

# **Time to Commit to Human Rights Promotion and Protection in Africa**

## **Amnesty International recommendations to the 2nd AU Ministerial Conference on Human Rights**

The second African Union (AU) Ministerial Conference on Human Rights to evaluate the Grand Bay (Mauritius) Declaration and Plan of Action is another important opportunity for African governments to take stock of the achievement of the Declaration's recommendations and to take positive actions to strengthen the African system of human rights protection. The conference will take place in Kigali, Rwanda, between 5 and 9 May 2003, at a time when the Organisation of African Unity (OAU) has been replaced by the African Union (AU).

Unlike the Charter of the Organization of African Unity (OAU) which contained limited provisions on human rights, the Constitutive Act of the African Union (the Act) attaches a particular significance to human rights in a more comprehensive manner<sup>1</sup>. Thus, the Constitutive Act expresses member states' determination to promote and protect human and peoples' rights, consolidate democratic institutions and culture and ensure good governance and the rule of law in accordance with the African Charter on Human and Peoples' Rights (African Charter). In addition, the Act obligates member states to promote gender equality and social justice, ensure balanced economic development, and reject impunity and unconstitutional changes of government. The Act also provides for the right of the AU to intervene in a member state in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity. Further, it provides for the right of member states to request intervention from the African Union (AU) in order to restore peace and security.

The Grand Bay (Mauritius) Declaration and Plan of Action (the Declaration) adopted at the end of the First OAU Ministerial Conference on Human Rights in April 1999<sup>2</sup> provides an important set of recommendations which need to be taken forward in order to achieve better promotion and protection of human rights in Africa.

While some of the recommendations contained in the Declaration have been achieved, many more remain outstanding. Amnesty International believes that this second ministerial conference offers a second opportunity for all AU members states to demonstrate their commitment to taking forward the declaration by strengthening the regional system set up to ensure that every person can seek protection of economic, social and cultural rights as well as civil and political rights and that every state can be held accountable for human rights violations. It is important for members states of the AU to fully commit themselves to the

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<sup>1</sup> See Amnesty International, *African Union: a New Opportunity for the Promotion and Protection of Human Rights in Africa* (AI Index: IOR 63/002/2002).

<sup>2</sup> CONF/HRA/DECL (I).

provisions of the AU Constitutive Act, the African Charter and other regional and international human rights treaties to which they are parties.

The following recommendations highlight some areas which the conference should consider to meet the enormous human rights challenges in the continent<sup>3</sup>.

### **Placing human rights at the heart of the African Union's agenda.**

The AU should place human rights at the heart of its agenda because human rights underlie all the purposes of the AU. It is important that the AU brings a human rights perspective to development, environment, commerce and trade, peace and security. Amnesty International believes that human rights should be reflected in the work carried out by the Commission of the AU. The Commission of the AU should be prepared to take a public stand against abuses of human rights in member states and to lend its authority to the promotion and protection of human rights throughout the continent.

While realizing that quiet diplomacy may be effective in some circumstances, there will also be occasions where the Commission of the AU must speak out publicly against human rights abuses. This is particularly important where such abuses amount to an affront to the principles of the AU and the nature of the abuses is such that remaining silent may call into question the independence of the Commission of the AU and the credibility of the AU. The Chairperson of the Commission of the AU should include in his/her reports to the political organs of the AU information on the human rights situation across Africa and on particular countries, where abuses are serious and systematic. Individual Commissioners of the AU should ensure that human rights considerations inform all their activities and programmes: the African Charter on Human and Peoples' Rights, with its unique bill of civil and political rights as well as economic, social and cultural rights, offer a set of benchmarks and indicators to develop their activities.

### **Establishing the post of Commissioner for Human Rights within the African Union.**

The AU should establish the post of Commissioner for Human Rights within the Commission of the AU. While Amnesty International notes that the current Statute of the Commission of the AU provides for a Commissioner on Political Affairs whose portfolio includes human rights, democracy, good governance as well as refugees and internally displaced persons (IDPs), the organization believes that a Commissioner specifically devoted to human rights is more likely to ensure the integration of human rights issues into the activities of the various organs of the AU and the Commission of the Union.

