

Credibility in Question: proposals for improving the efficiency and effectiveness of the African Commission on Human and Peoples' Rights

INTRODUCTION

The African Commission on Human and Peoples' Rights (the African Commission) is a body of 11 human rights experts¹ which monitors the compliance by states of their obligations under the African Charter on Human and Peoples' Rights (the African Charter).² Its Secretariat is based in Banjul, the Gambia. The Chairperson of the African Commission is elected for a two-year period by the African Commission from amongst its members. All members of the African Commission, including its Chairperson, serve in a voluntary capacity, usually attending the biannual sessions of the African Commission as well as undertaking inter-sessional activities. The Secretary to the African Commission, who is appointed by the Secretary-General of the Organization of African Unity (OAU), accounts to the General Secretariat of the OAU on financial and administrative matters. 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 resolutions and decisions.

¹The members of the African Commission are: Mr Youssoupha Ndiaye (chair), Dr Vera Duarte Martins (vice-chair), Dr Ibrahim Badawi El-Sheikh, Prof. Isaac Nguema, Mme Julienne Ondziel-Gnelenga, Mr Kamel Rezzag-Bara, Dr Nyameko Barney Pityana, Dr Mohamed Hatem Ben Salem, Prof Emmanuel Victor O. Dankwa, and Mr Atsu-Koffi Amega. Mr Alioune Blondin Beye died in June 1998.

²The African Charter entered into force on 21 October 1986. The functions of the African Commission are contained in Article 45 of the African Charter.

Since its establishment in July 1987, the African Commission has taken many positive initiatives towards fulfilling the four areas of its mandate: promotional activities, protective activities (including complaints), the examination of state party reports, and the interpretation of the African Charter. Such initiatives include the use of urgent appeals³, the creation of permanent positions to assess and take action on specific human rights issues,⁴ and the consideration of 271 complaints against states parties under Article 55⁵.

Despite these positive developments, there remain fundamental problems with the ability of the African Commission to work competently and to act effectively. Eleven years after it came into existence, the credibility of the African Commission is in question as it struggles to address the serious and massive violations of human rights that continue the length and breadth of the continent. The meagre attention paid by governments, the OAU, the media and a significant majority of non-governmental organizations (NGOs) to the African Commission ensures that the work of the organ for the promotion and protection and human and peoples' rights in Africa remains marginalized.⁶

The present paper does not address all of the short-comings of the African Commission, which include the funding and functioning of the Special Rapporteur on extrajudicial, summary and arbitrary executions, who was appointed in 1994 and who has failed to adequately fulfil his mandate.⁷ Rather it proposes practical changes

³For example, at its 15th ordinary session from 18-27 April 1994, the African Commission issued a communiqué which deplored the decision of the UN Security Council to withdraw peacekeeping troops from Rwanda, and urged that peacekeepers be deployed to the country to protect the Rwandese people. See also footnote 12.

⁴The African Commission has appointed three special rapporteurs: the special rapporteur on extrajudicial, summary or arbitrary executions was established during the 15th ordinary session of the African Commission, 18-27 April 1994. The special rapporteur on prison conditions and conditions of detention was established during the 20th ordinary session, 21-31 October 1996. The special rapporteur on women was established during the 23rd ordinary session, 20-29 April 1998.

⁵Article 55 provides for the submission of complaints from sources other than states parties.

⁶To mark the OAU's celebration of the 50th anniversary of the Universal Declaration of Human Rights, Amnesty International is issuing a report entitled "*The Organization of African Unity: Making Human Rights A Reality for Africans*", AI Index: IOR 63/01/98, August 1998, which makes recommendations to the OAU for integrating human rights into the work of its political bodies and organs, as well as for supporting the work of the African Commission.

⁷Amnesty International issued a report entitled "*The role of the Special Rapporteur on extrajudicial, summary or arbitrary executions*", AI Index: IOR 63/05/97, in November 1997 which makes recommendations on strengthening this mechanism.

in the way the African Commission discharges its work which are aimed at enhancing its performance and raising its profile regionally and internationally. Amnesty International calls on the African Commission to implement the recommendations contained herein so that it is better equipped to meet the challenges of the future.

I. A FRAMEWORK FOR ACTION

(A) Priority setting

The African Charter entrusts the African Commission with a broad mandate which includes treaty monitoring, consideration of complaints under Articles 47⁸ and 55, the adoption of country and thematic resolutions, dealing with emergency situations, and standard-setting. The African Commission usually only holds “two ordinary sessions a year each lasting for about two weeks”,⁹ with the result that it is faced with an agenda replete with items which should be addressed in considerably more detail than is possible. For example, the provisional agenda of the 23rd ordinary session of the African Commission which was held in April 1998, scheduled consideration of four states parties reports, a debate on the establishment of an early intervention mechanism in cases of massive human rights violations, examination of the reports of two Special Rapporteurs, a review of the African Charter, consideration of mission reports, as well as 15 other agenda items.¹⁰ The session was held over 10 days and several discussions were postponed or moved from the public to the private session, including debates that would have benefitted from the participation of NGOs.¹¹ Deferring agenda items or curtailing important debates leads to a sense that little or nothing is being achieved and detracts from the successes of the African Commission.¹²

⁸Article 47 provides for complaints dealing with violations of human rights from states parties against other states parties to the African Charter.

