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Amnesty International
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1 Easton Street
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United Kingdom

**@PROTECTING HUMAN RIGHTS:
INTERNATIONAL PROCEDURES AND HOW TO USE THEM
(A SERIES OF AMNESTY INTERNATIONAL PAPERS)**

2. THE ORGANIZATION OF AFRICAN UNITY AND HUMAN RIGHTS

Summary

(This is a summary of a paper with the same title which, if not attached, is available from the Amnesty International office in your country or from the London address above. Ask for AI Index IOR 63/01/91. That paper updates and replaces a paper with the same title (May 1987, AI Index IOR 03/04/87).)

WHAT FRAMEWORK HAS THE ORGANIZATION OF AFRICAN UNITY (OAU) DEVELOPED FOR PROTECTING HUMAN RIGHTS?

The Organization of African Unity's human rights framework is based on the African Charter on Human and Peoples' Rights, a treaty adopted unanimously in 1981 by the OAU. States which ratify or accede to the African Charter (called "States Parties") are legally bound to follow its provisions. The African Charter provides for an African Commission on Human and Peoples' Rights to supervise implementation of its provisions. The African Charter entered into force on 21 October 1986 after a majority of OAU member states had become States Parties, and this opened the way for establishment of the African Commission. The Commission was elected at the July 1987 meeting of the OAU Assembly of Heads of State and Government.

WHAT RIGHTS AND DUTIES ARE PROVIDED BY THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS?

The African Charter provides for:

- (i) Individual rights, including: right to life, prohibition of torture and ill-treatment, prohibition of arbitrary arrest or detention, right to a fair trial, and freedoms of conscience, expression, association and assembly;
- (ii) Rights of peoples, including rights to self-determination and development;
- (iii) Duties of states, including duties to promote awareness of the Charter and to guarantee independence of the courts;
- (iv) Duties of individuals, including duties: to place one's abilities at the service of the national community, not to compromise state security, to preserve and strengthen the state's national independence and territorial integrity and to contribute to its defence.

WHO SITS ON THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS?

The Commission consists of 11 members nominated by states which are parties to the African Charter and elected by the entire OAU Assembly of Heads of State and Government. The members are elected to serve six-year terms in their personal capacity rather than as representatives of their governments. They are "chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience."

WHAT ARE THE FUNCTIONS OF THE AFRICAN COMMISSION?

The African Charter provides that the Commission's work shall include:

- (i) Ensuring protection of the specified rights.
- (ii) Interpreting provisions of the Charter.
- (iii) Examining inter-state complaints, i.e., a communication by one state alleging that another state is not fulfilling its obligations under the Charter. These complaints are to be considered by the Commission only if the states concerned are unable to reach an amicable solution.
- (iv) Considering "other communications", including complaints by individuals, groups, NGOs, etc. These complaints are considered only if a majority of Commission members decide that they meet seven criteria for admissibility. When these communications relate to "special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights", the OAU Assembly of Heads of State and Government may request the Commission to undertake an in-depth study and report. If the communications concern a "case of emergency", the Chairman of the OAU Assembly may request an in-depth study.
- (v) Promoting human rights by undertaking studies, organizing conferences, disseminating information, and encouraging national and local institutions concerned with human rights.
- (vi) Developing principles and rules, aimed at solving human rights legal problems, upon which governments may base their legislation.

FOR FURTHER INFORMATION: See paper 2 cited below.

Papers in this series issued to date:

- 1A. The Human Rights Committee (April 1987, IOR 03/01/87)
- 1B. The Human Rights Committee: Examination of individual complaints under the Optional Protocol (April 1987, IOR 03/02/87)
- 1C. "General comments" of the Human Rights Committee (April 1987, IOR 03/03/87)
- 2. The Organization of African Unity and human rights (July 1991, IOR 63/01/91)
- 3. "Summary of selected international procedures and bodies dealing with human rights matters" (August 1989, IOR 30/01/89)

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This series provides practical information about international organizations and procedures which deal with allegations of human rights violations. To some extent the focus of each paper may reflect the mandate of Amnesty International which:

- seeks the release of "prisoners of conscience" (men and women detained anywhere for their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence);
 - advocates fair and early trials for all political prisoners and works on behalf of such persons detained without charge or without trial;
- and

- opposes the death penalty and torture or other cruel, inhuman or degrading treatment or punishment of all prisoners without reservation.

TABLE OF CONTENTS

1.	The Organization of African Unity	1		
	1.1 Purposes of the OAU	1		
	1.2 Institutions of the OAU	2		
	1.3 The OAU and refugees	4		1.4 OAU and the rights of children
				6
2.	The African Charter on Human and Peoples' Rights	6		
	2.1 Background	6		
	2.2 Basic facts	7		
	2.3 Rights and duties provided	8		
	2.4 Absolute and immediate obligations	9		
	2.5 Amendments and supplements	9		
3.	Distinctive features of the African Charter	10		
	3.1 Generally	10		
	3.2 Peoples' Rights	10		
	3.3 Duties	11		
	3.4 Right to asylum	11		
4.	Textual differences between the African Charter and the International Covenant on Civil and Political Rights ...	12		
	4.1 Generally	12		
	4.2 Fair trial	13		4.3 Right to life
	4.3 Right to life	13		13
	4.4 Right to liberty and security of person	14		14
	4.5 Freedoms of expression, association and movement ...	14		
	4.6 Duties of the individual toward the state	14		
	4.7 Derogation	15		
5.	The African Commission on Human and Peoples' Rights	15		
	5.1 Generally	15		
	5.2 Composition	15		
	5.3 Meetings	16		
	5.4 Sources of international law from which the African Commission is to "draw inspiration"	17		
	5.5 Promotional powers and activities	18		
	5.6 Protection powers and activities	19		
	5.7 Absence of court review	22		
	5.8 Correspondence with the African Commission	23		
6.	The role of non-governmental organizations in relation to the African Charter and the African Commission	23		
7.	The significance of the Organization of African Unity's framework for protecting human rights	24		
8.	For further reference	26		

APPENDIX 2: List of States Parties to the African Charter and the Charter of the Organization of African Unity

APPENDIX 3: Chart identifying corresponding provisions of the:

- | | |
|---|--------|
| - International Covenant on Civil and Political | Rights |
| - Universal Declaration of Human Rights | |
| - African Charter on Human and Peoples' Rights | |

NOTE: The African Commission on Human and Peoples' Rights publishes an annual report each summer on its activities. The report includes a list of current members of the African Commission on Human and Peoples' Rights, a list of States Parties to the African Charter on Human and Peoples' Rights and the Charter of the Organization of African Unity and a list of non-governmental organizations which have observer status with the African Commission. It also has published its Rules of Procedure (a working group of the Commission is studying the Rules of Procedure with a view to possible amendment). These documents are available from:

The Secretary to the Commission
The African Commission on Human and Peoples' Rights
Kairaba Avenue
P.O. Box 673
Banjul, The Gambia

Telephone: (220) 92964
Telex : 2346 OAU BJLGV

1. THE ORGANIZATION OF AFRICAN UNITY

The Organization of African Unity (OAU) is a regional intergovernmental organization bringing together governments of continental Africa and the island states surrounding Africa. The 51 member states of the OAU are listed in Appendix 2 to this paper. South Africa and Morocco do not belong to the OAU. Morocco announced its desire to withdraw from the organization in November 1984 when the OAU formally granted membership status to the Saharawi Arab Democratic Republic, the government entity established in exile by the Polisario Front, the movement fighting for independence of the Western Sahara. Morocco's withdrawal became effective one year later, in November 1985.