The post of Commissioner for Human Rights is necessary to achieve the objectives of the AU, specifically relating to the attainment of democracy, good governance and the rule of law. The Commissioner should be adequately supported, to be able to discharge his/her mandate

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<sup>3</sup> For further readings on Amnesty International recommendations to the African Union, please see Amnesty International, *African Union: a New Opportunity for the Promotion and Protection of Human Rights in Africa* (AI Index: IOR 63/002/2002).

effectively and efficiently. The mandate could include advising the Chairperson of the Commission of the AU on human rights issues, including refugees and IDPs, bringing to his/her notice human rights situations which may require urgent attention and response, and coordinating the relationship and interactions between the African Commission on Human and Peoples' Rights and the AU, including by ensuring that the reports of the African Commission on Human and Peoples' Rights and its recommendations receive due consideration within the AU. The Commissioner on human rights could also promote ratification of regional and international human rights treaties and provide technical assistance to members states on promotion and protection of human rights.

### **Addressing human rights as an integral component of conflict prevention, management and resolution.**

Amnesty International urges the AU to address human rights as an integral component of strategies for dealing with conflicts. Amnesty International strongly believes that many of the conflicts in Africa today (and indeed around the world) cannot be resolved without addressing their human rights dimension. Economic and political integration on the African continent will not become a reality without sustained efforts to address human rights abuses and protracted armed conflicts in Africa. While welcoming the human rights principles of the Protocol relating to the establishment of the Peace and Security Council of the AU, Amnesty International believes that the AU has a crucial role to play in translating these provisions into effective implementation on the ground. Indeed, Article 19 of the Protocol already provides that the Peace and Security Council would seek close cooperation with the African Commission on Human and Peoples' Rights in all matters relevant to its objectives and its mandate. The Peace and Security Council should work closely with the African Commission on Human and Peoples' Rights to establish practical and effective ways to ensure close cooperation.

The Commission of the AU must include proper analysis of the human rights abuses in its reports to relevant organs of the AU in order to ensure that human rights considerations are on the agenda of the Peace and Security Council. The Early Warning System established under the Protocol could play a vital role in the prevention of conflict, provided that information about human rights indicators is used when analyzing developments within Africa. A deterioration of the human rights situation in a country may be the signal of internal strife or armed conflict in the making.

It is therefore necessary that the Early Warning System is translated into an effective mechanism to monitor regularly the situation of human rights in countries throughout Africa in order to assess which countries are at risk of conflict. Information for such assessment could be gathered through fact-finding missions by the proposed Commissioner for Human Rights or the reports of the African Commission on Human and Peoples' Rights. However, unless followed up with early action, early warning will be of little significance. The Commission of the AU itself could consider the option of requesting special reports from member states of the AU and going on missions to member states, to better respond to urgent

situations as well as to facilitate the monitoring of governments reactions to its recommendations.

### **Addressing economic, social and cultural rights.**

The African Charter guarantees and gives equal weight to economic, social and cultural rights and civil and political rights. However, in most African countries, economic, social and cultural rights are neither constitutionally guaranteed nor form part of domestic law. Even in those States where a certain number of these rights have been incorporated into constitutions, national courts have tended to consider them as non-justiciable. Amnesty International calls on the African Union to increase its efforts to enhance the promotion and protection of economic, social and cultural rights in the continent, including by encouraging member states to adopt constitutional or legislative norms to recognise and enforce those rights domestically.

### **Providing more resources to the African Commission on Human and Peoples' Rights.**

Amnesty International believes that a major obstacle to the effectiveness of the African Commission on Human and Peoples' Rights (African Commission) is the limited political will of the AU member states to improve the institution. Since its inception in 1987, the African Commission has experienced financial constraints due to the poor funding from the AU, and has had to rely on funding from external sources. Inadequate funding has meant that the African Commission is not able to realize its full potential.

