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ANNEXURE: Organigram of the OAU

ORGANIZATION OF AFRICAN UNITY

Making Human Rights a Reality for Africans

*“Clearly, more needs to be done to ensure that the human and peoples’ rights of our people are guaranteed, promoted and protected. It is therefore, particularly relevant to recommit ourselves to this objective as we celebrate, this year, the 50th Anniversary of the Universal Declaration on Human Rights”.*¹

1. INTRODUCTION

African leaders of newly independent African states met 35 years ago to create a pan-African organization with the primary objective of promoting unity and solidarity of African states, to defend their sovereignty, territorial integrity and independence and to eradicate all forms of colonialism from Africa. On 25 May 1963, 25 African Heads of State and Government, meeting in Addis Ababa, Ethiopia, signed the Charter of the Organization of African Unity (OAU Charter), thus creating the regional organization.²

Over the three decades of its existence, the Organization of African Unity (OAU) has evolved and witnessed African states gaining independence. It has also witnessed the creation of new states such as Eritrea and the end of apartheid in South Africa. The OAU has also faced serious challenges throughout its brief history with political changes through *coups d'état* besieging the continent, through which some of the founding fathers of the OAU were deposed, and African peoples experiencing and witnessing some of the worst atrocities, including the genocide in Rwanda in 1994 and most recently the killing of thousands of refugees in late 1996 in eastern regions of the Democratic Republic of Congo (formerly known as Zaire).

¹Statement by Dr Salim Ahmed Salim, Secretary-General of the OAU on the occasion of the 68th Ordinary Session of the Council of Ministers, Ouagadougou, Burkina Faso, 4 June 1998.

²At present there are 53 member states of the OAU. The Sahrawi Arab Democratic Republic was admitted to the OAU in February 1982 following recognition by 26 of the (then) 50 member states of the OAU but its membership was disputed by Morocco and other states. Morocco withdrew from the OAU with effect from November 1985 and is the only African state which is not a member of the OAU.

With 14 of the 53 member states of the OAU afflicted by armed conflict during 1996, the resultant killings accounted for more than half the war-related deaths worldwide and caused more than 8 million persons to become refugees, returnees and displaced persons.³ While the OAU endeavours to build the African Economic Community, conflicts on the continent create the greatest obstacles to sustainable development which will help alleviate poverty and disease. Respect for human rights and the rule of law are key components to durable peace and long-term human development.

The OAU has embarked on a restructuring program which is intended to create a “structure which would reflect the mission and strategic functions of the Organization”.⁴ The *Ad-hoc* Committee of Fifteen on Structural Reform, established by the Council of Ministers (consisting of Foreign Ministers), is overseeing the process and has employed a firm of consultants to provide advice. At the same time, the Central Organ (representatives of members states elected to the Bureau of the OAU Assembly of Heads of States and Governments each year) at the Ambassadorial level is reviewing the effectiveness of the Organ as the policy-making body of the OAU Mechanism for Conflict Prevention, Management and Resolution. The OAU is to hold a Ministerial Conference on human rights in Luanda, Angola, during October 1998, to assess the human rights situation in Africa. These three initiatives provide an opportunity for the OAU to examine its role in the protection and promotion of human rights and to adopt measures to incorporate human rights in all spheres of its work. It will only be through making human rights central to its work that the OAU will be able to truly recommit itself to the principles of the Universal Declaration of Human Rights.

³*The causes of conflict and the promotion of durable peace and sustainable development in Africa*, Report of the UN Secretary-General, para. 4.

⁴Progress Report of the *Ad-Hoc* Committee of Fifteen on Structural Reform, 68th Ordinary Session of the OAU Council of Ministers, 1-6 June 1998, CM/2059 (LXVIII) Rev.1. The other principles on which the restructuring program is being undertaken include a limitation of the number of Departments, each with a clear mandate; a flat structure which would promote flexibility and horizontal communication; and clear responsibilities and reporting lines.

The entrenchment of the principle of “non-interference in the internal affairs of States” and the emphasis on state sovereignty in the OAU Charter meant that for many years the OAU took little or no notice of gross violations of human rights by member states.⁵ The OAU Charter in its preamble recognized “the fact that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples”, and the Heads of African States and Governments were “persuaded that the Charter of the United Nations and the Universal Declaration of Human Rights, to the principles of which we reaffirm our adherence, provide a solid foundation for peaceful and positive co-operation among states”. The purposes of the OAU listed in Article 1 of the OAU Charter include: “to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights”. In the early years of the OAU, issues of human rights and the reference to freedom, equality, justice and dignity in the OAU Charter were considered only in the context of self-determination and in the ending of colonial rule.

However, when the OAU Assembly of Heads of State and Government (OAU Assembly) adopted the African Charter on Human and Peoples’ Rights (African Charter) in June 1981 and when the African Commission on Human and Peoples’ Rights (African Commission) was established in June 1987, the OAU indicated in principle at least that the protection and promotion of human rights were of concern to it. The OAU gave content to the words “freedom, equality, justice and dignity” in the OAU Charter and defined the “aspirations of the African peoples” which includes living in a society in which their human rights are respected and protected. As the Chairperson of the African Commission stated in 1988 on the occasion of the 40th Anniversary of the Universal Declaration of Human Rights: “This Universal Declaration which serves as a point of reference for the majority of constitutions of African States, even though its principles are not directly incorporated in them, reflects the aspirations and fundamental values which form the very basis of the Charter of the Organization of African Unity, and which stand for Liberty, Equality, Dignity and Justice”.⁶

By ratifying the African Charter and accepting scrutiny of their human rights record by the African Commission, member states of the OAU accepted that human rights were the concern of the international community. This principle was reaffirmed

⁵Article III of the OAU Charter lists the principles which guide the OAU and which include: “2. non-interference in the internal affairs of States; 3. respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence”.

⁶Statement of the Chairman of the African Commission on Human and Peoples’ Rights on the Occasion of the Celebration of the 40th Anniversary of the Universal Declaration of Human Rights, Annex VI, 2nd Activity Report of the African Commission on Human and Peoples’ Rights, Documentation No.1, Activity Reports (1988-1990), p.41.

by all UN member states at the World Conference on Human Rights in Vienna in 1993. It is therefore clear that the principle of non-interference in internal affairs cannot be invoked to excuse violations of human rights in any country.

The OAU recently established the two main priorities of the organization: economic development and integration and conflict resolution. At the summit in Abuja, Nigeria, in June 1991, the OAU Assembly adopted the Treaty Establishing the African Economic Community, which came into effect in May 1994. At its summit in June 1993, the OAU Assembly established the Mechanism for Conflict Prevention, Management and Resolution. These two priorities are interconnected, but underlying both is the issue of human rights. Human rights violations are an underlying cause and result of conflict and often prevent economic development. The OAU Assembly recognized the link between respect for human rights, democracy and development when it adopted a "Declaration on the Political and Socio-economic Situation and the Fundamental Changes Taking Place in the World" in which it stated: "A political environment which guarantees human rights and the observance of the rule of law, would assure high standards of probity and accountability on the part of those who hold high offices".⁷ It also emphasized this important link when it underlined "the importance of ensuring respect for human and peoples' rights with a view to enhancing peace, stability and development in Africa".⁸

To fulfil its responsibilities in ensuring peace, security and economic development on the continent, the OAU must recognize the centrality of human rights and the need to incorporate the human rights dimension in all its work. In order to do so in a consistent and effective manner, the OAU needs to develop procedures and mechanisms at the General Secretariat and within its political organs.

As the OAU embarks upon a review of its structure, it is essential to assess the role of the Organization in human rights protection and to consider what measures the organization should take in enhancing its effectiveness in the protection of human rights. This document looks first at the African Commission as the mechanism created by OAU specifically to promote and protect human rights; secondly the document examines the other mechanisms of the OAU and their role in human rights protection; and finally the

⁷Assembly of Heads of State and Government, 26th Ordinary Session, 9-11 July 1990, Addis Ababa, Ethiopia, AHG/Decl. 1 (XXVI).

⁸Resolution on the African Commission on Human and Peoples' Rights, Assembly of Heads of State and Government, 28th Ordinary Session, 29 June - 1 July 1992, Dakar, Senegal, AHG/Res. 207 (XXVIII).

document makes recommendations regarding the important role which the political organs of the OAU should play in preventing human rights violations.

2. AFRICAN COMMISSION

“The accomplishment of the mission of the African Commission cannot be conceived outside OAU member states”⁹

⁹The Mauritius Plan of Action 1996-2001, which sets out the objectives to be achieved by the African Commission during the period 1996-2001, was adopted at the 20th Ordinary Session of the African Commission in Mauritius, 21-31 October 1996. See Section IV, (a), paragraph 50.

The African Commission is a body of 11 human rights experts which monitors the compliance by states of their obligations under the African Charter.¹⁰ The African Commission was established in June 1987, after the African Charter came into effect, when the first Commissioners were elected by the OAU Assembly. Its mandate includes the promotion and protection of human rights through formulation of principles, the receipt and consideration of state and individual complaints, and the interpretation of the provisions of the African Charter. Its Secretariat is based in Banjul, the Gambia, and it depends on the OAU for its funding and other resources. The African Commission received an amount of US\$576,000 from the regular budget of the OAU for the financial year 1996/97, which constitutes about 1.95% of the total program budget of the OAU. The Secretary to the African Commission, who is appointed by the Secretary-General of the OAU, accounts to the General Secretariat of the OAU on financial and administrative matters. The African Commission elects its Chairperson for a two-year period from amongst its members. All members of the African Commission, including its Chairperson, serve in a voluntary capacity and usually attend the twice yearly sessions of the African Commission. They also undertake some inter-sessional activities. The African Commission presents a report on its activities to the OAU Assembly each year and is dependent on this body for the implementation of its decisions and resolutions.

While the African Commission is a body created by the OAU, its place within the OAU structure has not been clearly defined. Although the African Charter established a reporting relationship between the African Commission and the OAU Assembly, its relationship with other bodies of the OAU and the political organs is not defined. As this relationship has always been through the OAU Secretariat, the African Commission is often perceived as being part of the General Secretariat of the OAU. Such a perception undermines the independence and status of the African Commission.

¹⁰African Charter, Part II, Chapter I (Articles 30-44) deals with the establishment and organization of the African Commission.

