the offence.<sup>4</sup> The police put in custody and conducted investigation against those involved in the street-riot organized by the CUD in accordance with the procedures prescribed by law. The suspects are put in Ziway and Kaliti prisons. These are federal prisons.

Moreover, concerning the rights of persons in custody, the Constitution of FDRE outlines that all persons held in custody and persons imprisoned upon conviction and sentencing have the right to treatments respecting their human dignity.<sup>5</sup> Moreover, he

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<sup>1</sup> The Constitution of FDRE, Art. 17.

<sup>2</sup> Article 17(1) of the Constitution of FDRE, Articles 19, 26, 49, 50, and 51, of the Criminal Procedure Code of Ethiopia.

<sup>3</sup> The Criminal Procedure Code of Ethiopia, Art. 50.

<sup>4</sup> Ibid. Article 19.

<sup>5</sup> Supra, at 62, Art. 21(1).

cannot be held *incommunicado*. The right to communicate with and be visited by spouses, close relatives, and friends, on the one hand and by professionals giving religious counsel, medical and legal services on the other, are specifically provided under the Constitution.<sup>1</sup>

Moreover inhuman treatment or punishment is expressly prohibited under the constitution and international instruments Ethiopia is a party to. The Constitution, in a *verbatim* restatement of the Universal Declaration of Human Rights, reaffirms that everyone has the "right to be protected from cruel, inhuman or degrading treatment or punishment."<sup>2</sup>

The present regime of management of federal prisons in Ethiopia, including the treatment of prisoners, is governed by the legislation issued for the Establishment of the Federal Prison Commission.<sup>3</sup> In accordance with this law, the Federal Prison Commission, is one of the law enforcement organs of the Federal Government established by law, with accountability to the Ministry of Federal Affairs and with duties and responsibilities of the administration of federal prisons and proper treatment of persons subject to detention and imprisonment.<sup>4</sup>

Following the adoption of Proclamation No. 365/2003, the Federal Prisons started to receive their budget directly from the Federal Government and are being administered by the Federal Prison Commission. The legislative measures taken with an objective to improve the federal prison administration and treatment of prisoners, is nothing but, an expression of the Government's commitment to improve the welfare of its prisoners in accordance with its available resources.

In this regard, the Report of the Mission of the African Human and Peoples' Rights Commission Special Rapporteur on Prisons and Conditions of Detention in Africa to the FDRE, 15 - 29 March 2004, states in its findings that "the Federal prisons are better in terms of infrastructure, budgetary allocations and managements than regional prisons."<sup>5</sup>

The Addis Ababa Administration being under direct federal authority has prisons including *Kaliti* prison and *Ziway* prison. The *Kaliti* prison is a federal prison situated in the heart of the capital of the country. It is one of the largest prisons in the country.

The prison is divided into a total of 11 cells, called blocks. The male prisoners occupy 10 of the cells or blocks, while the female prisoners occupy the remaining cells.<sup>6</sup> The female cells are called villas. The male section of the prison is separated from the

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<sup>1</sup> Ibid, 21(2).

<sup>2</sup> Ibid, 18(1).

<sup>3</sup> The Federal Prison Commission Establishment Proclamation No. 365/2003.

<sup>4</sup> Id.

<sup>5</sup> Report on the Mission of the African Commission Special Rapporteur on Prisons and Conditions of Detention in Africa to Ethiopia, P.8.

<sup>6</sup> Ibid, P. 12.

female section using a fence. In all these prisons the female sections are well separated from the male section and are guarded by female guards.<sup>1</sup>

According to the report of the Special Rapporteur, the subsidiary legislation of the country that deals with the administration of prisons and treatment of detainees, by stipulating the duty of the Government to ensure the welfare and health of the detainees, is compatible with international law.<sup>2</sup> The observations and findings of the Special Rapporteur clearly states that all the detention centers, except police stations, have clinics that offer treatment to detainees. Medical problems that cannot be handled by the clinics are referred to nearby hospitals.<sup>3</sup>

In connection with medical care, it sometimes happens that detainees who are ill and require specialist treatment, are transferred from the "Kaliti" prison to specialized medical institutions or civil hospitals. Among the medical treatments given by the Addis Ababa Prison Administration in serious medical cases, was the timely efforts made by the Administration to enable Engineer Hailu Shawel, leader of the CUD, to receive the necessary treatment. Accordingly, ophthalmic specialists from Minelik II Hospital and Police Hospital referred him to undergo a major eye surgery.<sup>4</sup> Foreign experts brought by the Government conducted successful operation and Engineer Hailu Shawel is now in good health following a successful surgery undertaken by ophthalmic specialists from home and abroad.<sup>5</sup>

The detainees are being provided with adequate opportunities to be visited by and to communicate and consult with their families, spouses, relatives, friends, lawyers, without delay, interception or censorship and in full confidentiality. Prison regulations allow family visits twice a week, usually on Saturdays and Sundays.<sup>6</sup> In Addis Ababa Prison, there is a visiting room where inmates and detainees can meet and discuss.<sup>7</sup> The leadership and members of CUD, apart from their relatives, friends and spouses, have been visited by the Prison Fellowship, (local NGO), the Ethiopian Human Rights Commission and the Ethiopian Orthodox Church. After their visit, Head of the Office of the Patriarch of the Ethiopian Orthodox Church (EOC), Director of Prison Fellowship Ethiopia and Commissioner of the Ethiopian Human Rights Commission jointly declared their findings that detained CUD leaders and journalists are in good hands with all their rights respected.<sup>8</sup> Moreover, the EU Commissioner Mr. Louis Michel, during his recent visit to Ethiopia met with relatives and lawyers of the detained leaders of the opposition as well as the detainees from 15 - 17 February 2006.<sup>9</sup> Detainees are allowed to write and receive letters.

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<sup>1</sup> Ibid, P. 25.

<sup>2</sup> Supra, at 69, Art. 27.

<sup>3</sup> Supra, Note 35, p. 28.

<sup>4</sup> Eng. Hailu Shawel undergone Ophthalmic Surgery, The Ethiopian Herald Vo. LXII No. 140. 21 February, 2006.

<sup>5</sup> Id.

<sup>6</sup> Supra, at 71, p. 30.

<sup>7</sup> Supra, at 71, P. 31.

<sup>8</sup> Supra, at 56 11 November 2005.

<sup>9</sup> Ethioblog News, <http://europ.eu.int/comm/commission,brasso> 103/06/106

The Addis Ababa prison adopted its own rules to maintain law and order in the prison. Most of the rules and regulations are consistent with international human rights norms and the treatment of persons deprived of their liberty.<sup>1</sup> The Report of the Special Rapporteur states the striking feature as to how these rules are enforced as follows:

" It is interesting to note that prison authorities do not enforce the rules and regulations of the prison. Discipline is "self-administered". The prisoners discipline themselves through the prisoners' committee."<sup>2</sup>

According to the findings made by the Special Rapporteur, there are no secret or underground prisons in Ethiopia. There are only three official places where people could be detained in Ethiopia- the civilian prison, the military prison and the police station. The place where the leadership and members of CUD are detained is one of the official and legitimate places of detention.

Generally, prisons in Ethiopia are in good conditions. The relationship between the detainees and prison authorities is good.<sup>3</sup> The Report of the Special Rapporteur clearly witnessed that in all the prisons visited, during the close door meetings with detainees, there were very little complaints about the prison administration and prisoners are generally happy with the way they are being treated.<sup>4</sup>

## 6.2. Protection of Due Process Rights of Detainees

The Constitution of FDRE contains, a list of legal guarantees to arrested persons. Article 19 of the Constitution lists down the rights of detained persons pending investigation and trial. These rights consist of the following:

- a) the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them;
- b) the right to remain silent;
- c) the right to be brought before a court within 48 hours of their arrest;
- d) an inalienable right to petition the court to order their physical release;
- e) the right against self-incrimination;
- f) the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.

During detention, both substantive as well as procedural rights of detained CUD leaders and their supporter are guaranteed. The detainees were denied bail on grounds that the requirements of the Criminal Procedure Code of FDRE regarding bail were not

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<sup>1</sup> Supra, at 71, p.34.

<sup>2</sup> Id.

<sup>3</sup> Supra, at 71, p. 38.

<sup>4</sup> Supra, at 71.

met.<sup>1</sup> Hence this cannot be raised as a ground to claim that due process entitlements were not respected.

Once the investigation is complete, both the Constitution and relevant provisions of the Criminal Procedure Code provide that persons arrested should be brought before a court of law. This has been scrupulously implemented. Moreover, the leadership and supporters of CUD enjoyed the right to a public trial by an ordinary court of law within a reasonable time after having been charged.<sup>2</sup> Once the trial process has started, the accused persons are also entitled to:

- a) the right to be provided with sufficient particulars of the charge brought against them or the precise offence which they are alleged to have committed and to be given the charge in writing;
- b) the right to be presumed innocent until proved guilty according to law, during the proceeding all the way up to a final court verdict is given and not to be compelled to testify against themselves;
- c) the right to have access and confront any evidences presented against them;
- d) the right to be represented by legal counsel of their choice, in the case of indigent defendant includes the right to be provided with legal representation at state expense where, in the opinion of the court, in justice would otherwise result; "where in justice would otherwise result" has traditionally meant serious crimes that entail loss of life, loss of liberty beyond two years, or comparable punitive measures; and
- e) the right of appeal to the competent court against an order or judgment of the court of first instance.<sup>3</sup>

The rights of accused persons set out above as special safeguards under the Constitution and other laws of the country are fundamental to a fair system of criminal justice. Following the initiation of criminal proceeding against the opposition leaders, steps were taken towards guaranteeing the basic rights of the defendants such as, to be timely notified of the precise offences which they are alleged to have committed, when and where their hearing will take place, a public trial, to be represented by attorney in accordance with Ethiopian law and in accordance with universally accepted human rights instruments which Ethiopia signed and ratified. Cognizant of the valuable functions that the publicity of criminal proceedings serves in the society, the trial hearing is made public.

As regards the implementation of the rights of the defendants to have the assistance of a legal counsel, the court informed the defendants that their rights to seek legal counsel is guaranteed. With respect to bail, the accused submitted their request to

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<sup>1</sup> Supra, at 64, Art. 28.

<sup>2</sup> Supra, at 62, Art. 20(1).

<sup>3</sup> Ibid, Art. 20 (2-6).

be released on bail by a petition on 28 December 2005.<sup>1</sup> The Second Criminal Bench of the Federal High Court issued an order, rejecting, the request to be released on bail by the suspects who face charges of crime against the Constitution and the Constitutional system and other serious offences.<sup>2</sup> The Bench denied the suspects' request to be released on bail after looking into their petition against the prosecutor's counter argument that referred to a relevant legal stipulation and the non-bailable nature of the criminal charges brought against them.<sup>3</sup> The Bench ruled out the suspects' argument based on Article 9(3) of the International Covenant on Civil and Political Rights of 1966 and Article 19 of the Constitution cum Article 63 of the Criminal Procedure Code of Ethiopia.<sup>4</sup>

### **6.3. The Trial of the Leadership and Members of the CUD**

Following the May 2005 National Elections, the leadership and members of CUD, opted for unconstitutional means of assuming power, by inciting violence and insurrection with the intention of destabilizing the constitution and the constitutional order. They have committed serious crimes endangering national security of the country.

The law recognizes that it is the responsibility of the government to prosecute serious violations of the constitution and other laws of the country. Thus, after examining the investigation of the federal police and obtaining sufficient evidence, the federal prosecutor charged the leadership and members of CUD who are suspected in the May 2005 post election violence. The prosecutor charged the suspects under a single charge containing different counts and being described separately. The charge has been filed against 131 defendants.

The seven counts of the charge include: outrages against the constitution or the constitutional order (Articles 32(1)(a)(b), 34, 38, 27(1) and 238(2)/258 of the Criminal Code of FDRE); obstruction of the exercise of constitutional powers (Articles 32(1)(a)(b), 34, 38, and 239 of the Criminal Code of FDRE); armed rising or civil war (Articles 32(1)(a)(b), 34, 38, and 240(2)/258 of the Criminal Code of FDRE); attack on the political or territorial integrity of the State (Articles 32(1)(a)(b), 38, and 241 of the Criminal Code of FDRE); impairment of the defensive power of the state (Articles 32(1)(a)(b), 34, 38, and 247(a)(c)/256 of the Criminal Code of FDRE); high treason (Articles 32(1)(a)(b), 34, 38, and 248(b)/258 of the Criminal Code of FDRE) and genocide (Articles 32(1)(a)(b), 34, 38 and 269(a) of the Criminal Code of FDRE).

All defendants are accused of the first count of the charge. The second and third counts of the charge have been filed against defendants listed under number 1 to 39 and 96 to 131 of the charge. The fourth and fifth counts of the charge have been filed against defendants listed under number 1 to 39, 70 to 90 and 127 to 131 of the charge.

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<sup>1</sup> High Court rejects Eng. Hailu Shawel et al. bail appeal, The Ethiopian Herald, Vol. LXII, No. 100, 5 January, 2006, P.1.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

The sixth count of the charge has been brought against defendants listed under number 1 to 39 and 127 to 131 of the charge. And the last count of the charge has been filed against the 1<sup>st</sup> to 39<sup>th</sup>, 70<sup>th</sup> to 90<sup>th</sup> and 96<sup>th</sup> to 131<sup>st</sup> of the defendants.

The trial of the 131 opposition leaders and supporters, including 14 publishers and editors of private newspapers, is being attended by representatives of international organizations and embassies of several countries in Addis Ababa and families and friends of the suspects.

The prosecutor, on 22 March 2006 withdrew the 4<sup>th</sup> count out of the seven counts of the charge instituted against the suspects and it also requested the court to release 18 defendants.<sup>1</sup> The Federal Prosecutor has decided to drop all the charges against 18 out of 131 defendants after having taken into consideration the degree of participation and the age of the defendants. The Court ordered for the release of Wondwossen Tsega, Wondimu Desalegn, Solomon Abebe, Menbere Cherinet, Abraham Abiye, Zinash Moges, Biniam Tadesse, Teferi Berhe and Gebre-Medhin Teferra. It also order the withdrawal of the charges filed against Negussie Mengesha, Addisu Abebe, Solomon Kifle, Tizeta Belachew, Adanech Fissehaye, Kassa Kebede, Isayas Lisanu, Teferra Zewdie and Tilahun Maru, the cases of whom was being heard in absentia.<sup>2</sup> The 18 defendants whose charges are lifted or suspended are released by the order of the court included five journalists working for the Voice of America and charged in absentia.<sup>3</sup>

It should also be mentioned that the trial process is being conducted as expeditiously as possible without being unduly prolonged. So far the trial hearing is adjourned twice. All of the defendants except three, pleaded not guilty by remaining silent. It appears to the Court in the course of proceedings that "where the accused says nothing in answers to the charge..., a plea of not guilty shall be entered".<sup>4</sup> After establishing "plea of not guilty", the court adjourned the hearing, requiring the prosecutor to call such evidences for the prosecution as it considers necessary. It is expected that the hearing of both prosecution and defense evidences and the final verdict would be given within a reasonable period of time. It will be up to the Court to determine the validity of these charges. The government will obviously abide by the verdicts of the court.

## **7. The Right to Freedom of Demonstration and Assembly**

Article 30(1) of the Constitution of FDRE guarantees the people of Ethiopia the right to demonstrate and assemble peaceably and unarmed. The Constitution, however, allows the imposition by law of a certain measures of restriction on the manner of exercise of this right. Restrictions imposed accordingly may relate to the location of open-air meetings and the route of movement of demonstrators and may be imposed for the sake of public convenience or for the protection of democratic rights, public morality and peace during a meeting or demonstration. The Constitution also spells out that this

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<sup>1</sup> Supra, at 90, 23 March 2006.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Supra, at 64, Art. 13(1).

right may not be exercised in a manner that would affect the well being of the youth or the honor and reputation of individuals, and to disseminate war propaganda and to express opinions in public intended to injure human dignity.

The restrictions permitted by the Constitution are also allowed under the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.

Particulars as to the usage of this right are set forth in Proclamation no. 3/1991 issued to establish the procedure for peaceful demonstration and public political meeting. The restrictions and requirements imposed by this Proclamation are only concordant with those sanctioned by the Constitution and are not meant to create undue hurdles to the exercise of the right but rather to facilitate its enjoyment to its fullest extent possible without, of course, infringing against other constitutionally protected rights.

#### **7.1. Protection of the right of demonstration: before and after the election**

Before the Election Day, political parties employed a number of methods to amass support from voters. They introduced their candidates and national agenda through different channels of communication, took part in national political parties' debates, called their members and supporters for discussion and organized and held demonstrations and counter demonstrations.

As the right to demonstrate was always protected, public rallies including the one called by one of the main opposition parties, the CUD, were held in the capital, Addis Ababa, and cities of regional states. Almost all the rallies held in support of the different contending political parties were peaceful. The government lived up to its responsibilities with respect to facilitating for the rallies to be concluded with out any security problem.

Rallies organized by opposing parties were held not because they suited the purposes of the government and hence gained its blessing but because the constitution obligates the government to allow them so long as all the statutory legal requirements are met.

Following the election, the government found it necessary to impose a month-long ban on demonstration in Addis Ababa and its surroundings to prevent any threat against public peace. The decision to ban public rallies was not made arbitrarily. The government had the responsibility to ensure that the security of the people was protected at all times and under all circumstances. Moreover, it recognized the fact that it would bear the blame if, although it did not expect any major problem to happen, lives were to be lost and property to be damaged owing to its failure to take preparatory actions.

During the month in which the ban on demonstration was in force, riots erupted in Addis, and other parts of the country, which claimed the lives of people and inflicted

damage on property. This fact, therefore, necessitated the extension of the ban for one more month. Given the volatile situation that prevailed in the city, not extending the ban would have been an irresponsible act on the part of the government that would have made matters even worse.

The ban on demonstration once the extended for a brief period was rescinded. Here, it must be noted that the purpose served by the imposition of the ban cannot be contested on grounds whether it was necessary or its legal standing.

## **7.2. Protection of the Right of Assembly**

The right to assemble has never been restricted at anytime before or after the election except for those two months when only outdoor meetings- and demonstrations as discussed just above- were banned temporarily to eschew possible threat against public peace. Before the Election Day, opposition parties gathered - both outdoor and indoor - their members, supporters and other voters to introduce their candidates and political agenda.

Following the actual election, these political parties continued meeting their members and supporters indoor to discuss problems and challenges they might have faced during the election and the actions they intended to take. The most notable of such occasions were the strings of meetings the CUD held in Addis Ababa and other parts of the country to deliberate with its members and supporters on whether to join or boycott parliament and whether the Party should take over the administration of Addis Ababa from the incumbent EPRDF.

Therefore, except for that brief spell of temporary ban imposed for cause only on open-air gatherings, the right to assemble was never restricted.

## **8. The Right to Freedom of Expression**

### **8.1. Overview of Ethiopian Press law and the State of Press in Ethiopia**

#### ***8.1.1. Overview of the Ethiopian Press Law***

Free and vibrant press is a fundamental aspect of the right to freedom of expression. Thus, the existence, promotion and expansion of a free and strong press is a fundamental prerequisite for the full realization of freedom of expression.<sup>1</sup>

Free press, not only provides forum for citizens to freely express their opinions, but also plays a preeminent role in the protection of individual and people's rights and the development of democratic culture as well as in affording citizens the opportunity to form balanced views on various topical issues and to forward their opinions on the

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<sup>1</sup> Proclamation to provide for the Freedom of the Press, Proc. No. 34/1992, Preamble, Para. 2.

directions and operations of government.<sup>1</sup> But press can play this role only when appropriate conditions are created under which it can operate freely and responsibly without any censorship and restrictions of similar nature.<sup>2</sup> To materialize this, it is necessary to issue the appropriate law providing for the freedom, rights and duties of the press.<sup>3</sup>

Ethiopia is a state party to the International Covenant on Civil and Political Rights (ICCPR) of 1966, and the African Charter on Human and People's Rights (ACHPR) of 1981.

The FDRE Constitution and the Proclamation to Provide for the Freedom of the Press (the Proclamation) provide the domestic legal framework in which freedom of press is guaranteed.

Article 29 (3) of the Constitution guarantees freedom of the press and other mass media and freedom of artistic creativity; and that freedom of the press shall specifically include the following elements:

- (a) Prohibition of any form of censorship; and
- (b) Access to information of public interest.<sup>4</sup>

Paragraph 4 of the same Article reads as follows:

" In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions."<sup>5</sup>

According to Article 4 of the Proclamation, the main purpose of the Ethiopian Press Law is to promote the pursuit of fundamental freedom, peace, democracy, justice, and equality and for the acceleration of social and economic development.<sup>6</sup> Accordingly the press:

- a) gathers and disseminates news;
- b) expresses opinions on various issues;
- c) forwards criticism on various issues;
- d) participates in forming public opinion by employing various other methods; and;
- e) undertakes other activities necessary for the accomplishment of its purposes.<sup>7</sup>

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<sup>1</sup> Ibid, Para. 3.

<sup>2</sup> Ibid, Para. 4.

<sup>3</sup> Ibid, Para. 5.

<sup>4</sup> Supra, at Art. 29(3).

<sup>5</sup> Ibid, Art. 29(4).

<sup>6</sup> Supra, at 98, Art. 4(1).

<sup>7</sup> Ibid, Art. 4(2).

The Proclamation also prohibits censorship of the press and any restrictions of a similar nature<sup>1</sup>. This has created a fertile ground for the free press to flourish in Ethiopia in the last decade and half.

#### ***8.1.1.1 Restrictions/Limitations on the Free Press***

There are acceptable grounds for limitations and restrictions on the right to freedom of the press. Under Article 19(3) of the ICCPR, freedom of expression (that includes the right to freedom of the press) may be subject to certain restrictions that shall only be such as provided by the law and are necessary:

1. for respect of the rights or reputations of others; and
2. for the protection of national security or public order (order public), or of public health or morals.<sup>2</sup>

Article 9(2) of the ACHPR clearly shows that the individual's right to express and disseminate his opinions can be restricted within the bounds of the law.<sup>3</sup> Limitations on freedom of expression are also provided for in other regional legal instruments.

The Constitution, under Article 29(6), shows that legal limitations can be laid down on the right to freedom of the press in order to protect the well being of the youth, and honor and reputation of individuals.<sup>4</sup> The Proclamation also prohibits any propaganda for war as well as the public expression of opinion intended to injure human dignity.<sup>5</sup> The Constitution, under 29 (7), also provides that any individual citizen who violates any legal limitations on the exercise of this right may be held liable under the law.<sup>6</sup>

Articles 10 to 14 of the Proclamation provide for rules defining what are considered as the responsibilities of the press.<sup>7</sup> In particular, Article 10 of the Proclamation reads:

1. Every press has the duty to ensure that any press product it circulates is free from any content that can give rise to criminal and civil liability,
2. Without prejudice to the generality of sub-article 1 of this Article, any press shall have the duty to ensure that any press product it issues or circulates is free from:
  - a) any criminal offence against the safety of the state or of the administration established in accordance with the Charter or of national defense force;

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<sup>1</sup> Ibid, Art. 3.

<sup>2</sup> Supra, at 102, Art. 19(3).

<sup>3</sup> Supra, at 103, (emphasis added).

<sup>4</sup> Supra, at 62, Art. 29(6).

<sup>5</sup> Id.

<sup>6</sup> Ibid, Art. 29(7).

<sup>7</sup> Supra, at 98.

- b) any defamation or false accusation against any individual, nation/nationalists, people or organizations;
  - c) any criminal instigation of one nationality against another or incitement of conflict between peoples; and
  - d) any agitation for war.
3. Responsibility for carrying out the duties specified under sub-articles 1 and 2 of this Article shall lie as follows:
- a) in case of a periodical press such as a news paper, magazine or journal, on the concerned editor, journalist or publisher;
  - b) in case of press other than those specified under this sub-article 3(a), on the publisher,
  - c) in any press product disseminated by radio or television, on the concerned journalist and program editor.

