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SA Prisons at a glance

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By Jamil Ddamulira Mujuzi, Doctoral Research Intern, CSPRI

1. Introduction

The African Commission on Human and Peoples' Rights (the African Commission) was established under Article 30 of the African Charter on Human and Peoples' Rights^[1] (the African Charter) with the mandate to promote and protect the rights of individuals^[2] and peoples^[3] under the African Charter. The activities of the African Commission since its establishment have been a subject of various studies, books and journal articles but little has been written about how the African Commission can be used effectively, especially by civil society, as a means to protect prisoners' rights.^[4] This article aims to explore the avenues through which civil society can participate in the activities of the African Commission to promote and protect prisoners' rights. It is noted at the outset that the African Charter has no provision that explicitly relates to prisoners' rights or the rights of people in detention, but these rights are implied in other rights such as the right to human dignity and the right not to be subjected to any form of torture cruel, inhuman and degrading treatment or punishment.^[5] Attention is paid to the individual communication procedure of the African Commission; the acquisition and utilisation of observer status at the African Commission; the *amicus curiae* role of civil society in communications submitted to the African Commission; and the involvement of the Commissioners or Special Rapporteurs in the activities of national human rights organisations that deal with prisoners' rights.

2. Civil Society and Communications before the African Commission

The African Commission has jurisdiction to deal with interstate^[6] and individual communications alleging human rights violations under the African Charter.^[7] It is beyond the scope of this article to deal with interstate communications as the African Commission lacks established jurisprudence in this area and therefore it is difficult to ascertain the role civil society can play in interstate communications.^[8] The focus is thus on individual communications.

Most of the communications that have been heard by the African Commission were filed by non-governmental organisations and a few by individual victims.^[9] Through these communications, states are called upon to react to the allegations that they are violating human rights, including prisoners' rights. The African Commission, when it finds such violations, would then call upon the relevant states to report to it on the measures taken to ensure that such rights are being promoted and protected.^[10]

Like any other judicial or quasi-judicial body, the African Commission has requirements or procedures that must be followed before a communication can be dealt with, that is, before a communication is declared admissible and then heard on merits. These requirements are laid down under Article 56 of the African Charter read together with Rules 102-120 of the Rules of Procedure of the African Commission.^[11] Article

56 of the African Charter provides that: *Communications relating to Human and Peoples' rights referred to in Article 55 received by the Commission shall be considered if they:*

- 1) *Indicate their authors even if the latter requests anonymity;*
- 2) *Are compatible with the Charter of the Organisation of African Unity or with the present Charter;*
- 3) *Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity;*
- 4) *Are not based exclusively on news disseminated through the mass media;*
- 5) *Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;*
- 6) *Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter; and*
- 7) *Do 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 above provisions have been interpreted in various communications and have been the subject of numerous books^[12] and journal articles.^[13] A detailed analysis of each and every provision is outside the scope of this article. It is important to note that the most contentious issue has always been the exhaustion of domestic remedies. It should be emphasised that before a communication is filed before the African Commission, local remedies, both judicial and administrative, where they are available and efficient, should be exhausted. The African Commission has on various occasions reiterated the rationale for the requirement of exhaustion of domestic remedies and stated that:

?the Commission notes the importance of this rule as a condition for the admissibility of a claim before an international forum. It notes that the rule is based on the premise that the Respondent State must first have an opportunity to redress by its own means and within the framework of its own domestic legal system, the wrong alleged to have been done to the individual.^[14]

A further important requirement regarding the rule of exhaustion of domestic remedies is that any allegation that a right has been violated should be based on a law that has already entered into force. Unlike, for instance, the Constitutional Court of South Africa which can decide on the constitutionality of a bill of law and decide whether it infringes on a right that is protected under the constitution or under any international treaty to which South Africa is a party,^[15] the African Commission 'is of the view that a law which has not yet entered into force cannot violate any right which is protected by the Charter'^[16] and therefore cannot be challenged before the African Commission.