The OAU and the United Nations (UN) often work together on matters of common interest. The OAU maintains representatives to the UN in both New York and Geneva.

1.1 PURPOSES OF THE OAU

A conference of African heads of state and government adopted the Charter of the OAU on 25 May 1963 in Addis Ababa, Ethiopia.¹ The OAU Charter specifies five purposes of the organization:

- promotion of African unity;
- cooperation in achieving a better life for Africans;
- defence of the sovereignty, territorial integrity and independence of African states;
- an end to colonialism in Africa; and
- promotion of international cooperation, "having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights".

The OAU Charter's preamble reaffirms adherence to the principles of the UN Charter and the Universal Declaration of Human Rights which "provide a solid foundation for peaceful and positive co-operation among states".

Another preambular paragraph states that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples".

The OAU Charter lists seven principles to which OAU member states declare their adherence:

- to respect each other's equality;

¹ Note that the Charter of the OAU (the instrument which established the OAU in 1963) should not be confused with the African Charter on Human and Peoples' Rights (the human rights treaty adopted by the OAU in 1981 which entered into force in October 1986). Section 1 of this paper refers to the OAU Charter and certain other OAU treaties; the remainder of the paper deals with the African Charter on Human and Peoples' Rights (African Charter). The text of the 1963 OAU Charter is contained in Brownlie (editor), *Basic Documents on African Affairs* (1971), and is available from: The Information Division, General Secretariat, Organization of African Unity, P.O. Box 3243, Addis Ababa, Ethiopia.

- not to interfere in each other's internal affairs;
- to respect the borders of each state;
- to settle disputes peacefully through negotiation or mediation;
- to condemn unreservedly all forms of political assassination and subversive activities by neighbouring or other states;
- to support the liberation of non-independent territories; and
- to observe non-alignment.

The OAU Charter also pledges member states to coordinate their general policies, especially in six fields:

- political/diplomatic matters;
- economic matters, including transport and communication;
- education and culture;
- health, sanitation, nutrition;
- science; and
- defence/security.

1.2 INSTITUTIONS OF THE OAU

The Assembly of Heads of State and Government is the supreme organ of the OAU where each member state has one vote. The Assembly meets annually, now usually on the first Monday in June (religious holidays permitting), with the head of state or government of a member state being elected to the post of Chairman of the Assembly and thus the Chairman of the OAU until the next annual meeting. The Assembly decides OAU policy, reviews the actions of all organs and specialized agencies of the organization, and is responsible for appointing the OAU Secretary General to a four-year term. Assembly meetings are generally closed to observers.

OAU Assembly sessions have considered such issues as sanctions against South Africa, the economic situation of the continent, and famine relief. Human rights violations in specific countries have rarely been discussed at the Assembly, apart from the situation in South Africa and Namibia. However, at the July 1986 Assembly, Ugandan President Yoweri Museveni, in his first speech to an OAU meeting, criticized the silence of the rest of Africa while extensive human rights abuses were carried out in Uganda during the governments of former Ugandan Presidents Idi Amin and Milton Obote. He said:

"Over a period of 20 years nearly three quarters of a million Ugandans perished at the hands of governments that should have protected their lives...I must state that Ugandans...felt a deep sense of betrayal that most of Africa kept silent...The reason for not condemning such massive crimes has supposedly been a desire not to interfere in the internal affairs of a member state, in accordance with the Charters of the OAU and the United Nations. We do not accept this reasoning because in the same organs there are explicit laws that enunciate the sanctity and inviolability of human life".²

² President Museveni later became Chairman of the OAU (1990-1991).

At the OAU Assembly's 24th session in May 1988, it "strongly" urged member states which had not yet ratified the African Charter "to do so as soon as possible". In July 1989, at its 25th session, the Assembly stated that "the promotion and protection of Human and Peoples' rights are essential ingredients for the advancement of African citizens and peoples and constitute a significant contribution to the realization of their development aspirations". At its 26th session in July 1990, "in the light of the rapid changes taking place in the world and their impact on Africa", the Assembly emphasized the importance of human rights and the rule of law, and stated that it was committed "to the further democratisation of our societies and to the consolidation of democratic institutions in our countries" and asserted that "democracy and development should go together and be mutually reinforcing".

The OAU Council of Ministers, which is responsible to the Assembly, is composed of ministers (usually foreign ministers) designated by member states. The functions of the Council include adopting the budget, preparing the Assembly's agenda, and making recommendations to the Assembly. The Council meets twice a year.

The OAU General Secretariat, located in Addis Ababa and headed by the Secretary General,³ is the administrative branch of the organization. It is responsible for implementing decisions of the Assembly and for coordinating various policies among member states.

Among the organs of the OAU are the following two:

- The OAU Commission of Mediation, Conciliation and Arbitration meets in closed session to seek peaceful settlement of armed conflicts, border disputes and other disputes among member states.

- The OAU Co-ordinating Committee for Liberation Movements in Africa, based in Dar es Salaam, Tanzania, and with several regional offices, channels financial and military aid to recognized national liberation movements opposing white minority rule and colonialism.⁴

1.3 THE OAU AND REFUGEES

The OAU Secretariat's Bureau for Refugees has various responsibilities including:

- granting scholarships to refugees;
- assisting refugees with job placement;
- conducting studies and organizing conferences on refugee-related issues;
- appealing to member states to share the burden of refugee resettlement; and
- consulting with the United Nations High Commissioner for Refugees (UNHCR) and other refugee organizations.

³ Salim Ahmed Salim (formerly a government minister of Tanzania and chairman of the UN General Assembly in 1979 when he was Tanzania's Permanent Representative to the UN) was elected to a four-year term as OAU Secretary General at the July 1989 OAU Assembly.

