Purohit and Moore v. The Gambia, African Commission on Human and Peoples' Rights, Comm. No. 241/2001 (2003).

241/2001 – Purohit and Moore / The Gambia

Rapporteur:

29th Session: Commissioner Chigovera

30th Session: Commissioner Chigovera

31st Session: Commissioner Chigovera

32nd Session: Commissioner Chigovera

33rd Session: Commissioner Chigovera

Summary of Facts

1. The Complainants are mental health advocates, submitting the communication on behalf of patients detained at Campama, a Psychiatric Unit of the Royal Victoria Hospital, and existing and 'future' mental health patients detained under the Mental Health Acts of the Republic of The Gambia.

2. The complaint was sent by fax and received at the Secretariat on 7 th March 2001.

3. The Complainants allege that legislation governing mental health in The Gambia is outdated.

4. It is alleged that within the Lunatics Detention Act (the principle instrument governing mental health) there is no definition of who a lunatic is, and that there are no provisions and requirements establishing safeguards during the diagnosis, certification and detention of the patient.

5. Further, the Complainants allege that there is overcrowding in the Psychiatric Unit, no requirement of consent to treatment or subsequent review of continued treatment.

6. The Complainants also state that there is no independent examination of administration, management and living conditions within the Unit itself.

7. The Complainants also complain that patients detained in the psychiatric unit are not even allowed to vote.

8. The Complainants notify the African Commission that there is no provision for legal aid and the Act does not make provision for a patient to seek compensation if his/her rights have been violated.

Complaint

9. The Complainants allege a violation of **Articles 2, 3, 5, 7(1)(a) and (c), 13(1), 16 and 18(4)** of the African Charter on Human and Peoples' Rights.

Procedure

10. Ms.H. Purohit and Mr. P. Moore presented the communication and it was received at the Secretariat on the 7 th March 2001.

11. On 14 th March 2001, the Secretariat wrote to the Complainants requesting that they furnish the names of the persons on whose behalf they were acting.

12. On the 4 th April 2001, the Secretariat received the names of the persons on whose behalf Purohit and Moore were acting and it was stated clearly that those persons wished to remain **anonymous**.

13. At its 29 th Ordinary Session from 23 rd April to 7 th May 2001 in Tripoli, Libya, the African Commission examined the Complaint and decided to be seized of it.

14. On 23 rd May 2001, the Secretariat conveyed the above decision to the parties and requested parties to furnish it with additional information on admissibility in accordance with Article 56 of the African Charter and forwarded a copy of the text of the complaint to the Respondent State. The Parties were requested to present their written submissions to the Secretariat within three months of notification of the decision.

15. During the 30 th Ordinary Session held from 13 th to 27 th October 2001 in Banjul, The Gambia, the African Commission considered the Complaint and the rapporteur of the communication addressed questions to the Representative of the Respondent State. The Representative stated that she was not in a position to provide satisfactory responses to the questions posed at the time but promised to do so soon after the 30 th session. The African Commission decided to defer consideration of this communication to the 31 st Ordinary Session pending receipt of the Respondent State's submissions.

16. On 9 th November 2001, the Secretariat wrote to the Complainants informing them of the decision taken by the African Commission at its 31 st Session and also forwarded them copies of the Respondent State's submissions that were received at the Secretariat on 11 th October 2001.

The Complainants were also reminded to forward exhaustive submissions on the question of admissibility of the complaint within two (2) months.

17. On 9 th November 2001, the Secretariat also forwarded a Note Verbale to the Respondent State informing it of the decision of the African Commission and reminding them to furnish the African Commission with responses to the questions raised by the African Commission at its 31 st Session within two (2) months.

18. The Secretariat also on numerous occasions by telephone and in writing reminded the Solicitor General of the Respondent State to ensure that their written submissions on this matter are forwarded to the Secretariat.

19. At the 31 st Ordinary Session held from 2 nd to 16 th May 2002 in Pretoria, South Africa the African Commission considered the communication and it was declared admissible.

20. On 29 th May 2002, the Secretariat informed the parties of the decision of the African Commission and requested them to transmit their written submissions on admissibility to the Secretariat within a period of 3 months.