⁹See Rule 2, Rules of Procedure of the African Commission on Human and Peoples' Rights (Rules of Procedure), amended on 6 October 1995, ACHPR/PR/XIX.

¹⁰See agenda for the 23rd ordinary session, 20-29 April 1998, DOC/OS/22 (XXIII).

¹¹For example, the item on incompatibility of functions of the members of the African Commission, which was originally scheduled to be a public debate. Several NGOs, including Amnesty International, have a contribution to make to the discussion. See Amnesty International “*Organization of African Unity: Making Human Rights A Reality For Africans*”, section 2.1, AI Index: IOR 63/01/98.

¹²Such successes include, for example, the African Commission issuing an urgent appeal to

the Rwandese Government for a stay of execution for 23 people for allegedly participating in the 1994 genocide. See African Commission Press Release, 23 April 1998, "*The African Commission on Human and Peoples' Rights Requests Rwanda To Stop Planned Executions*".

In an attempt to establish a framework for action, the African Commission has developed a system of planning cycles. This began in 1988 with a preliminary Plan of Action to launch the activities of the African Commission, and continued with a second Plan of Action which was adopted for the period 1992-1996. The current (Mauritius) Plan of Action for the period 1996-2001 is “based on the various missions of the African Commission while duly taking into account the priority requirements of Africa”¹³ and assumes a flexible approach so that activities may be “expanded or readjusted in view of the situation in Africa”.¹⁴ The present Plan sets out a number of broad objectives under four headings: promotional mission, protection activities, co-operation, and strengthening of the Secretariat and of the African Commission. The objectives cover a comprehensive range of issues, including documentation and research activities, communications, emergency cases, training, co-operation with the OAU Secretariat, other international and regional organizations and NGOs. However, the strategy for achieving these objectives, the relative priority of each objective, the time-frame for action and resource implications, are not provided. Under the section on the African Charter on the Rights and Welfare of the Child, for example, the Plan states that “The Commission is proposing that a sensitization campaign be undertaken with the aim of obtaining the ratification and the coming into force, as soon as possible, of this important instrument. The African Commission plans to carry out this task with the cooperation of its partners”.¹⁵ The Plan gives no indication of the scope and nature of the sensitization campaign, when it should begin and end, how important this objective is in relation to others and whether the component parts of it can be prioritized, who will be involved or how much money it will cost. Taken in conjunction with the other fifty-four objectives, there is no doubt that these goals, without further definition, are unlikely to be met over a five-year period by an African Commission that meets for four weeks a year.

Without a detailed strategy for meeting its objectives, the African Commission is unable to evaluate properly the implementation of the Mauritius Plan of Action. Part of a planning process is to measure achievements in order to identify areas of work that are falling behind schedule as well as those that have been

¹³See Mauritius Plan of Action Section I, paragraph 3, published in the Review of the African Commission on Human and Peoples’ Rights, Volume 6, 1996-7.

¹⁴*Ibid.*, Section I, paragraph 2.

¹⁵*Ibid.*, Section II, paragraph 27. Note that the title of the treaty contained in the Mauritius Plan of Action is incorrectly given as the African Charter on the Rights and Welfare of Children.

realized. A systematic evaluation process would also enable the African Commission to accommodate unforeseen developments.

The African Commission recognizes that previous plans of action have only been partially implemented because of serious resource constraints.¹⁶ It is therefore of great concern that, despite having indicated that additional resources are needed for implementation of the Mauritius Plan of Action, the Plan has not been revised to reflect the fact that such resources have not been forthcoming.¹⁷

Amnesty International recommends that the African Commission establish a working group to review the Mauritius Plan of Action and to make adjustments which reflect what is attainable over the remaining time-frame and within existing resources.¹⁸ The working group should establish priorities for all of the objectives included in the Plan, define a clear strategy for each objective, propose costings for their implementation and set schedules for their completion. The working group should also consider the process by which the African Commission can institute a regular review of its Plans of Action as part of its on-going work. Given the workload of the African Commission, it is likely that a standing committee with responsibility for planning would need to be established to ensure systematic appraisals.

(B) Organization of work

Realistic objectives should enable the African Commission to organize its work more efficiently and to plan a workload that can be accomplished, including through carefully planned agendas. Greater and better preparation of work and documentation could increase the quality of debate and decisions and the amount of issues the African Commission is able to cover. In this regard, the African Commission should continue to assign specific items to individual Commissioners in order that preparatory work may be undertaken in advance of its meetings, and ensure that annotated agendas, which include a summary of the issues to be discussed together with references to relevant documentation and a time-limit for each item, can be distributed in advance.

¹⁶*Ibid.*, introduction.

¹⁷*Ibid.*, Section V, paragraphs 76 and 77.

¹⁸Rule 28 of the Rules of Procedure provides for the establishment of committees or working groups in the exercise of the African Commission's functions.

