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Strengthening the African Commission on Human and Peoples' Rights must be a top priority: Amnesty International's recommendations to the African Union Colloquium on the African Charter on Human and Peoples' Rights

1 Introduction

This year marks the 25th anniversary since the adoption of the African Charter on Human and Peoples' Rights (African Charter) and the 20th anniversary of its entry into force. The African Union (AU) Commission is organizing a colloquium on the African Charter in Banjul on 30 June 2006, ahead of the 7th Ordinary Session of the AU Assembly.

The African Charter is the main human rights treaty in Africa and all 53 members of the AU are parties to it, which means they have agreed to be legally bound by the Charter and to implement in good faith all its provisions.

Since the adoption of the African Charter 25 years ago, many key developments have taken place in the field of protection of human rights in Africa. Notably, two Protocols to the African Charter have been adopted and entered into force: the Protocol establishing the African Court on Human and Peoples' Rights, and the Protocol on the Rights of Women in Africa, which provides a comprehensive framework for the promotion and protection of women's human rights.

The Constitutive Act of the AU adopted in 2000 also attaches a particular importance to human rights, requiring all AU member states to promote and protect human rights.

However, although some limited steps have been taken to implement the human rights provisions contained in the African Charter, grave human rights violations, including rape, torture and unlawful killings continued to be committed in many parts of Africa. Impunity for human rights violations remained widespread, despite some international and continental efforts to address the problem.

The African Commission on Human and Peoples' Rights, established under the African Charter to monitor its implementation by states parties, continues to play a crucial role to ensure the protection and respect of human rights in Africa. Soon the work of the African Commission will be complemented by that of the African Court on Human and Peoples' Rights, whose judges were elected at the 6th Ordinary Session of the AU Assembly in January 2006.

Amnesty International has continued to support the work of the African Commission and has repeatedly urged African governments, both when acting individually or collectively through

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the AU main decision making bodies, to support politically and financially the African Commission so that it is more able to discharge its mandate under the African Charter.

The 25th anniversary of the adoption of the African Charter is another important opportunity for the AU to review progresses made in the field of human rights in Africa and to firmly commit to providing all necessary human, material and financial resources to the African Commission. The following highlights some Amnesty International's recommendations which the AU meeting in Banjul should consider in its Declaration on the African Charter, which is expected to be submitted to the AU Assembly. These recommendations are based on Amnesty International's work with the Commission and the AU.

2 Recommendations to the African Union Assembly

2.1 Clarifying the relationship between the African Commission and the African Union and respecting the recommendations of the African Commission

The place of the African Commission within the AU institutional framework is still to be clearly defined. This uncertainty and some decisions taken by the AU main decision making bodies are having a negative impact on the independence and effectiveness of the African Commission.

The African Commission has established a working group mandated, *inter alia*, to review the rules of procedure of the African Commission and clarify its relationship with the various AU organs. An important consultative meeting took place between the AU and the African Commission on 9-10 May 2006. **Amnesty International welcomes such dialogue and recommends that these meetings are held periodically and open to the participation of NGOs and civil society.**

A recent example that illustrates the need to clarify the relationship between the African Commission and the AU is the decision taken by the AU Assembly at its 6th Ordinary Session, which authorizes the publication of the 19th Activity Report of the African Commission with the notable exception of the resolutions on Eritrea, Ethiopia, Sudan, Uganda and Zimbabwe, adopted by the African Commission during the 38th Ordinary Session in November 2005 in Banjul. Similarly, the 4th Ordinary Session of the AU Assembly in Addis Ababa (Ethiopia, in July 2004, decided on the suspension of the publication of the 17th Annual Activity Report of the African Commission.

Resolutions adopted by the African Commission, as well as concluding observations to states parties' reports, reports of country missions and other reports of activities carried out by the African Commission under its mandate are not subjected to confidentiality. Their publication should not be delayed or made conditional upon publicizing the governments' responses.

All AU member states are parties to the African Charter and have undertaken to implement effectively and in good faith the provisions of the African Charter to ensure that the rights contained therein are protected, respected and fulfilled. Findings and recommendations of the African Commission, the very body established to monitor the implementation of the Charter's obligations by states parties, should be respected and implemented. States parties have opportunities during the sessions of the African Commission, to make their views known. They also have the possibility to contribute, both orally and in writing, during the AU Assembly's debate on the annual activity report of the African Commission. Such dialogue is crucial to ensuring the effective monitoring of the implementation of the African Charter by states parties.

All AU bodies, and in particular the AU Assembly, must support and promote the work of the African Commission by acting upon its resolutions and recommendations and by sanctioning those states that are in violations of the obligations under the African Charter.

Amnesty International is also concerned by the practice of many states not to implement the decisions taken by the African Commission on complaints of violations of the African Charter filed by individuals or non-governmental organisations (NGO) under its communication procedure provided for in Article 55 of the African Charter. Amnesty International is also concerned that many states have consistently failed to adhere to interim measures adopted by the African Commission pending consideration of a case.