21. At its 32 nd Ordinary Session held from 17 th to 23 rd October in Banjul, The Gambia, the African Commission decided to defer consideration of the communication on the merits and the parties were informed accordingly.

22. By a Note Verbale dated 30 th October 2002, the Respondent State was reminded to forward its written submissions on the merits to the Secretariat of the African Commission within a period of 2 months.

23. At its 33 rd Ordinary Session held from 15 th to 29 th May 2003 in Niamey, Niger, the African Commission considered this communication and decided to deliver its decision on the merits.

LAW Admissibility

24**.** Article 56 of the African Charter governs admissibility of communications brought before the African Commission in accordance with Article 55 of the African Charter. All of the conditions of this Article are met by the present communication. Only Article 56(5), which requires that local remedies be exhausted, necessitates close scrutiny. Article 56(5) of the African Charter provides -:

Communications … received by the African Commission shall be considered if they-:

a) *are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged*

25. The rule requiring exhaustion of local remedies as a condition of the presentation of a complaint before the African Commission is premised on the principle that the Respondent State must first have an opportunity to redress by its own means within the framework of its own domestic legal system, the wrong alleged to have been done to the individual.

26. The Complainants submit that they could not exhaust local remedies because there are no provisions in the national laws of The Gambia allowing for the Complainants to seek remedies where a violation has occurred.

27. The Respondent State concedes that the Lunatics Detention Act does not contain any provisions for the review or appeal against an order of detention or any remedy for detention made in error or wrong diagnosis or treatment. Neither do the patients have the legal right to challenge the two separate Medical Certificates, which constitute the legal basis of their detention.

28. The Respondent State submits that in practice patients found to be insane are informed that they have a right to ask for a review of their assessment. The Respondent State further states that there are legal provisions or procedures within the Gambia that such a vulnerable group of persons could have utilised for their protection. Section 7(d) of the Constitution of The Gambia recognises that Common Law forms part of the laws of The Gambia. As such, Respondent State argues, the Complainants could seek remedies by bringing an action in tort for false imprisonment or negligence where a patient held at Campama Psychiatric Unit is wrongly diagnosed.

29. The Respondent State further submits that patients detained under the Lunatics Detention Act have every right to challenge the Act in a Constitutional Court claiming that their detention under that Act deprives them of their right to freedom of movement and association as provided for under the Gambian Constitution.

30. The concern raised in the present communication is that in the Gambia, there are no review or appeal procedures against determination or certification of one's mental state for both involuntary and voluntary mental patients. Thus the legislation does not allow for the correction of an error assuming a wrong certification or wrong diagnosis has been made, which presents a problem in this particular case where examination of the said mental patients is done by general practitioners and not psychiatrists. So if an error is made and there is no avenue to appeal or review the medical practitioners' assessment, there is a great likelihood that a person could be wrongfully detained in a mental institution.

31. Furthermore, the Lunatics Detention Act does not lay out fixed periods of detention for those persons found to be of unsound mind, which, coupled with the absence of review or appeal procedures could lead into a situation where a mental patient is detained indefinitely.

32. The issue before the African Commission is whether or not there are domestic remedies available to the Complainants in this instance.

33. The Respondent State indicates that there are plans to amend the Lunatics Detention Act, which, in other words is an admission on part of the Respondent State that the Act is imperfect and would therefore not produce real substantive justice to the mental patients that would be detained.

34. The Respondent State further submits that even though the Act itself does not provide review or appeal procedures, there are legal procedures or provisions in terms of the constitution that the Complainants could have used and thus sought remedies in court. However, the Respondent State has informed the African Commission that no legal assistance or aid is availed to vulnerable groups to enable them access the legal procedures in the country. Only persons charged with Capital Offences get legal assistance in accordance with the Poor Persons Defence (Capital Charge) Act.

35. In the present matter, the African Commission cannot help but look at the nature of people that would be detained as voluntary or involuntary patients under the Lunatics Detention Act and ask itself whether or not these patients can access the legal procedures available (as stated by the Respondent State) without legal aid.

