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REPORT OF THE AFRICAN COMMISSION ON
HUMAN AND PEOPLES’ RIGHTS
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Introduction


Events Preceding the 48th Ordinary Session

3. Members and staff of the African Commission participated in, and collaborated with other human rights organizations/partners in a series of activities preceding, and on the margins of the Session, including the following:

   i. Meeting of the Committee to clean up the Rules of Procedure, from 4-5 November 2010;

   ii. Workshop of Women’s Human Rights Defenders, from 4-6 November 2010;

   iii. Meeting of the Working Group on Indigenous Populations / Communities in Africa, from 6-8 November 2010;

   iv. Forum of Non-Governmental Organizations (NGOs), from 6-9 November 2010;

   v. Meeting of the Committee for the Protection of People Living with HIV/AIDS, from 6-7 November 2010;

   vi. Meeting with UNAIDS, 7 November 2010;

   vii. Meeting of the Working Group on the Death Penalty, from 7-9 November 2010;

   viii. Meeting of the Committee for the Prevention of Torture in Africa, 10 November 2010;


   x. Launch of the Commemoration of the 30th Anniversary of the African Charter, 12 November 2010;

Attendance at the Session

4. The following members of the African Commission attended the 48th Ordinary Session:

- Honourable Commissioner **Reine Alapini-Gansou**, Chairperson
- Honourable Commissioner **Mumba Malila**, Vice-Chairperson
- Honourable Commissioner **Lucy Asuagbor**;
- Honourable Commissioner **Catherine Dupe Atoki**;
- Honourable Commissioner **Musa Ngary Bitaye**;
- Honourable Commissioner **Mohamed Bechir Khalfallah**;
- Honourable Commissioner **Soyata Maiga**;
- Honourable Commissioner **Kayitesi Zainabou Sylvie**;
- Honourable Commissioner **Pansy Tlakula**; and
- Honourable Commissioner **Yeung Kam John Yeung Sik Yuen**.

5. Commissioner Mohamed Fayek was absent with apologies.

The Opening Ceremony

6. A total of five hundred and twelve (512) participants attended the 48th Ordinary Session of the African Commission, including: representatives from States Parties, International and Inter-Governmental Organizations, African Union (AU) Organs, National Human Rights Institutions (NHRIs), as well as African and International Non-Governmental Organizations (NGOs).

7. At the Opening Ceremony, speeches were delivered by the following:

   i. Honourable Commissioner Reine Alapini Gansou, Chairperson of the African Commission;

   ii. H.E. Commissioner Julia Dolly Joiner, Commissioner, for Political Affairs of the African Union Commission (AUC),

   iii. Mrs. Hannah Forster, Executive Director of the African Centre for Democracy and Human Rights Studies, on behalf of NGOs,

   iv. Mr. Med S. K.Kaggwa, Chairperson of the Uganda Human Rights Commission, on behalf of the Network of National Human Rights Institutions (NHRIs);
v. Honourable Judge Gerard Niyungeko, President of the African Court on Human and Peoples' Rights,

vi. H.E. Salamata Sawadogo, Minister for the Promotion of Human Rights in Burkina Faso, on behalf of AU Member States, and


8. In her welcoming statement, the Chairperson of the African Commission, Honourable Commissioner Reine Alapini Gansou, expressed, on behalf of the Members of the African Commission, and on her own behalf, her profound gratitude to the Government and People of the Republic of The Gambia for once again hosting the Ordinary Session of the African Commission and welcomed the participants to the 48th Session of the African Commission. The Chairperson congratulated Honourable Justice Mrs. Lucy Asuagbor on her election as a Member of the African Commission and officially welcomed her to the Commission.

9. The Chairperson also welcomed the President of the African Court on Human and Peoples' Rights, Honourable Justice Gerard Niyungeko, who was attending the Opening Session of the African Commission for the first time. She stated that the presence of Honourable Justice Gerard Niyungeko at the African Commission's Opening Session should be seen as a manifestation of the constructive complimentary relationship between the African Court and the African Commission.

10. Honourable Commissioner Reine Alapini Gansou noted that the 48th Ordinary Session should be an occasion for the African Commission to reflect on the difficult situation many African women find themselves in on the continent. Speaking under the theme of Reflecting on the Human Rights of Women in Africa, she observed that even though there have been a plethora of legislations enacted by some States in the region to protect women's rights, securing women's rights in Africa remains a challenge.

11. Honourable Commissioner Reine Alapini Gansou stated that despite the BEIJING+15 Conference in 2009 that called for an evaluation of the rights of women in Africa, 2010 has shown that there is an urgent need to take positive steps to improve the human rights of women in Africa, particularly on issues such as female genital mutilation, forced marriages, sexual and domestic violence and other types of human rights violations that affect the dignity and physical integrity of women. The Chairperson stated that at the time when democracy in Africa is facing serious challenges, it is imperative for NGOs and civil society in collaboration with the African Commission to send a clear message of their strong commitment to the rights and freedoms guaranteed in the African Charter.

12. In closing her speech, Honourable Commissioner Reine Alapini Gansou stressed the need for States Parties to the African Charter to build a culture of human rights observance and to establish strong mechanisms to protect human rights in Africa. She ended her speech by asking the following question: “Do we want the
future generation to inherit an intolerable world, an Africa devastated by wars, an Africa that refuses to move forward”?

13. Speaking on behalf of the African Union Commission, Her Excellency, Mrs. Julia Dolly Joiner, Commissioner for Political Affairs at the African Union Commission (AUC), assured the African Commission of the continued support of the AUC in the discharge of its mandate and reiterated that the African Commission is an integral part of the human rights dialogue that is taking place right across Africa. Her Excellency Mrs. Julia Dolly Joiner noted with appreciation the role the African Commission has played and continues to play in promoting and protecting human rights on the continent.

14. She stated that despite some progress, the overall human rights record in Africa remains poor and noted with regret that matters such as gender discrimination remain a concern. Her Excellency Mrs. Julia Dolly Joiner stated that issues such as the right to development and the rights of women and children needed some more focus by Member States. She said that the deteriorating human rights situation in many African countries has had a negative impact on the lives of women and children and urged Member States to spare no effort to respond progressively and decisively to these issues, in particular to repeal laws that discriminate against women and girls.

15. Her Excellency, Mrs. Julia Dolly Joiner urged the African Commission, that whilst responding to the complex demands and challenges of the next six months, it must seek ways to ensure that it delivers on all elements of its core mandate particularly in ensuring that Member States submit their Initial and Periodic States Reports in accordance with Article 62 of the African Charter. She stated that even though the obligation to submit Reports rests with Member States, the African Commission is well placed to explore ways of securing more active participation and commitment in this regard. Her Excellency, Mrs. Julia Dolly Joiner underscored that while the anticipated activities to commemorate the 30th Anniversary of the African Charter are important for advocacy and raising the profile of the African Commission, these activities should be used by the African Commission to reflect on the journey travelled and the challenges that lie ahead.

16. The Executive Director of the African Centre for Democracy and Human Rights Studies, Mrs. Hannah Forster, made a statement on behalf of the NGOs present at the 48th Ordinary Session of the African Commission and made reference to the NGO Forum which was held prior to the 48th Session to discuss the situation of human rights on the continent. In reviewing the human rights landscape in Africa for the last six months, she noted that Africa still experienced a lot of human rights abuses and called on Member States to ensure better protection of human rights in their territories. She expressed the concerns of the NGO Forum over homophobic attacks in Burundi, Malawi, Rwanda and Uganda, as well as the extrajudicial killings and enforced disappearances in a number of countries including the Democratic Republic of Congo.

17. Mrs. Forster stated that some States Parties to the African Charter have not only enacted harsh laws to suppress free expression and the press, but that some of
them continue to harass, intimidate, arbitrarily detain and even kill human rights defenders. **Mrs. Forster** also highlighted the challenges faced by various vulnerable groups and communities in Africa such as migrants, refugees and Internally Displaced Persons, the elderly, the disabled and indigenous populations.

18. The Representative of the Network of African National Human Rights Institutions and Chairperson of the Uganda Human Rights Commission, **Mr. Med S. K. Kaggwa**, in his statement expressed appreciation to the African Commission for its relentless efforts to make human rights a reality on the African continent, despite being confronted with multiple challenges. **Mr. Med S. K. Kaggwa**, stated that the Sessions of the African Commission provide the Network of African National Human Rights Institutions the opportunity to exchange information on various human rights challenges and also serve as a platform to debate pertinent human rights issues concerning the African continent.

19. **Mr. Med S. K. Kaggwa** noted that the Session was being held at a time Africa was facing many challenges ranging from issues relating to freedom of expression, the plight of women and children, especially those caught in conflict zones and issues of democracy and good governance. He stated that, despite some progress made by some African leaders to promote and protect human rights as envisaged in the African Charter and other regional human rights instruments, and the Constitutive Act of the African Union, human rights violations still persist. He underscored, however, that Africans are increasingly becoming aware of their rights and demanding such rights from their governments.

20. **Mr. Med S. K. Kaggwa** said that the Network of African National Human Rights Institutions is happy to collaborate with Member States and the African Union organs, such as the African Commission, the African Court on Human and Peoples’ Rights (African Court) and other regional treaty monitoring bodies and civil society organizations to promote and protect the rights of people on the African continent. He noted that the Network of African National Human Rights Institutions complement the already established African human rights institutions, and by the nature of the work they do, are in a good position to make a unique contribution to secure human rights in the region.

21. Speaking on behalf of the African Court, **Honourable Justice Gerard Niyungeko**, President of the African Court reiterated the sentiments expressed by the Chairperson of the African Commission, **Honourable Commissioner Reine Alapini Gansou** in her opening remarks that the collaborative relationship between the African Court and the African Commission is one that is based on mutual respect for the complementary role of both institutions. He added that it is within the spirit of that collaborative relationship that the Rules of Procedure of both organs have been harmonized.

22. **Honourable Justice Gerard Niyungeko** informed the 48th Ordinary Session that the African Court has two roles. Firstly, to look into cases related to the interpretation and the application of the African Charter and secondly, an advisory role, where the African Court gives a legal opinion about any question related to human and peoples’ rights.
23. He indicated that the foremost challenge of the African Court is its inability to hear cases due to the small number of countries that have ratified the Protocol Establishing the Court, as well as the small number of States Parties which have made the Declaration allowing individuals and NGOs to submit cases directly to the Court. He informed the Session that of the 53 Member States of the African Union, only 25 have so far ratified the Protocol Establishing the Court. He further stated, that out of those 25 States only four countries, namely Burkina Faso, Mali, Malawi and Tanzania, have made the a declaration accepting the jurisdiction of the Court to examine applications lodged by individuals and NGOs.

24. The Minister for the Promotion of Human Rights in Burkina Faso, Honourable Salamata Sawadogo, delivered a statement on behalf of the State Parties present at the 48th Ordinary Session. After expressing her gratitude to the Government and People of The Gambia, the Honourable Minister reminded the participants, that the African Charter places responsibility on States Parties to ensure the promotion and protection of human rights on the continent. She said however, that the protection of human rights in Africa can only be realised with the collaboration of all, including Member States, international partners, National Human Rights Institutions and NGOs.

25. The Honourable Minister stated that the Sessions of the African Commission provide all those who fight for the cause of human rights with an opportunity to engage in frank and constructive dialogue. The Honourable Minister reminded the African Commission that in order for it to discharge its mandate with success, it is crucial that it cooperates with Member States, who should be encouraged to facilitate and support its work. She urged the African Commission to continue discharging its mandate resolutely and with objectivity.


27. Honourable Edward Gomez, congratulated the African Commission on the successfully convening of the Session and recognised the important role of the African Commission’s Sessions which he likened to a mirror through which Africa sees itself, while evaluating its achievements and challenges in the promotion and protection of human rights. He detailed various efforts that have been made by the Government of The Gambia to uphold the rights and liberties of the Gambian people, notably through the constitution and the creation of a Department for Human Rights in the Ministry of Justice. He, however, raised the issue of enjoyment of individual rights, which he argued must be subject to the rights of others and the compelling interests of society as a whole. This, he explained, was the basis for the continued existence of the death penalty in The Gambia and the enactment of legislation to curb corruption.
28. **Honourable Edward Gomez** regretted the deplorable conditions of women in Africa, particularly rural women and the girl-child, whom, he said, continue to be victims of harmful customary practices. He appealed to States Parties and members of civil society to devise more creative ways and means of protecting the African woman and the girl-child. **Honourable Edward Gomez**, congratulated Honourable Justice Mrs Lucy Asuagbor on her election as a Member of the African Commission, before officially declaring the 48th Ordinary Session open.

**Swearing in of New Commissioner**

29. During the 19th Ordinary Session of the Executive Council of the African Union held in Kampala, Uganda, in July 2010, Honourable Justice Mrs. Lucy Asuagbor was elected as a member of the African Commission on Human and Peoples’ Rights.

30. In accordance with Rule 9 of the Rules of Procedure of the African Commission, Honourable Justice Mrs. Lucy Asuagbor was sworn in by making a solemn declaration during the Public Session.

**Agenda of the Session**

31. The Agenda of the Session was adopted and is attached to this Report as

**Annex I**

**Cooperation and Relationship with NHRIs and NGOs**

**Application for Observer Status**

32. The African Commission considered applications for **Observer Status** from six (6) NGOs. It granted Observer Status to all the six (6) NGOs in accordance with the 1999 Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the Field of Human and Peoples’ Rights, ACHPR/Res.33 (XXV) 99. The NGOs granted Observer Status are the following:

i. Dimension Sociale Benin;
ii. Consortium for Refugees and Migrants in South Africa;
iii. Eastern Africa Journalists Association – EAJA;
iv. Network of African Human Rights Institutions (NANHRI);
v. Open Society Initiative of South Africa (OSISA); and
vi. Secretariat of the African Decade of Persons with Disabilities.

33. This brings the total number of NGOs with Observer Status before the African Commission to **four hundred and eighteen (418)**.
Application for Affiliate Status

34. During the 48th Ordinary Session, the African Commission did not receive any application for Affiliate Status from any NHRI. The number of NRHIs with Affiliate Status with the African Commission thus remains at **twenty - two (22)**.

Human Rights Situation in Africa

35. Statements were made by State delegates from Republic of Algeria, Republic of Burkina Faso, Arab Republic of Egypt, Federal Democratic Republic of Ethiopia, Republic of Kenya, Kingdom of Lesotho, Great Socialist People's Libyan Arab Jamahirya, Federal Republic of Nigeria, Sahrawi Arab Democratic Republic, Republic of Senegal, Republic of South Africa, Republic of Sudan, Republic of Tunisia, Republic of Uganda and Republic of Zimbabwe on the human rights situations in their respective countries. The summarised texts of these statements are reflected in the Session Report of the 48th Ordinary Session of the African Commission.


37. A total of forty-four (44) NGOs, having Observer Status with the African Commission also made statements on the human rights situation in Africa.

Activities of Members of the African Commission during the Inter-Session

38. The Chairperson and members of the African Commission presented Reports on the activities that they undertook during the period between the 47th Ordinary Session in May 2010, and the 48th Ordinary Session in November 2010. The reports covered activities undertaken in their capacities as members of the African Commission, Special Rapporteurs, and/or Members of Special Mechanisms. The activities are set out hereunder.

Honourable Commissioner Reine Alapini Gansou - Chairperson of the African Commission

Report on activities as a Commissioner

39. From 7 to 11 June 2010, the Chairperson of the African Commission participated in a training seminar on the African Commission Communication procedures in Dakar, Senegal. The seminar was organized by the African Commission to make available to the key actors some educational tools and texts to
serve as a basis for seizure of the African Commission in the event of individual human rights violations.

40. From 22 to 24 June 2010, the Chairperson of the African Commission participated in a working visit of the African Commission’s Bureau to Addis Ababa, Ethiopia. The visit had the objective of meeting the key actors of the AU Organs and discussing appropriate ways and means of giving effect to the decisions of the Heads of State and Government regarding the treatment of the members of the African Commission and the need to build the human and intellectual capacities of its Secretariat.

41. From 13 to 16 July 2010, the Chairperson of the African Commission participated in a Continental Conference in Bamako, Mali, on the role of the African Commission in the promotion and protection of Women’s Rights in Africa. This Conference which was organized on the initiative of the Special Rapporteur on the Rights of Women in Africa, Maitre Soyata Maiga, sought, among other things, to bring the African Commission closer to the stakeholders who had participated in this conference. In this context, the Chairperson delivered the opening and closing addresses of the Conference. The Conference provided an opportunity for the Chairperson to participate in the launching of the Claims Dossier on the Rights of Women in Africa prepared by the FIDH and its partners.

42. From 19 to 23 July 2010, the Chairperson of the African Commission participated in the AU summit of Heads of State and Government in Kampala, Uganda. During the summit the Chairperson presented the 28th Activity Report of the African Commission which was adopted by the Decision No. EX.CL/600(XVII).