3. Some communications involving prisoners' rights

As mentioned earlier, the African Charter does not specifically provide for prisoners' rights but the African Commission has held in a number of communications that governments have an obligation to protect prisoners' rights. In *International PEN and others on behalf of Ken Saro-Wiwa and Civil Liberties Organisation v Nigeria*^[17] the complainants alleged that Mr Ken Saro-Wiwa was detained by the Nigerian government and that, while in detention, many of his rights were violated, including the right to the best attainable state of physical and mental health protected under Article 16 of the African Charter. The Commission held, among other things, that:

The responsibility of the government is heightened in cases where an individual is in its custody and therefore someone whose integrity and well-being is completely dependant on the actions of the authorities. The state has a direct responsibility in this case. Despite requests for hospital treatment made by a qualified prison doctor, these were denied to Ken Saro-Wiwa, causing his health to suffer to the point where his life was endangered. The government has not denied this allegation in any way. This is a violation of [A]rticle 16.^[18]

In that communication, the African Commission rightly highlighted the special vulnerability of prisoners. If governments resort to imprisonment, they should at the same time shoulder the responsibility of ensuring that prisoners' rights, such as the right to health, which is closely linked to the right to life, is protected. In *Civil Liberties Organisation v Nigeria*,^[19] in which the Federal Military government of Nigeria imprisoned civilians and military officers in military camps who allegedly wanted to overthrow it, the African Commission held that:

While being held in a military detention camp is not necessarily inhuman, there is the obvious danger that

normal safeguards on the treatment of prisoners will be lacking. Being deprived of access to one's lawyer, even after trial and conviction, is a violation of article 7(1)(c) [of the African Charter].^[20]

The African Commission thus encourages governments to detain people in humane conditions and during detention such people should be allowed to have access to their lawyers during trial, so that they can prepare their defence. Such people should also have access to their lawyers after convictions to discuss the prospects of appeal and also for lawyers to ensure that their clients are detained in conditions that are in line with international standards. Prisoners should also be granted access to their family members, doctors and should also be allowed sufficient light in their cells and enough food. The African Commission thus observed that '[b]eing deprived of the right to see one's family is psychological trauma [that is] difficult to justify, and may constitute inhuman treatment. Deprivation of light, insufficient food and lack of access to medicine or medical care constitute violations of Article 5.'^[21]

Furthermore, the African Commission has held that states have an obligation to treat all prisoners equally and more specifically not to discriminate against prisoners because of the religious beliefs. In *Amnesty International and others v Sudan*^[22] it was alleged that many people were arbitrarily detained in Sudan after an attempted coup and that during detention they were not only subjected to various forms of torture in *incommunicado* cells known as 'ghost houses', but that they also received different treatment according to their religious beliefs. The African Commission observed that 'a serious allegation is that of unequal food distribution in prisons subjecting Christian prisoners to blackmail in order to receive food' and the Commission held that this was a violation of Article 8 of the African Charter.^[23]

Related to the above, was a communication brought against Mauritania. In *Malawi African Association and others v Mauritania*^[24] it was alleged that the Arab-dominated Mauritania government detained many black Mauritians regarding allegations of an attempted coup. That during detention, they were detained in the 'worst' prison conditions and that they:

only received a small amount of rice per day, without any meat or salt. Some of them had to eat leaves and grass. The prisoners were forced to carry out very hard labour day and night; they were chained up in pairs in windowless cells. They only received one set of clothes and lived in very bad conditions of hygiene?they were regularly beaten by their guards?four prisoners died of malnutrition and lack of medical attention?the cells were overcrowded. The prisoners slept on the floor without any blankets, even during the cold season. The cells were infested with lice, bedbugs and cockroaches, and nothing was done to ensure hygiene and provision of health care.^[25]

The African Commission held that:

Article 5 of the African Charter prohibits torture, cruel, inhuman or degrading punishment?the communications detail instances of torture, and cruel, inhuman and degrading treatment. During their time of custody, the detainees were beaten?forced to make statements?denied the opportunity of sleeping?some of the prisoners were held in solitary confinement?The conditions of detention were, at the very least, bad. The prisoners were not fed; they were kept in chains, locked up in overpopulated cells lacking in hygiene and access to medical care. They were burnt and buried in sand and left to die a slow death?^[26]

The Commission thus held that Mauritania had violated various provisions of the African Charter. The African Commission has held that preventing a prisoner from taking a bath for over 147 days, denying him sufficient food and detaining him in solitary confinement violate Article 5 of the African Charter and Principle 1 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which requires prison authorities to treat prisoners in a humane manner and Principle 6 which outlaws torture.^[27] The African Commission held further that detaining an individual in a cell equipped with a 250 Watt electric light and leaving such a light on for 10 months accompanied by denying a prisoner bathroom facilities during his or her detention, amounts to inhuman treatment under Article 5 of the African Charter and also violate Principles 1 and 6 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.^[28]

It should be emphasised that the decisions of the African Commission are not binding in the same way as court rulings. They are recommendations which the African Commission 'requests' states parties to implement.^[29] States are expected to take these recommendations seriously and implement them because it is one of the ways of fulfilling their treaty obligations. The African Commission also requires states parties to report on the measures they have taken to implement the recommendations made in the relevant communications.^[30] Some scholars have argued that most of the recommendations of the African Commission are ignored by states.^[31] The non-binding nature of the decisions of the African Commission is soon to be addressed when the newly established African Court on Human and Peoples' Rights starts to

hear cases alleging violations of the African Charter. Unlike the decisions of the African Commission, the Protocol to the African Charter on Human and Peoples' Rights Establishing the African Court on Human and Peoples' Rights makes it clear that the decisions of the African Court on Human and Peoples' Rights are (will be) binding.^[32]

4. *Amicus Curiae*

The term *amicus curiae* is a technical legal term which literary means 'friend of the court.'^[33] Like the Rules of Procedure of United Nations Human Rights Committee^[34] established under the International Covenant on Civil and Political Rights and the Committee Against Torture^[35] established under the Convention Against Torture, the Rules of Procedure of the African Commission do not expressly provide for *amicus curiae*. However, as the discussion below illustrates, this does not mean that civil society organisations cannot appear as amici before the African Commission in communications in which they have an interest or possess expertise. An *amicus curiae* should ordinarily be an expert in the area he or she is to address the African Commission about. It has been observed in relation to the role of *amici* in the United States, that:^[37]

Several studies of amicus activity have suggested that "[a]micus curiae practice has evolved from a mechanism for aiding the Court to a method of lobbying it," and that the filing of amicus briefs is part of the vigorous extensive, and continuing efforts on the part of the interest groups to lobby the courts?amici have an important agenda-setting effect?these briefs improve, or even "democratize," interpretive litigation by expanding the scope of perspective before the Court.

Civil society organisations in various countries appear before courts as *amici curiae* in human rights-related matters. For instance in the case of South Africa, the Community Law Centre, University of the Western Cape, has played an instrumental role in appearing as *amicus curiae* before courts^[38] in a number of cases involving social-economic rights, the most well-known being the *Grootboom* case.^[39]

The fact that the Rules of Procedure of the African Commission do not expressly mention *amicus curiae* does not mean that *amicus curiae* cannot appear before the African Commission in a communication that he or she or the organisation has an interest in or possess expertise. What it means is that such *amicus curiae* will have to identify a particular litigant in a particular communication and ask that litigant to allow him or her be part of the case to 'beef up' the team. It could also mean that non-governmental organisations that intend to send communications to the African Commission should identify people or organisations that can support them as *amici* and make them part of their team. However, under Rule 76 of the Rules of Procedure of the African Commission, '[t]he Commission may consult the non-governmental organisations either directly or through one or several committees set up for this purpose. These consultations may be held at the invitation of the Commission or at the request of the organisation.' This could be interpreted to mean that the Commission can also independently engage NGOs as *amici curiae* on matters for which it needs technical input.