The entry into force of the African Charter on 21 October 1986 (a date now commemorated as African Day on Human and Peoples' Rights) and the establishment of the African Commission were significant steps in the advancement of human rights in Africa.¹¹ Yet there remain fundamental problems with the capacity of the African Commission to work competently and act effectively. In a document entitled *Credibility in Question: proposals for improving the efficiency and effectiveness of the African Commission on Human and Peoples' Rights*, August 1998, (AI Index: IOR 63/02/98), Amnesty International makes recommendations to the African Commission on practical measures for enhancing its performance and raising its profile regionally and internationally. However, the OAU and its member states bear primary responsibility for ensuring that the African Commission is able to function as the organ for the promotion and protection of human and peoples' rights in Africa. This paper identifies four key areas where the political and financial support of the OAU is crucial if the African Commission is to succeed in meeting its objectives.

2.1 Appointment of the Commissioners

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".¹² The African Commissioners are nominated by their governments and elected by the OAU Assembly.¹³ Yet a significant draw-back to the effectiveness and credibility of the African Commission is the perceived lack of independence and impartiality of some of its members.

In the past, there have been two instances when Commissioners have also held the posts of Attorney General and Minister of the Interior respectively, at the same time as serving on the African Commission. It is not possible for an individual holding such a position in government to act concurrently as an independent member of a body which is itself holding governments accountable for their actions. This conflict of interest was recognized by a member of the African Commission, Isaac Nguema, who stated that

¹¹Only one of the 53 member states of the OAU - Eritrea - has yet to ratify the African Charter.

¹²Article 31 of the African Charter.

¹³ Although each state may also nominate a second candidate who is a national of another State Party to the African Charter. Commissioners are elected for a period of six years and may be re-elected. The OAU Assembly usually elects members of the Commission every two years to fill vacancies which arise from the term of a Commissioner coming to an end and three vacancies were filled during the OAU Assembly in June 1997.(Article 36 of the African Charter).

“Today some of its [the African Commission’s] members are ambassadors. But they must be independent: they swear an oath of independence. But an ambassador represents his head of state, and he cannot have an opinion that differs from his head of state. On this point we are not well-equipped for choosing members of the Commission”.¹⁴ Regardless of whether the Commissioner is actively following a government agenda, the perception of partiality is sufficient to throw the whole question of the independence, and therefore the credibility of the African Commission into question.

¹⁴Interview with Isaac Nguema, *Terra Viva*, March 1998, No.15

Commissioners are also compromised when they hold high-ranking positions with intergovernmental organizations, and in particular the United Nations (UN).¹⁵ As this work often involves confidential political and diplomatic efforts, it is clearly at odds with the role of an independent and impartial Commissioner, particularly if the UN work is in or concerned with African states. The possibility of strong action by the African Commission could be perceived as jeopardizing delicate negotiations, thus rendering the two incompatible.

The African Charter is silent on the need for geographical balance in the composition of the African Commission.¹⁶ This has implications for the perception, at least, of the independence of a body from a continent of different traditions, cultures and legal systems. Currently, the African Commission does not have any representatives from east Africa and only one from southern Africa.¹⁷ Similarly, there is no obligation for the African Commission to reflect a gender balance, which resulted in the complete absence of any women Commissioners until 1993.¹⁸ All states, including member states of the OAU have “committed themselves to gender balance ... in all international bodies, institutions and organizations, notably by presenting and promoting more women candidates”.¹⁹ Without a gender balance in the composition of the African Commission key issues relating to the violations of human rights of women are likely to be overlooked. The Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (Protocol to the African Charter) requires judges from the different regions and legal systems to be elected and entrenches the principle of adequate gender representation for the nomination

¹⁵Commissioner Alioune Blondin Beye, who died in June 1998, was the UN Secretary-General’s Special Representative to Angola at the same time as he had been a member of the African Commission.

¹⁶At the first election of Commissioners in June 1987, the OAU Assembly ensured that there was adequate representation from the different regions and legal systems of Africa by electing Commissioners from Libya, Egypt, Mali, Gambia, Senegal, Gabon, Congo, Uganda, Tanzania, Botswana and Zambia.

¹⁷The Commissioners who held office at the time of writing are from Algeria, Cape Verde, Congo, Egypt, Gabon, Ghana, Senegal, South Africa, Togo and Tunisia. Commissioner Blondin Beye was from Mali.

¹⁸Two of the Commissioners are women: Ms Vera Duarte Martins, who was appointed in 1993, and Ms Julienne Ondziel, appointed in 1995.

¹⁹Report of the Fourth World Conference on Women (Beijing, 4-15 September 1995), A/Conf.177/20, para. 299.

and election of judges of the African Court and provides the basis for similar guidelines on the African Commission to be adopted by the OAU Assembly.²⁰

²⁰Protocol to the African Charter, Articles 12(2) and 14 (2) & (3).

The African Commission should draft and recommend for adoption by the OAU Assembly, guidelines and criteria for independence and impartiality which would disqualify candidates defined as 'political' or 'governmental' appointees, that is, those carrying out directives from their government, such as ministers or ambassadors. The Protocol to the African Charter sets a useful standard by stating that: "The position of judge of the Court is incompatible with any activity that might interfere with the independence or impartiality of such a judge or the demands of the office, as determined in the Rules of Procedure of the Court".²¹ This thinking has been adopted by the Chairpersons of the UN Treaty Bodies²² who have recommended that "States Parties to human rights treaties should refrain from nominating or electing to the treaty bodies persons performing political functions or occupying positions which were not readily reconcilable with the obligations of independent experts under the given treaty".²³

It is also desirable that stricter criteria for selection be introduced to ensure that the candidates have some degree of expertise relevant to their position.²⁴ Although this does not in itself guarantee independence, it contributes towards the realisation of a more competent professional body. In addition, greater participation by nongovernmental organizations (NGOs) and consultation during the selection process at the national level would be a positive development.²⁵

²¹*Ibid.*, Article 18.

²²UN Treaty Bodies are all the mechanisms which are created under international human rights treaties to monitor compliance by state parties with their obligations under the treaties and include the Human Rights Committee, Committee on the Rights of the Child and Committee on Elimination of Discrimination against Women.

²³Report of 8th Meeting of Chairpersons of UN Treaty Bodies, UN General Assembly, UN Doc. A/52/507, para. 68.

²⁴ The European Committee on the Prevention of Torture for instance has already produced a list of desirable professional skills for candidates which includes (particularly relevant for the Committee) specialist knowledge of penitentiary systems and medical doctors with relevant experience in forensic medicine.

²⁵ One of the recommendations to come out of the NGO workshop held prior to the African Commission's session in October 1991, was that "NGO's should be actively involved in the processes of nomination and appointment of Commissioners", *Conclusions and Recommendations of the First Workshop organised by the International Commission of Jurists in collaboration with the African Commission on Human and Peoples Rights and the African Centre for Democracy and Human Rights Studies*, 5-7 October, 1991, Banjul, The Gambia.

The African Commission should amend its Rules of Procedure to state clearly that members of the African Commission should refrain from dealing with and considering reports, including periodic reports, and complaints of human rights violations and participating in any investigations concerning their own countries. The current provisions of the Rules of Procedure give too much discretion to individual members to decide on incompatibility or whether to withdraw.²⁶ Other bodies, such as the Chairpersons of UN Treaty Bodies, have taken the clear view that “members of treaty bodies refrain from participating in any aspect of the consideration of the reports of the States of which they were nationals, or communications or inquiries concerning those States, in order to maintain the highest standards of impartiality, both in substance and in appearance”.²⁷ This would also work to the benefit of the Commissioners themselves as they would then be immune from criticism from their governments for being party to critical decisions and reports.

Ultimately, it is the responsibility of governments to propose, and the OAU Assembly to approve, candidates who meet the criteria established in the Rules of Procedure and who will be able to fulfil their tasks with independence and impartiality. If the African Commission is to have credibility this responsibility will have to be accorded the seriousness it deserves.

The African Commission should

- **draft and recommend for adoption by the OAU Assembly, guidelines and criteria for independence and impartiality which would disqualify candidates defined as ‘political’ or ‘governmental’ appointees, and ensure adequate gender balance and representation of the different regions and legal systems of Africa in the African Commission.**
- **amend its Rules of Procedure to state clearly that members of the African Commission should refrain from dealing with and considering reports, including periodic reports, and complaints of human rights violations and participating in any investigations concerning their own countries.**

2.2 Co-operation between the OAU and the African Commission

An objective of the African Commission during this planning period is to enhance

²⁶See Rule 109 and Rule 110 of the Rules of Procedure of the African Commission.

²⁷*Supra*, note 23 at para. 67. Note also the guidelines for the European Committee for the Prevention of Torture and European Court of Human Rights, Rule 4. The UN Committee on the Elimination of Racial Discrimination is presently drafting a rule of procedure that follows the above recommendation but also allows the member concerned to give information on the factual or legal situation of the state if useful.

“the OAU Secretariat’s involvement in its activities related to human and peoples’ rights with regard to, among other things, conflict prevention and management, refugees and displaced people, observation of elections and the establishment of the African Economic Community”.²⁸ The establishment of “practical modalities of cooperation” as a priority would be a positive development and Amnesty International urges the OAU and African Commission to give the time, money and thought necessary to meeting this objective through a clearly-defined strategy.²⁹

This document contains several recommendations for strengthening the relationship between the OAU and African Commission, but there are also a number of simple initiatives that could be undertaken immediately. Firstly, under the Rules of Procedure of the African Commission, the OAU Secretary-General may attend and provide written or oral statements to sessions of the African Commission.³⁰ Attendance by the Secretary-General or a senior representative at the African Commission’s meetings will indicate the importance the Secretary-General attaches to the work of the African Commission. Furthermore, it will enhance the status of the African Commission within the OAU and provide the necessary political weight to improve its effectiveness as regards members states of the OAU.

In addition, regular representation of the OAU at meetings of the African Commission would go a considerable way towards bridging the information and conceptual gulf that exists between the two institutions. A representative of the OAU Secretariat would be able to provide information directly to the Commissioners and other participants on OAU decisions and resolutions pertaining to country situations and thematic issues, as well as to the African Commission itself. This would bring an important dimension to discussions at the African Commission by providing details of the political response of the OAU to many of the items on the African Commission’s agenda. It would also enable the OAU Secretariat’s representative to report on discussions on the situation of human rights in states that are on the African Commission’s agenda or brought to its attention to relevant departments at the OAU General Secretariat, and in particular the Mechanism for Conflict Prevention, Management and Resolution, the Division for Refugees, Displaced Persons and Humanitarian Affairs, the Secretary-General and the Legal Division. It is possible that this role could be carried out by staff from the human rights division recommended below (see Section 4.4).