#### ***8.1.1.2. Amendment of the Law of the Press***

According to Article 74 of the Constitution, H.E the Prime Minister shall submit to the House periodic reports on the work accomplished by the executive as well as its plans and proposals.<sup>1</sup> In accordance with this constitutional provision, H.E. the Prime Minister submitted the second quarterly report of the fiscal year 2006. During the discussion on the report, H.E. the Prime Minister explained that, at present, the government is making maximum effort to retain the services of experts from Canada, United kingdom, Germany and India on the study to amend the press law.<sup>2</sup> According to H.E. the Prime Minister, all appropriate institutions will continue to work with the government and organizations who give support in this regard; and upon the completion of the study, a draft press law would be prepared through dialogue and negotiation among the parties who participate in the parliament and the draft will then be submitted to the House.<sup>3</sup> Owing to the Government's belief that the issue affects actors beyond political parties, it is currently organizing various forums need to be organized that could facilitate the presentations of inputs from other stakeholders will help enhance the democratic nature of the process.<sup>4</sup>

#### ***8.1.2. The State of the Press in Ethiopia***

In addition to creating the appropriate political environment and legal regime for the strengthening and further development of the right to freedom of the press, encouraging activities have been conducted and tangible results have been achieved so far.

Institutions that seek to strengthen the capacity of the media sector have been established and are now graduating qualified professionals in the country. For instance, the School of Journalism and Communication at Addis Ababa University is providing

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<sup>1</sup> Supra, at 62, Art. 74(11).

<sup>2</sup> Report of the Prime Minister to the House of Peoples' Representatives (January 2006), P. 23, Para. 2.

<sup>3</sup> Id.

<sup>4</sup> Id.

postgraduate programmes and other short-term and long-term trainings for numerous participants. Mass Media Training Institute in Addis Ababa has also been providing diploma programmes and trainings for professionals from the public media sector. The role of the private sector in this regard cannot be overemphasized. Numerous private owned institutions are now flourishing and are playing their role in graduating qualified journalists who can contribute towards the promotion and development of the press. The government is keen in promoting public-private partnership in the sector. Accordingly it has developed numerous initiatives that provide support and assistance to private institutions that provide trainings in journalism. The Government is also facilitating the availability of various opportunities to media staff and other press personnel so that they would get short and long-term training in foreign institutions.

With the view to creating conducive environment for the free press and independent media, the following additional measures were taken:

1. The Freedom of Information Act (FOIA) was drafted by the relevant authority and commented by foreign consultants. It is expected to be submitted to the House for adoption through the National Committee established for that purpose.
2. Revision of the existing press law is being conducted. More than three consultative meetings were held among the government and journalists and concerned bodies. The details on the amendment of this law are discussed under section 8.1.1.2 above.
3. The establishment of the Broadcasting Agency is another achievement in this regard. The Agency has given license permits to 2 private FM Stations and they have begun operating.

Encouraged by the conducive environment created, journalists have created several associations. For instance, mention could be made of the Ethiopian Journalists Association, the Ethiopian Free Press Association, the Ethiopian Women Journalists Association, Ethiopian Sport Journalists Association and etc.

Considerable number of private publishing enterprises, newspapers, magazines and news agencies are also operating in the country. Since 1992, a total of 1, 113 press licenses have been granted i.e. license permits for 684 Newspapers, 276 Magazines, 3 News Agencies, 150 Electronics Publishing Enterprises have been issued. Currently, 71 Newspapers and 34 Magazines are in circulation, 2 News Agencies are operating and 100 electronics (Audiovisual) publishing enterprises are functioning.

## **8.2 Participation of Ethiopian Private Press during Pre-election, Election and Post-election periods**

### ***8.2.1 Pre-Election Period***

Recognizing and respecting the right of the press; prohibiting censorship and any similar restrictions of the press; establishing institutions that build the capacity of journalists; encouraging private sector to participate in establishing these institutions; encouraging publishing enterprises and creating conducive environment to this effect are the most important factors that contributed for the private press to flourish in Ethiopia.

The private press often criticized policies of the government and one would expect them to contribute for the democratic culture in the country. It obtains information from any government sources of news and information, and publicizes reports based on such information. The private press disseminates news and information regarding the country's political, economic and social aspects. During the pre-election period, the free press had access to the debates among political parties. They disseminated news and information on election campaign including open debates and peaceful campaign rallies. They had access to the activities of the NEB and other relevant government agencies.

### ***8.2.2. The Election Day***

During the Election Day, the press operated in a similar environment under which it conducted itself during the pre-election phase. The private press had unfettered access to the polling stations during the Election Day as can be witnessed from the various reports that appear in numerous media outlets at the time. Such access was available without any restriction during the opening, voting, counting and tallying of the ballots. They obtained information and disseminated their press products on this matter.

### ***8.2.3. Post Election Period***

As it was during the pre election period and Election Day, the private press continued to obtain information and disseminate press products. The day-to-day post election events were widely published on the newspapers and magazines that belonged to the private press regardless of their contribution to the process positively or negatively. They had access to all relevant governmental and non-governmental institutions even during the post-election violence.

## **8.3 Detention of Some Journalists**

As explained above, it is not uncommon to have restrictions on a certain right under any law.<sup>1</sup> There are, indeed, certain limitations on the right to freedom of the

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<sup>1</sup> Supra, at 109, 102, 103, 62.

press under Ethiopian Law.<sup>1</sup> If a press circulates a product which goes against legal limitations, then the press that violates these legal limitations may be held liable under the law.<sup>2</sup>

The 14 journalists who are detained after the street violence instigated by some of the opposition parties are brought before the law not because they violated the legal limitations on the freedom of expression and press law but it is because they took part in:

- outrages against the constitutional order,
- attack on the political and territorial integrity of the state,
- impairment of defensive power of the state; and
- genocide.<sup>3</sup>

Hence the acts committed by the journalist are not minor infractions of the press law but serious violation of the criminal code.

## **9. Rights and Protection of “Human Rights Defenders”**

### **9.1. “Human Rights Defenders” in Ethiopia**

The Ethiopian Constitution enumerates in its chapter three (3) a comprehensive list of the fundamental human and democratic rights and freedoms under Articles 13 to 44<sup>4</sup>. It affirms that the provisions contained therein shall be respected and enforced by all federal and state organs, and that they shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, international covenants on human rights and international instruments adopted by Ethiopia.

In light of the foregoing, the Government attaches particular significance to its obligations to ensure the respect of the fundamental human and democratic rights and freedoms of its citizens. It is this strong attachment to the respect and enforcement of these rights and freedoms that led Ethiopia’s parliament to establish in 2004 the Ethiopian Human Rights Commission and the Institution of the Ombudsman (See Annex 3).

These institutions have been entrusted with the task of examining individual cases of human rights violations and where, deemed appropriate, to give redress or transmit the case for remedy to the appropriate organ. These institutions have started operating and are currently examining numerous cases brought to their attention

Along side these institutions truly dedicated to the advancement of the cause of human rights in Ethiopia, there have been for several years now a non-governmental organization called the Ethiopian Human Rights Council founded and headed until

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<sup>1</sup> Id.

<sup>2</sup> Supra, at 62.

<sup>3</sup> The charge by public prosecutor to the Federal High Court, 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup> Charges (See Annex 2).

<sup>4</sup> Supra, at 62.

recently by a prominent opposition figure, Professor Mesfin Woldemariam and others. The Council has been using this institution to propagate false information about human rights abuses in Ethiopia in order to advance his sinister political motive of discrediting the Government.

The motives of the founder became even more apparent to all when in the run-up to the May 2005 elections, he formed the Rainbow Movement for Social Justice and Democracy, a party which became part of the CUD and orchestrated the street violence in Ethiopia in June and November 2005 with the objective of overthrowing the constitutional order and seizing power illegally. He is currently facing in a court of law along with other CUD leaders charges of high treason and genocide for his role in the violence that gripped the country after the elections with his rights to due process entitlements fully respected. (See the charge annexed to this document)

Thus, it should not come as a surprise that individuals working for this organization would attempt to lure organizations truly dedicated to the cause of human rights under the guise of “human rights defenders” by feeding and propagating falsehoods for hidden political motives.

When examining reports of alleged human rights abuses, it is of the utmost importance to take the greatest care possible in identifying the sources of the reports. Only zero credibility can be attached to reports emanating from organizations such as the Ethiopian Human Rights Council operating under the guise of human rights defenders but in actual fact openly pursuing a political agenda.

It is, therefore, clear that any report emanating from the abovementioned organization of the elections will only contain a litany of lies, falsehoods and misinformation designed to discredit what has been otherwise hailed as a free, fair and orderly electoral process.

## **9.2. Participation of “Human Rights Defenders” during the Pre-election, Election and Post-election Periods**

As stated above, numerous international and national electoral monitors and observers were invited by the Government to observe and monitor the May 2005 elections. Some of these national observers came from local and locally-based international non-governmental organizations working in the developmental field.

These organizations were allowed to participate in the electoral process from the pre-election period, to the Election Day and post-election periods with the hope that they would play constructive roles in the process.

Although the vast majority did indeed fulfill their role with the diligence and professionalism that one expects of them, few, unfortunately did not. Limited number of individuals working for some NGOs have been charged on an individual basis with the

crimes stated in the charge attached to this document<sup>1</sup>. The organization to which these accused individuals belong have continued to operate in the country.

Despite this regrettable fact, it is, nonetheless, important not to let these limited cases of illegal acts committed by some individuals working in the NGO community overshadow the work done by numerous other members of the NGOs and religious organizations that observed the election process and declared it as being free, fair and orderly.

## **10. Establishment of Independent Parliamentary Inquiry Commission**

### **10.1. Parliamentary Debate Over Post-Election Developments In Ethiopia**

The House of the FDRE, which is the highest authority of the Federal Government,<sup>2</sup> in its first extraordinary session of the first year term dated 14 November 2005, thoroughly deliberated on the report presented by the Police Commissioner on actions taken by security forces to suppress the street-violence orchestrated by the opposition political parties in the capital city and some other towns of the country following the May 7, 2005 national election. The Police Commissioner has submitted the report in accordance with Article 55(17) of the Constitution of the FDRE.<sup>3</sup> The said provision empowers the House to call and to question the Prime Minister and other Federal officials and to investigate the Executive's conduct and discharge of its responsibilities. The House called the Police Commissioner, who is the official of the Federal Government, heading of the institution that is vested with the power to prevent any activities in violation of the Constitution that may endanger the constitutional order under Proclamation No. 313/95 on the FDRE Police Commission.

In the report, the Police Commissioner explained the security problems, which occurred in the country by anti-peace forces and the subsequent measures police has taken to resolve the problems.<sup>4</sup> As it has already been mentioned under section five of this document, the violence has claimed the lives of civilians and police forces and destroyed public and private property. The House, after having discussed on the report, endorsed it with 322 votes for, 44 against and 37 abstentions and issued a five-point resolution.

In the resolution, the House expressed that it is considerably saddened by the loss of lives and property damages due to the recent street-riots in Addis Ababa and other towns. It also asserted that any complaint that might arise in connection with the third federal and regional elections could have been handled through the laws and legal institutions of the country, leaving the legal and peaceful path, to disturb the peace and stability of the people, as well as making an antidemocratic and anti-constitutional call to destroy the age old social fabric of the people is an extremely dangerous approach.

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<sup>1</sup> Supra, at 62, Art. 50(3).

<sup>2</sup> Ibid, Art. 55(17).

<sup>3</sup> Supra, at 46.

<sup>4</sup> www.ethiopar.net, November 14, 2005.

Furthermore, the resolution states that in the belief that any political struggle could be pursued peacefully, legally and democratically, underlining the measures taken by the government to address the recent problems and maintain the constitutional order and ensure peace and stability. The House, in addition, decided to establish an Independent Inquiry Commission to investigate the violence in Addis Ababa and some other towns and if there were measures taken by the government outside of the law. Finally, the House decided that the Legal and Administrative Affairs Standing Committee of the House to make available a draft proposal on the Independent Inquiry Commission's formation and members of the commission to the House in two weeks' time. At this juncture, it needs to be understood that the House forwarded the motion to set up an Independent Inquiry Commission pursuant to Article 55(7) of the Constitution that gives the House the power to carry out investigations and take necessary measures if the conduct of national force, public security and a national police force infringe upon human rights and the nation's security. Moreover, the action taken by the House to form an Independent Inquiry Commission emanates from the belief that ongoing system of the country is self-corrective and governed by the rule of law.

### **10.2. Powers and Duties of the Independent Parliamentary Inquiry Commission**

The House, in its regular session on 29 November 2005, approved the bill to form an Independent Inquiry Commission which steers the violence occurred on 8 June 2005 in Addis Ababa and between 1<sup>st</sup> of November and 10<sup>th</sup> of November 2005 as well as between the 14<sup>th</sup> of November and 16<sup>th</sup> of November 2005 in Addis Ababa and in some parts of the country. The bill was prepared by the Legal and Administrative Affairs Standing Committee of the House which was empowered to submit the said bill in the House's first extraordinary session of the first year term on 14 November 2005.

An Independent Parliamentary Inquiry Commission has been constituted by virtue of Proclamation No. 478/2005 with the following powers and duties. (See Annex 4). These are:

1. to investigate whether the force used by the security force to control the disorder was excessive or not;
2. to investigate whether the handling of human rights in matters related to the problem was conducted in accordance with the Constitution and the rule of law; and
3. the damage caused to life and property as the result of the incident.

The Commission is also empowered by the aforementioned Proclamation with powers to effectively carry out its duties:

1. It shall order the production of documents in the possession of any organization or individual if it deems such document is necessary for its work.
2. It shall summon individuals that have relevant information and order them to give their statements.

3. It shall order appearance of unwilling individual or organization by police to give information or statements of testimony that are relevant to the duties of the Independent Parliamentary Inquiry Commission. And
4. It shall require professional, material and other cooperation from any organization that are necessary for the proper discharge of its duties.

On the other hand, the Commission is responsible under the Proclamation to accept relevant information presented to it by a concerned individual or body. Pursuant to the Proclamation, the Independent Parliamentary Inquiry Commission, while undertaking investigation, shall cause efficient investigators to be assigned and decide their numbers in accordance with the work load when it deemed necessary. Finally, the Proclamation vests the Independent Parliamentary Inquiry Commission with the power to send warrant to any person to appear before it for question in a specified place and time. In this connection, if the person who has to appear before the Independent Parliamentary Inquiry Commission for question is a prisoner, the Proclamation reads, "the Independent Parliamentary Inquiry Commission shall order the head of the prison to cause him to appear before it." If the person is an admitted patient with ability to appear before the Commission, it shall order to the health institute to cause him to appear before it. And if the person is out of Ethiopia, the Independent Parliamentary Inquiry Commission shall send the warrant through his address and if he is in Ethiopia but with unknown address it shall call him to appear before it by announcing through mass media.

### **10.3. Members of the Independent Parliamentary Inquiry Commission**

The Proclamation that establishes the Independent Parliamentary Inquiry Commission states that the members of the Commission shall be nominated by the Legal and Administrative Affairs Standing Committee to be appointed by the House of FDRE. In this regard, the House has appointed 11 members of the Commission in its regular meeting on 6 December 2005. The members of the Commission are drawn from different professional, educational and ethnic backgrounds and they are renowned for their goodwill and integrity in the society.

The names and responsibilities of members of the Commission are:

- |                              |  |
|------------------------------|--|
| 1. Mr. Firehiwot Samuel      | - Chairperson of the Commission        |
| 2. Mr. Shiferaw Jamo         | - Deputy Chairperson of the Commission |
| 3. Bishop Elsa               | - Member of the Commission             |
| 4. Sheik Elias Redman        | - " "                                  |
| 5. Mr. Abel Muse             | - " "                                  |
| 6. Priest Derejie Jenberu    | - " "                                  |
| 7. Mrs. Hakimet Abdela Mefek | - " "                                  |
| 8. Dr. Gemechu Megerssa      | - " "                                  |
| 9. Mr. Tamirat Kebede Gebrie | - " "                                  |
| 10. Mr. Abdu De'ad Ibrahim   | - " "                                  |
| 11. Mr. W/Michael Meshesha   | - " "                                  |

The Commission is lead by a chairperson who is responsible to:

1. supervise and control overall activities of the Independent Parliamentary Inquiry Commission;
2. assign support staffs that are necessary to undertake the duties of the Independent Parliamentary Inquiry Commission and
3. represent the Independent Parliamentary Inquiry Commission in its all dealings with other bodies.

The Proclamation provides that the Commission shall have a deputy chairperson who represents the chairperson in his absence. Furthermore, he shall make sure that the minutes of the Commission are properly kept; supervise whether the daily recorded activities of the Independent Parliamentary Inquiry Commission are transcribed and properly recorded in written form; sign and send warrants to persons who shall appear before the Commission for question; check whether any document presented to the Commission are kept; supervise and control duties of the office of the Commission and undertake other activities assigned to it by the Commission and the chairperson.

Decision making by the members of the Commission is made by majority vote of the members present at a given meeting. The presence of six members of the Independent Parliamentary Inquiry Commission shall constitute a quorum pursuant to the Proclamation.

#### **10.4. Independence of the Parliamentary Inquiry Commission**

The Independent Parliamentary Inquiry Commission administers its affairs without the intervention of external bodies. The Commission prepares and gives relevant terms of reference to investigators, assigned by it to take testimonies from witnesses. It is independent from external bodies in drawing its work plan and rules of procedure, to enable it undertake its duties properly. The House is responsible under the Proclamation to provide the necessary staff, budget and office to the Independent Parliamentary Inquiry Commission. In return, the Proclamation that constituted the Independent Parliamentary Inquiry Commission provides that, the latter is duty bound to submit report and its findings to the House by investigating the violence and its consequences.

A deadline is set by the Proclamation for the Independent Parliamentary Inquiry Commission to make a report on its findings. It has to submit the report of its findings within three months of its formation (December 27, 2005 to March 27, 2006). Nevertheless, if it requires more time to complete its work, it shall present the case to the Speaker of the House and when convinced the Speaker could grant an extension for not more than one month. As per the Proclamation, if the Independent Parliamentary Inquiry Commission requires an extension of more than one month, it shall be decided by the House.

The Proclamation that created the Independent Parliamentary Inquiry Commission ensures that the Commission is protected from the interference of the executive branch of the government.

## 11. Conclusion

The Government of the Federal Democratic Republic of Ethiopia is of the view that the facts presented in this report are compelling and persuasive evidence showing that the Commission's resolution which failed to take into account the environment within which Ethiopia's freest and most democratic election has taken place, and rushed to condemn Government measures taken with the view to safeguarding the constitutional order, was not warranted. It is also the view of the Government that passing the resolution without sufficient opportunity for the Government to respond and without adequate assessment by the Commission is indeed inconsistent with the African Charter on Human and Peoples' Rights, the Commission's Rules of Procedure and other relevant legal instruments. The unbecoming manner in which the resolution was passed cannot be overemphasized. The Government therefore requests the Commission to exclude the resolution from its report.

The report has provided the Commission with sufficient information on the institutional, legal and practical aspect of the May 2005 federal and regional legislative elections in Ethiopia, which is by far the most competitive election held in the country. The hardliners in the opposition camp tried to manipulate the free and fairness of the elections to seize power through unconstitutional means. As clearly stipulated in so many of the African Union's legal instruments, this cannot and should not be tolerated. This report clearly establishes that political campaigning during the election was undertaken in a free and open environment. The report establishes that the individuals who are in prison following the carefully marshaled street violence in Addis Ababa and other parts of the country are not political prisoners. The few journalists and individuals who misused their status in civic society organizations that are arrested in connection with the street violence are ordinary prisoners. The law enforcement bodies have concrete evidence that is now being presented in their trial. The report has shown that both during their detention and the ongoing trial, their due process rights enshrined in the FDRE Constitution and relevant international human rights instruments are fully guaranteed and protected.

Ethiopia remains committed to its international obligations. As such the unfortunate killing of civilians and law enforcement officers is a matter of utmost regret to the Government. This is indeed why, as comprehensively discussed in the report, the House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia adopted a Proclamation establishing an Independent Inquiry Commission that will look into the circumstances surrounding the post-election violence. The constituting legislation, reporting mechanism, membership and financing are designed in such a manner that ensures the independence of the Commission. The report of this Commission will be debated in parliament.

For the reasons adduced in the report, the Government reiterates its request to the Commission to put aside the ill-conceived resolution. It wishes to express its commitment to encourage positive dialogue between the Government and the Commission in the future in the context of the promotional and protection mandates of the Commission and in the context of Ethiopia's initial and periodic reports that are being finalized for submission to the Commission.

## RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN THE DARFUR REGION IN SUDAN

The African Commission on Human and Peoples' Rights meeting at its 38<sup>th</sup> Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005;

**Considering** the provisions of the *Constitutive Act of the African Union* (AU) and the *Charter of the United Nations Organisation* (UN), as well as those of the *African Charter on Human and Peoples' Rights* and other regional and international human rights instruments to which the Sudan is a State Party;

**Recalling** relevant Decisions and Communiqués adopted by the AU Assembly of Heads of State and Government and those of the Peace and Security Council on the situation in Darfur, most notably Decisions AU/Dec.54(III) and Assembly/AU/Dec.68 (IV) adopted at the 3<sup>rd</sup> and 4<sup>th</sup> Ordinary Sessions of the AU Assembly of Heads of State and Government respectively, as well as Communiqués PSC/PR/Comm.(XIII) and PSC/PR/Comm.(XVII) adopted by the AU Peace and Security Council at their 13<sup>th</sup> and 17<sup>th</sup> Meetings respectively;

**Recalling** Resolutions 1556/2004 of 30 July 2004 and 1590/2005, 1591/2005 and 1593/2005 adopted by the UN Security Council on the situation in Darfur, Sudan in March 2005;

**Recalling** also Resolution ACHPR /Res.74 (XXXVII) 05 adopted by the 37<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights on 11<sup>th</sup> May 2005 on the situation in the Darfur region of Sudan and Resolution ACHPR/Res.68 (XXXV) 04 adopted by the 35<sup>th</sup> Ordinary Session on 4<sup>th</sup> June 2004, as well as Resolution E/CN.4/RES/2005/82 adopted by the UN Commission on Human Rights on 21<sup>st</sup> April 2005 on the situation of human rights in Sudan;

**Deeply concerned** about the continuing grave violations of human rights and international humanitarian law in Darfur committed by parties to the conflict, in particular the continued depopulation of vast areas in the region of their indigenous owners, threats of violence, intimidation and assault against UN agencies and humanitarian organizations, the targeting and killing of AU troops in Darfur, and the killing and abduction of staff members of national and international humanitarian organisations;

**Concerned** that the African Commission undertook a Fact-Finding Mission to the Darfur region of Sudan in July 2004 and dispatched its report to the government of Sudan but has not yet received a response;

1. **Calls** on the government of Sudan to submit its comments to the African Commission with respect to its report on the 2004 Fact-Finding Mission to Sudan;

2. **Calls** on the government of Sudan to comply with its obligations under the *African Charter on Human and Peoples' Rights*, the *AU Constitutive Act*, the *UN Charter* and other relevant instruments to which the Sudan is a State Party, and comply with the following:
  - a. **Cease**, with immediate effect, all attacks against civilians in Darfur and end the grave violations of human and peoples' rights, in particular the forced de-population of entire areas in the region, rape and sexual violence against women and girls, abduction of women and children, and to cease all support to the *Janjaweed* militiamen, including the provision of supplies.
  - b. **Provide** the necessary support to all international agencies and humanitarian organisations in order to ensure effective and full access to the war affected areas of Darfur and to facilitate delivery of humanitarian assistance to civilian populations.
  - c. **Fully and unconditionally cooperate** with the Office of the Prosecutor of the International Criminal Court in his efforts to investigate and bring to justice all persons suspected of perpetrating war crimes and crimes against humanity as prescribed in the report of the International Commission of Inquiry on Darfur.
  - d. **Take all appropriate measures** to ensure the effective implementation of the Resolutions 1556/2004 of 30 July 2004 and 1590/2005, 1591/2005 and 1593/2005 adopted on 29 and 31 March 2005 by the United Nations Security Council;
3. **Calls** on all parties to the conflict to return to negotiations and to cooperate with the international organs and humanitarian organisations.

Done at Banjul, 5<sup>th</sup> December 2005

In the Name of Allah, The Gracious, the Merciful

**Comments of the Sudan on the Decision of the African Commission on Human and Peoples Rights concerning Darfur during its 38<sup>th</sup> Ordinary Session held in Banjul, the Gambia, from 21 November to 5 December 2005.**

We wish to refer to the above subject and the Decision of the AU Assembly of Heads of State and Government held in Khartoum from 16-24 January 2006 asking for Sudan's view on, and response to the Decision of the African Commission on Human and Peoples Rights on Darfur during its 38<sup>th</sup> Ordinary Session held in Banjul, the Gambia, from 21 November to 5 December 2005.