5. Observer status, shadow reports and the Special Rapporteur on Prison Conditions in Africa

Another avenue through which a non-governmental organisation can promote and protect prisoners' rights using the African Commission is by applying for Observer Status before the African Commission. Since 1999, when the Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the field of Human and Peoples' Rights was adopted,^[40] the African Commission has granted Observer Status to 370 non-governmental organisations,^[41] some of whom deal with prisoners' rights directly and others indirectly.^[42]

One may rightly be asked what benefits accrue to an organisation on acquiring Observer Status with the African Commission. Two obvious benefits are provided for under the Rules of Procedure of the African Commission. Rule 75 states that '[n]on-governmental organisations, granted observer status by the Commission, may appoint authorised observers to participate in the public sessions of the Commission and of its subsidiary bodies.' Under Rule 76, '[t]he Commission may consult the non-governmental organisations either directly or through one or several committees set up for this purpose. These consultations may be held at the invitation of the Commission or at the request of the organisation.'

By using their Observer Status, NGOs can submit shadow reports to the African Commission as a supplement to state reports. The shadow reports usually contain alternative and/or additional information, such as human rights violations that governments would prefer not to include in their reports. The shadow reports are therefore a good source of information for the Commissioners when they engage government

officials during the presentation of a particular state's report.[43] For example, in the reports submitted by the governments of Zambia, Zimbabwe, Kenya and Algeria that the African Commission considered at its recently concluded 41st Ordinary Session,[44] it is evident that these governments neglected the issue of prisoners in their reports and shadow reports would have been of great importance to address this shortcoming. The Zambia report only talks about the laws in place in that country to deal with prisoners. It does not inform the African Commission about the situation of prisoners in Zambia and the conditions under which prisoners are being detained.[45] The Zimbabwean report mentions prisoners' rights briefly and reports that the conditions under which female prisoners are being detained, is improving. It also highlights the role community service has played in reducing overcrowding in some of the prisons.[46] Needless to say it ignores the well-known problems facing the prison system in that country. Had a shadow report accompanied it, the African Commission would have had a more informed picture of the prison situation in Zimbabwe. The Kenyan report is probably the most interesting one not because it covers prisoners' rights extensively but because in its 48 pages there is not even a single mention of the word prison or prisoner.[47] The Algerian report, like the Zambian one, only mentions prison reform legislation.[48] The only difference between the two is that whereas the Zambian report gives an extensive coverage of prisons-related laws, the Algerian report mentions it briefly.

Another way in which civil society organisations can collaborate with the African Commission to promote and protect prisoners' rights is by working hand-in-hand with the Office of the Special Rapporteur on Prisons and Conditions of Detention in Africa. The current Special Rapporteur is Commissioner Mumba Malila who was appointed at the 38th Ordinary Session of the African Commission for a period of two years effective from 5 December 2005.[49]

The Office of the Special Rapporteur on Prisons in Africa, in comparison with other Special Rapporteurs of the African Commission, has been successful to a degree in its activities of promoting and protecting the rights of prisoners in Africa. This success has been measured by: the mandate of the Special Rapporteur; analysing the work of the Special Rapporteur in comparison with other Special Rapporteurs of the African Commission; [50] and by investigating the impact on the situation in countries that have been visited.[51] While commenting on the relevance of the Special Rapporteur on Prisons, Viljoen observed that 'the SRP [Special Rapporteur on Prisons] is an indispensable piece in the protective puzzle...'[52] Civil society organisations can organise workshops on prisoners' rights and invite the Special Rapporteur on Prisons to present papers on the role of the African Commission in promoting and protecting prisoners' rights.[53] NGOs can also help supply the Special Rapporteur on Prisons' office with information relating to the rights of prisoners in their respective countries for his/her intervention.[54] The African Commission is in the process of establishing a 'hotline on prisons in Africa' and when established, civil society should use it to notify African Commission, and especially the Special Rapporteur on Prisons, about the violations taking place in their respective countries.[55] Civil society organisations can also be part of the Special Rapporteur's team when he/she is inspecting prisons and places of detention in their respective countries. This would enable the Special Rapporteur not to overlook any key issues. When the Special Rapporteur is also availed of the relevant information about prisons and detention conditions, this would enable the African Commission to pass appropriate resolutions calling upon countries to improve conditions in prisons.