43. The Chairperson of the African Commission participated in two workshops with the NHRIs on human rights promotion mechanisms. The first workshop took place from 29 to 30 July 2010 in Johannesburg, South Africa and brought together more than ten NHRIs. The second workshop took place from 27 to 28 September 2010 in Dakar, Senegal and brought together all the NHRIs from West and North Africa. These workshops had the main objective of putting in place strategies and action plans enabling the NHRIs to engage in a more effective partnership with the African human rights mechanisms.

44. From 2 to 3 August 2010, the Chairperson of the African Commission represented the Commission in three activities relating to the launching of the governance architecture platform in Africa, the African Human Rights Strategy and the preparation of the summit on shared values in Banjul, The Gambia.

45. From 4 to 6 August 2010, the Chairperson of the African Commission participated in the 3rd meeting on the establishment of the Human Rights Strategy for Africa in Banjul, The Gambia. This meeting sought in particular to consider the draft Human Rights Strategy for Africa and to contribute as best as possible to its coherence and practicability.

1 The Representatives of 18 States Parties, the Members of Civil Society and the Development Partners attended and participated in the conference.
46. From 12 to 13 August 2010, the Chairperson of the African Commission participated in a meeting organized by the African Union Commission on the study of two Protocols; one on the Pan-African Parliament and the other on the extension of the African Court on Human and Peoples’ Rights, in Johannesburg, South Africa.

47. From 15 to 17 September 2010, the Chairperson of the African Commission participated in a sub-regional Forum on the evaluation of the 10 years of the United Nations Resolution 1325 on the situation of Women in conflict situations and on the representation of women in decision making institutions, under the theme “Women, an Asset for Peace”. The Forum was organized by the United Nations West Africa Bureau in collaboration with the other representatives of the United Nations Agencies in Dakar, Senegal. During this Forum the Chairperson made a presentation on the African Commission, its achievements, challenges and its prospects with regard to women’s rights in Africa.

48. From 4 to 6 October 2010, the Chairperson of the African Commission participated in the Symposium of African Human Rights Courts and similar institutions, in Arusha, Tanzania. The Symposium sought to pool the experiences of the organs and institutions represented at this symposium for the purpose of strengthening each others’ activities and to achieve better cooperation between the human rights protection organs and institutions on the African Continent.

49. On 9 October 2010, the Chairperson of the African Commission participated in the 19th All African MOOT Court organised by the Human Rights Centre of the University of Pretoria as a member of the Jury appointed to proclaim the prize winners results. The Moot Court, which took place in Cotonou, Benin, sought to create a nursery from which competent jurists who have perfect knowledge of the African Charter on Human and Peoples’ Rights and other subsequent legal instruments, the jurisprudence of the ACHPR and international human rights law, can be drawn, for the defence and protection of the rights of individuals and communities.

50. From 19 to 22 October 2010, the Chairperson of the African Commission participated in the 3rd edition of the MIBEKO Forum on the Rights of Women in Africa, in Brazzaville, Congo. The central issued tabled during this Forum was that of the adequate representation of women in decision making institutions and that of women’s leadership, as well as crucial issues linked to gender based abuse and to HIV. During this Forum the Chairperson made a presentation on behalf of the African Commission, and delivered an address on the African Commission’s achievements.

51. From 25 to 26 October 2010, the Chairperson of the African Commission participated in the last meeting before the launching of the Human Rights Strategy in Arusha, Tanzania. This meeting sought essentially to validate the document on the Human Rights Strategy.

52. From 28 to 29 October 2010, the Chairperson of the African Commission participated in a meeting on the review mechanisms of the United Nations Human Rights Council organized by the United Nations in Geneva, Switzerland.
Activities as a Member of the Working Group on the Rights of Older Persons and People with Disabilities in Africa

53. From 9 to 11 August 2010, the Chairperson of the African Commission participated in the 2nd statutory meeting of the Working Group on the Rights of Older Persons and Persons with Disabilities in Africa in Port-Louis, Mauritius. The objective of the meeting was to examine two draft Protocols; one on the rights of elderly persons and the other on the rights of persons with disabilities.

Activities as Chairperson of the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV

54. On 2 October 2010, the Committee held a working meeting organized by the Human Rights Development Initiative (HRDI), in Pretoria, South Africa. The main objective of this working session was to enable the mechanisms working in human rights and HIV/AIDS issues to discuss their modalities of cooperation and appropriate strategies that would allow the Committee to give effect to the Commission’s Resolution No. ACHPR/Res163 (XLVII) of 26 May 2010.

55. On 6 November 2010, another working session in Banjul, The Gambia, brought together the HRDI staff and members of the Committee and culminated in the conclusion of a document on the various types of support that can be given to the Committee (technical, material and financial).

56. On 7 November 2010, the Committee held a meeting with the representatives of UNAIDS to fine tune the implementation of the Committee’s Action Programme. From this meeting also emanated highly concrete proposals on the activities to be undertaken in the short, medium and long terms.

Commissioner Mumba Malila - Vice Chairperson of the African Commission

Activities as a Commissioner

57. From 7 to 11 June 2010, Commissioner Malila participated in a Training Seminar on the Communications Procedure which was organized by the African Commission in Dakar Senegal. The purpose of the seminar was, in the main, to familiarize various users of the communications procedure of the Commission with the many fine points regarding communications particularly in light of the Commission’s new rules of procedure, and generally to discuss issues of concern to the users. He presented a paper on an overview of the African Commission.

58. From 14 to 18 June 2010, Commissioner Malila attended a working visit at the Inter American Commission on Human Rights, in Washington DC, USA together with the Executive Secretary to the Commission and Mr Chafi Bakari, Senior Legal Officer. This visit was done in the framework of cooperation with institutions with similar mandates. The purpose was to share experience, consider challenges and identify ways for future collaboration.

59. From 21 to 25 June 2010, Commissioner Malila undertook a working visit with the Chairperson and the Secretary to the Commission to the AUC in Addis, Ababa. The delegation held meetings with the Vice Chairperson of the AUC, Dr Erustus Mwencha, the Commissioner, Political Affair Mrs. Julia Dolly Joiner, the AUC Legal
Counsel, Mr. Ben Kioko and the Director Human Resource and Administration, among others. The main purpose of the visit was to discuss the outstanding issue of recruitment of staff and revision of remuneration for Commissioners.

60. On 30 June 2010, Commissioner Malila attended the meeting of the Subcommittee of PRC on Administrative and Financial matters, in Addis Ababa, Ethiopia. The meeting was organised to among other things, discuss the issue of remuneration for the African Commission as well as that of the Court.

61. From 19 to 21 July 2010, Commissioner Malila attended the pre AU summit meeting of the PRC in Kampala, Uganda, together with the Chairperson, Commissioner Maiga and the Executive Secretary. Commissioner Malila also attended the Executive Council meeting that preceded the AU Summit and attended the Summit itself.

62. From 28 to 29 July 2010 in Maseru, Lesotho, Commissioner Malila participated in a Judges’ Symposium on Judicial Independence, Impartiality and Accountability, organized by the International Commission of Jurists in conjunction with the Judiciary of Lesotho. The participants were drawn from the Southern African sub region and included serving and retired judges and academics. He presented a paper entitled “The Independence of the Judiciary through the Eyes of the African Commission on Human and People’s Rights”.

63. On 30 July 2010, Commissioner Malila participated in a workshop for Eastern and Southern African National Human Rights Institutions on continental human rights mechanisms held in Johannesburg, South Africa and officially closed the workshop which had been opened by the Chairperson of the African Commission on the 29 July 2010.

64. From 4 to 6 October 2010, Commissioner Malila participated in a colloquium of the African Human Rights Court and Similar Institutions held in Arusha, Tanzania. The Colloquium was jointly sponsored by the GTZ, the Danish Institute for Human Rights, the European Union and the African Commission. He presented a paper on “the Jurisprudence of the African Commission on Human and Peoples’ Rights”.

65. On 15 October 2010, Commissioner Malila was invited to officially inaugurate a new course in Financial Crimes Investigation at the National Institute of Public Administration in Lusaka, Zambia.


67. He presented the key note address in which he, among other things, called on African states to support the human rights institutions they have created, including
the African Commission and the African Court. He also featured in an interview on e-
TV explaining the significance of the day in the African human rights calendar and 
also on a live phone-in programme in which he was asked questions on the African 
human rights system generally.

68. From 25 to 26 October 2010, Commissioner Malila participated in a regional 
Training Workshop for Lawyers organized by the Coalition for an Effective African 
Court, Zimbabwe Human Rights NGO Forum, and the Centre for Human Rights and 
Rehabilitation in Blantyre, Malawi. He presented a paper on the Complementarity 
between the African Commission on Human and Peoples’ Rights and the African 
Court on Human and Peoples’ Rights.

69. On 8 November 2010, Commissioner Malila featured on a Gambian radio 
station, Paradise FM, to explain the various aspects of the African Commission on 
Human and Peoples’ Rights. Elementary matters like the creation of the Commission, 
its composition, mandate, working methods, achievements and challenges were 
explained.

Activities as Member of the Working Group on the Death Penalty in Africa

70. From 7 to 9 November 2010, Commissioner Malila participated in the meeting 
of the Working Group on the Death Penalty held immediately preceding the 48th 
Ordinary Session. The meeting discussed among other things, the Kigali Framework 
Document and the Cotonou Framework Document as well as the way forward on the 
question of the death penalty in Africa.

Activities as Member of the Working Group on Indigenous Populations / 
Communities in Africa

71. From 11 to 13 October 2010, Commissioner Malila together with 
Commissioner Bitaye, Dr. Zephym Kalimba, Mr. Albert Barume and Ms Genivive 
Rose as members of the Working Group on Indigenous Populations and 
Communities in Africa attended and participated in the Sub regional Conference on 
the Rights of Indigenous Peoples/Marginalised Communities in Africa organized by 
the office of the Prime Minister (Namibia) International Labour Organization and the 
African Commission.

72. The Conference coincided with the official launch of the overview Report of 
the Rights of Indigenous Peoples in 24 African Counties. The study leading to the 
Report was undertaken by the Centre for Human Rights of the University of Pretoria 
and was presented by Prof Frans Viljoen. The seminar and the launch of the Report 
took place in Windhoek, Namibia.

73. From 7 to 8 November 2010, Commissioner Malila participated in the meeting 
of the Working Group on Indigenous Peoples/ Communities held in Banjul, The 
Gambia, just before the 48th Ordinary Session of the African Commission. The 
meeting reviewed, among other things, activities undertaken in the last inter session, 
and planned for programmes to be undertaken in the forthcoming intersession.
Activities as Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa

74. From 27 to 28 September 2010, Commissioner Malila as Chairperson of the Commission's Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, took part in a conference on Legal Remedies and the Role of Lawyers in Protecting Human Rights in the Context of Corporate Activity organized by the International Commission of Jurists in Geneva, Switzerland. He made a presentation on the background to the creation of the Working Group, the purpose of the Working Group and how it hopes to contribute to redressing human rights violations by corporations operating in the continent.

75. From 1 to 2 November 2010, he participated in a workshop on Extra-Territorial Obligations (ETOs) for the African Region in Pretoria, South Africa. The meeting was co-organized by the Centre for Human Rights, Pretoria, FIAN International and SAIFAC. He made a presentation on “the Establishment and Future of the Working Group on Extractive Industries” and possible areas of future cooperation between the African Commission and the ETO Consortium.

Activities as a Member of the Committee for the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV;

76. On 2 October 2010, Commissioner Malila participated together with the Chairperson and Commissioner Maiga as members of the Committee for the Protection of the Rights of People Living with HIV/AIDS and those at risk in a conversation between the Committee, the UN Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health, Mr. Anand Griverrm and the Human Rights Development Institute (HRDI). The conversation took place in Pretoria South Africa.

Honourable Commissioner Catherine Dupe Atoki

Activities as a Commissioner

77. From 7 to 11 June 2010, Commissioner Atoki attended a training seminar in Senegal, Dakar on the Complaints/Communication procedure, organised by the African Commission.

78. On 29 June 2010, Commissioner Atoki chaired a stakeholder’s roundtable on strengthening of the National Human Rights Commission of Nigeria and its adherence to the Paris Principles which was organised by the Network of African Human Rights Institutions (NANHRI) in Abuja, Nigeria. The roundtable brought together high level representatives from NHRI’s from six regional zones, Members of Parliament and civil society organisations. The meeting involved the launching of the Gap Analysis report on the National Human Rights Commission of Nigeria that was commissioned by NANHRI. The overall objective of the roundtable was to sensitize national and international stakeholders on strengthening the NHRC to enable it carry out its mandate in line with the recommendations of the Gap analysis Report.
79. From 5 to 6 July 2010, Commissioner Atoki participated in an anti-corruption interactive seminar for Magistrates in Lagos, Nigeria. The Seminar was organised by Socio-economic Rights and Accountability Project (SERAP) and it aimed to promote integrity in the Magistrate Courts and improve access of the citizens to justice in Lagos State. She presented a paper on promoting and enhancing the use and awareness of Alternative Dispute Resolution Mechanism.

80. On 10 August 2010, Commissioner Atoki was invited by the Nigerian Institute for Advanced Legal Studies in Lagos to make a presentation on Revisiting Death Penalty in Nigeria. She traced the evolution of international law and the trend towards abolition of the death penalty as illustrated by the UN General Assembly's adoption of the 2nd Optional Protocol to the ICCPR and the general reluctance by those States that have retained capital punishment on their Statute books.

81. From 4 to 6 October 2010, Commissioner Atoki attended a Colloquium of the African Human Rights Courts and Similar Institutions in Arusha, Tanzania, together with Commissioners Maiga the Chairperson, Vice-chair, and the Secretary of the Commission. She made a presentation on the “Enforcement of the recommendations of the African Commission” and reiterated the fundamental clog in the wheel of the operationalisation of the mandate of the Commission created by the instrument which left it without an enforcement powers.

**Activities as Special Rapporteur on Prisons and Places of Detention in Africa**

82. From 10 to 14 July 2010, the Special Rapporteur on the invitation of the Government of the Republic of Tunisia visited detention and related facilities in the country. During her visit she held talks with high ranking officials including the Government officials responsible for the relevant portfolios dealing with prisons in particular and detention in general. She also held talks with relevant NGOs and civil society organisations working in the field of prisons in the country. During the visit, the Special Rapporteur also visited a wide range of detention facilities including prisons, police stations and juvenile detention centres.

83. On July 22 2010, the Special Rapporteur on the invitation of the Nigerian Bar Association as part of its Law week activities gave an International/comparative perspective to a keynote presentation on Balancing Public Safety and Security and the Constitutional Rights of Suspects: The Imperatives for Reforming the Pre-Trial System in Lagos State.

84. Pursuant to the collaborative project with PRAWA on Prison Reform Intervention in Africa, the Special Rapporteur from 19 to 23 July 2010 participated in the assessment programme for Nigeria, which took place in Abuja on the situation and practices of the prisons/correctional services.
Activities as Chairperson of the Committee on the Prevention of Torture in Africa

85. From June 2010, Commissioner Atoki chaired a public hearing on police abuse in Ibadan city, Nigeria, organized by the Network of Police Reforms, an NGO engaged in monitoring the activities of police in Nigeria. Victims publicly testified to the various violations of human rights suffered by them at the hands of the police whilst wrongfully detained. Torture, cruel, inhuman, degrading treatment and punishment were consistently identified as the means of extorting confessions. These testimonies were televised and reported nationwide.

86. On the occasion of the ‘International Day in Support of Victims of Torture’, the African Commission on Human and Peoples’ Rights (the African Commission) and the CPTA jointly called upon States Parties to the African Charter on Human and Peoples’ Rights (the African Charter) to take concrete measures to respect their commitments with regard to the right of victims to an effective remedy for the human rights violations suffered as a result of torture and other ill-treatment, as well as the right to full redress, including compensation and rehabilitation.

87. From 18 to 19 October 2010, Commissioner Atoki attended a Workshop in Nairobi, Kenya, for East Africa National Human Rights Institutions on the Implementation of Standards to Prevent Torture and other Ill-treatment, organised by the Human Rights Implementation Centre of the University of Bristol, UK. She made a presentation on the role of the African Commission in the prevention of Torture in Africa where she highlighted the important role that NHRI can play in support of the work of the African Commission by popularising the RIG, prosecuting torture, advocating for the criminalisation of torture and lobbying for enforcement of the recommendation of the Commission.