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

## **Supporting the work of the African Committee on the Rights and Welfare of the Child**

Amnesty International has repeatedly called on all African governments to ratify the African Charter on the Rights and Welfare of the Child<sup>4</sup>. The Grand Bay (Mauritius) Declaration and Plan of Action recommends states to ratify the African Children's Charter among others. Since its establishment the African Committee of Experts on the Rights and Welfare of the Child has received little financial and material support from the African Union. The AU must ensure that there is sufficient support, including funding, for the Committee to work competently and to act effectively, in particular by immediately establishing an independent, strong and professional secretariat to support the work of the Committee.

## **Adopting the Protocol on the Rights of Women in Africa**

Amnesty International urges the African Union to strengthen the human rights framework for the protection and promotion of women's rights in Africa by adopting the draft Protocol on the Rights of Women in Africa. It is vital that the draft Protocol includes measures and provisions that are consistent with international standards for the promotion and protection of women's rights, including the Convention on the Elimination of All Forms of Discrimination Against Women<sup>5</sup>. Numerous violations of women's rights, including female genital mutilation, forced marriage, domestic violence and rape, occur on a daily basis in Africa. These abuses result from, and are compounded by, women's social and economic inequality: lack of access to education, land, financial resources and health care and their inequality within the family.

The adoption by the AU of the draft Protocol would demonstrate the commitment expressed in the Constitutive Act of the Union to promote gender equality and in particular to guarantee women's right to live free from violence.

## **Urging Member States of the African Union to ratify the Protocol Establishing the African Court on Human and Peoples' Rights and other international human rights treaties.**

Amnesty International supports the establishment of an African Court on Human and Peoples' Rights as a means of strengthening the regional mechanism for the protection of human rights in Africa. Amnesty International has campaigned for the ratification of the Protocol establishing the Court by African governments<sup>6</sup>. Amnesty International welcomes the

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<sup>4</sup> Amnesty International, *African Children's Charter: a welcome step to securing the rights of Africa's children* (AI Index: IOR 63/06/99).

<sup>5</sup> Amnesty International, *African Union: An opportunity to strengthen the promotion and protection of the women's rights* (AI Index: IOR 10/001/2003).

<sup>6</sup> Amnesty International, *African Court on Human and Peoples' Rights: an Opportunity to Strengthen Human Rights in Africa* (AI Index: IOR 63/001/2002).

decision by the Assembly of Heads of State and Government in Pretoria<sup>7</sup>, calling upon Member States to ratify the Protocol with a view to having it enter into force by July 2003. However, as of 2 April 2003, only six states have so far ratified the Protocol: Burkina-Faso, Mali, Senegal, The Gambia, Uganda and South Africa and 15 ratifications are required for the Protocol to enter into force.

The AU should urge in the strongest possible terms member states that have not yet ratified the Protocol to do so without further delay. The AU should also encourage states to make declarations accepting individual and non-governmental organizations (NGOs) access to the Court.

Amnesty International also urges the AU member states to ratify or accede, without reservations, to international human rights treaties, including:

- the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol;
- the International Covenant on Economic, Social and Cultural Rights;
- the International Covenant on Civil and Political Rights, together with the first and second optional protocol;
- the International Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol;
- the two Optional Protocols to the Convention on the Rights of the Child;
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- the Rome Statute of the International Criminal Court.

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<sup>7</sup> AHG/Dec. 171 (XXXVIII).