Amnesty International urges that AU Assembly to publicly sanction those states that fail to implement decisions and interim measures taken by the African Commission under its communication procedure.

2.2 Urging states to comply with its reporting obligations under the African Charter

An essential function of the African Commission is the consideration of state periodic reports, provided for in Article 62 of the African Charter, on the measures taken to give effect to the rights guaranteed under the African Charter. Despite regular reminders from the AU and the African Commission, most states have failed to comply with this provision, with a considerable number of states which have never submitted any report, thereby making impossible for the African Commission to fulfil its monitoring mandate. This contributes to the undermining of the effectiveness of the African Commission.

Amnesty International recommends that the AU Assembly continues to urge states to submit their overdue reports and consider other steps should states continue to fail to do so.

2.3 Providing more resources to the African Commission

Amnesty International believes that a major obstacle to the effectiveness of the African Commission is the limited political will of the AU member states to improve the institution.

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Since its inception in 1987, the African Commission has experienced financial constraints due to the poor funding from the AU, and has had to rely on funding from external sources. The brainstorming meeting in May 2006 has brought to everyone's attention the failure of the AU to provide adequate financial support to the African Commission. Such lack of support has detrimental effect on the staffing and work of the African Commission's secretariat, on the capacity of the Commissioners to carry out promotional and fact-finding missions and even on the capacity of the African Commission to hold its two sessions a year, as provided by the African Charter. The AU has also failed to provide any financial support for the work of the special rapporteurs and working groups established by the African Commission. Clearly, inadequate funding has meant that the African Commission is not able to realize its full potential.

Amnesty International calls on the AU Assembly to increase the resources allocated to the African Commission, including essential human and material resources for its Secretariat.

Amnesty International believes that the present situation whereby all the members of the African Commission including the Chairperson work on part-time basis is one major reason why the African Commission has been largely unable to fully and effectively discharge its mandate under the African Charter. A full-time Chairperson would take responsibility for overseeing the implementation of the African Commission's plans of action; for representing the African Commission at conferences and seminars that take place inter-sessionally in the region and beyond in the absence of other Commissioners to perform this role; and for responding to emergency situations of human rights abuses and liaising with the Chairperson of the Commission of the Union in regard to such emergency situations.

Amnesty International encourages the AU Assembly to give due consideration to the possibility of making the position of the Chairperson of the African Commission a permanent one

3 *Recommendations to the African Commission*

3.1 Availability of information before, during and immediately after the sessions of the African Commission

Essential documents relating to the work of the African Commission should be publicly available and easily accessible for NGOs interested in order to enable them to contribute effectively, follow-up on and promote the work of the Commission. While we note that the annual activity reports, final communiqués and resolutions are available on the African Commission website, Amnesty International would like to encourage the African Commission to ensure the publication of other documents produced by the African Commission, such as Commissioners' reports, reports of fact-finding and promotional

missions, reports of Working Groups and Special Rapporteurs, up-to-date information on the status of submission of state reports and reports currently pending for consideration before the African Commission. These documents could usefully be made available on the website of the Commission and provided in hard copies during the sessions of the Commission.

Amnesty International appreciates the practice of the Secretariat to communicate to participants the provisional agenda in advance of the session. The information contained in the agenda regarding issues to be discussed and state reports to be examined is essential to enable NGOs to prepare effectively their participation to the session of the African Commission. Amnesty International has noted however that the provisional agenda of the African Commission's session are normally not distributed until a few days before the beginning of the session. Furthermore, almost no other documentation are made available in advance of most of the Commission's sessions.

Amnesty International recommends that the African Commission review its practices and ensure publication and posting on the Commission's website of all documents produced by the African Commission, such as Commissioners' reports, reports of fact-finding or promotional missions, reports of Working Groups and Special Rapporteurs, up-to-date information on the status of submission of state reports and reports currently pending for consideration before the African Commission. The provisional agenda and its related documents should be distributed at least six weeks before the beginning of each session.

3.2 Publishing concluding observations of states parties' reports

Amnesty International has welcomed the practice of the African Commission to adopt concluding observations on the consideration of states parties' periodic report. Since the African Commission began the practice of adopting concluding observations, it is not clear whether such documents are public or not. Amnesty International and other NGOs have been for some time calling for the publications of these concluding observations, in line with the long established practice of other treaty monitoring bodies. **Amnesty International believes that concluding observations to states parties' reports should be made public immediately after each session.**

3.3 Publishing Official Summary Records of the meetings of the African Commission

An official summary record of the meetings of the African Commission would be useful to increase awareness around the Commission's work. **Amnesty International recommends to the African Commission to ensure the publication of summary records of its public meetings**, as provided for by Rules 39 and 40 of its Rules of Procedure.