88. On 12 November 2010, during celebrations marking the 30th Anniversary of the African Charter on Human and Peoples’ Rights, at the 48th Ordinary Session of the African Commission, the CPTA in its effort to promote the RIG, sensitized the public on its role to ensure that States Parties live up to their international obligations. The Chairperson of the CPTA launched a bi-annual publication of a Newsletter known as AFRICA TORTURE WATCH:

89. On 10 November 2010, at the margins of the 48th Ordinary Session, Commissioner Atoki chaired a Meeting of the CPTA in Banjul, The Gambia to review the Meetings of the CPTA of 26 April 2010, which was held in Dakar, Senegal and the Strategic Consultative Meeting of the CPTA of 29 April 2010, also in Dakar, Senegal. The Meeting also discussed the programme and activities of the CPTA for 2010 and 2011.
Honourable Commissioner Musa Ngary Bitaye

Activities as a Commissioner

90. In March 2010, Commissioner Biatye, as Commissioner responsible for promotion activities in the Federal Republic of Nigeria, sent an Urgent Appeal to His Excellency the President of the Federal Republic of Nigeria to “Investigate Allegations of Serious Human Rights Violations” in Jos. Because of the deteriorating situation in Jos, the Chairperson of the African Commission followed the March Urgent Appeal with another letter, in May, addressed to the Chair of the Peace and Security Council, requesting from the State Party a Joint Fact-finding Mission to address the situation in Jos. The African Commission is still awaiting a response from the Federal Republic of Nigeria as to when the African Commission and the Peace and Security Council will be able to carry out the Fact-finding Mission.

91. In September 2010, Commissioner Biatye also sent an Urgent Appeal to His Excellency the President of the Federal Republic of Nigeria about the alleged assassination of officials of the Economic and Financial Crimes Commission (EFCC). In the Urgent Appeal, he brought to His Excellency’s attention the grave concerns of the African Commission about the recent alleged spate of assassinations of officials of the Economic and Financial Crimes Commission (EFCC) and the implications this has for its impartiality and independence. He is still awaiting a reply from the Government of the Federal Republic of Nigeria.

92. Pursuant to the African Commission’s decision during the 47th Ordinary Session to conduct a Joint Promotion Mission to Sierra Leone involving all its Special Mechanisms taking into account the recent troubled history of that country and the many challenges it posed with respect for human rights, Commissioner Biatye sent a Note Verbale to the Government of Sierra Leone requesting a Joint Promotion Mission. The Government of Sierra Leone responded, but limited the Mission to conditions in Prisons. Unfortunately, the Commission did not consider it appropriate to truncate the Joint Mission it had proposed. Therefore, the Joint Promotion Mission could not take place.

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

93. The following activities were carried out under the supervision of Commissioner Biatye, as Chairperson of the Working Group:

94. On 9 August 2010, Commissioner Biatye together with the Chairperson of the Commission sent an Urgent Appeal to the President of Botswana, His Excellency Ian Khama, drawing his attention to the 21 July 2010 judgment of the High Court in Lobatse, Botswana which ruled that the Bushmen people were not entitled to use a well already established on their traditional land in the Kalahari Game Reserve or excavate a new one. This is in contradiction with the 13 December 2006 ruling of the High Court of Botswana that has ruled the forceful eviction of the Bushmen of the Central Kalahari Game Reserve as "unlawful and unconstitutional". In the Urgent
Appeal the Government of Botswana was urged to embrace the decision of the 13 December 2006 of the High Court and allow the Bushmen to have access to water from their existing borehole at Motomelo.

95. On 21 September 2010, Commissioner Bitaye sent a second Urgent Appeal to the Government of Tanzania on the situation of the Masai Pastoralists in Loliondo, Northern Tanzania. In the Urgent Appeal he brought to the attention of the President of the United Republic of Tanzania, His Excellency Jakaya M. Kikwete, that the situation of the Masai Pastoralists in Loliondo reportedly continues to be as bad as it was in 2009 when he wrote the first urgent appeal, that members of non-governmental organizations who are working with the affected people are being intimidated and that the European Union and diplomatic missions from different countries have been denied access to Loliondo. He urged the Government to kindly provide clarification on these reports, and in particular indicate what measures it has put in place or is likely to put in place to deal with the situation, if the reports are correct.


97. From 6 to 8 November 2010, Commissioner Bitaye participated in the meeting of the Working Group on Indigenous populations/ Communities, in Banjul, The Gambia, to discuss activities undertaken during the past six months and plan for the future activities.

98. At the 48th Ordinary Session of the African Commission, The UN Declaration on the Rights of Indigenous Peoples and the Advisory Opinion of the African Commission on the UN Declaration on the Rights of Indigenous Peoples, published in English and French was distributed to participants. The publication will be used to raise awareness about the UN Declaration on the Rights of Indigenous Peoples among African member states and other key stakeholders. The rights enshrined in this important UN Declaration are consistent with the African Charter on Human and Peoples’ Rights and the jurisprudence of the African Commission.

Honourable Commissioner Mohamed Khalfallah

Activities as a Special Rapporteur on Human Rights Defenders in Africa

99. Commissioner Khalfallah sent Note Verbales to ten countries for promotion missions namely: Angola, Côte d’Ivoire, Congo Brazzaville, Democratic Republic of Congo, Central African Republic, Guinea, Cameroon, Chad Rwanda and Burundi. Only Cameroon responded to the request and discussions are on-going to agree on a date for the said visit. These country visits are necessary in order to maintain the dialogue with the Governments and with Civil Society on the ground where these partners actually live.
100. Commissioner Khalfallah noted that, the subject of concern by the mechanism during the intersession period is that pertaining to freedom of association and freedom of expression in the various African States. Commissioner Khalfallah is in the process of drafting terms of reference for a study on the freedom of association in Africa. Other matters of concern experienced by the human rights defenders constitute: harassment, intimidation and arbitrary detentions.

101. Following the receipt of urgent appeals from the various human rights organizations and networks, Commissioner Khalfallah dealt with about thirty cases and sent communications to the Governments according to the need and urgency of the case. These cases concern human rights defenders in the following ten (10) countries: Algeria, Angola, Cameroon, The Gambia, the Democratic Republic of Congo, Uganda, Sudan, Tunisia, Zimbabwe, and Swaziland.

102. Commissioner Khalfallah published two Press Releases; one on the assassination of Floribert Chebeya and the other on the arrest of Sylvestre Baziwa in the Democratic Republic of Congo. Commissioner Khalfallah also published a letter of appreciation in relation to the release of a Zimbabwean human rights defender.

103. From 4 to 6 November 2010, Commissioner Khalfallah participated in a seminar on Women Human Rights Defenders organized by the International Human Rights Service. In the same vein, the first activity of the regional meeting held in Banjul, The Gambia, had been designed to provide specific information regarding the experience of women human rights defenders in Africa. These discussions led the Commissioner to the second activity relating to possible strategies for the establishment of contacts with the international and regional mechanisms, so as to maximize the protection of women human rights defenders and the promotion of their work. An Action Plan was developed as well as a Resolution on women human rights defenders with the objective of building their capacity and enabling them to protect their rights in a strategic manner.

104. On 6 November 2010, Commissioner Khalfallah participated in a workshop organized by the International Human Rights Service on human rights defenders. He had discussions with the human rights defenders on several issues so as to provide them information on the role of the Special Rapporteur and to develop common working strategies for the protection of human rights defenders.

105. From 7 to 9 November 2010, Commissioner Khalfallah participated in the NGO forum which preceded the 48th Ordinary Session of the African Commission. Within the context of the forum, he was a member of a panel organized by the International Service, to meet and discuss with human rights defenders about the ways and means of establishing dialogue between them and the Special Rapporteur, and to address the problems encountered by human rights defenders everywhere on the Continent.

Activities as Chairperson of the Working Group on ECOSOC

106. With the objective of working on the mandate assigned by the Commission to the Working Group at its 47th Ordinary Session, namely to extract the guidelines on
the elaboration of States Reports, the Working group met from 6 to 8 July 2010, in Tunis, Tunisia, to draft the guidelines for State Reporting on Economic, Social and Cultural Rights in Africa. The document has been completed in English and French, and was considered and adopted by the African Commission during the 48th Ordinary Session.

Honourable Commissioner Soyata Maiga

Activities as a Commissioner

107. From 7 J to 11 June 2010, Commissioner Maïga took part in a seminar organised by the African Commission on Communications/complaints mechanism Dakar, Republic of Senegal. The aim of the seminar was to inform representatives from member States and NGO on the communications/complaints procedure.

108. From 1 to 2 July 2010, Commissioner Maïga participated in a meeting organised by the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People in Rabat, Morocco. The objective was to discuss the importance of building an international consensus on a just and viable solution of the question of Jerusalem and the role of African States and other actors in that regard. In this meeting, Commissioner Maïga delivered a presentation on “The Role of Non-State Actors, including Parliamentarians and African Civil Society”.


110. On 2 October 2010, Commissioner Maïga participated together with Chairperson and the Vice-Chairperson of the African Commission, in a meeting organized by the Human Rights Development Initiative (HRDI) with the Committee members on the Protection of the Rights of People Living With HIV/AIDS (PLHIV) and those at risk, vulnerable to and affected by HIV and other actors, in Pretoria, South Africa.

111. From 4 to 6 October 2010, Commissioner Maïga participated in the Colloquium organised by the African Court on Human and Peoples’ Rights, in partnership with the Danish Institute for Human Rights (DIHR) and with the support of the German agency for technical cooperation (GTZ) and the European Union in Arusha, Tanzania. The goal of the colloquium was to initiate a judicial dialogue between such institutions, in order to reinforce the means and ways through which cooperation and coordination can be ensured (notably through the exchange of information and expertise) between judicial, quasi-judicial, continental and sub-regional organisations mandated with the promotion and protection of human rights in Africa.

Activities as Special Rapporteur on the Rights of Women in Africa

112. From 3 to 4 June 2010, the Special Rapporteur participated in a seminar organized by the Inter-Parliamentary Union (IPU) in partnership with the National
Assembly of Mali on the topic “Violence against Women and Girls” which was intended for Parliamentarians in Bamako, Mali.

113. From 21 to 23 June 2010 and on 24 and 25 October 2010 respectively, the Special Rapporteur participated in Montreal, Canada, as a foreign member, in the deliberations of the Board of Directors of Rights and Democracy.

114. From 13 to 15 July 2010, The Special Rapporteur, in collaboration the Government of the Republic of Mali, organised the first Regional Conference for West and North African States in Bamako, Mali, on the theme “The Role of the African Commission in the Promotion and Protection of the Rights of Women in Africa. The conference took place, under the auspices of the Government of the Republic of Mali”. This was the first of a series of conferences that the Special Rapporteur wishes to organize on women’s rights in Africa. The overall objective of the Conference was to highlight the role that can be played by the African Commission in the promotion and protection of women’s rights in Africa and to provide a better understanding of its protection mandate through its communication/complaint mechanism. The report from the conference is available on the ACHPR website www.achpr.org.

115. From 21 to 23 July 2010, in Kampala, Uganda, the Special Rapporteur participated in the 16th Consultative Meeting of African civil society organisations on Gender Mainstreaming in the African Union in Kampala, Uganda. The meeting was organized by the network “Gender is my Agenda” (GIMAC) and coordinated by Femmes Africa Solidarité (FAS). Participants discussed the following themes: Women, Peace and Security in Africa and the Tenth Anniversary of Resolution 1325; Review of the implementation of the Solemn Declaration; Maternal, infant and child health and development in Africa. Recommendations were formulated at the end of the meeting, in particular in the field of maternal health, for the Summit of Head of States and Government that was to follow.

116. From 22 to 27 July 2010, the Special Rapporteur participated in the Ordinary Session of the African Union’s Executive Council, in Kampala, Uganda and subsequently, the Summit of Heads of State and Government of the African Union.

117. On 31 July 2010, on the occasion of Pan African Women’s Day, the Special Rapporteur published a press release which highlighted the importance of the topic of maternal health in the African human rights agenda in 2010. She recalled the theme of the African Union Campaign on Accelerated Reduction on Maternal Mortality (CARMMA): “Africa Cares, No woman should die while giving birth!” and that of the 15th Summit of Heads of States and Governments, which was “Maternal, Infant and Child Health and Development in Africa”.

118. From 23 to 25 August 2010, the Special Rapporteur participated in a workshop organised by a Canadian organisation: the International Development Research Centre (IDRC), in Dakar, Senegal, to plan a sub-regional study on the problematic of political participation of young women.
119. On 2 September 2010, the Special Rapporteur was invited by the Office of the High Commissioner on Human Rights (OHCHR) to participate in a meeting with the staff of the Office of Rashida Manjoo, UN Special Rapporteur on Violence against Women, its Causes and Consequences in Geneva, Switzerland. The meeting agreed to reinforce the partnership between our two mechanisms, by exchanging information and with regards to programs implemented by the OHCHR, particularly in the DRC on sexual violence and the right to reparation for victims.

120. On 3 September 2010, the Special Rapporteur took part in a conference on Maternal Mortality, Morbidity, Human Rights and Accountability: A Dialogue with Human Rights Bodies, in Geneva, Switzerland. The conference was organised by the United Nations Population Fund (UNFPA) and the Centre for Reproductive Rights. The objective of the conference was to bring together experts working in the different international and regional human rights systems to share their experiences and develop strategies aimed at recognizing and establishing legal standards in the area of maternal health and morbidity as human rights.

121. In September 2010, the Special Rapporteur wrote the preface of a publication by Rights and Democracy entitled “Sexual Violence in Armed Conflict from 1993 to 2003 in the Democratic Republic of Congo”, which should be launched in the upcoming months.

122. From 15 to 17 September 2010, in Dakar, Senegal, the Special Rapporteur participated in a regional forum on the implementation of United Nations Security Council Resolution 1325 on “Women, Peace, and Security” in Dakar, Senegal. The forum was organized by the United Nations Office for West Africa (UNOWA), in partnership with the African Union, the Economic Community Of West African States (ECOWAS), Mano River Union (MRU), the United Nations Population Fund (UNFPA), the United Nations Trust Fund for Women (UNIFEM), UN-INSTRAW, the Office of the UN High Commissioner for Human Rights (OHCHR), the United Nations Development Program (UNDP), the UN High Commissioner for Refugees (UNHCR) and the United Nations Children’s Fund (UNICEF). In addition to technical and financial partners, NGO and ECOWAS Gender Ministers were represented.

123. On 12 October 2010, in Kinshasa (DRC) the Special Rapporteur participated in a Forum organized by the Office of the High Commissioner on Human Rights (OHCHR) and the United Nations Mission for Stabilization in DRC (MONUSCO) in Kinshasa, DRC, on the issue of sexual violence in DRC and the issue of reparation for victims of sexual violence. Representatives from the OHCHR, the Trust Fund for victims, NGO, associations of victims of sexual violence, and government delegates working in the field of gender and justice were represented at the Forum. The goal of this event was to inform participants on the global strategy initiated by the OHCHR and to ensure that all stakeholders working on the issue of sexual violence were being made aware of the latest developments.

124. From 13 to 15 October 2010, the Special Rapporteur participated in a meeting of Experts and Gender Ministers from the African Union in Nairobi, Kenya, which preceded the launch of the African Women Decade (AWD) 2010-2020. The Meeting was officially opened by H. E. Hon. Kolonza Musyoko, Vice President of the Republic
of Kenya and chaired by H. E. Atanas Manyala Keya, Assistant Minister for Gender, Children and Social Development. The meeting concluded with the adoption of the Nairobi Declaration and finally launching the AWD on 15 October 2010.

125. From 19 to 22 October, the Special Rapporteur participated in the third edition of the International Mibeko Forum in Brazzaville, Congo. This Forum was organized by Mibeko Association, in partnership with the Ministry of Gender and Integration of Women in Development with the support of the United Nations Development Programme (UNDP) and the United Nations Population Fund (UNFPA). The forum brought together delegates from States, international, regional and sub-regional institutions as well as representatives from African civil society. The Special Rapporteur presented a paper on communication on “Thirty years of CEDAW: Evaluation and Perspectives in Africa”.

126. In line with her mandate to undertake promotional and fact finding missions in African countries Members of the African Union, the Special Rapporteur forwarded letters to the Republic of Niger for a mission to be carried out from the 6 to 10 December 2010 and also to the Republic of Algeria, which responded to the verbal note and should welcome the mission from the 13 to 22 December 2010.

127. During the 48th Ordinary Session of the African Commission, which took place in Banjul, the Gambia, the Special Rapporteur participated in the following activities: Meeting of the Committee tasked to work on the Internal Rules of Procedure; made a presentation in a panel discussion organized by the NGO Forum on “Women as a Critical Force in Democratic Governance”; facilitated a discussion on “Women’s and Children’s Rights in Africa”. The discussion was held in the during the NGO Forum organized by the African Centre for Democracy and Human Rights Studies (ACDHRS) and, made a presentation on the Mandate of the ACHPR and on the mandate of the newly established Committee on People Living with HIV/AIDS in Africa organized by the NGO People Opposing Women Abuse (POWA).

128. In conclusion, the Special Rapporteur reported that the year 2010 was fruitful and highly symbolic for African women. It marked the beginning of the African Women Decade 2010-2020 and the 10th anniversary since the adoption of the UN Security Council Resolution 1325 on “Women, Peace, and Security”. The year 2010 is also the 5th anniversary since the entry into force of the Maputo Protocol.

129. The Special Rapporteur stated that despite an enhanced commitment from member States to improve the situation of women, women continue to be victims of poverty, illiteracy, and suffer from the consequences of armed conflicts and from all kinds of abuses and several forms of discrimination, as well as the weight of traditional practices and that the mechanism is however pleased to have contributed to raising awareness on challenging issues faced by women in decision-making institutions and forums.