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**GRAND BAY MAURITIUS) DECLARATION**  
**AND PLAN OF ACTION**

The First OAU Ministerial Conference on Human Rights, meeting from 12 to 16 April, 1999 in Grand Bay, Mauritius;

**Considering** that the promotion and protection of Human Rights is a matter of priority for Africa, and that the Conference provides a unique opportunity to carry out a comprehensive analysis and reflection on the mechanisms for the protection of Human Rights to guarantee Human Rights for accelerated development of the Continent;

Recalling the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World adopted by the Assembly of Heads of State and Government of the OAU in 1990, as well as the Declaration establishing within the OAU, a Mechanism for Conflict Prevention, Management and Resolution adopted by the Assembly of Heads of State and Government of the OAU in Cairo (Egypt) in June 1993;

Acknowledging that observance of human rights is a key tool for promoting collective security, durable peace and sustainable development as enunciated in the Cairo Agenda for Action on relaunching Africa's socio-economic ~formation adopted by the extraordinary session of the Council of Ministers held in Cairo, Egypt, from 25 to 28 March, 1995;

**Taking Note** of the growing recognition that violations of human rights may constitute a burden for the international community;

**Reaffirming** its commitment to the purposes and principles contained in the OAU Charter, UN Charter, the Universal Declaration of Human Rights as well as, the African Charter on Human and Peoples' Rights;

Deeply Concerned by acts of genocide and other crimes against humanity perpetuated in certain parts of Africa;

Emphasizing that respect for Human Rights is indispensable for the maintenance of regional and international peace and security and elimination of conflicts, and that it constitutes one of the fundamental bedrocks on which development efforts should be realized.

**Considering** the democratization processes taking place on the Continent and the expressed desires of African peoples to live in a state of law which secures the full enjoyment of Human Rights and fundamental freedoms for all peoples, regardless of their gender, race, place of origin, religion, social status, ethnic background, political opinions or language;

**Further Considering** the importance of the right to development, the right to international peace and security and the principles of solidarity and Friendly relations between States provided for in the African Charter on Human and Peoples' Rights;

**Recalling** the determination of the collective leadership in Africa to establish conditions which will ensure social justice and progress and thus enable African peoples to enjoy better standards of living in greater freedom and in the spirit of tolerance towards all;

Reiterating the need to constructively examine Human Rights issues in a spirit of justice, impartiality and non-selectivity, avoiding their use for political purposes;

**Recognizing** the progress ' achieved by African States in the domain of Human Rights and the significant contribution of the African Continent to the universalization of these rights;

**Further Recognizing** the contribution made by African NGOs to the promotion and protection of Human Rights in Africa;

**Recalling** the recommendations made by the Second Conference of National Human Rights Institutions held in Durban in 1998;



**Determined** to consolidate the gains made in Africa in the promotion and protection of Human and Peoples' Rights;

**SOLEMNLY ADOPTS THE GRAND BAY (MAURITIUS) DECLARATION AND PLAN OF ACTION**

- 1 The Ministerial Conference affirms the principle that Human Rights are universal, indivisible, interdependent and inter-related and urges governments, in their policies, to give parity to economic, social and cultural rights as well as civil and political rights;
2. The Conference also affirms that the right to development, the right to a generally satisfactory healthy environment and the right to national and international peace and security are universal and inalienable rights which form an integral part of fundamental Human Rights;
3. The Conference further affirms the interdependence of the principles of good governance, the Rule of Law, democracy and development.
4. The Conference recognizes that the development of the rule of law, democracy and Human Rights calls for an independent, open, accessible and impartial judiciary, which can deliver justice promptly and at an affordable cost. To this end, such a system requires a body of professional and competent judges enjoying conducive conditions.
5. The Conference recognises that the core Values on which Human Rights are founded, particularly (a) respect for the sanctity of life and human dignity (b) tolerance of differences (c) desire for liberty, order, fairness, prosperity and stability, are shared across all cultures. In this connection, integrating positive traditional and cultural values of Africa into the Human Rights debate will be useful in ensuring their transmission to future generations.
6. The Conference notes that Women and Children's rights issues remain of concern to all. Therefore it welcomes the decision to elaborate a Protocol to the African Charter for the more effective protection of Women's rights and

calls on the OAU to convene a meeting of Government experts to examine the instrument. It urges all African States to work assiduously towards the elimination of discrimination against women and the abolition of cultural practices which dehumanize or demean women and children. The Conference also recommends to States to take the necessary measures to stop the practice of child-soldiers and to reinforce the protection of civilian populations, particularly children in conflict situations. The Conference further recommends that States adopt measures to eradicate violence against women and children, child labour, sexual exploitation of children, trafficking in children and to protect children in conflict with the law as well as refugee children.

