



**Human and Peoples' Rights  
in Africa  
and  
THE AFRICAN CHARTER**

Report of a Conference  
held in Nairobi from 2 to 4 December 1985  
convened by the  
International Commission of Jurists

INTERNATIONAL COMMISSION OF JURISTS

box 9/10

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# Contents

Preface by Niall MacDermot, Secretary-General of the International Commission of Jurists.....	5
Address of Welcome by S. Amos Wako .....	8
Chairman's Opening Remarks by Taslim Olawale Elias, Judge and Former President, International Court of Justice.....	11
Message from H.E. Abdou Diouf, President of Senegal, Chairman of the Organisation of African Unity.....	14
Opening Speech by H.E. Daniel T. arap Moi, President of Kenya.....	16
Keynote Address «Introduction to the African Charter on Human and Peoples' Rights», by Kéba Mbaye, Judge, International Court of Justice, President of the ICJ.....	19
Summary of Discussion on the African Charter .....	51
Legal Services in Rural Areas, a working paper by the ICJ staff .....	56
Summary of Discussion on Legal Services in Rural Areas .....	66
Declaration No. 1 on South Africa .....	72
Declaration No. 2 on the African Charter .....	74
Text of the African Charter on Human and Peoples' Rights .....	75
Chart showing signatures and ratifications of the African Charter as of 1 January 1986.....	93
List of participants .....	95

## Preface

The International Commission of Jurists has over the years played a not insignificant role in the promotion of what has now become the African Charter of Human and Peoples' Rights.

In 1961 it convened the first all African Conference of Jurists at Lagos. The special rapporteur was Taslim Olawale Elias, now a Judge and former President of the World Court. That Conference recommended for the first time the adoption by the African Governments of an African Convention of Human Rights. This proposal was further developed at an ICJ Colloquium in Dakar in 1967, the report of which was distributed widely in Africa in French and English, and was supported in Conferences convened by the United Nations in Cairo and Monrovia and by the UN Economic Commission for Africa in Addis Ababa. Perhaps the decisive step was taken at a Francophone colloquium of the ICJ in Dakar in 1978 when the participants resolved to establish a follow up Committee. This Committee organised missions of leading African jurists to present the conclusions of the Conference in favour of an African Convention and Commission of Human Rights. These missions were received by the Heads of State or Prime Ministers of ten Francophone African countries.

On the occasion of the mission to President Senghor of Senegal, he asked to be given a draft resolution for submission to the next meeting of the Heads of State of the OAU. It was this resolution which led to the appointment of a Committee of Experts to draft what became the African Charter of Human and Peoples' Rights. The Rapporteur of the Committee was Judge Keba Mbaye, who was the President of the ICJ and of the follow-up Committee to the Dakar seminar. This Charter was adopted unanimously at the meeting of the Heads of State under the chairmanship of President arap Moi in Nairobi in 1981.

Under the terms of the Charter half the member States of the OAU need to ratify it before it comes into force, an exceptionally high proportion. By 1985, 15 states had ratified it, but another 11 ratifications were still required to bring it into force. The ICJ decided, therefore, to convene a Conference in Nairobi of its own members and of leading African jurists, mostly from countries which had not yet ratified the Charter, to discuss the implementation of human rights in Africa with particular reference to bringing into force the African Charter.

The other subjects on the agenda for discussion were the provision of legal services in rural areas and the Ombudsman institutions in Africa. The working paper on legal services in rural areas describes the steps taken by the ICJ to introduce in both Francophone and Anglophone Africa a system which has been introduced with marked effect in several countries of Asia and Latin America. This involves the training of 'para-legals' to act as a link between village populations and the lawyers in the towns. During the discussions various other projects in Africa were described. Unfortunately time did not allow more than a very cursory discussion of the Ombudsman institutions in Africa.

This report contains the opening speeches, the introductory report and a summary of the discussions on the African Charter, and the working paper and discussions on legal services in rural areas. It also contains the text of two declarations agreed by the participants, one on the situation in South Africa and one on the African Charter.

The participants agreed to establish in six regions of Africa follow-up groups to appeal to States which have not yet done so to ratify the Charter, to disseminate the conclusions of the colloquium among jurists, and to make available to the competent authorities any assistance required in clarifying the contents of the Charter.

Since the Conference a number of other States have already ratified the Charter and the ICJ joins with the participants in expressing the hope that this Conference may help to secure the additional ratifications required to bring the Charter into force.

The ICJ expressed its profound gratitude to His Excellency Daniel arap Moi, President of Kenya, for honouring it and the participants by consenting to open the Conference in the Kenyatta Conference Centre in Nairobi. It also wishes to thank the Minister of Justice, the Chief Justice, the Judiciary and the Bar Association of Kenya for the support they gave to the Conference and, not least, to the Kenya National Section of the ICJ whose members worked indefatigably to ensure the smooth working of the

Conference.

Finally, it offers its thanks to the government of Norway, the International Development Research Centre of Canada and the Ford Foundation for the financial support which made possible the holding of this Conference.

*Niall MacDermot*  
Secretary-General  
ICJ

April, 1986

**Extracts from the Address of Welcome**  
**by**  
**S. Amos Wako**  
**Kenyan Commission Member of**  
**the ICJ**

It is a very great honour and privilege to welcome, on this auspicious occasion, eminent jurists from some 40 countries. We greet you not as visitors but as colleagues and extend a warm welcome to you all.

Although the ICJ has organised seminars, colloquiums, conferences throughout the world including Africa, this is the very first time that it has held its Commission Meeting outside Europe and North America. That of all the third world countries Kenya should have been chosen to host such a meeting is in my view a tribute and recognition of the reputation Kenya enjoys internationally as a place of peace, stability and progress.

It is with pride and pleasure and with a deep sense of humility that I welcome our guests, in particular my colleagues, the Commission Members of the ICJ and eminent African jurists in the presence of my beloved President, His Excellency, the Hon. Daniel Toroitich arap Moi, the President of the Republic of Kenya, who has kindly consented to take time from his ever busy schedule to grace this opening ceremony.

My fellow Commission Members of the ICJ, eminent African jurists, distinguished guests, you are now in Kenya, a land whose people were colonized at the end of the 19th century but who were determined to be free and to this end waged a successful liberation struggle to establish its independence under a system which respects human rights. Kenya has



been fortunate in that both the Founder of the Nation and its First President, the late Mzee Jomo Kenyatta and his successor, the Hon. Daniel arap Moi have believed in laying a firm foundation for the rule of law to flourish. Both have regarded respect for life and the rule of law as one of the pillars of the Kenyan society. Indeed, one of the first pronouncements by our President on assuming office was that his Government was fully committed to the protection of human rights, the rule of law and democracy in its efforts to establish a just society. The President is a firm believer in the dynamic concept of the Rule of Law under which the Rule of Law should be employed not only to safeguard and advance the civil and political rights of the individual in a democratic society, but also to establish economic, social, educational and cultural conditions under which the individual's legitimate aspirations and dignity may be realised.

My fellow ICJ Commission Members, eminent African jurists and distinguished guests, I welcome you all to Nairobi. It was here in this Kenyatta International Conference Centre that the historic document, which will be discussed at this Conference, the African Charter on Human and Peoples' Rights, was unanimously adopted at the meeting of the OAU Assembly of Heads of State and Government in June 1981, under the Chairmanship of His Excellency the Hon. Daniel arap Moi.

I am glad that His Excellency Keba Mbaye, Judge of the International Court of Justice who was the chairman of the Committee of Experts appointed by the Secretary-General of the OAU to draft the Charter is here with us to deliver a key-note address and will no doubt guide us in our deliberations. The Charter awaits the ratification of at least 26 member states of the OAU before it can come into force. It is the earnest desire and hope of all of us that Kenya, which has one of the best records in Africa in matters related to the respect and protection of human rights, will be one of those countries ratifying the Charter.

In English, I wish our guests «Welcome» and in our national language, Swahili, I say «Karibuni».

My other task this morning is to introduce and call upon H.E. Taslim Olawale Elias, who is the Chairman of this opening session. To introduce Judge Elias is both a simple and a difficult task. Simple because he is very well known. Difficult because to do justice by mentioning the important things that he has done in his life will take a better part of the day. The bibliography of what he has written in itself forms a sizeable book entitled «A Bibliography of the Writings of the Honourable Judge T.O.

Elias». Suffice to say he is currently a Judge of the International Court of Justice, the first African President of the International Court of Justice, former Chief Justice, former Minister of Justice and Attorney General of Nigeria, former Chairman of the International Law Commission, and has been Professor of Law at various universities. His relationship with Kenya goes back to the late 1940s when he was carrying out research in African customary laws. In 1981 he delivered the Gandhi Memorial Lectures at the University of Nairobi, and in 1983, the University of Nairobi conferred upon him the Honorary Degree of Doctor of Laws.

May I now call upon His Excellency Taslim Olawale Elias, a living legend among the legal fraternity, to deliver his opening remarks as Chairman of this Session.

**Chairman's Opening Remarks**  
**by**  
**Taslim Olawale Elias**  
**Judge and Former President of the**  
**International Court of Justice**

This Conference is being held with two main themes in view:

- (a) The African Charter of Human and Peoples' Rights  
and
- (b) Legal Services for the Rural Areas.

The discussion on the African Charter is to be devoted to identifying the obstacles to ratification and seeking ways of overcoming them. The second theme is in continuation of the pursuit at non-governmental organization and grass-roots level in both West and East Africa, following the meeting with CODESRIA in 1983 and the workshop in Tambacounda, Senegal, in April 1984. In October 1984 there was held a very successful seminar in Limuru, Kenya, attended by both lawyers and community development experts from 14 Commonwealth countries in Africa. It is hoped a number of pilot projects will soon emerge. With regard to the African Charter, the story dates back to 1961, when the African Conference, the first of its kind in Africa, was held by the ICJ in Lagos, on the Rule of Law, with 194 judges, practising lawyers and teachers of law from 23 African nations, as well as nine other countries. It reached conclusions regarding —

- (i) Human rights in relation to government security

- (ii) Human Rights in relation to aspects of administrative law
- (iii) The responsibility of the Judiciary and of the Bar in the protection of the rights of the individual in society.

This conference also adopted a Declaration inviting the African governments to study the possibility of establishing an African Convention of Human Rights that would protect individuals aggrieved by the violation of public or private law, and enable them to seek redress before an international tribunal of appropriate jurisdiction. It ended with the adoption of what was christened the «Law of Lagos», the gravamen of which is a commitment of all the governments of the countries from which the participants came to constitutional propriety in government and the avoidance of tyranny everywhere, including the requirement that lawyers and judges should always be made the cornerstone of civilized governmental behaviour (see Journal of the ICJ, Volume 113, (1961) p. 2-28).

The next stage in the development of the idea was reached when the African Commission of Jurists was established in Lagos in 1963 with the aim, *inter alia*, of establishing a Human Rights Charter, with the same aim as that expressed in 1961 but, after the constitution of the new Commission had been settled, together with the relevant instrument, the matter was decided to be referred to the Organization of African Unity Headquarters in Addis Ababa, and that proved the end of the matter.

The whole question of an African Charter was resurrected by the United Nations Conference on the subject which was held in Monrovia, Liberia in July 1979, to which both Judge Keba Mbaye and I were invited to submit background papers for the formulation of the proposed Charter. Then there followed in Banjul, the Gambia, an Organization of African Unity Conference, which drew up the Charter of Human and Peoples' Rights in January 1981. The final stage of the somewhat long process was reached when the Heads of State and Government of the Organization of African Unity adopted it in June 1981 here in Nairobi. As the progress of the ratification by States appeared to be slow, the Secretary-General of the ICJ, Mr. Niall MacDermot, wrote to Judge Keba Mbaye and myself in the first part of 1983 inviting us to address a joint Letter of Appeal to a number of Heads of States and Government of the Organization of African Unity urging them to take early steps in effecting ratification so as to bring the Charter into force as early as practicable. This we did and the result was that some 15 African governments gave favourable reactions to our appeal by sending letters to Mr. Niall MacDermot. This is a progress

report of what has happened to the Charter up to date.

The importance of discussing this Charter at the present Conference can hardly be over-emphasized, not only because of the epoch-making character of the Charter in the international law-making process that it represents, but also because it is fundamental to the emergence of true democracy in the newly emergent nations of Africa. Our continent is in very short supply of democracy and anything that we can do to overcome this serious deficiency must be done for ourselves and for posterity. The other day, at the African Regional Conference of the International Bar Association held in Lagos from August 1 to 3, 1985, I was privileged to give, at the invitation of the President of the International Bar Association, a keynote address entitled «Organization and Development of the Legal Profession in Africa, in Particular the Ability of the Bar and the Judiciary to Uphold the Rights both of the Citizen and the State». I hope that the challenge which I threw down to our legal profession and the judiciary will be taken up in earnest by the profession, demonstrating once more what we can do as African lawyers and judges in the field of the promotion of human rights in our time.

May I conclude by making a passionate appeal to all the Heads of States and Government of the Organization of African Unity to lend all their energies towards the achievement of the ratification of the Charter at the earliest possible date. In view of the various problems of instability and complaint of violations of fundamental human rights by minorities, groups, as well as by individuals, in most of our present countries, there is no more appropriate stage for the bringing into force the prevalence of the Rule of Law and the enthronement of democratic government in our various countries.

**Message from  
President Abdou Diouf  
President of Senegal and  
Chairman of the  
Organisation of African Unity**

At the time when the ICJ is holding a Conference in our continent devoted to the «implementation of Human Rights in Africa», I am particularly happy, as President of the Organisation of African Unity (OAU), to send you our warmest congratulations on this initiative and to repeat to you the commitment of the most highly placed African leaders to the promotion and protection of human rights.

Indeed, it was here in Nairobi that in July 1981, the Heads of State and of Government of the OAU adopted the African Charter on Human and Peoples' Rights, thus manifesting their firm resolve to complete and to define the general principles and guidelines in this field in the constituent Charter of the pan-African Organisation. This new legal instrument provides in particular for the principles of non-discrimination, of equality before the law, of liberty of conscience, and of the right to information, universally accepted by the international law of human rights.