130. The Special Rapporteur congratulated the existing collaboration and cooperation between the African Commission, States Parties, United Nations agencies, Regional Economic Commissions, Research Institutions and civil society organizations working on gender issues.
131. She formulated recommendations for Member States on specific themes which have an impact on the promotion and the protection of the rights of women and girls in Africa, including the following:

i. Ensure the ratification without reservation, the domestication, and the effective implementation of all key human rights instruments which guarantee the rights of women and girls;

ii. Take appropriate measures to eliminate discrimination against women and girls;

iii. Enact laws and additional programmes aimed at ensuring a better protection of maternal and child health;

iv. Adopt national action plans to facilitate the implementation of UN Security Council Resolutions 1325, 1820, 1888 and 1889;

v. Take appropriate measures to reinforce the role of women and to guarantee their participation in the prevention and the resolution of conflict;

vi. Reinforce the capacities of women and women NGOs to enable them to influence the systems, structures, and decision-making institutions;

vii. Ratify and give priority to the implementation of the Charter of Democracy, Elections, and Governance;

viii. Invest in research on climate change in Africa and its implications on the life of women;

Activities as a Member of the Working Group on Indigenous Populations / Communities in Africa (WGIP)

132. From 6 to 8 November 2010, in Banjul, the Gambia, she participated in the meeting of the Working Group on Indigenous Populations / Communities and took part in the discussion on the agenda items.

Honourable Commissioner Kayitesi Zainabou Sylvie

Activities as a Commissioner

133. From 10 to 11 June 2010, Commissioner Kayitesi attended a Workshop on the application of International, Regional Instruments and Principles of Human Rights in the Administration of Justice in Rwanda, organized by the United Nations Coordination in collaboration with the National Commission on the Rights of the Individual in Kigali, Rwanda. During this Workshop, she presented a paper on the “Role of Regional Mechanisms and Instruments for the Protection of Human Rights”.
134. On 7 June 2010, Commissioner Kayitesi attended a training session on human rights organised for priests from the North Western region of Rwanda, organized by the National Commission on the rights of the Person in Rwanda. She presented a paper on “International, Regional and National Mechanisms on the Protection of Human Rights”.


136. On 29 July 2010, Commissioner Kayitesi attended a Consultative Meeting with Youth Leaders from Civil Society Organizations held, in Gicumbi, Rwanda. She presented a paper on “African Instruments on Human Rights: The African Charter on Human and Peoples’ Rights and the African Charter on Democracy, Elections and Governance”. The objective of the meeting was to remind Civil Society Organizations of their role as promoters of Democracy that the country was at the time in the process of holding its Presidential Elections.

137. From 20 to 21 September 2010, Commissioner Kayitesi attended the 2nd Regional Conference on the Death Penalty in the Middle East and North Africa in Alexandria, Egypt. The Conference was organized by Penal Reform International (PRI) in collaboration with the Swedish Institute Alexandria and the Arab Center for the Independence of the Judiciary and Legal Profession. During the Conference, she presented a paper on “The African Commission on Human and Peoples’ Rights and the Working Group of the African Commission on the Death Penalty”.

138. During the intersession, Commissioner Kayitesi forwarded Note Verbales to Burundi and Guinea Bissau in a view to undertake promotional missions in her capacity as Commissioner responsible with promotional activities on human rights in these countries.

Activities as Chairperson of the Working Group on the Death Penalty in Africa

139. From 7 to 9 November 2010, in Banjul, The Gambia, Commissioner Kayitesi chaired the Meeting of the Working Group on the Death Penalty in Africa. The Meeting was organised to examine the document on the issue of the Death Penalty in Africa. During the meeting, the Working Group examined the document and included the recommendations made at the two regional Conferences on the Death Penalty in Kigali, Rwanda and in Cotonou, Benin. The Working Group also examined the Draft Resolution on the Abolition of the Death Penalty in Africa, to be submitted for consideration to the African Commission.

140. During the intersession, Commissioner Kayitesi forwarded Letters of Appeal on the situation of the Death Penalty to:

i. His Excellency, President of the Federal Republic of Nigeria in June 2010, following information received about the planned execution of 800 prisoners sentenced to Death in a bid to reduce the prison population.
The Appeal was addressed to His Excellency, reminding him to adhere to the Resolutions of the African Commission on the Moratorium and urge for measures to be put in place to prevent the execution of these persons.

ii. His Excellency, President of the Republic of Equatorial Guinea in September 2010, following information received that four persons, three of which were military officers, and a civilian were executed some time after a military tribunal had tried and convicted them in Absentia; and that their family members were neither given the opportunity to see nor give them a decent burial. The letter expressed the African Commission's disappointment and urged the State Party to make all efforts to ensure that such situations do not re-occur, to respect the African Charter and African Commission Resolutions on the Moratorium.

Activities as Member of the Working Group on Specific Issues

141. From 5 to 6 November 2010, on the margins of the 48th Ordinary Session of the African Commission in Banjul, The Gambia, Commissioner Kayitesi attended the Meeting of the Committee on the Rules of Procedure (ROP) of the African Commission. The meeting was organized to review the text of the Rules of Procedure of the African Commission, make the necessary amendments and fine tune the document before its publication she contributed to the document and chaired the meeting.

Honourable Commissioner Pansy Tlakula

Activities as a Commissioner

142. From 29 to 30 July 2010, Commissioner Tlakula attended a Workshop for East and Southern African National Human Rights Institutions (NHRIS), organised by the Network of African NHRIs, in Johannesburg, South Africa. She made a presentation on “the African Commission on Human and Peoples’ Rights: its mandate, functions and relevance in the promotion and protection of human rights”.

143. On 26 August 2010, Commissioner Tlakula attended a workshop on Public Dialogue on the promotion of the African Charter and Protocols to enhance shared values and women’s participation in governance. The Workshop was organised by IDASA in Pretoria, South Africa.

144. On 8 September 2010, Commissioner Tlakula attended the African Network of Constitutional Lawyers' Working Group on Social and Economic Rights in Africa (SERIA), organised by the University of Cape Town, South Africa. The theme of the Workshop was,” Tracking progress in the protection of socio-economic rights in Africa”. During the Workshop, she made a keynote address on the ‘Background of the African Commission’,” where she highlighted the socio-economic rights problems in Africa, and the role of the African Commission in finding lasting solutions to their realisation by States Parties.”
145. From 7 to 9 October 2010, Commissioner Tlakula attended the Second Echenberg Family Global Conference on Human Rights and Diverse Societies, organised by the McGill Centre for Human Rights and Legal Pluralism, and the McGill University Faculty of Law in Montreal, Canada. She gave a speech on “Human Rights Institutions: Successes and Failures”.

146. On 19 October 2010, Commissioner Tlakula attended a Seminar on the recent developments in the African Commission organised by the People Opposed to Women Abuse (POWA) in Johannesburg, South Africa.

**Activities as Special Rapporteur on Freedom of Expression and Access to Information in Africa**

147. From 25 to 28 May 2010, the Special Rapporteur participated in a Panel Discussion on ‘Human Rights of Journalism,’ at the International Federation of Journalists (IFJ) World Congress in Cadiz, Spain.

148. On 5 July 2010, she attended the 2nd World Journalism Education Congress and 2010 Highway Africa Conference in Grahamstown, South Africa, where she made a presentation on “understanding the mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa: A medium to effective advocacy for Journalists in Africa.”

149. From 19 to 24 July 2010, the Special Rapporteur attended a Seminar on Media and Elections in SADC-challenges and opportunities, organised by the Electoral Commission Forum of SADC. She made a presentation on “The state of ratification of the African Charter on Democracy, Elections, and Governance in the SADC region.”

150. From 16 to 18 August 2010, the Special Rapporteur attended a Freedom of Information Litigation Strategies meeting in Nairobi, Kenya. During the meeting, she made a presentation on “Role and Mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa.” In her presentation, she highlighted Article 9 of the African Charter which entrenches the rights to freedom of expression and access to information, and the Declaration of Principles on Freedom of Expression in Africa (Declaration) which elaborates on Article 9. She also mentioned various Resolutions that have been adopted by the African Commission related to freedom of Expression and Access to Information in Africa since 2006.

151. From 30 August to 2 September 2010, she attended the Open Government Policy Summit organised by the Rivers State, in Port Harcourt Nigeria. She made a presentation on the “Role & Agenda of the Special Rapporteur on Freedom of Expression and Access to Information in Africa.”

152. On 15 September 2010, the Special Rapporteur participated in the “Right to Know Campaign” launch organised by the Freedom of Expression Institute (FXI) in Johannesburg, South Africa. She made a presentation on “Regional Perspectives on Freedom of Expression and Access to Information.”
153. On 28 September 2010, the Special Rapporteur attended the Regional Training Workshop on Media and Elections for Senior Journalists from Eastern and Southern Africa, organised by the UNDP. She made a presentation on “Freedom of Expression and Access to Information: A requisite for Democratic Elections in Africa”.

154. From 29 to 31 October 2010, she attended an Expert meeting on drafting a model for Freedom of Information Law in Africa. The workshop was organised by the Centre for Human Rights, University of Pretoria in collaboration with the Special Rapporteur and the Open Society Justice Initiative (OSJI).

155. On 12 November 2010, the Special Rapporteur attended a Brainstorming Meeting on strengthening freedom of expression under the African Peer Review Mechanism (APRM), organized by Article 19, in collaboration with her mandate. The meeting had three main objectives: to strengthen the cooperation and working relationship between the mandate of the Special Rapporteur and the APRM; ensure that issues related to freedom of expression and access to information are incorporated in the APRM Questionnaire and Indicators; and to strengthen the cooperation between the African Commission and the APRM.

156. In line with her mandate to “make public interventions where violations of the right to freedom of expression and access to information have been brought to her attention, including by issuing public statements, press releases, and sending appeals to Member States asking for clarifications,” the Special Rapporteur forwarded letters of Appeal to the Republic of Zambia, Republic of Rwanda, and the Republic of South Africa, respectively.

157. The Special Rapporteur noted that the Republic of Liberia which was reported to have a Freedom of Information Bill submitted to the House of Representatives since 18 April 2008 by the Liberia Media Law and Policy Reform Working Group was finally passed into law on 6 October 2010. In this regard, the Special Rapporteur commended Liberia for this progress and expressed hope that other States Parties which still have Bills pending in Parliament will follow suit.

158. The Special Rapporteur also noted that she continued to receive reports on violations of the right to freedom of expression and access to information in the following countries: Angola, Burundi, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Gabon, Ivory Coast, Western Kenya, Malawi, Mozambique, Namibia, Nigeria, Somalia, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda and Zimbabwe. These reports include: prosecution, kidnapping, imprisonment, harassment and intimidation; extra-judicial killing/murder of journalists and Media Practitioners; unfair press restrictions; banning and destruction of media houses, restrictions to publish newspapers by requiring a license as a precondition, detention of journalists pending investigation in publication crimes, libel and criminal defamation laws etc.

159. The Special Rapporteur welcomed the decision of the Constitutional Court of Uganda in August 2010 that the sedition law infringes on the public’s right to freedom

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2 These violations have remained the same and have been consistent over the years.
of speech guaranteed under Uganda’s Constitution, and thus abolishing criminal sedition. She reported that following this decision, a Ugandan Magistrates Court in Kampala dismissed sedition charges in October 2010 against the former radio presenter Robert Kalundi Serumaga, who faced six counts of sedition for making anti-President statements during the September 2009 Kampala riots. The Special Rapporteur expressed hope that the cases against the 10 journalists who are collectively facing 22 sedition charges will be withdrawn soon.

160. The Special Rapporteur also encouraged other African countries to ensure that their criminal defamation laws conform to standards stipulated in Principle XII of the Declaration. The Special Rapporteur pointed to some of the challenges still present and these include amongst others: States Parties who continue to ignore the recommendations and appeals of the Special Rapporteur; absence of Access to Information laws in some States Parties; continuous attacks on journalists and Media Practitioners and Legislative measures that restrict freedom of expression to name a few.

161. She finally appealed to the States Parties that have not yet done so, to ratify the African Charter on Democracy, Elections and Governance, highlighting that the right to freedom of expression and access to information, are essential for free, fair and credible elections.

Honourable Commissioner Yeung Kam John Yeung Sik Yuen

Activities as a Commissioner

162. On 27 August 2010, Commissioner Yeung Sik Yuen received the visit of Mr. Greg SHAW, Director, International and Corporate Relations of the International Federation on Ageing (IFA). The IFA has expressed interest to work with the ACHPR in the future.

163. On 2 October 2010, Commissioner Yeung Sik Yuen attended the function marking the International Day of Elderly Persons held at the State House, Le Reduit Mauritius. Almost 1,000 elderly persons turned out at a tea party/ cultural show hosted by the President of the Republic of Mauritius, to mark that yearly event.

164. On 4 November 2010, Commissioner Yeung Sik Yuen contributed to the publication of a booklet of illustrated drawings launched by Amnesty International (Mauritius) branch by writing its preface. The drawings are meant to help diffuse and promote human rights and civil liberties which are embedded in the Constitution of Mauritius.

Activities as the Chairperson of the Working Group on the Rights of Older Persons and Persons with Disabilities in Africa

165. From 9 to 11 August 2010, Commissioner Yeung Sik Yuen participated in the meeting of the Working Group on the Rights of Older Persons and Persons with Disabilities, in Mauritius. The main objective of the meeting was to finalise the Draft
Protocol on the Rights of Older Persons in Africa with a view to present it for consideration during the 48th Ordinary Session of the African Commission.

166. The meeting also mapped out strategies to finalize the draft Protocol on the Rights of People with Disabilities, through the participation and collaboration of other stakeholders by 2011. The meeting was able to finalize the draft Protocol on Older Persons in Africa in both English and French for submission to the African Commission.

APPOINTMENT OF SPECIAL RAPPORTEUR

167. The African Commission appointed Honourable Commissioner Lucy Asuagbor as Special Rapporteur on Human Rights Defenders in Africa, effective from 24 November 2010 for a term of two (2) years.

RE-ALLOCATION OF COUNTRIES OF RESPONSIBILITY

168. The African Commission reviewed the countries for which Commissioners would be responsible as follows::

i. Honourable Commissioner Reine Alapini-Gansou: Cameroon, Cape Verde; Democratic Republic of Congo, Mali and Tunisia;

ii. Honourable Commissioner Lucy Asuagbor: Benin; Guinea Bissau and Rwanda;

iii. Honourable Commissioner Mumba Malila: Kenya, Malawi, Mozambique Uganda and Tanzania;

iv. Honourable Commissioner Pansy Tlakula: The Gambia, Namibia, Lesotho,, Swaziland and Zambia;

v. Honourable Commissioner Catherine Dupe Atoki: Egypt, Ethiopia, Equatorial Guinea, Liberia, and Sudan;

vi. Honourable Commissioner Musa Ngary Bitaye: Ghana, Nigeria, Mauritius Sierra Leone and Zimbabwe;

vii. Honourable Commissioner Mohamed Bechir Khafalllah: Chad, Central African Republic, Guinea Conakry, Mauritania, SADR and Senegal;

viii. Honourable Commissioner Zainabo Sylvie Kaytesi: Algeria, Burkina Faso, Burundi and Cote d’Ivoire,

ix. Honourable Commissioner Mohamed Fayek: Botswana, Eritrea, South Africa and Somalia;
x. Honourable Commissioner **Soyata Maiga**: Angola, Congo Brazaville, Gabon, Niger and Libya;

xi. Honourable Commissioner **Yeung Kam John Yeung Sik Yuen**: Comoros, Djibouti, Madagascar, Sao Tome and Principe, and Seychelles.

**Private Session**

**Report of the Secretary**

169. In her Report to the 48th Ordinary Session of the African Commission, the Secretary, Dr. Mary Maboreke, set out the activities undertaken during the Inter-Session period between the 47th and 48th Ordinary Sessions; updated on administrative, budgetary and staffing issues; discussed the budget execution rate, as well as the budget preparation concerning the 2011 fiscal year.

170. She indicated that there have been some positive developments in the staffing situation at the Secretariat. She reported that in response to the Secretariat’s continuous requests to the Headquarters to expedite recruitment to the approved posts for 2010, a new Accounts Assistant has joined the Secretariat and candidates have been interviewed for vacant positions for Legal Officer positions at the Secretariat as follows: Legal Officer /Protection P2; Legal Officer/Promotion P2 and Legal Officer/Protection P3. She said following approval from the Headquarters, the posts of Receptionist/Secretary and Driver/Messenger were advertised locally, and that a lot of applications have been received, all of which would be forwarded to the Headquarters for processing with a view to having the new staff joining the Secretariat as soon as possible.

171. Concerning implementation of AU Policy decisions, Dr. Maboreke indicated that the Secretariat has continued to follow-up on the issue of the construction of a permanent Headquarters for the African Commission and so far, there have been no new developments on the matter.