⁴ Among the liberation movements which have been officially recognized by the OAU and thus have observer status at OAU meetings are the following: African National Congress of South Africa (ANC), and Panafrican Congress of Azania (PAC). Before Namibia became independent the South-West Africa People's Organization (SWAPO) was an observer.

The Bureau reports to the OAU Commission of Fifteen on Refugees, the body of government representatives which reviews the OAU's refugee work.

The OAU Coordinating Committee on Assistance to Refugees is an advisory body to the Bureau for Refugees. The Committee's members include the Bureau and organizations concerned with refugee protection and assistance, such as UNHCR, Lutheran World Federation, Caritas International, All Africa Conference of Churches and Amnesty International. At its March 1987 meeting, the Coordinating Committee adopted a resolution welcoming the coming into force of the African Charter on Human and Peoples' Rights, and recommending that the OAU should:

- remind member states of the need to observe and uphold the principle of non-refoulement;
- recommend that all States Parties to the Charter should undertake an early review of existing domestic legislation in order to ensure that necessary steps are taken to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Charter; and
- seek further ratifications of the Charter, and recommend to all OAU member states which have not already done so to consider early ratification of other international instruments including the International Covenant on Civil and Political Rights and its Optional Protocol, and the International Covenant on Economic, Social and Cultural Rights.

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention on Refugees) was adopted by the OAU Assembly in 1969 and entered into force in November 1973.⁵ As of 31 December 1990, more than 30 African states were parties to this Convention and several others had signed but not yet ratified it.

While the approach of this treaty is similar to that taken in the UN Convention and Protocol relating to the Status of Refugees (the major international agreements regarding refugees), the OAU Convention on Refugees provides a more encompassing definition of "refugee". It defines "refugee" to cover not only those unwilling to return to their country due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion (as in the UN Convention and Protocol), but also those compelled to leave their country of origin on account of external aggression, occupation, foreign domination, or events seriously disturbing public order. Also, unlike the UN refugee instruments, there is a specific agreement by parties that the granting of asylum to refugees "is a peaceful and humanitarian act and shall not be regarded as an unfriendly act" by any state. It is explicitly stated that no refugee shall be rejected at a frontier.

This generally liberal approach taken to the problems of refugees is a reflection of the long historical tradition of asylum-granting which has existed in African societies. However, the OAU Convention on Refugees does contain provisions which are more restrictive than the UN instruments in requiring that refugees must abstain from any "subversive activities" against any member state of the OAU and must not be allowed to attack any OAU member state "by use of arms, through the press, or by radio".

See section 3.4 of this paper for an explanation of provisions of the African Charter on Human and Peoples' Rights which concern the right to asylum.

⁵ The text of the OAU Convention on Refugees is reproduced in Brownlie (editor), Basic Documents on African Affairs (1971) and in UNHCR (editor), Collection of International Instruments Concerning Refugees (1979). It is also available from the OAU at the following address: The Information Division, General Secretariat, Organization of African Unity, P.O. Box 3243, Addis Ababa, Ethiopia.

1.4 OAU AND THE RIGHTS OF CHILDREN

The OAU African Charter on the Rights and Welfare of the Child (African Children's Charter) was adopted by the OAU Assembly in July 1990. It requires ratification by 15 member states of the OAU before it will enter into force. However, as of 31 December 1990 no states had signed or ratified this treaty and, because of several inconsistencies between the English and French texts which need to be resolved, it is unlikely that it will enter into force soon.

The treaty is somewhat similar to the UN Convention on the Rights of the Child. One possible crucial difference between the two treaties is the definition of a child. Article 2 of the UN Convention on the Rights of the Child defines a child as any human being below the age of 18 years, unless under the law applicable to the child majority is attained earlier, but Article 37(a) prohibits imposition of the death penalty for offences committed by persons below 18 years. The definition of a child in Article 2 of the African Children's Charter is unclear. The English text defines a child as "every human being below the age of 18 years". The French text of this article, however, defines a child as "every human minor, whether he was born outside or inside wedlock" without mentioning age. It is hoped that the French text will be amended to include the age limit in the English version.

Among the important rights of children which the African Children's Charter recognizes are the right to life (including a prohibition against the death penalty for crimes committed by children), the prohibition against torture or inhuman or degrading treatment, freedom of expression, freedom of association, and freedom of thought, conscience and religion. It also obligates States Parties to "take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child". In contrast to the UN Convention on the Rights of the Child, which permits recruitment into the armed forces of children who have reached the age of 15, the restriction on recruitment of children in the African Children's Charter applies to all children.

Although the rights in this charter are not as broadly defined as in the African Charter or in other human rights treaties, nothing in it limits any broader protection of those rights provided in other treaties. When it comes into force it provides for an African Committee of Experts on the Rights and Welfare of the Child to monitor implementation of this charter by reviewing reports submitted periodically by States Parties on the steps they have taken to implement it and the obstacles they have encountered.

2. THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

2.1 BACKGROUND

During the 1960s and 1970s a number of conferences were organized in Africa by the United Nations, certain African governments and non-governmental organizations to discuss the need for an African regional system to promote and protect human rights. Commentators have noted that these discussions were largely a result of frustration felt by many Africans at the contradictions implied by the OAU's condemnation of human rights violations by white-ruled governments in southern Africa and its virtual silence in the face of human rights violations in the rest of Africa, particularly the gross abuses of the governments of Idi Amin in Uganda (in office 1971-1979), Macias Nguema in Equatorial Guinea (1968-1979), and Jean-Bedel Bokassa in the Central African Empire (1965-1979).

In 1979 at its meeting in Monrovia, Liberia, the OAU Assembly of Heads of State and Government unanimously resolved that the OAU Secretary General should set in motion the process for establishing a commission on human rights. The preliminary draft of a human rights instrument was prepared between 1979 and 1981 by a working committee of experts selected by the OAU. The draft, with some modifications, was approved by a meeting of the OAU Council of Ministers in Banjul, Gambia, in January 1981. In June 1981 the OAU Assembly of Heads of State and Government adopted unanimously the final text of the African Charter on Human and Peoples' Rights.

2.2 BASIC FACTS

The African Charter on Human and Peoples' Rights (African Charter) is a treaty. It provides for election of an African Commission on Human and Peoples' Rights (African Commission) to supervise implementation of the treaty provisions. The role of the African Commission is described in section 5 below. When a state deposits its instrument of ratification to the African Charter and becomes a State Party, it undertakes legally

binding obligations to give effect to the specified rights. The African Charter is also relevant to OAU member states which have not yet become parties. States which have signed but not yet ratified a treaty are obliged under a basic principle of international law to refrain from acts which would defeat the object and purpose of that treaty. Also, many provisions of the African Charter articulate internationally-recognized fundamental rights (including those contained in the Universal Declaration of Human Rights) and are therefore applicable to all states.