But side by side with these rights, which it is now agreed should be called rights of the first and second generations, there are to be found «rights of solidarity» such as the right to development, the right to peace and the right to the environment, as well as the duties of the individual towards the family and society, towards the State, other communities and the international community.

In doing this, the Heads of State and of Government were assuredly concerned to reconcile the necessary promotion of human rights with the African concept of man and at the same time to express their demands for peace and international security, and the fair division of the wealth and natural resources common to all mankind.

I am sure that this resolve which underlines the 1981 Charter and which has remained intact has not escaped the wisdom of the distinguished jurists you are and will occupy your attention in the course of your discussions. I also know that you will have regard to the measures by which the African Charter of Human and Peoples' Rights proposes to ensure the application of and respect for the principles it has enunciated.

These measures fall within the competence of the Conference and the Heads of State and Government of the OAU assisted by a Commission, the highest African political body thus having the last word in the promotion and protection of human rights.

I am sure that your discussions will emphasise this, and nourish the hope that your reflections will result in proposals which will help to stimulate those states that have not already done so to sign and ratify the African Charter on Human and Peoples' Rights.

Being convinced that the rapid implementation of this legal instrument will reinforce the struggle of the OAU and all its members for the recognition in South Africa of the application of fundamental human rights to the majority of the population in this country, I wish your work every success.

# **Opening Speech**

by

## **H.E. Daniel T. arap Moi**

### **President of Kenya**

I wish first to welcome all the distinguished delegates to our capital city of Nairobi, to our country and to the continent of Africa. For some of you this may be your first visit to Kenya and indeed, to the continent of Africa. I assure you all that you are most welcome among your brothers and sisters.

I take this opportunity as well to express the sincere gratitude of the Kenyan people for your decision to hold this important conference in our country. I do hope that you will find the facilities we offer useful for your important deliberations, and that while you are here you will find time to see the rest of our country and meet more of our people.

The topics you have chosen to deliberate on for the next three days are matters which dearly concern all of us. The enactment of the African Charter of Human and Peoples' Rights, the provision of legal services for rural populations and the establishment of institutions which give protection against violation of human rights, are all fundamental to the well-being of the democratic societies we have been developing over the past two to three decades in independent Africa.

Distinguished delegates to this conference are fully aware of the long period of colonial domination which faced African countries and the denial of basic human rights which was an essential part of that domination.

It is therefore, only natural, for matters concerning liberty, equality,



justice and human dignity to be at the forefront in the effort of African communities to remould their societies. And it is not surprising that immediately after attaining political independence, African countries set about making the necessary legislation to provide the rights which their people were denied for so long.

I therefore have no doubt in my mind that I speak for all Africa in assuring you that we look forward to the outcome of your deliberations here with much hope and anticipation.

You will except me to say something about the situation here in Kenya concerning the important issues you will discuss. I am glad to say that in Kenya, we have succeeded where many others have failed. We have created a united and peaceful nation from the remains of a colonial society which was divided along racial, ethnic and religious groupings for more than 70 years.

We have, as a result, enjoyed a unity and stability during the past two decades which has enabled us to devote our resources towards the improvement of the well-being of our people. It is not as a result of chance, nor is it a historical accident, that we have managed to do so much for our people in such a short period.

The right of every individual, irrespective of his race, tribe, creed or colour is enshrined in the Constitution of Kenya. We strongly believe and guarantee that everyone has the right to life, personal liberty, protection from slavery and forced labour.

All Kenyans are guaranteed their freedom of expression, conscience, assembly and association. No-one, irrespective of his race, tribe, place of origin, creed or sex, can be discriminated against in our society.

I assert today that it is through this adherence to our constitution, which has always been strengthened and fortified by our own African tradition of solving disputes through reconciliation rather than through contentious procedures, that we have managed to achieve success. I will add as well, that we have no intention of deviating from this orderly conduct of our affairs.

Internationally, Kenya's record is well understood. We have never shied away from the communal obligation to support and uphold international covenants which seek to protect and guarantee fundamental human freedoms and dignity.

On our own continent we have supported and we are committed to the principles of African brotherhood and mutual co-existence as enunciated in the Organisation of African Unity Charter and subsequent legislation.

Kenya is indeed proud that the African Charter on Human and Peoples' Rights was adopted by the Assembly of Heads of State and Government here in Nairobi in June 1981.

The document has been examined by my government, and it is clear that the Charter covers the same issues which we have provided for in our Constitution. As such, we have no objection to the basic aims and objects of the African Charter, and we look forward to finalising the remaining legal procedures which will enable us to accede to this charter.

I note with encouragement the good work that has been done by the ICJ in all corners of the world to restore human rights and the rule of law in areas where these have been disrupted.

I am particularly gratified by the work that has been done to bring to light the injustices that are being committed in South Africa, which has blatantly defied international opinion against apartheid. We shall no doubt continue working together in our efforts to bring the inhuman system to an end, so that justice, equality and human dignity is restored in that part of our continent.

I commend the ICJ for seeking to introduce a programme for providing legal services in rural areas in Africa, along the lines of similar programmes which have succeeded in Asia and Latin America.

As you all know, most of our people live in the rural areas where access to legal assistance is limited due to many factors. We therefore stand to gain much from such a system.

As you deliberate on ways of establishing such a system for Africa, you can count on the support of each and every Kenyan.

I now conclude my brief remarks today with a hope. A hope which I know I share with all peace-loving peoples of the world, that your deliberations will contribute much towards creating a more peaceful and just world. A better world for all of us to live in.

It is now my great pleasure to declare the ICJ Conference officially opened.

**Keynote Address**  
on the  
**African Charter on Human  
and Peoples' Rights**  
by  
**Kéba Mbaye\***

Ladies and Gentlemen,

It is now 25 years since that historic event, the Lagos Conference of 1961, and the ICJ is once again gathering you together, eminent African jurists that you are, in order to discuss the problem of «The implementation of human rights in Africa», which is essential for the men and women of this continent.

**I. Historical Background**

In January 1961 in the order of 200 jurists from 23 African countries met in Lagos for the first time as a result of the initiative of the ICJ to examine the theme of the «Rule of Law». The idea of setting up an African human rights commission was launched at that Conference. Maurice Glélé places the origins of the idea further back. According to him, already in 1943, Doctor Nnamdi Azikiwé, an outstanding figure in contemporary Africa, in

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\* Judge at the International Court of Justice and President of the International Commission of Jurists.

his memorandum on 'The Atlantic Charter and British West Africa' advocated the adoption of an African Convention on human rights\*\*. The Lagos Conference ended with the adoption of a paper containing conclusions and recommendations entitled: «The Law of Lagos». The idea of setting up an African commission appears in this paper in the form of a recommendation.

The Lagos recommendation was not followed up immediately, although everything justified a certain optimism. Karel Vasak, one of those present at the Lagos Conference wrote in 1962 that the way appeared to be open for an African human rights convention. There was, however, no echo to the voice of Nnamdi Azikiwé (President of the Republic of Nigeria at the time when the first Conference of African jurists was held) when he recommended that the Council of African States should enact an African human rights convention, as a pledge of their faith in the supremacy of the law, and in so doing made himself the advocate of the cause defended at Lagos. His voice was lost in the savannah and the forest, where the new leaders were more concerned with State security and the social and economic development of their populations. A fact that no-one would attempt to deny is that human rights were not a major concern of African States after each had gained its independence, nor of the OAU at the time it was set up. From the opening, on 22 May 1963, of the Addis Ababa Conference that established the OAU, Emperor Haile Selassie set down in his introductory speech the themes that were to become the true concerns of Africa: unity, non-interference and liberty. This was clearly expressed by Biram Ndiaye when he wrote that:

«For the OAU, apart from racial discrimination and the right of the peoples to self-determination, it is not necessary to engage in close monitoring of human rights.»

In fact, political and economic independence, non-discrimination and the liberation of Africa were the immediate objectives to be achieved for the Organisation of African Unity. In 1963, Africans were under the cloud of their backward economy, the fragility of their independence, the need to regain their unity and the persistence of colonialism and its conse-

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\*\* Maurice Glélé Ahanhanzo, «Introduction à la Charte africaine des Droits de l'homme et des peuples», in «Droits et libertés à la fin du XXe siècle, influence des données économiques et technologiques», Studies offered to Claude-Albert Colliard, Pédone, 1984, p. 313.

quences on the continent. This particular sensitivity manifested itself in a proliferation of commissions of a political and economic nature and a relative indifference with regard to juridical institutions in general and human rights in particular.

However the Charter of the OAU does lay down in its Preamble that:

«Liberty, equality, justice and dignity are essential objectives in the achievement of the legitimate aspirations of the peoples of Africa.»

And who could deny that the protection of their rights are and remain a fundamental aspiration of these peoples?

The idea of setting up an African human rights commission was, however, indefatigably pursued on several occasions by African jurists and particularly at the various study cycles on human rights organised by the United Nations. This was the case in particular in Dakar (Senegal) in 1966, in Cairo (Egypt) in 1969, Dar-es-Salam (Tanzania) in 1973 and Monrovia (Liberia) in 1979. For its own part, the ICJ was not discouraged as a result of the tenacity of its Secretary-General, Mr. MacDermot, to whom I wish to pay public homage. It undertook and conducted numerous conferences and symposia in Africa. For tactical reasons it concentrated its efforts in Francophone Africa. Consequently it organised two meetings in Dakar in 1967 and 1978. On each occasion the participants reverted to the same idea and formulated it definitively as an urgent request to the OAU.

In the same year of 1978, the UN, through its Commission on Human Rights, renewed its previous calls in a courteous and discreet, but nevertheless unequivocal manner. In resolution 24 (XXXIV) of 8 March 1972, it invited the OAU to undertake the establishment of a regional human rights commission, and even promised assistance from the Secretary General of the Organisation if this were needed.

African jurists joined their voices with those of the UN and the ICJ. Many articles were published on the subject of human rights in Africa in scientific magazines, newspapers and reviews. Unfortunately no attention was given in Africa to these proposals. Seminars followed upon conferences with no positive outcome. Resolutions and recommendations swelled the dossier of the project for an African human rights commission. The 1978 Colloquium in Dakar was the only exception to the multiple failures following upon the efforts undertaken with determination from all quarters. Organised by the ICJ in collaboration with the Senegalese Association of Legal Studies and Research on the subject of «Development and

human rights», the Colloquium was more than a theoretical analysis of the concept of development in relation to human rights. Its participants made an in-depth analysis of the issue of development and human rights in Africa from the dual stand-point of the present and the future, and decided to make firm proposals to the States. Noting that meetings and conferences always finished with expressions of good-will, they formed a so-called «follow-up» committee, composed of four eminent Africans, to follow up closely (as its name would indicate) the implementation of the conclusions and recommendations. This committee undertook many journeys to French-speaking Africa, to countries carefully chosen for the presumed support of their leaders for human rights and for their influence within the OAU. Its members explained to the heads of State and the political authorities that it was necessary and urgent for Africa to have a human rights commission. They emphasised the reasons which had led the African jurists gathered together in Dakar in September 1978 to draw up firm proposals on this subject. In view of the replies they obtained and the future development of the issue, it seems that their efforts were not in vain. It was as a result of their visit to Senegal that President L.S. Senghor agreed to present a resolution for the establishment of an African human rights commission at the next session of the OAU and made the President of the Supreme Court of Senegal, President of the Committee, responsible for preparing a draft text. It was the Senghor draft, duly amended by the addition of the «peoples' rights» that was adopted by the OAU.

This is the way in which the resolution was born which was to give rise to Resolution 115 (XVI) of the Assembly of Heads of State and Government of the OAU at its Sixteenth Ordinary Session held in Monrovia (Liberia) from 17 to 20 July 1979. This Decision instructed the Secretary General of the OAU to bring together a committee of high level African experts who were to be responsible for the preparation of «a preliminary draft on an African Charter on Human and Peoples' Rights providing *inter alia* for the establishment of organs for the promotion and protection of human and peoples' rights».

At the request of the Secretary General of the OAU a preliminary draft of an African charter of human and peoples' rights was prepared on the basis of this resolution. Given the task of preparing this text, I was admirably assisted by Professor Ibrahima Fall and by the Supreme Court Judge Mohamadou Mbacké. The meeting of African jurists was held in Dakar from 28 November to 8 December 1979. It gathered together some 20

professors, judges and advocates. It was opened by President L.S. Senghor in the presence of the Secretary General of the OAU: their important speeches were recorded in the working documents of the experts. The experts directed their efforts towards a number of points, including in particular:

- to be inspired by the traditions of African society and the principles upon which such traditions are based;
- to respect the political options of States and consequently to ensure a balance between the various doctrinal systems current in Africa;
- to avoid favouring in one way or another individual or collective rights, civil and political or economic, social and cultural rights;
- to give a content acceptable to all to the peoples' rights to which express reference was made in resolution 115 of the OAU;
- to ensure the protection and promotion of the human rights declared and accepted as such through the activities of a commission, although reserving the powers of the Assembly of Heads of State and Government which must be associated with the final decisions;
- not to exceed that which African States were ready to accept in the field of the protection of human rights.

The text that issued from this meeting was to be submitted to a conference of plenipotentiaries. This was convened in Addis Ababa on 24 March 1980. Unfortunately the delegates had to leave in the absence of the necessary quorum. A number of newspapers interpreted this set-back as a deliberate policy on the part of certain States to kill the Charter in its cradle.

Another meeting was planned by the Secretariat of the OAU in the form of a ministerial conference of the OAU. It was held in Banjul (the Gambia) over two sessions: the first from 9 to 16 June 1980 and the second from 7 to 19 January 1981. At the first session only the Preamble and Articles 1 to 11 of the preliminary draft were examined. On being informed of this semi-failure, the Assembly of Heads of State and Government confirmed resolution CM/Res 712 (XXXV) of the Ministerial Conference, requesting the work of the Conference to be taken up again and specifying that it should make all necessary efforts to bring to a conclusion the examination of the draft of the Charter and to ensure that the final text was submitted to the 18th Session of the OAU. The draft Charter was adopted at the Second Session in an atmosphere of willingness to bring it

to a conclusion. The Assembly of Heads of State and Government in its turn examined and adopted in Nairobi (Kenya) in June 1981 the text that has become the «African Charter on Human Rights and Peoples' Rights».