172. Regarding the long-standing issue of the review of honorarium and allowances for members of the African Commission, Dr. Maboreke said the proposals for the allowances and honorarium of African Commission Commissioners had been attached to the 28th Activity Report of the African Commission. However, the Executive Council decided that the proposals be considered by the relevant AU bodies before being submitted for consideration by the Executive Council and Summit. She indicated that the Secretariat will continue to follow up on the matter.

173. Recalling that the new Rules of Procedure came into force three (3) months following the date of their adoption, that is, on 18 August 2010, Dr Maboreke informed the Honourable Commissioners that the Committee set up to clean up the Rules met prior to the 48th Ordinary Session, to ensure that the Rules are ready for a final reading and, thereafter, harmonization and translation into all the other AU languages as mandated during the 47th Ordinary Session.
Consideration of State Reports under Article 62 of the Charter


Status of Submission of State Reports

176. The status of submission and presentation of the Periodic Reports of States as at the 48th Ordinary Session of the Commission stood as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Category</th>
<th>Number of States</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>States which have submitted and presented all their Reports</td>
<td>9</td>
</tr>
<tr>
<td>8</td>
<td>States that are late by one (1) Report.</td>
<td>8</td>
</tr>
<tr>
<td>5</td>
<td>States that are late by two (2) Reports</td>
<td>5</td>
</tr>
<tr>
<td>5</td>
<td>States that are late by three (3) Reports</td>
<td>5</td>
</tr>
<tr>
<td>12</td>
<td>States that are late by more than three (3) Reports</td>
<td>12</td>
</tr>
<tr>
<td>12</td>
<td>States that have not submitted any Reports</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>States that have submitted all their Reports and will present at the 49th Ordinary Session</td>
<td></td>
</tr>
</tbody>
</table>

a) States which have submitted and presented all their Reports:

<table>
<thead>
<tr>
<th>No.</th>
<th>State Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Algeria</td>
</tr>
<tr>
<td>2.</td>
<td>Botswana</td>
</tr>
<tr>
<td>3.</td>
<td>Cameroon</td>
</tr>
<tr>
<td>4.</td>
<td>Congo Brazzaville</td>
</tr>
<tr>
<td>5.</td>
<td>Ethiopia</td>
</tr>
<tr>
<td>6.</td>
<td>Mauritius</td>
</tr>
<tr>
<td>7.</td>
<td>Nigeria</td>
</tr>
<tr>
<td>8.</td>
<td>Rwanda</td>
</tr>
<tr>
<td>9.</td>
<td>Uganda</td>
</tr>
</tbody>
</table>

b) States which have submitted one or more Reports but still owe more:

<table>
<thead>
<tr>
<th>No.</th>
<th>State Party</th>
<th>Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Angola</td>
<td>6 overdue Reports</td>
</tr>
<tr>
<td>2.</td>
<td>Benin</td>
<td>1 overdue Report</td>
</tr>
<tr>
<td>3.</td>
<td>Burundi</td>
<td>4 overdue Reports</td>
</tr>
<tr>
<td>4.</td>
<td>Cape Verde</td>
<td>6 overdue Reports</td>
</tr>
<tr>
<td>5.</td>
<td>Central African Republic</td>
<td>2 overdue Reports</td>
</tr>
<tr>
<td>No.</td>
<td>State Party</td>
<td>Status</td>
</tr>
<tr>
<td>-----</td>
<td>-------------------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>6.</td>
<td>Chad</td>
<td>4 overdue Reports</td>
</tr>
<tr>
<td>7.</td>
<td>Egypt</td>
<td>3 overdue Reports</td>
</tr>
<tr>
<td>8.</td>
<td>Gambia</td>
<td>7 overdue Reports</td>
</tr>
<tr>
<td>9.</td>
<td>Ghana</td>
<td>4 overdue Reports</td>
</tr>
<tr>
<td>10.</td>
<td>Ghana</td>
<td>6 overdue Reports</td>
</tr>
<tr>
<td>11.</td>
<td>Kenya</td>
<td>1 overdue Report</td>
</tr>
<tr>
<td>12.</td>
<td>Lesotho</td>
<td>4 overdue Reports</td>
</tr>
<tr>
<td>13.</td>
<td>Madagascar</td>
<td>1 overdue Report</td>
</tr>
<tr>
<td>14.</td>
<td>Mali</td>
<td>4 overdue Reports</td>
</tr>
<tr>
<td>15.</td>
<td>Mauritania</td>
<td>2 overdue Reports</td>
</tr>
<tr>
<td>16.</td>
<td>Mozambique</td>
<td>6 overdue Reports</td>
</tr>
<tr>
<td>17.</td>
<td>Namibia</td>
<td>3 overdue Reports</td>
</tr>
<tr>
<td>18.</td>
<td>Niger</td>
<td>2 overdue Reports</td>
</tr>
<tr>
<td>19.</td>
<td>Saharawi Arab Democratic Rep</td>
<td>2 overdue Reports</td>
</tr>
<tr>
<td>20.</td>
<td>Senegal</td>
<td>2 overdue Reports</td>
</tr>
<tr>
<td>21.</td>
<td>Seychelles</td>
<td>2 overdue Reports</td>
</tr>
<tr>
<td>22.</td>
<td>South Africa</td>
<td>1 overdue Report</td>
</tr>
<tr>
<td>23.</td>
<td>Sudan</td>
<td>1 overdue Report</td>
</tr>
<tr>
<td>24.</td>
<td>Swaziland</td>
<td>4 overdue Reports</td>
</tr>
<tr>
<td>25.</td>
<td>Tanzania</td>
<td>1 overdue Report</td>
</tr>
<tr>
<td>26.</td>
<td>Togo</td>
<td>4 overdue Reports</td>
</tr>
<tr>
<td>27.</td>
<td>Tunisia</td>
<td>1 overdue Report</td>
</tr>
<tr>
<td>28.</td>
<td>Zambia</td>
<td>1 overdue Report</td>
</tr>
<tr>
<td>29.</td>
<td>Zimbabwe</td>
<td>1 overdue Report</td>
</tr>
</tbody>
</table>

- **c)** States which have **submitted all** their Reports and will **present** at the 49th Ordinary Session of the ACHPR:

<table>
<thead>
<tr>
<th>No.</th>
<th>State Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Libya</td>
</tr>
<tr>
<td>2.</td>
<td>Burkina Faso</td>
</tr>
</tbody>
</table>

- **d)** States which have **not submitted** any Reports:

<table>
<thead>
<tr>
<th>No.</th>
<th>State Party</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Comoros</td>
<td>11 overdue Reports</td>
</tr>
<tr>
<td>2.</td>
<td>Côte d’Ivoire</td>
<td>9 overdue Reports</td>
</tr>
<tr>
<td>3.</td>
<td>Djibouti</td>
<td>9 overdue Reports</td>
</tr>
<tr>
<td>4.</td>
<td>Equatorial Guinea</td>
<td>12 overdue Reports</td>
</tr>
<tr>
<td>5.</td>
<td>Eritrea</td>
<td>5 overdue Reports</td>
</tr>
<tr>
<td>6.</td>
<td>Gabon</td>
<td>12 overdue Reports</td>
</tr>
<tr>
<td>7.</td>
<td>Guinea Bissau</td>
<td>12 overdue Reports</td>
</tr>
<tr>
<td>8.</td>
<td>Liberia</td>
<td>13 overdue Reports</td>
</tr>
<tr>
<td>9.</td>
<td>Malawi</td>
<td>10 overdue Reports</td>
</tr>
<tr>
<td>10.</td>
<td>Sao Tome &amp; Principe</td>
<td>12 overdue Reports</td>
</tr>
<tr>
<td>11.</td>
<td>Sierra Leone</td>
<td>13 overdue Reports</td>
</tr>
<tr>
<td>12.</td>
<td>Somalia</td>
<td>13 overdue Reports</td>
</tr>
</tbody>
</table>
177. The African Commission congratulates States Parties who are up to date with their Reports, and continues to urge those that have not yet done so, to submit their Initial and Periodic Reports. The African Commission also reminds States Parties that they can combine all the overdue Reports into a single cumulative Report, for submission to the African Commission.

**Protection Activities**

178. During the Inter-Session period, the African Commission undertook several measures pursuant to Articles 46 to 59 of the African Charter, to ensure the protection of human and peoples’ rights on the continent. These included, among others, writing Urgent Appeals, in reaction to allegations of human rights violations received from stakeholders, and Press Releases addressing human rights violations.

179. In addition, a total of eighty-two (82) Communications were tabled before the African Commission: five (5) on Seizure; fifty-two (52) on Admissibility; twenty-four (24) on the Merits; and one (1) for review.

180. The following Communications were seized of by the African Commission;

   i. Communication 389/10 – Mbiankeu Genevieve v Cameroon;
   ii. Communication 390/10 – Abba Boukar v Cameroon;
   iii. Communication 391/10 - Mr. Abdelrahman Mohamed Gassim & 9 others (represented by East and Horn of Africa Human Rights Defenders Project) v Sudan;
   iv. Communication 392/10 - Mr. Theogene Muhayeyezu v Rwanda;
   v. Communication 393/10 - Institute for Human Rights and Development in Africa & Rights and Accountability in Development v DRC;

181. The parties concerned (States Parties and Complainants) have been duly informed of the decisions of the African Commission in their respective cases.

182. The African Commission declared the following Communications admissible:

   i. Communication 311/05 - Riffaat Makkawi v Sudan;

183. The African Commission declared the following Communications inadmissible:

   i. Communication 305/06 - Article 19 and Others v Zimbabwe;
   ii. Communication 338/07 – SERAP v Nigeria;

184. The African Commission deferred seventy-four (74) Communications to its 49th Ordinary Session, for various reasons, including time constraints and lack of response from one or both parties.
Decisions/Adoption of Documents of the African Commission

185. The African Commission examined and adopted the following Reports and documents:


ii. Draft State Reporting Guidelines on Economic, Social and Cultural Rights in Africa; and


186. The African Commission discussed the document on “the Role of the African Commission on Human and Peoples’ Rights in Promoting the Rights to a Nationality in Africa” prepared by Citizen Rights in Africa Initiative (CRAI) and deferred its adoption.

187. The African commission also discussed the budget for 2011.

188. The African Commission decided that the nomination of an expert from North Africa to join the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa be re advertised up to 31 January 2011.

189. The African Commission considered a document on matters/cases for referral to the African Court and agreed that the Secretariat should identify such cases and report to the African Commission at its next Session.

190. The African Commission considered the request by Coalition of African Lesbians (CAL) to be furnished with reasons for not granting it observer status and decided that the Secretariat should make these reasons available to CAL.

191. The African Commission decided that the Secretariat intensifies its efforts in inviting States Parties to attend the Ordinary Sessions of the Commission and in ensuring that States Parties submit their Reports in terms of Article 62 of the Charter;

192. On the margins of the 48th Ordinary Session, a delegation of the African Commission led by the Acting Chairperson, met with the Honourable Secretary General for Foreign Affairs of the Republic of Angola, and discussed matters of mutual interest.

Adoption of Mission Reports

Appointment of Expert Members of the Committee for the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV

194. During its 47th Ordinary Session held in Banjul, The Gambia, from 12 to 26 May 2010, in accordance with Rule 28 of its Rules of Procedure, the African Commission adopted a Resolution Establishing a Committee on the Protection of the Rights of Persons Living with HIV and those at Risk, Vulnerable to and Affected by HIV.

195. Following the establishment of the Working Group, the African Commission mandated its Secretariat to compile a list of interested candidates who will constitute the Independent Expert Members of that Working Group. Due consideration was to be given to expertise on HIV and human rights issues in Africa, as well as gender, geographical distributions and legal aspects.

196. During the 48th Ordinary Session, the African Commission reviewed the applications received and appointed the following as Expert Members of the Committee on the Protection of the Rights of Persons Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV:

i. Ms. Atim Agnes, HRDI;
ii. Mr. Patrick Michael Eba, UNAIDS;
iii. Mr. Alain Patrick le Doux Fogue Dzutue (Cameroonian);
iv. Ms. Nicolette Merle Naylor, (South African);
v. Mr. Christian Garuka Nsabimana, (Rwandan);
vii. Mr. Durojaye Ebenezer Tope, (Nigerian).

Resolutions

197. The African Commission adopted the following Resolutions:

i. Resolution on Elections in Africa;
ii. Resolution on Repealing Criminal Defamation Laws in Africa;
iii. Resolution on the Cooperation between the African Commission on Human and Peoples’ Rights and the African Peer Review Mechanism;
iv. Resolution on the Deteriorating Situation of Indigenous People/Communities in some parts of Africa;
v. Resolution to Increase Members of the Working Group on Older Persons and People with Disabilities in Africa;
vi. Resolution on the Appointment of a Special Rapporteur on Human Rights Defenders in Africa;

vii. Resolution on the Appointment of Members of the Committee on the Protection of the Rights of People Living with HIV(PLHIV) and those at Risk, Vulnerable to and Affected by HIV;


ix. Resolution on Crimes committed against Women in the Democratic Republic of Congo (DRC);

x. Resolution on Securing the effective Realization of Access to Information in Africa;

xi. Resolution to Increase the Membership of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa;

Session Report

198. The African Commission deferred the adoption of the 48th Ordinary Session Report to a later Session, due to time constraints.

Dates and Venue of the 49th Ordinary Session

199. The African Commission decided that the 49th Ordinary Session will be held from 28 April to 12 May 2011, at a venue still to be determined.

Submission of the Twenty – Ninth Activity Report

200. In accordance with Article 54 of the African Charter on Human and Peoples’ Rights, the African Commission submits the present 29th Activity Report to the 19th Ordinary Session of the Executive Council of the African Union, for consideration and onward transmission to the 16th Summit of the AU Heads of State and Government.
ANNEXES
AGENDA OF THE 48th ORDINARY SESSION OF THE AFRICAN COMMISSION
ON HUMAN AND PEOPLES’ RIGHTS
(10 – 24 November 2010, Banjul, The Gambia)

Item 1: Opening Ceremony (Public Session)
   a) Swearing-in of New Commissioner

Item 2: Adoption of the Agenda (Private Session)

Item 3: Organization of Work (Private Session)

Item 4: Human Rights Situation in Africa (Public Session)
   a) Statements by State Delegates;
   b) Statement by African Union Organs with Human Rights mandate;
   c) Statements by Intergovernmental and International Organizations;
   d) Statements by National Human Rights Institutions;
   e) Statements by NGOs.

Item 5: Launching of the activities commemorating the 30th Anniversary of
       the African Charter (Public Session)

Item 6: Cooperation and Relationship with National Human Rights
       Institutions (NHRIs) and Non-Governmental Organizations (NGOs)
       (Public Session)
   a) Relationship between the ACHPR and NHRIs;
   b) Cooperation between the ACHPR and NGOs:
      i. Relationship with NGOs;
      ii. Consideration of Applications for Observer Status from NGOs.

Item 7: Consideration of State Reports (Public Session)
   a) Status of Submission of State Party Reports
   b) Consideration of the:
      Periodic Report of the Democratic Republic of Congo;
Item 8: Activity Reports of Members of the Commission & Special Mechanisms (Public Session)

a) Presentation of the Activity Reports of the Chairperson, Vice-Chairperson and Members of the ACHPR;

b) Presentation of the Activity Reports of Special Mechanisms of the ACHPR:

i. Special Rapporteur on Prisons and Conditions of Detention in Africa;

ii. Special Rapporteur on the Rights of Women in Africa;

iii. Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;

iv. Special Rapporteur on Human Rights Defenders in Africa;

v. Special Rapporteur on Freedom of Expression and Access to Information in Africa;

vi. Chairperson of the Committee for the Prevention of Torture in Africa;

vii. Chairperson of the Working Group on the Situation of Indigenous Peoples/Communities in Africa;


ix. Chairperson of the Working Group on the Death Penalty;

x. Chairperson of the Working Group on the Rights of Older Persons and People with Disabilities;

xi. Chairperson of the Working Group on Specific Issues Relevant to the Work of the Commission;

xii. Chairperson of the Committee on the rights of People Living with HIV/AIDS; and

Item 9:  **Consideration of:** (Private Session)

a) Budget Proposal for 2011;

b) Discussion on the Composition of the Advisory Committee on Budget and Staff Matters;

c) Report of the Committee on the Rules of Procedure;


f) Draft Protocol on the Rights of Older Persons in Africa;

g) Nomination of an Expert from North Africa to join the Working Group on Extractive Industry, Environment and Human Rights Violations in Africa;

h) Nomination of an Independent Expert for the Working Group on People Living with HIV;

i) AU Human Rights Strategy;

j) CAL Application for Observe Status;

k) Submission of State Reports and Attendance at the Ordinary Sessions of the ACHPR;

l) Matters /Cases for Referral to the African Court;

m) Right to Citizenship.

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

Promotion Missions to the:

i. Republic of The Sudan;

ii. Republic of Mozambique.