²⁸The Mauritius Plan of Action, Section IV (b) paragraph 54 of the Plan.

²⁹*Ibid.*, Section IV (b) paragraph 55.

³⁰ Rules of Procedure of the African Commission, Rule 22.

Secondly, the OAU must demand regular, substantive and detailed reports from the African Commission so that it is able to assess the situation of human rights in its member states as part of its deliberations and response. The reports of the African Commission to the Council of Ministers and OAU Assembly primarily consist of final communiqués and activity reports. These are “a brief summary of the recommendations and statements on issues to which the African Commission would like to draw the attention of the current Chairman and member states of the Organization of African Unity”.³¹ As the main source of public information about the African Commission’s meetings, they fail to provide details about the country or thematic situations.³² Amnesty International has made recommendations to the African Commission to improve its public reporting, including in the areas of consideration of states parties reports and on-site missions.³³ However, the OAU should ensure that it receives information from the African Commission which is of a sufficiently high standard to adequately inform its debates, decisions and action.

The Secretary-General should:

- **attend, or send a senior representative regularly to, the meetings of the African Commission.**
- **send a representative from the proposed Human Rights Division to all meetings of the African Commission with the aim of informing participants about the deliberations and activities of the OAU and to gather information on human rights situations.**

The OAU Assembly should:

- **require the African Commission to produce regular and detailed reports, including through the production of summary records of its meetings.**

2.3 Obligations of states parties

An essential part of the information the African Commission should provide to the OAU arises from its function as a treaty monitoring body. Under Article 62 of the African Charter, each state party undertakes to submit a report every two years to the African

³¹*Ibid.*, Rule 41.

³²For example, the summary which relates to the consideration of periodic reports by the African Commission typically consists of a list of states parties who presented their reports and records the thanks extended to them for doing so. See the Eleventh Annual Activity Report of the African Commission on Human and Peoples’ Rights, 1997-8, CM/2084 (LXVIII), Section II, A.9.

³³See “*Credibility in Question: proposals for improving the efficiency and effectiveness of the African Commission on Human and Peoples’ Rights*”, AI Index: IOR 63/03/98, sections I(c), IV and V.

Commission on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the African Charter.

Like other treaty monitoring bodies, the African Commission has no enforcement mechanism and is therefore reliant on the will of member states to present their reports. Despite regular reminders from the OAU Assembly and the Secretary-General to states parties to submit their reports in a timely fashion, as of June 1998 there are 200 reports which are overdue.³⁴ In addition, the reporting process is frequently frustrated by states parties who are scheduled to present their reports to the African Commission simply failing to attend the session.

Fulfilling obligations under the African Charter is central to implementation of the principles of the OAU Charter. The OAU could take more radical steps to urge its members to do so. At a minimum, the OAU Secretary-General should be raising the issue of overdue reports in bilateral communications with member states of the OAU. The Secretary-General should also ensure implementation of a resolution adopted by the OAU Assembly in 1993 which recommended that “states parties to the African Charter designate high ranking officials to act as focal points in the relation between the African Commission and the states as such focal points would facilitate the follow-up on the Commission’s recommendations and contact between states and the Commission”.³⁵

All member states of the OAU should:

- **provide all overdue reports to the African Commission as a matter of priority. In particular, those states who have never submitted a report should be urged to do so by the OAU.**
- **inform the Secretary-General of the designated official who will act as a focal point between the government and the African Commission.**

The Secretary-General should:

- **raise the issue of overdue reports systematically with member states as an integral part of his communications with them.**

³⁴See Eleventh Annual Activity Report of the African Commission on Human and Peoples’ Rights, 1997-98, Annex II (Status on Submission of State Periodic Reports), 68th Ordinary Session of the OAU Council of Ministers, 1-6 June 1998, CM/2084 (LXVIII). The following states parties have yet to submit their first reports which were due 11 years ago: Botswana, Burkina Faso, Central African Republic, Comoros, Congo, Equatorial Guinea, Gabon, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Sahrawi Arab Democratic Republic, Sao Tomé et Príncipe, Sierra Leone, Somalia, Uganda and Zambia.

³⁵Resolution on the African Commission on Human and Peoples’ Rights, OAU Assembly of Heads of State of Government, 29th Ordinary Session, 28-30 June 1993, Egypt.

- **establish a cooperative relationship with the Office of the UN High Commissioner for Human Rights in regard to the provision of technical assistance to OAU member states for the preparation of periodic reports.**

2.4 Increasing resources

Many weaknesses in the management and functioning of the Secretariat exist which have a significant impact on the overall performance of the Secretariat and the African Commission itself.³⁶ Although the Chairperson of the African Commission has responsibility for the general supervision of the Secretary (and, by inference, the Secretariat of the African Commission), the OAU Secretary-General has responsibility for appointing the Secretary to the African Commission and providing the African Commission with necessary resources.³⁷

The OAU has consistently failed to provide essential human and material resources for the Secretariat, with the consequence that the African Commission is reliant on donors for performing many key tasks. Presently, donor funding is being used to employ key personnel including a press officer and a documentalist. The need for additional personnel has been recognized by the OAU and the OAU is urged to give it priority in its restructuring program.³⁸ At present, there are only two full-time permanent lawyers at the Secretariat, one of whom is the Secretary to the African Commission.³⁹ The African Commission, as a quasi-judicial body which deals with complaints and which renders decisions, needs professional staff permanently employed in its Secretariat in order to fulfil its mandate under the African Charter adequately. Unless the OAU provides the African Commission with additional resources, it will not be able to do so. Further, to meet many of the objectives in the Mauritius Plan of Action and to function efficiently, the OAU must also provide resources for computers, electronic mail, a website and the maintenance of existing equipment at the Secretariat.

³⁶See *Credibility in Question: proposals for the improved efficiency and effectiveness of the African Commission on Human and Peoples' Rights*, (AI Index: IOR 63/02/98), DATE 1998.

³⁷ See Rule 23, Rules of Procedure of the African Commission, amended on 6 October 1995, ACHPR/RP/XIX.

³⁸See Progress Report of the *Ad-Hoc* Committee of Fifteen on Structural Reform, 68th Ordinary Session of the OAU Council of Ministers, 1-6 June 1998, CM/2059 (LXVIII) Rev., at p.7.

³⁹Interns with legal qualifications and staff on fixed-term contracts are placed at the Secretariat for periods varying between six months to a year by NGOs and donor organizations.

In March 1992, at its 12th ordinary session, in Tunis, Tunisia, the African Commission was forced to reduce the length of its meeting from 14 days to 10 days as a result of the reduction of its budget by the OAU Secretariat. This reduction of almost one-third of its meeting time has seriously hampered the work of the African Commission and undermined its effectiveness. It has been unable to deal adequately with many of the issues on its agenda at each session. The OAU should increase the budget of the African Commission to enable it to meet for 14 days at each session.

Amnesty International is calling on the OAU to provide resources for the Chairperson of the African Commission to serve on a full-time basis during the tenure of two years in order to take effective responsibility for the overall management of the Secretariat. A full-time Chairperson would be responsible for ensuring that the priority areas of work of the African Commission are implemented as well as for establishing systems which ensure that the Secretariat functions effectively and efficiently. The Chairperson would also then take responsibility for dealing with emergency situations and liaising with the state concerned, the OAU Chairperson and Secretary-General regarding such situations, making early action by the African Commission a priority.

The OAU should:

- **provide essential resources for the Secretariat including additional permanent posts.**
- **increase the budget of the African Commission to enable it to meet for 14 days at each session.**
- **consider providing resources for the Chairperson of the African Commission to serve on a full-time basis during the tenure of two years.**

3. AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Amnesty International supports the establishment of an African Court of Human and Peoples' Rights (African Court) as a means of strengthening the protection of human rights in Africa, whilst also seeking to ensure that the African Court will function competently and effectively. The African Court, once established, will consider cases referred to it by the African Commission and state parties to the Protocol and, where a state party recognizes such a jurisdiction, by individuals and NGOs. It will render binding decisions and the execution of its judgments will be monitored by the Council on behalf of the OAU Assembly.

Although the African Court does not yet exist, the Protocol for its establishment was adopted by the OAU Assembly in June 1998 and thus it is no longer a question of whether there should be an African Court, but rather when it will come into being.⁴⁰ The

⁴⁰The Protocol to the African Charter requires 15 signatures to come into effect.

establishment of an African Court which can render decisions that are binding represents an important development in terms of progress towards a comprehensive regional mechanism of human rights protection in Africa. Equally significant is the fact that the success of the African Court is to a large extent dependent upon the operational efficiency of the African Commission, as the two are designed to work together and complement each other.⁴¹ Amnesty International believes that simultaneous with efforts to establish the African Court, the OAU should endeavour to further strengthen the role, functioning and working practices of the African Commission.

The relationship between the two bodies is at present far from clear and is dependant upon the drawing up of Rules of Procedure (as required in the Protocol).⁴² It is clear, though, that most complaints of human rights violations will first be processed by the African Commission before being referred to the African Court, similar to the practice in the Inter-American and European systems.⁴³ The Rules of Procedure will be vital to the success or failure of the African Court as they will create the practical framework for the operation of the provisions of the Protocol to the African Charter and regulate the relationship between the African Court and African Commission. The functioning of the African Commission itself however is of paramount importance if this relationship is to be successful.⁴⁴

4. OAU GENERAL SECRETARIAT

4.1 Secretary-General

⁴¹ See the seventh preambular paragraph of the Protocol to the African Charter, and Art.2: “(the Court)... shall complement the protective mandate of the African Commission....”.

⁴²*Ibid.*, Article 8: ‘The Rules of Procedure of the Court shall lay down the detailed conditions under which the Court shall consider cases brought before it, bearing in mind the complementarity between the African Commission and the Court’.

⁴³The European Commission on Human Rights will cease to exist in November 1998 and complaints will be considered directly by the European Court of Human Rights.

⁴⁴ It seems that others are aware of this issue also. For instance at the meeting of Government experts on the establishment of an African Court of Human and Peoples’ Rights, (6-12 September, 1995, Cape Town, South Africa), the meeting decided that its mandate should not only be to consider the draft protocol on the establishment of a Court, but also to consider ways to strengthen the African Commission. See point V(10) in the Report of the Government Experts Meeting, OAU/LEG/EXP/AFC/HPR(I).