I wished to retrace this historical background, which gives an idea of the enormous difficulties that had to be overcome in order to arrive at the adoption of the Charter, in order to illustrate clearly that the implementation of human rights is a lengthy task, but that the time has now come for every African man and woman to be aware of the necessity of ensuring for everyone the protection of his rights within the coherent and balanced framework created by the African Charter on Human and Peoples' Rights of which the *basic principles*, the *recognised rights and duties* and the *system of promotion and protection* are the outcome of reflection over a long period.

## II. Basic Principles

The basic principles of the African Charter on Human and Peoples' Rights can be grouped under three headings:

- concerning the values of African civilisation;
- concerning the philosophy of the law and human rights;
- concerning the influence of socio-political factors.

### 1) Basic principles concerning African values of civilisation

In his opening speech at the Conference of African experts given the task of drawing up the preliminary draft of the African Charter on Human and Peoples' Rights, Mr. Léopold Sédar Senghor, then President of the Republic of Senegal, said that:

«During the discussions concerning Article 63 of the European Human Rights Convention, when I was a member of the French Parliament, I cautioned the negotiators, whose tendency was to draft a declaration for *homos europeus*. Article 63 referred to the automatic application



of the provisions of the Conventions to overseas territories. Its final version did not conform to my wishes.»

and he added:

«Europe and America have built their system of rights and liberties with reference to a common civilisation, to their respective peoples and to specific aspirations.»

...

«It is not the case for us Africans either to copy or to seek originality for the sake of originality. We will need to show proof simultaneously of imagination and effectiveness. We may find inspiration in those of our traditions that are good and positive. You should therefore always bear in mind the values of our civilisation and the real needs of Africa.»

In reply to the speech by President Senghor, the Secretary General of the OAU emphasised in his turn that:

«By requesting a Charter of human rights and peoples' rights to be drawn up, the African Heads of State intended to signal the beginning of a new era, opening out for the majority of our nations, the adaptation of our principles to fit criteria of responsibility and the re-thought value of our traditions.»

Finally, Mr. Daouda Diawara, President of the Republic of the Gambia, addressed the Ministerial Conference, which met in Banjul on 9 June 1980 for the adoption of the African Charter on Human and Peoples' Rights, in the following terms:

«A truly African Charter should reflect our traditions which deserve to be preserved and our values, and the legitimate aspirations of our peoples, in order to complete the global international effort made to reinforce respect for human rights.»

The basic concern of African leaders can be identified here: to draw up a Charter that respects traditions and customs that are judged to be

worthwhile and at the same time to be integrated into worldwide and regional rules drawn up the world over in order to promote and protect individual and collective rights. This idea was communicated to the group of experts and the Ministerial Conference to serve as a guiding thread. It was also taken up in the Charter, both in the Preamble and in the body of the text.

In the Preamble it is stated that account will be taken of «the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights.»

Article 17 of the Charter, in paragraph 3, also specifies that «the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State within the framework of safeguarding human rights.»

Many other Articles of the Charter take up prescriptions relating to certain cardinal values in Africa. This is the case of those concerning the family, its role and its rights, the elderly, women and children, communities and their prerogatives, as well as the duties of the individual within the community to which he belongs.

## 2) Basic principles concerning the philosophy of the law

On one side this involves respect for the African concept of law and human rights, and on the other, adaptation of the Charter to developments in the theory of human rights.

### a) *The African concept of the law and human rights*

#### i) The relationship between rights and duties:

Yosiyuki Noda notes in a penetrating book devoted to the philosophy of Japanese legal thought, that the West sees the law as an opposition between the individual and the entity representing the community, namely the State, whereas the East regards the law as a series of measures protecting the individual within his community.

Juon des Longrais made the same observation in relation to what he called «Confucian Asia».

The same remark could be made on the subject of African society: in Africa, laws and duties are regarded as being two facets of the same reality: two inseparable realities. Consequently it is no surprise to find, for the first time in a treaty of this type, a list of the duties of the individual towards the community in the African Charter on Human and Peoples' Rights. This concept has at times been criticised on the grounds that a Charter on human rights should remain silent on the duties of the individual. Such a point of view does not conform with the African concept of the law, and moreover there is often a tendency to forget that Article 29 of the Universal Declaration of Human Rights specifies that:

«Everyone has duties to the community in which alone the free and full development of his personality is possible.»

ii) The community, a privileged subject of law:

In Africa, the community is a privileged subject of law, whatever form it may take (clan, ethnic group, tribe, etc.). This concept reinforces the solidarity between members of the same community. The African Charter on Human and Peoples' Rights reflects this solidarity. This explains the importance it gives to collective rights and in general terms justifies its provisions concerning national and international solidarity.

iii) Aversion to the adoption of judicial solutions

According to African conception of the law, disputes are settled not by contentious procedures, but through reconciliation. Reconciliation generally takes place through discussions which end in a consensus leaving neither winners nor losers. Trials are always carefully avoided. They create animosity. People go to court to dispute rather than to resolve a legal difficulty.

Consequently the African legislation, at the national as well as the international level, always avoids resorting to tribunals. An illustration of this can be found in the OAU Convention of 10 September 1969 concerning the African aspects of the refugee problem. This Convention is based on the Universal Convention of 1951 and its Protocol of 1967. But whereas the latter Convention resorts to a judicial solution to resolve the difficulties that could arise from its application, the African Convention of 1969 avoids this solution. Other examples could be given to show that

there is a certain aversion in Africa to the adoption of judicial solutions in cases of dispute.

*b) Developments in the theory of human rights*

The African Charter on Human and Peoples' Rights was adopted at a time when major developments in the theory of human rights could be observed. The features of this theory can be enumerated as the increased importance of economic, social and cultural rights, greater consideration given to collective rights, the emergence of rights known as «third generation rights», a new conception of the duties of the individual and an worldwide consideration of human rights.

*i) The importance of economic, social and cultural rights*

It is through the efforts of the socialist countries, and in particular the Soviet Union, that the Universal Declaration of Human Rights of 1948 reserved a relatively important place for economic, social and cultural rights.

Today one of the Covenants of 1966 is devoted to this category of rights.

*ii) Collective rights*

The Universal Declaration of Human Rights did not speak of the right to self determination. It needed the mass arrival on the international scene in the 1960s of the formerly colonised States for this right to be given the place it was due, as a result of the adoption of resolution 1415 (XV) of 30 January 1960. This right has since appeared to be the most fundamental of all. It occupies the first Articles of the two Covenants of 1966 in the same terms. The African Charter on Human and Peoples' Rights took these developments into account when it enshrined the right of peoples to existence, equality, self-determination and freedom to dispose of their natural wealth and resources.

*iii) Emergence of third generation rights*

Karel Vasak maintained that civil and political rights are based on

the principle of liberty, whereas economic, social and cultural rights derive from the principle of equality. In the case of the former category of rights, an abstention is required of the state: in effect the state must avoid preventing the exercise by individuals of the rights and liberties that are recognised as theirs.

Conversely, for the enjoyment of the second category of rights the state must make provision for their achievement. Such rights could be categorised by saying that civil and political rights are «rights of», while economic, social and cultural rights are «rights to». These first and second generation rights are now completed by third generation rights, the achievement of which can no longer be obtained merely by abstention or provision on the part of the state, but requires solidarity between people and states. These rights of solidarity are basically the right to peace, the right to the environment and the right to development. There are, however, other such rights. The African Charter on Human and Peoples' Rights enumerates the three rights that the OAU recognises and safeguards.

#### iv) The importance of duties

The importance of duties appears in present day society as a new factor, where 20 years earlier emphasis was laid only on the rights of the individual.

I have already mentioned the special nature of duties in traditional African society. The Charter takes this into account in Article 27 in particular.

#### v) Overall conception of human rights

The subdivision of human rights is increasingly being avoided. Indeed, the most recent developments tend to take a universal view of them, so as not to give them a hierarchical structure or to regard only a number of them as being necessary for a particular category of society or population.

### 3) Basic principles concerning the importance of socio-political factors

The African Charter on Human and Peoples' Rights had to take into

account the special socio-political features of the African continent: its under-developed state, its diversity with regard to geography, ethnic groups and other factors and the variety of its political, economic and cultural concepts. Fundamental importance had also to be given to a phenomenon that has developed under a dual aspect in Africa: colonisation and racial discrimination.

Even a rapid reading of the Charter makes it evident that its authors wished to respect the diversity of Africa and the political options of the various States composing the OAU. It was also particularly necessary to give pride of place to the principle of non-discrimination and at the same time emphasise the determination of the African peoples to combat the vestiges of colonialism.

### III. Legal Techniques Used by the Charter

I propose to examine here the way in which the authors of the Charter approached and solved the various legal aspects involved in drawing up a text of this kind.

#### 1) Declaration, promotion and protection

There is no specific text serving as a declaration of rights. Declaration, promotion and protection are dealt with together.

The scheme of the Charter is simple. It includes a first section devoted to rights and duties and a second section dealing with measures of safeguard. The rights and duties are enumerated and recognised and their protection is ensured. The Charter envisaged fundamental rights which can be distinguished from others by the fact that they may not be subject to any derogation. The other rights are those traditionally recognised: non-discrimination, equality before the law, freedom of opinion, association and movement, the right of asylum, the right of property, etc.

The Charter declares and recognises economic, social and cultural rights and in particular the right to health and education and the right of certain categories of persons and of the family as a whole.

Finally, the three third generation rights mentioned above are set out and recognised.

Beside the rights of individuals are the rights of peoples. The first of

these is the right to self-determination and its corollary, the right to dispose freely of wealth and natural resources. Mention should be made of the importance given to duties of international cooperation based on mutual respect, fair exchange and the principles of international law.

The Charter envisages duties of the individual, the family and the State. States have the duty of ensuring the independence of the courts, of promoting and protecting human rights, of ensuring development, strengthening the family and taking the necessary measures for the provision of education to the population and for the teaching of human rights.

The family has received the mission of being the «custodian of morals and traditional values recognised by the community». A distinction is consequently drawn between positive respectable values and those which are not worthy of being maintained. Finally, duties towards the family, the State, the African international community and the universal community are incumbent upon the individual. The individual also has duties towards other members of the community. In particular he must respect the rights of others, abstain from all discrimination and practice tolerance.

## 2) Other techniques used by the Charter

### a) *States parties to the Charter*

Only member States of the OAU may be parties to the African Charter on Human and Peoples' Rights.

This restriction is understandable and is justified for two reasons: firstly it is an African Charter and it is consequently normal that only African States can become parties to it. However, comparison with the European Human Rights Convention would have made it conceivable for any African State to be able to sign, ratify or adhere to the Charter. This is not the case. The promotion and protection mechanism envisaged in the Charter is fixed to the organs of the OAU: the general secretariat and the Assembly of Heads of State and Government, as I will show when referring to the African Commission on Human and Peoples' Rights. Under these conditions only member States of the OAU are able to become parties to the Charter. This is envisaged in Article 63, paragraph 1, which provides that «The present Charter shall be open to signature, ratification or adherence of the member States of the Organization of African

Unity». Moreover, straightaway in the Preamble it is stated that it is the «African member States of the Organization of African Unity», parties to the present convention who have agreed on the provisions constituting the Charter.

*b) Signature, ratification and adherence*

Before any signatures or ratifications, the Charter was adopted by the Assembly of Heads of State and Government as mentioned above. It was adopted unanimously.

Article 63 of the Charter stipulates that it is open to signature, ratification or adherence. No choice is made with regard to the way in which the consent of States wishing to be parties to the Charter is to be expressed. It is however a solemn form. Article 63 also stipulates that instruments of ratification or adherence shall be deposited with the Secretary General of the OAU.

*c) Coming into force*

The preliminary draft adopted by the Committee of Experts included a provision to the effect that the Charter would be applied provisionally immediately upon its adoption and signature by the Heads of State and Government. It was to come into force definitively in the case of each State three months after the reception of its instrument of ratification or adherence.

The provisional application of the Charter was a means of overcoming the delays often experienced in the case of treaties of the same type as the African Charter on Human and Peoples' Rights concerning their coming into force. It was envisaged that immediately upon the provisional coming into force of the Charter, the election of the members of the African Commission on Human and Peoples' Rights would take place. The Secretary General of the OAU was even to convene the first meeting of the Commission. The Charter would consequently come into force *de facto* even in the absence of ratifications.

Unfortunately this provision was not retained by the Ministerial Conference. Provisional application was not included and was replaced by a paragraph of Article 63 stating that the Charter would come into force «three months after the reception by the Secretary General of the instruments of ratification or adherence by a simple majority of the member



States of the Organization of African Unity», that is 26 ratifications. This is an abnormally high number and exceeds that generally laid down for the coming into force of treaties dealing with similar subjects, although there are no rules in this respect. It can nevertheless be pointed out in illustration that in the cases of the two international Covenants the number of ratifications required was 35, or in the order of a quarter of the total number of States. The international convention on the elimination of all forms of racial discrimination envisaged 27 ratifications, or in the order of 1/6th of the member States of the UN. In the case of the international convention on the elimination and suppression of the crime of *apartheid*, only 20 ratifications were required, or 1/8th of the States concerned.

It is not therefore surprising that the 26 ratifications have not yet been achieved. However, efforts have been made by the ICJ and the Association of African Jurists to obtain 26 ratifications. Mr. Elias, then President of the International Court of Justice, even wrote jointly with the author of this paper to all the heads of State in Africa on this subject. Unfortunately, despite this initiative, at the present time there are only 19 signatures and 15 ratifications. This means that 11 instruments of ratification must still be received for the Charter to come into force.

The specific coming into force for each State occurs three months after the date of reception of its instrument of ratification or adherence. The States must be informed of the reception of each instrument of ratification or adherence by the Secretary General who was appointed the depositary of such instruments. This provision was intended to stimulate emulation, but does not appear to have achieved its objective.