The African Commission should undertake a review of its working practices to ensure that it makes the optimum use of its time. For example, a significant amount of time is devoted to reports of promotional activities, when briefer oral summaries could be provided and supplemented by fuller written accounts. Other measures, such as starting meetings promptly at the times designated on the agenda and avoiding unnecessarily lengthy breaks between meetings, could be easily implemented and would save the African Commission valuable hours.¹⁹

NGO participation would be enhanced by the African Commission organizing a speaker's list for NGOs under each agenda item in the public session,²⁰ and particularly the item on the "human rights situation in Africa", which many NGOs wish to speak on. NGO representatives should be encouraged to put their names on the speaker's list in advance, and at the latest, by the end of the opening ceremony. This would enable the Chair to plan the time allotted for statements so that NGOs know in advance how much time they have for each statement and can prepare their contributions accordingly.

(C) Reports of meetings

As yet, no substantial public account of what happens at the African Commission's meetings exists and there is no written record of action to be taken and by whom following any recommendation or decision made. Despite provision in the Rules of Procedure that summary records of the African Commission meetings will be distributed after each session, the Secretariat has not produced any of these records.²¹

The African Commission has taken a literal interpretation of its Rules of Procedure requiring "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".²² This has resulted in the final communiqués and activity reports (which are distributed to the OAU Council of Ministers and constitute the major part of the African

¹⁹The African Commission usually meets for seven and a half hours per day, so that it only has approximately 75 hours of meeting time in any one session (minus adjournments on Friday afternoons and Sunday mornings to allow some Commissioners time for prayer).

²⁰Speakers lists should also be opened for government representatives.

²¹See Rules of Procedure, Rules 39 and 40.

²²See Rules of Procedure, Rule 41.

Commission's Annual Report to the OAU Assembly) as being woefully inadequate as the main source of public information about the African Commission's deliberations.

For 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.²³ The summary should reflect a rigorous analysis of the periodic report including positive aspects of the state party report, subjects of concern, factors which are impeding implementation of the African Charter, together with the African Commission's recommendations (see below, section IV). This would provide the OAU, NGOs and the media with a much clearer picture of the situation of human rights in the country concerned. It would also give the reporting procedure - an important function of the African Commission - greater visibility and raise the profile of the African Commission's work.

The Mauritius Plan of Action proposes a number of different publications for dissemination to make the African Commission's activities publicly known, such as a monthly newsletter, compendiums of decisions and resolutions adopted by the African Commission, and reports of seminars and workshops.²⁴ Whilst these would all be important documents, they are not a substitute for summary records. Amnesty International recommends that the African Commission concentrates on publishing summary records of all future sessions.

II. AN INFORMED DEBATE

²³See, for example, the Eleventh Annual Activity Report of the African Commission, 1997-8, 68th ordinary session of the OAU Council of Ministers, 1-6 June 1998, CM/2084 (LXVIII), section II, A.9. "The periodic report of the Republic of Namibia and the Republic of Guinea were presented at the 23rd session. The African Commission praised the quality of the reports and thanked the representatives for their presentation".

²⁴Mauritius Plan of Action, section II, paragraph 13.

The quality of the African Commission's work relies significantly on the ability of the Commissioners to consider the issues on the agenda and to reach informed and considered decisions. A key component of this is the availability of information before, during and after meetings of the African Commission. The Rules of Procedure require that the provisional agenda and essential documents relating to each agenda item be made available in advance to the Commissioners, states parties, the Chairman of the OAU and to observers.²⁵ It is important that such reports are distributed sufficiently in advance if Commissioners are to consider and reflect upon the contents of essential documents, particularly communications and periodic reports.

Moreover, the African Commission should request other relevant documentation on a systematic basis, including the reports of the OAU Secretary-General which are prepared for the meetings of the OAU Assembly of Heads of State and Government and the Council of Ministers meetings. These would include the Secretary-General's reports on Angola, Burundi, Comoros, Sierra Leone and Somalia as well as those from the Commission on Refugees, Returnees and Displaced Persons, from the Secretary-General on the activities of the General Secretariat, from the newly established International Panel of Eminent Personalities to Investigate the Genocide in Rwanda and Surrounding Events, and from the OAU Mechanism for Conflict Prevention, Management and Resolution.²⁶

As a practical measure, the African Commission should ensure that core documentation is available throughout its meetings so that all participants are able to obtain copies of the African Charter, the Rules of Procedure, previous annual activity reports and final communiqués as well as documentation relating to the specific session. The documentation activities envisaged in the Mauritius Plan of Action go some way towards addressing this problem, although they do not specify the availability of such information at the meetings of the African Commission.²⁷

²⁵Under Rule 7(2) of the Rules of Procedure, the provisional agenda and essential documents relating to each item are to be distributed to African Commission members, states parties, the Chairman of the OAU and to observers at least six weeks before the opening of the session.

²⁶Reports for the OAU Council of Ministers and the Assembly of Heads of State and Government are published at the time of their meetings, in February and June respectively.

²⁷See Mauritius Plan of Action, section II, paragraph 14.