The text of the African Charter is reproduced in Appendix 1⁶. A chart listing all OAU member states and indicating which have become States Parties to the African Charter is reproduced in Appendix 2 to this paper. As of 31 December 1990, 41 of the 51 OAU member states had become parties to the African Charter.

The African Charter entered into force on 21 October 1986.⁷

The African Charter's coming into force means that there are now three regional treaty-based systems for promotion and protection of human rights:

<u>Region</u>	<u>Instrument</u>	
Africa	African Charter on Human and Peoples' Rights (1986)	Rights (adopted 1981, entered into force 1986)
Americas (1978)	American Convention on Human Rights	(adopted 1969, entered into force 1978)
Europe	European Convention on Human Rights and Fundamental Freedoms (adopted 1950, entered into force 1953)	

2.3 RIGHTS AND DUTIES PROVIDED

The African Charter's provisions specifying rights and duties are divided into four sections:

(i) Individual rights (Articles 2 to 18), including: right to life, prohibition of torture and ill-treatment, prohibition of arbitrary arrest or detention, right to a fair trial, and freedoms of conscience, expression, association and assembly.

(ii) Rights of peoples (Articles 19 to 24), including rights to self-determination and development.

(iii) Duties of states (Articles 25 and 26), including the duty to promote and ensure awareness of and respect for

⁶ There is no entirely satisfactory text of the African Charter in any of the official languages of the OAU. The original text in French has minor typographical errors and the English and Arabic texts contain translation errors. This paper uses the text published by Amnesty International.

⁷ According to the terms of the African Charter, its entry into force occurs three months after the OAU Secretary General receives notice that a majority of OAU member states have become party to the treaty. On 21 July 1986 the Secretary General received notice the Niger had become the 26th state to deposit its instrument of ratification, meaning that a majority of the then 50 OAU member states had become States Parties and therefore the Charter entered into force three months later.

rights guaranteed by the Charter through teaching, education and publication, and the duty to guarantee independence of the courts.

(iv) Duties of individuals (Articles 27 to 28), including duties to work for cohesion of the family, to contribute to African unity, to serve the national community by placing one's physical and intellectual abilities at its service, not to compromise the security of the state, to preserve and strengthen national independence and the territorial integrity of the country and to contribute to its defence.

Attached as Appendix 3 is a chart identifying provisions of the following three instruments which roughly correspond in terms of subject matter:

- International Covenant on Civil and Political Rights;
- Universal Declaration of Human Rights; and
- African Charter on Human and Peoples' Rights.

2.4 ABSOLUTE AND IMMEDIATE OBLIGATIONS

Commentators have noted that the African Charter imposes on States Parties absolute and immediate obligations to take action to ensure that the rights it guarantees are respected.⁸ The obligations are not expressed as being dependent on available resources as is the case, for example, in the International Covenant on Economic, Social and Cultural Rights.

Article 1 provides that states "shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them." This is reinforced by Article 45, which provides that the function of the African Commission on Human and Peoples' Rights is "to ensure the protection of human and peoples' rights under conditions laid down by the present Charter".

2.5 AMENDMENTS AND SUPPLEMENTS

It is important to note that the African Charter's provisions may be amended or supplemented as provided in Articles 66 and 68. A leading contributor to the Charter's preliminary draft, Kéba Mbaye, who has served as a judge on the International Court of Justice, has commented:

"Conscious of having adopted a useful instrument which however requires to be perfected, the authors of the Charter envisaged provisions concerning its amendment and revision.

The Charter constitutes what the African States were able to accept in 1981 and was therefore only a stage. It is hoped that it can be improved at a later date. The provision concerning additions which may be added to it is in response to this objective".⁹

⁸ P. Sieghart, The International Law of Human Rights (1983), p.57.

⁹ Mbaye, "Keynote address on the African Charter on Human and Peoples' Rights", in Human and Peoples' Rights in Africa and the African Charter (International Commission of Jurists), pp. 33-34 (Hereinafter Mbaye, "Keynote address on the African Charter").

At a conference on the African Charter in Dakar in December 1990 sponsored by the Association Sénégalaise des Etudes et des Recherches Juridiques (Senegalese Association of Juridical Studies and Research), Kéba Mbaye and other African human rights experts suggested that the time may have come to amend the Charter. Similarly, leading African jurists participating in the Judicial Colloquium on the Domestic Application of International Human Rights Norms held in Banjul, the Gambia in November 1990 adopted the Banjul Affirmation expressing their belief that the time may have come for an independent African Court of Human Rights whose decisions would be binding.

3. DISTINCTIVE FEATURES OF THE AFRICAN CHARTER

3.1 GENERALLY

The committee of experts which drafted the African Charter on Human and Peoples' Rights was guided by the principle that the instrument "should reflect the African conception of human rights, [and] should take as a pattern the African philosophy of law and meet the needs of Africa".¹⁰

As one African legal scholar has noted, "it was...recognized by the drafters of the Charter that while sticking to African specifics in dealing with rights, it was thought prudent not to deviate from international norms solemnly adopted in various universal instruments by different member states of the OAU".¹¹ The African Charter's preamble reflects this approach. One preambular paragraph recalls "the values of African civilization which should inspire...reflection on the concept of human and peoples' rights". Another paragraph reaffirms adherence to principles of human and peoples' rights contained in the declarations, conventions and other instruments adopted by the OAU, Non-Aligned Movement and United Nations.

3.2 PEOPLES' RIGHTS

One aspect of the African Charter, which distinguishes it from other human rights treaties is that it recognizes the rights of peoples. The drafters of the Charter did not define "peoples", but left it to the African Commission to determine whether the term meant ethnic groups within a state or the entire people composing the state or territory.

The Charter recognizes that all peoples are equal and entitled to the same rights (Article 19). They all have the right to exist, to self-determination and freely to determine their political status and to pursue their economic and social development according to the policy they have freely chosen (Article 20). Colonized and oppressed peoples have the right to free themselves from the bonds of domination by any internationally recognized means and all peoples have the right to political, economic and cultural assistance from States Parties in their liberation struggle against foreign domination (Article 20).

The Charter states that all peoples have certain economic rights. These include the right freely to dispose of their wealth and natural resources, provided that this right is exercised in the exclusive interest of the people with a view to strengthening African unity and without prejudice to the obligation of promoting international cooperation, and the right to recover property taken away from them (Article 21).