It is not without use to recall that the Assembly of Heads of State and Government had shown a certain urgency in the drafting and adoption of the Charter. Between the date on which the decision was taken to convene a Committee of jurists and that on which the Charter was adopted, less than two years elapsed. There is no doubt that this showed an indisputable will to bring matters to a conclusion. It may therefore be deduced that the slowness observed in the process of ratifications is not the result of a deliberate policy, but rather due to chance factors which could certainly be overcome.

#### d) *Amendments, revision and supplements*

Conscious of having adopted a useful instrument which however

requires to be perfected, the authors of the Charter envisaged provisions concerning its amendment and revision.

The Charter constitutes what the African States were able to accept in 1981 and was therefore only a stage. It is to be hoped that it can be improved at a later date. The provision concerning additions which may be added to it is in response to this objective. Indeed, under Article 66, «Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.»

Article 68 deals with amendments and revision and needs no particular commentary.

*e) Reservations, denunciation and withdrawal*

The Charter does not include provisions concerning reservations, denunciation and withdrawal. This is not an omission. An amendment concerning reservations and denunciation was presented by the Congo, Niger and Central Africa at the Bangui Conference. The amendment was rejected.

With regard to reservations, it is not in doubt that these can be made by States at the time of signature, ratification or adherence. This point of view is in conformity with the law of treaties.

However, the Charter contains no Article concerning its abolition, nor does it envisage denunciation or withdrawal. It might therefore be thought that it could not be the subject of a denunciation or withdrawal. The rejection of the amendment mentioned above would tend to reinforce the same idea. This is not, however, the case. Indeed, «it was clearly the intention of the parties», to quote the terms of Article 56 of the Vienna convention on the law of treaties, to admit the possibility of denunciation or withdrawal. It was on this condition that the above amendment was rejected.

#### **IV. Promotion and Protection of Human Rights**

Under this heading I will examine the organisation and competence of the African Commission on Human and Peoples' Rights and the procedures to be followed before it for the protection and promotion of the rights recognised by the Charter.

## 1) Organisation

The African Commission on Human and Peoples' Rights (hereinafter referred to as the Commission) presents no very original features in respect of its organisation in comparison with its predecessors: the Interamerican Human Rights Commission and the European Human Rights Commission.

### a) Headquarters

The African Charter on Human and Peoples' Rights gives no indication of the seat of the Commission. Article 30 merely states that the Commission is established within the OAU. Should it be concluded that the seat of the Commission is fixed in Addis Ababa? Apparently the answer is affirmative. Nevertheless the collegial organs of the OAU can meet in other African cities. Furthermore, Article 46 of the Charter envisages that the Commission can resort to «any appropriate method of investigation»; it is therefore able to carry out on the spot investigations. It should be logically deduced that it can have external sessions, which would not affect the fact that the Commission has the same seat as the organisation on which it depends (the OAU).

### b) Composition

The Commission is composed of eleven members. This figure corresponds to the equitable geographic distribution that the OAU usage devotes to the North, East, West, Centre and South of Africa. An odd number was chosen to facilitate the making of decisions, in the event of division in the votes. Members of the Commission should be eminent Africans enjoying the highest respect and known for their high morality, integrity and impartiality. Furthermore, the eminent persons in question must be competent in the field of human rights. It is not necessary to have a legal training to be a member of the Commission. However, under Article 31 of the Charter, particular consideration should be given to «persons having legal experience».

Members of the Commission must necessarily be nationals of one of the States parties to the Charter. Each State may submit a list of a maximum of two candidates, it being understood that the two candidates may not be

of the same nationality. Members are elected by secret ballot by the Assembly of Heads of State and Government from lists composed in the above fashion. The Commission may not include more than one national of the same state. The mandate of the members of the Commission lasts six years and is renewable. However, concerning the first elections, it is envisaged that the mandate of four of the elected members will end after two years and that of three others after four years, to achieve a progressive renewal. The mandates of two and four years are decided upon by lots, which are drawn by the Chairman of the Assembly of Heads of State and Government once the results of the ballot of the first elections are known.

After their election the members of the Commission make a solemn declaration. In the event of the death or resignation of a member, the seat is declared vacant by the Secretary General of the OAU, who is informed by the Chairman of the Commission. Furthermore, a member who, in the unanimous opinion of his colleagues, ceases to fulfil his functions or is incapable of continuing to fulfil them, loses his seat unless this failure is due to absence of a temporary nature. In the event of a seat becoming vacant due to death, resignation or non-fulfilment of a member's obligations, the Assembly of Heads of State and Government replaces the member in question. However, if the incompleting period of the mandate is less than six months, the person in question will only be replaced at the triennial renewal of mandates when this occurs in the normal course of time.

Members of the Commission elected following a death, resignation or non-fulfilment of a member's functions complete the mandate of their predecessors.

#### *c) Chairman and Vice-Chairman*

The members of the Commission elect a Chairman and a Vice-Chairman for a renewable two-year period. The manner in which the ballot should take place (secret or public) is not stipulated. It is to be hoped that the internal rules of procedure of the Commission will specify the need for a secret ballot. That would be a better guarantee of the sincerity of the votes. Nor is any indication given, in the event of the Chairman or the Vice-Chairman leaving the Commission for any reason, as to whether they should be replaced provisionally or definitively. The internal rules of procedure of the Commission should fill these gaps.

It may be noted, when examining the procedure followed by the Commission, that its Chairman has very few powers of his own.

*d) Secretariat*

The Commission is assisted by a secretariat including a secretary appointed by the Secretary General of the OAU, who is provided with an unspecified number of collaborators.

The Secretary General of the OAU will provide the Commission with the means and services necessary for it to discharge its duties effectively. The running costs of the Commission are to be born by the OAU.

The Secretary General of the OAU may attend the meetings of the Commission. His opinion may be heard orally, but he does not participate in the discussions or votes. In case of need, the Commission may hear him in order to obtain clarification on a particular point.

*e) Functioning*

The Commission should, as soon as possible, establish and adopt rules of procedure to cover certain omissions, whether voluntary or not, that may be noted in the Charter. No indication is given in particular as to whether the Commission meets in public, or conversely whether its discussions are to take place in private.

In my opinion, the discussions of the Commission should be secret since the decisions it takes should, in general, remain confidential until the Assembly of Heads of State and Government has decided otherwise. Clearly this applies to discussions concerning communications. With regard to periodical reports, certain organisations should be able to collaborate in their discussions.

In order for the Commission's meetings and discussions to be valid, at least seven members must be present. Decisions are taken by a majority of the voting members. In the event of an equality of votes, the Chairman has the casting vote.

*f) Status of the members of the Commission*

The members of the Commission serve in their personal capacity; they are independent of the State which nominated them and of the OAU. They enjoy the diplomatic privileges and immunities provided for in the Convention on the Privileges and Immunities of the OAU. They receive emoluments and allowances. Expenses occasioned by the exercise of their functions are provided by the budget of the OAU. The function of a

member of the Commission is not permanent; the Commission holds sessions.

## 2) Areas of competence of the Commission

The Commission was set up in order to promote human and peoples' rights in Africa and to protect them. It will be observed, however, that it shares its competence in the field of protection with the Assembly of Heads of State and Government, which acts as a supervisory body for the Commission.

The Commission has two other areas of competence: interpreting the Charter and carrying out the tasks conferred upon it by the Assembly of Heads of State and Government.

### a) *Promotion*

It appears that the authors of the Charter intended to make the mission of promotion an essential element in the competence of the Commission. This promotion can be grouped around three categories of functions: functions concerning studies and information; quasi-legislative functions; and co-operative functions.

#### i) Study and information functions

The Commission should be a documentation centre in the field of human rights in Africa. It is therefore responsible for gathering, classifying and keeping all the information concerning human rights in Africa. It makes its information available to users. It should also disseminate on as large a scale as possible, by means that are to be determined, information concerning human rights in Africa either in a systematic way, or in order to complete or correct already existing information.

The Commission is responsible for undertaking studies and conducting surveys itself, or through competent persons, on African problems in the field of human and peoples' rights. It should organise or participate in the organisation of conferences, seminars and meetings to promote a better understanding and disseminate knowledge of the state of human and peoples' rights in Africa.

It is also empowered to encourage organisations concerned with human and peoples' rights. In this respect it could, with the goodwill and assis-

tance of the Secretary General of the OAU, make suggestions concerning the organisation of competitions, the establishment of prizes and the award of distinctions favouring human rights.

Finally, the Commission could give opinions or make recommendations to governments concerning the promotion of human and peoples' rights in Africa.

#### ii) Quasi-legislative functions

I give this name to the functions entrusted to the Commission by the Charter in virtue of which it may prepare drafts of model laws for States or for the OAU. Indeed, in addition to the recommendations it can make to governments the Commission can formulate and lay down «principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms». These provisions, although vague, are important. Indeed, it is specified that the activities of the Commission in this field should serve as a basis «upon which African Governments may base their legislations.»

#### iii) Co-operative functions

The functions entrusted to the Commission are so vast and difficult to exercise to the full that the African legislator felt the need to envisage the Commission's co-operation with other institutions. These would be African or international institutions concerned with the promotion and protection of human and peoples' rights. In practice, this co-operation will be best with non-governmental organisations.

#### b) *Protection*

In Article 45, paragraph 2 of the Charter it is envisaged that the mission of the Commission is to «ensure the protection of human and peoples' rights under conditions laid down by the present Charter.»

#### i) Various areas of competence

##### — Competence *ratione materiae*

The attention of the Commission may be drawn to any violation of the provisions of the Charter. The terms employed in Article 47 are very gen-

eral. Consequently any failure to comply with the provisions of the Charter that recognise and guarantee rights may be brought before the Commission. Failure to comply with other provisions may also be brought before the Commission. The same solution applies to the European Commission.

— Competence *ratione loci*

Does the alleged violation have to be committed on the territory of one of the States Parties for the Commission to be competent? In the Charter there is no equivalent to Article 1 of the European Charter under which the States guarantee the recognised rights to persons under their jurisdiction. However, since there is no restriction concerning the obligations of States Parties to the Charter to protect the rights they have recognised it must be deduced that the Commission is competent even when the violation ascribable to a State Party takes place in relation to a protected person outside the national territory.

— Competence *ratione personae*

The violations that may be brought to the attention of the Commission must have been committed by a State Party. This means that those ascribable to other physical or moral entities (particularly individuals) do not fall within the competence of the Commission.

ii) Capacity for action

Two sorts of action are possible before the Commission: those sponsored by States and those from other sources.

— Actions by States Parties

In the event of violations of the provisions of the Charter, the State Party that is convinced of the violation may choose between two types of action. It can initiate a «negotiation-communication» or a «complaint-communication». (The terminology is mine.)

Indeed, the State can restrict itself to a written communication through which it draws the attention of the State it considers to be at fault to what it regards as being a violation of the provisions of the Charter. The communication will in any case be addressed to the Secretary General of the OAU and the Chairman of the Commission. The State receiving the communication then has three months from the date of its



receipt to supply the enquiring state with complete written explanations or statements concerning the point at issue, which, as far as possible, should include indications concerning the laws and rules of procedure applied or applicable and the redress already given or being given and the course of action open to anyone concerned.

Once these explanations have been supplied, the enquiring State can either consider itself satisfied or pursue the bilateral negotiations commenced in this manner until it is satisfied. It can also use, in the words of the text, «any other peaceful procedure» to achieve this objective. The legislator must have been thinking of mediation, good offices or other means of reaching a peaceful solution to disputes between States as envisaged by international law. If the issue remains unsettled, either through the absence of a reply, by an unsatisfactory reply being received or by the failure of the means employed, the dispute that has arisen may be referred to the Commission by one of the States concerned.

The «plaintiff» State may also refer the matter to the Commission by means of a communication addressed to the Secretary General of the OAU, the Chairman of the Commission and the State concerned, without entering into bilateral negotiations with the State it alleges has violated the provisions of the Charter.

#### — Other actions

There are two sections in the Charter contained in the chapter concerning the procedure of the Commission: «Communication from States» and «Other Communications».

It may be legitimately wondered what other communications may be involved: the legislator seems to have retreated when faced with the difficulty of specifying them. In my opinion they are communications from physical or moral entities other than States Parties. Consequently an individual, a non-governmental organisation or even an international or national organisation may denounce before the Commission any act considered to be a violation of the provisions of the Charter, by means of communications. Clearly, however broad the formula, it does not enable States not party to the Charter and public national institutions dependent on them to take action before the Commission.

#### c) *Other areas of competence*

The Commission has two other areas of competence:

### i) Interpretation

It is most surprising that the authors of the Charter should have believed it was necessary to envisage a provision empowering the Commission to interpret the Charter. Indeed, it seems that such interpretation is within the normal functions of the Commission since it has to ascertain the accuracy of the allegations concerning violations of the provisions of the Charter. However, it should be recalled that the Commission cannot refer matters to itself, and in cases where matters are referred to it, it is only required to verify whether the particular provision of the Charter has been violated or not. The function of interpreting the Charter is much broader. It could be exercised when an opinion is requested. Such a request may originate from a State, an institution of the OAU or from an African organisation recognised by the OAU. The Charter does not mention the OAU itself, but, in my opinion, there is nothing in its provisions which would seem to prevent the OAU from being able to request an opinion from the Commission.

### ii) Other tasks

Article 45, paragraph 4, of the Charter also envisages the mission of the Commission as being to «perform any other tasks» with which it may be entrusted by the Assembly of Heads of State and Government. It is difficult to be sure, at present, of what such tasks may consist. The hypothesis is conceivable of a case in which a State that has violated the provisions of the Charter is not accused of such violations through any of the channels laid down by the Charter. In this case the Assembly of Heads of State and Government could request the Commission to examine the question. The existence of the Commission could therefore dispense the OAU from the need to create *ad hoc* committees in the field of human rights.

### 3) Procedure before the Commission

The rules of procedure before the Commission vary according to whether the complaint-communication originates from a State or from other sources. In both cases the Commission takes a number of steps. Other steps which may be taken by the Commission or by States are envisaged by the Charter. In the exercise of the functions with which it is entrusted,

the Commission applies the rules envisaged by the Charter. It is empowered, within the framework of its investigations, to hear the Secretary General of the OAU or any other person, in particular representatives of non-governmental organisations.