5. Conclusion

The role that NGOs can and do play at the African Commission should not be underestimated. There are several avenues, as discussed above, through which civil society can engage the African Commission in the protection and promotion of prisoners' rights. There are a range of problems besetting Africa's prisons such as overcrowding, torture, and other human rights violations. The African Commission may need to be petitioned to come out strongly and advise African governments on alternative forms of punishments other than imprisonment. If imprisonment is to be imposed, it should be done as a last resort and prisoners should be detained under humane conditions that are in line with international and regional human rights obligations. But unfortunately, most African governments detain prisoners in some of the world's worst conditions. This deprives them of their dignity and undermines reintegration. It also appears that most state reports lack serious consideration of prisoners' rights. NGOs are instrumental in providing the African Commission additional information relating to the conditions in prisons in their respective countries through shadow reports. The Office of the Special Rapporteur on Prisons in Africa can be effectively utilised, as the discussion above has illustrated, to protect and promote prisoners' rights in Africa.

Endnotes

Note: I would like to thank Prof Julia Sloth Nielsen and Mr Lukas Muntingh of Civil Society Prisons Reform Initiative, for their comments on the earlier drafts of this article. All mistakes, if any, remain entirely mine.

[1] Adopted by the 18th Assembly of the Heads of States and Government, 26 June 1981, Nairobi, Kenya, O.A.U.

Doc. CAB/LAG/67/3/Rev.5 (entered into force on 21 October 1986).

[2] Individual rights in the African Charter include the rights to education under article 17 (1) where it is provided that '[e]very individual shall have the right to education'; article 13 (1) where it is provided that '[e]very citizen shall have the right to participate freely in the government of his country?' among other articles.

[3] Peoples' rights in the African Charter include the right to existence under article 20 (1) which provides that '[a]ll peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination'; the right to dispose of natural resources under article 21(1) which is to the effect that '[a]ll peoples shall freely dispose of their wealth and natural resources' among other rights. For a brief discussion of both the individual and peoples' rights under the African Charter see, Ibrahim Al Badawi El-Sheikh, 'The African Regional System of Human Rights: Notes and Comments' in M. Cherif Bassiouni & Ziyad Motala (Eds) (1995) *Protection of Human Rights in African Criminal Proceedings*, Martinus Nijhoff Publishers, 23-38,25. For a detailed discussion of the jurisprudence of the African Commission on Peoples' Rights see, Solomon A Dersso, 'The Jurisprudence of the Commission on Human and Peoples' with Respect to Peoples' Rights' (2006) 6: 2, *African Human Rights Law Journal*, 358-381.

[4] The most comprehensive study so far, as far as my research could go, on the African Commission and Prisoners' Rights was carried out by Professor Frans Viljoen of the Centre for Human Rights, University of Pretoria on behalf of the Penal Reform International and published under the title 'The Special Rapporteur on Prisons and Conditions of Detention in Africa: Achievements and Possibilities' (2005) 27 *Human Rights Quarterly* 125-171. It should be noted that Viljoen, as the title of the article suggests, deals with the work of the Special Rapporteur on Prisons, and suggests various strategies that could be adopted for the office of the Special Rapporteur to successfully carry out its work of promoting and protecting the rights of detainees in Africa.