We wish to further state that the points raised in the Decision only reflected what was orchestrated by some media quarters which rely on allegations that cannot be substantiated.

We wish to also point out that the situation in Darfur was examined in accordance with the AU Constitutive Act and resolved in line with UN Charter where the UN Security Council issued Resolution 1593 referring the case in Darfur to the International Criminal Court. Resolution 1591 establishing a Committee of Experts was also adopted among other resolutions. It is worth noting that the Decision of the African Commission on Human and Peoples Rights has also made reference to the Decisions of the African Union and its Peace and Security Council as well as those of the UN Security Council.

**First Observations on the Report of the African Commission on Human and Peoples Rights on the Fact Finding Mission that visited the Sudan in 2004.** We had earlier submitted our response to the First Report of the Mission. Our response to the Second Report had articulated Sudan's position on the holding of an Extraordinary Session in Pretoria, South Africa without the approval of, or funding by the African Union Commission. The Sudan had lodged a complaint on this to the Chair of the African Union, but no response has so far been forthcoming.

Second, regarding Sudan's commitment to the African Charter on Human and Peoples Rights and to other international agreements and conventions, the Sudanese Government takes all necessary measures to promote human rights in the Sudan and ensure decent life by eliminating poverty, disease and illiteracy inherited from colonialism. At the same time, Sudan strives to preserve its political sovereignty and territorial integrity. Since the eruption of the troubles in Darfur, the Sudan has been keenly engaged in the search for solutions to the problem through direct negotiations with the rebels as a result of which the Abeeche, Njamina and Abuja Agreements were concluded. However, negative signals sent by several external circles have encouraged the rebels not to care much about the implementation of these Agreements.

The Government has always shown concern about the safety of civilians by taking measures against all those who break the law. As a proof of that, civilians have been fleeing from abuses by the rebels to the areas under Government Control. Even in the areas that were shelled by mistake, the Government has compensated the victims.

The International Community as a whole is witness to that and the most glaring example is the victims of air raid in the Habila area where the government blood money of those killed and compensated the inhabitants for their properties. As for the question of forced displacement, as we said earlier, this is in conflict with the reality as displacement only occurs after rebel attacks on villages using such displacement as a weapon against the government. The Government of the Sudan has concluded an agreement with IOM which supervises the programmes of repatriating the displaced persons. The Government is concerned with the rehabilitation programme in the areas of displacement and it has also established a committee which is now one of the three committees set up based on the recommendations of the National Investigation Committee presided over by the Former Head of the Judiciary to define the pastoral routes and confirm land ownership.

Concerning the alleged rape and violence against women, the Sudanese courts receive statements on the basis of which it has tried a number of police and army officers and names have been submitted to human rights observers in this regard. A list is hereto attached.

The government has also adopted a plan for the prevention of violence against women in Darfur (copy attached) and amended the criminal proceedings to enable the victims of violence to receive treatment without filling Form No. 8 with the police authorities. Hospitals and foreign treatment units of the international and voluntarily organizations have also been allowed to treat those affected. Groups of the AU troops participate in joint patrols to escort women when they go out of their camps in search of firewood, which has considerably minimized cases of violence against women.

As for the need to open the way for the international organizations, and humanitarian agencies, the entire international community is witness to Sudan's cooperation and facilitation of humanitarian work without any customs restrictions or formalities. It has issued visas to the personnel of some 600 voluntary organizations that now work in Darfur.

The Government has affirmed that it does not give support to any of the parties in Darfur, that are prohibited under the Ceasefire Agreement, from any movement without prior knowledge of the AU troops, and are also banned from the use of air-force.

On cooperation with the Office of the Prosecutor General of the International Criminal Court, even though this is not within the jurisdiction of the African Union Commission on Human and Peoples Rights, our response is that the Sudan has provided all the facilities to enable the said Office to perform its duty and provided it with the necessary documentation.

Regarding the implementation of UN Security Council Resolutions 1556/2005, 1590/2005, 1591/2005 and 1593/2005, the Sudan has always cooperated with the UN. This has been confirmed by the Representative of the UN Secretary General in the Sudan in his monthly reports. There are more than 25 human rights observers in Darfur and they are allowed to visit the prisons in all parts of the Sudan as indicated in the reports of the UN Secretary General. Meetings are also held between the Human Rights Division of the United Nations and the Human Rights Consultation Council at the

office of the Sub-Jim every two weeks. Fact-finding missions are undertaken by both sides in Darfur and joint seminars organized to amend the criminal proceedings and the rules of implementing Form No.8.

In conclusion, we would have liked to see the African Commission, instead of sending timid signals about the atrocities by the rebels, adopt a bold and firm position by considering the atrocities they have been perpetrating in Darfur since the eruption of the war, particularly their recruitment of child soldiers to attack humanitarian workers and their convoys.

## RESOLUTION ON THE HUMAN RIGHTS SITUATION IN UGANDA

The African Commission on Human and Peoples' Rights, meeting at its 38<sup>th</sup> Ordinary Session held in Banjul, The Gambia, from the 21<sup>st</sup> November to 5<sup>th</sup> December 2005.

**Bearing in mind** Article 45 of the African Charter on Human and Peoples' Rights which stipulates the mandate of the African Commission on Human and Peoples' Rights;

**Considering** that conflicts in many African countries, including the Republic of Uganda have been responsible for the violation of the Human Rights of civilian population, in particular vulnerable groups such as the elderly, women and children;

**Concerned** that the said conflict has been responsible for insecurity in Northern Uganda leading to displacement of an estimated 1.8 million people; among whom are young children who are constantly trekking between their villages and towns at night to avoid abduction;

**Taking note** of the previous concerted efforts by the Government of the Republic of Uganda to bring this conflict to an end;

**Welcoming** the investigations by the Office of the Prosecutor of the International Criminal Court and the subsequent issuance of arrest warrants in respect of the top leaders and commanders of the Lord Resistance Army (LRA);

**Aware** that the Republic of Uganda is committed to the independence of the Judiciary and legal profession in that country, as stipulated under Article 26 of the African Charter on Human and Peoples' Rights;

**Recalling** Article 7 of the African Charter and the Guidelines and Principles on the Rights to Fair Trial and to Judicial Assistance developed by the African Commission on Human and Peoples' Rights;

**Deeply concerned and disturbed** that the LRA has committed grave Human Rights violations against the civilian population in particular, the mutilation of their victims, abduction of young boys into its rebel forces as child soldiers and forces the young girls into sexual slavery;

**Disturbed** by recent events on 16<sup>th</sup> November 2005 threatening the judiciary and lawyers in Uganda;

1. **Calls on** the parties to the conflict to immediately open negotiation with a view to a conclusion of a ceasefire and peace agreement;
2. **Calls on** the LRA to free immediately all the child soldiers, young girls and women held by them and demobilize all combatants;
3. **Supports** the efforts of the Office of the Prosecutor of the International Criminal Court in its investigations against conduct and activities by the parties to the conflict deemed to be violations of the Rome Statute and to bring those responsible for war crimes in Northern Uganda to justice;
4. **Calls on** the international community to urge the parties to the conflict in Northern Uganda to find a peaceful and lasting resolution to the conflict;
5. **Urges** the international community to offer material support to take steps to demobilize the combatants of the LRA, and to assist the people of Northern Uganda in their rehabilitation after 19 years of conflict;
6. **Condemns** the recent incidents of violence in Uganda, which threatens the peace and stability of the country, in particular the threats to the independence of the judiciary and the legal profession in Uganda;
7. **Calls on** the Government of the Republic of Uganda to guarantee the independence of the Judiciary and the integrity of the members of the legal profession, in order to ensure impartiality in rendering justice, without intimidation or interference;
8. **Calls on** the Government of Uganda to undertake amendments to its laws and abolish the practice of bringing civilians before the Court Martial, and reserve its exclusive jurisdiction to matters affecting serving members of the military in Uganda;
9. **Urges** the Government of the Republic of Uganda to ensure that it guarantees the respect, promotion and protection of human and peoples' rights in Uganda.

Done in Banjul, 5 December 2005



**THE REPUBLIC OF UGANDA**

**EXECUTIVE SUMMARY OF THE GOVERNMENT OF  
UGANDA'S RESPONSE TO THE AFRICAN COMMISSION ON  
HUMAN AND PEOPLES' RIGHTS RESOLUTION ON THE  
HUMAN RIGHTS SITUATION IN UGANDA  
(99. ACHPR/RES. 94 (XXXVIII) 05**

**PRESENTED AT THE 39<sup>TH</sup> ORDINARY SESSION OF THE  
COMMISSION ON HUMAN AND PEOPLES' RIGHTS  
BANJUL, THE GAMBIA - 18<sup>TH</sup> MAY 2006**



**Bearing in mind** that the delegation of the Republic of Uganda met the Commissioners of the African Commission on Human and Peoples' Rights (hereinafter referred to as the 'Commission') at a private session on the 17<sup>th</sup> of May 2006 in Banjul, the Gambia.

**Whereas** Uganda is a state party to the Charter and is in possession of the resolution on the human rights situation in Uganda (99. ACHPR/Res. 94(xxxviii) 05);

**Aware and conscious** of Uganda's obligations as a state party to the African Charter on Human and Peoples' Rights and has been progressively complying with and implementing the provisions of the Charter;

**Deeply concerned** about the spirit of operative paragraphs 1, 6, 7 and 8 of the resolution;

**Given that** during a constructive dialogue between the two, it was agreed that the formal response submitted to the Commission as well as the addendum and annexes be condensed into a concise executive summary responding to the operative paragraphs of the said resolution.

**THE GOVERNMENT OF UGANDA**, while welcoming the efforts of the Commission to address the implementation and sanctity of the Charter, hereby responds to the concerns raised in the resolution as follows and *traversed seriatim*:

**1. Calls on the parties to the conflict to immediately open negotiations with a view to a conclusion of a cease fire and peace agreement,**

**Response:**

The Government of Uganda has over the years consistently offered to hold peace talks and negotiations with the rebels to reach a cease fire and a comprehensive peace agreement. Government policies to address this include:

- i. The Kategaya Commission headed by the then 1st Deputy Prime Minister and Minister of Internal Affairs, Eriya Kategaya.
- ii. The Betty Bigombe and Dr. Ruhakana Rugunda (current Minister of Internal Affairs)-led peace talks which are still ongoing;
- iii. Traditional and religious leaders acting as mediators between the government and the rebels;
- iv. Bilateral agreements between the governments of Uganda and Sudan for the latter to stop giving sanctuary and logistical support to the LRA.
- v. The enactment of the Amnesty Act of 2000 and the establishment of the Amnesty Commission to facilitate surrender, rehabilitation and resettlement of rebels.

However, despite all these efforts by the Ugandan Government, the leadership of both the LRA and ADF have not responded to government's offers for peace and ceasefire.

- 2. *Calls on the LRA to free immediately all the child soldiers, young girls and women held by them and demobilise all combatants.***

#### **Response**

- i.* The Government of Uganda supports this call. Furthermore, the Government has rescued over 3000 abducted children, women and young girls. It has re-integrated them into their communities as well as providing counselling services and rehabilitation.
- ii.* Under the Amnesty Act the demobilised rebels are rehabilitated and resettled by the Amnesty Commission. This applies to all former rebels including the ADF, UNRF and West Nile Bank Front II.

- 3. *Supports the efforts of the Prosecutor of the International Criminal Court in its investigations against conduct and activities of the parties to the conflict deemed to be in violation of the Rome Statute and to bring those responsible for war crimes in Northern Uganda to justice.***

#### **Response**

Uganda welcomes the support of the Commission. The Government of Uganda initiated the case before the International Criminal Court (ICC). Government is working hand in hand with the Office of the Prosecutor (OTP) as well as the Governments of Sudan and the Democratic Republic of the Congo (DRC) to effect the warrants of arrest issued to the leadership of the LRA.

- 4. *Calls on the international community to urge the parties to the conflict in Northern Uganda to find a peaceful and lasting resolution to the conflict.***

#### **Response**

The Government is in support of this call and reiterates its appeal to the international community to do more. Furthermore, the Government of Uganda has established the Joint Monitoring Committee which is overseen by the Office of the Prime Minister. The latter is in charge of the rehabilitation, resettlement of the IDPs and post- conflict resolution of the situation in Northern Uganda. It caters for short, medium and long term measures.

- 5. *Urges the international community to offer material support to take steps to demobilise the combatants of the LRA, and to assist the people of Northern Uganda in their rehabilitation after 19 years of war.***

**Response**

The Government of Uganda welcomes this appeal and wishes to reiterate its appeal to the UN and its agencies as well as the international community to fulfil their commitment as well as calling upon the UN Mission in the DRC, MONUC, and the Governments of Sudan and DRC to arrest the LRA rebels who have taken sanctuary in their territories.

***6. Condemns the recent incidents of violence in Uganda, which threaten the peace and stability of the country, in particular the threats to the independence of the judiciary and the legal profession in Uganda.***

**Response:**

- i. Government categorically states that the alleged incidents of violence did not amount to a threat of peace and stability of the country. The Government is in full control of the country.
- ii. The Government of Uganda strongly condemns the acts of violence instigated by the opposition on the 14<sup>th</sup> of November 2005 that led to pillage, destruction and looting of property by some hooligans instigated by the opposition in protest to a legitimate act of arresting suspects.
- iii. The alleged violence of the 16<sup>th</sup> Nov 2005 that was construed to threaten the independence of the judiciary and the legal profession was a gross misrepresentation of the facts. The fact of the matter is that the judiciary released suspects on bail after due representation by their lawyers without any interference from the security forces. The Government security forces only intervened to ensure that the dangerous suspects remained under official custody on the basis of credible intelligence information- that they posed a security threat to the public. This was done out-side the court rooms. Regarding the allegation of threat to the lawyers, at no time has any lawyer representing any of the accused persons been denied access to his/her clients.

***7. Calls on the Government of the Republic of Uganda to guarantee the independence of the Judiciary and the integrity of the members of the legal profession, in order to ensure impartiality in rendering justice without intimidation or interference.***

**Response**

Uganda is committed to the principle of guaranteeing the independence of the Judiciary and in fact Government has never threatened such independence whether by conduct or otherwise. It remains committed to these noble principles of good governance.

**8. Calls on the Government of Uganda to undertake amendments to its laws and abolish the practice of bringing civilians before the Court Martial, and reserves its exclusive jurisdiction to matters affecting serving members of the military in Uganda.**

**Response**

- i. Government has a permanent Law Reform Commission which regularly revises and reviews laws.
- ii. The trial of civilians before the Court Martial is provided by the UPDF Act No. 7 of 2005.
- iii. It should be noted that in Uganda there exists a prevalence of civilians colluding with armed persons either in rebel activities or armed robbery. The legal provision of trying civilians in court martial is founded against this background.
- iv. This issue has been challenged in the Constitutional Court by the Uganda Law Society and judgement has been given. Trial proceedings have been stayed in the Court Martial and the suspects are now being tried in the High Court. If necessary, the amendment of the law will be done after the outcome of this court process.

**9. Urges the Government of Uganda to ensure that it guarantees the respect, promotion and protection of human and peoples' rights in Uganda.**

**Response**

Government reiterates its continued commitment to the Charter and all the international human rights instruments to which it is a party as well as its national laws and the Bill of Rights enshrined in the Constitution. Furthermore, Uganda has submitted its consolidated Periodic Report for the period 2000-2006 to the African Commission on Human and Peoples' Rights in compliance with Article 62 of the Charter. This report details the progressive implementation and observance of human rights by the Government.

**PRAYER**

The Government of Uganda requests that the resolution be amended as appropriate and that any allegations not based on facts be expunged. Government hereby reiterates its willingness to continue carrying out constructive dialogue with the African Commission on Human and Peoples' Rights to address human rights in Uganda and the continent.

***DONE AT BANJUL***

## RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN ZIMBABWE

The African Commission on Human and Peoples' Rights meeting at its 38<sup>th</sup> Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005;

**Considering** that Zimbabwe is a Party to the *African Charter on Human and Peoples' Rights* and other international human rights instruments;

**Recalling** the recommendations to the government of Zimbabwe contained in the African Commission Report of the Fact-Finding Mission to Zimbabwe in June 2002;

**Further recalling** the recommendations to the government of Zimbabwe by the United Nations Special Envoy on Human Settlement Issues in Zimbabwe contained in her Report published on 22 July 2005;

**Deeply concerned** by the continued undermining of the independence of the judiciary through defiance of court orders, harassment and intimidation of independent judges and the executive ouster of the jurisdiction of the courts;

**Further concerned** by the continuing human rights violations and the deterioration of the human rights situation in Zimbabwe, the lack of respect for the rule of law and the growing culture of impunity;

**Alarmed** by the number of internally displaced persons and the violations of fundamental individual and collective rights resulting from the forced evictions being carried out by the government of Zimbabwe;

1. **Condemns** the human rights violations currently being perpetrated in Zimbabwe;
2. **Urges** the government of Zimbabwe to cease the practice of forced evictions throughout the country, and to adhere to its obligations under the *African Charter on Human and Peoples' Rights* and other international human rights instruments to which Zimbabwe is a party;
3. **Urges** the government of Zimbabwe to implement without further delay the recommendations contained in the African Commission Report of the 2002 Fact-Finding Mission to Zimbabwe and the recommendations in the July 2005 Report of the UN Special Envoy on Human Settlement Issues, in particular to ensure full and unimpeded access for the provision of aid and protection to the victims of the forced evictions and demolitions by impartial national and international humanitarian agencies and human rights monitors, and to ensure that those responsible for the violations are brought to justice without delay;

4. **Calls** on the government of Zimbabwe to respect the fundamental rights and freedoms of expression, association and assembly by repealing or amending repressive legislation, such as the *Access to Information and Protection of Privacy Act*, the *Broadcasting Services Act* and the *Public Order and Security Act*;
5. **Calls** on the government of Zimbabwe to uphold the principle of separation of powers and the independence of the judiciary and urges the government of Zimbabwe to repeal or amend Constitutional Amendment (No.17) and provide an environment conducive to constitutional reform based on fundamental rights;
6. **Calls** on the government of Zimbabwe to cooperate with the African Commission Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa and other African Commission Special Mechanisms, including allowing a Fact-Finding Mission to investigate the current situation of internally displaced persons in Zimbabwe;
7. **Urges** the African Union to renew the mandate of the African Union Envoy to Zimbabwe to investigate the human rights implications and humanitarian consequences of the mass evictions and demolitions.

**Done at Banjul, 5<sup>th</sup> December 2005**

**THE RESPONSE BY THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE TO  
THE RESOLUTION ON THE HUMAN RIGHTS SITUATION IN ZIMBABWE  
ADOPTED BY THE AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS  
DURING ITS 38<sup>TH</sup> ORDINARY SESSION HELD IN BANJUL, THE GAMBIA  
FROM 21 NOVEMBER TO 5 DECEMBER 2005**

**1.0 INTRODUCTION**

1.1 During its 38<sup>th</sup> Session held in Banjul, the Gambia, from the 21<sup>st</sup> November to 5<sup>th</sup> December 2005, the African Commission on Human and Peoples Rights (ACHPR) adopted a resolution on the human rights situation in Zimbabwe. The ACHPR submitted its 19<sup>th</sup> activity report which contained the Resolution quoted below together with other country- specific resolutions on the human rights situations in Sudan, Uganda, Ethiopia and Eritrea to the Executive Council of the African Union held in Khartoum, the Sudan from 20 to 21 January 2006.

**“RESOLUTION ON THE SITUATION OF HUMAN RIGHTS IN ZIMBABWE** [*paragraphs of the preamble have, for purposes of convenience and reference been numbered as paragraphs (a) to (h)*]

- (i) The African Commission on Human and Peoples Rights meeting at its 38<sup>th</sup> ordinary Session in Banjul, the Gambia from 21 November to 5 December 2005;
- (ii) **CONSIDERING** that Zimbabwe is a State Party to the African Charter on Human and Peoples Rights and other human rights instruments;
- (iii) **RECALLING** the recommendations to the Government of Zimbabwe contained in the African Commission Report of the Fact Finding Mission to Zimbabwe in June 2002;
- (iv) **FURTHER RECALLING** the recommendations to the Government of Zimbabwe by the United Nations Special Envoy on Human Settlement Issues in Zimbabwe contained in her Report published on 22 July 2005;
- (v) **DEEPLY CONCERNED** by the continued undermining of the independence of the judiciary through the defiance of court orders, harassment and intimidation of independent judges and the executive ouster of the jurisdiction of the courts;
- (vi) **FURTHER CONCERNED** by the continuing human rights violations and the deterioration of the human rights situation in Zimbabwe, the lack of respect for the rule of law and the growing culture of impunity;

- (vii) **ALARMED** by the number of internally displaced persons and the violations of fundamental individual and collective rights resulting from the forced evictions being carried out by the Government of Zimbabwe;
1. **CONDEMNS** the human rights violations currently being perpetrated in Zimbabwe
  2. **URGES** the Government of Zimbabwe to cease the practice of forced evictions throughout the country, and to adhere to its obligations under the African Charter on Human and Peoples Rights and other international human rights instruments to which Zimbabwe is a party;
  3. **URGES** the Government of Zimbabwe to implement without further delay the recommendations contained in the African Commission Report of the Fact Finding Mission to Zimbabwe and the recommendations in the July 2005 Report of the UN Special Envoy on Human Settlement Issues, in particular to ensure full and unimpeded access for the provision of aid and protection to the victims of the forced evictions and demolitions by impartial national and international humanitarian agencies and human rights monitors, and ensure that those responsible for the violations are brought to justice without delay;
  4. **CALLS** on the Government of Zimbabwe to respect fundamental rights and freedoms of expression, association and assembly by repealing or amending repressive legislation, such as the Access to Information and Protection of Privacy Act, the Broadcasting Services Act and the Public Order and Security Act;
  5. **CALLS** on the Government of Zimbabwe to uphold the principle of separation of powers and the independence of the judiciary and urges the Government of Zimbabwe to repeal or amend Constitutional Amendment (No. 17) and provide an environment conducive to constitutional reform based on fundamental rights;
  6. **CALLS** on the Government of Zimbabwe to cooperate with the African Commission Special Rapporteur on refugees, Asylum Seekers and Internally Displaced Persons in Africa and other African Commission Special Mechanisms, including allowing a Fact Finding Mission to investigate the current situation of internally displaced persons in Zimbabwe;
  7. **URGES** the African Union to renew the mandate of the African Envoy to Zimbabwe to investigate the human rights implications and humanitarian consequences of the mass evictions and demolitions.

Done at Banjul, the 5<sup>th</sup> December 2005.”

- 1.2 Article 59 of the Charter provides that the report of the ACHPR shall not be published until it has been considered by the Assembly of Heads of State and Government (the Assembly). Article 59 (1) further provides that measures adopted by the Commission shall remain confidential until the Assembly has made a decision on the matter.
- 1.3 The resolution on Zimbabwe constitutes measures adopted by the ACHPR. These measures were published on the website of the ACHPR and other NGO sponsored websites. This was subsequently published in the print and electronic media which was awash with articles on the resolution before its consideration by the Assembly. Though the resolution had been withdrawn from the website by the time the Executive Council met, Zimbabwe questions the motive of the ACHPR in publishing the resolution.
- 1.4 This is not the first instance that the ACHPR has acted in this manner. The June 2002 fact finding mission report on Zimbabwe was also published by the ACHPR before it was considered by the Summit. The publication of the report prior to its consideration by the Assembly was clearly intended to give an erroneous impression that Zimbabwe was being condemned by the African Union.
- 1.5 For the reasons set out in the following paragraphs, Zimbabwe submits that the ACHPR should revoke its resolution on the human rights situation in Zimbabwe in its entirety and;
  - 1.5.1 Comply with its laid down Rules of Procedure and make decisions after following all the procedures and finalising considerations of all Communications lodged in accordance with Article 45 of the Charter.
  - 1.5.2 Adhere to Rules of Natural justice in all present and future deliberations, giving State Parties a right to be heard before any decisions are taken to adopt any resolutions pertaining to them;
  - 1.5.3 Not to exceed its mandate as set out in the Charter which does not include the passing of condemnatory resolutions against State Parties;
  - 1.5.4 To observe the rules of equity in the allocation of time to States Parties in exercising the right of response to allegations by NGOs;
  - 1.5.5 By adopting the Amnesty International draft resolution as its own, the ACHPR has undermined its independence, integrity and impartiality.