Under Rules 75 and 76 of the Rules of Procedure, NGOs who have observer status with the African Commission may participate in the public sessions of the African Commission and its subsidiary bodies, and the African Commission may consult with NGOs either directly or through committees set up for this purpose.²⁸ Thus, NGOs may distribute their documents, make oral interventions under agenda items considered in public session and participate in working groups established by the African Commission.²⁹

²⁸231 NGOs have observer status with the African Commission.

²⁹For example, the Working Group on the preparation of an additional protocol to the African Charter on the rights of women includes the International Commission of Jurists, the African Centre for Democracy and Human Rights Studies and Women in Law and Development in Africa, as well as members of the African Commission.

The Rules of Procedure do not require that documentation, other than the provisional agenda, be distributed to NGOs in advance of the African Commission's sessions,³⁰ which has implications for the level and quality of NGO participation, and the ability of NGOs to propose items for the agenda.³¹ It is therefore important that NGOs take responsibility for following items of interest that are on the African Commission's agenda and for requesting documentation that is relevant to these items so that they are able to prepare their contribution to the debate. In this regard, the African Commission could encourage NGOs to distribute their statements in hard copy, which would enable the Commissioners to have written testimony about human rights situations rather than relying on their ability to absorb information aurally.³²

III. PERIODIC REPORTS OF STATES PARTIES

Under Article 62 of the African Charter, each state party undertakes to submit a report every two years 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. The treaty monitoring function has been described as "vital to the mission" of the African Commission.³³

³⁰ Rules of Procedure, Rule 7(3)

³¹ Rules of Procedure, Rule 6 (3) (f)

³²The African Commission could facilitate this through the provision of basic office equipment, such as use of a typewriter or computer terminal and photocopier machine at the site of the session.

³³See Dr Ibrahim Badawi El-Sheikh, "The case of the African Commission on Human and Peoples' Rights", published for the Conference on regional systems of human rights protection in Africa, America and Europe, Third Afro-Americo-European Conference, Strasbourg 15-19 June 1992

The African Commission has no enforcement mechanism and is therefore reliant on the will of member states to present their reports. The African Commission has noted that “the dialogue initiated...with governments will most certainly result in an improvement of national legislation or practice related to human rights”.³⁴ This optimistic assertion fails to take into account the various components of a reporting process which should result in a meaningful exchange between a treaty body and government. The evidence suggests that many states parties to the African Charter do not take the reporting process seriously. Despite regular reminders from the OAU Assembly of Heads of State and Government and the OAU Secretary-General to states parties to submit their reports in a timely fashion, as of June 1998 there are exactly 200 overdue reports. The following states parties - Botswana, Burkina Faso, Central African Republic, Comoros, Congo, Equatorial Guinea, Gabon, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Sahrawi Arab Democratic Republic, Sao Tomé and Príncipe, Sierra Leone, Somalia, Uganda and Zambia - have yet to submit their first reports which were due eleven years ago.³⁵ Too frequently, states parties who are scheduled to present their reports to the African Commission simply fail to attend the session. The OAU must demonstrate a commitment to ensuring that governments provide their reports to the African Commission,³⁶ but the African Commission itself needs to counter the perception that the reporting process is weak and ineffectual. It could do this through the introduction of practices to accord greater importance to the process and to raise awareness of this crucial aspect of its work.³⁷

To overcome a major failing of the reporting process, the African Commission must issue recommendations to all states parties who present their reports in order to provide guidance to governments on legislative and practical short-falls, to identify needs for technical assistance, and to establish a yard-stick by which to measure improvements. The OAU adopted a resolution 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

³⁴See Mauritius Plan of Action, section II, paragraph 28.

³⁵See Eleventh Activity Report of the African Commission, 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).

³⁶See “*Organization of African Unity: Making Human Rights A Reality For Africans*”, AI Index: IOR 63/01/98, Section 2.3.

³⁷*Ibid.* See Section 2.1. Amnesty International also believes that the African Commission should amend its Rules of Procedure to state clearly that members of the African Commission should refrain from dealing with reports and communications concerning their own countries.

the African Commission's recommendations and contact between states and the African Commission".³⁸ The African Commission should seize this important decision to ensure that its recommendations are given effect and to maintain a regular dialogue with states parties on implementation of the African Charter.

³⁸ Resolution on the African Commission on Human and Peoples' Rights, adopted at the 29th ordinary session of the OAU Assembly of Heads of State and Government, 28-30 June 1993, Egypt.

The state party report should be made publicly available to all participants at the African Commission session in advance of the session, including to NGOs who express an interest in receiving it in order that they have adequate time to prepare their observations on the report.³⁹ The rapporteurs assigned to the country concerned should avail themselves of as much information as possible from a wide range of sources, including reports from the OAU, from its Specialized Institutions,⁴⁰ from the United Nations (UN),⁴¹ and from NGOs. Part of the on-going responsibilities of the Secretariat should be to collect this information for the Commissioner's use. There should be sufficient time for putting questions to the government representatives and receiving answers from the delegation. Questions by the Commissioners to the state party should be detailed, probing and specific and should elicit substantive responses. Some Commissioners do ask incisive questions on a range of violations, but such questions are often ignored by the government representative and then not followed up during the dialogue. As it is normal practice for the African Commission to send the list of questions to the state party concerned in advance, the government should send representatives with sufficient expertise and preparation to answer the questions comprehensively.