The Charter also provides that all peoples are entitled to certain rights which are often called "third generation" rights. These include the right to economic, social and cultural development "with due regard to their freedom" (Article 22), the right to national and international peace and security (Article 23) and the right to a generally satisfactory environment favourable to their development (Article 24).

3.3. DUTIES

¹⁰ OAU Doc. CAB/LEG/67/3, rev. 1, at 1.

¹¹ Eze, Human Rights in Africa: Some selected problems (1984), p. 212.

The African Charter emphasizes duties of the individual toward the community and the state (Articles 27 to 29). Other international and regional conventions on human rights contain provisions referring to the duty of individuals to respect the rights guaranteed to other individuals. However, unlike other major human rights treaties, the African Charter also specifies duties to the state.¹²

The African Charter's preamble reflects the importance of the community in African society when it states that "the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone". However, the Charter in its preamble also recognizes the fundamental principle that human rights are inherent rather than earned: "Fundamental human rights stem from the attributes of human beings, which justifies their international protection".

The duties outlined in the African Charter are discussed in more detail in section 4.6 of this paper.

3.4 RIGHT TO ASYLUM

The African Charter provides that individuals who are persecuted have the right to seek and obtain asylum in accordance with the laws of the countries where they are seeking asylum and with international conventions (Article 12), a right also found in the Universal Declaration of Human Rights and the American Convention on Human Rights. It is hoped that the African Commission will interpret Article 12 to mean that international conventions are superior to national law. The definition of the right in Article 12 is broader than that in the Universal Declaration, which guarantees only the right to "seek and enjoy" asylum, not to "obtain" it.

However, unlike those other instruments, the African Charter (Article 23) contains an explicit restriction on the activities of those enjoying the right to asylum:

"For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:

a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter."

This restriction is similar to provisions of the OAU Convention on Refugees, described in section 1.3 of this paper. It is hoped that the Commission will interpret Article 23 in a manner which will protect peaceful exercise of the rights of freedom of expression, association and assembly.

4. TEXTUAL DIFFERENCES BETWEEN THE AFRICAN CHARTER AND THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

4.1 GENERALLY

In some cases provisions of the African Charter on Human and Peoples' Rights are more broadly worded than corresponding provisions of the International Covenant on Civil and Political Rights (ICCPR) and other international human rights standards. It will therefore be important to

¹² The American Convention on Human Rights, for example, does not go beyond a vague reference to an individual's responsibilities to family, community and mankind. Similarly, the Universal Declaration of Human Rights (1948) has a reference to an individual's "duties to the community". Note, however, that the American Declaration on the Rights and Duties of Man (1948), which is not a treaty, specifies several duties to the state.

ensure that the broadly drafted provisions of the African Charter are interpreted in a manner generally consistent with the Universal Declaration of Human Rights and ICCPR and other international human rights standards. One factor which will encourage such interpretation is Article 60 of the African Charter, which provides that the African Commission on Human and Peoples' Rights "shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights..."

Article 61 provides that the African Commission "shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and peoples' rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine".

Textual differences between the African Charter and ICCPR which await interpretation include (but are not limited to) the points described below in sections 4.2 to 4.6. Appendix 3 to this paper is a chart identifying corresponding provisions of the ICCPR, the Universal Declaration of Human Rights and the African Charter.

4.2 FAIR TRIAL

Article 7 of the African Charter provides basic fair trial guarantees (right to be presumed innocent, right to defence, right to be tried by an impartial tribunal, etc.) but does not explicitly spell these rights out in detail. The ICCPR takes a more detailed approach, with Article 14 making express reference to elements of a fair trial and the right to defence, including:

- the right to a public hearing (subject to certain exceptions);
- the right to have adequate time and facilities for the preparation of one's defence;
- the right to be present at one's own trial;
- the right to be assigned legal counsel where the interests of justice so require;
- the right to examine witnesses;
- the right to free assistance of an interpreter in court if necessary;
- the right not to be compelled to testify against oneself; and
- the right to appeal to a higher tribunal.

One may presume that these internationally recognized components of the right to a fair trial are implicit in the broad language of the African Charter, but this remains to be confirmed when the Charter is interpreted and applied by the African Commission on Human and Peoples' Rights.

4.3 RIGHT TO LIFE

Article 4 of the African Charter broadly protects the right to life but does not spell out internationally recognized elements of that right contained in ICCPR Article 6, such as: sentence of death may be imposed only for the most serious crimes in accordance with law not contrary to the provisions of the ICCPR (including, thus, the right to a fair trial and appeal), the death penalty can only be carried out pursuant to a final judgment rendered by a competent court, anyone sentenced to death has the right to seek pardon or commutation, a death sentence shall not be

imposed on pregnant women or for crimes committed by persons below 18 years of age. As with the fair trial guarantee, it would be reasonable to expect that the African Commission will find these specific elements to be inherent in the African Charter's broad guarantee of the right to life.

4.4 RIGHT TO LIBERTY AND SECURITY OF PERSON

The African Charter in Article 6 broadly guarantees the right to liberty and security and prohibits arbitrary arrest or detention. Again it is reasonable to consider that implicit in the African Charter are the internationally recognized elements of these broad rights as specified in ICCPR Article 9: the right to be informed at the time of arrest of the reasons for arrest and to be promptly informed of charges, the right of those arrested or detained to be brought promptly before a judge or other judicial officer, the right to trial within a reasonable time or release, the right of detainees to take proceedings before a court in order to challenge the lawfulness of detention, etc.

4.5 FREEDOMS OF EXPRESSION, ASSOCIATION AND MOVEMENT

The African Charter limits the rights of free expression (Article 9), free association (Article 10) and free movement (Article 12) by providing that these must be exercised "within the law". This limitation is more broadly worded than restrictions which the ICCPR and other international instruments place on these rights. For example, ICCPR Article 19 provides that freedom of expression may only be subject to restrictions which are provided by law and are shown to be necessary for respect of the rights and reputations of others or for the protection of national security, public order (ordre public), public health or morals.

It will be important for the African Commission to ensure that limitation clauses of African Charter Articles 9, 10 and 12 are not interpreted in a way that would allow governments to enact arbitrary or abusive laws which unnecessarily restrict fundamental rights and render meaningless these guarantees of the African Charter.

4.6 DUTIES OF THE INDIVIDUAL TOWARD THE STATE

As noted in section 3.3 of this paper, unlike other international and regional human rights treaties the African Charter provides that the individual has certain duties to the state, including:

- "Not to compromise the security of the State";
- "To preserve and strengthen social and national solidarity"; and
- "To preserve and strengthen national independence and the territorial integrity of his country and to contribute to its defence".