Item 11:  **Consideration of Communications:** (Private Session)

Item 12:  **Report of the Executive Secretary:** (Private Session)

Item 13:  **Consideration and Adoption of** (Private Session)
a) Recommendations, Resolutions and Decisions;

b) Concluding Observations on the Periodic Report of the:
   - Democratic Republic of Congo;

**Item 14:** Dates and Venue of the 49\textsuperscript{th} Ordinary Session of the ACHPR
   (Private Session)

**Item 15:** Any Other Business (Private Session)

a) Participation of Expert Members of Working Groups in promotional missions;

b) Update on commissioners’ honorarium;

c) Allegations on staff appointments.

**Item 16:** Adoption of: (Private Session)

a) 48\textsuperscript{th} Session Report;

b) 29\textsuperscript{h} Activity Report; and

c) Final Communiqué of the 48\textsuperscript{th} Ordinary Session.

**Item 17:** Reading of the Final Communiqué and Closing Ceremony
   (Public Session)

**Item 18:** Press Conference (Public Session)
Summary of the Complaint

1. The Complaint is filed by ARTICLE 19, the Media Institute of Southern Africa (MISA) of Zimbabwe, the Institute for Human Rights and Development in Africa, Gerry Jackson and Michael Auret Jr. (herein after referred to as the Complainants) against the Republic of Zimbabwe (the Respondent State) in accordance with Article 55 of the African Charter on Human and Peoples’ Rights (the Charter).

2. The Complainants aver that Capital Radio Private Limited (CRPL) is a private company incorporated in the Respondent State seeking to provide broadcasting services within Zimbabwe. They submit that despite repeated efforts, CRPL still cannot broadcast in Zimbabwe due to legal restrictions and political opposition that allows the state broadcaster to enjoy broadcasting monopoly.

3. It is further alleged that on 22 September 2000, the Supreme Court of Zimbabwe ruled, in a matter in which CRPL challenged the constitutionality of this monopoly, that Section 27 of the Broadcasting Act was unconstitutional on the grounds that it was inconsistent with Section 20(1) of the Constitution of Zimbabwe which guarantees the right of freedom of expression. The Supreme Court also struck down Sections 14(1) and 14(2) of the Radio-communication Service Act (RSA) on the same ground, and expressly pronounced that CRPL was legally entitled to broadcast in Zimbabwe and in accordance with the law can import any broadcasting equipment into Zimbabwe.

4. The Complainants aver that on 25 September 2000, the Respondent State publicly responded to the ruling of the Supreme Court by stating that the public broadcaster would continue its broadcasting monopoly and that a new legislation would be enacted to regulate the broadcasting sector.

5. Despite the statements by the Respondent State and the Minister in particular, CRPL proceeded to exercise its newly recognized right to broadcast. It imported broadcasting equipment into Zimbabwe and began broadcasting a test signal on 28 September 2000 from an office in Eastgate shopping centre Harare.

6. However, the Directors of CRPL quickly realized that the location was not ideal for broadcasting and thus, on the following day, 29 September, CRPL, relocated to
alternative broadcasting premises at the Monomotapa Crowe Plaza Hotel and set up a broadcasting studio in one of the offices there.

7. A music signal was set up on a broadcasting loop while the scope of the coverage was tested and it was determined what additional equipment was required for an improved signal.

8. Following the commencement of CRPL’s broadcast, the Respondent State is reported to have stated a number of times in the media that CRPL was operating illegally and referred to CRPL as a “pirate radio station”.\(^5\)

9. On 1 October 2000, the Minister of State for Information stated in a Zimbabwe Broadcasting Corporation (ZBC) telecast that he would be “taking appropriate action” against CRPL.

10. On 3 October 2000, an article appeared in The Herald newspaper which indicated that the Inspector Division of the Posts and Telecommunications Corporation (PTC) considered that CRPL’s broadcasting service may be in breach of Sections 12 and 13 of the Radio-communications Service Act (RSA).\(^6\)

11. Following this, on 4 October 2000, CRPL applied to the High Court for an order declaring that the RSA does not apply to CRPL’s broadcast service and to restrain the Respondent State and police from interfering with its broadcasting on the alleged violation of the RSA.\(^7\)

12. On the same day, the Minister made an application to the High Court seeking an interdict prohibiting CRPL from broadcasting on the basis that it was contravening Sections 12 and 13 of the RSA. A search warrant was also issued by a magistrate on 4 October 2000 permitting the Assistant Police Commissioner to search CRPL’s broadcasting premises and all related premises, and to seize its broadcasting equipment.\(^8\)

13. The police sought to exercise the search warrant that day, arriving at CRPL’s broadcasting premises that afternoon. Upon the arrival of the police, CRPL made an urgent *ex-parte* application to the High Court seeking a stay of execution of the search warrant.

14. The High Court heard the application immediately and granted the stay of execution, holding that the search warrant was invalid for a number of reasons.\(^9\) In particular, the Court declared that there was no possibility of CRPL breaching Sections 12 and 13 of the RSA as these provisions did not apply to CRPL and, in any case, these provisions were no longer enforceable since the Supreme Court had

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\(^6\) Ibid

\(^7\) Brooks certificate of urgency and Auret’s founding affidavit (Annex A6 & A7)

\(^8\) Search warrant (Annex A8)

\(^9\) Court transcript of ex-parte application (Annex A9)
ruled that Sections 12 and 13 of the RSA were secondary operative provisions to give effect to Sections 14(1) and 14(2).

15. The stay of execution of the search warrant was valid until 4:30pm of 5 October 2000. CRPL’s lawyers at the Monomotapa Plaza reminded the police of the existence of the High Court order prohibiting the execution of the search warrant. In the evening of 5 October, the police raided CRPL’s broadcasting studio and seized its broadcasting equipment. This brought CRPL’s broadcasting to an end.

16. The police also surrounded the homes of the Directors of CRPL on 4 October 2000 in order to execute the search warrant. On the advice of their lawyer, the CRPL Directors went into hiding at this point. The Directors’ homes continued to be surrounded and monitored for a number of days. The police camped outside Mr Auret’s family home for a week and executed their search warrant on Ms Jackson’s home during the week following 4 October.

17. Finally, in the afternoon of 4 October 2000, an emergency temporary legislation was enacted under the Presidential Powers (Emergency Regulations) Act. The Regulations introduced a broadcast regulatory regime imposing a requirement to obtain a broadcast license and designating the Minister of State for Information as the licensing authority. The Regulations further provided that broadcasting licenses would only be granted in response to a call for a license application made by the Minister.

18. The Regulations were not gazetted, and so did not become legally enforceable, until 5 October 2000.

19. After the raid on the CRPL’s broadcasting premises, the Respondent State held a press conference on 5 October 2000, where they displayed the broadcasting equipment confiscated from the CRPL. At this press conference, the Minister of Information stated that CRPL did not qualify for a broadcasting license under the Regulations.

20. On 5 October 2000, the High Court ordered the police to return the confiscated equipment, which had been unlawfully seized. In addition to this order, Gwaunza J made a declaration confirming that Sections 12 and 13 of the RSA had no application to CRPL’s functioning or broadcasting. The declaration also stated that CRPL should desist from broadcasting for ten days in order that its site and equipment (once returned) could be inspected and that CRPL should be granted a frequency.

21. On 6 October 2000, CRPL’s lawyer Mr Antony Brookes went to CRPL’s broadcasting premises to oversee the return of the confiscated equipment by the

11 IFEX Update 6 October 2000, See also BBC News ‘Radio Shut Down Defended’ 5 October 2000.
12 Ibid
13 Gwaunza J Order (Annex (A10)
police. Under the Regulations it was now an offence to possess a “signal transmitting station”, that is, a station which is used for the purpose of transmitting a broadcast service. Accordingly, Mr Brookes stated to the police that CRPL would be taking possession of everything except CRPL’s transmitter unit, as they were legally entitled to under the Regulations.\footnote{14} Despite this, the police proceeded to confiscate all the equipments.\footnote{15} CRPL continued to be liable for the hire charges on the equipments at the monthly charge of ZM $ 158,730.00 (approximately US $ 2,886.00 at the time).\footnote{16}

22. On or about 16 October 2000, the High Court held the Assistant Commissioner of Police in contempt of court for the raid on the evening of 4 October.\footnote{17} Neither the Assistant Police Commissioner nor the Police Commissioner denied that the stay of execution of the search warrant had been defied.

23. On 3 November 2000, CRPL’s lawyers wrote a letter of demand to the Police Commissioner seeking the return of the equipment, except the transmitter unit, which had been seized on 6 October 2000 and indicating that if this equipment was not returned, court proceedings would be initiated.\footnote{18} No response to the letter of demand was received.

24. On 8 November 2000, CRPL applied to the High Court for the return of the equipment seized on 6 October 2000, apart from the transmitter unit. The High Court ruled in CRPL’s favour and ordered the return of the equipment within two days.\footnote{19}

25. CRPL was not allocated a frequency or granted a broadcasting license. No broadcasting licenses were issued during the six month life span of the Regulations, thus keeping in place the State broadcast monopoly which had been ruled unconstitutional by the Supreme Court.

26. Upon the expiry of the Regulations in April 2001, the Respondent State enacted the Broadcasting Services Act 2001 (the Act), carrying over many of the provisions from the Regulations. The Parliamentary Legal Committee issued two reports – one regarding the Regulations\footnote{20} and the other regarding the Bill\footnote{21} - both of which declared several provisions of the Regulations and the Bill to be Unconstitutional. The Speaker of Parliament dismissed the report on the Bill on a technicality and the Bill was passed without amendment.\footnote{22}

27. CRPL then initiated proceedings in the Supreme Court to challenge the Constitutionality of the Broadcasting Services Act. Accordingly, in June 2001, CRPL applied to the Supreme Court to rule that key operative provisions of the Act were

\footnotesize{14} Affidavit of Mr Antony Brooks dated 8 November 2000
\footnotesize{15} The Herald ‘Police return Capital Radio equipment then seize it again’ 7 October 2000.
\footnotesize{16} Affidavit of Geraldine Jackson dated 8 November 2000
\footnotesize{17} Capitol Radio (Private) Limited v Minister of Information & Ors (3): In re Ndlovu 2000 (2) ZLR 289 (H).
\footnotesize{18} Letter of demand
\footnotesize{19} Court Order from Gwaunza J November 2000
\footnotesize{20} Regulations Report
\footnotesize{21} Bill Report
\footnotesize{22} IFEX Update, ‘Broadcasting Services Bill Passed into Law’ % April 2001.
unconstitutional on the basis of being inconsistent with Section 20(1) of the Zimbabwean Constitution, guaranteeing the right of freedom of expression.

28. There was a significant delay in hearing the matter. In the interim, the Broadcasting Authority of Zimbabwe (BAZ), which was established by the Act, made a call for satellite television license applications in 2002, although formally this fell within the Minister's ambit, not that of the BAZ. Four license applications were received but all were rejected. This was the first ever call for license applications under the Regulations or the Act.

29. The Supreme Court handed down its judgment on 19 September 2003, ruling that the majority of the contested provisions were either constitutional or that CRPL did not have standing to challenge them. The Court held four of the seventeen challenged provisions to be unconstitutional.

30. At the time of the Supreme Court's judgment, the Zimbabwean Government enacted the Broadcasting Services Amendment Act 2003 (Amendment Act). The Amendment Act repealed Section 6 of the Act (which designated the Minister as the broadcast licensing authority). The Amendment Act did not, however, repeal any of the other provisions which the Supreme Court had ruled were unconstitutional.

31. A second call for applications, this time for both radio and television, was made in March 2004. This would have been the first ever opportunity for CRPL or other aspirant radio broadcasters to apply for a license. Once again, all of the applications were denied. It was announced in May 2005 that Munhumutape African Broadcasting Corporation (MABC) was short listed by the BAZ for further consideration for a license but in August 2005 the BAZ denied MABC's application.

32. In September 2004, the Zimbabwean Government enacted subordinate legislation outlining the schedule of broadcast license fees for broadcasting licenses. These license fees were prohibitively expensive given the increasingly difficult economic situation in Zimbabwe and hence constituted a further barrier to the feasibility of private broadcasting in Zimbabwe. The license fee for a 10-year national commercial radio broadcasting license was set at ZM$ 672 million (approximately US$ 159,620 at the time) coupled with a ZM$ 5 million (US$ 1,187) non-refundable application fee, and a frequency fee of ZM$ 800,000 (US$ 190) per month. For a 10-year national commercial television license, the fee was ZM$ 840 million (US$ 199,525), along with the application fee. For a local commercial radio license, the fee was ZM$ 14 million (US$ 3,325).

23 IFEX Update ‘Information Minister rejects applications for satellite broadcasting licenses’ 12 July 2002.
24 Capitol Radio (Private) Limited v the Broadcasting Authority of Zimbabwe, the Minister of State for Information and Publicity and the Attorney General of Zimbabwe. Judgment No S.C 128/02 (Capitol Radio). Judgment was handed down on 19 September 2003.
33. By the time this Communication was filed before the Commission no private broadcasting license have been granted in Zimbabwe, leaving in place the State broadcasting monopoly.

Articles alleged to have been violated:

34. The Complainants allege violation of Articles 1, 2 and 9 of the African Charter.\(^{28}\)

Procedure:

35. The Complaint dated 18 August 2005 was received at the Secretariat of the African Commission on Human and Peoples’ Rights (the Secretariat) on 19 August 2005.

36. The Secretariat acknowledged receipt of the same on 22 August 2005.

37. An amended version of the Complaint, dated 6 October 2005, was received by the Secretariat on 11 October 2005. On 11 October 2005, the Secretariat wrote to the Complainants acknowledging receipt thereof.

38. At its 38\(^{\text{th}}\) Ordinary Session held from 21 November to 5 December 2005 in Banjul, The Gambia, the African Commission considered the communication and decided to be seized thereof.

39. On 15 December 2005, the Secretariat notified the Respondent State of this decision and requested it to forward its written submissions on the Admissibility of the matter.

40. On 30 January 2006, a similar notice was sent to the Complainants also requesting them to forward their written submission on the Admissibility of the matter.

41. On 25 April 2006, the Secretariat received the written submissions of the Complainants on Admissibility.

42. At its 39\(^{\text{th}}\) Ordinary Session, the African Commission considered the communication and decided to defer it to its 40\(^{\text{th}}\) Ordinary Session pending the Respondent State’s submission on Admissibility. The parties were notified accordingly.

43. At its 40\(^{\text{th}}\) Ordinary Session, the African Commission considered the communication and deferred its decision thereof to the next session. The Complainant sent in further submissions on the communication and the Respondent State also made its submissions during the said session.

\(^{28}\) The Complainants also aver that the provisions of Article 9 of the African Charter should be read in light of the African Commission’s Declaration of Principles on Freedom of Expression in Africa (Declaration), with Principles I, II, III, V, VII and XVI having particular bearing on this communication.
44. At its 41st Ordinary Session, the Communication was further deferred to the 42nd Ordinary Session for a decision on Admissibility and the parties were accordingly informed of the decision by a Note Verbale and letter dated 8 July 2007.

45. During the inter-session, the Secretariat on examining the Respondent State’s submission on Admissibility discovered that they had sent submissions on the merits instead of submissions on Admissibility as requested.

46. By Note Verbale ACHPR/LPROT/COMM/305/ZIM/TN, dated 6 September 2007, the Secretariat informed the Respondent State of this and asked the later to make submissions on Admissibility by 30 September 2007. The Secretariat also informed the Respondent State that if it wishes the African Commission to proceed on the Merits of the case, this should be indicated by the State.

47. During the 42nd Ordinary Session held from 15 – 28 November 2007 in Brazzaville, Republic of Congo, the Commission considered the Communication and decided to defer the decision on Admissibility to the 43rd Ordinary Session.

48. The parties were informed of the decision of the Commission by a Note Verbale and letter dated 19 December 2007.

49. At its 43rd, 44th and 45th Ordinary Sessions the Commission considered the Communication and deferred its decision on Admissibility as the Respondent State did not submit its arguments on Admissibility.

50. By Note Verbale and letter dated 3 June 2009 the Secretariat informed the parties of the deferment of the Commission’s decision on Admissibility to its 46th Ordinary Session and further notified the Respondent State of the former’s decision to proceed to decide on the Communication if it fails to submit its arguments on Admissibility.

51. On 19 August 2009 the Secretariat received the Respondent State’s submission on Admissibility of the Communication.

52. During its 46th Ordinary Session the Commission considered the Communication and deferred its decision to the 47th Ordinary Session to enable the Secretariat prepare a draft decision on Admissibility.

53. During its 47th Ordinary Session held in Banjul, The Gambia, from 12 to 26 May 2010, the African Commission decided to defer its decision on Admissibility to its 48th Ordinary Session.

54. In Note Verbale and letter dated 16 June 2010 the Respondent State and the Complainants respectively were informed of the above decision of the African Commission.
The Law on Admissibility

Complainants’ submission on Admissibility

55. The Complainants submit that they have met all the admissibility requirements under Article 56 of the African Charter. They submit that the Communication complies with Article 56(1) as the authors of the Communication are listed as Article 19, Gerry Jackson, Michael Aurent Jr., Media Institute of Southern Africa and the Institute for Human Rights and Development in Africa.