*a) Complaint-communication from a State*

i) The point when the matter comes under the jurisdiction of the Commission

The Charter has supplied States complaining of violations of its provisions with two channels for action.

In accordance with the first channel the Commission may intervene to investigate the matter following a breakdown in the bilateral negotiations through which one State has informed another of an alleged violation of the provisions of the Charter. In this case both of the States have the right to submit the issue to the Commission. Notification is then addressed to the Commission through its Chairman, and at the same time to the other State concerned and the Secretary General of the OAU.

The second channel for redress enables a State claiming to have good reasons for believing that another State also party to the Charter has violated its provisions, to refer the matter directly to the Commission by means of a communication addressed to its Chairman, the State concerned and the Secretary General.

ii) Conditions of validity

Whatever the channel (direct or indirect) through which the matter has been referred to the Commission, it can only consider it if the communication fulfils a number of conditions of validity. In the first place, the communication must originate from a State Party to the Charter and contain allegations against another State that is party to the Charter. In the second place, it must concern the violation of a provision of the Charter. Finally it must respect the rule that all local remedies have been exhausted. This rule is laid down in Article 50 of the Charter. It is the responsibility of the Commission to supervise the application of this rule and to ensure that such remedies, if there are any, have indeed been exhausted, unless the State at fault has clearly used the rule for the purpose of causing delay. This is the case when recourse to the above channels

becomes «unduly» prolonged, as specified in Article 50 of the Charter.

iii) Investigation

Once the matter has been referred to it the Commission proceeds to investigate it. It may request the States Parties to supply all information relative to the matter in question that may enlighten it. During the investigations, the States Parties concerned may be represented and may present written or oral observations.

If it deems it to be necessary, the Commission may also gather information from other sources using appropriate means that are compatible with the Charter and with international law. During the period when the investigations are taking place, the Commission must attempt by all possible means to reach an amicable settlement to the dispute. However, such a solution must be based on respect for human rights. For example, the Commission could thus reject any agreement between the States which was not compatible with the provisions of the Charter, and in particular any agreement that might result in a violation of human rights.

iv) Action to be taken by the Commission

Once the investigations are concluded the Commission produces a report containing two parts: one devoted to an account of the facts and the other to the conclusions arrived at by the Commission. No period is specified within which the Commission is to produce its report, although this should be completed «within a reasonable period of time» from when the matter was referred to it. The Commission's report is given to the Assembly of Heads of State and Government. While transmitting its report the Commission may make the Assembly any recommendations that it deems useful. Consequently the Commission could recommend that the matter be closed, that a resolution addressed to one or both of the States concerned be adopted, that the report be published, etc. It is then the responsibility of the Assembly to take the appropriate decision.

b) *Other complaint-communications*

The authors of the Charter preferred to employ the expression «other communications». In so doing they leave it open for the case law of the Commission to develop, taking circumstances into account, and to specify

what should be understood by «other communications». It should nevertheless be recalled that Article 55, paragraph 2, states that the communications involved are other than those from States Parties. This indication does not however fill in the gap for which the Commission must make good at a later date.

i) The point at which the matter comes under the jurisdiction of the Commission

It would appear difficult at the present time to draw up a list of the persons and bodies from which the communications referred to in Article 55 can originate. It can nevertheless be stated here and now that States not party to the Charter and public institutions dependent on them may in no way make use of the channel envisaged in Article 55. Conversely, it would appear to be indisputable that individuals are empowered to refer matters to the Commission in the event of violation of one of the rights recognised by the Charter by one of the States Parties.

Seizure of matters takes place in two ways.

Before each of the sessions of the Commission its members receive from the secretary a list of communications other than those from States Parties. The members can then request more information on the content of any particular communication. They may then request the Commission to consider matters on the basis of the communications that they indicate. In cases where a simple majority of the members of the Commission so request a matter shall be considered by the Commission.

ii) Conditions of validity

The authors of the Charter show great distrust in respect of communications other than those from States Parties. They have surrounded them with conditions of validity which taken as a whole, although difficult, are necessary for a valid referral of the matter to the Commission.

There are seven such conditions of validity.

- The author of the communication must indicate his identity. This does not prevent him from requesting observance of anonymity for personal reasons or in cases where he fears reprisals. His identity would therefore be known by the Commission but not by other physical or moral persons entitled to receive documentation of the Commission.

- The communication must be compatible with the Charter of the OAU and with the African Charter on Human and Peoples' Rights.
- The communication must be drawn up in measured language. The terminology used must not be disparaging or insulting with regard to the accused State, its institutions or the OAU.
- The communication must state precise facts and must not confine itself to reproducing information obtained from the spoken or written media.
- The communication must respect the rule of the exhaustion of local remedies, as mentioned above in the case of complaint-communications from States.
- No period of time has been specified within which the communication must be presented. This period should, however, be reasonable. It shall be assessed by the Commission beginning from the exhaustion of local remedies or a date fixed by the Commission in the event of the State in question using delaying tactics.
- The facts occasioning the complaint in the Communication must not concern cases that have already been settled under other procedures envisaged by the Charter of the United Nations, the Charter of the OAU or the African Charter on Human and Peoples' Rights.

With the exception of the above, no other formal conditions are laid down for the presentation of communications.

### iii) Notification

Before any examination of a communication it must be notified to the State concerned. This notification is to be made by the Chairman of the Commission.

### iv) Investigation

Once seized of a matter, the Commission examines the case submitted to it in deliberations that it fixes freely. After such deliberations the Commission may deem that there is no need to pursue investigations into the matter further. If, on the other hand, in accordance with Article 58, paragraph 1, it considers that one or several communications concerning specific situations reveal «the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the

attention of the Assembly of Heads of State and Government to them.» Consequently the pre-condition for the Commission to be able to undertake the second stage in the procedure consists of the existence of «a series of serious or massive violations of human and peoples' rights.» Clearly every word in this expression is of capital importance. Reference is made to «a series of violations» in order to prevent specific isolated cases being brought before the Commission. Furthermore, they must be «serious violations». If they are not serious, they must be «massive». In my opinion an isolated violation, although it may be serious, may not be referred to the Commission since it does not constitute a series of violations. Conversely, a series of serious violations, even if perpetrated by one individual, could serve as the basis for an action. However, massive violations, even if they are not serious, may serve as a basis for an action in accordance with Articles 55 and 58 of the Charter. It will be the responsibility of the Commission to specify the concepts of «serious violations», «massive violations» and «a series of violations».

#### v) In-depth studies

When the matter is in turn referred by the Commission to the Assembly of Heads of State and Government, the latter may either classify the matter, or request the Commission to proceed to an «in-depth study» of the situations that it specifies, or take any other decision compatible with the Charter and with international law.

No definition is given to the concept of an «in-depth study». It is surely appropriate, in order to obtain a measure of enlightenment, to refer to the interpretation given by the doctrine and practice under resolution 1503 of the Economic and Social Council, where the same expression is employed in paragraph 6(a).

In the event of the matter being referred back to the Commission, it undertakes an in-depth study and reports to the Assembly. It produces a factual report to this end including a narration of the facts, and it also reaches conclusions and makes recommendations.

The decision for the matter to be referred back to the Commission may be made by the Chairman of the Assembly of Heads of State and Government. In cases of emergency of which it has duly taken notice the Commission need not refer the matter to the Assembly. This would take a long time in certain cases in view of the fact that the Assembly normally meets only once a year. It may therefore refer the matter to the current Chair-

man of the OAU at times when the Assembly is not in session. This latter is then empowered either to request an in-depth study or to refer the matter to the Assembly. Would he be able to file the matter? I do not think so.

*c) Other actions envisaged by the Charter*

The Charter envisages reports by States and reports on its activities submitted by the Commission.

*i) State reports*

Each State Party to the Charter must submit a report on legislative and other measures taken with a view to giving effect to the rights and freedoms recognised and guaranteed by the Charter. Such reports are to be presented every two years, although their form and content is not specified. There is no indication as to whom they should be addressed. They are certainly to be studied by the Commission which will transmit them to the Assembly of Heads of State and Government with its comments. I see in this the beginnings of a procedure that could take inspiration from the most useful practice of the Committee of Experts on the Application of Conventions and Recommendations of the ILO, and that of the Human Rights Committee.

The Commission is required to produce a report on its activities. The report is published by its Chairman after being examined by the Assembly of Heads of State and Government. No indication is given as to how frequently it should be produced. It is reasonable to think that it should be produced annually.

*d) Principles applicable by the Commission*

In the performance of its mission the Commission applies two groups of principles.

The first group is constituted by the «principal measures» (Article 60 of the Charter). The Commission «shall draw inspiration» from international law on human rights. This is made up of various African instruments, the Charter of the United Nations, the Charter of the OAU, the International Declaration on Human Rights, other instruments adopted by the United Nations and by other African countries and those adopted by



specialised institutions of which the parties to the Charter are members.

It would appear that these principal measures in fact cover all the restrictive provisions to which the States Parties have subscribed.

In addition to the principal measures, the Commission «shall also take into consideration» subsidiary measures. These consist of other international conventions on condition that they lay down rules expressly recognised by the member States of the OAU, African practices conforming to international standards, generally accepted customs, general principles of law recognised by African States, and legal precedents and doctrine.

Only the practice of the Commission will be able to give clear indications in the future of concepts, some of which, at least in their formulation, are new.

## Conclusion

The above was a description of the rules resulting from the African Charter on Human and Peoples' Rights. I thought it important to give particular emphasis to the African Commission on Human and Peoples' Rights. In the final count it is the Commission that is responsible for ensuring the long awaited protection of human rights in Africa. I also felt it was important to conclude this introduction to our Conference with a few brief reflections on this Commission which was conceived 25 years ago. It has not yet seen the light of day, since the Charter has not come into force due to an insufficient number of ratifications. As is well known, this number is that of a simple majority of member States of the OAU. The number is high; too high in the opinion of many observers.

In comparison with ones that already exist, the system established by the OAU for the protection of human rights may seem insufficient. In particular a human rights court is missing. I have already referred to this problem. In the present situation experience shows that it is premature to set up a court. With regard to the functions of the Commission, certain people think that the Charter does not go far enough. In fact, this judgment can only be reached by those reading the text of the Charter rapidly. It should not be denied that major difficulties will appear concerning the protection of peoples' rights. The fact remains, however, that when studying the provisions of the Charter with great attention it can be seen that the safeguard of human rights as they are established by the mechanism envisaged in these provisions is far from being insufficient. Great

precautions have been taken by the authors of the text in order to obtain the assent of the States, while at the same time opening up bold perspectives if circumstances and individuals allow. The future is not blocked. On the contrary, the Charter looks towards the future: a future of development involving ever greater requirements with regard to human rights. Much room is left to the initiative of the Commission. If it is composed of competent and independent personalities, and if its membership as a whole is inspired with a will to accomplish to the full its mission of protection of human rights, it will be able to satisfy the most demanding. Indeed, much room for manoeuvre is recognised implicitly in the various provisions of the text on the future organ for the protection of the rights and freedoms of Africans. For 20 years now, African intellectuals have been calling for such an organ; the peoples of Africa place much hope in it; I have good reasons for believing, Ladies and Gentlemen, that you will contribute to reinforcing that hope here in Nairobi.

## Summary of discussion on the African Charter

At the outset it was suggested that the discussion be divided into two parts:

- general observations comparing the provisions of the Charter with those of national law concerning the promotion and protection of human rights; and
- specific remarks on
  - the rights envisaged,
  - the duties,
  - the African Commission on Human Rights, and
  - the entry into force of the Charter.

In introducing the discussion the Rapporteur, Judge Kéba Mbaye, stated that every participant had something to contribute. The conference was not a conference of African jurists only, but an international conference on the implementation of human rights in Africa. He went on to say that although the African Charter had not yet entered into force, it was important to take stock of everything which could help to bring into existence the principal institution of the Charter, namely the African Commission on Human and Peoples Rights. Thus the Nairobi Conference was an occasion to discuss its provisions and to clear up misunderstandings. For 25 years the United Nations, the International Commission of Jurists and African intellectuals have worked in favour of an African charter on human rights. Judge Mbaye commented that, of course, to have an African

charter does not solve all the problems, but it is nevertheless important to have a charter. First of all it must enter into force, and it is time to speed up the process of ratification.

One participant suggested that the relatively few number of ratifications had frightened off some countries, as they wondered whether there was something in the Charter that inhibited ratifications. The Rapporteur recalled that the African Charter was conceived and drafted by Africans for Africa, but that it drew inspiration, *inter alia*, from the Universal Declaration of Human Rights (cf. Article 60). In spite of the hesitations of some countries, the Charter has been well received. Already 15 States have ratified it. If the same percentage of ratifications had been required for the two International Covenants on human rights, namely an absolute majority of the United Nations, neither of them would yet have entered into force. Only four years have elapsed since the Charter was adopted by the OAU, but it took 10 years to achieve the smaller percentage of ratifications required to bring the UN Covenants into force. This point should be stressed in discussions with governments. The number of ratifications required was made high in order to ensure that when it entered into force it had the support of a majority of African countries.

Under the general observations it was noted that almost all the African constitutions referred expressly to the Declaration of the Rights of Man of 1879 or to the Universal Declaration or to both, and there was no conflict between the African constitutions and the provisions of the Charter.

Another issue was the divergence that exists in some countries between national laws and the constitution. The laws sometimes limit or abrogate rights contained in national constitutions. Some of these laws could amount to a violation of the Charter. In most countries the Charter is basically consistent with the national constitution and laws, but it was generally agreed that governments should, where necessary and in due course, bring their laws into conformity both with their national constitutions and with the Charter.

It was stated that concern had been expressed in some quarters that the Charter does not reflect customary law sufficiently, and that allowances are not made for some practices in traditional courts. An example was given of the exclusion of defence counsel in customary courts because the procedures of these courts were essentially ones of conciliation. This was not considered a serious problem by the participants, but they did note that some politicians had pointed to it in discussions on ratification. One

answer is that some of the States that have ratified have such customary courts.