The consideration of a state party report usually takes place during the four days of

³⁹Rule 78 of the Rules of Procedure states that "Periodical reports and other information submitted by states parties to the Charter as requested under Article 62 of the Charter, shall be documents for general distribution". However, Rule 82 (Transmission of Reports) imposes no obligation for these reports to be transmitted within a time-limit, although states parties reports undoubtedly constitute "essential documents" referred to under Rule 7, which requires that such documents be distributed at least six weeks before the opening of the Session.

⁴⁰Note that Rule 82 of the Rules of Procedure provide that the African Commission may invite the specialized institutions concerned to submit observations relating to relevant parts of the state party report. The specialized institutions are not identified in the document. The Specialized Commissions of the OAU are the Economic and Social Commission, the Educational, Scientific, Cultural and Health Commission, the Commission of Fifteen on Refugees, the Defence Commission and the Mediation, Conciliation and Arbitration Commission. Regional and sub-regional offices of the OAU exist in New York, Geneva, Cairo, Brussels, Lagos, Niamey, and Dar es Salam.

⁴¹For example, reports produced for the UN Commission on Human Rights include those dealing with Burundi, Democratic Republic of Congo, Equatorial Guinea, Nigeria, Rwanda, Somalia, Sudan and Uganda. In addition, the reports of the UN Commission's thematic mechanisms contain information about violations in a range of countries as well as mission reports by those particular experts. Note that the African Commission is encouraging states parties to append reports submitted to the UN treaty monitoring bodies. For example, at its 23rd ordinary session, the African Commission noted that Namibia should have appended its report to the UN Committee on the Elimination of Discrimination against Women.

public debate, and this is an important principle that the African Commission should continue to uphold.⁴² The Mauritius Plan of Action states that “public discussions of periodic reports also provide an opportunity for NGOs to make their contribution to the process of dialogue”.⁴³ Although the African Commission has been proactive in seeking information from some NGOs in advance of a state party report being considered, it has yet to develop a method of informing a broader base of NGOs about the forthcoming consideration of a report. In particular, material from local, national, regional and international NGOs could complement the information upon which the Commissioners base their questions, that is for the most part government reports. This could result in better scrutiny which may help to reveal any weaknesses in legislative and practical terms which impede implementation of the African Charter.

IV. ON-SITE MISSIONS

The African Commission “may resort to any appropriate method of investigation” in discharging its duties and it has interpreted this provision to include on-site missions.⁴⁴ To date, the African Commission has undertaken missions to Togo in 1995, to Mauritania, Senegal and the Sudan in 1996, and to Nigeria in 1997. Amnesty International believes that investigations of this kind are critical to the African Commission gaining first-hand knowledge about the human rights situation in a country. The organization has encouraged the African Commission to undertake regular missions, which are based on two essential elements: the development of guidelines for carrying out missions, and the production of written reports, which include recommendations, shortly after a mission.⁴⁵ It is therefore regrettable that the reports of the last two missions of the African Commission, which took place in December 1996 and in March 1997, are still not available and that the African Commission has yet to adopt guidelines on missions.

⁴²Note, however, that the final communiqué of the 23rd ordinary session records that the initial report of Guinea was considered by the African Commission. This did not happen, as scheduled, during the four days of public debate, but after the African Commission’s private session had started and NGOs had left the meeting.

⁴³See Mauritius Plan of Action, Section II, paragraph 27 (d).

⁴⁴See Article 46 of the African Charter.

⁴⁵See Amnesty International’s statement to the 19th ordinary session of the African Commission, delivered on 27 March 1996, reference LO/ACM/CB.

The use of on-site investigations as a means of expediting the communications procedure provided for in the African Charter and as a way to deal with emergency situations is foreseen in the Mauritius Plan of Action. The Plan also encourages Commissioners to use visits which are undertaken for promotional activities as a way of assessing the human rights situation in a particular country.⁴⁶ Promotional activities have traditionally consisted of the Commissioners visiting human rights organizations, universities and other institutions in the countries assigned to them (including their own country) to raise awareness about the rights enshrined in the African Charter. Promotional visits are based on an entirely different premise to an on-site investigation. This points to the need for the African Commission to establish clear guidelines with respect to each category of mission.

An examination of the only public mission reports which exist highlight weaknesses in the process and methodology used.⁴⁷ The stated objective in both cases was to find an amicable solution to the situation, without reference to the obligation of the state party concerned to abide by the provisions of the African Charter. This approach undermines the protection role of the African Commission by framing the mission in terms of mediation rather than investigating human rights violations. It also assumes that the Commissioners themselves have the skill, expertise and authority to mediate in situations of complexity and sensitivity. Above all, it implies a compromise of the rights enshrined in the African Charter in the search for an amicable settlement.

⁴⁶ See Mauritius Plan of Action, Section III, paragraphs 30, 38 and 44.