56. Regarding Article 56(2) of the Charter, the Complainants submit that the Communication alleges violation by the Respondent State of Articles 1, 2 and 9 of the Charter. They submit that the Respondent State has violated Article 1 of the Charter by failing to adopt measures to give effect to its obligations under Article 9 of the Charter and this has the effect of denying the rights enshrined in this provision. They also argue that the specific actions of the Respondent State, particularly the Minister’s official statement that CRPL would never be granted a license because of its predominately white ownership, discriminated against CRPL, thereby constituting a violation of Article 2 of the Charter. They therefore submit that these allegations establish a prima facie violation of the Charter and thus compatible with Article 56(2).

57. Regarding Article 56(3) of the Charter, the Complainants aver that the Communication is written in a manner that is neither disparaging nor insulting to either the Respondent State or the Organization of African Unity (now the African Union).

58. With respect to Article 56(4) the Complainants submit that the Communication is supported by firsthand experience of two of the Complainants, court rulings and other pertinent documents, which are annexed to the Communication.

59. Concerning Article 56(5) of the Charter, the Complainants submit that the Supreme Court handed down its judgment on 19 September 2003, ruling that most of the impugned provisions it was challenging were either constitutional or that CRPL as a prospective broadcaster, lacked standing to challenge them. According to the Complainants, in respect of the provisions ruled constitutional (which constituted a number of the key operative provisions of the broadcast regulatory regime), it is well established that when the highest appellate court of a respondent state has pronounced on an issue in contention, it is settled that the remedy is exhausted.29

60. According to the Complainants, the Supreme Court ruled that four out of the seventeen provisions were unconstitutional.30 This limited ruling of unconstitutionality would not, in their view, even if fully implemented, provide an effective solution to the

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30 The Supreme Court of Zimbabwe ruled that Secs 6, 9(1), (2) & (3) were unconstitutional. Sec 6 designate the Minister as the licensing authority; Sec 9(1) restricts one national broadcasting license to each radio and television; Sec 9(2) restricts only one signal carrier license to be issued other than to public broadcaster; and Sec 9(3) prohibits a person holding both a broadcasting license and signal carrier license.
violations of the Charter as it would not remedy the systematic Charter violations which are inherent in the broadcast regulatory regime as a whole. The Complainants believe that the predominant effect of the broadcast regulatory regime at present is to keep in place the State broadcasting monopoly, which, as a result of the Act, has continued uninterrupted by the Supreme Court’s ruling.

61. Furthermore, they aver that the Amendment Act largely ignored the Supreme Court’s ruling on unconstitutionality and no further legislation has been enacted to implement these rulings. Accordingly, the Complainants argue, the limited remedy provided by the Supreme Court was rendered ineffective.

62. It is submitted that the Amendment Act responds to only one of the rulings of unconstitutionality of the Supreme Court judgment, but even such minor compliance with the Supreme Court's judgment fails to address the fundamental issue of the Minister's ability to exert significant influence over the licensing process and the broadcast regulatory regime. The Complainants are of the view that a broadcast licensing process which is not independent of government control is inconsistent with the right to freedom of expression, an argument which remains unaffected by both the Supreme Court's ruling and the Amendment Act.

63. The Complainants allege that by allocating formal regulatory responsibility to the BAZ and at the same time reserving significant powers of intervention and direction to the Minister, the Amendment Act fails to address the primary arguments put forward both at the Zimbabwean Supreme Court and in the present Communication.

64. In conclusion, the Complainants contend that by pursuing to completion the Supreme Court proceedings, CRPL has exhausted available domestic remedies.

65. Concerning the Admissibility requirement under Article 56(6) of the Charter, the Complainants submit that the Communication was filed before the Commission in August 2005, but September 2003, the date on which the Supreme Court rendered its judgment, should not be taken as the correct point for purposes of exhaustion of local remedies, because according to the Complainants, it was reasonable to wait and see how the Supreme Court judgment would be implemented and whether any broadcasting license would be issued.

66. According to the Complainants, this is supported by the fact that a call for application for satellite television broadcasting licenses had been made in 2002, although all four applicants were in fact rejected. Furthermore, a call for national radio and television broadcasting license applications as well as local commercial radio licenses was made some months after the Supreme Court judgment, in March 2004, and the period for submitting radio license applications was extended until January 2005. In May 2005, they submit, the BAZ announced that of the five applicants, only one had been short-listed. In August 2005, it was announced that even this applicant, MABC, would not be given a license.

67. Following the denial of all the applications after the March 2004 call, which made it clear that the authorities were not implementing even the very flawed
broadcasting regime set out in the Act in good faith, the Complainants claim that they decided to file the Communication with the Commission.

68. The Complainants also submit that this Communication has not been submitted to any other international body in accordance with Article 56(7) of the Charter.

69. For these reasons, the Complainants submit that the Complaint satisfies each of the requirements for Admissibility.

**Respondent State’s submission on Admissibility**

70. The Respondent State contends that non-compliance with even a single requirement under Article 56 of the Charter renders a Communication inadmissible, and that Article 56(5) on exhaustion of local remedies has not been complied with by the Complainants.

71. The State avers that the record shows that CRPL approached the Supreme Court in 2000 in the case **CRPL v Ministry of information, Posts and Telecommunications SC99/2000** and was successful in having Section 27 of the Broadcasting Act and Sections 14(1) and 14(2) of the Radio Communications Services Act declared unconstitutional.

72. In the same year, the State submits, CRPL was granted an order by the High Court of Zimbabwe to have its confiscated property returned to it, which was accordingly returned. The Respondent State further submits that CRPL was ordered not to carry out broadcasting services until properly licensed and in order for the license to be issued and the air waves allocated, CRPL was required by the Court order to submit its equipment and site for inspection. The latter was not done, and hence, the State argues, CRPL itself has contributed to the failure to comply with the full court order and that CRPL has not satisfied this requirement to date.

73. The Respondent State submits that in 2002 CRPL approached the Supreme Court, which as provided by the national law is the first court of instance in matters relating to constitutional cases or matters relating to the Bill of Rights. The Court considered the application on the merits and declared that Sections 6, 9(1), (2) & (3) were unconstitutional, and declared Sections 8(1), (2) and (5), 11(4), 12(1)(f), 12(2), 12(3), 15, 16 and 22(2) constitutional. The Sections that were declared unconstitutional, according to the Respondent State, were repealed or amended to be in conformity with the Constitution. This record of proceedings, the Respondent State argues, shows that CRPL was never without a remedy.

74. The Respondent State claims that having declared some sections of the RSA unconstitutional, and the state having amended those provisions accordingly, its broadcasting monopoly was removed and CRPL could have taken that opportunity, but the latter failed to apply for a license on both the first and the second calls made in 2002 and 2004 respectively. Previously, the Respondent State alleges, other aggrieved parties in similar circumstances sought relief from the High Court and were
granted licenses as in Retrofit v Minister of Information, Posts and Telecommunications.

75. The Respondent State avers that if CRPL had applied for and was not granted the license then it should have taken the matter to court as the remedy has been proven not only to be available but effective.

76. With respect to Article 56(6) of the Charter the Respondent State submits that even if the Commission were to find that local remedies were exhausted, the Communication was submitted after an unduly prolonged period of time as it was filed with the Commission after more than two years.

Commission’s Analysis on Admissibility

77. Article 56 of the Charter provides for seven requirements on the basis of which the Admissibility or otherwise of Communications is determined. Accordingly, the Commission proceeds to assessing the submissions of both parties against the requirements under the said provision.

78. Although the Respondent State challenges the Admissibility of the present Communication only on two grounds, that is Article 56(5) and (6) of the Charter, the Commission finds it necessary to analyze the admissibility of the Communication against all the seven requirements under Article 56 of the Charter.

79. Article 56(1) requires Communications to indicate the authors even if the latter wants to remain anonymous. With respect to this requirement, the Complainants have indicated their names as: Article 19, Gerry Jackson, Michael Auret Jr, Media Institute of Southern Africa and the Institute for Human Rights and Development in Africa together with their contact addresses. The Respondent State has not raised any objection on this issue. Accordingly, since the Communication clearly lists the names and contact details of the Complainants (authors), the Commission holds that the Communication meets the requirement under Article 56(1) of the Charter.

80. The second admissibility requirement provided under Article 56(2) states that Communications should be compatible with the Constitutive Act of the African Union (AU) or with the African Charter. The Complainants submit that the Respondent State has violated Articles 1, 2 and 9 of the Charter. They have also briefly narrated the series of events and acts that they allege have caused the violation of those provisions of the Charter. The Respondent State however does not challenge the Admissibility of this Communication on this ground. The Commission is of the view that the facts described in this Communication reveal a prima facie violation of the Charter, and the Communication is brought by persons within the jurisdiction of a State Party to the Charter. Based on the above, the Commission is satisfied that the requirement under Article 56(2) has been met.

81. Article 56(3) provides that for a Communication to be admissible it must not be written in a language which is insulting or disparaging to the AU or the Respondent State or its institutions. The Complainants contend that the Communication is written in a manner that is neither disparaging nor insulting to either the Respondent State or the OAU (present AU). The Respondent State is
again silent on this claim which is taken as acceptance. Having studied the Communication, the Commission does not find it disparaging in any way. The Commission therefore concurs with the Complainants that the Communication complies with Article 56(3) of the Charter.

82. Article 56 (4) of the Charter requires Communications not to be based exclusively on news disseminated by the media. The Complainants submit with respect to this requirement that the Communication is based on personal experiences and testimonies of two of the Complainants and the rulings and proceedings of the High Court and Supreme Court of Zimbabwe. They have also attached the relevant Acts, Parliamentary Legal Committee report and numerous reports of NGOs. This claim is not contested by the Respondent State. Thus, the Commission is of the view that this Complaint is not solely based on news disseminated by the media and hence complies with Article 56(4) of the Charter.

83. Article 56(5) requires that Communications should be brought to the Commission after exhausting all local remedies, if any, unless it can be shown that the procedure of exhausting local remedies have been unduly prolonged. The Complainants submit that CRPL challenged the constitutionality of seventeen provisions of the Broadcasting Services Act 2001, and the Supreme Court in its 19 September 2003 judgment ruled that four out of the seventeen provisions of the Act were unconstitutional, and the rest were found to be constitutional or that CRPL, as a prospective broadcaster, lacked standing to challenge them.

84. The Supreme Court is the court of original and final jurisdiction on matters relating to the constitutionality of laws and the Bill of Rights. No appeal lies from the decision of the Supreme Court. Thus, having approached the Supreme Court of the Respondent State the Complainants are still not satisfied with the judgment and hence they were left with no other local remedy. It is the Commission’s view that with respect to this communication, the Complainants have exhausted the domestic remedies available to them.

85. The Respondent State’s argument that the repeal or amendment of certain provisions that were found to be unconstitutional by the Supreme Court provided the CRPL with domestic remedy is noted, but does not deny the fact that the Complainants exhausted local remedies.

86. The Respondent State is of the view that after the ruling of the Supreme Court and the subsequent amendment of the provisions of the regulatory framework found to be unconstitutional, CRPL should have applied for a license using the two calls for application made by BAZ in 2002 and 2004. According to the Respondent State, had CRPL applied for, and not been granted a license then it should have taken the matter to Court. The position of the Respondent State is that by not applying for a license there is an available and effective domestic remedy left to be pursued.

87. The Commission wishes to state with respect to the above submissions by the Respondent State that the matter before this Commission is the compatibility of the provisions of the Broadcasting Services Act with the African Charter. The CRPL petitioned the Supreme Court of Zimbabwe arguing that seventeen provisions of the Act are unconstitutional (and restrict the enjoyment of freedom of expression). The
Supreme Court ruled that four of the seventeen provisions are indeed unconstitutional. However, the Complainants are not satisfied with the decision of the Supreme Court, nor are they satisfied with the measures taken by the State to amend some of the provisions found to be unconstitutional. They have thus approached the Commission challenging those same provisions as contravening Articles 1, 2 and 9 of the African Charter. Nowhere in their submissions have the Complainants indicated that they were before the Commission because they could not apply for a license or that they have been denied a broadcasting license. The State can therefore not rely on an issue that is not before this Commission to argue that local remedies have not been exhausted. Therefore, this Communication has complied with Article 56(5) of the Charter.

88. Article 56(6) stipulates that a Communication should be submitted within a reasonable period of time after exhausting local remedies or from the date the Commission is seized with the matter.

89. In the present Communication the Supreme Court rendered its judgment on 25 September 2003 and the Complainants submitted the Complaint with the Commission on 19 August 2005, which is almost two years after exhausting local remedies.

90. The question here is, can this period be considered as ‘reasonable’ in terms of Article 56(6) of the Charter?

91. Unlike the European Convention on Human Rights and Fundamental Freedoms\(^{31}\) and the American Convention on Human Rights\(^{32}\), which provide a specific time limit for the submission of communications, which is six months, the African Charter only provides that Communications should be submitted ‘within a reasonable period’ which is not defined. The Commission thus treats each case on its own merit to ascertain the reasonableness of the time.\(^{33}\)

92. Thus, in *Darfur Relief and Documentation Centre v Republic of Sudan*\(^{34}\) the Commission stated that the lapse of two years and five months or twenty nine months *without any reason or justification* was considered as unreasonable. The Commission noted further that ‘where there is a good and compelling reason why a Complainant does not submit his complaint to the Commission for consideration, the Commission has a responsibility, for the sake of fairness and justice, to give such a Complainant an opportunity to be heard’.

93. In the present Communication, it took the Complainants two years after the exhaustion of local remedies to bring the matter to the Commission. The reason advanced by the Complainants for this delay in submission is that they wanted to wait and see how the Supreme Court’s judgment would be implemented and whether any broadcasting licenses would be issued.

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\(^{31}\) Art 26 European Convention on Human Rights and Fundamental Freedoms

\(^{32}\) Art 46(1)(b) American Convention on Human Rights

\(^{33}\) Communication 310 /05 - *Darfur Relief and Documentation Centre v Republic of Sudan* (2009) para 74.

\(^{34}\) *Darfur Relief and Documentation Centre v Republic of Sudan* para 77.
94. Is the reason advanced by the Complainants ‘good and compelling’?

95. The issue brought before the Supreme Court by CRPL was that seventeen provisions of the broadcasting regulatory regime (the BSA) were unconstitutional. The Supreme Court held that four of the provisions were indeed unconstitutional and the others were constitutional and that CRPL had no standing before the Court. The Court’s decision was not appealable as the Supreme Court is the highest court in Zimbabwe. CRPL was not satisfied with the Court’s ruling as it insisted that the provisions restrict the enjoyment of freedom of expression. So why was it necessary for the Complainants to ‘wait and see’ how the Supreme Court’s decision would be implemented, and whether any broadcasting license would be issued?

96. The reason advanced by the Complainants for the delay is neither good nor compelling. The CRPL itself did not apply for a license. It was ‘waiting to see’ whether others who applied would be granted the license. In any case the matter before the Commission is not the refusal to grant licenses, it is rather the incompatibility of provisions of the BSA with the African Charter. The Complainants knew as far back as September 2003 that they had reached ‘a dead end’ at domestic level. They could have within a reasonable time seized the Commission with the matter. Waiting for two years with no compelling reason is not justifiable.

97. For the above reasons the Commission finds that the Communication was not filed within a reasonable time after the exhaustion of local remedies and hence does not comply with Article 56(6) of the Charter.

98. Article 56(7) of the Charter states that a Communication submitted to the Commission should not be one already settled by states involved according to the principles of the Charter of the United Nations, or the Charter of the OAU or the provisions of the African Charter. The Complainants submit that the Communication has not been submitted to any other international body for settlement and the Respondent State has not contested this claim. Thus, the Commission holds that the Communication fulfils the requirement under Article 56(7) of the Charter.

Decision of the Commission on Admissibility

99. In view of the above, the African Commission on Human and Peoples’ Rights decides:

I. To declare this Communication Inadmissible as it does not comply with the requirement of Article 56(6) of the African Charter;

II. To give notice of this decision to the parties; and

III. To include this decision in its Report on Communications.

Done in Banjul, The Gambia, during the 48th Ordinary Session of the African Commission, 10 – 24 November 2010
Summary of the Complaint:

1. On 14 February 2007, the Secretariat of the African Commission on Human and Peoples’ Rights (the Secretariat) received the present Communication from the Complainant - Socio-Economic Rights and Accountability Project (SERAP) on behalf of the people of Awori Community in Abule Egba in Lagos State, Nigeria, against the Federal Republic of Nigeria (the Respondent State or Nigeria).35

2. The Complainant alleges that the Respondent State violated the rights of the people of Awori Community, following a pipeline explosion in Abule Egba on 26 December 2006, which resulted in loss of lives, physical and permanent injuries, destruction of properties, environmental degradation, and other human rights violations.