7. The Conference notes that the rights of people with disability and people living with HIV-AIDS, in particular women and children are not always observed and urges all African States to work towards ensuring the full respect of these rights.

8. The Conference is aware that violations of Human Rights in Africa are caused among others by:

- a) Contemporary forms of slavery
- b) Neo-colonialism, racism and religious intolerance
- c) Poverty, disease, ignorance and illiteracy
- d) Conflicts leading to refugee outflows and internal population displacement
- e) Social dislocations which may arise from the implementation of certain aspects of structural adjustment programmes
- f) The debt problem
- g) Mismanagement, bad governance and corruption
- h) Lack of accountability in the management of public affairs
- i) Monopoly in the exercise of power
- j) Harmful traditional practices
- k) Lack of independence of the judiciary
- l) Lack of independent human rights institutions
- m) Lack of freedom of the press and association
- n) Environmental degradation
- o) Non-compliance with the provisions of the OAU Charter on territorial

- integrity and inviolability of colonial borders and the right to self determination
- p) Unconstitutional changes of governments
  - q) Terrorism
  - r) Nepotism
  - s) Exploitation of ethnicity.

There is therefore the need to adopt a multi-faceted approach to the task of eliminating the causes of human rights violations in Africa.

9. While welcoming the improvements which have taken place in addressing

the refugee problem, the Conference believes that the high number of refugees, displaced persons and returnees in Africa constitutes an impediment to development. It recognizes the link between human rights violations and population displacement and calls for redoubled and concerted efforts by States and the OAU to address the problem.

10. The Conference recognizes that the development and energization of the civil society, the strengthening of the family unit as the basis of human society, the removal of harmful traditional practices and consultation with community leaders should all be seen as building blocs in the process of creating an environment conducive to human rights in Africa and as tools for fostering solidarity among her peoples.

11. Deeply concerned about the acts of genocide, crimes against humanity and other war crimes being perpetuated in certain parts of Africa, the Conference appeals to African States to ensure that such acts are definitively eradicated on the Continent and recommends that these serious acts of violation be adequately dealt with.

12. Also concerned by the scourge of terrorism as a source of serious Human Rights violation, especially the most basic of such rights - the right to life the Conference urges African countries to formulate and implement an African Convention for Cooperation in combating this scourge.

13. The Conference reaffirms the commitment of Africa to the promotion, protection and observance of Human Rights obligations. In this framework, the Conference requests those states which have not yet done so to give consideration to the ratification of all major OAU and UN Human Rights Conventions, in particular

- a) The African Charter on Human and Peoples' Rights;
- b) The African Charter on the Rights and Welfare of the Child;
- c) The Convention Governing Specific Aspects of Refugee Problems in Africa;
- d) The Protocol on the Establishment of an African Court on Human and Peoples' Rights;
- e) International Covenant on Economic, Social and Cultural Rights;
- f) International Covenant on Civil and Political Rights;
- g) United Nations Convention on the Rights of the Child;
- h) United Nations Convention on Refugees and its Protocol;
- i) Convention on the Elimination of All Forms of Discrimination Against Women;
- j) The Four Geneva Conventions governing the Treatment of War Wounded, Prisoners of War and Civilians as well as the Two Additional Protocols;
- k) UN Convention Against Torture;
- l) UN Convention on the Elimination of All Forms of Racial Discrimination
- m) The Statute of the International Criminal Court.

14. The Conference recognizes the necessity for States to give effect to the African Charter, International Humanitarian Law and other major international Human Rights instruments which they have ratified, in their national legislations for wider effect throughout Africa.