The Secretary-General of the OAU is appointed by the OAU Assembly and is responsible for directing the affairs of the Secretariat.⁴⁵ The impartiality and independence of the Secretary-General is entrenched in the OAU Charter which states that the Secretary-General “shall not seek or receive instructions from any government or from any other authority external to the Organization”.⁴⁶ The Secretary-General is directly responsible to the Council of Ministers, is required to submit reports requested by the OAU Assembly and the Council of Ministers and is responsible for the finances of the Organization.⁴⁷

The current Secretary-General, Dr Salim Ahmed Salim, was re-elected by the OAU Assembly in June 1997 to serve his third four-year term as the administrative head of the OAU. During his first two terms Dr Salim Ahmed Salim has overseen several positive developments including the implementation of the two main priorities of the organization, economic integration and conflict resolution. He has also taken a positive view of human rights and, through his statements to the meetings of the political organs, has urged member states of the OAU to respect human rights.

⁴⁵OAU Charter, Article XVI. See the organigram annexed. The Council of Minister which comprises the Foreign Ministers of member states of the OAU, meets twice a year. The Assembly of Heads of State and Government is the highest policy-making body of the OAU and meets once a year.

⁴⁶*Ibid.*, Article XVIII (1).

⁴⁷Functions and Regulations of the General Secretariat, Rules 6, 10, 16.

The Secretary-General has the authority to engage in quiet diplomacy, however, in some circumstances, it may be necessary for him to speak out publicly against human rights violations. This is particularly important where such violations amount to an affront to the principles of the OAU and the nature of the violations is such that remaining silent may question not only his credibility but also that of the OAU. A serious human rights situation such as that which prevailed in the Democratic Republic of Congo at the end of 1996 and during the early months of 1997 requires concern and criticism to be expressed publicly. A report of the United Nations Secretary-General's Investigative Team which was presented to the Security Council on 29 June 1998 includes evidence of massacres and the commission of crimes against humanity and possible genocide in the eastern parts of that country which began in October 1996.⁴⁸

While general exhortations by the Secretary-General to member states to respect human rights may be necessary, it is more important that the OAU, through its Secretary-General, should speak out publicly about specific situations of serious human rights violations in member states of the OAU. In the past the Secretary-General has issued statements about the situation in various countries including Burundi, Liberia and Rwanda. However, the Secretary-General has been cautious about making public statements about the human rights situation in more influential member states of the OAU, especially those which contribute a large proportion of the budget of the OAU.⁴⁹

The Secretary-General should use his position more often to intervene in cases where he may be able to prevent further human rights violations. The African Charter has been ratified by all but two member states of the OAU and therefore it provides a moral basis for the Secretary-General to intervene in individual cases which are a threat to the principles of the African Charter. The "good offices" function of the Secretary-General is an important one and enables him to exercise influence where other initiatives may fail. His timely intercession in situations where individuals are facing

⁴⁸At the time of finalization of this report, the OAU Secretary-General dispatched a mission to the Democratic Republic of Congo to "see how best the OAU can make contribution its contribution to the search for a peaceful solution" to the current crisis which started at the beginning of August 1998, AFP 6 Aug.

⁴⁹Algeria, Egypt, Nigeria and South Africa each contribute US\$1.96 million and Libya contributes US\$1.8 million which is 7.25% and 6.8% respectively of the assessed contributions of member states to the OAU. As only 20 of the 53 states paid their contributions for the 1997/98 financial year in full, the contributions of the five states in fact constituted about 16% of the contributions received up to 31st January 1998 for the 1997/98 financial year. (See Statement of Contributions to the OAU Regular Budget as at 31 January 1998, 67 Ordinary Session of the Council of Ministers, 23-27 February 1998, CM/2030(LXVII).

serious human rights violations such as torture or arbitrary execution may prevent further harm coming to those individuals.

The Secretary-General should:

- **speak out publicly about specific situations of serious human rights violations in member states of the OAU.**
- **use his “good offices” as his timely intercession may prevent further harm coming to those individuals facing serious human rights violations.**

4.2 Conflict Resolution Mechanism

“Respect for human rights and the rule of law are necessary components of any effort to make peace durable. They are cornerstones of good governance. By signalling its commitment to respecting human rights, a Government can demonstrate its commitment to building a society in which all can live freely.”⁵⁰

In June 1993 during the Summit in Cairo, Egypt, the OAU Assembly adopted a “Declaration on the Establishment, within the OAU, of a Mechanism for Conflict Prevention, Management and Resolution”.⁵¹ The Declaration states: “Conflicts have forced millions of our people into a drifting life as refugees and internally displaced persons, deprived of their means of livelihood, human dignity and hope”. The primary objective of the Conflict Resolution Mechanism (CRM) is the anticipation and prevention of conflicts. However, the CRM functions within the constraints of the principles of state sovereignty and non-interference in the internal affairs of states.⁵² While there is no explicit link between human rights and conflicts in the Declaration, it does make reference to “certain internal human factors and policies which have negatively contributed to the present state of affairs on the Continent”. The former Head of the OAU Conflict Management Division recognized that “conflicts usually occur because the rights of the people, individually and collectively, are under threat or under assault”.⁵³

⁵⁰*Supra*, note 3, para. 72.

⁵¹Assembly of Heads of State and Government, 29th Ordinary Session, Cairo, Egypt, 28-30 June 1993, AHG/Decl.3 (XXIX).

⁵²Paragraph 14 of the Declaration states: “The Mechanism will be guided by the objectives and principles of the OAU Charter; in particular, the sovereign equality of Member States, non-interference in the internal affairs of States, the respect of the sovereignty and territorial integrity of Member States, their inalienable right to independent existence, the peaceful settlement of disputes as well as the inviolability of borders inherited from colonialism. It will also function on the basis of the consent and the cooperation of the parties to the conflict”.

⁵³Dr Chris Bakwesegha, “Democracy and Human Rights in Africa: A Bird’s Eye View”, in

The Declaration recognized that: “Emphasis on anticipatory and preventive measures, and concerted action in peace-making and peace-building will obviate the need to resort to the complex and resource-demanding peace-keeping operations, which our countries will find difficult to finance”. The OAU Assembly therefore recognized that it is more effective and less expensive to deal with the root causes of conflict than to deal with the results of conflict. With the UN and the international community taking less interest in managing conflicts in Africa and placing more responsibility on the OAU, dealing with the root causes of conflict becomes even more imperative.

The political organ which gives directions to the CRM and oversees its operations is the Central Organ which consists of states which are elected to the Bureau of the OAU Assembly each year. The Central Organ meets at least once a month at the level of Ambassadors, twice a year at the level of Foreign Ministers and once a year at the level of Heads of States and Government. It is regrettable that the meetings of the Central Organ, especially at the level of Ambassadors, are held behind closed doors and therefore little is known about its deliberations and the consideration given to human rights issues. While the Central Organ regularly issues communiqués after its meetings these contain a summary of its decision and give no indication whether there had been any discussion of the human rights situation during the deliberations.

The Conflict Management Division (Conflict Division) in the OAU Secretariat gathers information, assesses conflict situations and prepares reports on behalf of the Secretary-General for consideration by the Central Organ and the Council of Ministers. The reports on conflict situations presented to the Council deal only with the political situation in a country and with diplomatic and other efforts being made to deal with the situation. While there is often reference in the reports to killings and other human rights abuses this is often presented as contextual information rather than in an analysis of the prevailing human rights situation in the country. In the report on Angola presented to the Council meeting in June 1998, there is a section on "Human Rights and Humanitarian Aspects" which states only that: "The period under review also witnessed an increase in cases of alleged human rights violations, including unlawful detention, torture and killing of innocent civilians. This state of affairs has been a source of concern to me and to members of the Central Organ".⁵⁴ There are no details pertaining to the extent of the human rights violations or as to who may be responsible for these violations. The lack of proper analysis of the human rights situation in a country such as Angola prevents an adequate assessment of the conflict situation prevailing in that country. Similarly, in the report on Sierra Leone, there is a section on "Post-conflict Assistance" where brief details are given regarding the assistance required for rehabilitation and reconstruction of the country.⁵⁵ While attention may correctly have been focused in the report on issues such as the primary health care system and sanitation, the failure to address other human rights issues such as the rebuilding of national institutions, including the judicial system, to protect human rights and prevent further violations, is a serious oversight.

These reports often do not present an entire picture regarding the conflict situation in a country and avoid mentioning killings and atrocities by government forces. For example, a report on Burundi⁵⁶ documents attacks by armed opposition groups on regroupment camps, expresses concerns about these camps but fails to mention killings and other atrocities by government forces which had been occurring at the time.⁵⁷

⁵⁴Report of the Secretary-General on the Situation in Angola, 68th Ordinary Session of the Council of Ministers, 1-6 June 1998, CM/2062 (LXVIII)-e, p. 3.

⁵⁵Report of the Secretary-General on the Situation in Sierra Leone, 68th Ordinary Session of the Council of Ministers, 1-6 June 1998, CM/2062 (LXVIII)-d, p.9-10.

⁵⁶Report of the Secretary-General on the Situation in the Great Lakes Region, II. Burundi, 66th Ordinary Session of the Council of Ministers, 26-30 May 1997, CM/2004 (LXVI) - a.

⁵⁷See Amnesty International's report: *Burundi - Forced relocation: new patterns of human rights abuses*, AI Index: AFR 16/19/97, 15 July 1997.

Another report on Burundi⁵⁸ refers to the massacre of civilians by rebel groups but fails to address killings by the security forces which were occurring during the same period.⁵⁹

Amnesty International believes that it is important to assess the state of human rights in African countries in anticipating conflicts and preventing them. With 14 of the 53 member states of the OAU afflicted by armed conflict during 1996, the resultant killings accounted for more than half the war-related deaths worldwide and caused more than 8 million persons to become refugees, returnees and displaced persons.⁶⁰ Such a situation presents an arduous task for the CRM.

A deterioration in the human rights situation in a country may be an indicator that the government has lost the respect of its people and has resorted to oppression and force in order to retain power. Human rights violations often occur when the authorities ignore the rule of law and undermine institutions such as the judiciary. It is this steady decline in respect for human rights which often signals the progression towards internal strife and armed conflict. It is therefore imperative for the CRM to regularly monitor the human rights situation in countries throughout Africa as a central part of its assessment of countries which are at risk of conflict. The Conflict Division should then identify as a priority countries which are at risk of conflict because of the lack of respect for human rights and prepare regular reports for consideration by the Central Organ meeting at the level of Ambassadors.