36. The African Commission believes that in this particular case, the general provisions in law that would permit anybody injured by another person's action are available to the wealthy and those that can afford the services of private counsel. However, it cannot be said that domestic remedies are absent as a general statement – the avenues for redress are there if you can afford it.

37. But the real question before this Commission is whether looking at this particular category of persons the existent remedies are realistic. The category of people being represented in the present communication are likely to be people picked up from the streets or people from poor backgrounds and as such it cannot be said that the remedies available in terms of the Constitution are realistic remedies for them in the absence of legal aid services.

38. If the African Commission were to literally interpret Article 56 (5) of the African Charter, it might be more inclined to hold the communication inadmissible. However, the view is that, even as admitted by the Respondent State, the remedies in this particular instance are not realistic for this category of people and therefore not effective and for these reasons the **African Commission declares the communication admissible**.

Merits

39. The present communication was declared admissible at the African Commission’s 31 st Ordinary Session in May 2002. The Respondent State has since been requested numerous times to forward their submissions on the merits but to no avail. On 29 th April 2003, 2 weeks prior to the 33 rd Ordinary Session, the Respondent State finally forwarded their written submissions to the Secretariat of the African Commission.

40. In coming to its decision, the African Commission will refer the more recent written submissions on the merits as presented by the Respondent State as well the Respondent State's submissions on admissibility in particular where they address issues relating to the merits of this communication.

41. When States ratify or accede to international instruments like the African Charter, they do so voluntarily and very much awake to their responsibilities to implement the provisions of these instruments. It therefore troubles the African Commission to be forced to make several requests to the Respondent State for its submissions, which are pertinent to its consideration of communications. In the present communication, it is very much unfortunate that the African Commission was forced to take this path bearing in mind the fact that its Headquarters is within the Respondent State. This situation not only seriously hampers the work of the African Commission but it also defeats the whole purpose of the African Charter, to which the Respondent States professes to be aligned with. The African Commission therefore hopes that in future the Respondent State will be forthcoming to its requests especially those relating to communications.

42. The Complainants submit that by ratifying the African Charter, the Respondent State undertook an obligation to bring its domestic laws and practice in conformity with the African Charter. This presupposes that any domestic law, which violates the African Charter, should as soon as the Respondent State ratifies or accedes to the African Charter be brought into conformity with Articles provided for therein. "As soon as" in this context would mean that States that are party to the African Charter should take immediate steps, mindful of their obligations, to bring their legislation in line with the African Charter. The legislation in dispute in the present communication – the LDA was enacted in 1917 and the last amendment to this Act was effected in 1964. There is no doubt that since 1964, there have been many developments in the field of human rights, particularly addressing the rights of persons with disabilities. As such, the LDA should have long been amended to bring it in line with the changed circumstances.

43. In principle, where domestic laws that are meant to protect the rights of persons within a given country are alleged to be wanting, the African Commission holds the view that it is within its mandate to examine the extent to which such domestic law complies with the provisions of the African Charter. This is because when a State ratifies the African Charter it is obligated to uphold the fundamental human rights contained therein. Otherwise if the reverse were true, the significance of ratifying a human rights treaty would be seriously defeated. This principle is in line with Article 14 of the Vienna Convention on the Law of Treaties of 1980.

44. The Complainants submit that the provisions of the Lunatics Detention Act (LDA) condemning any person described as a "lunatic" to automatic and indefinite institutionalisation are incompatible with and violate Articles 2 and 3 of the African Charter. Section 2 of the LDA defines a "lunatic" as including "an idiot or person of unsound mind".

45. The Complainants argue further that to the extent that mental illness is a disability, the practice of detaining persons regarded as mentally ill indefinitely and without due process constitutes discrimination on the analogous ground of disability.

46. Article 2 of the African Charter provides -:

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

Article 3 of the African Charter provides -:

1. *Every individual shall be equal before the law*

2. *Every individual shall be entitled to equal protection of the law*

47. In interpreting and applying the African Charter, the African Commission relies on its own jurisprudence, and as provided by Articles 60 and 61 of the African Charter, on appropriate and relevant international and regional human rights instruments, principles and standards.