## 2.0 Background to the adoption of the resolution

2.1 Prior to the 38<sup>th</sup> Session, Amnesty International co-hosted a briefing session for NGOs. Commissioners of the ACHPR were invited and attended the Session. This event was a culmination of a sustained anti-Zimbabwe campaign by Amnesty International which published unsubstantiated damning articles on Zimbabwe on its own website, and various other newspapers in the run up to the 38<sup>th</sup> Session. In particular, on 22 November 2005, Amnesty International urged the ACHPR to adopt its draft resolution on Zimbabwe, which the ACHPR subsequently adopted on 5 December 2005:

2.2 The operative elements of the draft resolution by Amnesty International provided for the following:

*[for purposes of convenience and reference the paragraphs of Amnesty's resolution have been numbered as (a) to (h) respectively]*

- “ (a) **Condemning** the human rights situation in Zimbabwe;
- (b) **Urging** Zimbabwe to adhere to its obligations under the African Charter on Human and Peoples Rights, including by refraining from committing further human rights violations and by providing redress to victims of those violations already committed;
- (c) **Urging** Zimbabwe to implement without further delay the recommendations contained in the African Commission 2002 fact finding report;
- (d) **Urging** Zimbabwe to implement the recommendations of the UN Special Envoy on Human Settlement Issues in Zimbabwe, in particular calling for full and unimpeded passage of aid provided by impartial humanitarian organisations and UN agencies;
- (e) **Urging** the Government of Zimbabwe to cooperate with the African Commission Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced persons in Africa, including by allowing a fact finding mission to investigate the current situation of internally displaced persons in Zimbabwe;
- (f) **Calling** on the African Union to place the human rights situation of Zimbabwe on the agenda of its January 2006 Assembly of Heads of State and Government;
- (g) **Calling** on the African Union to encourage the Government of Zimbabwe to implement recommendations of the African Commission and the UN Special Envoy;

- (h) **Calling** on the African Union to renew the mandate of the African Union Envoy on Zimbabwe.”

### 3.0 THE RESOLUTION

3.1 The preamble of the ACHPR resolution stands on the following three pillars which cannot stand under close scrutiny: -

3.1.1 The report of the fact- finding mission of the ACHPR of June 2002;

3.1.2 The report of the UN Secretary General’s Special Envoy on Human Settlement issues in Zimbabwe, which was published on 22 July 2005; and

3.1.3 Communications filed with the ACHPR against Zimbabwe by NGOs in accordance with Article 54 of the Charter.

3.2 Firstly, the report of the ACHPR fact-finding mission of June 2002, which was adopted by the ACHPR during its 34th Session held in Niamey, Niger in November 2003, was tabled before the Assembly of Heads of State and Government in July 2004. The Summit did not authorise publication of the report, but directed that Zimbabwe should be given an opportunity to respond. The Government of Zimbabwe submitted its comments prior to the 36<sup>th</sup> Ordinary Session of the ACHPR, which took place in November 2004. The ACHPR declined to consider the comments by the Government of Zimbabwe and merely attached them to the Fact Finding Mission’s report as an addendum. In January 2005 the AU Summit noted the Fact-Finding Missions’ report and the response given by Zimbabwe and authorised publication of both the report and the Government’s response. This closed the chapter on the issue and cannot be revived at the whims of the ACHPR. The resolution cannot therefore stand on this basis.

3.3 Secondly, the report of the UN Secretary General’s Special Envoy on Human Settlement issues in Zimbabwe, which was published on 22 July 2005. This report was produced under the auspices of the UN Secretary General’s ‘good offices role’ in order to determine how to assist, and not to punish, Zimbabwe. The mission’s report is not a document of the United Nations but an instrument under the ‘good offices role’ of the Secretary General who noted both the report and the response by the Government of Zimbabwe. The Secretary General of the United Nations has not called for the enforcement of any of the recommendations. Even the Security Council of the United Nations could not take any punitive measures against Zimbabwe on the basis of the report that it did not cause. The ACHPR cannot call for punitive action on the basis of a report that it did not originate. This is inconsistent with the Charter. Therefore, the resolution cannot stand.

3.4 Thirdly, the resolution was based on Communications filed with the ACHPR against Zimbabwe by NGOs in accordance with Article 55 of the Charter. To date, 13 Communications have been filed against Zimbabwe. Seven of the Communications are at the admissibility stage while the remaining six are at the consideration of merits. The ACHPR has therefore not finalised consideration of any of the Communications. No valid resolution can be passed on the basis of Communications which are still pending. The ACHPR in this regard has actually pre-empted its own decisions. In January 2006, a month after the adoption of the resolution based on the pending Communications, the ACHPR requested the Government of Zimbabwe to file its submissions in respect of the very same Communications for consideration during its 39<sup>th</sup> Session in May 2006. The resolution therefore cannot stand on this basis.

3.5 The other possible basis of the resolution could be statements made by Western funded NGOs during the 38<sup>th</sup> Session. The resolution on Zimbabwe was adopted following a public session of the ACHPR in November 2005. While the 17 NGOs who spoke on Zimbabwe were collectively given about one and a half hours (90 minutes), the Government was given only five (5) minutes. This is against the rules of natural justice and equity. The imbalance calls for a review of the ACHPR's Rules of Procedure to ensure that the principle of equity and proportionality is incorporated into its rules. The allegations by NGOs were never substantiated. The basis for this resolution is therefore non-existent.

3.6 The resolution of ACHPR is an improper reproduction of the Amnesty International resolution. This indicates that the resolution by Amnesty International found its way into the AU Organs for rubber-stamping. This brings to question the relationship of the ACPHR with Western NGOs, more particularly those based in Europe like Amnesty International, which use their financial contributions to the ACHPR budget to unduly influence ACHPR decisions in pursuit of the agendas of Western countries to effect regime change in Zimbabwe. It follows therefore that the funding of the ACHPR by donors and influential NGOs should be brought under the close scrutiny of the Executive Council. Failure to act could further compromise the mandate, the independence and the integrity of the ACHPR. In the case of Zimbabwe, teaming up of the ACHPR with Western funded NGOs further advances the agenda of the Governments of UK and its allies who are pressing for regime change in Zimbabwe under the guise of alleged human rights violations. It would not be improper therefore to conclude that the Resolution on Zimbabwe is a resolution of Western sponsored NGOs, either resident in the West, or who though on Zimbabwean soil, are set up and are being solely funded by the West in order to demonise Zimbabwe and further their not so hidden agenda of regime change.

3.7 The origins of the current demonisation of Zimbabwe can be traced from the inception of the land reform programme in 2000. Western Countries, led by UK and its allies felt that their economic interests in Zimbabwe had been threatened by the land reform and swiftly imposed illegal sanctions on Zimbabwe. In addition, as part of their

broader destabilisation agenda, they created NGOs which are accountable to them to do the bidding on their behalf on the pretext of promoting the rule of law, democracy and good governance.

3.8 Amnesty International in paragraph (a) of its resolution contained in document AI Index: IOR/ 10/ 003/ 2005 (Public) which was circulated on 22 November 2005 and posted on its website condemned the human rights violations currently being perpetrated in Zimbabwe. This was repeated in paragraph 1, of the ACHPR's resolution. The same condemnation was also called for in Communication 245/ 2002, 288/ 2004, 306/ 2005 and 314/ 2005. All these Communications are still being considered by the ACHPR. It is only in respect of Communication 245/ 2002, which was filed in 2002, where submissions on the merits were made. The ACHPR is still to finalise their consideration thereof as indicated in its *Note Verbale* dated January 2006. The other three are to be considered at the forthcoming 39<sup>th</sup> Session in May 2006 as per correspondence from the ACHPR. The condemnation is therefore premature and without basis as it pre-empts the ACHPR's decision on the Communications. This paragraph therefore cannot be allowed to stand.

3.9 Amnesty International in paragraphs (b) and (g) of its proposal called on the Government of Zimbabwe to cease the continued violations of human rights and to implement the decision of the African Commission and the UN Secretary General's Special Envoy. Paragraph 2 of the resolution adopted by the ACHPR repeats the same calls. Amnesty International further in paragraph (d) proposes that the Government of Zimbabwe should allow full and unimpeded passage of aid provided by impartial humanitarian organisations and UN agencies. This is repeated in paragraph 3 of the ACHPR's resolution. These paragraphs of the ACHPR's resolution are also premised on the fact- finding mission report of the ACHPR and the UN Secretary General's Special Envoy's report which cannot both be revived in a resolution of the ACHPR since they were dealt with at the appropriate fora. Furthermore, the paragraph pre-empts the decision on Communication 306/ 2005 which relates to the case of Muzerengwa and 110 others, and Communication 314/2005 concerning Operation Restore Order. In both Communications, which the ACHPR is scheduled to consider submissions on admissibility at the 39<sup>th</sup> Session in May 2006, the parties allege forced evictions. Zimbabwe is filing its submissions as per the request of the ACHPR on Communication 306/ 05 dated 14 January 2006, and on Communication 314/ 05 dated March 2006. This process has however become meaningless in view of the pre-emptive position taken by the ACHPR.

3.10 Amnesty International under paragraphs (b) and (c) of its proposed resolution proposes that Zimbabwe should comply with the obligations under the Charter and implement the recommendations of the June 2002 report of the fact - finding mission of the ACHPR which called for the repeal of POSA, AIPPA, and the Broadcasting Services Act. Paragraph 4 of the ACHPR resolution calls on the Government of Zimbabwe to respect fundamental rights and freedoms and to repeal or amend 'repressive' legislation

like AIPPA, POSA and Broadcasting Services Act. This echoes the call by the report of the fact - finding mission of the ACHPR and Communications 288/ 2004, 297/2004, 298/ 2004 and 305/ 2005 which were filed by NGOs before the ACHPR. All the four Communications allege violation of freedom of the press and the right of access to information and call for the amendment or repeal of the same legislation as in the ACHPR's resolution. These communications are still pending before the ACHPR.

3.11 In Communication 284/ 2004 Zimbabwe Lawyers for Human Rights sought a provisional order for the Government of Zimbabwe to release the equipment of ANZ Newspapers, which was seized following its defiance of an order of the Supreme Court to stop publishing until it complied with the law. The order has not been granted to date. The second form of relief sought was a declaration by the Commission that the dirty hands doctrine is in violation of the Charter, and a repeal of AIPPA. The parties made submissions on the admissibility of the Communication at the 37<sup>th</sup> Session. At the time of the Summit of Heads of State and Government held in Sudan, Khartoum in January 2006, the ACHPR had not communicated its decision on admissibility to the Government of Zimbabwe. However, after the Summit, where the decision was made to give the Government of Zimbabwe an opportunity to respond to the resolution, the ACHPR has since written to the Government of Zimbabwe, requesting submissions on the merits for consideration during the 39<sup>th</sup> Session in May 2006. In **Scanlen and Holderness and others/ Government of Zimbabwe (Communication 297/ 04)** the Commission is scheduled to consider the merits of the complaint during the 39<sup>th</sup> Session in May 2006. In **Article 19 and others/ Government of Zimbabwe (Communication 305/ 05)** the ACHPR became seized with the Communication, which alleges violation of freedom of expression during the 38<sup>th</sup> Session. Arguments on admissibility will be made during the 39<sup>th</sup> Session. In **Zimbabwe Lawyers for Human Rights (representing Andrew Barclay Meldrum)/ Government of Zimbabwe**, Communication 298/ 2004, the arguments on the merits will be considered at the 39<sup>th</sup> Session in May 2006. However, paragraph 4 of the resolution, in line with paragraphs (b) and (c) of the draft resolution by Amnesty International grants the relief sought in all these Communications that are still pending for the consideration by the ACHPR in May 2006. The relief was granted without even hearing the submissions on the merits of the case. This amounts to the ACHPR pre-empting its own decision. The Commission therefore cannot seek to use the Communications as a basis for its resolution.

3.12 Amnesty International in paragraph 11 of its public statement document referenced AI Index: IOR 10/003/ 2005 (Public) dated 22 November 2005 deemed the Constitutional Amendment No 17 of 2005 to be in violation of the international standards and called for its repeal. Paragraph 5 of the ACHPR's resolution deals with the principle of separation of powers, independence of the judiciary and Constitutional Amendment No 17 of 2005 and calls for the repeal of this amendment thereby adopting the position laid down by Amnesty International. The focus is more on the issues of land acquisition. Land has never been a legal but political issue for which multitudes of Zimbabweans lost their lives

in order to regain it. This right to reclaim the land is recognised in Articles 14 and 21 of the Charter.

3.13 Regarding independence of the judiciary, this is repetitive of the fact-finding mission's report and Communication 308/ 2005 concerning Mr Michael Majuru, a former President of the Administrative Court. The ACHPR became seized with this Communication during the 38<sup>th</sup> session and requested Zimbabwe on 14 January 2006 to file its submissions on admissibility in preparation for the 39<sup>th</sup> Session to be held in May 2006 where the same shall be considered. The ACHPR has already made a finding to the effect that the Executive has ousted the jurisdiction of the Courts and further that the independence of the judiciary is compromised notwithstanding that Communication 308/ 2005 is still to be considered.

3.14 Amnesty International in paragraph (e) calls on the Government of Zimbabwe to cooperate with the African Commission's Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa. This is repeated in paragraph 6 the operative part of the resolution which makes the same call on the Government of Zimbabwe to cooperate with the ACHPR's mechanisms, more particularly with the office of the same Special Rapporteur. The Special Rapporteur landed in Zimbabwe in June 2005 without prior authorisation, and without observing the established procedures and protocol. Infact, the Government of Zimbabwe only became aware of the visit when the Commissioner was already in the country. Both the Chairperson of the Commission of the African Union and the Chairperson of the ACHPR denied having sanctioned the mission. The Charter in Article 58 and the practice of the AU provides for the mechanisms and procedures that have to be complied with regarding the dispatch of investigatory missions to State Parties, which in this case were not complied with. Therefore, this paragraph should not be allowed to stand.

3.15 Paragraph 7 of the resolution, which echoes paragraph (h) of the proposal of Amnesty International calls for the renewal of the mandate of the African Union Envoy on Zimbabwe. Since both the Chairpersons of the AU Commission and of the ACHPR itself did not sanction the mission, then there is no basis for the renewal of the mandate that was never granted in the first instance. This paragraph is therefore baseless in its entirety and should be struck out.

3.16 Zimbabwe has always co-operated with the ACHPR. The Government received a fact-finding mission of the African Commission in 2002, as well as the mission of the Special Rapporteur on Prisons prior to that. We have worked with the Commission on Communications that have been filed, and have always submitted responses to the Communications filed. Where we have failed to meet a deadline, we have always sought the indulgence of the Commission to extend the time limit.

#### 4.0 Conclusions

4.1 For the reasons set out in this document, Zimbabwe submits that the resolution in its entirety should be revoked.

4.2 Zimbabwe was judged before it was heard. This is against the rules of natural justice. Since the ACHPR's resolution clearly pre-empts its future decisions on the admissibility and merits of the 13 Communications currently under its consideration, the Government of Zimbabwe fears that the objectivity of the ACHPR is already compromised and thus stands in serious question, especially taking into account the remarks of the Chairperson of the ACHPR before the Executive Council in January 2006 that "everyone knows that Zimbabwe is a gross violator of human rights." In order to allow fair play and undue interference with the process of considering the 13 Communications before it, Zimbabwe submits that all the Commissioners who deliberated on or associated themselves with the Resolution, thereby pre-empting their decision on the Communications should recuse themselves from consideration of any of the 13 Communications pending before it. In addition the ACHPR should amend its Rules of procedure to allow equity and fair play during the exercise of the right of response in the Public Sessions.

**GOVERNMENT OF THE REPUBLIC OF ZIMBABWE**  
**HARARE, ZIMBABWE**  
**19 APRIL 2006.**

**ANNEX IV****COMMUNICATIONS**

- Communication 227/ 1999 – Democratic Republic of Congo / Burundi, Rwanda, Uganda
- Communication 249/ 2001 – Institute for Human Rights and Développement in Africa/ République de Guinée
- Communication 290/ 2004 – Open Society Justice Initiative / Cameroon
- Communication 299/ 2005 – Anuak / Ethiopia
- Communication 231/ 2005 – Interights / Egypt
- Communication 227/99 - D. R. Congo / Burundi, Rwanda and Uganda

**Rapporteurs:**

25 <sup>th</sup> Session :	Commissaire Ben Salem
26 <sup>t</sup> Session :	Commissaire Ben Salem Commissaire Isaac Nguéma Commissaire E. V. O. Dankwa
27 <sup>th</sup> Session :	Commissaire Ben Salem Commissaire Isaac Nguéma Commissaire E. V. O. Dankwa
28 <sup>th e</sup> Session :	Commissaire Ben Salem Commissaire Isaac Nguéma Commissaire E.V.O. Dankwa
29 <sup>th</sup> Session :	Commissaire EVO Dankwa Commissaire Rezag Bara Commissaire Ben Salem
30 <sup>th</sup> Session :	Commissaire EVO Dankwa Commissaire Rezag Bara Commissaire Ben Salem
31 <sup>th</sup> Session :	Commissaire EVO Dankwa Commissaire Rezag Bara Commissaire Ben Salem
32 <sup>th</sup> Session :	Commissaire EVO Dankwa Commissaire Rezag Bara Commissaire Ben Salem
33 <sup>th</sup> Session:	Commissaire EVO Dankwa Commissaire Rezag Bara Commissaire Ben Salem

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**Summary of Facts:**

1. On 8 March 1999, the Secretariat of the African Commission on Human and Peoples' Rights received from Mr. Léonard She Okitundu, Minister of Human Rights of the Democratic Republic of Congo, a letter with Reference No CABMIN/MDH/MM/201/MZ/99, dated 24 February 1999, a communication presented on behalf of the Congolese government based on the provisions of Article 49 of the Charter.

2. The communication is filed against the Republics of Burundi, Rwanda and Uganda (hereinafter referred to, respectively, as "Burundi", "Rwanda" and "Uganda"). It alleges grave and massive violations of human and peoples' rights committed by the armed forces of these three countries in the Congolese provinces where there have been rebel activities since 2 August 1998, and for which the Democratic Republic of Congo blames Burundi Uganda and Rwanda. In support of its complaint the Democratic Republic of Congo states that the Ugandan and Rwandan governments have acknowledged the presence of their respective armed forces in the eastern provinces of the Democratic Republic of Congo under what it terms the "fallacious pretext" of "safeguarding their interests". The complaint states, furthermore, that the Congolese government has "sufficient and overwhelming evidence of Burundi's involvement".

3. In particular, the Democratic Republic of Congo asserts that on Monday, 3 August 1998, thirty-eight (38) officers and about 100 men of the Congolese forces were assassinated, after being disarmed, at Kavumu airport, Bukavu, in the Congolese province of South Kivu. Relatedly, on Tuesday, 4 August 1998, over fifty (50) corpses were buried in Bukavu, about twenty of them near the fuel station at the Nyamwera market, opposite Ibanda mosque. Other corpses (mostly civilians) were found at the military camp called "Saïo camp" in Bukavu. On 17 August 1998, the Rwandan and Ugandan forces who had been on Congolese territory for many weeks, besieged Inga hydroelectric dam, in Lower Congo province, a wholly civilian facility. The presence of these forces disrupted the lives of millions of people and the economic life of the Democratic Republic of Congo. It also caused the death of many patients including children in hospitals, due to the cutting off of electricity supply to incubated operating theatres and other respiratory equipment.

4. On Monday, 24 August 1998, over eight hundred and fifty-six (856) persons were massacred in Kasika, in Lwindi chiefdom, and Mwenga. The bodies found over a distance of sixty kilometres (60 km) from Kilungutwe to Kasika (in South Kivu province) were mainly those of women and children. The women had been raped before being killed by their murderers, who slashed them open from the vagina up to the abdomen and cut them up with daggers. On 2 September 1998, in a bid to ambush the men of the Congolese army based in Kamituga, the Rwandan and Ugandan forces in Kitutu village massacred thirteen (13) people. On 6 October 1998, forty-eight (48) civilians were killed in Lubarika village. In Uvira town, on the banks of Lake Tanganyika, a massacre of the population including intellectuals and other able-bodied persons took place. This was partly evidenced by the discovery of three hundred and twenty-six (326) bodies in

Rushima river, near Luberizi. Five hundred and forty-seven (547) bodies were also discovered buried in a mass grave at Bwegera, and one hundred and thirty-eight (138) others were found in a butcher's shop in Luvingi village. From 30 December 1998 to 1 January 1999, six hundred and twelve (612) persons were massacred in Makobola, South Kivu province. All these atrocities were committed by the Rwandan and Ugandan forces which invaded territories of the Democratic Republic of Congo, according to the complaint of the Democratic Republic of Congo.

5. The Democratic Republic of Congo also claims that the forces of Rwanda and Uganda aimed at spreading sexually transmitted diseases and committing rape. To this end, about two thousand AIDS suffering or HIV-positive Ugandan soldiers were sent to the front in the eastern province of Congo with the mission of raping girls and women so as to propagate an AIDS pandemic among the local population and, thereby, decimate it. The Democratic Republic of Congo notes that 75% of the Ugandan army are suffering from AIDS. A white paper annexed to the communication enumerates many cases of rape of girls and women perpetrated by the forces of Rwanda and Uganda, particularly in South Kivu province. It further states that on Monday, 5 October 1998, in Lumunba quarter, Babozo division, Bagira commune, under the instructions of a young Rwandan officer nicknamed "terminator", who was then commanding the Bagira military camp, several young Congolese girls were raped by soldiers based at the said camp. Similar cases of rape have been reported from Mwenga, Walungu, Shabunda and Idjwi.

6. The Democratic Republic of Congo avers that since the beginning of the war in its eastern provinces, the civilian population has been deported by the Rwandan and Ugandan armies to what it refers to as "concentration camps" situated in Rwanda. It further states that other people are simply massacred and incinerated in crematories (especially in Bugusera, Rwanda). The goal of these operations is to make the indigenous people disappear from these regions and thus, to establish what it terms "Tutsiland".

7. The Democratic Republic of Congo also accuses Rwanda and Uganda of carrying out systematic looting of the underground riches of the regions controlled by their forces, just as the possessions of the civilian population are being hauled away to Burundi, Rwanda and Uganda. To substantiate its accusations, it states that on 4 September 1998, the contents of all the safes of the local branch of the Central Bank of Congo in Bukavu town were looted and the booty taken away to Rwanda. In Kalema, a town in Maniema province, all the minerals in the factory of the SOMINKI firm were looted by the same forces. The Democratic Republic of Congo claims that between October and December 1998, the gold produced by the OKIMO firm and by local diggers, yielding \$100,000,000 (one hundred million US dollars) was carted to Rwanda. Still according to its estimation, the coffee produced in the region and in North Kivu yielded about \$70,000,000 (seventy million US dollars) to Uganda in the same period. As for the wood produced by the AMEXBOIS firm based in Kisangani town, it is exported to Uganda. Rwanda and Uganda have also taken over control of the fiscal and customs revenue

collected respectively by the Directorate General of Taxes. The plunder of the riches of the eastern provinces of Congo is also affecting endangered animal species such as okapis, mountain gorillas, rhinoceros, and elephants.

### **The Complaint**

8. The Democratic Republic of Congo claims, among other things, that it is the victim of an armed aggression perpetrated by Burundi, Rwanda and Uganda; and that this is a violation of the fundamental principles that govern friendly relations between States, as stipulated in the Charters of the United Nations and the Organisation of African Unity; in particular, the principles of non-recourse to force in international relations, the peaceful settlement of differences, respect for the sovereignty and territorial integrity of States and non-interference in the internal affairs of States. It emphasises that the massacres and other violations of human and peoples' rights that it accuses Burundi, Rwanda and Uganda of, are committed in violation of the provisions of articles 2, 4, 6, 12, 16, 17, 19, 20, 21, 22 and 23 of the African Charter on Human and Peoples' Rights.