On the implementation provisions of the Charter, some of the participants indicated that States were reluctant to have an outside monitoring body examine their application of human rights norms. In this regard it was pointed out that international human rights law has developed to the point that States have obligations to observe fundamental human rights whether or not they are signatories to a particular agreement and that this aspect had to be stressed. In any event the monitoring provisions were carefully drawn to ensure that the Charter was not conceived of as an instrument for denouncing States. The procedures are confidential. The State concerned is fully consulted and is entitled to be present when a matter is considered by the Commission and to submit written or oral representations, and the Commission's report is then submitted to the Heads of State and Government.

Some speakers wondered whether the ratification process had not been slow because of the lack of a catalyst. The hope was expressed that the conference and the follow-up to it might act in this way.

Another recurrent theme was the priorities that governments had set for themselves, and that due to the economic difficulties facing many African countries, governments had put a low priority on the enforcement and protection of human rights. The populations of the newly independent States had made great demands on their governments and expected that their standard of living would improve with independence. Governments had to be convinced that there was no contradiction in pursuing economic rights at the same time as civil and political rights.

Some participants referred to particular articles that were causing problems for their countries, although all expressed the view that these should not prevent eventual ratification. One such article is 18(4) which requires special measures for the aged and disabled. Some governments felt that this required them to allocate scarce resources in a particular way. Article 12(5) which prohibits mass expulsions is said to be a problem for some countries. Several have expelled large numbers of non-nationals and fear that as a result of economic problems expulsions may again take place. It was noted, however, that some of these countries had nevertheless ratified the Charter.

The question of the rights of peoples was the subject of several interventions. It was recalled that at the meeting of plenipotentiaries at Banjul to examine the draft of the Charter, one of the major problems was

how to define a 'people'. The plenipotentiaries finally decided to refrain from giving a definition to this term and to leave the matter to the heads of state. In fact no definition was inserted. Nevertheless the conference participants sought to clarify this notion. It was noted that Westerners tend to consider clans, ethnic units, tribes and even communities as 'peoples'. In Africa, the notion of a people refers to the national community as distinct from an ethnic, linguistic or tribal community. The provision in Article 21(4), to the effect that the peoples' right to dispose freely of their wealth and natural resources is to be exercised by the States, indicates clearly that the concept of a people refers to the whole national community. It was pointed out that a distinction must be drawn between the rights of peoples in the sense of national communities and the rights of minorities. On the question of the meaning of 'legally recognised communities' in Article 27, Judge Mbaye, who is one of the drafters of the Charter, indicated that it referred to administrative divisions within a State. He gave as examples the communes and rural communities of Senegal. With regard to the principle of the right of peoples to self-determination (Article 20), it was observed that it in no way authorises secession. The Charter imposes the duty to preserve the national independence and territorial integrity (Article 29(5)).

Some questions were raised concerning the duties of individuals and States. As the individual cannot be arraigned before the African Commission on Human and Peoples' Rights, how can this institution concern itself with the duties of the individual? Can an individual be prosecuted because he has not placed his physical and intellectual abilities at the service of his national community (Article 29(2))? As was pointed out by some participants, the Charter is an international convention which binds States, and in the event of a violation it is the States who are answerable for it. The Commission can have regard only to violations committed by States, as to which it can receive information from several sources. To understand well the provisions relating to duties, it was said that it was necessary to understand the African way of thought, in which rights and duties intermingle. In any event, it was clearly stated by several participants that no-one could think that the Articles 27 to 29 relating to the duties of individuals were to be carried out to the letter. The right to work is widely recognised, and is to be found in the International Covenant on Economic, Social and Cultural Rights ratified by many States, but is to be realized gradually. Thus, in the same way, the duties and some of the rights contained in the Charter refer to principles which the community

accepts but whose immediate application is not envisaged. In this respect, it was pointed out that the first seven articles of the Charter are not subject to any derogation. This is not the case with regard to Article 8 in which is introduced the limitation 'subject to law and order', and other articles that envisage rights which the individual can enjoy only in accordance with the law.

With regard to the institutions referred to in Article 45(1), which relates to the promotion of human rights, it was made clear that this meant organisations concerned with promoting these rights. As for protection of human rights, this is to be assured by the States Parties and also by 'communications other than those of States parties' (Article 55). There is no limitation as to who can submit communications, but the Commission will examine the substance only of those which a majority of its members decide merit consideration, which comply with the rules of admissibility, and which have been brought to the knowledge of the State concerned (Articles 55-57).

The overriding mood of the conference was positive and a strong belief was expressed that more ratifications should be forthcoming. It was reiterated several times that for most countries the Charter was basically consistent with the national constitution. Governments needed to be persuaded that

- ratification does not pose any serious problem for them,
- the Charter is not a Western document, but a document that reflects African traditions and law, and
- the implementation provisions strike a fair balance between respect for national sovereignty and the need for monitoring implementation.

The Charter itself would have an important educative value. It would assist people in learning about their rights and encourage them to seek protection for their rights.

The promotional aspects in Article 45 should also be emphasised. These include the encouragement of local institutions which would focus on human rights teaching, and undertaking studies which would be of general use and assist States to fulfill their obligations.

At the end of the conference a decision was made to form groups for the various regions of Africa which would undertake follow-up actions to encourage ratifications. This would include approaching governments.

## Working Paper on Legal Services in Rural Areas

The International Commission of Jurists in the last decade has organised a series of seminars in Africa, Asia and Latin America concerning development and human rights.\* These seminars, which brought together interested lawyers and development experts, examined closely the relationship between all human rights and the process of development, and sought to answer the question of how human rights can promote human

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\* Human Rights in a One-Party State, Dar-es-Salaam, Tanzania, 1976; Human Rights and Development, Barbados, 1977; Le développement et les droits de l'homme, Dakar, Senegal, 1978; Human Rights in the Rural Areas of the Andean Region, Bogota, Colombia, 1979; Rural Development and Human Right in South-East Asia, Penang, Malaysia, 1981; Rural Development and Human Rights in South Asia, Lucknow, India, 1982; Development and Legal Services in Africa, Dakar, Senegal, 1983; Legal Services in Rural Areas, Tambacounda, Senegal, 1984; Bonded Labour and Other Forms of Labour Exploitation in South Asia, Kathmandu, Nepal, 1984; and Legal Services in Rural Areas, Limuru, Kenya, 1984. All these seminars were co-sponsored by organisations working in the region and the participants included development economists, social scientists, trade unionists, church leaders and activists in addition to judges, academics and practising lawyers. Reports of the first six of the above seminars have been published in book form and are obtainable through the International Commission of Jurists, B.P. 120, 1224 Chêne-Bougeries/Geneva, Switzerland. The third is in French, the fourth in Spanish and the others in English. Also available are the reports of the seventh (in English and French), eighth (in French) and last (in English).



development. Several of these seminars have focussed particularly on regions where the majority of the population lives in rural areas.

A common conclusion of these seminars was that the problems of development as well as human rights of the rural poor are closely linked to the question of their access to law and to governmental programmes in general.

The participants in these seminars repeatedly asserted:

- that the poor are at a disadvantage at the levels of legislation and administration, as well as at the levels of legal process and the administration of justice, and
- that the laws and administrative regulations tend to favour the upper strata of society and less attention is paid to their effects upon the poor, in particular the rural poor.

The preface to the report of the ICJ seminar on Development and Legal Services in Africa held in Dakar, Senegal, in 1983, summarised the problem of access in the following manner:

«Influential, educated and wealthy groups (both urban and rural based) are often able to make use of law and administrative institutions for their own narrow group or individual gains. The poor peasant has no chance of knowing and disentangling his legal rights in order to assert them. Even if the peasants are well informed, they often have no means and resources to pursue their rights. In practice, therefore, the right to development cannot, under these circumstances, have very much practical meaning to the peasants.»<sup>1</sup>

These seminars have recognised that access problems of the rural poor to information, to participation in decision-making, to legal resources and to legal processes are related to:

- the complex language of laws and legal procedures coupled with the ignorance and illiteracy of the people which discourage them from using law,
- the fact that lawyers who have assumed monopoly over law and legal processes are most often oblivious to the needs of the poor and are situated in urban centres far removed from the rural people,
- the training and legal education of lawyers which contributes to their

- inability as a profession to respond to the problems of the poor, and the continued use of authoritarian laws of the former colonisers, such as those permitting preventive detention.

These seminars have also dealt with some of the alternatives and their limitations to overcome the problems of access. Among these alternatives are simplification of procedures and language, and use of traditional methods to settle disputes. These changes can certainly help to resolve disputes between members of rural communities and dispense with the costs and delays of litigation. They can, however, make only a partial contribution to the problem of access to law and justice.

Another approach to the problem lies in the creation of an independent government agency, unencumbered by much legal formality, which can hear and investigate grievances against government officials at all levels. Permanent commissions of enquiry, ombudsmen and other institutions with varying jurisdictions have been created in a number of countries. While such agencies can help, through investigation of individual complaints, to overcome frustrating delays, inattention to claims and corrupt dealings, they are less equipped to deal with more basic flaws in the design and administration of allocational programmes in the interest of the rural poor.

Legal aid to the poor is another proposal suggested to remedy the problem of access. Though this touches on the actual problem of access and attempts to ensure availability of professional service to the poor, it usually suffers from the following limitations:

- legal aid programmes designed and operated entirely by professional lawyers are usually limited to provision of a narrow range of largely court-centred services to individuals rather than to group and collective needs,
- the legal aid lawyers may tend to monopolise the task of identifying the underlying needs of the client and the strategies to address those concerns,
- while rural families may be individually helped in some ways by this kind of legal assistance, it does not touch the common problems of the communities, and the people remain essentially ignorant of their legal rights and of different ways in which they can assert and vindicate them, and
- the legal aid approach seldom provides advisory or other services

beyond representation in court, usually limited to serious criminal cases. It fails to help them to make use of law as an instrument for improving their conditions.

These observations on the limitations of the legal aid approach can be reinforced by the conclusions of the regional seminars.

At the South-East Asian seminar, the participants concluded that:

«Traditional legal aid schemes for the representation in conflict of individual litigants are not in themselves sufficient to meet the needs of the poor for legal assistance.»<sup>2</sup>

The participants of the South Asian seminar analysed the programme carried out by the Committee for Implementation of Legal Aid Schemes in India, and concluded:

«An important contribution is made by the legal aid scheme recently introduced by the government of India in several states. Under this scheme, a government-appointed Board disseminates important legal information and provides free legal advice and representation by counsel to the rural poor who otherwise have little or no access to the judicial system. The success of the scheme depends on the cooperation of lawyers, judges and intended beneficiaries, as also on the funding commitment of the government. Imaginative efforts are being made to bring the law to the people rather than the people to the law, by organising camps in rural areas at which thousands of cases are resolved at great saving in cost to the state as well as the litigants. It was felt that other South Asian countries should, with suitable modifications, introduce this scheme in their respective countries.

«However, while the legal aid scheme in India is particularly effective in dealing with civil and criminal claims against the state authorities by the rural poor, it is not so successful when the claim is against a powerful individual in his community (e.g. in the case of bonded labourers). In such cases, legal solutions have proved to be largely ineffective unless supported by a countervailing power through peoples' organisations to overcome the harassment and intimidation to which they are subject.»<sup>3</sup>

In contrast to legal aid, another alternative that has been discussed and recommended in some of these seminars is the legal resources approach. This aims to provide the poorer sections of the population with all the other legal services which more affluent people enjoy — informing them of their rights, telling them how they can assert and claim those rights, giving advice on how to overcome obstruction and difficulties, negotiating on their behalf, where necessary, with those in authority, on occasion undertaking court work in cases of importance to the rural communities, and studying their problems and promoting necessary reforms in the law.

In his key-note speech to the 1983 Dakar seminar on Development and Legal Services in Africa, Dr. Clarence Dias of the International Center for Law in Development, elucidated the three main concepts of the legal resources approach in the following manner:

«The legal resources' approach emphasises concepts of *legal self-reliance*, *deprofessionalisation* and *interest-group advocacy*. *Legal self-reliance* is to be achieved both through programmes seeking to educate specific poverty communities about their rights and the laws and procedures relevant to their day-to-day activities, so as to enable them to decide for themselves when and how to take recourse to law and when not to. *Deprofessionalisation* is to be pursued through an attempt to break the legal profession's monopoly over legal knowledge and skills by developing, wherever appropriate, community-based para-legals. *Interest-group advocacy* seeks to enhance countervailing power of organisations of the rural poor by advocacy of their interests in national centres of decision-making through specialised national and international organisations which work with local groups.»<sup>4</sup>

Practical implications for implementing the legal resources programme in the rural areas of Africa were discussed in two seminars organised by the International Commission of Jurists. The first, held in April 1984 at Tambacounda, Senegal, was organised jointly with the Conseil des Organisations non gouvernementales d'aide au développement (CON-GAD). The participants included lawyers, 15 representatives of NGOs connected with development and two Senegalese villagers. Based on the conclusions of the seminar, a pilot project to provide legal resources to the rural poor has been initiated.

The second seminar was held in October 1984 in Limuru, Kenya, and was co-sponsored by the African Bar Association and the All-Africa Conference of Churches. The conclusions and recommendations of this seminar are given in detail here since they deal with the practical details concerning implementation of a legal resources programme:

«The participants were concerned to find ways of making these services available. It was agreed that lawyers engaged on this task should work together with members of non-governmental organisations (NGOs) working for community development who have the confidence of the rural people. These include but are not limited to church groups, women's and youth organisations, health workers, adult education and other extension workers.

«Working with such groups will help to:

- sensitise the lawyers concerned to the attitudes, traditions and situation of the rural communities,
- surmount the geographical, linguistic and other barriers to communication, and
- overcome attitudes of distrust towards lawyers that may be found among rural people.

«The principle services to be provided are:

- education about the law,
- helping to resolve conflicts and disputes within the communities,
- providing access to lawyers, and
- giving legal assistance by negotiating with authorities or in court proceedings.

#### *«The Content and Method of Educational Services*

«The content of the educational or sensitisation programme should be of two kinds:

- to provide general information about the law applicable to all,
- to provide specific information about laws directly concerning the particular rural communities.