48. The African Commission is, therefore, more than willing to accept legal arguments with the support of appropriate and relevant international and regional human rights instruments, principles, norms and standards taking into account the well recognised principle of universality which was established by the Vienna Declaration and Programme of Action of 1993 and which declares that *“all human rights are universal, indivisible, interdependent, and interrelated*.”

49. Articles 2 and 3 of the African Charter basically form the anti-discrimination and equal protection provisions of the African Charter. Article 2 lays down a principle that is essential to the spirit of the African Charter and is therefore necessary in eradicating discrimination in all its guises, while Article 3 is important because it guarantees fair and just treatment of individuals within a legal system of a given country. These provisions are non-derogable and therefore must be respected in all circumstances in order for anyone to enjoy all the other rights provided for under the African Charter.

50. In their submissions to the African Commission, the Respondent State conceded that under the LDA, persons declared "lunatics" do not have the legal right to challenge the two separate Medical Certificates that constitute the legal basis of their detention. However, the Respondent State argued, that in practice patients found to be insane are informed that they have a right to ask for a review of their assessment. The Respondent State further argues that Section 7(d) of the Constitution of The Gambia recognises that Common Law forms part of the laws of The Gambia. Therefore, such a vulnerable group of persons are free to seek remedies by bringing a tort action for false imprisonment or negligence if they believe they have been wrongly diagnosed and as a result of such diagnosis been wrongly institutionalised.

51. Furthermore, the Respondent State submits that patients detained under the LDA have every right to challenge the Act in a Constitutional Court claiming that their detention under that Act

deprives them of their right to freedom of movement and association as provided for under the Constitution of The Gambia.

52. In view of the Respondent State's submissions on the availability of legal redress, the African Commission questioned the Respondent State as to whether legal aid or assistance would be availed to such a vulnerable group of persons in order for them to access the legal procedures of in the country. The Respondent State informed the African Commission that only persons charged with Capital Offences are entitled to legal assistance in accordance with the Poor Persons Defence (Capital Charge) Act.

53. The category of persons that would be detained as voluntary or involuntary patients under the LDA are likely to be people picked up from the streets or people from poor backgrounds. In cases such as this, the African Commission believes that the general provisions in law that would permit anybody injured by another person's act can only be available to the wealthy and those that can afford the services of private counsel.

54. Clearly the situation presented above fails to meet the standards of anti-discrimination and equal protection of the law as laid down under the provisions of Articles 2 and 3 of the African Charter and Principle 1(4) of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Illnesses and the Improvement of Mental Health Care.

55. The Complainants further submit that the legislative scheme of the LDA, its implementation and the conditions under which persons detained under the Act are held, constitute separately and together violations of respect for human dignity in Article 5 of the African Charter and the prohibition against subjecting anybody to cruel, inhuman or degrading treatment as contained in the same Charter provision.

56. Article 5 of the African Charter provides: -

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

57. Human dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities as the case may be, are entitled to without discrimination. It is therefore an inherent right which every human being is obliged to respect by all means possible and on the other hand it confers a duty on every human being to respect this right.

58. In ***Media Rights Agenda/Nigeria***, the African Commission held that the term "cruel, inhuman or degrading punishment and treatment" is to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental; furthermore, in ***John K. Modise/Botswana***, the African Commission stated that exposing victims to "personal suffering and indignity" violates the right to human dignity. Personal suffering and indignity can take

many forms, and will depend on the particular circumstances of each communication brought before the African Commission.

59. Under the LDA, persons with mental illness have been branded as “lunatics” and “idiots”, terms, which without any doubt dehumanise and deny them any form of dignity in contravention of Article 5 of the African Charter

60. In coming to this conclusion, the African Commission would like to draw inspiration from Principle 1(2) of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Care. Principle 1(2) requires that “all persons with mental illness, or who are being treated as such, shall be treated with humanity and respect for the inherent dignity of the human person.”