9. It also claims violation of the provisions of the International Covenant on Civil and Political Rights, the Geneva Conventions of 12 August 1949 and of the Additional Protocol on the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

10. From the foregoing, the Democratic Republic of Congo, based on the facts presented and the law cited, requests the Commission to:

- a. Declare that [t]he violations of the human rights of the civilian population of the eastern provinces of the Democratic Republic of Congo by Rwanda, Uganda and Burundi are in contravention of the relevant provisions of the African Charter on Human and Peoples' Rights cited above; and
- b. Examine the communication diligently, especially in the light of Article 58 (1) & (3) of the Charter with a view to producing a detailed, objective and impartial report on the grave and massive violations of human rights committed in the war-affected eastern provinces and to submit it to the Assembly of Heads of State and Government of the Organisation of African Unity.

11. The Democratic Republic of Congo also requests the Commission to:

- a. *... Take due note of the violations of the relevant provisions of the Charters of the United Nations, the Organisation of African Unity, and the one on Human and Peoples' Rights;*
- b. *Condemn the aggression against the Democratic Republic of Congo, which has generated grave violations of the human rights of peaceful peoples;*

- c. *Deploy an investigation mission with a view to observing in loco the accusations made against Burundi, Rwanda and Uganda;*
- d. *Demand the unconditional withdrawal of the invading troops from Congolese territory in order to put an end to the grave and massive violations of human rights;*
- e. *Demand that the countries violating human and peoples' rights in the Democratic Republic of Congo pay just reparation for the damages caused and the acts of looting; and*
- f. *Indicate the appropriate measures to punish the authors of the war crimes or crimes against humanity, as the case may be, and the creation of an ad hoc tribunal to try the crimes committed against the Democratic Republic of Congo. The ad hoc tribunal may be created in collaboration with the United Nations”.*

## **The Procedure**

12. The communication was received at the Secretariat of the Commission on 8 March 1999. The same day, two letters were dispatched by fax, to the Ministry of Human Rights and the Ministry of Foreign Affairs of the Democratic Republic of Congo respectively, acknowledging receipt.

13. In compliance with the relevant provisions of the Charter and the Rules of Procedure, the Secretariat then submitted the communication to the Commission, meeting at its 25<sup>th</sup> Ordinary Session from 26 April to 5 May 1999, in Bujumbura (Burundi).

14. At its 25<sup>th</sup> Ordinary session held in Bujumbura, Burundi, the Commission took a decision of seizure on the communication and requested the Complainant State to forward an official copy of its complaint to the Secretary-General of the OAU.

15. On 28<sup>th</sup> May 1999, Note Verbales together with a copy of the communication were each sent to the Ministries of External Affairs/External Relations of the Respondent States informing them of the communication filed against them by the Democratic Republic of Congo.

16. On 2<sup>nd</sup> June 1999, the Secretariat wrote to the authorities of the Democratic Republic of Congo informing them of the decision of seizure taken by the Commission and requesting them to comply with the provisions of Article 49 of the Charter.

17. At the 26<sup>th</sup> session of the Commission held in Kigali, Rwanda, the communication was not examined, as the Commission considered it necessary to allow the Respondent States more time to communicate their reactions.

18. On 14<sup>th</sup> December 1999, the Secretariat wrote to the various parties requesting their reactions regarding the issue of admissibility.

19. At the 27<sup>th</sup> ordinary session held from 27 April to 11 May 2000 in Algiers, Algeria, the Commission heard oral submissions on the admissibility of the case from representatives of the Complainant State and from two Respondent States (Rwanda and Uganda). The Commission, after examining the case according to the provisions of its Rules of Procedures, thereafter declared the communication admissible and requested parties to furnish it with arguments on the merits of the case.

20. The parties were accordingly informed of the above decision on 14<sup>th</sup> July 2000.

21. At the 28<sup>th</sup> session of the Commission held from 23<sup>rd</sup> October to 6<sup>th</sup> November 2000 in Cotonou, Benin, the communication was not considered as the Commission had not received any response from Respondent States on the request that was extended to them following the 27<sup>th</sup> session.

22. During the session, however, the delegation of Rwanda transmitted to the Secretariat of the Commission, a submission, which stated that the Commission should not have declared communication 227/99 admissible because the procedure followed by the Democratic Republic of Congo was not valid and that the Commission itself had not respected the provisions of its own Rules of Procedure. The submission further stated that the matters addressed by the communication were pending before competent authorities of the Organization of African Unity and other international bodies like the UN Security Council and ECOSOC. Finally, Rwanda refuted allegations of human rights violations made against it by the Democratic Republic of Congo and justified the presence of its troops in this country on grounds of security, while accusing the Democratic Republic of Congo of hosting groups hostile to Rwanda.

23. The submission of Rwanda was transmitted to all States concerned by communication 227/99.

24. In October 2000, the Secretariat of the Commission received from Uganda a submission on communication 227/99 in which the Respondent State recognised and justified the presence of its troops in the Democratic Republic of Congo. The troops were said to be in the Democratic Republic of Congo to prevent Ugandan rebels from attacking the Ugandan territory.

25. Uganda stated in its submission that since the early 1990's the territory of the Democratic Republic of Congo (then the Republic of Zaire) has provided sanctuary to

bands of armed rebel groups. These rebel groups, which Uganda claims support former dictator Idi Amin, have posed a significant danger for Uganda since 1996.

26. Uganda stated that supported by both Sudan and Mobutu's government in the Democratic Republic of Congo, these groups grew to 6,000, posing a serious security threat to Uganda and that therefore Ugandan troops were present in the Democratic Republic of Congo in order to prevent Ugandan rebels from attacking the Ugandan territory.

27. The submission further states that after Mobutu's overthrow in 1997, the Kabila government invited Uganda to enter eastern Congo to work together to stop the activities of the anti-Uganda rebels and that Ugandan armed forces remained in the Democratic Republic of Congo at the request of President Kabila since his forces "had no capability to exercise authority" in the remote eastern region. Uganda attached the Protocol between the Democratic Republic of Congo and the Republic of Uganda on Security Along the Common Border to show that both sides recognized the problem of armed groups and decided to cooperate.

28. According to Uganda, President Kabila revoked the above-mentioned agreement in August 1998 as a new rebellion started in the Democratic Republic of Congo (when the coalition that had overthrown Mobutu disintegrated) and blamed this "internal rebellion," on the invasion of Uganda and Rwanda. The Democratic Republic of Congo then started looking for allies in its struggle against the rebels and it turned to forces hostile to the governments of Rwanda and Uganda, specifically the Allied Democratic Force and pro-Idi Amin groups. Uganda said it therefore had no option but to keep its troops in the Democratic Republic of Congo, in order to deal with the threat of attacks posed by these foreign-sponsored rebel groups.

29. To support its actions, Uganda cited provisions of international instruments:

- a) *Article 51 of the UN Charter;*
- b) *Article 3 of the UN General Assembly Resolution on the Definition of Aggression;*
- c) *The UN General Assembly Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States; and*
- d) *Article 23 of the African Charter on Human and Peoples' Rights.*

30. In its submission, Uganda also points to the lack of evidence implicating it in the alleged human rights violations, stating for example that, Ugandan troops have never been in some places mentioned in the communication. The submission characterises the violations relating to HIV/AIDS as "the most ridiculous allegation". Referring to the joint case against itself, Rwanda, and Burundi, Uganda claims that "[t]here is never group responsibility for violations." In addition, "allegations of human rights violations must be verified by an independent body or by a fact-finding Commission." Uganda

contrasts the allegations it faces with evidence of the Democratic Republic of Congo government's involvement in violations in its eastern provinces.

31. As for the withdrawal of Ugandan troops from the Democratic Republic of Congo, the submission relies on the Democratic Republic of Congo's failed request to the ICJ to order the unconditional withdrawal of Ugandan troops.

32. Regarding payment of reparations, Uganda points to the lack of documentation on this issue and, concerning the illegal exploitation of the Democratic Republic of Congo's natural resources, Uganda denied involvement and affirmed its "unconditional support to the United Nation's efforts to set up a panel of experts [that the Democratic Republic of Congo has also approved] to investigate" the issue.

33. On the issue of investigation of human rights violations, while Uganda welcomed the Democratic Republic of Congo's call for independent investigation, it portrayed the Democratic Republic of Congo's uninvestigated allegations as "disturbing."

34. Uganda also noted that the Democratic Republic of Congo has accused Uganda in several other fora: the UN Security Council, the ICJ, the Lusaka Initiative, and the OAU. According to the Respondent State, these actions "present a dilemma to the conduct of international affairs...and adjudication," undermining the credibility of these institutions and the Commission as divergent opinions may be reached.

35. In conclusion Uganda contends that "*there is no legal basis on which the African Commission can deal with the communication and declare any of the remedies sought by the Democratic Republic of Congo against Uganda.*"

36. Copies of the submissions of Uganda on communication 227/99 were transmitted to all States concerned by the communication.

37. In December 2000, the Secretariat of the Commission received a set of five (5) submissions from the Democratic Republic of Congo containing reports on alleged violations of human rights by armed forces of the Respondent States and their alleged allies in the territory of the Democratic Republic of Congo. The submissions also stated that the foreign uninvited troops in the Democratic Republic of Congo were looting the resources of the country.

38. The Secretariat of the Commission transmitted these submissions to the respective parties to the communication.

39. At the 29<sup>th</sup> session, which was held from 23<sup>rd</sup> April to 7<sup>th</sup> May 2001 in Tripoli, Libya, the communication was not considered because the Commission had still not received any submission from one of the Respondent State, namely, Burundi. On that occasion, all relevant letters and submissions by the other States were transmitted to

the delegations of all the Respondent States including Burundi, for their consideration and reaction to the Commission.

40. In August 2001, the Secretariat of the Commission received a request from the Ministry of Human Rights of the Democratic Republic of Congo, which deplored the delays in the processing of communication 227/99 and invited the Commission to summon an extraordinary session in order to deal diligently with the communication.

41. By Notes Verbales ACHPR/COMM/044 sent to their respective Ministries of Foreign/External Affairs on 26<sup>th</sup> September 2001, the Secretariat of the Commission informed all States concerned by communication 227/99 that it was going to consider the said communication on the merits, at its 30<sup>th</sup> ordinary session scheduled from 13<sup>th</sup> to 27<sup>th</sup> October 2001 in Banjul, The Gambia.

42. In October 2001, the Secretariat of the Commission received a Note Verbale from Rwanda, which restated the objections raised in its submission of October 2000 concerning communication 227/99, adding that if Rwanda's arguments were not taken into account, it should not be called upon to present a defence.

43. At its 30<sup>th</sup> session, the Commission discussed the request by the Democratic Republic of Congo about organising an extraordinary session to deal with communication 227/99 and resolved to raise the issue with the relevant authorities of the Secretariat of the African Union. The Commission also heard oral statements by the delegations of Rwanda and Uganda on the issue, written copies of which were also handed over to its Secretariat

44. In its statement, the Rwandan delegation reiterated its arguments stated during the 28<sup>th</sup> session and objected to the proposed extraordinary session to deal with the communication on the grounds that the communication could be considered during an ordinary session and that an extraordinary session will have financial implication. Rwanda therefore recommended that the Commission deals with the communication during its 31<sup>st</sup> session scheduled for May 2002 in Pretoria, South Africa. The statement further justified the presence of Rwandan troops in the Democratic Republic of Congo by the assistance that the Government of this country is granting elements hostile to the Government of Kigali and concluded that as long as such a threat exists for Rwanda, it could not withdraw its troops from the Democratic Republic of Congo.

45. In its statement, the Ugandan delegation said that they had not received the documents sent to them on communication 227/99 and could not present their defence at that stage. The delegation further objected to the holding of an extraordinary session to deal with the communication and added that the facts complained of by the Democratic Republic of Congo are also pending before the International Court of Justice and that consideration of the communication by the Commission would prejudice the court hearing.

46. At the 31<sup>st</sup> session of the Commission, which was held from 2<sup>nd</sup> to 16<sup>th</sup> May 2002 in Pretoria, South Africa, the Commission did not consider the Communication because there had been no response from the Organisation of African Unity regarding the request from the Democratic Republic of Congo on the holding of the extraordinary session on the communication. During that session, the Commission resolved to proceed as follows: the African Commission would hold the extraordinary session in case the Secretariat General of the OAU agree to it, or (in case the OAU did not accept the idea of extraordinary session), the African Commission would arrange its agenda for the 32<sup>nd</sup> Ordinary Session in such a way as to have sufficient time to deal with the communication. That decision was communicated to the delegations of all the States concerned who were attending the session.

47. By Note Verbale ACHPR/COMM 227/99 of 11 June 2002, the Secretariat transmitted that decision to the States concerned by the communication.

48. A reminder was also sent to the same States by Notes Verbale ACHPR/COMM 227/99 on 8<sup>th</sup> October 2002.

49. During its 32<sup>nd</sup> ordinary session which took place from 17 to 23 October 2002 in Banjul, the Gambia, the Commission did not consider this communication because of the circumstances of the session<sup>1</sup> which did not provide enough time to deal with this important communication.

50. The Commission took a decision on the merits of the communication during its 33<sup>rd</sup> Ordinary Session, which was held from 15<sup>th</sup> to 29<sup>th</sup> May 2003 in Niamey, Niger.

## **LAW**

### **Admissibility**

51. The procedure for bringing inter-state communications before the Commission is governed by Articles 47 to 49 of the Charter. At this stage, it is important to mention that this is the first inter-State communication brought before the African Commission on Humana and Peoples' Rights.

52. It is to be noted that Burundi<sup>2</sup>, a Respondent State was provided with all the relevant submissions relating to this communication, in conformity with Article 57 of the

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<sup>1</sup> Financial constraints caused the 32<sup>nd</sup> ordinary session of the Commission to last for only seven (7) days.

<sup>2</sup> Burundi, a State Party to the African Charter, ratified the said Charter on 28/07/1989.

African Charter. But neither did Burundi react to any of them nor did it make any oral submission before the Commission regarding the complaint.

53. The African Commission would like to emphasise that the absence of reaction from Burundi does not absolve the latter from the decision the African Commission may arrive at in the consideration of the communication. Burundi by ratifying the African Charter indicated its commitment to cooperate with the African Commission and to abide by all decisions taken by the latter.

54. In their oral arguments before the Commission at its 27<sup>th</sup> ordinary session held in Algeria (27 April – 11 May 2000), Rwanda and Uganda had argued that the decision of the Complainant State to submit the communication directly to the Chairman of the Commission without first notifying them and the Secretary General of the OAU, is procedurally wrong and therefore fatal to the admissibility of the case.

55. Article 47 requires the Complainant State to draw, by written communication, the attention of the violating State to the matter and the communication should also be addressed to the Secretary General of the OAU and the Chairman of the Commission. The State to which the communication is addressed is to give written explanation or statement elucidating the matter within three months of the receipt of the communication.

56. By the provisions of Article 48 of the Charter, if within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and to notify the other States involved.

57. The provisions of Articles 47 and 48 read in conjunction with Rules 88 to 92 of the Rules of Procedure of the Commission are geared towards the achievement of one of the essential objectives and fundamental principles of the Charter: conciliation.

58. The Commission is of the view that the procedure outlined in Article 47 of the Charter is permissive and not mandatory. This is borne out by the use of the word “may”. Witness the first sentence of this provision:

*“If a State Party to the Present Charter has good reasons to believe that another State Party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter”.*

59. Moreover, where the dispute is not settled amicably, Article 48 of the Charter requires either State to submit the matter to the Commission through the Chairman and

to notify the other States involved. It does not, however, provide for its submission to the Secretary General of the OAU. Nevertheless, based on the decision of the Commission at its 25<sup>th</sup> ordinary session, requesting it to forward a copy of its complaint to the Secretary General of the OAU (see paragraph 14 above), the Complainant State had done so.

60. Furthermore, it appears that the main reason why the Charter makes provision for the Respondent State to be informed of such violations or notified of the submission of such a communication to the Commission, is to avoid a situation of springing surprises on the States involved. This procedure enables the Respondent States to decide whether to settle the complaint amicably or not. The Commission is of the view that even if the Complainant State had not abided by the said provision of the Charter, such omission is not fatal to the communication since after being seized of the case, a copy of the communication, as is the practice of the Commission, was forwarded to the Respondent States for their observations (see paragraph 15 above).

61. Article 49 on the other hand, provides for a procedure where the Complainant State directly seizes the Commission without passing through the conciliation phase. Accordingly, the Complainant State may refer the matter directly to the Commission by addressing a communication to the Chairman, the Secretary General of the OAU and the State concerned. Such a process allows the requesting State to avoid making contacts with the Respondent State in cases where such contacts will not be diplomatically either effective or desirable. In the Commission's considered opinion that seems to be the case here. Indeed, the situation of undeclared war prevailing between the Democratic Republic of Congo and its neighbours to the east did not favour the type of diplomatic contact that would have facilitated the application of the provisions of Articles 47 and 48 of the Charter. It was also for this reason that the Commission took the view that Article 52 did not apply to this communication.

62. The Commission is mindful of the requirement that it can consider or deal with a matter brought before it if the provisions of Article 50 of the Charter and Rule 97(c) of the Rules of Procedure are met, that is if all local remedies, if they exist, have been exhausted, unless such would be unduly prolonged.

63. The Commission takes note that the violations complained of are allegedly being perpetrated by the Respondent States in the territory of the Complainant State. In the circumstances, the Commission finds that local remedies do not exist, and the question of their exhaustion does not, therefore, arise.

64. The effect of the alleged activities of the rebels and armed forces of the Respondent States Parties to the Charter, which also back the rebels, fall not only within the province of humanitarian law, but also within the mandate of the Commission. The combined effect of Articles 60 and 61 of the Charter compels this conclusion; and it is also buttressed by Article 23 of the African Charter.

65. There is also authority, which does not exclude violations committed during armed conflict from the jurisdiction of the Commission. In communication 74/92, *Commission Nationale des Droits de l'Homme et des Libertés /Chad*, the Commission held that the African Charter “*unlike other human rights instruments, does not allow for States Parties to derogate from their treaty obligations during emergency situations. Thus, even a situation of ....war...cannot be cited as justification by the State violating or permitting violations of the African Charter*” (see also communication 159/96, *UIDH & Others v. Angola*).

**From the foregoing, the Commission declares the communication admissible.**

### **The Merits**

66. The use of armed force by the Respondent States, which the Democratic Republic of Congo complains of contravenes the well-established principle of international law that States shall settle their disputes by peaceful means in such a manner that international peace, security and justice are not endangered. Indeed, there cannot be both national and international peace and security guaranteed by the African Charter under the conditions created by the Respondent States in the eastern provinces of the Complainant State.

67. Rwanda and Uganda, in their oral arguments before the Commission at its 27<sup>th</sup> ordinary session held in Algeria had argued that the decision of the Complainant State to submit the communication directly to the Chairman of the Commission without first notifying them and the Secretary General of the OAU, is procedurally wrong and therefore fatal to the admissibility of the case. But the African Commission found otherwise.

68. The Commission finds the conduct of the Respondent States inconsistent with the standard expected of them under UN Declaration on Friendly Relations, which is implicitly affirmed by the Charters of the UN and OAU, and which the Commission is mandated by Article 23 of the African Charter on Human and Peoples' Rights to uphold. Any doubt that this provision has been violated by the Respondent States is resolved by recalling an injunction in the UN Declaration on Friendly Relations: “*No State or group of States has the right to intervene directly or indirectly, for any reason whatever, in the internal or external affairs of any other States. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of international law...Also no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State or interfere in civil strife in another State.*” The substance of the complaint of the Democratic Republic of Congo against the Respondents is covered by the foregoing prohibition. The Respondent States have therefore violated Article 23 of the

African Charter. The conduct of the Respondent States also constitutes a flagrant violation of the right to the unquestionable and inalienable right of the peoples of the Democratic Republic of Congo to self-determination provided for by Article 20 of the African Charter, especially clause 1 of this provision.

69. The Complainant State alleges grave and massive violations of human and peoples' rights committed by the armed forces of the Respondent States in its eastern provinces. It details series of massacres, rapes, mutilations, mass transfers of populations and looting of the peoples' possessions, as some of those violations. As noted earlier on, the series of violations alleged to have been committed by the armed forces of the Respondent States fall within the province of humanitarian law, and therefore rightly covered by the Four Geneva Conventions and the Protocols additional to them. And the Commission having found the alleged occupation of parts of the provinces of the Complainant State by the Respondents to be in violation of the Charter cannot turn a blind eye to the series of human rights violations attendants upon such occupation.

70. The combined effect of Articles 60 and 61 of the African Charter enables the Commission to draw inspiration from international law on human and peoples' rights, the Charter of the United Nations, the Charter of the Organisation of African Unity and also to take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules recognized by Member States of the Organization of African Unity, general principles recognized by African States as well as legal precedents and doctrine. By virtue of Articles 60 and 61 the Commission holds that the Four Geneva Conventions and the two Additional Protocols covering armed conflicts constitute part of the general principles of law recognized by African States, and take same into consideration in the determination of this case.

71. It is noted that Article 75(2) of the First Protocol of the Geneva Conventions of 1949, prohibits the following acts at any time and in all places whatsoever, whether committed by civilian or by military agents:

- (a) *Violence to life, health, or physical or mental well-being of persons, in particular;*
- (b) *Murder;*
- (c) *Torture of all kinds, whether physical or mental;*
- (d) *Corporal punishment;*
- (e) *Mutilations; and*
- (f) *Outrages upon personal dignity, in particular, humiliating and degrading treatment; enforced prostitution and any form of indecent assault.*

72. The Complainant State alleges the occupation of the eastern provinces of the country by the Respondent States' armed forces. It alleges also that most parts of the affected provinces have been under the control of the rebels since 2 August 1998, with the assistance and support of the Respondent States. In support of its claim, it states that the Ugandan and Rwandan governments have acknowledged the presence of their respective armed forces in the eastern provinces of the country under what it calls the "fallacious pretext" of "safeguarding their interests". The Commission takes note that this claim is corroborated by the statements of the representatives of the Respondent States during the 27<sup>th</sup> ordinary session held in Algeria.

73. Article 23 of the Charter guarantees to all peoples the right to national and international peace and security. It provides further that "the principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organisation of African Unity shall govern relations between states. The principles of solidarity and friendly relations contained in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (Res. 2625 (XXV), adopted by the UN General Assembly on 24 October 1970, prohibits threat or use of force by States in settling disputes. Principle 1 provides: Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

74. In the same vein, Article 33 of the United Nations Charter enjoins "*parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security...first of all, to seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice*". Chapter VII of the same Charter outrightly prohibits threats to the peace, breaches of the peace and acts of aggression. Article III of the OAU Charter states that "*The Member States, in pursuit of the purposes stated in Article II, solemnly affirm and declare their adherence to the following principles:*

*...2 Non-interference in the internal affairs of States*

*3. Respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence.*

*4. Peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration.*

75. It also contravenes the well-established principle of international law that States shall settle their disputes by peaceful means in such a manner that international peace and security and justice are not endangered. As noted in paragraph 66 above, there cannot be both national and international peace and security guaranteed by the Charter

with the conduct of the Respondent States in the eastern provinces of the Complainant State.

76. The Commission therefore disapproves of the occupation of the complainant's territory by the armed forces of the Respondent forces and finds it **impermissible, even in the face of their argument of being in the Complainant's territory in order to safeguard their national interests** and therefore in contravention of Article 23 of the Charter. The Commission is of the strong belief that such interests would better be protected within the confines of the territories of the Respondent States.

77. It bears repeating that the Commission finds the conduct of the Respondent States in occupying territories of the Complainant State to be a flagrant violation of the rights of the peoples of the Democratic Republic of Congo to their unquestionable and inalienable right to self-determination provided for by Article 20 of the African Charter.

78. As previously stated, the Commission is entitled, by virtue of Articles 60 and 61 of the African Charter, to draw inspiration from international law on Human and Peoples' Rights, the Charter of the United Nations, the Charter of the Organisation of African Unity...and also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules recognised by Member States of the Organisation of African Unity...general principles recognised by African States as well as legal precedents and doctrine. Invoking these provisions, the Commission holds that the Four Geneva Conventions and the two Additional Protocols covering armed conflicts, fall on all fours with the category of special international conventions, laying down rules recognised by Member States of the Organisation of African Unity and also constitute part of the general principles recognised by African States, and to take same into consideration in the determination of this case.