15. The Conference reiterates the fact that the primary responsibility for the promotion and protection of Human Rights lies with the State. It therefore urges States to establish national human rights institutions and to provide them with adequate financial resources and ensure their independence.

16. The Conference recognizes that the reporting obligation of States Parties under the African Charter on Human and Peoples' Rights provides an important mechanism and an opportunity for African governments to engage in a process of continuous dialogue with the African Commission. Accordingly, the Conference recommends that States Parties take appropriate measures to meet their reporting obligations under the Charter.

17. The Conference recognizes the importance of promoting an African Civil Society, particularly NGOs, rooted in the realities of the Continent and calls on African governments to offer their constructive assistance with the aim of consolidating democracy and durable development.

18. The Conference calls upon all international organizations - governmental, inter-governmental and non-governmental - to cooperate and harmonize their initiatives with the OAU and its relevant organs as well as the various sub-regional blocs within Africa for a more co-ordinated approach to the implementation of Human Rights in Africa and for maximum effect of such programmes and initiatives.

19. The Conference notes that the adoption of the UN Declaration on the Protection of Human Rights Defenders by the 54<sup>th</sup> Session of the UN Commission on Human Rights marks a significant turning point and calls on African governments to take appropriate steps to implement the Declaration in Africa.

20. The Conference appeals to the Secretary General of the OAU and the African Commission on Human and Peoples' Rights to develop appropriate strategies and take measures to sensitize and raise the awareness of African populations about Human Rights and International Humanitarian Law through formal and non-formal educational processes comprising among others, a special module in school curricula.

21. The Conference recognizes that the media are important actors for building bridges between governments and peoples; it, therefore, urges States Parties to guarantee a free and independent press within their national borders to enable it play a role in the promotion of human rights in Africa. To this end,

the Conference appeals to the Secretary General of the OAU to look into the possibility of providing assistance to media organizations on the Continent.

22. To ensure that Human Rights considerations are integrated into all OAU activities, the Conference recognizes the need for Human Rights to be reflected in the programmes of the Continental Organization.

23. The Conference noting that the working of the African Commission on Human and Peoples' Rights is critical to the due observance of Human Rights in Africa, believes that there is a need to evaluate the structure and functioning of the Commission and to ascertain the extent to which it is implementing the Mauritius Plan of Action during the period of 1996-2001, and to assist it to remove all obstacles to the effective discharge of its functions. There is also an urgent need to provide the Commission with adequate human, material and financial resources.

24. The Conference notes that under the African Charter on Human and Peoples' Rights, it is the Assembly of Heads of State and Government that is authorized to take decisive action on the activity reports of the African Commission on Human and Peoples' Rights and expresses the hope that the Assembly would consider delegating this task to the Council of Ministers.

25. The Conference underscores the fact that co-operation between the African Commission and national human rights institutions will greatly enhance respect for Human Rights in Africa. In that regard, the Conference welcomes the decision by the African Commission on Human and Peoples' Rights to grant affiliated status to National Human Rights Institutions.

26. Concerned by the fact that the external debt burden is crippling the development efforts of Africa and undermining the fostering and sustenance of respect for Human Rights, the Conference appeals to the international community, especially multilateral financial agencies, to alleviate the external debt and take all steps necessary to reduce this burden on States to enable them to fully realize the economic emancipation of their peoples and enhance the maximum enjoyment of Human Rights by African peoples.

27. The Conference requests the Secretary General of the OAU to submit this Declaration to the Assembly of Heads of State and Government, all African national governments, the African Commission on Human and Peoples' Rights, the UN High Commissioner for Human Rights and other relevant UN organs and agencies and to examine the feasibility of making this conference a regular feature of OAU activities.

28. The conference recommends to States to formulate and adopt national action plans for the promotion and protection of human rights.

29. Finally, the Conference requests the Secretary General of the OAU to submit a Report to the next Session of the Council of Ministers on the outcome of this Conference.

**Adopted at Grand Bay, Mauritius on 16 April 1999.**