[5] Frans Viljoen, 'The Special Rapporteur on Prisons and Conditions of Detention in Africa: Achievements and Possibilities' (2005) 27 *Human Rights Quarterly* 125-171, 132. For detailed discussion of the jurisprudence of the African Commission and the right to freedom from torture see, Jamil D. Mujuzi, 'An Analysis of the Approach to the Right to Freedom from Torture Adopted by the African Commission on Human and Peoples' Rights' (2006) 6:2 *African Human Rights Law Journal*, 423-441.

[6] Interstate communications are brought by states against one another. For example South Africa may take Uganda to the African Commission alleging that Uganda is violating some provisions of the African Charter.

[7] See articles 47-59 of the African Charter.

[8] The only interstate communication 'worthy of the name' that the Africa Commission has dealt with is Democratic Republic of Congo v. Burundi, Rwanda and Uganda, Communication 227/99, see Fatsha Ouguerouz, *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (2003) 571. Communication 227/99 is reported in the 20th Activity Report of the African Commission (January - June 2006).

[9] See African Human Rights Law Reports (2000-2004), Centre for Human Rights, University of Pretoria at http://www.chr.up.ac.za/centre_publications/ahrlr/ahrlr.html accessed 28 May 2007.

[10] For example in *Zimbabwe Human Rights NGO Forum v Zimbabwe*, Communication 245/2002, 21st Activity Report of the African Commission on Human and Peoples' Rights (May- November 2006), EX.CL/322(X) (Annex III) in which clemency order was implemented for the benefit of perpetrators of politically motivated crimes that were committed during and after the Referendum elections which order resulted into the release of many prisoners (see paras 50, 57, 179, 192, 197 and 211 of the communication), the African Commission condemned such a measure and held that it amounted to perpetuating impunity for such human rights violators and called upon 'the Republic of Zimbabwe to establish a Commission of Inquiry to investigate the causes of the violence which took place from February -June 2000 and bring those responsible for the violence to justice, and indemnify victims of the violence in order to provide them with just and adequate and adequate compensation' and requested 'the Republic of Zimbabwe to report to the African Commission on the Implementation of this recommendation during the presentation of its next periodic report.' See para 215.

[11] Available at <http://www.chr.up.ac.za/hr_docs/african/docs/achpr/achpr76.doc> accessed 29 May 2007.

[12] See Fatsha Ouguerouz, *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (2003) 485-663; Malcolm Evans & Rachel Murray (eds), *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000* (2002); and Christof Heyns (ed), *Human Rights Law in Africa* (2004) Vol.1, 99-612.

[13] The jurisprudence of the African Commission is extensively covered by the African Human Rights Law Journal that is published by the Centre for Human Rights, University of Pretoria. In this journal one finds many articles relating to various aspects of the African Commission and especially on how it has interpreted the various provisions of the African Charter including those that relate to jurisdiction and admissibility of communications. For some of the online articles in the journal and for more information about the journal visit, <http://www.chr.up.ac.za/centre_publications/ahrlj/ahrlj_contents.html> accessed 29 May 2007.

[14] *Tsatsu Tsikata v Republic of Ghana*, Communication 322/2006, 21st Activity Report of the African Commission on Human and Peoples' Rights (May - November 2006), EX.CL/322(X) (Annex III) para 34.

[15] See Section 167(4)(b) of the Constitution of South Africa (1996).

[16] See *FIDH, National Human Rights Organisation (ONDH) and Recontre Africaine pour la Defence des Droits de l'Homme (RADDHO) v Senegal*, Communication 304/2005, 21st Activity Report of the African Commission on Human and Peoples' Rights (May- November 2006), EX.CL/322(X) (Annex III) para 42.

[17] Communication 137/94, 12th Annual Activity Report of the African Commission on Human and Peoples' Rights (1998-1999) (Annex V).

[18] Para 112.

[19] Communication 151/96, 13th Annual Activity Report of the African Commission on Human and Peoples' Rights (1999-2000) Annex V.