79. The Commission finds the killings, massacres, rapes, mutilations and other grave human rights abuses committed while the Respondent States' armed forces were still in effective occupation of the eastern provinces of the Complainant State reprehensible and also inconsistent with their obligations under Part III of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 and Protocol 1 of the Geneva Convention.

80. They also constitute flagrant violations of Article 2 of the African Charter, such acts being directed against the victims by virtue of their national origin; and Article 4, which guarantees respect for life and the integrity of one's person and prohibits the arbitrary deprivation rights.

81. The allegation of mass transfer of persons from the eastern provinces of the Complainant State to camps in Rwanda, as alleged by the complainant and not refuted by the respondent, is inconsistent with Article 18(1) of the African Charter, which

recognises the family as the natural unit and basis of society and guarantees it appropriate protection. It is also a breach of the right to freedom of movement, and the right to leave and to return to ones country guaranteed under Article 12(1) and (2) of the African Charter respectively.

82. Article 56 of the First Protocol Additional to the Geneva Conventions of 1949 provides:

*(1) Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made object of military attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.*

*(2) The special protection against attack provided by paragraph 1 shall cease:*  
*(a) for a dam or dyke only if it is used for other than its normal function in a regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support...*

*(3) In all cases, the civilian population and individual civilians shall remain entitled to all the protection accorded them by international law, including the protection of precautionary measures provided for in Article 57.*

83. As noted previously, taking Article 56, quoted above into account, and by virtue of Articles 60 and 61 of the African Charter, the Commission concludes that in besieging the hydroelectric dam in Lower Congo province, the Respondent States have violated the Charter.

84. The besiege of the hydroelectric dam may also be brought within the prohibition contained in The Hague Convention (II) with Respect to the Laws and Customs of War on Land which provides in Article 23 that “Besides the prohibitions provided by special Conventions, it is especially prohibited...to destroy the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war”. By parity of reason, and bearing in mind Articles 60 and 61 of the Charter, the Respondent States are in violation of the Charter with regard to the just noted Article 23.

85. The case of *the International Criminal Tribunal for Yougoslavia vs. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo* (the Celebici Judgment; Nov., 16, 1998 at para. 587) is supportive of the Commission’s stance. It states, inter alia, that “international law today imposes strict limitations on the measures which a party to an

*armed conflict may lawfully take in relation to the private and public property of an opposing party. The basic norms in this respect, which form part of customary international law...include the fundamental principle...that private property must be respected and cannot be confiscated...pillage is formally forbidden”.*

86. The raping of women and girls, as alleged and not refuted by the respondent States, is prohibited under Article 76 of the first Protocol Additional to the Geneva Conventions of 1949, which provides that “women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any form of indecent assault. It also offends against both the African Charter and the Convention on the Elimination of All Forms of Discrimination Against Women; and on the basis of Articles 60 and 61 of the African Charter find the Respondent States in violation of the Charter.

87. The Commission condemns the indiscriminate dumping of and or mass burial of victims of the series of massacres and killings perpetrated against the peoples of the eastern province of the Complainant State while the armed forces of the Respondent States were in actual fact occupying the said provinces. The Commission further finds these acts barbaric and in reckless violation of Congolese peoples’ rights to cultural development guaranteed by Article 22 of the African Charter, and an affront on the noble virtues of the African historical tradition and values enunciated in the preamble to the African Charter. Such acts are also forbidden under Article 34 of the First Protocol Additional to the Geneva Conventions of 1949, which provides for respect for the remains of such peoples and their gravesites. In disregarding the last provision, the Respondent States have violated the African Charter on the basis of Articles 60 and 61 of this instrument.

88. The looting, killing, mass and indiscriminate transfers of civilian population, the besiege and damage of the hydro-dam, stopping of essential services in the hospital, leading to deaths of patients and the general disruption of life and state of war that took place while the forces of the Respondent States were occupying and in control of the eastern provinces of the Complainant State are in violation of Article 14 guaranteeing the right to property, articles 16 and 17 (all of the African Charter), which provide for the rights to the best attainable state of physical and mental health and education, respectively.

89. Part III of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949, particularly in Article 27 provides for the humane treatment of protected persons at all times and for protection against all acts of violence or threats and against insults and public curiosity. Further, it provides for the protection of women against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Article 4 of the Convention defines a protected person as those who, at a given moment and in any manner whatsoever, find themselves, in case

of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

90. The Complainant State alleges that between October and December 1998, the gold produced by the OKIMO firm and by local diggers yielded \$100,000,000 (one hundred million US dollars) to Rwanda. By its calculation, the coffee produced in the region and in North Kivu yielded about \$70,000,000 (seventy million US dollars) to Uganda in the same period. Furthermore, Rwanda and Uganda took over control of the fiscal and customs revenue collected respectively by the Directorate General of Taxes. The plunder of the riches of the eastern provinces of Congo is also affecting endangered animal species such as okapis, mountain gorillas, rhinoceros, and elephants.

91. Indeed, the respondent States, especially, Uganda, has refuted these allegations, pretending for example that its troops never stepped in some of the regions they are accused of human rights violations and looting of the natural resources of the complainant States. However, the African Commission has evidence that some of these facts did take place and are imputable to the armies and agents of the respondent states. In fact, the United Nations have acknowledged that during the period when the armies of the Respondent States were in effective control over parts of the territory of the Complainant State, there were lootings of the natural resources of the Complainant State. The United Nations set up a Panel of Experts to investigate this matter<sup>1</sup>.

92. The report of the Panel of Experts, submitted to the Security Council of the United Nations in April 2001 (under reference **S/2001/357**) identified all the Respondent States among others actors, as involved in the conflict in the Democratic Republic of Congo<sup>2</sup>. The report profusely provides evidence of the involvement of the Respondent states in the illegal exploitation of the natural resources of the Complainant State. It is stated in paragraph 5 of the Summary of the report: *“During this first phase (called Mass-scale looting phase by the experts), stockpiles of minerals, coffee, wood, livestock and money that were available in territories conquered by the armies of Burundi, Rwanda and Uganda were taken, and either transferred to those countries or exported to international markets by their forces and nationals.”*<sup>3</sup>.

93. Paragraph 25 of the reports further states: *“The illegal exploitation of resources (of the Democratic Republic of Congo) by Burundi, Rwanda and Uganda took different forms, including confiscation, extraction, forced monopoly and price-fixing. Of these, the*

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<sup>1</sup> See Resolution 1457 (2003) of the Security Council of the United Nations adopted on 24/01/2003 on the Panel of Experts on the illegal exploitation of the natural resources of the Democratic Republic of Congo.

Also see presidential statement dated 2 June 2000 (S/PRST/2000/20), whereby the Security Council requested the Secretary General of the United Nations to establish a Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo for a period of six months

<sup>2</sup> See Point 10(a) of the summary of the Report.

<sup>3</sup> Also see Paragraphs 26, 27, 32, 55, 64, etc. of the report.

*first two reached proportions that made the war in the Democratic Republic of the Congo a very lucrative business.*

94. The Commission therefore finds the illegal exploitation/looting of the natural resources of the complainant state in contravention of Article 21 of the African Charter, which provides:

*(1) All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. **In no case shall a people be deprived of it...***

*(2) States Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.*

95. The deprivation of the right of the people of the Democratic Republic of Congo, in this case, to freely dispose of their wealth and natural resources, has also occasioned another violation – their right to their economic, social and cultural development and of the general duty of States to individually or collectively ensure the exercise of the right to development, guaranteed under Article 22 of the African Charter.

96. For refusing to participate in any of the proceedings although duly informed and invited to respond to the allegations, Burundi admits the allegations made against it.

97. Equally, by refusing to take part in the proceedings beyond admissibility stage, Rwanda admits the allegations against it.

98. As in the case of Rwanda, Uganda is also found liable of the allegations made against it.

**For the above reasons, the Commission:**

**Finds** the Respondent States in violation of Articles 2, 4, 5, 12(1) and (2), 14, 16, 17, 18(1) and (3), 19, 20, 21, 22, and 23 of the African Charter on Human and Peoples' Rights.

**Urges** the Respondent States to abide by their obligations under the Charters of the United Nations, the Organisation of African Unity, the African Charter on Human and Peoples' Rights, the UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States and other applicable international principles of law and withdraw its troops immediately from the complainant's territory.

**Takes note with satisfaction**, of the positive developments that occurred in this matter, namely the withdrawal of the Respondent States armed forces from the territory of the Complainant State.

**Recommends** that adequate reparations be paid, according to the appropriate ways to the Complainant State for and on behalf of the victims of the human rights by the armed forces of the Respondent States while the armed forces of the Respondent States were in effective control of the provinces of the Complainant State, which suffered these violations.

*Done at the 33<sup>rd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights - May 2003, Niamey, Niger*

**249/2002 - African Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea)/Republic of Guinea**

**Rapporteur:**

31<sup>st</sup> Session: Commissioner Badawi  
32<sup>nd</sup> Session: Commissioner Badawi  
33<sup>rd</sup> Session: Commissioner Badawi  
34<sup>th</sup> Session: Commissioner El-Hassan  
35<sup>th</sup> Session: Commissioner El-Hassan  
36<sup>th</sup> Session: Commissioner El-Hassan

**Summary of facts**

1. It is alleged by the Complainant that on 9<sup>th</sup> September 2000, Guinean President Lansana Conté proclaimed over the national Radio that Sierra Leonean refugees in Guinea should be arrested, searched and confined to refugee camps. His speech incited soldiers and civilians alike to engage in mass discrimination against Sierra Leonean refugees in violation of Article 2 of the African Charter.

2. The Complainant alleged that the discrimination occasioned by President Conté speech manifested itself primarily in at least five ways:

3. First, widespread looting and extortion occurred in the wake of President Conté's speech. Guinean soldiers evicted Sierra Leoneans from their homes and refugee camps. The soldiers further looted the homes, confiscated food, personal property and

money from refugees at checkpoints. They also extorted large sums of money from detained refugees. These items were never returned to the refugees.

4. Second, the speech motivated soldiers and civilians to rise up against Sierra Leonean refugees inside and outside of the refugee camps. The resulting physical violence ranged from beatings, rapes, to shootings. Countless refugees died in these attacks, and many have scars as permanent reminders of their time in Guinea.

5. Third, after President Conté's speech, Guinean soldiers targeted Sierra Leonean refugees for arrest and detention without any just cause. Soldiers at checkpoints would inspect refugees for supposed rebel scars, calloused hands from carrying a gun, speaking Krio (the local language in Sierra Leone), or carrying a refugee card. However, the refugees had scars from tribal markings rather than the rebels and calloused hands from farming not carrying a gun. These false identifications were used to then detain refugees for hours and days for no other reason than being "a rebel" based upon being Sierra Leonean.

6. Fourth, the speech instigated widespread rape of Sierra Leonean women in Guinea. Furthermore, Guinean soldiers subjected men and women to humiliating strip searches. These searches were conducted sometimes several times a day and in front of large groups of people and on-looking soldiers.

7. Finally, Sierra Leonean refugees were forced to decide whether they were to be harassed, tortured and die in Guinea, or return to Sierra Leone in the midst of civil war where they would face an equally harsh fate. Thousands chose to flee back to their native Sierra Leone in response to the Guinean mistreatment. Furthermore, Guinean soldiers collected refugees, bussed them to Conakry seaport, and physically put them on the ferry forcing their return to Sierra Leone. The Guinean government was therefore not providing refuge and protection required by law, reported the Complainant.

#### **Complaint:**

8. The Complainant alleges that Articles 2, 4, 5, 12(5) and 14 of the African Charter on Human and Peoples' Rights have been violated.

#### **Procedure:**

9. The communication dated 17<sup>th</sup> April 2002, was submitted by the Institute for Human Rights and Development in Africa on behalf of the Sierra Leonean refugees.

10. On 18<sup>th</sup> April 2002, a letter was sent to acknowledge receipt and inform the Complainant that the communication would be scheduled for consideration at its 31<sup>st</sup> session.

11. At the 31<sup>st</sup> Ordinary Session held from 2 – 16 May 2002 in Pretoria, South Africa, the Commission decided to be seized of the case and requested the parties to submit their observations on the admissibility of the case.
12. On 29<sup>th</sup> May 2002, the Secretariat of the African Commission informed the parties of the decision of the African Commission.
13. On 24<sup>th</sup> June 2002, the Complainant forwarded to the Secretariat of the African Commission its written submission on the admissibility of the case, a copy was sent to the Respondent State by post on 16 August 2002.
14. By letters dated 28 November 2002, 17 January 2003 and 20 March 2003, the Secretariat wrote to the government requesting it to react to this complaint. Up to the holding of the 33<sup>rd</sup> Ordinary session in Niamey, Niger, from 15 – 29 May 2003, the Secretariat had not received any feedback from the Respondent State.
15. At the 33<sup>rd</sup> Ordinary Session the African Commission declared this communication admissible, and the parties were requested to forward their written submission on the merits.
16. On 18<sup>th</sup> June 2003, the Secretariat informed the parties of the above decision and requested them to transmit their brief on the merits to the Secretariat within a period of 3 months, the Note Verbal to the Respondent State was hand delivered.
17. On 29<sup>th</sup> August 2003, the Complainant forwarded its written submission on the merits of the case. On 22 September 2003, the Secretariat of the African Commission forwarded the written submission from the Complainant to the Respondent State
18. On 9<sup>th</sup> October 2003, the Secretariat of the African Commission received a Note Verbale from the Respondent State stating that they had not received the written submission from the Complainant.
19. By note Verbale dated 14<sup>th</sup> October 2003, the Secretariat of the African Commission forwarded once again the written submission from the Complainant to the Respondent State by DHL.
20. During its 34<sup>th</sup> Ordinary Session held in Banjul, The Gambia from the 6<sup>th</sup> to 20<sup>th</sup> November 2003, the African Commission heard the oral presentations on admissibility of the parties concerned and decided to postpone consideration on the merits of the case to its 35<sup>th</sup> Ordinary Session. By note verbale dated 4 December 2003, and by letter bearing the same date both parties were accordingly informed of the commission's decision.

21. The Commission instructed the Secretariat to have the comments of the Complainant translated into French and have the translation sent to the Respondent State to enable it submit its written comments on the merits of the communication.

22. These submissions on the merits of the case submitted by the Complainant were translated into French and sent to the Respondent State by Note Verbale on the 11<sup>th</sup> December 2003. The Respondent State was also informed that the communication would be considered on the merits at the Commission's 35<sup>th</sup> ordinary session.

23. By Note verbale dated 26 December 2003, the Secretariat received an acknowledgement from the Respondent State to its note verbale of 11 December 2003 noting that the Respondent State will forward its submission on admissibility within three months.

24. By note verbale dated 9 March 2004 the Secretariat reminded the Respondent State to forward its submission on admissibility noting further that the communication will be considered at the 35<sup>th</sup> ordinary session to be held in Dakar, Senegal from 3 – 17 May, 2004.

25. The Respondent State sent its reaction as to the merits of the communication to the Secretariat of the Commission on the 5<sup>th</sup> April 2004.

26. At the 35<sup>th</sup> Ordinary session, the Respondent State was not represented due to the change of the venue. At the 35<sup>th</sup> Ordinary Session, the Commission heard oral submissions from complainants and testimonies from witnesses on the merits of the communication.

27. By note verbale dated 18 June 2004 the Secretariat of the African Commission informed the State of its decision taken at the 35<sup>th</sup> ordinary session and by letter of the same date informed the complainant accordingly.

28. At its 36<sup>th</sup> Ordinary Session held from 23 November to 7 December 2004 in Dakar, Senegal, the African Commission considered this communication and decided to deliver its decision on the merits.

## **LAW**

### **Admissibility**

29. The admissibility of communications brought pursuant to Article 55 of the African Charter is governed by the condition stipulated in Article 56 of the Charter. This Article lays down seven (7) conditions for admissibility.

30. The African Commission requires that all these conditions be fulfilled for a communication to be declared admissible. Regarding the present communication, the

two parties do not dispute that Article 56 (1, 2, 3, 4, 6 and 7) have been fulfilled, and the only article that is in dispute is Article 56(5) of the African Charter.

31. Article 56(5) requires the exhaustion of local remedies as a condition of the presentation of a complaint before the Commission is premised on the principle that the Respondent State must first have an opportunity to redress by its own means within the framework of its own domestic legal system, the wrong alleged to have been done to the individual.

32. Concerning the matter of exhausting local remedies, a principle endorsed by the African Charter as well as customary international law, the Complainant argues that any attempt by Sierra Leonean refugees to seek local remedies would be futile for (3) three reasons:

33. First, the persistent threat of further persecution from state officials has fostered an ongoing situation in which refugees are in constant danger of reprisals and punishment. When the authorities tasked with providing protection are the same individuals persecuting victims an atmosphere in which domestic remedies are available is compromised. Furthermore, according to the precedent set by the African Commission in *Communication 147/95 and 149/96 Sir Dawda K. Jawara / the Gambia*, the need to exhaust domestic remedies is not necessarily required if the Complainant is in a life-threatening situation that makes domestic remedies unavailable.

34. Second, the impractical number of potential plaintiffs makes it difficult for domestic courts to provide an effective avenue of recourse. In September of 2000, Guinea hosted nearly 300,000 refugees from Sierra Leone. Given the mass scale of crimes committed against Sierra Leonean refugees – 5,000 detentions, mob violence by Guinean security forces, widespread looting – the domestic courts would be severely overburdened if even a slight majority of victims chose to pursue legal redress in Guinea. Consequently, the requirement to exhaust domestic remedies is impractical.

35. Finally, exhausting local remedies would require Sierra Leonean victims to return to Guinea, the country in which they suffered persecution, a situation that is both impractical and unadvisable. According to precedent set by the Commission in *Communication 71/92 Rencontre Africaine pour la Défense des Droits de l'Homme / Zambie*, victims of persecution are not necessarily required to return to the place where they suffered persecution to exhaust local remedies.

36. In this present case, Sierra Leonean refugees forced to flee Guinea after suffering harassment, eviction, looting, extortion, arbitrary arrests, unjustified detentions, beatings and rapes. Would it be required to return to the same country in which they suffered persecution? Consequently, the requirement to exhaust local remedies is inapplicable.

For these reasons, the communication is declared admissible.

## **Merits**

37. In interpreting and applying the African Charter, the African Commission relies on its jurisprudence and, as provided by Articles 60 and 61 of the African Charter, on appropriate and relevant international and regional human rights instruments, principles and standards.

38. The African Commission is therefore amenable to legal arguments that are supported by appropriate and relevant international and regional human rights principles, norms and standards.

39. The Petitioners have enclosed several affidavits from Sierra Leonean refugees who suffered widespread human rights abuses including harassment, evictions, looting, extortion, arbitrary arrests, beatings, rapes and killings while seeking refuge in the Republic of Guinea.

40. These accounts are based on interviews obtained from collaboration between the Institute for Human Rights and Development in African and Campaign for Good Governance, a Sierra Leonean NGO. Lawyers from both organisations interviewed and recorded statements from refugees who had returned to Sierra Leone from Guinea. For the most part, the depiction of events is substantiated by reports from Human Rights Watch and Amnesty International who have documented the situation of Sierra Leonean refugees in Guinea during the period in question.

41. The Republic of Guinea has ratified several regional and international human rights instruments which include the African Charter, the OAU Convention on the Specific Aspects of Refugee Problems in Africa, the International Covenant on Civil and Political Rights, the UN Convention Against Torture, and the 1951 UN Convention on the Status of Refugees, together with its 1967 Optional Protocol.

42. While the efforts of the Guinean authorities to host refugees are commendable, the allegations that the government instigated and directly discriminated against Sierra Leonean refugees present a picture of serious human rights abuses which contravene the African Charter and the other international human rights instruments to which Guinea is a party.

43. The statements made under oath by several refugees indicate that their refugee camps were direct targets and taken together with accounts of numerous other abuses, constitute tangible evidence that the Sierra-Leonean refugees in this situation had been targeted on the basis of their nationality and had been forced to return to Sierra Leone where their lives and liberty were under threat from the on-going war.

44. In view of the circumstances, the Complainant alleges that the situation which prevailed in Guinea in September 2000 manifestly violates Article 12 (5) of the African Charter which sets forth that:

*“The mass expulsion of strangers is prohibited. Mass expulsion is that which targets national, racial, ethnic or religious groups as a whole”.*

45. Among the Articles and other legal instruments to which the Respondent State is a party and by which it is bound to protect all persons against discrimination can be noted: Article 4 of the OAU Convention on the Specific Aspects of Refugees, Article 26 of the International Covenant on Civil and Political Rights and Article 3 of the 1951 United Nations Convention on the Status of Refugees.

46. The Complainants allege that in his speech of the 9<sup>th</sup> September 2000, delivered on radio in *Susu* language, President Conte incited soldiers and civilians to engage in large scale discriminatory acts against Sierra-Leonean refugees, the consequences of which had been that these persons were the direct victims of harassment, deportations, looting, stealing, beatings, rapes, arbitrary arrests and assassinations. It is further alleged that the President made no effort to distinguish between refugees and rebels and that the Government is therefore directly responsible for the violation of this fundamental precept of international law: Non-discrimination.

47. The Complainants also allege that the Respondent State violated the principle of non-refoulement under which no person should be returned by force to his home country where his liberty and life would be under threat.

48. The Complainants contend that President Conte’s speech not only made thousands of Sierra-Leonean refugees flee Guinea and return to the dangers posed by the civil war, but it also clearly authorized the return by force of Sierra-Leonean refugees. Thus, the voluntary return of refugees to Sierra Leone under these circumstances cannot be considered as voluntary but rather as a dangerous option available for the refugees.

49. The Respondent State alleges that on the 1<sup>st</sup> September 2000, the Republic of Guinea was victim of armed aggression perpetrated by elements from Liberia and Sierra Leone. These surprise attacks which were carried out simultaneously at its South and South-Eastern borders resulted in the fleeing en masse, of the populations from these zones.

50. Matching reports which came from all fronts to the Respondent State denounced persons who had lived for a long time in Guinea as refugees, and who had turned out to be, where they did not figure among those who had attacked Guinea, at least as accomplices of the attackers.

51. The President of the Republic, by virtue of the powers granted him under the Constitution, jumped to it by taking the measures necessary for safeguarding the nation's territorial integrity. In the process he recommended that all refugees be quartered and that Guineans scatter in all districts in order to unmask the attackers who had infiltrated the populations.

52. The Respondent State emphasises that such measures are in conformity with the provisions of Article 9 of the 1951 UN Convention on the Status of Refugees on refugees and Article 41 of the Laws of Guinea which provides that: "the President of the Republic is the guarantor/custodian of the independence of the nation and of territorial integrity. He is responsible for national defence....."

53. The Respondent State intimates that for the majority of the refugees the statement by the Head of State had been beneficial since the refugees had been registered, given supplies and placed in secured areas.

54. The State underscored the fact that at the time of the events there were not only Sierra Leonean refugees in Guinea but also Liberians and Guinea Bissau nationals. Guinea therefore had no interest in targeting Sierra Leonean refugees since it was public knowledge that all the attacks against the country had been directed from Liberia.

55. The Respondent State points out that there is no violation of the right to non-discrimination, since the speech referred to never mentioned specifically Sierra Leonean refugees. The Respondent State recalled that during the 34<sup>th</sup> Ordinary Session the Complainant had been requested to produce a transcript of the entire statement, which had not been done, whereas it is the responsibility of the Complainant to provide evidence.

56. The Complainants allege that almost immediately after the broadcast of President Conte's speech, the Guinean Authorities and civilians started to harass the Sierra Leonean refugees and to carry out large scale looting, expulsions and robbery of assets.

57. The Complainants contend that the rapes and physical searches carried out by the Guinean Authorities to establish a kind of discrimination against Sierra Leonean refugees constitute some form of inhuman treatment, thereby violating the dignity of the refugees.

58. The Complainants allege that the President's speech had given rise to widespread sexual violence largely against the Sierra Leonean women in Guinea with the Guinean soldiers using rape as a weapon to discriminate against the refugees and to punish them for being so-called rebels. The communication contains detailed reports of the raping of women of various ages in the prisons, in houses, control posts and refugee camps.

59. The Complainants contend that the violence described in the statements made under oath was undeniably coercive, especially since the soldiers and the civilians used arms to intimidate and threaten the women before and during the forced sexual relations.