61. The African Commission maintains that mentally disabled persons would like to share the same hopes, dreams and goals and have the same rights to pursue those hopes, dreams and goals just like any other human being. Like any other human being, mentally disabled persons or persons suffering from mental illnesses have a right to enjoy a decent life, as normal and full as possible, a right which lies at the heart of the right to human dignity. This right should be zealously guarded and forcefully protected by all States party to the African Charter in accordance with the well established principle that all human beings are born free and equal in dignity and rights.

62. The Complainants also submit that the automatic detention of persons considered “lunatics” within the meaning of the LDA violates the right to personal liberty and the prohibition of arbitrary arrest and detention in terms of Article 6 of the African Charter.

63. Article 6 of the African Charter provides -:

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

64. Article 6 of the African Charter guarantees every individual, be they disabled or not, the right to liberty and security of the person. Deprivation of such liberty is only acceptable if it is authorised by law and is compatible with the obligations of States Parties under the African Charter. However, the mere mention of the phrase ‘except for reasons and conditions previously laid down by law’ in Article 6 of the African Charter does not mean that any domestic law may justify the deprivation of such persons’ freedom and neither can a State party to the African Charter avoid its responsibilities by recourse to the limitations and claw back clauses in the African Charter. Therefore, any domestic law that purports to violate this right should conform to internationally laid down norms and standards.

65. Article 6 of the African Charter further states that no one may be arbitrarily arrested or detained. Prohibition against arbitrariness requires among other things that deprivation of liberty shall be under the authority and supervision of persons procedurally and substantively competent to certify it.

66. Section 3(1) of the LDA prescribes circumstances under which mentally disabled persons can be received into a place of detention and they are -:

- On submission of 2 certificates by persons referred to under the LDA as “duly qualified medical practitioners”
- Upon an order being made by and signed by judge of the Supreme Court, a Magistrate or any two Justices of the Peace

67. A “duly qualified medical practitioner” under the LDA has been defined as “every person possessed of a qualification entitling him to be registered and practice medicine in The Gambia”.

68. By these provisions, the LDA authorises the detention of persons believed to be mentally ill or disabled on the basis of opinions of general medical practitioners. Although the LDA does not lay out fixed periods of detention for persons found to be mentally disabled, the Respondent State has submitted that in practice the length of time spent by patients in the unit ranges from two to four weeks and that it is only in exceptional circumstances that patients may be detained longer than this period. These exceptional circumstances apply to mainly schizophrenics, and vagrant psychotics without any family support and known addresses. The African Commission takes note of the fact that such general medical practitioners may not be actual experts in the field of mental health care and as such there is a possibility that they could make a wrong diagnosis upon which certain persons may be institutionalised. Additionally, because the LDA does not provide for review or appeal procedures, persons institutionalised under such circumstances would not be able to challenge their institutionalisation in the event of an error or wrong diagnosis being made. Although this situation falls short of international standards and norms, the African Commission is of the view that it does not violate the provisions of Article 6 of the African Charter because Article 6 of the African Charter was not intended to cater for situations where persons in need of medical assistance or help are institutionalised.

69. The Complainants also allege that institutionalisation of detainees under the LDA who are not afforded any opportunity of being heard or represented prior to or after their detention violates Article 7 (1) (a) and (c) of the African Charter.

70. Article 7 (1) (a) and (c) of the African Charter provides -:

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

a) *The right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;*

b) *The right to defence, including the right to be defended by counsel of his choice.*

71. It is evident that the LDA does not contain any provisions for the review or appeal against an order of detention or any remedy for detention made in error or wrong diagnosis or treatment. Neither do the patients have the legal right to challenge the two separate Medical Certificates, which constitute the legal basis of their detention. These omissions in the LDA clearly violate Articles 7(1)(a) and (c) of the African Charter.

72. The guarantees in Article 7 (1) extend beyond hearings in the normal context of judicial determinations or proceedings. Thus Article 7(1) necessitates that in circumstances where persons are to be detained, such persons should at the very least be presented with the opportunity to challenge the matter of their detention before the competent jurisdictions that should have ruled on their detention. The entitlement of persons with mental illness or persons being treated as such to be heard and to be represented by Counsel in determinations affecting their lives, livelihood, liberty, property or status, is particularly recognised in Principles 16, 17 and 18 of the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Care.