- [20] Para 26.
- [21] As above para 27. Article 5 of the African Charter prohibits torture, cruel, inhuman and degrading treatment and punishment.
- [22] Communication 48/90, 13th Annual Activity Report of the African Commission on Human and Peoples' Rights (1999-2000) (Annex V).
- [23] Para 76.
- [24] Communication 54/91, 13th Annual Activity Report of the African Commission on Human and Peoples' Rights (1999-2000)(Annex V).
- [25] Para 12.
- [26] Paras 115-116.
- [27] See *Media Rights Agenda v Nigeria* Communication 224/98, 14th Annual Activity Report of the African Commission (2000-2001) (Annex V) para 70. See also *Huri-Laws v Nigeria* Communication 225/98, 14th Annual Activity Report of the African Commission, para 40.
- [28] See *John D. Ouka v Kenya* Communication 232/99 14th Annual Activity Report of the African Commission (2000-2001) paras 22-25.
- [29] For example in *Antoine Bissangou v Republic of Congo*, Communication 253/2002, 21st Annual Activity Report of the African Commission on Human and Peoples' Rights (May - November 2006) Annex II, in which the complainant's property was unlawfully taken and also damaged by people including Congolese security officers, the African Commission after observing that the Republic of Congo violated Articles 3, 7 and 14 of the African Charter, requested the Republic of Congo to compensate the complainant. See para 84 findings 3 and 4.
- [30] For example in *Zimbabwe Human Rights NGO Forum v Zimbabwe* Communication 245/2002, 21st Annual Activity Report of the African Commission on Human and Peoples' Rights (May - November 2006) Annex III, in which 12 Zimbabwe-based NGOs alleged before the African Commission that various human rights violations were perpetrated by the government in the aftermath of the 2000 Constitutional Referendum, the African Commission found that Zimbabwe violated articles 1 and 7(1) of the African Charter and called upon the government of Zimbabwe to establish a Commission of Inquiry to investigate that allegations and also prosecute those responsible for the alleged violations. The African Commission 'request[ed] the government of Zimbabwe to report to the African Commission on the implementation of this recommendation during the presentation of its next period report.' See para 215. It is difficult to assess the extent to which states have reported on the steps they have taken to implement the recommendations of the African Commission because state periodic reports are rarely readily available on the website of the African Commission and some many states do not submit their periodic reports on time.
- [31] See George Mukundi Wachira and Abiola Ayinla, 'Twenty Years of Elusive Enforcement of the Recommendations of the African Commission on Human and Peoples' Rights: A Possible Remedy' (2006) 6:2, *African Human Rights Law Journal* 465-492.
- [32] See Article 30 of the Protocol to the African Charter on Human and Peoples' Rights Establishing the African Court on Human and Peoples' Rights. See also article 2 for the complementary role of the African Court with the Commission and articles 5(3) and 34(6) for the requirements for the NGOs to bring cases before the African Court.
- [33] For a detailed explanation see Richard S. Benedek, Robert L. Del Campo, & Elissa P. Benedek, 'Michigan's Friends of the Court: Creative Programs for Children of Divorce' (1977) 26:4 *The Family Coordinator* 447-450, 447.
- [34] CCPR/C/3/Rev.8, 22 September 2005 (Rules 84-87).
- [35] CAT/C/3/Rev.4, 9 August 2002 (Rules 96-115).
- [36] Plural for amicus.
- [37] See Jane S. Schacter, 'The Confounding Common Law Originalism in Recent Supreme Court Statutory Interpretation: Implications for the Legislative History Debate and Beyond' (1998) 51:1 *Stanford Law Review* 1-71,47.
- [38] Part V(Rule 10) of the Rules of the Constitutional Court (2003) allow organisations to appear as amici. The Rules are available at <<http://www.constitutionalcourt.org.za/site/thecourt/rulesofthecourt.htm#p5>> accessed 30 May 2007
- [39] See <<http://www.communitylawcentre.org.za/Court-Interventions%20>> accessed 30 May 2007.
- [40] ACHPR/Res.33 (XXV) 99 available at <http://www.achpr.org/english/_info/observer_en.html> accessed 30 May 2007.
- [41] 21st Annual Activity Report of the African Commission on Human and Peoples' Rights (May- November 2006), EX.CL/322(X), para 15.
- [42] For a list of all the NGOs with Observer status before the African Commission see the 12th -21st Activity Reports of the African Commission at <http://www.chr.up.ac.za/hr_docs/themes/theme02.html> accessed 30 May 2007.
- [43] For a copy of the Shadow Report that was submitted to the African Commission by South African -based non-governmental organizations see <http://www.chr.up.ac.za/hr_docs/countries/docs/Shadow%20report.doc> accessed 30 May 2007.
- [44] It took place from 16th - 30th May 2007, Accra, Ghana.
- [45] See paras 112, 159, 185, 187-193, 195-196, 198 and 275 of the Initial Report of Zambia to the African Commission at <http://www.achpr.org/english/_info/Zambia%20initial%20report_Eng.pdf> accessed 30 May 2007.
- [46] See pages XV and XXII of the 7th, 8th, 9th, and 10th Combined Report of the Republic of Zimbabwe to the African Commission (20 October 2006) at <http://www.achpr.org/english/_info/Zimbabwe%20State%20Report_eng.pdf> accessed 30 May 2007.
- [47] See Initial Report of the Government of Kenya to the African Commission (June 2006) at <http://www.achpr.org/english/_info/Kenyan%20report_eng.pdf> accessed 30 May 2007.