⁵⁸Report of the Secretary-General on the Situation in Burundi, 67th Ordinary Session of the Council of Ministers, 23-27 February 1998, CM/2034 (LXVII) (a).

⁵⁹See Third Report on the human rights situation in Burundi submitted by the Special Rapporteur, Mr Paulo Sérgio Pinheiro, 54th Session of the UN Commission on Human Rights, E/CN.4/1998/72, 13 February 1998, in which he states: "The Special Rapporteur notes ... that serious violations of human rights and international humanitarian law attributable to members of the army or law enforcement agencies - massacres, enforced or involuntary disappearances and arbitrary arrests and detention - are still common in Burundi".

⁶⁰*Supra* note 3.

The greatest obstacle to the Conflict Division placing a country on the agenda for the meetings of the Central Organ is the interpretation given to the principles of state sovereignty and non-interference in the internal affairs of a state. The consent of a state concerned is required for any report on that country to be placed on the agenda. This prevents the Conflict Division from taking initiative and being effective in the gathering of information which would enable it to recommend measures to be taken to prevent conflict. In a report by the Secretary-General to the recent Council meeting, he indicated that one of the most serious constraints facing the Central Organ of the CRM included the provisions in the Declaration for non-interference in the internal affairs of States.⁶¹ If the OAU is determined to tackle the scourge of conflicts effectively, it has to consider and adopt measures on any situation which has the effect of frustrating the purposes of the OAU including “to achieve a better life for the peoples of Africa”.⁶² Furthermore, tackling conflict situations from a human rights perspective avoids objections being raised by states on the basis of non-interference in their internal affairs.

One of the methods of gathering information is through fact-finding missions to countries which are identified as high risk. These fact-finding missions should ensure that the human rights situation is assessed through the inclusion in the team of a human rights expert. Preferably, the CRM should undertake joint missions with members of the African Commission, who could concentrate on the human rights issues. Such joint initiatives would not only ensure that human rights are given a priority in the assessment of and in designing responses to a potential conflict situation, but would also improve coordination between two organs of the OAU and make prudent use of limited resources.

The Conflict Division should establish links with NGOs throughout Africa and internationally to enable it to receive information regularly on countries throughout Africa. While the Division has set up an early warning system to enable it to receive information, including by electronic means, NGOs are not sufficiently aware of such a system existing, its purpose and the role they could play in making the system function efficiently. The Conflict Division should also maintain regular contact with the African Commission through the proposed human rights division and with the UN through the permanent offices of the OAU in New York and Geneva and utilize information from the UN on countries in Africa.

⁶¹Report of the Secretary-General on the “Enhancement of the Effectiveness of the Central Organ”, 68th Ordinary Session of the OAU Council of Ministers, 1-6 June 1998, Ouagadougou, Burkina Faso, CM/2064 (LXVIII).

⁶²Article II (1) (b) of the Charter of the Organization of African Unity.

Early warning is not enough, there has to be early action. As the UN Secretary-General stated in his report on causes of conflict in Africa: "Early warning mechanisms are widely regarded as serving an important role in conflict prevention, but without early action, early warning is of little use."⁶³ Information on a deterioration in the human rights situation and increased risk of conflict should be brought to the attention of the Central Organ with recommendations on steps to be taken to prevent further human rights violations through diplomacy or other means, to ensure continuous monitoring of the situation including through fact-finding missions, and on sharing information with the African Commission and seeking its expert advice on the situation.

Most of the resources of the CRM have been spent on conflict management.⁶⁴ The CRM has been involved in several conflict situations including the placing of military observers in Burundi, authorizing armed intervention by west African troops in Sierra Leone and diplomatic initiatives in ending the conflict between Ethiopia and Eritrea and preventing an escalation of the conflict in the Comoros. The response of the CRM to conflict situations has been *ad-hoc* and selective with it choosing either not to deal with certain conflicts or to leave it to sub-regional bodies such as the Economic Community of West African States to deal with the conflict.

In any conflict situation human rights violations are pervasive. The CRM has ignored the human rights dimension of conflicts and therefore has failed to address what is often the root of the problem in a country. In its attempt to stem the spreading of conflicts, the CRM should not only consider human rights information, but seek to address the violations of human rights as an integral component of finding a solution to the conflict. The CRM should look at the use of human rights monitors, civilian police observers (CIVPOLS) to monitor and supervise the law enforcement agencies and ensure that any peace-keeping initiative includes a component to monitor and report on human rights violations. Finally, in its attempts to broker peace, any agreement it initiates should include a comprehensive human rights agreement which will provide the basis for the establishment of national institutions and mechanisms for the protection of human rights.

The OAU has developed a role in election monitoring. It has done so in the furtherance of its understanding that good governance is central to lasting peace and

⁶³*Supra* note 3, para. 16. The UN Secretary-General reiterated this statement at a meeting, in New York on 28 July 1998, of 16 regional organizations aimed at improving cooperation for prevention of conflicts, PANA 28/7/98.

⁶⁴See Report of the Secretary-General on the OAU Peace Fund, 68th Ordinary Session of the OAU Council of Ministers, 1-6 June 1998, CM/2066 (LXVIII) Rev.1.

development in any country. Election monitoring missions have been undertaken to various countries including Algeria, Comoros, Liberia and South Africa. Yet the OAU initiatives in election monitoring have amounted to little more than watching the process of voting. It has ignored the environment which is essential for any free and fair elections, including respect for human rights such as the exercise of the right to freedom of association and freedom of expression. The African Charter provides the framework in which any democratic process has to take place and includes guarantees of the right to freedom of speech and opinion, association and assembly.

For any meaningful participation by the OAU in election monitoring there needs to be, first of all, an early assessment of the prevailing human rights situation in the country. The Conflict Division should then make recommendations to the authorities on steps to be taken in order to ensure an environment respectful of human rights in preparation for the elections. The Conflict Division should make an assessment on the implementation of its recommendations before undertaking a mission to the country to monitor the elections. Finally, an assessment of the freedom and fairness of the elections will never be credible without an assessment of the human rights context in which the elections took place.

The Conflict Resolution Mechanism should:

- **address human rights as an integral component of finding a solution to conflict.**
- **consider the use of human rights monitors and civilian police observers in conflict situations and ensure a human rights monitoring component in any peace-keeping initiative.**

The Conflict Division should:

- **regularly monitor the human rights situation in countries throughout Africa, in order to identify countries which are at risk of conflict due to a deteriorating human rights situation, and prepare regular reports for consideration by the Central Organ meeting at the level of Ambassadors.**
- **undertake fact-finding missions to countries which are identified as high risk and include a human rights expert in the mission team.**
- **establish links with NGOs, the African Commission and with the UN to enable it to receive information regularly on countries in Africa.**
- **in its election monitoring functions, make an assessment of the prevailing human rights situation in a country long before the elections are to be held and make recommendations to the state concerned, assess the extent to which the recommendations have been implemented before a mission to the country is undertaken and include an assessment of the human rights situation during the elections in its final report on the freedom and fairness of the elections.**

4.3 Refugee Division

In 1969 the OAU adopted a treaty which is considered - at least on paper - as the most progressive treaty for the protection of refugees in the world: the Convention Governing the Specific Aspects of Refugees in Africa (OAU Refugee Convention)⁶⁵. It entered into force on 20 June 1974, a day that has been commemorated as Africa Refugee Day. It was therefore early in the life of the OAU that a treaty regime was established to protect the rights of refugees.

The role of the OAU in refugee matters seems to be concerned mainly about humanitarian assistance for refugees and displaced persons and considering ways in which “root causes” of refugee flows could be addressed not only to avert people becoming refugees but also to ensure that refugees can return to their country of origin. It is clear that the OAU sees voluntary repatriation as the main objective in its work on refugees.⁶⁶ The OAU has left the day to day work of protection and repatriation to the UN High Commissioner for Refugees.

⁶⁵Adopted by the OAU Assembly of Heads of State and Government at its 6th ordinary session in Addis Ababa on 10 September 1969. At the time of writing, of the 53 member states of the OAU, 43 have ratified or acceded to the Convention.

⁶⁶In a recent publication, *The Role of the Organization of African Unity in the Area of Refugees, Returnees and Displaced Persons*, Ref.BR/1/GM/12.97, the OAU states (at p.5): “For the OAU, voluntary repatriation is the ideal solution to the refugee problem in Africa”.

The Commission on Refugees comprises of Ambassadors of OAU member states based in Addis Ababa and is the principal policy-making organ of the OAU on all matters relating to refugees in Africa. It reports to the Council of Ministers at each of its sessions on the general situation of refugees and displaced persons in Africa. In the report submitted to the Council meeting in June 1998, the Commission identified 16 countries which were facing refugee problems and to which missions should be undertaken: Algeria, Burundi, Eritrea, Ethiopia, Democratic Republic of Congo, Djibouti, Côte d'Ivoire, Guinea, Liberia, Sierra Leone, Republic of Congo, Somalia, Kenya, Rwanda, Tanzania and Sudan. Missions were carried out by members of the Commission on Refugees to seven of these countries, including Algeria, Côte d'Ivoire, Guinea and Liberia, where they met with Government officials responsible for refugee matters, officials of the UN High Commissioner for Refugees and NGOs with whom they discussed problems and ways and means of assisting refugees and displaced persons pursuant to the relevant OAU Conventions. Missions to the other nine countries were to have been carried out during July and August 1998.⁶⁷

In the most recent report of the Commission on Refugees, it has stated: "The problem of refugees and displaced persons is essentially the result of conflicts, poverty and violations of human rights".⁶⁸ The Commission also called on member states of the OAU to continue their efforts for "durable solutions to the problem of refugees". While recognizing in its conclusion that human rights violations are one of the main contributing causes to refugee flows, the report of the Commission reflects only the refugee situation in various countries and expresses concerns mainly about the humanitarian assistance for refugees. It makes no recommendations on the improvement of the human rights situation of refugees. The most important role of the Commission on Refugees would be to ensure that those who flee human rights violations are allowed to reach a place of safety, are given effective protection against forcible return, and are guaranteed treatment in accordance with international standards while they are displaced. The Commission on Refugees should ensure that OAU member states secure the human rights of refugees and displaced persons. It could do this by including an assessment of the human rights situation of such persons as an essential component of its missions and making recommendations on the improvement of the situation.