60. The Complainant reports large scale acts of violence carried out by the soldiers, police and Guinean civilian protection groups against the thousands of Sierra Leonean refugees in the camps and in the Capital, Conakry. Different cases are mentioned, namely S.B. who is said to have been seriously injured, his hip dislocated and his knees broken with a gun in the Gueckedou Camp. S.Y. talks about soldiers who had shot her in the leg; she reports having been witness to a scene where soldiers were cutting off the ears of Sierra Leoneans with bayonets. L.C. recounts that Guinean soldiers had been shooting at random at the Sierra Leone Embassy on a group of Sierra Leoneans who had been waiting to be repatriated and that a large number of these refugees had been killed; he mentioned having also been witness at a scene where soldiers in trucks were shooting at Sierra Leoneans who were boarding the ferry to be repatriated: several of them fell into the water and were drowned.

61. The Respondent State, in a critical appraisal of these testimonies as reported, not only made comments but also raised some questions. With regard to isolated cases like those of S.B., M.F., and S.Y., the issues alluded to remain to be proved, declared the Respondent State, since they constitute a simple gathering of evidence. Concerning S.Y.'s testimony, who contends that she saw Guinean soldiers cutting off the ears of Sierra Leoneans with bayonets, it has to be pointed out that if such practices have been noted in certain countries, they do not figure among the habits of the Guinean Army.

62. The Complainants allege that the Guinean soldiers also subjected the Sierra Leonean men and women to humiliating physical searches. These searches were frequently carried out, sometimes in the presence of a group of soldiers and curious onlookers, which constituted a serious insult to their dignity.

63. The Respondent State disputes the testimony of L.C. who recounts that in front of the Sierra Leone Embassy building Guinean soldiers were shooting at random at a group of Sierra Leoneans who were waiting to be repatriated.

64. The Respondent State recalls that the Republic of Guinea and the Republic of Sierra Leone have always enjoyed relations of fraternity and good neighbourliness. This is evidenced by the fact that the Government of Sierra Leone has never complained to the Government of Guinean about any such situation. To say that Sierra Leonean refugees have been shot at by Guinean soldiers is more fiction than reality.

65. Considering all the accusations thus described by the Complainant, the Respondent State wonders if it is only Sierra Leonean refugees who live on Guinean soil. The Respondent State alleges that some hundreds of thousands of Liberian

refugees also live in Guinea and enjoy the same privileges and protection as do the Sierra Leoneans. It requested the Complainant to provide evidence with regard to the number of persons killed or injured and to indicate where or to which hospital they had been taken during the so called shooting incident by the Guinean soldiers of Sierra Leonean refugees.

66. The Respondent State recognises that if these testimonies as reported by the Complainant are proved they can only give rise to emotion and reprobation. But it insists that evidence must be produced and it is the responsibility of the Complainant to produce all the required evidence on the cases reported. The Respondent State points out that if these accounts have a basis the necessary investigations will be carried out and those responsible will be punished for their crimes.

67. The African Commission is aware that African countries generally and the Republic of Guinea in particular, face a lot of challenges when it comes to hosting refugees from neighbouring war torn countries. In such circumstances some of these countries often resort to extreme measures to protect their citizens. However, such measures should not be taken to the detriment of the enjoyment of human rights.

68. When countries ratify or sign international instruments, they do so willingly and in total cognisance of their obligation to apply the provisions of these instruments. Consequently, the Republic of Guinea has assumed the obligation of protecting human rights, notably the rights of all those refugees who seek protection in Guinea.

69. In *Communication 71/92 Rencontre africaine pour la Défense des Droits de l'Homme/Zambia*, the African Commission pointed out that “those who drafted the Charter considered large scale expulsion as a special threat to human rights”. In consequence, the action of a State targeting specific national, racial, ethnic or religious groups is generally qualified as discriminatory in this sense as it has no legal basis.

70. The African Commission notes that Guinea is host to the second largest refugee population in Africa with just under half a million refugees from neighbouring Sierra Leone and Liberia. It is in recognition of this role that Guinea was selected to host the 30<sup>th</sup> Anniversary celebrations of the 1969 OAU Convention on the Specific Aspects of Refugee Problems in Africa, which was held in Conakry, Guinea in March 2000.

71. The African Commission appreciates the legitimate concern of the Guinean Government in view of the threats to its national security posed by the attacks from Sierra Leone and Liberia with a flow of rebels and arms across the borders.

72. As such, the Government of Guinea is entitled to prosecute persons that they believe pose a security threat to the State. However, the massive violations of the human rights of refugees as are outlined in this communication constitute a flagrant violation of the provisions of the African Charter.

73. Although the African Commission was not provided with a transcript of the speech of the President, submissions before the Commission led it to believe that the evidence and testimonies of eye witnesses reveal that these events took place immediately after the speech of the President of the Republic of Guinea on 9 September 2000.

74. The African Commission finds that the situation prevailing in Guinea during the period under consideration led to certain human rights violations.

**For the above reasons, the African Commission,**

**Finds** the Republic of Guinea in violation of Articles 2, 4, 5, 12 (5) and 14 of the African Charter and Article 4 of the OAU Convention Governing the Specific Aspects of Refugees in Africa of 1969.

**Recommends** that a Joint Commission of the Sierra Leonean and the Guinea Governments be established to assess the losses by various victims with a view to compensate the victims.

**Adopted at the 36<sup>th</sup> Ordinary Session of the African Commission  
held from 23 November to 7 December 2004 in Dakar, Senegal**

**Communication 290/2004: Open Society Justice Initiative (on behalf of Pius Njawe Noumeni) / Cameroon**

**Rapporteur:**

*36<sup>th</sup> Ordinary Session Commissioner EVO DANKWA*

*37<sup>th</sup> Ordinary Session Commissioner EVO DANKWA*

*38<sup>th</sup> Ordinary Session Commissioner Angela Melo*

*39<sup>th</sup> Ordinary Session Commissioner Angela Melo*

**Summary of Facts**

1. The complaint is lodged by the NGO, Open Society Justice Initiative on behalf of a Cameroonian citizen, Pius Njawe Noumeni, against the Government of Cameroon (A state Party to the African Charter)
2. The communication was submitted in accordance with article 55 of the African Charter on Human and Peoples' Rights and the complainant alleges that in November 1999 the *Messenger* Group based in Douala, Cameroon and headed by Mr. Pius Njawe began operating a radio station in Douala whilst an illegal decision banning the operation of private radio stations was in place.
3. The complainant maintains that following the formal liberalization of air waves in April 2000, the *Messenger* Group submitted an application with the Ministry of Communications of Cameroon for a license to operate a radio station. After the six (6) months period required under the law, the Ministry of Communication did not respond favorably to the request arguing that the application was still being considered.
4. The complainant, moreover maintains that the Ministry of Communications of Cameroon was in the habit of processing applications for operational licenses in an arbitrary, illegal and discriminatory manner and had on many occasions refused to grant statutory license to operators of radio stations, and on the contrary resorting to the practice of informally issuing temporary authorization to operate on some frequencies, which did not provide any legal cover to the operators of radio stations but only placed them in a situation of uncertainty since the informal authorization could at any given time be withdrawn. In addition, the complainant maintains that by refusing to process applications for operating licenses or providing reasons for refusal to grant licenses, the Ministry of Communications tends to ban, in an arbitrary, discriminatory and politically motivated manner existing operators from continuing to operate.
5. Taking into consideration that the Ministry of Communications did not respond within the legally prescribed period to the *Messenger* Group's request and in view of the practice of arbitrarily refusing to grant operating licenses for stations, the complainant

further maintains that the *Messenger* announced in mid May 2003 that it will begin broadcasting programs on Radio Freedom FM on 24<sup>th</sup> May 2003. But on 23<sup>rd</sup> May 2003, even before Freedom FM began broadcasting, the Ministry of Communications took the decision to ban the broadcasting of the said programs and the police and the army sealed the premises of the radio station.

6. In September 2003, the *Messenger* took the matter to court requesting for a break of the seals. After 5 months of consecutive adjournments, the court of first instance of Douala decided that the matter came under the competence of the administrative court and took 3 months to deliver a written judgment which should have enabled the *Messenger* to appeal. Whilst the Court of Appeal should be considering this appeal, equipments worth \$110,000 continue to daily depreciate because of inadequate storage conditions.

7. As the procedure in the civil court followed its course, the Ministry of Communications took Mr. Pius Njawe and the *Messenger* Group to court for having “set up and operated” without a license a radio broadcasting company.

### **The Complaint**

8. The complainant maintains that the facts stated above constitute a violation by Cameroon of articles 1, 2, 9, and 14 of the African Charter on Human and Peoples’ Rights and consequently request the African Commission to consider as such and request Cameroon to pay adequate compensation to the victims for multiple violations of their rights and freedoms.

9. The complainant moreover, requests the African Commission, in accordance with article 111 of its rules of procedure to request Cameroon to adopt provisional measures with a view to:

- a. Immediately lifting the ban affecting the programs of Freedom FM and authorize it to operate whilst awaiting the outcome of the African Commission’s decision on the complaint;
- b. Break the seal on the premises of Freedom FM so that the equipments could undergo proper maintenance whilst awaiting the African Commission’s decision on the complaint;
- c. Undertake a quick review of the legislative framework and administrative practices on issuing licenses for operating radio stations with a view to harmonizing them with the provisions of article 9 of the African Charter and the 2002 Declaration of Principles.

## Procedure

10. The complaint was received at the Secretariat of the African Commission on 28/06/2004.

11. By a letter ref. ACHPR/COMM 290/2004/RK addressed to the complainant, the Secretariat of the African Commission acknowledged receipt of this communication on 5<sup>th</sup> July 2004 and indicated that the seizure of the complaint will be considered by the African Commission at its 36<sup>th</sup> Ordinary Session (23<sup>rd</sup> November to 7<sup>th</sup> December 2004, Dakar, Senegal).

12. By a letter ref. ACHPR/GOV/COMM/3/RK of 15<sup>th</sup> July 2004, the Chairperson of the African Commission sent an urgent request for the adoption of provisional measures in accordance with the provisions of article 111 of the African Commission's rules of procedure, to H.E Mr. Paul Biya, President of the Republic of Cameroon requesting that provisional measures be taken to ensure that no irreparable damage is done to the equipment of Radio Freedom FM.

13. By a letter of 16<sup>th</sup> November 2004, the complainant informed the Chairperson of the African Commission, Commissioner Sawadogo, that the request for provisional measures had not been complied with and that further the complainant had received death threats over the matter.

14. During the 36<sup>th</sup> Ordinary Session held in Dakar, Senegal from 23<sup>rd</sup> November to 7<sup>th</sup> December 2004, the African Commission considered the communication and decided to be seized of it. The Complainants made oral submissions on the failure of the State to comply with the request for provisional measure. The State delegates indicated that they has not been made aware of the request and the head of delegation, Minister Joseph Dion Ngute offered his good offices with a view to facilitating an amicable solution of the matter.

15. On 22<sup>nd</sup> December 2004, the Secretariat informed the parties that the African Commission had been seized of the communication and requested them to submit arguments on admissibility in three months from the date of notification.

16. On 22<sup>nd</sup> February 2005, the Secretariat reminded the State through a Note Verbale to submit its arguments on admissibility within one month from the date of the reminder.

17. On 22<sup>nd</sup> March 2005, the complainant submitted further arguments on admissibility, which were transmitted to the Respondent State on 29<sup>th</sup> March 2005 through the Embassy of the Respondent State.

18. At its 37<sup>th</sup> Ordinary Session, which was held from 27<sup>th</sup> April to 11<sup>th</sup> May 2005 in Banjul, The Gambia, the African Commission considered the case and heard oral submissions from the parties. The African Commission subsequently deferred its decision on admissibility of the case pending receipt of arguments of the Respondent State on the same.

19. On 8<sup>th</sup> December 2005, the Respondent State sent to the Secretariat a letter informing it that amicable settlement was underway in the matter.

20. On 4<sup>th</sup> October 2005, the Secretariat informed the complainant of the above letter and forwarded the attached documentation and requested them to send in their comments on the same.

21. At its 38<sup>th</sup> Ordinary Session held from the 21<sup>st</sup> November to 5<sup>th</sup> December 2005 in Banjul, The Gambia, the African Commission deferred its decision on the matter awaiting for comments of the complainant on the outcome of the said amicable settlement

22. On 28<sup>th</sup> April 2006, the Secretariat received a note from the complainant informing it that:

1. The Government of Cameroon dropped the criminal charges against the Freedom FM director and released the equipment of the Radio;
2. The Government committed itself to grant Radio Freedom FM a provisional authorization to broadcast, and process its application for a full license in a fair and equitable manner;
3. Freedom FM, for its part, agreed to discontinue the communication before the Commission, and settle the case;
4. The ongoing negotiations between the parties on the compensation issue have now produced a mutually acceptable compromise, with the Government of Cameroon agreeing to re-open the discussions with Radio Freedom FM in relation to the compensation of the damages suffered by the radio, with a view to reaching a fair, comprehensive and final settlement of the case; and
5. The Government has reiterated its commitment to grant Freedom FM a provisional authorization as soon as consideration of the current Communication is discontinued – as well as process the Radio's application for a broadcasting license in a fair, transparent, and expeditious manner.

23. In consideration of the above, the Open Society Justice Initiative, acting on behalf of Mr. Pius Njawe and Groupe Le Messenger, requested the African Commission to discontinue the consideration of Communication 290/04 against the Republic of Cameroon and that the amicable settlement be registered in its lieu.

24. At its 39<sup>th</sup> Ordinary Session held from 11<sup>th</sup> to 25<sup>th</sup> May 2006 in Banjul, The Gambia, the African Commission considered the communication and decided to close the file.

### **Decision**

25. The African Commission takes note of the above request and decides to close the file.

26. The African Commission also requests the parties to forward to the Secretariat the written copy of the said amicable settlement for inclusion in the file.

***Done at the 39<sup>th</sup> Ordinary Session held in Banjul, The Gambia,  
from 11<sup>th</sup> to 25<sup>th</sup> May 2006***

**Communication 299/05--Anuak Justice Council/ Ethiopia**

**Rapporteur:**

**37<sup>th</sup> Ordinary Session: Commissioner EVO Dankwa**  
**38<sup>th</sup> Ordinary Session: Commissioner Nyanduga/Malila**  
**39<sup>th</sup> Ordinary Session: Commissioner Malila**

**Summary of facts**

1. The communication is submitted by the Anuak Justice Council, through Obang Metho the Director for International Advocacy, Anuak Justice Council which was prepared by the International Human Rights Clinic, Washington College of Law in Washington, D.C in the United States of America against the Federal Democratic Republic of Ethiopia, the Respondent State, a party to the African Charter on Human and Peoples' Rights since 1998

2. The complainant avers that the respondent through its agents, the Ethiopian Defence Forces has been engaged in massive discrimination resulting in serious human rights abuses and violations of the people of Anuak ethnicity. They claim that the abuses by the Ethiopian Defence Forces include the massacre of over four hundred and twenty-four civilians, the wounding of over two hundred civilians and the disappearance of over eighty-five civilians in the Gambella region in the three day period of December 13 -15, 2003. The complainant states that the abuses have continued against the Anuak since that period including extrajudicial killing, torture, detention, rape and property destruction throughout the Gambella region resulting in 1000 Anuak deaths and that, over 51,000 Anuak have been displaced within the Gambella region.

3. The complainant adds, that the Republic of Ethiopia has violated its legal obligations to uphold the rights and principles of all Ethiopian citizens, and has violated its obligation to uphold the rights and protections enshrined in the African Charter under Articles 4,5,6,12,14,18.

4. The Anuak Justice Council requests the African Commission on Human and People's Rights to grant provisional measures and declare them binding on the Ethiopian government.

5. The complainant states that the Anuak are an indigenous minority group living in south-western Gambella region of Ethiopia and that despite their dominance in the region, the Ethiopian government has a long history of marginalizing, excluding and discriminating against them. The complainant claims that due to Gambella's natural resources, the Ethiopian government has resettled over sixty thousand Highlanders', who had almost completely destroyed the Anuak way of life within Gambella.

6. The complainant avers that the Anuak believe that oil in the region should belong to them, while the Federal Government argues that under the federal constitution all mineral resources belong to the Ethiopian State. The complainant adds that the Ethiopian Defence Forces are stationed throughout the Gambella in order to identify and destroy disparate groups of armed Anuak known collectively as 'shifita' that have attacked Highlander civilians.

7. The complainant submits that the December 2003 massacre was sparked by the killing of eight Highlander refugee camp officials and propelled the Ethiopian Defence Forces into a broad-based assault on Gambella's Anuak community. The complainant states that despite the fact that nobody was immediately found responsible for the death of the eight people, there is no indication that the Ethiopian government had undertaken an official investigation into the ambush of the refugee camp officials thus blaming the Anuak community for the attacks.

8. The complainant avers that the violence in the Gambella region has continued since December 2003 and remains a serious threat to Anuak citizens as well as other ethnic groups in the region. The complainant allege that the Ethiopian Defence Forces search for 'shifita' has become the pretext for bloody and destructive raids on numerous Anuak villages since the December 2003 massacre on the Gambella town. The complainant further allege that unarmed Anuak within Gambella are currently being killed by Ethiopian Defence Forces without due process or the use of judicial proceedings without even making an effort to distinguish Anuak civilians from the 'shifita' they claim to be looking for.

9. The complainant further allege that many Anuak have been detained in prison without charge both in Gambella and Addis Ababa which accounts to about 1000 detained to this day. The complainant also adds that a substantial group of Gambella's educated Anuak have been imprisoned or forced into exile and that many have been charged with offences relating to alleged collaboration with Anuak insurgents and put on trial but none of the leaders are yet to be convicted.

10. The complainant further alleged that in rural areas the Ethiopian military continues to burn homes, destroy crops, burn food stores, disrupt planting cycles, and destroy agricultural equipment of the Anuak to prevent them from sustaining themselves. The complainant asserts that as recently as January 2005, the Ethiopian government threatened Anuak elders in Gambella that anyone attempting to tarnish the reputation of the Ethiopian government over the massacres would be dealt with.

11. The complainant claims that the Ethiopian government's response to the December massacre has been grossly inadequate and disingenuous. The complainant states that the government's initial position that no soldiers had taken part in the massacre had become impossible to defend and adds that the Commission's of Inquiry

set up by the Government was biased and ineffectual and did not investigate the behaviour of the Ethiopian Defence Forces as an organization despite numerous reports.

### **The Complaint**

12. The complainant states that crimes against humanity, such as extrajudicial killing, torture, and rape, crimes that take place against the Anuak civilians is in violation of international law as well as a violation of Articles 4, 5, 6, 12, 14 and 18 of the African Charter. The Anuak Justice Council urges the African Commission on Human and Peoples Rights to intervene to prevent further human rights abuses of the Anuak by the Ethiopian government.

13. The Complaint further makes an urgent request for provisional measures under Rule 111 of the Rules of Procedures of the African Charter that the African Commission may intervene to “avoid irreparable damage being caused to the victim of the alleged violation.”

### **Request for provisional measures – summary**

14. The complainant, requests for provisional measures to the African Commission on Human and Peoples’ Rights pursuant to Rule 111 of the Rules of Procedures of the Commission. The complaint relates to the alleged actions of the Defence Forces of the Federal Democratic Republic of Ethiopia. These actions according to the complainant reveal a pattern of serious and massive human and peoples’ rights violations by the Ethiopian Defence Forces. That, bound by the African Charter on Human and Peoples’ Rights, the Federal Democratic Republic of Ethiopia, has and continues to violate Articles 4, 5, 6, 12, 14, and 18 of the African Charter.

15. The Anuak Justice Council therefore seeks the Commission’s intervention and issuance of Provisional Measures requesting that the Ethiopian government stops the human rights abuses of the Anuak pending a decision of the African Commission on the concurrent communication and is also seeking an in-depth study of the treatment of the Anuak by the African Commission pursuant to Article 58 of the Charter.

16. The Anuak Justice Council notes that it does not request the Commission to evaluate the merits of this case rather, in this provisional measures submission, the Anuak Justice Council merely asks that the Commission request that the Ethiopian government immediately stops the series of serious and massive violations of human and peoples’ rights of the Anuak people prior to the issuance of a decision by the African Commission on the merits.

17. That the Commission has jurisdiction to issue provisional measures under Article 111 of the rules of procedure of the African Charter of Human and Peoples' Rights. See *Registered Trustees of the Constitutional Rights Project v. the President of the Federal Republic of Nigeria and Five Others*. Similar to the Nigeria case, many Anuak have also been and continue to be sentenced to death. The Commission should therefore find the Anuak situation as even more severe and compelling than the Nigeria case and grant provisional measures.

18. The complainant notes further that while the African Commission on Human and Peoples' Rights has not decided whether grants of Provisional Measures should be binding on State Parties, other international and regional human rights bodies have declared that Provisional Measures be binding on States including the European Court of Human Rights, Inter-American Commission, the International Court of Justice and the UN Human Rights Committee. Due to the severity of the situation that the Anuak find themselves subject to in the Gambella, in prisons throughout Ethiopia and as refugees in Sudan and Kenya, petitioners plead that the African Commission grant provisional measures and declare them binding on the Ethiopian government.

19. The complainant seeks the Commission's intervention and issuance of Provisional Measures requesting that the Ethiopian government stop human rights abuses of the Anuak, pending the decision of this Commission on the Anuak Justice Council's concurrent communication to the African Commission on Human and Peoples' Rights on the merits of this claim and further urges the Commission to find that its order of Provisional Measures in this case be binding upon the Ethiopian government.

## Procedure

20. The communication was received at the Secretariat of the African Commission on 4 April 2005

21. By letter of 20 April 2005 the Secretariat acknowledged receipt thereof informing the complainant that the communication has been registered as **communication 299/05 - Anuak Justice Council/Ethiopia** and that the communication will be considered on seizure at the 37<sup>th</sup> ordinary session of the African Commission.

22. At its 37<sup>th</sup> ordinary session held in Banjul, The Gambia from 27 April to 11 May 2005, the African commission considered the communication and decided to be seized thereof.

23. By note Verbale of 24 May 2005 the Secretariat of the African Commission notified the State of the Commission's decision and forwarded the complaint to the State with a request for the latter to make its submission on the merits within three months of

the notification. By letter of 24 May 2005, the Secretariat of the African Commission informed the complainant of the Commission's decision.

24. On 23 August 2005, the Secretariat received the Respondent State's submissions on admissibility.

25. On 25 August 2005, the Secretariat transmitted the Respondent State's submission on admissibility to the complainant, requesting the latter to respond thereto before 25 September.

26. On 21 complainant wrote to the Secretariat informing the latter that the legal representative of the Anuak Justice Council had changed adding that they received the Secretariat's letter of 25 August only on 9 September and would like the deadline for the submission of their arguments on admissibility to be moved to 9 October 2005. The Complainant also requested for provisional measures to be taken by the Commission.

27. On 10 October 2005, The Secretariat received the complainant's response on the Respondent State submissions on admissibility.

28. On 19 October 2005, the Secretariat transmitted the complainant's response to the Respondent State with a request to the latter to make its comments, if any, before 31 October 2005.

29. At its 38<sup>th</sup> Ordinary Session, the African Commission deferred consideration on the admissibility of the communication and to enable the Secretariat get additional information from the parties.

30. By Note Verbale of 19<sup>th</sup> January 2006 and by letter of the same date, the Secretariat of the African Commission notified the parties of the African Commission's decision.

31. At its 39<sup>th</sup> ordinary session held in Banjul, The Gambia from 11 – 25 May 2006, the African Commission considered the communication and decided to declare it inadmissible.

32. By Note Verbale of 29 May 2006 and by letter of the same date, both parties were notified of the African Commission's decision.

### **Complainant's submission on admissibility**

33. The complainant submits that article 56 (5) of the African Charter requires that complainants exhaust domestic remedies before a case is considered by the African Commission. The complainant notes further that if the potential domestic remedies are

unavailable or unduly prolonged, the commission may nevertheless consider a communication, adding that this is especially true when the country against which the complaint is lodged has committed vast and varied scope of violations and the general situation in the country is such that domestic exhaustion would be futile.

34. The complainant argue that in the *Anuak Justice Council Case*, pursuing domestic remedies would be futile due to the lack of an independent and impartial judiciary, a lack of an efficient remedy, the significant likelihood of an unduly prolonged domestic remedy, and most importantly, the potential for violence against the Annuak or those supporting them within the legal system.