[48] See page 15 of the 3rd and 4th Combined Period Reports of the Peoples' Democratic Republic of Algeria (August 2006) at <http://www.achpr.org/english/_info/Algeria%20report_eng.pdf > accessed 30 May 2007.

[49] See Resolution on the Appointment of a Special Rapporteur on Prisons and Conditions of Detention in Africa, 5 December 2005, at <http://www.achpr.org/english/_info/prison_res_2.html > accessed 30 May 2007.

[50] The other Special Rapporteurs of the African Commission are: Special Rapporteur on the Rights of Women in Africa; Special Rapporteur on Freedom of Expression in Africa; Special Rapporteur on the Situation of Human Rights Defenders in Africa; Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa; and Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions.

[51] Viljoen (note 4 above), 167.

[52] Viljoen (as above) 162.

[53] For example, the Special Rapporteur on Prisons is reported to have visited 'prisons and other places of detention, meeting with government, participation in seminars on African prisons.' See 11th Activity Report of the African Commission on Human and Peoples' Rights (1997-1998) para 32.

[54] For example, non-governmental organisations have at times notified the African Commission about the 'inhuman prison and detention conditions' in their respective countries. See 12th Annual Activity Report of the African Commission on Human and Peoples' Rights (1998-1999) para 36.

[55] See Agenda of the 39th Ordinary Session of the African Commission on Human and Peoples' Rights (from 11th - 25th May 2006, Banjul, The Gambia), 20th Activity Report of the African Commission (January - June 2006, Item 11) Annex I. It is difficult to establish when this hotline is likely to be established because the African Commission conducts discussions relating to its establishment at its private sessions.

SA Prisons at a glance

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Category	Mar-06	Feb-07	Increase/ decrease
Functioning prisons	238	237	-0.4
Total prisoners	158032	161674	2.3
Sentenced prisoners	109226	113213	3.7
Unsentenced prisoners	48806	48461	-0.7
Male prisoners	154481	158115	2.4
Female prisoners	3551	3559	0.2
Children in prison	2207	2077	-5.9
Sentenced children	1069	912	-14.7
Unsentenced children	1138	1165	2.4
Total capacity of prisons	113825	115327	1.3
<i>Overcrowding</i>	139	140.2	0.9
<i>Most overcrowded</i>			
Umtata Med		353%	
<i>Least overcrowded</i>			
Flagstaff		15.50%	
Awaiting trial longer than 3 months	19277	21203	0.1
Infants in prison with mothers	136	168	0.2

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