⁶⁷See Report of the OAU Commission on the situation of refugees, returnees and displaced persons in Africa, 68th Ordinary Session of the OAU Council of Ministers, 1-6 June 1998, CM 2067 (LXVIII).

⁶⁸*Ibid.*, p. 31.

In its reports the Commission on Refugees has emphasized the need for the country of origin to create the necessary conditions which allow for the voluntary repatriation of refugees and urged that any repatriation of refugees has to be voluntary and in accordance with the UN and OAU Conventions on refugees.⁶⁹ Refugees and internally displaced persons should not be expected to return to their homes until and unless it has been determined that the human rights situation in their country has adequately improved. As Amnesty International has stated: “Any decision on repatriation should be based on an independent, impartial and objective assessment of the human rights situation in the country of return, to determine whether conditions are durably safe”.⁷⁰ The Commission on Refugees could play an important role in analysing information on the human rights situation obtained from the African Commission, NGOs and UN bodies and make such determination. The human rights division proposed below (Section 4.4) could assist the Commission on Refugees in gathering such information. The Commission on Refugees should also oversee compliance by member states of the OAU which have ratified the OAU Refugee Convention and make specific recommendations in this regard.

A year prior to the adoption of the OAU Refugee Convention, the OAU established a Bureau for the Placement, Education and Training of Refugees (BPETR). The BPETR transformed over the years and is now known as the Division for Refugees, Displaced Persons and Humanitarian Affairs (Refugee Division).⁷¹ The Refugee Division is an integral part of the Political Department of the OAU and acts as a secretariat for the OAU Commission on Refugees. While the Refugee Division indicates that protection is part of its responsibility, it has done little or nothing in regard to the protection of refugees. It is relatively passive and sees its main role in relation to the education and training of refugees. While the Refugee Division recognizes that “denial of human rights has been one of the most profound causes of asylum seeking,”⁷² there seems to be little evidence that it gives adequate consideration to human rights issues.

⁶⁹*Ibid.*, p. 19 & 25. See also Report of the OAU Commission of Twenty on the situation of Refugees, Returnees and Displaced Persons in Africa, 67th Ordinary Session of the Council of Ministers, 23-27 February 1998, CM/2038(LXVII) Rev.1.

⁷⁰See *In search of safety: The forcibly displaced and human rights in Africa*, AI Index: AFR 01/05/97, June 1997.

⁷¹For a detailed discussion on the 1969 OAU Convention on Refugees and the Refugee Division, see *African Exodus: Refugee Crisis, Human Rights and the 1969 OAU Convention*, Lawyers Committee for Human Rights, July 1995.

⁷²*Supra* note 63 at p.11, para. 32.

The Refugee Division should play a role in scrutinizing compliance by member states of the OAU which have ratified the OAU Refugee Convention with their obligations under that treaty.⁷³ It should report to the Commission on Refugee on specific violations of the OAU Refugee Convention on issues relating to the protection of refugees including *non-refoulement*. With the African tradition of hospitality being eroded over the recent years and some African governments closing their borders to refugees or forcibly expelling refugees to their country of origin, such a role becomes all the more important.

⁷³Under Article VII of the OAU Refugee Convention member states have undertaken to “provide the Secretariat ... with information and statistical data requested concerning: a) the condition of refugees; b) the implementation of this Convention, and c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees”.

Apart from mentioning the African Charter and African Commission in its publication, there seems to be no link between the work of the Refugee Division and that of the African Commission. The lack of coordination of its efforts with the African Commission is a serious shortcoming. While the African Commission does not deal regularly and systematically with refugee issues, decisions adopted by the African Commission in regard to refugees could assist the Refugee Division in incorporating human rights issues into its work.⁷⁴ The Refugee Division should establish a relationship with the African Commission through the proposed human rights division (see Section 4.4) and incorporate human rights issues into its programs. It should also seek information from UN bodies which deal with human rights and incorporate such information into its assessment of the situation of refugees in a country.

The Commission on Refugees should:

- **ensure that OAU member states secure the human rights of refugees and displaced persons. It could do this by including an assessment of the human rights situation of such persons as an essential component of its missions and making recommendations on the improvement of the situation.**
- **together with the proposed human rights division, make an assessment of the human rights situation in the country of return to ensure that the repatriation is in accordance with the provisions of the OAU Refugee Convention and that refugees are not forcibly returned to a situation where their human rights may be at risk.**
- **oversee compliance by member states of the OAU which have ratified the OAU Refugee Convention and make specific recommendations in this regard.**

The Refugee Division should:

- **play a role in scrutinizing compliance by member states of the OAU which have ratified the OAU Refugee Convention with their obligations under that treaty and report specific violations of the treaty to the Commission on Refugees.**
- **establish a relationship with the African Commission, seek information from UN human rights bodies and incorporate human rights issues into its programs.**

⁷⁴See for example, Organisation Mondiale Contre la Torture, et al v. Rwanda, 27/89, 46/91, 49/91, 99/93, 10th Annual Activity Report of the African Commission on Human and Peoples' Rights, in which the African Commission found that the expulsion by the Rwandese authorities of Burundian refugees without allowing them recourse to a court was in violation of Articles 2 (prohibition of discrimination), 12(4) (prohibition of arbitrary expulsion of non-nationals), 12(5) (prohibition of mass expulsion of non-nationals) and 7(1) (right of access to a court).

4.4 Legal Division

The Legal Division in the OAU Secretariat is a section of the Political Department and provides legal services to the organization including the drafting of treaties and agreements. It also prepares reports for the Secretary-General on the ratification of treaties including human rights treaties such as the OAU Refugee Convention, the African Charter and the African Charter on the Rights and Welfare of the Child.⁷⁵ However, the role of the Legal Division in regard to human rights issues beyond monitoring of ratifications and drafting of treaties is not very clear but it is understood that it also provides advice to the Secretariat on a range of issues pertaining to human rights including on the rights of children and women and contributes to reports of the Secretary-General on these issues.⁷⁶ A report on restructuring presented to the Council states that the Legal Division should “follow all aspects of human rights and humanitarian legal issues proposed to be handled by the Political Department”. The report further states: “It was understood that the African Commission in Banjul would be responsible for all issues dealing with human rights”.⁷⁷

It is thus not clear whether the Legal Division or the African Commission will deal with certain human rights issues, for example, advice on the interpretation of OAU human rights treaties. While the division of responsibility may be necessary, there has to be clarity on the relationship between the Legal Division and the African Commission. Furthermore, it is often left to the Legal Division to act as representative of the African Commission in Addis Ababa and the OAU should consider whether it is able to deal adequately with the issues concerning the African Commission, for example, questions of resources and budgets. The geographical distance between the OAU Secretariat in Addis Ababa, Ethiopia, and the African Commission’s Secretariat in Banjul, The Gambia, and the poor communication facilities between the two locations makes it very difficult to coordinate efforts adequately.

Given this situation it would be important for the OAU to consider establishing a separate human rights division. A serious consideration and implementation of human rights within the OAU’s core activities needs to take place. In order to do so it is

⁷⁵See Report of the Secretary-General on the Status of OAU Treaties, 68th Ordinary Session of the OAU Council of Ministers, 1-6 June 1998, CM/2081 (LXVIII).

⁷⁶See, for example, Report of the Secretary-General on the African Common Position and the Plan of Action on Child Labour in Africa, 68th Ordinary Session of the OAU Council of Ministers, 1-6 June 1998, CM/2067(LXVII).

⁷⁷*Supra*, note 4.

imperative that the OAU establishes a permanent mechanism in the form of a Human Rights Division within the Political Department to function at the same level as the Conflict Management, Refugee and Legal Divisions.

The creation of a human rights division will ensure the early integration of human rights issues into the activities of the various organs of the OAU. Such a division should be staffed by persons who have expertise in human rights and who would have the responsibility for liaising on human rights issues with the various departments and divisions within the OAU Secretariat and with the different organs of the OAU including the African Commission, the African Court, once established, and the Committee on the Rights and Welfare of the Child once the treaty comes into effect.⁷⁸

The human rights division could provide advice to the Secretary-General on human rights issues, could bring to his notice human rights situations which may require his attention and response, and could help prepare statements and comments on human rights situations of concern to the Secretary-General and the OAU.

In addition, the human rights division could prepare reports for the Secretary-General on the human rights situation in Africa from information gathered from different sources including the African Commission, UN, NGOs and member states. The information assembled by the division could also be used to advise the Conflict Division and Central Organ of the CRM on the human rights situation in countries experiencing conflict and could prepare the section on human rights for the reports of the Secretary-General on such situations.

The division could also act as the representative of the African Commission's Secretariat in regard to the following:

- ensuring that its request for resources receives due consideration by the Advisory Committee on Administrative and Budgetary Matters;
- ensuring that its reports are distributed to representatives of members states in Addis Ababa well ahead of the meetings of the Council of Ministers;
- liaising with the Refugee Division and the Conflict Management Division on human rights issues;
- following-up on the implementation of resolutions adopted by the OAU Assembly regarding the work of the African Commission, in particular the section pertaining to filing of state reports;

⁷⁸The African Charter on the Rights and Welfare of the Child provides for the establishment of a Committee to monitor compliance with the treaty and interpret its provisions. Although the treaty was adopted by the OAU Assembly in July 1990, only eight states have ratified it. For it to come into effect 15 ratifications are required.

- monitoring implementation of the decisions and resolutions of the African Commission and preparing a report on this for incorporation into the report of the African Commission to the Council;
- making certain that the decisions and resolutions of the African Commission are integrated into the work of all the divisions and departments of the OAU Secretariat;
- maintaining links with the Office of the UN High Commissioner for Human Rights and disseminating the reports of the mechanisms and procedures of the UN Commission on Human Rights such as Special Rapporteur's reports pertaining to Africa.

The OAU should establish a Human Rights Division to ensure the integration of human rights issues into the activities of the various organs of the OAU.