«General information should include information on:

- the need for law in society and the value to the whole community

- of obedience to the law,
- the responsibilities and duties of everyone to their fellow men and women, to the communities in which they live, to neighbouring communities and to the State,
- their fundamental human rights guaranteed by the constitution, the laws and international instruments. These include:
  - freedom of expression, freedom from arbitrary arrest and detention and the right to life,
  - the right to food, shelter, health and education to the maximum of the available resources, and
  - the right to participate in decision-making in matters concerning them, and the right to organise themselves for this purpose and to receive relevant information.

«The specific information should include an explanation of:

- the laws relating to issues of particular concern to them, e.g. land law and laws of succession,
- how to claim their rights and discharge their obligations, and
- how to obtain the assistance of a lawyer.

«The aim should be to discuss with rural people how they can make use of the law to find solutions to their problems and difficulties. The aim should be to find ways, wherever possible, to resolve disputes through mediation and conciliation. Recourse to litigation should be a last resort. This will not only promote reconciliation and harmony within the community, it will also help to minimise costs.

«All information should be imparted in a simple and practical manner, in language and terms which will be meaningful to the rural people and related to their own experience. Use can be made of a great variety of means of communication, including meetings, visual aids, dramas in which the people can participate, puppet shows, posters, illustrated pamphlets, as well as the press, radio and other media. These programmes may also be integrated with adult education programmes, making use of their techniques.

### «Organisation

«The seminar recommended participants from each country to es-

establish a Rural Development Legal Services Committee. This should include representatives of church and other rural development NGOs, the bar association or law society, university faculties of law, social sciences and departments of adult education.

«No universal model can be recommended for the organisation of legal services. Each committee must determine what form of organisation is best suited to national conditions and the needs of the rural people in their country.

«However, it is recommended that schemes for providing these services should begin modestly with pilot projects based upon a survey of the area and community concerned. In some cases this may be done by expanding existing legal services, perhaps linked to services for the dissemination of information.

«A dialogue should be established with the rural people:

- to find out how they view their problems and difficulties, and the solutions which they seek,
- to create trust and rapport between them and those seeking to provide the services, and
- to sensitise those providing the services to the rural people.

«National committees are recommended to mobilise resources for the provision of these services as far as possible within their own countries. In order to preserve their independence, they should not become dependent upon funding from their governments.

«Paid staff should be kept to the minimum, and use should be made as far as possible of voluntary services, whether full-time or part-time.

«Law firms, particularly those established in provincial centres, should be persuaded to devote a small percentage of their working time to the scheme for legal services without payment, or subject only to payment of their expenses. In particular, those engaged in litigation on behalf of the rural poor should be invited to provide this service for reduced or no fees.

#### *«Para-Legal Field Workers*

«Having received impressive accounts of their operation in other countries, the seminar strongly recommends that schemes for the provision of rural legal services should include the training and use of

para-legal field workers. These are persons who will work within the rural communities and act as a link between practising or university lawyers and the rural people.

«Their work may be of three kinds:

- participation in the educational function described above,
- assisting in securing mediation and reconciliation in matters in dispute, and
- where necessary, conducting a preliminary investigation in cases which have to be referred to a lawyer, and reporting to the lawyer with witness statements and other relevant information.

«Some will be able to perform all three functions, others only one or two. Some may do this work full-time. Most will do it part-time, combining it with other activities in the rural areas.

«Where possible, it is preferable that para-legals be recruited from the area in which they will work, from development NGOs working in the field, or from other persons having the confidence of the people and speaking their language. Others may be court clerks coming from or having a particular interest in the rural areas, and, in particular, university students.

«University law schools should be encouraged to create Legal Aid Clinics, and practical legal education centred on such clinics should be either compulsory or an optional course for which credit is given. Other faculties should give courses of a para-legal nature, so that their research projects in rural areas are sensitive to legal issues. Such research students could also be involved in para-legal services and studies for which academic credit is given.

«Any fears among practising lawyers that para-legals will deprive them of work or violate laws relating to legal practice are misconceived. Para-legals do not practice law. They inform people of their rights as many teachers and other non-lawyers do, and they collect information and statements to pass on to lawyers.

### *«Training of Para-Legals*

«The training of para-legals should be undertaken jointly by persons from rural development NGOs, practising lawyers from local bar associations or law societies and university staff or senior students, who should together draw up the training programme. They may be



assisted in the training by others, such as community leaders, social workers, customary court officials, serving or retired judges or magistrates.

«The training programme should be based upon research into the problems and needs of the rural population concerned and after the dialogue with them described above.

«The nature and content of the training programmes will depend upon the prospective functions and level of education of those to be trained. The programme may vary from short weekend courses, repeated periodically, for persons selected from the villages, to courses in depth lasting several months for persons with a more advanced level of education or experience. In general, programmes will include training in the basic principles of law, human relations and civics.

«Those under training may usefully spend several days attending court to have some practical knowledge of court procedures. The education of para-legals, like that of the rural population, should be essentially practical and related to their experience or the work they will undertake.»<sup>5</sup>

### Notes

- (1) Development and Legal Services in Africa. Report of a seminar held in Dakar, Senegal, April 1983; International Commission of Jurists, Geneva, and the Council for the Development of Economic and Social Research in Africa (CODESRIA), 1983, p. 4.
- (2) Rural Development and Human Rights in South-East Asia. Report of a seminar held in Penang, Malaysia, December 1981; International Commission of Jurists, Geneva, and Consumer Association of Penang, 1982, p. 25.
- (3) Rural Development and Human Rights in South Asia. Report of a seminar held in Lucknow, India, December 1982; N.M. Tripathi Private Limited, Bombay, and the International Commission of Jurists, Geneva, 1984, p. 43.
- (4) See reference (1) above, p. 101.
- (5) Legal Services in Rural Africa. Report of a seminar held in Limuru, Kenya, October 1984; International Commission of Jurists, Geneva, African Bar Association and the All-African Conference of Churches, 1985, pp. 1-6.

## **Summary of Discussion on Legal Services in Rural Areas**

Adama Dieng, the ICJ Legal Officer for Africa, introduced the discussion on this subject. He pointed out that in third world countries between 60% and 85% of the population live in rural areas. The great majority of these people have no idea of the legal system or of their rights within that system. There are few lawyers practicing in the rural areas, and frequently there are none at all. Moreover, rural populations tend to mistrust lawyers. Lawyers are often perceived as a part of the system that oppresses them.

The International Commission of Jurists has been seeking to interest lawyers and others in Africa in a way of overcoming these difficulties and providing effective legal services in rural areas. This involves cooperation between motivated lawyers and development organisations working at grassroots level who have the confidence of the rural population. An essential feature of the programme is to train 'para-legals' who can act as a link between the rural people and the lawyers in the towns. Their tasks are to inform the people of their rights and how to claim them, to discuss their problems with them and help find solutions to them, to seek to resolve conflicts by conciliation and where appropriate by the procedures of traditional courts, and, where necessary, to contact the lawyer in the town who can either negotiate with the authorities at a higher level or, as a last resort, commence proceedings before the national courts. The para-legals are not to be seen as supplanting the lawyers, but rather of bringing them into contact with people who need their services, and then

helping the lawyer by obtaining statements from the claimants and witnesses and other relevant evidence. The para-legals may be drawn from the rural populations or from development organisations or from legal or social science students at universities.

When the floor was opened for discussion, a speaker from Latin America said that the concept of para-legals had presented problems in his region. People were not satisfied with the service given by para-legals; they preferred to have lawyers to handle their cases, even though they mistrusted lawyers. Also, the para-legals tend to focus on the national law and existing legal structures. Not enough attempts are made to learn about and use customary law. It was said that para-legals should play a role in furthering the promotion of customary law and in promoting self-reliance among the population.

This is also true with respect to lawyers who do not usually make use of customary procedures. They must change their attitude and work to strengthen customary law since for the majority of the population it is a means of keeping costs low and providing a means of dispute resolution that they understand.

Adama Dieng responded by noting that the need to develop close contacts with the local population had been stressed in the ICJ seminars in Africa, as had the importance of traditional courts and customary law.

The theme of the disparity between customary law and national legislation and legal systems which have been inherited from former colonial powers was taken up by several speakers. One speaker went so far as to suggest that it was creating two nations. The rural population looked upon the urban population as 'foreigners', who had abandoned their traditional culture and adopted a Western individualistic culture. A lawyer working in an urban legal aid centre said that he frequently received complaints from clients that the humanity to which they were accustomed in traditional courts was not to be found in the national courts.

In countries such as Tanzania, where traditional courts at the local level continue to apply customary law, lawyers are excluded from the proceedings. The reason for this is that the objective of the proceedings in the traditional courts is to bring about a reconciliation between the parties, in order to preserve harmony within the community. The adversary approach to which lawyers are trained would be incompatible with this objective.

A speaker from Nigeria indicated that the idea of para-legals was problematic in his country. The profession itself was opposed. They did

not see the need as they considered there were sufficient lawyers in the rural areas owing to the practice of villagers grouping together and raising scholarship money to send students to the university, many of whom study law. Nigeria graduates about 1,500 lawyers a year. Many of these are versed in customary law and have returned to practice in the villages. The speaker also felt that the population would be suspicious of para-legals. They might feel that their cases were not getting proper consideration.

He also said that legal aid in court proceedings, as opposed to other legal services, was widespread in Nigeria. First year students are sent out to man legal aid centres at State level. Also the Bar provides legal aid in criminal matters.

A number of speakers described legal aid and legal services schemes in their countries, in particular in Kenya and Zimbabwe, as well as the work of a centre established by an ICJ Commission Member in South Korea.

## *Kenya*

With respect to Kenya it was noted that the facilities are rudimentary. After 13 years, there is only one legal aid centre and that is in Nairobi, namely the Legal Advice Centre. The basic problem is lack of funds. Another is apathy and to some extent hostility on the part of the bar associations. Many lawyers refuse to become involved and others see legal aid centres as competition. The speaker said there was a lack of support from the judiciary and the Attorney-General's office.

Another problem was the education received by lawyers which made them distant from the local population. Their education was in English, and the business of the high court was conducted entirely in English. If a witness speaks in Swahili, the national language, the judges need an interpreter. The laws are all in English and are not translated. Consequently the clients are unable to follow the legal arguments or the pleadings.

Many of the laws came from colonial times, and little had been done to re-instate African customary law.

There was a call for more to be done and some organisation, such as the ICJ national section, to organise seminars and prepare studies on the problem.

Another speaker from Kenya described the Kenya Public Law Institute which is seeking to overcome some of these problems. It was founded

by two organisations, the National Christian Council of Kenya and the Law Society of Kenya. It has both a human rights mandate and a legal aid and advice mandate.

It is planned to have three national centres, each with a full-time advocate, from which mobile clinics will operate in the surrounding area. The first mobile clinic is scheduled to start in June 1986. There will be a fixed schedule for visits to schools, churches, administrative centres and market places and other meeting places; these visits will be announced in advance.

At present the only centre in existence is the one in Nairobi, and it has no full time staff member. It operates mainly with the assistance of the students from the Law Faculty at the University and those undergoing internship before admission to the Roll of Advocates. The students receive course credit for working in the clinic. In the future, students will be able to do their post-graduate internships in the clinics, which should help to provide manpower to both the Nairobi centre and the rural clinics.

The Institute intends to use para-legals in the rural clinics, and training programmes are now under way. The programme has drawn heavily from the Indian experience.

It appears that the work of the centres will be case oriented. Para-legals will be given questionnaires for interviewing clients. A committee composed of lawyers, para-legals and volunteer workers will decide which cases to take up. Once a clinic accepts a case it will be handled until completion, including court appearances. The clinic hopes to have some volunteers to assist with its work. The case work will focus on landlord and tenant issues amongst other public interest issues.

Educational and promotional programmes will also be undertaken for specific target groups, such as women.

A major problem faced by the Institute is attracting qualified lawyers to join the staff. Legal education is heavily influenced by the needs of the profession, concentrating on commercial and other well-remunerated work, with little interest for the needs of the poor. The Institute is trying to change lawyers' attitudes towards legal services.

## *Zimbabwe*

Two speakers described the system in Zimbabwe. On independence the government was faced with the task of mobilising all available resources to bring the law to the people.

First, the legal profession was called upon to play its part. An agreement was reached between the government and the profession under which the Law Society provides legal representation in court to those who cannot afford it, now in both civil and criminal cases. Cases are allocated to law firms by rotation. This scheme is revised from time to time. It is by no means perfect, but it works reasonably well.

The university is involved through two organisations, a Legal Aid Clinic and a Centre for Applied Social Services. The Legal Aid Clinic was created before independence. Its primary aim was and still is that of exposing law students to the practice and procedures of the law. Cases are referred to it mainly by the citizens advice bureau, and are handled by fourth year students. Members of the legal profession also participate. For financial reasons it still operates only in the capital. The claimants are primarily persons with civil claims against public authorities or businesses, and landlord and tenant cases.

In 1983 the Law Department organised an international seminar which led to the creation of a Legal Resources Foundation, which has two objectives, — providing basic legal materials for the public, and research into particular problems. The legal materials are simple illustrated pamphlets informing people in English and the two main African languages of their rights on particular topics. As the literacy rate is exceptionally high, these can be and are distributed widely in rural areas. The research is carried out by the Centre for Applied Social Services which has been established within the Department of Social Science with the cooperation of the Law Department.

In 1984 members of the Law Department were instrumental in bringing an important case to the Supreme Court on the legal status of women following the introduction of the Legal Age of Majority Act. This had a considerable effect as it clarified the fact that women had been given a significant improvement in their status as from the age of 18 by that Act.

The Legal Resources Foundation has plans for the training of paralegals, or 'barefoot lawyers', to educate people as to their rights and how to prosecute their claims.

The government also plays its part through the Ministry of Justice, which has set up an office manned by legally qualified personnel who advise people on how to pursue their complaints, whether by legal proceedings or through the social services.

Both speakers stressed that the demand for legal services was much greater than could be provided with the available services.

## *South Korea*

Mrs Tai-Young Lee of South Korea described the Legal Aid Centre for Family Relations which she has founded and directed over the past 30 years. When she first started there was enormous discrimination against women in South Korea. The thrust of her organisation has been to seek to eradicate that discrimination and to educate women about the law that affects their lives. The Clinic undertakes casework and engages in conciliation, negotiating and counselling. Use is made of all forms of the media to publicise the Clinic's educational campaign. In addition, staff members give lectures and distribute written material. Women may call at or write to the Centre seeking advice.