73. The Complainants submit that the failure of the Respondent State to provide for and enable the detainees under the LDA to exercise their civic rights and obligations, including the right to vote, violates Article 13 (1) of the African Charter which provides-:

"Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law."

74. In its earlier submissions, the Respondent State admits that persons detained at Campama are not allowed to vote because they believe that allowing mental health patients to vote would open the country's democratic elections to much controversy as to the mental ability of these patients to make an informed choice as to which candidate to vote for. Subsequently, the Respondent State in its more recent submissions suggests that there are limited rights for some mentally disabled persons to vote; however this has not been clearly explained.

75. The right provided for under Article 13(1) of the African Charter is extended to "every citizen" and its denial can only be justified by reason of legal incapacity or that the individual is not a citizen of a particular State. Legal incapacity may not necessarily mean mental incapacity. For example a State may fix an age limit for the legibility of its own citizens to participate in its government. Legal incapacity, as a justification for denying the right under Article 13(1) can only come into play by invoking provisions of the law that conform to internationally acceptable norms and standards.

76. The provisions of Article 13(1) of the African Charter are similar in substance to those provided for under Article 25 of the International Covenant on Civil and Political Rights. In interpreting Article 13(1) of the African Charter, the African Commission would like to endorse the clarification provided by the Human Rights Committee in relation to Article 25. The Human Rights Committee has expressed that any conditions applicable to the exercise of Article 25 rights should be based on objective and reasonable criteria established by law. Besides the view held by the Respondent State questioning the mental ability of mentally disabled patients to make informed choices in relation to their civic duties and obligations, it is very clear that there are no objective bases within the legal system of the Respondent State to exclude mentally disabled persons from political participation.

77. The Complainants submit that the scheme and operation of the LDA both violate the right to health provided for in Article 16 of the African Charter when read with Article 18 (4) of the African Charter.

78. Article 16 of the African Charter provides -:

1. *Every individual shall have the right to enjoy the best attainable state of physical and mental health*

2. State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

79. Article 18(4) of the African Charter which provides -:

"The aged and disabled shall also have the right to special measures of protection in keeping with their physical or moral needs."

80. Enjoyment of the human right to health as it is widely known is vital to all aspects of a person's life and well-being, and is crucial to the realisation of all the other fundamental human rights and freedoms. This right includes the right to health facilities, access to goods and services to be guaranteed to all without discrimination of any kind.

81. More so, as a result of their condition and by virtue of their disabilities, mental health patients should be accorded special treatment which would enable them not only attain but also sustain their optimum level of independence and performance in keeping with Article 18(4) of the African Charter and the standards applicable to the treatment of mentally ill persons as defined in the Principles for the Protection of Persons with Mental Illness and Improvement of Mental Health Care.

82. Under the Principles, "mental health care" includes analysis and diagnosis of person's mental condition and treatment, care and rehabilitation for a mental illness or suspected mental illness. The Principles envisage not just 'attainable standards', but the highest attainable standards of health care for the mentally ill at three levels. First, in the analysis and diagnosis of a person's mental condition; second, in the treatment of that mental condition and; thirdly, during the rehabilitation of a suspected or diagnosed person with mental health problems.

83. In the instant case, it is clear that the scheme of the LDA is lacking in terms of therapeutic objectives as well as provision of matching resources and programmes of treatment of persons with mental disabilities, a situation that the Respondent State does not deny but which never-the-less falls short of satisfying the requirements laid down in Articles 16 and 18(4) of the African Charter.

84. The African Commission would however like to state that it is aware that millions of people in Africa are not enjoying the right to health maximally because African countries are generally faced with the problem of poverty which renders them incapable to provide the necessary amenities, infrastructure and resources that facilitate the full enjoyment of this right. Therefore, having due regard to this depressing but real state of affairs, the African Commission would like to read into Article 16 the obligation on part of States party to the African Charter to take concrete and targeted steps, while taking full advantage of its available resources, to ensure that the right to health is fully realised in all its aspects without discrimination of any kind.