5. POLITICAL ORGANS

The political organs of the OAU which oversee the functioning of the Organization and make its policies consist of representatives of member states at the levels of Ambassadors, Foreign Ministers (Council of Ministers) and Heads of State and Government (OAU Assembly). The Council of Ministers meets twice a year in regular sessions and, if necessary, may also meet in extraordinary sessions. Its meeting in February each year usually takes place in Addis Ababa, Ethiopia. As it is held just prior to the OAU Assembly, the meeting in June each year takes place in the country which offers to host the OAU Assembly.⁷⁹ The next OAU Assembly will be held in Algiers, Algeria, in June 1999. In June 2000 it will be held in Lome, Togo, and thereafter in Lusaka, Zambia in 2001. The head of state or government of the country which hosts the OAU Assembly becomes the chairperson of the OAU.⁸⁰

5.1 Committee of Ambassadors

Ambassadors based in Addis Ababa play the most important role by overseeing the administration and finances of the OAU through the Advisory Committee on Administrative and Budgetary Matters and give directions to the work of the Organization through their involvement in bodies such as the Central Organ and the

⁷⁹Since 1995 the OAU Assembly took place in Ethiopia, Cameroon, Zimbabwe, and Burkina Faso respectively. If no state offers to host the OAU Assembly then it is held in Addis Ababa, where the OAU headquarters are located.

⁸⁰ President Blaise Compaoré, President of Burkina Faso, is the current chairperson of the OAU.

Commission on Refugees. While decisions on policy are taken by the Council of Ministers and the OAU Assembly, these are often based on advice from the Ambassadors.

For the past three years a preparatory meeting of the Committee of Ambassadors and other government representatives considers the agenda of each session of the Council of Ministers (the Council), decides on which issues should be discussed by the Ambassadors and which should be referred directly to the Council. In most instances, the major part of the agenda is discussed at the preparatory meeting and only issues which are purely political, such as conflict situations, are referred to the Council. In the report of the preparatory meeting the Ambassadors record a summary of their discussions and present recommendations to the Council on each agenda item they discuss.⁸¹ The recommendations of the Ambassadors are often adopted by the Council with little or no discussion.

As Ambassadors are in regular contact with the OAU Secretariat and an integral part of the CRM, they can ensure that human rights issues are given due consideration by the CRM. The Ambassadors who are part of the Central Organ form an integral part of the early warning system. During the monthly meetings of the Central Organ of the CRM, their role should be to assess information on specific human rights situations indicating a possible conflict developing and they should be able to make recommendations to the appropriate organs of the OAU, including calling for, if necessary, an extraordinary session of the Central Organ at the level of Foreign Ministers. As they are central to the work of the Council, they can influence it to include a consideration of the human rights situation in Africa on the agenda of its meetings. They should include on the agenda of the Council situations where systematic human rights violations provides early warning of a possible conflict.

The Committee of Ambassadors should:

- **ensure that human rights issues are given due consideration by the Conflict Resolution Mechanism.**
- **urge the Council of Ministers to include consideration of the human rights situation in Africa on the agenda of its meetings.**

Ambassadors who form the Central Organ should:

- **assess information on specific human rights situations indicating a possible conflict developing and make recommendations to the appropriate organs of the OAU.**

⁸¹See Report of the Seventh Ordinary Session of the Committee of Ambassadors and Other Plenipotentiaries, 1-3 June 1998, Amb/Cttee/Rpt (VII).

5.2 Council of Ministers

The Council of Ministers (the Council) of the OAU which meets twice a year considers reports presented to it by the Secretary-General and by bodies established by the Council itself. At these meetings the Council deals with a whole range of issues including financial and administrative matters and economic questions. Under the heading "Political Matters" it deals mainly with situations of conflict in Africa and considers reports presented by the Secretary-General on countries such as Angola, Burundi, Comoros, Sierra Leone and Somalia. The Secretary-General should include a specific section on human rights in every report on conflict situations with specific recommendations on the measures to be taken to prevent further human rights violations.

Often serious human rights situations in Africa do not even appear on the agenda of the Council despite such situations receiving widespread media attention and being the subject of discussions at other intergovernmental fora such as the UN. One such situation is that which has been prevailing in Algeria for the past few years. Although there may be quiet diplomacy regarding such situations, the failure to deal with them publicly creates the perception of either a lack of concern, a lack of knowledge or a lack of consistency in the way the OAU deals with its members. The Council should consider including on its agenda an item dealing specifically with the human rights situation in Africa and request the Secretary-General to bring to its attention serious situations of human rights violations which are likely to affect the achievement of the purposes of the OAU as stipulated in Article II of the OAU Charter and which includes the achievement of "a better life for the peoples of Africa". This report of the Secretary-General could include information from the African Commission, NGOs and UN bodies such as the Human Rights Committee or country and thematic rapporteurs of the UN Commission on Human Rights. After consideration of such a report the Council could decide on measures which would address the situation and prevent further human rights violations, including the establishment of an *ad-hoc* committee of Ambassadors or, where there are indications that the situation may develop into conflict, referral to the Central Organ at Ambassadorial level to deal with a situation of serious human rights violations.

The Secretary-General should:

- **include a specific section on human rights in every report on conflict situations presented to the Council of Ministers with specific recommendations on the measures to be taken to prevent further human rights violations.**

The Council should:

- **include on its agenda an item dealing specifically with the human rights situation in Africa and request the Secretary-General to bring to its attention**

serious situations of human rights violations which are likely to affect the achievement of the purposes of the OAU.

5.3 OAU Assembly

The OAU Assembly of Heads of States and Governments, the highest political organ within the OAU, considers the report of the Council and adopts resolutions and declarations which provide overall direction to the work of the OAU. It is also entrusted with the responsibility of enforcing the recommendations and resolutions of the African Commission. It meets once a year in June at the level of Heads of State and Government.

In terms of Article 58 of the African Charter, the African Commission is required to bring to the attention of the OAU Assembly “special cases which reveal the existence of a series of serious and massive violations of human and peoples’ rights” and the OAU Assembly “may request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations”. In addition, Article 59 of the African Charter requires the African Commission to report to the OAU Assembly on “all measures taken within the provisions of the present Charter” and on its activities. The report of the African Commission includes a summary of its work during its two sessions in November and April each year and annexures of the resolutions adopted by the African Commission on thematic issues and country situations and decisions on complaints, usually from individuals and NGOs, it has considered.

Over the past few years the African Commission, acting in terms of Article 58 of the African Charter, has brought to the attention of the OAU Assembly several cases in which it found facts which constitute a series of serious and massive violations of human rights.⁸² However, the OAU Assembly did not respond to the African Commission and failed to take any action to address the situation. A former Chairman of the African Commission, in reference to situations of massive violations of human rights has stated that “none of the letters sent to the OAU President has ever received a reply”.⁸³ In the case of the Democratic Republic of Congo (formerly known as Zaire), the African

⁸²See Krishna Achutan on behalf of Aleke Banda, Amnesty International on behalf of Orton and Vera Chirwa v. Malawi, 64/92, 68/92, 78/92, 8th Annual Activity Report of the African Commission on Human and Peoples Rights, 1994-1995, ACHPR/RPT/8th/Rev.1; Commission Nationale des Droits de l’Homme et des Libertés v. Chad, 74/92, and Free Legal Assistance Group, Lawyers Committee for Human Rights, Union InterAfricaine des Droits de l’Homme, Les Temoins de Jehovah v. Zaire, 25/89, 47/90, 56/91, 100/93, 9th Annual Activity Report of the African Commission on Human and Peoples’ Rights, 1995/96, ACHPR/RPT/9th.

⁸³Interview with Isaac Nguema, member of the African Commission, in *Terra Viva*, March 1998, No. 15

Commission alerted the OAU Assembly to the situation of serious and massive violations of human rights in a report submitted to its meeting in July 1996. This was a few months before the situation in the country deteriorated into open conflict and led to the commission of crimes against humanity, possibly genocide. The failure of the OAU Assembly to take the report of the African Commission seriously provides a striking example of the inability of the OAU to address and prevent conflict and resultant human suffering.

The OAU Assembly meets over a period of three days each year and during the last two meetings, in Harare, Zimbabwe, in June 1997 and in Ouagadougou, Burkina Faso, in June 1998, it was preoccupied with situations of conflict in Sierra Leone and Ethiopia, Eritrea and Guinea-Bissau respectively. Such urgent matters and the relatively short period of the meeting prevent the OAU Assembly from giving adequate consideration to the report of the African Commission. In its resolutions, the OAU Assembly merely endorses the report of the African Commission and calls on member states to adhere to the African Charter. However, there is no scrutiny by the OAU Assembly, on the basis of the African Commission's report, whether there is in fact adherence by member states to the African Charter and whether they have taken any "concrete measures to implement effectively the provisions of the Charter".⁸⁴

For there to be effective protection of the human and peoples' rights enshrined in the African Charter, the political organs of the OAU, especially the OAU Assembly, have to play a significant role in ensuring compliance with the African Charter and making specific recommendations to relevant states on the measures that should be adopted to conform with their treaty obligations. As the Council is already entrusted with the responsibility of considering and deciding on the majority of issues which face the OAU, the OAU Assembly could delegate part of its responsibility in relation to the African Charter and African Commission to this body. In terms of Article XIII (2) of the OAU Charter, the Council "shall take cognizance of any matter referred to it by the OAU Assembly". Therefore the OAU Assembly could refer consideration of the report of the African Commission and any other matter brought to its attention by the African Commission, including situations of serious and massive violations of human rights, to the Council and request it to prepare recommendations for consideration by the OAU Assembly. Once the OAU Assembly has adopted the recommendations, it could request

⁸⁴For example, the Resolution on the African Commission on Human and Peoples' Rights adopted by the OAU Assembly at its 32nd Ordinary Session in Yaounde, Cameroon, 8-10 July 1996, "Calls on the States Parties to take concrete measures to implement effectively the provisions of the Charter and, in particular, cooperate further with and set up assistance to the Commission to enable it to accomplish its mission", Resolution 242 (XXXII).

the Council to implement its decision in accordance with Article XII (2) of the OAU Charter.

The OAU Assembly should request the Council to establish a procedure to ensure compliance and follow-up with its decisions arising from its consideration of the report of the African Commission. Such procedure should include a regular report by the Secretary-General to each session of the Council on the extent to which member states have complied with the OAU Assembly's decisions and the resolutions emanating from the report of the African Commission.

Once the African Court is established, the need for effective enforcement of its decisions on human rights will become all the more crucial. Without effective implementation of the decisions and a procedure to ensure enforcement, the African Court will be undermined and will have little or no impact on the human rights situation in Africa. This may affect the credibility of the institution and result in the collapse of the system established to protect human rights. It is therefore imperative that the OAU Assembly ensures the creation of a procedure within the OAU to implement the decisions of the African Commission and the African Court, once established.