⁴⁷ See Tenth Annual Activity Report of the African Commission, 1996/1997, annex VIII, Report on the Mission of Good Offices to Senegal of the African Commission, 1-7 June 1996 and annex IX Report of the Mission to Mauritania of the African Commission, 19-27 June 1996

The mission to Senegal was in response to a communication submitted by an NGO in 1992 about grave and massive violations of human rights in Casamance. It was carried out under the African Commission's "good offices" function in 1996.⁴⁸ As the good offices role of the African Commission is not defined, it is not clear how this mechanism works, particularly in relation to on-site investigations.⁴⁹ The report of the mission provides a brief summary of the evolution of the conflict as well as the principle elements which characterize the present situation, but fails to provide a detailed analysis of human rights violations in Casamance. The recommendations focus on creating favourable conditions for negotiations and include the government freeing political prisoners and prosecuting those implicated in torture and summary executions. However, there are no recommendations for independent and impartial investigations into past or present violations of human rights, for bringing suspected perpetrators of those violations to justice, for legal reform or for follow-up to the mission.

The report of the mission to Mauritania is similarly deficient.⁵⁰ Acting under Article 46 of the African Charter, the mission, comprising three Commissioners, travelled to the capital, Nouakchott, and met with representatives of the government as well as NGOs, including those working on women's rights.⁵¹ Although the report provides a general context which contains information about human rights violations, it lacks an in-depth analysis and then concludes with recommendations which do not adequately respond to the violations mentioned in the report. For example, the section dealing with violations of women's rights concludes that "the promotion of women's rights is deficient in the country, and merits particular attention". Yet there are no recommendations to the government on how to address these violations or any indication as to how the African Commission will ensure implementation of the recommendations.

⁴⁸The communication was submitted by Rencontre Africaine Pour la Défense des droits de l'Homme (RADDHO). The communication, brought against Senegal, described grave and massive violations of human rights at Kaguitt in Casamance, following a clash between the Senegalese army and the rebels of the Mouvement des Forces Démocratiques de la Casamance (MFDC).

⁴⁹ Rule 98 of the Rules of Procedure states that "Except the provisions of Rule 96 of the present Rules of Procedure, the Commission shall place its good offices at the disposal of the interested states parties to the Charter so as to reach an amicable solution on the issue based on the respect of human rights and fundamental liberties, as recognized by the Charter".

⁵⁰*Supra*, note 47.

⁵¹ *Ibid.* The introduction states that "After receiving communications that revealed disturbing violations of human rights in Mauritania, the African Commission applied Article 46 of the Charter, according to which "the Commission may resort to any appropriate method of investigation". The Commission decided at the 19th ordinary session to send a fact-finding and investigation mission to Mauritania, with a view to finding an amicable resolution to put an end to the situation".

The African Commission must commit itself to undertaking fact-finding missions with the objective of assessing the human rights situation in the country concerned. The purpose of this assessment should be the protection of all of the rights enshrined in the African Charter. Any guidelines adopted by the African Commission should include a clause which prohibits a Commissioner who is a national of or who resides in the territory of the state in which the fact-finding mission is to be carried out from participating in the mission.

Adequate preparation in advance of missions which includes information-gathering from a range of sources is an essential pre-requisite to the success of the assignment. It will assist the Commissioners in identifying areas and places to visit and people to contact in order to make an assessment of the situation as well as providing details of the nature and scope of violations. The African Commission should be proactive in seeking this information from NGOs, the OAU and the UN.

In clarifying the terms of reference of the mission with the government concerned, the African Commission should insist on unimpeded access to all parts of the territory and make independent arrangements to travel to and within the country concerned. It should also obtain a clear undertaking that no reprisals will be taken against any persons or entities co-operating with the mission. In this regard, arrangements for security of the mission should not compromise the independence of the mission or the safety and security of witnesses.

The Commissioners should be accompanied by staff with relevant skills and expertise, including on violence against women and children.

The African Commission should produce public reports of missions for wide distribution which provide a detailed analysis of the human rights situation within a short time after the mission has concluded. The reports should give information about the nature and scope of violations, details about national legislation, in particular, its conformity with the African Charter and international human rights treaties to which the government is a state party, conclusions and recommendations. The recommendations should indicate action to be taken by the government and, if appropriate, non-governmental entities, as well as follow-up required by the OAU or the African Commission itself. The recommendations should set a clear time-frame for implementation.

The above recommendations should be incorporated into guidelines to be adopted by the African Commission as soon as possible.

V. THE MEDIA

The African Commission has established various objectives in relation to a media programme as a priority for this planning period.⁵² The appointment of a press officer to develop media strategies is a welcome initiative. However, the post is a one-year contract and it is doubtful that the press officer will be able to undertake many of the tasks necessary to fulfil this role unless the job becomes a permanent one.

Due to the location of the Secretariat in the Gambia, there are no representatives of regional or international media in the immediate vicinity to regularly report on its activities, which has resulted in scant attention being paid to its work. Therefore, a media strategy must be viewed in the long-term in order that basic preparations can be undertaken. These include clarifying the main objectives of the media strategy, together with key targets, and establishing and maintaining media contacts across the continent.