35. Anuak Justice Council alleges that it cannot seek exhaustion of domestic remedies because of its inability to receive an independent and fair hearing, as a direct consequence of the fact that the aggressor is the government of Ethiopia. The complainant notes that in spite the protection in Article 78 of the Respondent State's Constitution guaranteeing the independence of the Judiciary, it is perceived by individuals both at home and abroad that the Executive has considerable and even undue influence on the judiciary.

36. The complainant quoted a World Bank Report entitled "Ethiopia: Legal and Judicial Sector Assessment" (2004) which concluded that "... of the three branches of government, the judiciary has the least history and experience of independence and therefore requires significant strengthening to obtain true independence". According to the complainant, the Report notes that the interference in the judiciary is more flagrant at State level where there are reports of Administrative officers interfering with court decisions, firing judges, dictating decisions to judges, reducing salaries of judges and deliberately refusing to enforce certain decisions of the courts.

37. The complainant also alleges that bringing the case before Ethiopian courts would unduly prolonging the process as the Ethiopian judiciary suffer from a complex system of multiple courts that lack coordination and resources, including "dismal conditions of service, staff shortages, lack of adequate training, debilitating infrastructure and logistical problems". The complainant claims court proceedings take years to yield results, and concluded that the Respondent State's judicial system is so under resourced that prosecutions would be nearly impossible, noting that to date, no action had been taken to prosecute any of the Ethiopian Defence Forces or government officials for the atrocities they committed against the Anuak.

38. The complainant also alleges that the Anuak fear for their safety in bringing the case in Ethiopia adding that there are no Anuak trained as lawyers who could bring the case before Ethiopian courts. The complainant notes that the overwhelming sentiment in the Gambella Region and of the Anuak who have fled the country is that non - Anuak lawyers within Ethiopia would be unwilling to take the case due to the potential

persecution they would face, as well as the insurmountable odds of achieving a just remedy. The complainant added that Anuak who remain in the Gambella Region continue to suffer from extra-judicial executions, torture, rape and arbitrary detention from the authorities of the Respondent State adding that several of them have been threatened and warned specifically against pursuing a case against the Respondent State. The complainant noted that as recently as January 2005, the Respondent State threatened Anuak leaders, declaring that anyone attempting to tarnish the reputation of the Respondent State would be dealt with. The complainant concluded by stating that to bring the case within the Respondent State would only further endanger the lives of the remaining Anuak in the Ethiopia.

39. The complainant added that the Respondent State had been given notice and adequate time to remedy the human rights violations against the Anuak but has utterly failed to do so. That the Respondent State received notice of the violations but chose not to take action to halt the atrocities or to make its forces accountable. The complainant added that the Respondent State's response to the massacres in December 2003 in the Gambella Region was inadequate and disingenuous. That under international pressure, the Respondent State established a Commission of Inquiry to investigate the killings, however, according to the complainant, the inquiry was biased and ineffectual and did not meet international standards of an independent investigation.

#### **Respondent State's submissions of admissibility**

40. The Respondent State claims that the cases of those involved in the alleged violations that took place in the Gambella Region are currently pending before the Federal Circuit Court and the respondent, therefore, argued that domestic remedies have not yet been exhausted. The State provided a list of about 9 such cases including their file numbers and previous and future dates of adjournments.

41. The respondent State argues that the rule that local remedies be exhausted is not limited to individuals and also applies to organisations, including those in no way subject to the jurisdiction of the respondent State. According to the respondent, the complainant could have sought redress from the domestic courts, the Judicial Administration Office, the Commission of Inquiry or the Human Rights Commission but did not. The complainant has not, argued the State, shown the existence of any impediment to the use of these remedial processes or that such were unduly long.

42. Without indicating the status of the proceedings, the State argued that all those alleged of human rights offences associated with the Gambella incident of December 2003 were brought before the Federal Circuit Court. The State indicated that three domestic remedies were available to the complainants – the competent Courts, the Judicial Administration Officer and the Human Rights Commission but the complainants failed to approach any of them.

**Provisional Measures:**

43. The Republic of Ethiopia argues that the complainant has sought only to present what it claims is *prima facie* evidence of violations and has not shown that if such alleged violations continue there will be “irreparable injury”, as required. Finally, the respondent submits that the Government has presented sufficient evidence that it has taken adequate measures to rectify the situation and that the situation in general has stabilised and does not warrant any provisional measures from the Commission. The Respondent State submits as follows:

- In February 2004, the Office of the Prime Minister issued instructions to Federal institutions to assist the Regional Administration in safeguarding the security of the people and institutions and preventing further violence; soliciting the support of elders, the youth and civil servants in the effort towards sustainable peace, democracy and development; rehabilitating victims of the violence and internally displaced people; and bringing to justice those responsible for committing the violence and the destruction of property.
- The Defence Forces, once deployed, protected the civilian population and allowed humanitarian assistance and rehabilitation.
- The Federal Government, in cooperation with international agencies, coordinated humanitarian assistance to alleviate the suffering of the victims of violence and the displaced.
- A Commission of Inquiry has been established to investigate the circumstances surrounding the crisis, charges have been filed against several individuals as a result.
- The Government has organised various consultations and workshops with the participation of the local population which have proposed concrete solutions aimed at resolving the problems facing the region and have identified the root causes of the crisis.
- The Federal Police have recently graduated more than three hundred police officers from the Gambella region to aid in maintaining law and order in the region once the situation has stabilised.

## The law Admissibility

44. The current communication is submitted pursuant to Article 55 of the African Charter which allows the African Commission to receive and consider communications, other than from States Parties. Article 56 of the African Charter provides that the admissibility of a communication submitted pursuant to Article 55 is subject to seven conditions. The African Commission has stressed that the conditions laid down in Article 56 are conjunctive, meaning that if any one of them is absent, the communication will be declared inadmissible.

45. The complainant in the present communication argued that it has satisfied the admissibility conditions set out in Article 56 of the Charter and as such, the communication should be declared admissible. The Respondent State on the other hand submitted that the communication should be declared inadmissible because, according to the State, the complainant has not complied with Article 56 (5) of the African Charter. As there seems to be agreement by both parties as to the fulfillment of the other requirements under Article 56, this Commission will not make any pronouncements thereof.

46. Article 56 (5) of the African Charter provides that communications relating to human and peoples' rights shall be considered if they: "[a]re sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged".

47. Human rights law regards it as supremely important for a person whose rights have been violated to make use of domestic remedies to right the wrong, rather than address the issue to an international tribunal. The rule is founded on the premise that the full and effective implementation of international obligations in the field of human rights is designed to enhance the enjoyment of human rights and fundamental freedoms at the national level. In *Free Legal Assistance Group v. Zaire and Rencontre Africaine pour la Défense de Droits de l'Homme [RADDHO] v. Zambia*, this Commission held that "a government should have notice of a human rights violation in order to have the opportunity to remedy such violations before being called before an international body."<sup>1</sup> Such an opportunity will enable the accused state to save its reputation, which would be inevitably tarnished if it were brought before an international jurisdiction.

48. The rule also reinforces the subsidiary and complementary relationship of the international system to systems of internal protection. To the extent possible, an international tribunal, including this Commission, should be prevented from playing the role of a court of first instance, a role that it cannot under any circumstances arrogate to itself. Access to an international organ should be available, but only as a last resort -

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<sup>1</sup> See Comm. Nos. 25/89, 47/90, 56/91, 100/93, para. 36, 1995 and Comm. No. 71/92, para. 11.

after the domestic remedies have been exhausted and have failed. Moreover, local remedies are normally quicker, cheaper, and more effective than international ones. They can be more effective in the sense that an appellate court can reverse the decision of a lower court, whereas the decision of an international organ does not have that effect, although it will engage the international responsibility of the state concerned.

49. The African Charter states that this African Commission shall consider a communication after the applicant has exhausted local remedies, “*if any, unless it is obvious that this procedure is unduly prolonged.*” The Charter thus recognizes that, though the requirement of exhaustion of local remedies is a conventional provision, it should not constitute an unjustifiable impediment to access to international remedies. This Commission has also held that Article 56(5) “must be applied concomitantly with article 7, which establishes and protects the right to fair trial.”<sup>1</sup> In interpreting the rule, the Commission appears to take into consideration the circumstances of each case, including the general context in which the formal remedies operate and the personal circumstances of the applicant. Its interpretation of the local remedies criteria can therefore not be understood without some knowledge of that general context.

50. A local remedy has been defined as “any domestic legal action that may lead to the resolution of the complaint at the local or national level.”<sup>2</sup> The Rules of Procedure of the African Commission provide that “[t]he Commission shall determine questions of admissibility pursuant to Article 56 of the Charter.”<sup>3</sup> Generally, the rules require applicants to set out in their applications the steps taken to exhaust domestic remedies. They must provide some *prima facie* evidence of an attempt to exhaust local remedies.<sup>4</sup> According to the Commission’s guidelines on the submission of communications, applicants are expected to indicate, for instance, the courts where they sought domestic remedies. Applicants must indicate that they have had recourse to all domestic remedies to no avail and must supply evidence to that effect. If they were unable to use such remedies, they must explain why. They could do so by submitting evidence derived from analogous situations or testifying to a state policy of denying such recourse.

51. In the jurisprudence of this Commission, three major criteria could be deduced in determining the rule on the exhaustion of local remedies, namely: that the remedy must be available, effective and sufficient.”<sup>5</sup> According to this Commission, a remedy is

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<sup>1</sup> Amnesty International v. Sudan, para. 31.

<sup>2</sup> See Constitutional Rights Project [CRP] v. Nigeria, Comm. No. 60/91.

<sup>3</sup> Rule 116 of the Commission’s Rules of Procedures.

<sup>4</sup> Ceesay v. The Gambia,

<sup>5</sup> Jawara v. The Gambia, Comm. Nos. 147/95, 149/96, para. 31,

considered to be available if the petitioner can pursue it without impediments<sup>1</sup> or if he can make use of it in the circumstances of his case.<sup>2</sup> The word “available” means “readily obtainable; accessible”; or “attainable, reachable; on call, on hand, ready, present; . . . convenient, at one’s service, at one’s command, at one’s disposal, at one’s beck and call.”<sup>3</sup> In other words, “remedies, the availability of which is not evident, cannot be invoked by the State to the detriment of the complainant.”<sup>4</sup>

52. A remedy will be deemed to be effective if it offers a prospect of success.<sup>5</sup> If its success is not sufficiently certain, it will not meet the requirements of availability and effectiveness. The word “effective” has been defined to mean “adequate to accomplish a purpose; producing the intended or expected result,” or “functioning, useful, serviceable, operative, in order; practical, current, actual, real, valid.”<sup>6</sup> Lastly, a remedy will be found to be sufficient if it is capable of redressing the complaint.<sup>7</sup> It will be deemed insufficient if, for example, the applicant cannot turn to the judiciary of his country because of a generalized fear for his life “or even those of his relatives.”<sup>8</sup> This Commission has also declared a remedy to be insufficient because its pursuit depended on extrajudicial considerations, such as discretion or some extraordinary power vested in an executive state official. The word “sufficient” literally means “adequate for the purpose; enough”; or “ample, abundant; . . . satisfactory.”<sup>9</sup>

53. In the present communication, the author of the communication is based in Canada, alleging human rights violations in the respondent State following an incident that occurred in the country. The complainant does not hide the fact that local remedies were not attempted but argued that pursuing domestic remedies in the respondent State would be futile “due to the lack of an independent and impartial judiciary, a lack of an efficient remedy, the significant likelihood of an unduly prolonged domestic remedy, and most importantly, the potential for violence against the Anuak or those supporting them within the legal system”. The complainant argued that the violations that took place in

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<sup>1</sup> Id. para. 32

<sup>2</sup> Id para 33

<sup>3</sup> LONGMAN SYNONYM DICTIONARY 82 (1986)

<sup>4</sup> Jawara *supra*, para. 33.

<sup>5</sup> Id para 32.

<sup>6</sup> Longman *supra*.

<sup>7</sup> Jawara *supra* para 32.

<sup>8</sup> Id para 35.

<sup>9</sup> Longman *supra* at 1183.

Gambella were massive and serious and involved many people – it noted that “the government forces and its collaborators, having previously drawn a list of targets, went from door to door, slaughtering any educated Anuak men they could find, women and children were raped, and homes and schools were burnt to the ground...”.

54. The complainant noted further that the judiciary in the respondent state is not independent due to interference at State level where there are reports of Administrative officers interfering with court decisions, firing of judges, dictating decisions to judges, reducing salaries of judges and deliberately refusing to enforce certain decisions of the courts; and that bringing the case before Ethiopian courts would be unduly prolonging the process as the Ethiopian judiciary suffers from “a complex system of multiple courts that lack coordination and resources”, including “dismal conditions of service, staff shortages, lack of adequate training, debilitating infrastructure and logistical problems”. The complainant claims court proceedings “take years to yield results”, and concluded that the Respondent State’s judicial system is “so under resourced that prosecutions would be nearly impossible”.

55. The complainant also alleges that the Anuak fear for their safety in bringing the case in Ethiopia adding that there are no Anuak trained as lawyers who could bring the case before Ethiopian courts. The complainant concluded by stating that to bring the case within the Respondent State would only further endanger the lives of the remaining Anuak in the Ethiopia. The complainant added that the Respondent State had been given notice and adequate time to remedy the human rights violations against the Anuak but has utterly failed to do so.

56. Can this Commission conclude, based on the above allegations by the complainant that local remedies in the respondent State are not available, ineffective or insufficient?

57. It must be observed here that the complainant’s submissions seems to suggest that local remedies may in fact be available but it is apprehensive about their effectiveness as far as the present case is concerned. From the complainant’s submissions, it is clear that the complainant has relied on reports, including a World Bank report which concluded that “of the three branches of government, the judiciary has the least history and experience of independence and therefore requires significant strengthening to obtain true independence”.

58. The complainant’s submissions also demonstrate that it is apprehensive about the success of local remedies either because of fear for the safety of lawyers, the lack of independence of the judiciary or the meagre resources available to the judiciary. Apart from casting aspersions on the effectiveness of local remedies, the complainant has not provided concrete evidence or demonstrated sufficiently that these apprehensions are founded and may constituted a barrier to it attempting local remedies. In the view of this

Commission, the complainant is simply casting doubts about the effectiveness of the domestic remedies. This Commission is of the view that it is incumbent on every complainant to take all necessary steps to exhaust, or at least attempt the exhaustion of, local remedies. It is not enough for the complainant to cast aspersion on the ability of the domestic remedies of the State due to isolated or past incidences. In this regard, the African Commission would like to refer to the decision of the Human Rights Committee in **A v Australia**<sup>1</sup> in which the Committee held that “mere doubts about the effectiveness of local remedies ... did not absolve the author from pursuing such remedies”.<sup>2</sup> The African Commission can therefore not declare the communication admissible based on this argument. If a remedy has the slightest likelihood to be effective, the applicant must pursue it. Arguing that local remedies are not likely to be successful, without trying to avail oneself of them, will simply not sway this Commission.

59. The complainant also argue that the violations alleged are serious and involve a large number of people and should be declare admissible as the Commission can not hold the requirements of local remedies to apply literally in cases where it is impracticable or undesirable for the complainant to seize the domestic courts in the case of each violation. In the *Malawi African Association* case<sup>3</sup>, for example, this Commission observed that [t]he gravity of the human rights situation in Mauritania and the great number of victims involved render[ed] the channels of remedy unavailable in practical terms, and, according to the terms of the Charter, their process [was] “unduly prolonged”. In like manner, the *Amnesty International v. Sudan* case<sup>4</sup> involved the arbitrary arrest, detention, and torture of many Sudanese citizens after the coup of July 30, 1989. The alleged acts of torture included forcing detainees into cells measuring 1.8 meters wide and 1 meter deep, deliberately flooding the cells, frequently banging on the doors to prevent detainees from lying down, forcing them to face mock executions, and prohibiting them from bathing or washing. Other acts of torture included burning detainees with cigarettes, binding them with ropes to cut off circulation, and beating them with sticks until their bodies were severely lacerated and then treating the resulting wounds with acid. After the coup, the Sudanese government promulgated a decree that suspended the jurisdiction of the regular courts in favor of special tribunals with respect to any action taken in applying the decree. It also outlawed the taking of any legal action against the decree. These measures, plus the “seriousness of the human rights situation

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<sup>1</sup> Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997).

<sup>2</sup> See also *L Emil Kaaber v Iceland*, Communication No. 674/1995. UN Doc. CCPR/C/58/D/674/1995 (1996). See also *Ati Antoine Randolph v. Togo*, Communication No. 910/2000, UN Doc. CCPR/C/79/D/910/2000 (2003).

<sup>3</sup> See combined Communications. Nos. 54/91, 61/91, 98/93, 164/97, 210/98, para. 80,

<sup>4</sup> Comm. Nos. 48/90, 50/91, 52/91, 89/93, para. 32.

in Sudan and the great numbers of people involved, the Commission concluded, “render[ed] such remedies unavailable in fact.”<sup>1</sup>

60. Thus, in cases of massive violations, the state will be presumed to have notice of the violations within its territory and the State is expected to act accordingly to deal with whatever human rights violations. The pervasiveness of these violations dispenses with the requirement of exhaustion of local remedies, especially where the state took no steps to prevent or stop them.<sup>2</sup>

61. The above cases must however be distinguished from the present case which involves one single incident that took place for a short period of time. The respondent State has indicated the measures it took to deal with the situation and the legal proceedings being undertaken by those alleged to have committed human rights violations during the incident. By establishing the Gambella Commission of Inquiry and indicting alleged human rights perpetrators, the state, albeit under international pressure, demonstrated that it was not indifferent to the alleged human rights violations that took place in the area and in the view of this Commission could be said to have exercised due diligence.

62. This Commission has also held in many instances that domestic remedies have not been exhausted if a case that includes the subject matter of the petition before it is still pending before the national courts. In *Civil Liberties Organization v. Nigeria*,<sup>3</sup> the African Commission declined to consider a Communication with respect to which a claim had been filed but not yet settled by the courts of the respondent state. In the present communication, the respondent State indicates that the matter is still pending before its courts and attached a list of cases still pending before the Federal Circuit Court in relation with the Gambella incident. The list provided the names of the suspects, file number of their cases, previous and future dates of adjournments. The complainant does not deny this process is going on. In the view of this Commission, it does not matter whether the cases still pending before the courts have been brought by the complainant or the state. The underlying question is whether the case is a subject matter of the proceedings before the Commission and whether it is aimed at granting the same relief the complainant is seeking before this commission. As long as a case still pending before a domestic court is a subject matter of the petition before this Commission, and as long as this Commission believes the relief sought can be obtained locally, it will decline to entertain the case. It is the view of this Commission that the

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<sup>1</sup> Ibid.

<sup>2</sup> Organisation Mondiale Contre la Torture and Association Internationale des Juristes Démocrates, Commission Inter.nationale des Juristes (C.I.J.), *Union Interafricaine des Droits de l’Homme v. Rwanda*, Comm. Nos. 27/89, 46/91, 49/91, 99/93.

<sup>3</sup> Comm. No. 45/90.

present communication is still pending before the courts of the respondent State and therefore does not meet the requirements under Article 56 (5).

For the above reasons, the African Commission declares communication 299/2005 – Anuak Justice Council/Ethiopia **inadmissible** for non-exhaustion of local remedies in conformity with Article 56 (5) of the African Charter on Human and Peoples' Rights.

**312/2005 - INTERIGHTS & the Egyptian Initiative for Personal Rights / Egypt<sup>1</sup>**

**Rapporteur:**

*38<sup>th</sup> Ordinary Session: Commissioner Yaser Sid Ahmed El-Hassan*  
*39<sup>h</sup> Ordinary Session: Commissioner Yaser Sid Ahmed El-Hassan*

**Summary of the facts:**

1. The complaint is filed by the International Centre for Human Rights (INTERIGHTS)<sup>2</sup>, and the Egyptian Initiative for Personal Rights pursuant to Article 55 and 56 of the African Charter on Human and Peoples' Rights ("the African Charter").

2. The authors allege that the victim under the present communication is a religious training Egyptian graduate of Al-Azhar University in Cairo, Egypt, who continuously sought to challenge the legality of his arrest after being arrested from his home on 18<sup>th</sup> of May 2003 with out being given no reason but due to presumably his unpublished religious researches refuting the oftenly held opinions of the 'duty of Muslims to kill converts from Islam to other religions' and 'prohibition on Muslim women marrying non-Muslim men' which was distributed widely. Despite several appeals of the applicant. Despite his several appeals and official complaints and the repeated release orders of the Emergency Court, the victim still continues to be in prison. They further alleged that applicant has been made subject to assaults and harassments consequent to his arrest, and his complaints to get protection and investigation proved to be futile.

3. The authors submit that the applicant's rights have been violated under Articles 2, 5, 6, 7(1)(d), 8 and 9(2) of the Charter as he was discriminated against in his enjoyment of Charter rights on the basis of his religious beliefs; inhumanely detained and denied the protection and respect of the right to dignity; arbitrarily arrested and detained and denied effective judicial remedy; and when arbitrarily restricted to exercise his freedom to express his religious thoughts.

4. It is further alleged that the violations of the applicants rights have been made possible by the respondent states's State of Emergency which the African Commission has had, on a number of occasions, the opportunity of to consider and emphasis that the Charter does not permit states to derogate from their responsibilities during states of emergency, and that this is "an expression of the principle that the restriction of human rights is not a solution to national difficulties".

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<sup>1</sup> Egypt ratified the African Charter on the 20<sup>th</sup> of March 1984.

<sup>2</sup> International Centre for Human Rights (INTERIGHTS) is a Non-government Organization which was granted Observer Status with the African Commission during the 18<sup>th</sup> Ordinary Session in October 1990.

5. The authors averred that each time the Emergency Court has ordered the applicant's release the Minister for Interior, Mr.Habib El-Adli has issued a new administrative detention decree under Article 3 of the Emergency Law which allows the President, or the Minister for the Interior to order, orally or in writing, the arrest and detention of those who "pose a threat to public security".

6. The authors also alleged that the applicant has appealed his detention several times before the State Security Emergency Court, the only and final judicial body designated for that purpose under the Emergency Law, and the same court has passed seven orders for his release but none of them have been implemented. In addition the authors alleged that the applicant has submitted five complaints to the State Security Prosecutor's Office and ten complaints to the National Council of Human Rights but no response has been received.

### **The Complaint**

7. The authors of this Communication contend that applicant's arbitrary arrest and detention, his subsequent treatment under detention, the failure of the Government of Egypt to provide the former with adequate and effective judicial remedy, and the manner in which the 24-year long State of Emergency has been applied in practice violates Articles 2, 5, 6, 7(1)(d), 8 and 9(2) of the Charter.

### **The Procedure**

8. The present communication was received by the Secretariat of the African Commission on the 22<sup>nd</sup> of November 2005.

9. The Secretariat of the Commission acknowledged receipt of the Communication to the contact persons of the INTERIGHTS and the Egyptian Initiative for Personal under letter ACHPR/LPROT/COMM/ 312/2005/RK of 29 November 2005, and informed the same that the Communication will be the Commission's agenda for consideration at seizure stage at the 38<sup>th</sup> Ordinary Session of the Commission which is being held from 21<sup>st</sup> November 2005 to 5<sup>th</sup> December 2005 in Banjul, The Gambia.

10. During its 38<sup>th</sup> Ordinary Session, the African Commission considered the communication and decided to be seized thereof.

11. On 19 December 2005, the Secretariat informed the parties of this decision, transmitted a copy of the complaint to the Respondent State and requested both parties to send in their arguments on admissibility.

12. On 16 February 2006, the complainant forwarded its arguments on admissibility of the case.

13. On 29 March 2006, the Secretariat acknowledged receipt of the arguments and forwarded them to the Respondent State whose rejoinder was requested within 3 months.

14. By letter dated 19 May 2006, the Complainant informed the African Commission that the alleged victim, Mr. Methwalli Ibrahim Methwalli was released and was requesting that the complaint be withdrawn.

15. During its 39th Ordinary Session that took place from 11 to 25 May 2006 in Banjul, The Gambia, the African Commission considered the complaint and heard the parties. On that occasion, the Complainant reiterated his wish to withdraw the complaint.

**Consequently, the African Commission decides to strike out this communication.**