It will be necessary to ensure that such duties are not misused by any government seeking to deny the fundamental individual rights which the African Charter was created to protect.

4.7 DEROGATION

Unlike the ICCPR and other regional human rights conventions, the African Charter does not contain a provision allowing states to derogate from certain obligations under the treaty in a time of public emergency. It has been suggested that the African Charter's use of broadly-worded limitation clauses (such as those described in section 4.5 above) rendered unnecessary a provision on emergencies.¹³

¹³ D'Sa, "Human and peoples' rights: Distinctive features of the African Charter", 29 Journal of African Law, pp. 75-76.

5. THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

5.1 GENERALLY

The African Commission on Human and Peoples' Rights (African Commission) is the body created under the African Charter which is charged with monitoring the latter's implementation. The African Commission was established in July 1987 at the 23rd session of the OAU Assembly of Heads of State and Government (OAU Assembly) held in Addis Ababa. Its headquarters are located in Banjul, the Gambia. The working languages of the Commission are English, French and Arabic. The Rules of Procedure, which comprise 120 rules dealing with the organization, and operation of the Commission were adopted in Dakar, Senegal, in February 1988.¹⁴ The Commission has appointed a working group to draft possible amendments to the Rules of Procedure to reflect developments in its methods of work during the past two years.

5.2 COMPOSITION

The African Commission is composed of 11 members "chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience" (Article 30). Members are nominated by States Parties to the African Charter but elected by the entire OAU Assembly to serve six-year terms (Article 36) in their individual capacities only (Article 30) rather than as representatives of their governments. At the first election in 1987, three of the members were elected to four-year terms, and a further four members to two-year terms. Approximately one-third of the members are elected every two years. Members are eligible for re-election. A list of members and officers of the Commission is included in its annual activities report which is available from the Secretariat of the Commission (see section 5.8).¹⁵

5.3 MEETINGS

Under its current Rules of Procedure, the African Commission normally holds two ordinary sessions annually. However, the chairman may convene extraordinary sessions in consultation with the members of the Commission. To date, the African Commission has held nine ordinary and one extraordinary sessions in the following states:

- Addis Ababa, 2 November 1987 (1st ordinary session)
- Dakar, Senegal, 8 to 13 February 1988 (2nd ordinary session)
- Libreville, Gabon, 14 to 18 April 1988 (3rd ordinary session)
- Cairo, Egypt, 17 to 26 October 1988 (4th ordinary session)
- Benghazi, Libya, 13 to 14 April 1989 (5th ordinary session)
- Banjul, Gambia, 13 to 14 June 1989 (extraordinary session)
- Banjul, Gambia, 23 October to 4 November 1989 (6th ordinary session)
- Banjul, Gambia, 18 to 28 April 1990 (7th ordinary session)
- Banjul, Gambia, 8 to 21 October 1990 (8th ordinary session)
- Lagos, Nigeria, 18 to 25 March 1991 (9th ordinary session)

¹⁴ As with the African Charter, there is no entirely satisfactory text of the Rules of Procedure in any of the official languages of the OAU. The original text in French has minor typographical errors and the English and Arabic texts contain translation errors. The Rules of Procedure are available from the Secretariat (see section 5.8) and are reprinted in English and French in the African Charter on Human and Peoples' Rights (1990), a booklet published by the UN Centre for Human Rights in Geneva.

¹⁵ The annual activity reports are also reprinted in Human Rights Law Journal.

In practice the agenda for Commission's session is based on proposals made by the Secretary and Chairman of the Commission. The OAU Assembly, States Parties to the Charter, liberation movements recognized by the OAU and non-governmental organizations may also make proposals to be included in the agenda. The Commission may invite any State Party or national liberation movement recognized by the OAU to participate, without a vote, in the discussion of issues in which they are interested. Representatives of intergovernmental and non-governmental organizations granted observer status by the Commission may participate, without a vote, in the discussions of issues of interest to them. Amnesty International was in the first group of non-governmental organizations to be granted observer status with the Commission. By the close of the ninth ordinary session, 11 international non-governmental organizations and 26 African non-governmental organizations had been granted observer status.

The first sessions of the Commission were held in private, except for opening and closing ceremonial meetings; under current practice, most of each session is open to observers except such matters as consideration of communications (complaints) from individuals or non-governmental organizations alleging that a State Party has violated an individual's rights. Amnesty International now attends Commission sessions and participates in discussions of matters within its mandate.

After each session the Commission publishes a communiqué summarizing what occurred. It prepares an annual report of its activities which is published after approval by the OAU Assembly (Article 59).¹⁶

6.4 SOURCES IN INTERNATIONAL LAW FROM WHICH THE AFRICAN COMMISSION IS TO "DRAW INSPIRATION"

The African Commission's tasks include both promotional and protection activities. The Preamble and Articles 60 and 61 of the African Charter permit the Commission when carrying out both these activities to look beyond the terms of the Charter. In the Preamble, the States Parties to the African Charter reaffirmed

"their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations".

In Article 60, the Charter expressly states that the Commission

"shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the parties to the present Charter are members".

Article 61 directs the Commission also to

"take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by Member States of the Organization of African Unity, African practices consistent with international norms on human and peoples' rights, customs generally accepted as law, general principles of law recognized by African States as well as legal precedents and doctrine".

Thus, when the Commission conducts such promotional activities as interpreting the Charter under Article 45(3) and developing guidelines for national legislation under Article 45(1)(b) or such protection activities as reviewing state periodic reports under Article 62 it can look to the provisions of similar human rights treaties such as the International Covenant on Civil and Political Rights or other international standards such as the UN Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment. Accordingly, it is hoped that Articles 60 and 61 will encourage the African Commission to define and interpret the rights in the Charter at least as broadly as those in other international human rights treaties and instruments.

¹⁶ Both documents are regularly reprinted in the Human Rights Law Journal.

6.5 PROMOTIONAL POWERS AND ACTIVITIES

The African Commission's powers to promote human rights include undertaking studies, organizing conferences and disseminating information (Article 45(1)(a)); encouraging national and local institutions concerned with human rights (Article 45(1)(a)); interpreting provisions of the African Charter at the request of a State Party, an OAU institution or "an African organization recognized by the OAU" (Article 45(3)); developing principles and rules aimed at solving legal problems relating to human rights, upon which governments may base their legislation (Article 45(1)(b)); and performing any other tasks entrusted to it by the OAU Assembly (Article 45(4)).