Non-compliance with the decisions of the African Commission (and the African Court, once established) amounts to a clear repudiation of the obligations undertaken by the member states of the OAU under the African Charter and should be taken up by the political organs of the OAU as a threat to the principles and objectives enshrined in the OAU Charter.

The OAU Assembly should:

- **delegate its responsibility to consider the report of the African Commission to the Council of Ministers and request it to prepare recommendations for adoption by the OAU Assembly;**
- **request the Council of Ministers to establish a procedure to ensure compliance and follow-up with its decisions arising from its consideration of the report of the African Commission.**

6. OAU PEACE FUND

The OAU Peace Fund (the Fund) was established in March 1993 "to support exclusively, OAU operational activities relating to conflict management and resolution". The resources of the Fund are used by the OAU in its activities undertaken within the framework of conflict anticipation and prevention, peace-making, conflict resolution and peace-building. The Fund receives an allocation of 6% from the regular OAU budget and in addition, receives voluntary contributions from governments within and outside Africa. Contributions from outside Africa accounted for 68% of the amount received by

the Fund in its five years of existence. For the period March 1993 to March 1998, the Fund received contributions totalling almost US\$ 26 million. During the same period the total expenditure from the Fund was almost US\$ 20 million.⁸⁵

In contrast to the money available to the CRM for conflict prevention, management and resolution, the African Commission received an amount of US\$ 576,000 from the regular budget of the OAU for the financial year 1996/97, which constituted about 1.95% of the total program budget of the OAU.⁸⁶ In addition, the African Commission receives contributions from donors from outside Africa. The African Commission could benefit greatly from increased resources. Despite requests by the OAU Assembly to the Secretary-General to increase the human, material and financial resources of the African Commission, this has not been done.⁸⁷

In order to be able to carry out its mandate effectively, the African Commission has to have adequate resources, including an adequate financial budget which is not subject to the vagaries of voluntary contributions from donors. Although the regular budget of the OAU may not be able to afford an increase in the budget of the African Commission, the Fund could be a resource for the African Commission's activities. In order to allocate money from the Fund, the OAU will have to consider aspects of the work of the African Commission as contributing to the anticipation and prevention of conflicts. The assessment of the human rights situation in a country and the undertaking of investigative missions by the African Commission could contribute to the work of the CRM in anticipating conflicts. In addition, the African Commission could contribute to efforts in post-conflict reconstruction by undertaking missions to countries such as Liberia and Sierra Leone to assess the human rights situation and advise on measures to be taken to ensure respect for human rights, including the establishment and strengthening of national institutions.

⁸⁵Report of the Secretary-General on the OAU Peace Fund, 68th Ordinary Session of the OAU Council of Ministers, 1-6 June 1998, CM/2066 (LXVIII) Rev. 1.

⁸⁶Financial Report of the Organization of African Unity for the Financial Year 1996/97, 67th Ordinary Session of the OAU Council of Ministers, 23-27 February 1998, CM/2025 (LXVII).

⁸⁷See, for example, Resolution on the African Commission on Human and Peoples' Rights, 32nd Ordinary Session of the OAU Assembly of Heads of State and Government, 8-10 July 1996, Yaounde, Cameroon, in which it stated: "Further calls on the Secretary-General of the OAU to take necessary measures through appropriate organs to endow the African Commission as early as possible, with the requisite human, material and financial resources to enable it to carry out its mission effectively...".

The OAU should allocate resources from the Peace Fund to the African Commission to enable it to carry out missions and contribute to the work of the Conflict Resolution Mechanism in the anticipation and prevention of conflicts.

7. CONCLUSION

After 35 years, it is appropriate that the OAU should re-evaluate its role in Africa and create a structure which would meet the current and future needs of the continent. With conflicts raging in so many African countries, it is proper that the Organization makes conflict prevention, management and resolution a priority and puts so much resources into it. Conflicts contribute to the forced movement of people and causes individuals to become internally displaced persons and refugees. They hamper economic development and are a serious threat to the achievement of the objectives of the Abuja treaty which creates the African Economic Community.

The OAU has to recognize the central role of human rights in the achievement of its main priorities: conflict prevention and economic integration. It is only through making human rights a reality for Africans that the OAU could expect to achieve its priorities. The Organization has to create mechanisms and procedures to hold member states accountable for human rights violations. The adoption by the OAU of human rights treaties and the creation of an African Court to protect human rights are important steps, but now the OAU should go further by indicating to the people of Africa that it is willing to exert political pressure to ensure implementation of the treaties.

The OAU should also integrate human rights into every sphere of its work. This it can achieve by establishing a human rights division. The role of the division would be to incorporate human rights issues into the work and programs of the various bodies and organs of the OAU and become the central liaison department on human rights issues.

8. SUMMARY OF RECOMMENDATIONS

1. African Commission (See Section 2)

The African Commission should:

- draft and recommend for adoption by the OAU Assembly, guidelines and criteria for independence and impartiality which would disqualify candidates defined as 'political' or 'governmental' appointees, and ensure adequate gender balance and representation of the different regions and legal systems of Africa in the African Commission.
- amend its Rules of Procedure to state clearly that members of the African Commission should refrain from dealing with and considering reports, including periodic reports, and complaints of human rights violations and participating in any investigations concerning their own countries.

The Secretary-General should:

- attend, or send a senior representative regularly to, the meetings of the African Commission.
- send a representative from the proposed Human Rights Division to all meetings of the African Commission with the aim of informing participants about the deliberations and activities of the OAU and to gather information on human rights situations.
- raise the issue of overdue reports systematically with member states as an integral part of his communications with them.
- establish a cooperative relationship with the Office of the UN High Commissioner for Human Rights in regard to the provision of technical assistance to OAU member states for the preparation of periodic reports.

All member states of the OAU should:

- provide all overdue reports to the African Commission as a matter of priority. In particular, those states who have never submitted a report should be urged to do so by the OAU.
- inform the Secretary-General of the designated official who will act as a focal point between the government and the African Commission.

The OAU should:

- provide essential resources for the Secretariat of the African Commission including additional permanent posts.

- increase the budget of the African Commission to enable it to meet for 14 days at each session.
- consider providing resources for the Chairperson of the African Commission to serve on a full-time basis during the tenure of two years.

The OAU Assembly should

- require the African Commission to produce regular and detailed reports, including through the production of summary records of its meetings.

2. Secretary-General (Section 4.1)

The Secretary-General should:

- speak out publicly about specific situations of serious human rights violations in member states of the OAU.
- use his “good offices” as his timely intercession may prevent further harm coming to those individuals facing serious human rights violations.

3. Conflict Resolution Mechanism (Section 4.2)

The Conflict Resolution Mechanism should:

- address human rights as an integral component of finding a solution to conflict;
- consider the use of human rights monitors and civilian police observers in conflict situations and ensure a human rights monitoring component in any peace-keeping initiative.

The Conflict Division should:

- regularly monitor the human rights situation in countries throughout Africa, in order to identify countries which are at risk of conflict due to a deteriorating human rights situation, and prepare regular reports for consideration by the Central Organ meeting at the level of Ambassadors.
- undertake fact-finding missions to countries which are identified as high risk and include a human rights expert in the mission team.
- establish links with NGOs and with the UN to enable it to receive information regularly on countries in Africa.
- in its election monitoring functions, make an assessment of the prevailing human rights situation in a country long before the elections are to be held and make recommendations to the state concerned, assess the extent to which the recommendations have been implemented before a mission to the country is undertaken and include an assessment of the human rights situation during the elections in its final report on the freedom and fairness of the elections.

4. Refugee Division (Section 4.3)

The Commission on Refugees should:

- ensure that OAU member states secure the human rights of refugees and displaced persons. It could do this by including an assessment of the human rights situation of such persons as an essential component of its missions and making recommendations on the improvement of the situation.
- together with the proposed human rights division, make an assessment of the human rights situation in the country of return to ensure that the repatriation is in accordance with the provisions of the OAU Refugee Convention and that refugees are not forcibly returned to a situation where their human rights may be at risk.
- oversee compliance by member states of the OAU which have ratified the OAU Refugee Convention and make specific recommendations in this regard.

The Refugee Division should:

- play a role in scrutinizing compliance by member states of the OAU which have ratified the OAU Refugee Convention with their obligations under that treaty and report specific violations of the treaty to the Commission on Refugees.
- establish a relationship with the African Commission, seek information from UN human rights bodies and incorporate human rights issues into its programs.

5. Legal Division (Section 4.4)

The OAU should establish a Human Rights Division to ensure the integration of human rights issues into the activities of the various organs of the OAU.

6. Committee of Ambassadors (Section 5.1)

The Committee of Ambassadors should:

- ensure that human rights issues are given due consideration by the Conflict Resolution Mechanism.
- urge the Council of Ministers to include consideration of the human rights situation in Africa on the agenda of its meetings.

Ambassadors forming the Central Organ should:

- assess information on specific human rights situations indicating a possible conflict developing and make recommendations to the appropriate organs of the OAU.

7. Council of Ministers (Section 5.2)

The Secretary-General should:

- include a specific section on human rights in every report on conflict situations presented to the Council of Ministers with specific recommendations on the measures to be taken to prevent further human rights violations.

The Council should:

- include on its agenda an item dealing specifically with the human rights situation in Africa and request the Secretary-General to bring to its attention serious situations of human rights violations which are likely to affect the achievement of the purposes of the OAU.

8. OAU Assembly (Section 5.3)

The OAU Assembly should:

- delegate its responsibility to consider the report of the African Commission to the Council of Ministers and request it to prepare recommendations for adoption by the OAU Assembly;
- request the Council of Ministers to establish a procedure to ensure compliance and follow-up with its decisions arising from its consideration of the report of the African Commission.

9. OAU Peace Fund (Section 6)

The OAU should allocate resources from the Peace Fund to the African Commission to enable it to carry out missions and contribute to the work of the Conflict Resolution Mechanism in the anticipation and prevention of conflicts.

Assembly of Heads of State and
Government

Bureau of
OAU
Central Organ
Assembly

**Council of
Ministers**

Committee of
Ambassadors

Commission on
Refugees

SECRETARY-GENERAL

Conflict
Management
Division

Legal
Division

Refugee
Division

OAU SECRETARIAT

Human and Peoples Rights

**ORGANIGRAM OF THE ORGANIZATION OF AFRICAN UNITY SHOWING
ONLY THE POLITICAL ORGANS, DIVISIONS OF THE GENERAL
SECRETARIAT AND THE AFRICAN COMMISSION REFERRED TO IN THE
REPORT**