⁵² See Mauritius Plan of Action, Section II.

The projects which are outlined in the Mauritius Plan of Action to popularise the African Charter through press, radio, cinema and television are important objectives in highlighting the African Commission's promotional activities.⁵³ Given the scope of the African Commission's work in this area, it will be important for the press officer to develop clear messages for the media and an effective strategy to deliver them. This should mean working closely with national NGOs so that the message reaches its target audience and can be followed up accordingly through the dissemination of relevant materials, like the African Charter. Commemorative days, such as African Human Rights Day and OAU Refugee Day, provide an important opportunity for focusing media attention on human rights situations in the region.

Equally important is arousing media interest in the consideration of states parties reports, the results of missions, decisions on communications and urgent appeals. The African Commission must decide what its objectives will be in developing a media strategy around this area of its work, which should include immediate action by the government concerned in response to urgent appeals or decisions on communications, and raising national and international awareness on a country situation following consideration of a state party report. This will determine the media message, how it is presented and who the target audience should be. The need for a media strategy to highlight the protective activities of the African Commission should be incorporated into the Mauritius Plan of Action.

VI. INFORMATION TECHNOLOGY

For many of the recommendations made above to be implemented effectively, in particular those relating to documentation, information-flow, planning and the media, the African Commission needs to give priority to establishing electronic storage and retrieval systems at the Secretariat through the provision of the latest technology, communications equipment and information databases. This is vital to the efficient and effective management of the Secretariat, for information-flow between the Secretariat, the Commissioners and the OAU and for the purposes of providing information to the outside world.

⁵³*Ibid.*, paragraphs 10 and 11.

The African Commission needs to develop an information technology strategy which supports many of the objectives outlined in the Mauritius Plan of Action, such as those relating to the publication and dissemination of reports, documentation activities, including establishing “a mechanism for a systematic exchange of documents and publications” with NGOs and intergovernmental organizations.⁵⁴

In its Annual Report to the OAU Council of Ministers this year, the African Commission highlighted the need for resources for computers, electronic mail, a website on the internet and maintenance of the existing equipment.⁵⁵ Amnesty International hopes that the OAU will make resources available as priority as any further delay comes at a heavy price to the efficiency and effectiveness of both the African Commission and the Secretariat. The UN Human Rights Website which was launched on 10 December 1996 is reported to have been visited by people from 123 countries worldwide, with an average of 300 user sessions per week recorded from 1 August to 31 October 1997.⁵⁶ The opening of the website was considered to be an important milestone for the UN in achieving two of its major objectives: human rights information and transparency. The establishment of a website for the African Commission could achieve similar goals. At a minimum, the site should provide practical information, including calendars and agendas, press releases, decisions and resolutions, reports, communiqués and summary minutes, the jurisprudence of the African Commission and periodic reports. The website should also be available in the working languages of the African Commission.⁵⁷

Implementation of an information technology strategy would bring many advantages to the African Commission, including improved efficiency, better use of staff and equipment, savings of time, enhanced storage capacity, and increased integration internally and with other organizations.

⁵⁴See Mauritius Plan of Action, Section II, paragraph 14.

⁵⁵See Eleventh Annual Report of the African Commission on Human and Peoples' Rights, 68th Ordinary Session of the OAU Council of Ministers, 1-6 June 1998, (CM/2084 LXVIII).

⁵⁶See “A Quarterly Review of the Office of the United Nations High Commissioner for Human Rights”, No. 1, Winter 1997/8.

⁵⁷Note that some information about the African Commission is available on the OAU's website @ http://www.oau_oua.org or through the Pan-African News Agency website @ <http://www.rapide-pana.com>.

VII. THE SECRETARIAT: TOWARDS A SOLID, EFFICIENT AND FLEXIBLE STRUCTURE⁵⁸

The African Commission has neglected its duty to adequately supervise the Secretariat.⁵⁹ Coupled with a continuing lack of resources, the consequence is that the Secretariat is not performing its functions efficiently. The recent decision of the African Commission to set up a working group to review the functioning of the Secretariat is a positive development which should lead to sustained improvements in the performance of the Secretariat. The following proposals should be considered by the working group as a matter of urgency.

The functions of the Secretary are vaguely defined under Rule 23 of the Rules of Procedure. However, the limited time allocated to meetings of the African Commission means that a significant amount of responsibility *de facto* is delegated to the Secretary in discharging the African Commission's duties. This has resulted in confusion about, for example, the extent to which the Secretary should attend conferences and seminars on the African Commission's behalf and indicates the need for the African Commission to interpret Rule 23 with a view to clarifying the exact responsibilities of the Secretary in relation to the Secretariat and his accountability to the African Commission on these matters.

⁵⁸The objective of having a "solid, efficient and flexible administrative and technical structure" to enable the African Commission to fulfil its role is contained in the Mauritius Plan of Action, Section V, paragraph 79.