The promotional activities of the Commission include sending each member to several countries to meet with government officials, non-governmental organizations and members of the public to urge states which have not yet ratified the Charter to do so and those states which have done so to implement it. Members also frequently attend seminars on human rights and some of them have visited the secretariats of other international and regional treaty-monitoring bodies. The Commission has urged all member states of the OAU to observe 21 October of each year as the African Day on Human and Peoples' Rights in commemoration of the entry into force of the Charter on that day in 1986 and it plans to publish an African Review on Human and Peoples' Rights.

The Commission has recommended that States Parties undertake a broad range of educational measures, including

- (a) integrating human rights into the teaching curriculum of schools at all levels;
- (b) broadcasting human rights programs on radio and television; and
- (c) establishing national and regional institutions "devoted to study and research and the dissemination of information on the subject matter of human and peoples' rights and the duties of citizens".

It has also recommended that States Parties implement the African Charter by incorporating its guarantees into national legislation and it has recommended the establishment of national human rights institutions for the promotion and protection of human and peoples' rights. The Commission will be assisted in its promotional activities by its Information and Documentation Centre being established with the help of the United Nations Centre for Human Rights and the European Community.

6.6 PROTECTION POWERS AND ACTIVITIES

The African Commission has several important powers to protect human rights.

a) Investigations

Article 46 grants the Commission broad power to investigate matters within its field of competence: it "may resort to any appropriate method of investigation; it may hear from the Secretary-General of the Organization of African Unity or any person capable of enlightening it". As noted by Kéba Mbaye, Article 46 permits the Commission to carry out on-the-spot investigations.¹⁷

b) Review of Periodic Reports

The Commission reviews periodic reports which are required to be submitted every two years by States Parties under Article 62 of the Charter on the legislative and other measures they have taken to implement the Charter. A significant part of the power to review such reports includes promotional work such as assisting States Parties to bring their legislation and practices into line with their obligations under the Charter.

The Commission examined the first periodic reports of States Parties at its ninth ordinary session in Lagos, Nigeria in April 1991. Non-governmental organizations including Amnesty International submitted background information to assist the Commission in conducting its

¹⁷ Mbaye, "Keynote address on the African Charter", p.35

review of the reports and the Commission questioned the representatives of the governments which had submitted reports. Under current practice, established at the ninth session (which will have to be confirmed at a subsequent session with a full quorum) the Commission will announce at the end of each session the names of the States Parties whose periodic reports will be considered at the next session and will specify in its provisional agenda the dates on which the reports will be considered. The reports must state what measures the States Parties have taken to give effect to the rights recognized in the Charter, the progress which has been made with regard to enjoyment of those rights and, where possible, the factors and difficulties impeding implementation of those rights. The Commission has published detailed guidelines for such reports. These are included in Annex XII to the Commission's Second Activity Report.¹⁸ The OAU Secretary-General may give copies of the reports to specialized institutions of the OAU and the Commission may ask them to comment. At the ninth ordinary session, the Commission made it clear that the reports were public documents and would be made available to non-governmental organizations and individuals on request.

The Commission informs States Parties of the dates and location of the session at which their reports are to be considered and invites representatives of the State Party to present the report and to respond to oral questions from Commission members. Under current practice, the Commission does not conduct a full examination of periodic reports or supplementary information in the absence of a representative of the State Party.

Before considering a periodic report, the Commission conducts a preliminary examination of the report to determine whether it contains the required information. If it does not contain adequate information, the Commission may ask the State Party to supply the additional information and indicate the date on which the information needed should be submitted.

If the State Party fails to submit its periodic report or does not submit additional information requested by the Commission, the Commission may send a reminder through the Secretary-General to the State Party. If the State Party fails to supply the information requested in this reminder, the Commission will mention this in its annual activities report to the OAU Assembly.

The Commission has invited non-governmental organizations and individuals to supply information to assist it in examining reports. It appoints one member of the Commission for each report of a State Party as a rapporteur to prepare an analysis of the report before the session at which it is to be considered. The members of the Commission use this analysis and the other information supplied by non-governmental organizations and individuals in questioning the representatives. Observers may be asked to comment at the close of the examination of the report, but they may not participate in the questioning. After the examination has been concluded, the Commission may submit written questions to the State Party asking for further information.

If, following consideration of the report and the information submitted by the State Party, the Commission decides that the State Party has not discharged some of its obligations under the Charter, it may address any general observations to the State Party it deems necessary. It will give the State Party an opportunity to respond to the general comments and may transmit the general observations and comments to the OAU Assembly.

c) Examination of State Communications

Under Articles 47 to 53 of the African Charter, the Commission may review communications (complaints) by any State Party alleging that another state party has violated the Charter. The African Charter provides two methods for States Parties to make such complaints. Under Articles 47 and 48, the complaining State Party may submit its communication first to the other State Party (with copies to the OAU Secretary-General and the Chairman of the Commission). If within three months after the communication is received the issue is not settled to the satisfaction of the two States Parties, either State Party may then submit the matter directly to the African Commission. Alternatively, under Article 49 the State Party making the communication may submit the matter directly to the Commission (with copies to the OAU Secretary-General and the other State Party).

The Commission can only deal with a complaint if all local remedies, if they exist, have been exhausted, unless it is obvious that the procedure for achieving these remedies would take too long. The Commission must first attempt to settle the matter amicably. After receiving all necessary information from the States Parties concerned and other sources and if it is unable to reach an amicable solution, the Commission prepares a report stating the facts, its findings and any recommendations it wishes to make and sends it to the States Parties concerned and to the OAU Assembly. As of the ninth ordinary session, no State Party had invoked this procedure.

¹⁸ The guidelines for state periodic reports are reprinted in 11 Human Rights Law Journal (1990): 403-427.

d) Examination of Communications from Individuals and Non-Governmental Organizations

Under Articles 55 to 58 of the African Charter, the African Commission can consider communications (complaints) from individuals and non-governmental organizations. The Commission will consider such communications if a simple majority agrees that they meet seven admissibility requirements. Article 56 provides that the Commission will consider such complaints if they:

1. Indicate their authors even if the latter request anonymity;
2. Are compatible with the Charter of the OAU or with the African Charter;
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the OAU;
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 of the matter; and
7. Do not deal with cases which have been settled by the States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the OAU or the provisions of the African Charter.

Under current practice, the Commission may ask the author of the communication for further information and it gives the State Party an opportunity to comment before the Commission decides whether the communication is admissible. Before the Commission makes its final views known to the OAU Assembly, it may suggest to the State Party concerned that it take provisional measures to avoid irreparable prejudice being caused to the victim of the alleged violation.

If the Commission decides that the communication is admissible, it will promptly notify the author of the communication and the State Party. The State Party must submit in writing to the Commission within four months a reply explaining the issues and indicating, if possible, any steps it has taken to remedy the situation. The Commission will send a copy of the reply to the author of the communication who may submit additional information and observations within the time limit fixed by the Commission.