3. The Complainant alleges that, for months, the Respondent State failed to deal with the issue of fuel scarcity in the country, repair damaged pipelines, and inspect these incidents. According to the Complainant, this led to young men and women scooping fuel from damaged pipelines in order to sell and make a living.

4. Furthermore, the Complainant alleges that after the explosion, the fire department was ill-equipped to deal with the fire as they reportedly had no water or equipment.

5. The Complainant alleges that about 700 lives were lost including women and children in the aftermath of the pipeline explosion. Furthermore, it submits that, the environment has not been properly disinfected since the explosion, which could cause an epidemic to the remaining residents of the area.

6. The Complainant alleges that there has been environmental degradation, and potential pollution of water, as a result of the explosion, which may amount to health problems in the long run.

7. According to the Complainant, the injured have also not been adequately treated of their injuries and that some of them have died while in the hospital.

8. The Complainant further alleges that the leaders of the Abule Egba Community reported the matter to the Nigerian authorities and they were ignored.

9. The Complainant alleges that due to the above-mentioned facts, the rights of the people of Awori Community, which are guaranteed under the African Charter on Human and Peoples’ Rights (the African Charter), have been violated by the Respondent State.

35 Nigeria ratified the African Charter on Human and Peoples’ Rights on 22nd July 1983, and is therefore a State Party.
Articles alleged to have been violated:

10. The Complainant alleges that the actions and omissions of the Respondent State resulted in violations of Articles 2, 4, 5, 14, 16, 20 and 24 of the African Charter.

Procedure:

11. The present Communication was received by the Secretariat on 14 February 2007.

12. The Secretariat acknowledged receipt of the Communication to the Complainant by letter ACHPR/LPROT/COMM/CB/338/07/NIG/RE of 21 February 2007, in which the Complainant was informed that the Communication would be scheduled for seizure by the African Commission for Human and People’s Rights (the African Commission or the Commission) at its 41st Ordinary Session held from 16 to 30 May 2007, in Accra, Ghana.

13. At its 41st Ordinary Session, held from 16 to 30 May 2007, in Accra, Ghana, the African Commission considered the Communication and decided to be seized thereof.

14. By letter of 13 June 2007 and Note Verbale of 15 June 2007, the Secretariat notified the parties of its decision on seizure and requested them to submit their arguments on the Admissibility of the Communication within three months.

15. At its 42nd Ordinary Session, held from 15 to 28 November 2007, in Brazzaville, Republic of Congo, the African Commission received a submission from the Respondent State and the Complainant was notified accordingly in 19 December 2007.

16. By Note Verbale of 19 December 2007 and by letter of the same date, both parties were notified of the African Commission’s decision at its 42nd Ordinary Session. The Complainant was given a three months period to submit its arguments on Admissibility.

17. The African Commission decided to defer consideration of the Communication to the 43rd Ordinary Session to allow the Complainant to submit its arguments on Admissibility.


19. By letter, dated 22 October 2008, the African Commission informed the Complainant that, during its 43rd Ordinary Session, held from 7 to 22 May 2008, in Ezulwini, the Kingdom of Swaziland, it considered the present Communication and
decided to defer its decision on Admissibility to its 44th Ordinary Session to allow the Complainant to submit its arguments on Admissibility.

20. By letter, of 11 December 2008, the African Commission informed the Complainant that its decision on Admissibility was deferred during the 44th Ordinary Session, held from 10 to 24 November 2008 in Abuja, Federal Republic of Nigeria, to allow the Complainant to submit its arguments on Admissibility within a period of three months.

21. By letter and Note Verbale, of 4 June 2009, the African Commission informed both parties that at its 45th Ordinary Session held from 13 to 27 May 2009 in Banjul, The Gambia, the African Commission decided to defer further consideration of the Communication to allow the Complainant to make its submissions on Admissibility within a period of two months.

22. By letter of 15 March 2009, the Secretariat acknowledged receipt of the Complainant’s submission on Admissibility on the same day and forwarded the same to the Respondent State by Note Verbale dated the same day.

23. By letter and Note Verbale, of 14 December 2009, the African Commission informed both parties that at its 46th Ordinary Session held from 11 to 25 November 2009, in Banjul, The Gambia, the Commission considered the Communication and decided to defer it to its 47th Ordinary Session to allow its Secretariat time to prepare a draft decision.

24. By letter and Note Verbale, of 25 June 2010, the African Commission informed both parties that at its 47th Ordinary Session held from 12 to 26 May 2010, in Banjul, The Gambia, the Commission considered the Communication and decided to defer the consideration of Admissibility to its 48th Ordinary Session in November 2010 to allow the Secretariat time to prepare a draft decision.

The Law on Admissibility

The Complainant’s Submissions On Admissibility

25. The Complainant submits that the present Communication satisfies all the requirements of Admissibility as contained under Article 56 of the African Charter.

26. The Complainant submits that it complies with Article 56 (1) of the African Charter, because the author of the Communication is identified. It declares that SERAP is the author of the present Communication, on behalf of several victims of the Awori Community affected by the pipeline explosion.

27. The Complainant also submits that it complies with Article 56 (2) of the African Charter, as the present Communication reveals a *prima facie* violation of the African Charter.
28. Concerning Article 56 (3) of the African Charter, the Complainant submits that the present Communication complies with the requirement under the said sub-Article because it is written and presented in a professional and respectful language.

29. The Complainant further submits that the present Communication fulfils the requirement in Article 56 (4) of the African Charter because according to the Complainant, it relies on first hand information from the victims, including testimonies from those directly affected by the pipeline explosion.

30. With respect to Article 56 (5) of the African Charter, the Complainant submits that the present Communication “constitutes a compelling exception to the requirement of exhaustion of local remedies” and requests the African Commission to wave this requirement as portrayed in its jurisprudence. It submits that there is no adequate or effective domestic remedies that exist to address the violations alleged in the present Communication.

31. The Complainant also submits that, although the Nigerian Government is well aware of the human rights violations that the country is subject to, it has not fully or effectively addressed the violations in the present Communication, and that these violations are still ongoing.

32. It further submits that even though the Respondent State has incorporated the African Charter into its national laws, Nigerian courts have ruled that its application in the country is subject to the Nigerian Constitution, which is the supreme law of the land.

33. The Complainant bases its request to wave the requirement of Article 56 (5) of the African Charter on several decisions of the African Commission.\(^{36}\)

34. The Complainant also submits that the Nigerian legal system lacks availability and effectiveness, because it is not accessible to the poor and the marginalized community.

35. Furthermore, the Complainant submits that, the burden shifts to the Respondent State to submit evidence proving the availability, the accessibility, and the effectiveness of local remedies to redress the violations in the current Communication.

36. With respect to Article 56 (6) of the African Charter, the Complainant avers that the present Communication was filed within days of the pipeline explosion.

Regarding Article 56 (7) of the African Charter, the Complainant avers that the present Communication is not being considered by another international or regional mechanism, nor has it been previously settled by any of them.

The Respondent State’s Submissions On Admissibility

In its submission on Admissibility, the Respondent State urged the African Commission “to strike out the Communication as it is an abuse of the process of the Commission.” It submits that the present Communication should not be Admissible for the non-fulfilment of Article 56 (4), (5) and (6) of the Charter.

According to the Respondent State, the Complaint does not fulfil the requirement of Article 56 (5) of the African Charter related to the exhaustion of local remedies. It submits that “the incident complained of is envisaged and effectively covered by local legislation providing for local remedies.”

It further submits that the Complainant “did not attempt any form of utilization of such local remedies,” which are available and accessible, before submitting a Communication about the incident to the African Commission.

To substantiate its submission, the Respondent State submits that, the domestic law of Tort; Section 11 (5) of Oil Pipelines Act LFN 2004, provides several remedies for the victims in case of pipeline explosions.

Furthermore, the Respondent State submits that, under Sections 33, 35, 36, 42 and 46 of the Nigerian Constitution, victims have the “unfettered right of action.” It adds that, Section 46 of the Nigerian Constitution expressly mandates the State to provide them with legal representation.

The African Commission’s Analysis on Admissibility

In order for a Communication to be admissible before the African Commission, they have to fulfil all the seven requirements of Article 56 of the African Charter. The African Commission has affirmed in its jurisprudence that those requirements are cumulative, meaning that, if any one of them is absent, the Communication will be declared inadmissible.\(^{37}\)

In the present Communication, the Complainant submits that they have complied with six of the seven requirements enumerated in Article 56 of the African Charter. The Complainant requests the African Commission to waive the requirement under Article 56 (5) of the African Charter that is related to the exhaustion of local remedies due to the lack of adequate or effective domestic remedies that exist to address the violations alleged in the Communication.

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45. In its submission on Admissibility, the Respondent State, however, noted that the present Communication should not be Admissible because of the non-fulfilment of Article 56 (4), (5) and (6) of the African Charter. The Respondent State nonetheless only submitted arguments relating to the non-exhaustion of local remedies requirement, that is, Article 56 (5) of the African Charter.

46. Notwithstanding the fact that the only Article the Respondent State contends to Article 56 (5) of the African Charter, the African Commission will still proceed to analyse all the seven requirements under Article 56 of the African Charter to ensure that they have been duly complied with by the Complainant.

47. Article 56 (1) of the African Charter provides that Communications should be Admissible if it ‘indicates their authors even if the latter requests anonymity.’ This Communication is filed by SERAP – a registered human rights NGO based in Lagos, Nigeria. The author of the Communication has not requested anonymity. The Complainant has thus fulfilled the requirement set in Article 56 (1) of the African Charter.

48. Article 56 (2) of the African Charter provides that Communications should be ‘compatible with the Charter of the Organisation of African Unity or with the Present Charter.’ The present Communication complies with this requirement because it invokes the violation of Articles 2, 4, 5, 14, 16, 20 and 24 of the African Charter, thus it shows a prima facie violation of the African Charter.

49. Article 56 (3) of the African Charter provides that in order for Communications to be Admissible, they should ‘not [be] written in disparaging or insulting language directed against the State concerned and its institutions or the Organisation of African Unity.’ The present Communication has not shown any evidence of disparaging language and therefore fulfils the requirement under Article 56(3) of the African Charter.

50. Article 56 (4) of the African Charter provides that Communications should not be ‘based exclusively on news disseminated through the mass media.’ The present Communication is submitted based mainly on primary information gathered by the Complainant from victims of the pipeline explosion, and thus fulfils the requirement of Article 56 (4) of the African Charter.

51. Article 56 (5) of the African Charter provides that Communications should be ‘sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.’

52. The Complainant argues that, there is no adequate or effective domestic remedy that exists in Nigeria to address the violations alleged. It argues that the African Charter has not been accorded recognition and supremacy in the Nigerian legal system.
53. The Complainant referred the African Commission to its decision in Jawara v The Gambia\(^{38}\) where the African Commission held that local remedies must be available, effective and sufficient; meaning that it can be pursued without impediment, offers a prospect of success, and is capable of redressing the complaint.

54. The Complainant avers that the Respondent State is aware of the violations and did not remedy the situation. They argue that, given the scale of the human rights violations involved, the large number of victims, and the unaccessibility of the Nigerian legal system to the poor and the marginalized, local remedies could not be exhausted.

55. The Complainant, basing its arguments on World Organisation Against Torture and others v Zaire\(^{39}\) where the African Commission decided that it is not expected from the complainants to wait for an ‘unduly prolonged’ procedure of local remedies.

56. The Complainant submits that given the scale of the human rights violations in the present Communication, and the large number of the victims involved, local remedies are unavailable, ineffective and insufficient.\(^{40}\)

57. The Respondent State on the other hand, contends that the Complainant did not use the available national legislation to remedy the violations alleged before bringing the complaint to the African Commission, and thus has not fulfilled the requirement of Article 56(5) of the African Charter.

58. In the view of the African Commission, the purpose of the requirement of exhaustion of local remedies under Article 56(5) of the African Charter is based 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.’\(^{41}\) The African Commission has also stated that this well established rule in international law conforms to the principle that international law does not replace national law, and international mechanisms do not replace national judicial institutions.\(^{42}\)

59. The jurisprudence of the African Commission, in determining compliance with this requirement, laid down three major criteria...that is: the local remedy must be \textit{available, effective and sufficient}.\(^{43}\) Nevertheless, for the local remedy to fulfil these criteria, the African Commission elaborates in Jawara v The Gambia ‘A remedy is considered \textit{available} if the petitioner can pursue it without impediment, it is deemed \textit{effective} if it offers a prospect of success, and it is found \textit{sufficient} if it is capable of redressing the complaint.’\(^{44}\)

\(^{38}\) Jawara v The Gambia
\(^{39}\) World Organisation Against Torture and Others v Zaire
\(^{40}\) The Complainant referenced as well to Communications Malawi Africa Association and Others v Mauritania
\(^{41}\) Rencontre Africaine pour la Defence des Droits de l’Homme v Zambia
\(^{42}\) Anuak Justice Council v Ethiopia para 48
\(^{43}\) Communication 300/05 – Socio Economic Rights and Accountability Project v Nigeria (2008) ACHPR para 45
\(^{44}\) Jawara v The Gambia para 32
60. The Complainant submits that there are no adequate or effective domestic remedies to address the violations, and the Respondent State on the other hand, provides a specific legislation that it claims is available.

61. According to the Respondent State, Section 11 (5) of Oil Pipelines Act LFN 2004 of the domestic law of Tort provides several remedies for pipeline explosions. In reading the said law, the African Commission is of the view that Section 11 (5) indeed creates a civil liability on the person who owns or is in charge of an oil pipeline. According to the law, the latter would be liable to pay compensation to anyone who suffers physical or economic injury as a result of a break or leak in his pipelines.\(^\text{45}\) The Complainant did not adduce any evidence in their submission that it has attempted to use this legislation to redress the violations for compensation to the victims of the pipeline explosion.

62. Furthermore, the case of World Organisation Against Torture and others v Zaire\(^\text{46}\), which the Complainant based their argument upon for waiver of the requirement of Article 56 (5) of the African Charter, cannot be applied in the current Communication because the Complainant did not provide evidence for this general statement, nor any precedent which show that Section 11 (5) of Oil Pipelines Act LFN 2004 is proved to be an unduly prolonged avenue, nor have they attempted to take their case before a court of law.

63. The African Commission is of the view that the initial burden is on the Complainant to prove that they have met the requirement set-out in Article 56 (5) of the African Charter. Thereafter the burden shifts to the Respondent State if it contests the allegations of the former, declaring that there is further available and effective remedy.

64. In the current Communication, the Respondent State provides in its submission that Section 11 (5) of Oil Pipelines Act LFN 2004 is an available and effective remedy for the victims of the pipeline explosion, which, as indicated above, the Complainant failed to refute or prove otherwise.

65. In Anuak Justice Council v Ethiopia the African Commission declared the Communication Inadmissible because the Complainant did not provide evidence to

\(^{45}\) Sec 11 (5) of Oil Pipelines Act LFN 2004: “The holder of a licence shall pay compensation -
(a) to any person whose land or interest in land (whether or not it is land respect of which the licence has been granted) is injuriously affected by the exercise of the rights conferred by the licence, for any such injurious affection not otherwise made good; and
(b) to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work structure or thing executed under the licence, for any such damage not otherwise made good; and
(c) to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good.
If the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by a court in accordance with Part iv of this Act.”

\(^{46}\) World Organisation Against Torture and Others v Zaire
their claim about why they could not exhaust local remedies. The African Commission said in its decision that:

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 constitute 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. [...] 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.47

66. In the present Communication, the African Commission is of the opinion that the Complainant only made generalised statements about the unavailability of local remedies in the Respondent State, without attempting to exhaust them. Accordingly, as was the situation in the Anuak Justice Council v Ethiopia case, the African Commission concludes that the Complainant in the present Communication has not exhausted local remedies.

67. A waiver of the requirement of Article 56 (5) of the African Charter according to the African Commission’s jurisprudence48 is not automatic, except in cases of serious and massive violations of human rights.

68. Based on the above analyses, the African Commission is of the view that the Communication has not fulfilled the requirement set by Article 56 (5) of the African Charter.

69. Article 56 (6) of the African Charter stipulates that Communications should be “submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter.” The Complainant avers that the Communication has been submitted in a timely manner, from the date of the alleged violation, which is not contested by the Respondent State, thus the requirement under Article 56 (6) of the African Charter has been duly complied with.

70. Article 56 (7) of the African Charter stipulates that Communications should “not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter.” The

47 Anuak Justice Council v Ethiopia para. 58
Complainant avers that the Communication is not being considered by another international or regional mechanism, nor has it been previously settled by one, which is not contested by the Respondent State, thus the requirement under Article 56 (7) of the African Charter has been duly complied with.

The Decision of the African Commission on Admissibility

71. In view of the above, the African Commission on Human and Peoples’ Rights decides:

i. To declare the Communication Inadmissible with respect to Article 56 (5) of the African Charter;

ii. To give notice of this decision to the parties;

iii. To publish this decision in its report on Communications.