One of the important activities of the Centre's preventive programmes is the law lectures series offered to housewives on Thursday afternoons. The Centre has also developed a body of legal literature on the rights of women.

Owing to the efforts of the Centre two thirds of the discriminatory laws against women have been eradicated. In addition, the efforts of Dr. Lee through her work at the Centre have led to the formation of the Korean Family Court.

At present there are 160 lawyers who volunteer their services to the Centre. This came about, in large part, because of Mrs Tai-Young Lee's arrest in 1976. When lawyers asked what they could do for her while she was under a suspended sentence and disbarred from practice, she asked them to give free services for cases coming to the Centre. Another factor that contributed to the staffing of the Centre was her position for eight years as Dean of the Law Faculty of Ewha Womans University in Seoul. Now many of her former students are coming to work or to volunteer their services to the Centre because of their initial involvement through a Clinical Legal Course initiated by Dr. Lee.

The Centre in Seoul has been funded completely from donations by women and women's organisations, and its 6-story building is named The One Hundred Women's Building. It has 4 branches in other parts of Korea and ten in the US to meet the growing needs of the expanding Korean community outside of Korea.

Finally, Mrs Tai-Young Lee observed that this type of work, which encourages the weak to resist the powerful, is in reality a quiet revolution, taking place step by step, which will most truly effect peace in families and ultimately peace in the world.

The International Conference of Jurists on  
The Implementation of Human Rights in Africa  
met at Nairobi, 2-4 December 1985 and  
agreed upon the following:

## Nairobi Declarations

### Declaration No. 1 on South Africa

1. The entire system of *apartheid* in South Africa, based as it is on racial discrimination, is a gross violation of international law, and has rightly been declared a crime against humanity.
2. Recent events illustrate the growing determination of the black majority in South Africa, whatever the price, no longer to tolerate the inhuman indignity of the *apartheid* system.
3. In response the South African government has intensified its repression. It declared a state of emergency in 38 districts and in three of the largest cities, Johannesburg, Port Elizabeth and Cape Town. Recent months have also seen a considerable increase in massive arrests and detentions without trial, systematic torture, and the indiscriminate use of firearms against unarmed civilians exercising their universally recognised democratic rights causing the deaths of hundreds, including children. Moreover, the security forces have been granted immunity against all crimes committed in the course of this repression. Treason trials have been mounted against the leaders of political movements and trade unions seeking to establish without violence a democratic nation.
4. The only basis for lasting peace in South Africa and Namibia is



equality of all before the law, leading to the repeal of unjust laws, the dismantling of the so-called 'independent' Bantustans, and the establishment of a democratic nation under the Rule of Law, free of all racial and other discrimination.

5. The United Nations Charter, the Universal Declaration on Human Rights and the International Covenants on Human Rights prohibit racism and racial discrimination. On its part Article 20 of the African Charter of Human and Peoples' Rights, adopted unanimously by the Heads of State and Governments of the Organisation of African Unity provides that «colonised or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community», and the Preamble to the Charter recognises the duty of African States to achieve the total liberation of Africa, and in particular the elimination of *apartheid*.
6. The intensification of the struggle for the liberation of the black majority in South Africa, and the threats and attacks made by the South African government against neighbouring states supporting this struggle, demonstrates that the system of *apartheid* is a threat to international peace and security.

In these circumstances the Conference

- appeals to all member states of the United Nations Organisation, the Organisation of African Unity and intergovernmental and non-governmental organisations to intensify their support to the struggle against *apartheid*, racism and racial discrimination;
- appeals urgently to the international community to take all necessary steps to persuade the government of South Africa to release immediately and unconditionally all political prisoners, and in particular Nelson Mandela; and
- earnestly hopes that the Security Council of the United Nations will declare the system of *apartheid* to be a threat to international peace and security, and impose upon South Africa mandatory and effective sanctions aimed at terminating the system of *apartheid* and enabling the peoples of Southern Africa to enjoy democratic rights without discrimination and with full respect for human dignity.

## Declaration No. 2 on The African Charter on Human and Peoples' Rights

The Conference,

Considering that the African Charter on Human and Peoples' Rights was adopted unanimously at Nairobi on 26 June 1981 by the Conference of Heads of State and Government of the OAU;

After having studied carefully all the provisions of the Charter and their various implications, national and international;

Having noted that the Charter is based on strict respect for African historical traditions, on the values of African civilisation, and on the conception of law and human rights in Africa;

After having taken note of the compatibility between the provisions of the Charter and the constitutions of the Member States of the OAU and, in general, the totality of the laws in these States;

Having assessed the role which the entry into force and the implementation of the African Charter on Human and Peoples' Rights can play in the struggle for the elimination of *apartheid*, racism and racial discrimination;

Conscious of the contribution which the Charter will make to the strengthening of the promotion and protection of human and peoples' rights in Africa;

1. Appeals to all the States which have not yet done so to ratify the African Charter on Human and Peoples' Rights; and
2. Decides to form in six regions of Africa follow-up groups charged with:
  - bringing, where necessary, to the competent authorities all information which could help to clarify the content of the provisions of the Charter and their various implications; and
  - following the procedures for ratification of the Charter already in hand or to come, and, when asked, giving any legal assistance required for this purpose.

# African Charter on Human and Peoples' Rights

## Preamble

The African States members of the Organization of African Unity, parties to the present convention entitled «African Charter on Human and Peoples' Rights»,

*Recalling* Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of «a preliminary draft on an African Charter on Human and Peoples' Rights providing *inter alia* for the establishment of bodies to promote and protect human and peoples' rights»;

*Considering* the Charter of the Organization of African Unity, which stipulates that «freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples»;

*Reaffirming* the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa and to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

*Taking into consideration* the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;

*Recognizing* on the one hand, that fundamental human rights stem

from the attributes of human beings, which justifies their international protection and on the other hand, that the reality and respect of peoples' rights should necessarily guarantee human rights;

*Considering* that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

*Convinced* that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

*Conscious* of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, colour, sex, language, religion or political opinion;

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

*Firmly convinced* of their duty to promote and protect human and peoples' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

HAVE AGREED AS FOLLOWS:

## **Part I: Rights and Duties**

### **Chapter I:**

#### **Human and Peoples' Rights**

##### *Article 1*

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

##### *Article 2*

Every individual shall be entitled to the enjoyment of the rights and

freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

#### *Article 3*

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

#### *Article 4*

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### *Article 5*

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

#### *Article 6*

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

#### *Article 7*

1. Every individual shall have the right to have his cause heard. This comprises:
  - (a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
  - (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
  - (c) the right to defence, including the right to be defended by counsel of his choice;
  - (d) the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

#### *Article 8*

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

#### *Article 9*

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

#### *Article 10*

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

#### *Article 11*

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

#### *Article 12*

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those

countries and international conventions.

4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

#### *Article 13*

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

#### *Article 14*

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

#### *Article 15*

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

#### *Article 16*

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

#### *Article 17*

1. Every individual shall have the right to education.
2. Every individual may freely take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

#### *Article 18*

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical and moral health.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

#### *Article 19*

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

#### *Article 20*

1. All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

#### *Article 21*

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised



without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.

4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

#### *Article 22*

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

#### *Article 23*

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:
  - (a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;
  - (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

#### *Article 24*

All people shall have the right to a general satisfactory environment favourable to their development.

#### *Article 25*

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

#### *Article 26*

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

### **Chapter II: Duties**

#### *Article 27*

1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

#### *Article 28*

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

#### *Article 29*

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or

resident he is;

4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well-being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity.

## **Part II: Measures of Safeguard**

### **Chapter I:**

#### **Establishment and Organization of the African Commission on Human and Peoples' Rights**

##### *Article 30*

An African Commission on Human and Peoples' Rights, hereinafter called «the Commission», shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

##### *Article 31*

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity.

*Article 32*

The Commission shall not include more than one national of the same State.

*Article 33*

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the States parties to the present Charter.

*Article 34*

Each State party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the States parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

*Article 35*

1. The Secretary-General of the Organization of African Unity shall invite States parties to the present Charter at least four months before the elections to nominate candidates;
2. The Secretary-General of the Organization of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections.

*Article 36*

The members of the Commission shall be elected for a six-year period and shall be eligible for re-election. However, the term of office of four of the members elected at the first election shall terminate after two years and the term of office of three others, at the end of four years.

*Article 37*

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to decide the names of those members referred to in Article 36.

*Article 38*

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

#### *Article 39*

1. In case of death or resignation of a member of the Commission, the Chairman of the Commission shall immediately inform the Secretary-General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary-General of the Organization of African Unity, who shall then declare the seat vacant.
3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term unless the period is less than six months.

#### *Article 40*

Every member of the Commission shall be in office until the date his successor assumes office.

#### *Article 41*

The Secretary-General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall also provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the cost of the staff and services.

#### *Article 42*

1. The Commission shall elect its Chairman and Vice-Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The Secretary-General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

#### *Article 43*

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of African Unity.

#### *Article 44*

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organization of African Unity.

### **Chapter II: Mandate of the Commission**

#### *Article 45*

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:
  - a) To collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights and, should the case arise, give its views or make recommendations to Governments.
  - b) To formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.
  - c) Co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State Party, an institution of the OAU or an African Organization recognized by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

### Chapter III: Procedure of the Commission

#### *Article 46*

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary-General of the Organization of African Unity or any other person capable of enlightening it.

#### **Communication from States**

#### *Article 47*

If a State Party to the present Charter has good reasons to believe that another State Party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary-General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the communication the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available.

#### *Article 48*

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either States shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

#### *Article 49*

Notwithstanding the provisions of Article 47, if a State Party to the present Charter considers that another State Party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary-General of the Organization of African Unity and the State concerned.

#### *Article 50*

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

#### *Article 51*

1. The Commission may ask the States concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representations.

#### *Article 52*

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of human and peoples' rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report stating the facts and its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government.

#### *Article 53*

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

#### *Article 54*

The Commission shall submit to each Ordinary Session of the Assembly of Heads of State and Government a report on its activities.

### **Other Communications**

#### *Article 55*

1. Before each session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission,



who shall indicate which communications should be considered by the Commission.

2. A communication shall be considered by the Commission if a simple majority of its members so decide.

#### *Article 56*

Communications relating to human and peoples' rights referred to in Article 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter request anonymity;
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter;
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity;
4. Are not based exclusively on news disseminated through the mass media;
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter; and
7. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

#### *Article 57*

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

#### *Article 58*

1. When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and

make a factual report, accompanied by its finding and recommendations.

3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

#### *Article 59*

1. All measures taken within the provisions of the present Charter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.
2. However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.
3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

### **Chapter IV: Applicable Principles**

#### *Article 60*

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

#### *Article 61*

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by Member States of the Organization of African Unity, African practices consistent with international norms on human and peoples' rights, customs

generally accepted as law, general principles of law recognized by African States as well as legal precedents and doctrine.

#### *Article 62*

Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.

#### *Article 63*

1. The present Charter shall be open to signature, ratification or adherence of the Member States of the Organization of African Unity.
2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organization of African Unity.
3. The present Charter shall come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the Member States of the Organization of African Unity.

### **Part III: General Provisions**

#### *Article 64*

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.
2. The Secretary General of the Organization of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organization within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

#### *Article 65*

For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by that State of its instrument of ratification or adherence.

*Article 66*

Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

*Article 67*

The Secretary General of the Organization of African Unity shall inform Member States of the Organization of the deposit of each instrument of ratification or adherence.

*Article 68*

The present Charter may be amended if a State Party makes a written request to that effect to the Secretary General of the Organization of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the States parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the States parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

## African Charter on Human and Peoples' Rights

*Ratifications as of (1 June 86)*

No.	Country	Date of signature	Date of ratification	Date deposited
1.	Algeria	11/4/86		
2.	Angola			
3.	Benin		20/1/86	25/2/86
4.	Botswana			
5.	Burundi			
6.	Cameroon			
7.	Cape Verde			
8.	Central African Republic			
9.	Chad			
10.	Comoros			
11.	Congo	27/11/81	9/12/82	17/1/83
12.	Djibouti			
13.	Egypt	16/11/81	20/3/84	3/4/84
14.	Equatorial Guinea			
15.	Ethiopia			
16.	Gabon	26/2/82	20/2/86	
17.	Gambia	11/2/83	8/6/83	13/6/83
18.	Ghana			
19.	Guinea	9/12/81	16/2/82	13/5/82
20.	Guinea-Bissau		4/12/85	6/3/86
21.	Ivory Coast			
22.	Kenya			
23.	Lesotho	7/3/84		
24.	Liberia	31/1/83	4/8/82	29/12/82
25.	Libyan Arab Peoples Socialist Jamahiria	30/5/85		
26.	Madagascar			
27.	Malawi			

No.	Country	Date of signature	Date of ratification	Date deposited
28.	Mali	13/11/81	21/12/81	22/1/8
29.	Mauritania	25/2/82		
30.	Mauritius			
31.	Morocco			
32.	Mozambique			
33.	Niger			
34.	Nigeria	31/8/82	22/6/83	22/7/83
35.	Rwanda	11/11/81	15/7/83	22/7/83
36.	Sao Tome & Principe		13/5/86	
37.	Senegal	23/9/81	13/8/82	25/10/82
38.	Seychelles			
39.	Sierra Leone	27/8/81	21/9/83	27/1/84
40.	Somalia	26/2/82	31/7/85	
41.	Sudan	3/9/82	18/2/86	11/3/86
42.	Swaziland			
43.	Togo	26/2/82	5/11/82	22/12/82
44.	Tunisia		16/3/83	22/4/83
45.	Uganda			
46.	United Republic of Tanzania	31/5/82	18/2/84	9/3/84
47.	Bourkina Faso	5/3/84	6/7/84	21/9/84
48.	Zaire			
49.	Zambia	17/1/83	10/1/84	2/2/84
50.	Republic of Zimbabwe			
51.	SADR	11/4/86	26/4/86	

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