The Commission will then consider the communication in light of all the information the author and the State Party have submitted in writing and send its observations on the communication to the OAU Assembly, which may authorize the Commission to publish its observations.

When it appears to the Commission that "one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the OAU Assembly of Heads of State and Government to these special cases" (Article 58(1)). The Assembly "may then request the commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations" (Article 58(2)). In an emergency case, the Chairman of the Assembly may request the study (Article 58(3)).

All "measures taken" under this procedure remain confidential until the Assembly decides to make them public (Article 59 (1)).

Under current practice, the Commission discloses only the number of communications filed under this procedure; it does not disclose the names of the authors of the communications, the States Parties against which the communications are made, the subject matter of the communications or the provisions of the Charter involved. The Commission has not yet published its final views on any communication under this procedure and it has not decided how it will conduct in-depth studies.

6.7 ABSENCE OF COURT REVIEW

Unlike the other two regional human rights treaties, the American Convention on Human Rights and the European Convention on Human Rights and Fundamental Freedoms, which each established a human rights court empowered to review cases first brought before a commission, the African Charter does not provide for any sort of judicial determination of cases. This has been attributed to the traditional African emphasis on conciliation rather than formal adversarial settlement of disputes.¹⁹ The lack of a court, however, has been of the major reasons mentioned by African human rights experts for amending the Charter (see section 2.5).

6.8 CORRESPONDENCE WITH THE AFRICAN COMMISSION

Any correspondence relating to the African Commission should be sent to:

Secretary to the Commission
African Commission on Human and Peoples' Rights
Kairaba Avenue
P.O. Box 673
Banjul, The Gambia

Telephone: (220) 92964
Telex : 2345 OAU BJLGV

6. THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS IN RELATION TO THE AFRICAN CHARTER AND THE AFRICAN COMMISSION

A number of non-governmental organizations (NGOs), including Amnesty International, have formally welcomed the coming into force of the African Charter on Human and Peoples' Rights and urged that steps be taken to make Africans and others aware of the African Charter and the work of the African Commission. For example, African and international jurists, lawyers and human rights activists participating in the Seminar on the Judiciary and Human Rights in Africa organized in Banjul, the Gambia from 13 to 17 November 1988, organized by the African Association of International Law in cooperation with the Commission, adopted the Banjul Appeal requesting African states:

- "To take appropriate measures to ensure that every African knows of the existence of the African Charter on Human and Peoples' Rights, its provisions and stipulations, and the roles and functions of the African Commission on Human and Peoples' Rights. This should be done through the most modern methods and techniques of mass communication";

- "To ensure the independence and autonomy of the African Commission on Human and Peoples' Rights, and take appropriate measures to give all material, human and financial resources to the Commission to enable it [to] discharge its responsibilities effectively"; and

- "(To take immediate steps) to promote, if necessary in collaboration with non-Governmental bodies and associations, the

¹⁹ Umozurike, "The African Charter on Human and Peoples' Rights", 77 American Journal of International Law (1983), p.909.

translation and dissemination as widely as possible of the African Charter on Human and Peoples' Rights".

NGOs such as Amnesty International have submitted communications pursuant to the Charter (see section 5.6 of this paper). NGOs have also assisted the promotional efforts of the OAU and Commission by contributing information to studies and conferences organized by the Commission, by disseminating the African Charter on Human and Peoples' Rights, and by promoting public awareness of the African Commission and its work. For example, Amnesty International attended the conference on the Charter and the Commission in Dakar, Senegal from 3 to 5 December 1990 organized by the Association Sénégalaise des Etudes et des Recherches Juridiques (Senegalese Association of Juridical Studies and Research). Amnesty International has been distributing as widely as possible throughout Africa 100,000 copies of the Charter in English, 40,000 copies in French and 5,000 copies in Portuguese. In 1991 it is publishing an edition of the Charter which includes the text in Arabic as well as English and French and it will soon begin distributing copies of the Charter in other languages used in Africa, beginning with two West African languages: Hausa and Bambara. Amnesty International is also producing a pamphlet to be published in these languages to mark the fifth anniversary of the entry into force of the Charter on 21 October 1986, *Introduction to Your Rights Under the African Charter on Human and Peoples' Rights*, which describes for the general public in Africa their rights under the Charter and how to submit a communication to the Commission.

Amnesty International and other NGOs can also assist the Commission by submitting background information on the human rights situations in States Parties. It and other non-governmental organization observers frequently participate in the Commission's public sessions.

Individual members of the Commission have recognized that international NGOs and regional African NGOs have a role in serving as "bridges" between the Commission and those whose rights are being discussed, by helping to ensure that those who seek to promote and protect human rights at national and local levels are kept informed of the Commission's work.

7. THE SIGNIFICANCE OF THE ORGANIZATION OF AFRICAN UNITY'S FRAMEWORK FOR PROTECTING HUMAN RIGHTS

When OAU member states unanimously adopted the text of the African Charter on Human and Peoples' Rights in 1981, it was a signal that an important consensus had been achieved on a set of fundamental rights to be guaranteed by treaty, and on regional procedures to promote and protect those rights. It was also a clear affirmation by all OAU member states that the protection of fundamental human rights is a matter for international concern.

Another indication of the striking degree of support for the principles of the African Charter is that by 31 December 1991 41 OAU member states had chosen to become States Parties to the Charter, accepting a binding obligation to ensure to individuals all of the rights recognized in the Charter.

As with all regional arrangements for the protection of human rights, the enduring significance of the OAU's framework will be its record in practice of promoting and protecting the rights of individuals. In this respect, the African Commission has a most important role to play.

The members of the Commission have confronted a number of important practical questions during the first years of the Commission, questions similar to those faced by other bodies such as the Human Rights Committee, the Inter-American Commission on Human Rights, and the European Commission on Human Rights. Necessary staff assistance and facilities still need to be arranged. The Commission has not yet completed the process of amending its rules of procedure, and it will need assistance to ensure that its work receives widespread publicity.

The main task of the 11 individuals elected to the Commission is to develop this institution into one which plays a dynamic role in ensuring respect for fundamental rights and in assisting governments to cooperate towards that end.

8. FOR FURTHER REFERENCE

An extensive listing of books and articles is provided below. For readers wishing to consult only a few sources on the African Charter, the following provide informative overviews:

- **Books and pamphlets:** See entries under Eze, Gittleman, and Mbaye ("Keynote address on the African Charter"), cited in full below.
- **Articles:** See entries under D'Sa, Okere and Umzurike, cited in full below.

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