85. The African Commission commends the Respondent State's disclosure that there is no significant shortage of drug supplies at Campama and that in the event that there are drug shortages, all efforts are made to alleviate the problem. Furthermore, that it has taken steps to improve the nature of care given to mental health patients held at Campama. The Respondent State also informed the African Commission that it is fully aware of the outdated aspects of the LDA and has therefore long taken administrative steps to complement and/or reform the archaic parts of the LDA. This is however not enough because the rights and freedoms of human beings are at stake. Persons with mental illnesses should never be denied their right to proper health care, which is crucial for their survival and their assimilation into and acceptance by the wider society.

For the above reasons, the African Commission,

Finds the Republic of The Gambia in violation of Articles 2, 3, 5, 7 (1)(a) and (c), 13(1), 16 and 18(4) of the African Charter.

Strongly urges the Government of The Gambia to -:

a) Repeal the Lunatics Detention Act and replace it with a new legislative regime for mental health in The Gambia compatible with the African Charter on Human and Peoples' Rights and International Standards and Norms for the protection of mentally ill or disabled persons as soon as possible;

b) Pending (a), create an expert body to review the cases of all persons detained under the Lunatics Detention Act and make appropriate recommendations for their treatment or release;

c) Provide adequate medical and material care for persons suffering from mental health problems in the territory of The Gambia;

Requests the Government of The Gambia to r eport back to the African Commission when it submits its next periodic report in terms of Article 62 of the African Charter on measures taken to comply with the recommendations and directions of the African Commission in this decision.

Done at the 33 rd Ordinary Session of the African Commission held from 15 th to 29 th May 2003 in Niamey, Niger

Communication 211/98 – Legal Resources Foundation/Zambia

In the case of the Attorney General v Unity Dow 1994 6 BCLR 1 Per Ammisah JP at Pages 27-30

and Aguda JA at pages 43-47, The Botswana Appeal Court correctly observed that there is a presumption that when States sign or ratify treaties or human rights instruments, they signify their intention to be bound by and to adhere to the obligations arising from such treaties or human rights instruments even if they do not enact domestic legislation to effect domestic incorporation.

Article 14 of the Vienna Convention provides as follows: *"1. The consent of a State to be bound by a treaty is expressed by ratification when: (a) the treaty provides for such consent to be expressed by means of ratification; (b) it is otherwise established that the negotiating States were agreed that ratification should be required; (c) the representative of the State has signed the treaty subject to ratification; or (d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation. 2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification."*

Paragraph 17 of the Introduction to the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (UNGA Resolution 48/96 of 20 th December 1993) provides that *"the term "disability" summarises a great number of different functional limitations …People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness…"*

Vienna Declaration and Programme of action, A/CONF.157/23, para.5

Principle 1(4) provides - *There shall be no discrimination on the grounds of mental illness. "Discrimination" means any distinction, exclusion or preference that has an effect of nullifying or impairing equal enjoyment of rights.*

G.A. Res. 46/119, 46 U.N. GAORSupp. (No. 49) at 189, U.N. Doc A/46/49 (1991)

Communication 224/98

Communication 97/93 (decision reached at the 27 th ordinary session of the African Commission held in 2000)

Article 3 of the UN Declaration on the Rights of Disabled Persons, UNGA Resolution 3447(XXX) of 9 th December 1975, provides that *"D isabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and as full as possible."*

Article 1 of the Universal Declaration of Human Rights of 1948

Consolidated communications 147/95, 149/95 – Sir Dawda K. Jawara/The Gambia

Communication 211/98 Legal Resources Foundation/Zambia

Section 2 of the Lunatics Detention Act Cap 40:05, Laws of The Gambia

See Principles 15, 16 and 17 of the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Care

Communication 71/92, *Rencontre Africaine pour la defense des droits de l'homme/Zambia*, (1995); Communication 159/96, *UIDH et al/ Angola*, (1997)

Human Rights Committee, General Comment 25 (57), Adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996), paragraph 4.