⁵⁹ Rule 23 of the Rules of Procedure states: "The Secretary of the Commission shall be responsible for the activities of the Secretariat under the general supervision of the Chairman, and particularly: (a) He/she shall assist the Commission and its members in the exercise of their functions; (b) he/she shall serve as an intermediary for all the communications concerning the Commission; (c) he/she shall be the custodian of the archives of the Commission; (d) the Secretary shall bring immediately to the knowledge of the members of the Commission all the issues that will be submitted to him/her".

Amnesty International is calling on the OAU to provide resources for the chairperson of the African Commission to serve on a permanent basis during the tenure of two years in order to take effective responsibility for the overall management of the Secretariat.⁶⁰ 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 violations and liaising with the Chairperson of the OAU and the Secretary-General of the OAU in regard to such emergency situations. The Chairperson would be directly accountable to the African Commission and to the OAU for providing financial and administrative reports, including regular and detailed reports on the financial expenditure at the Secretariat. This will place the African Commission in a stronger position to request additional money from the OAU.

Under this structure, the Secretary would retain responsibility for the day-to-day management of the Secretariat and for establishing systems to enable the Secretariat to operate as efficiently as possible. Given the lack of full-time and permanent staff at the Secretariat, there is a need for greater delegation of tasks to staff, who should be held accountable for the tasks assigned to them and have clear authority to match the responsibility they have been given.

Consideration should be given to managing human resources effectively, including through basic elements of a personnel strategy such as job descriptions, contracts of employment, and terms and conditions of service. It is essential that competitive recruitment procedures which seek to attract candidates of a high calibre from Africa are introduced and applied to all posts in the Secretariat. In addition, those from outside the OAU and African Commission who are providing vital additional resources also have a responsibility to ensure that their resources, in particular human resources, are properly utilized. They should seek to apply the same stringent assessments that they would do within their own organizations and rectify problems immediately, including directly with the Chairman of the African Commission. Donors also have to ensure competitive recruitment for the positions which they are funding to attract the highest quality candidates.

Amnesty International is urging the OAU to provide additional resources to the African Commission and its Secretariat as a matter of urgency in order for the African Commission to carry out essential work for the promotion and protection of human

⁶⁰ See "*Organization of African Unity: Making Human Rights A Reality For Africans*", AI Index: IOR 63/01/98, section 2.4

rights.⁶¹ However, the African Commission must take immediate responsibility for evaluating how its resources can be best utilized and for ensuring the effective management and efficient performance of the Secretariat.

CONCLUSION

⁶¹ See “*Organization of African Unity: Making Human Rights A Reality For Africans*”, AI Index: IOR 63/01/98, section 2.4 and section 6.

The African Commission has noted that this year “.. is the most appropriate occasion to take stock of actions undertaken and progress accomplished in the past so as to adequately prepare for the future”.⁶² If the African Commission and the African Charter are to continue as “the cornerstone and backbone”⁶³ of the human rights promotional and protective system in the region, the African Commission must be able to respond adequately to the scale and nature of human rights violations that persist across the African continent. By learning from its past accomplishments and failures, the African Commission will be better placed to fulfil its role and improve its performance. Africa’s celebrations of the 50th anniversary of the UDHR provide the African Commission with an opportunity to meet this challenge and to realize its potential.

⁶² See “Celebration of the 50th anniversary of the Universal Declaration of Human Rights”, 23rd ordinary session of the African Commission on Human and Peoples’ Rights, 20-29 April 1998, DOC/OS/29 (XXIII)

⁶³*Ibid.*

SUMMARY OF RECOMMENDATIONS TO THE AFRICAN COMMISSION:

The African Commission should undertake the following measures as a matter of priority:

- Establish a working group to review and adjust the Mauritius Plan of Action. This working group should establish priorities for all of the objectives in the Plan, define a clear strategy for each objective, assess costings for their implementation, set schedules for their completion, and recommend a process by which the African Commission can institute a regular review of its Plans of Action as part of its on-going work.
- Review its organization of work to ensure greater and better preparation of its work and documentation, and undertake a review of its working methods to make optimum use of its meeting time. It should also organize speakers lists for NGOs and government representatives on each agenda item in the public session which participants can sign up to by the end of the opening ceremony.
- Ensure that summary records of meetings are produced and distributed widely, that documentation relating to the agenda is available in advance of and during sessions, and obtain relevant documentation from a wide range of sources to inform its debate.
- Issue recommendations to states parties following consideration of a report. It should make time to ask questions and elicit substantive responses during a reporting process that takes place during the four days of public session.
- Develop guidelines for missions, including those whose aim is to assess the human rights situation, which ensure the independence and impartiality of the mission, adequate preparation in advance of and follow-up after a visit, and the wide distribution of detailed reports which include recommendations and a time-frame for their implementation following a mission.
- Clarify its objectives in relation to a media strategy, in particular with regard to its protective activities, including establishing and maintaining contacts, identifying target audiences, the most effective message and how to deliver it, and ensure that the press officer position is a permanent post.
- Accord priority to implementing an information technology strategy, including the creation of a website.
- Support the proposal for the chairperson to serve on a permanent basis during the tenure of two years, assume greater responsibility in overseeing the functioning of the Secretariat, including through clarification of the Secretary's functions, and ensure the effective management of human resources at the Secretariat.