

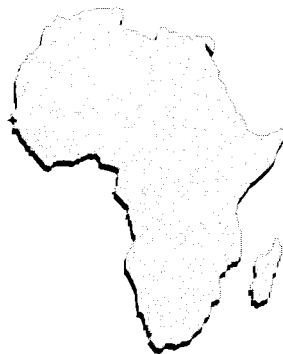


**ICJ WORKSHOPS ON NGO PARTICIPATION
IN THE AFRICAN COMMISSION ON HUMAN
AND PEOPLES' RIGHTS
1991 TO 1996**

A CRITICAL EVALUATION

OCTOBER 1996





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A CRITICAL EVALUATION

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Although this evaluation process has been commissioned by the ICJ,
the views expressed in this publication are independent views of the evaluator/
author and do not necessarily represent the view of the ICJ,
Wits University or any other institution or person.

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Preface

The role played by the International Commission of Jurists (ICJ) towards the elaboration of the African Charter on Human and Peoples' Rights since the process began in 1961 has been widely acknowledged. As an organisation committed to the promotion and protection of the Rule of Law all over the world, the ICJ continues to explore ways and means of giving practical effect to its mandate.

Following the establishment of the African Commission on Human and Peoples' Rights (ACHPR), in 1987, the ICJ turned its attention to ensuring the implementation of the Charter's provisions. The NGO workshops organised by the ICJ since 1991 prior to the African Commission's ordinary sessions is one of the practical ways in which we have sought to contribute to the strengthening of this mechanism.

The workshops have been guided by the following objectives:

- to develop NGO strategies for working on a continental level - with each other and with the ACHPR - as well as on the national level for the promotion of the African Charter on Human and Peoples' Rights;
- to promote dialogue between NGOs and the Commission;
- to facilitate NGO attendance and participation in the sessions of the ACHPR.

The ICJ embarked upon the evaluation of the workshops in 1994 with a view to assessing the impact of the initiative; to give effect to some of the preliminary findings of the evaluation exercise; a fourth objective was added to guide the workshops, viz:

- to encourage the participation of other national institutions involved in the promotion and protection of human rights in Africa to participate in the work of the African Commission and to develop better relations with the NGO community.

The inclusion of this objective led to the participation of some judges and ombudspersons in the 10th workshop.

The report, which highlights some "successes" and challenges, has been finalised to coincide with the celebration of the 10th anniversary of the entry into force of the African Charter on 21 October 1996, to assist both the NGO community and the African Commission in designing activities for the future. The report is not intended to mark the end of the process neither is it considered to be an end in itself. The recommendations contained therein will serve as a useful source of reference for the African Commission as it prepares its Programme of Action for the next five years. It will also be useful for the ICJ in devising other ways of contributing to the implementation of human rights norms in Africa.

The ICJ is extremely grateful to Professor Shadrack Gutto of the University of Witwatersrand, South Africa who agreed to undertake the not so easy task of evaluating the impact of the workshops. We also wish to thank members of the NGO community and the African Commission on Human and Peoples' Rights who participated in the workshops, and contributed to the successful outcome of this evaluation process.

The ICJ hopes that the African Commission will in the next decade continue to seek and enjoy the full cooperation and assistance of the NGO community, national judicial systems and other relevant international institutions in furthering its mandate.

Adama Dieng
Secretary - General

October 1996

PART I

Contextualising the OAU and its Institutionalisation of Human Rights mechanisms - especially the African Commission on Human and Peoples' Rights (ACHPR)

1.1. Background to the African Charter and the Commission

When the Charter of the Organisation of African Unity (OAU) was adopted and the organisation formally established on 25th May 1963, the "Purposes" of the organisation included (and still includes) a commitment to the eradication of colonialism and promotion of international cooperation, with due regard to the UN Charter and the Universal Declaration of Human Rights.¹ There was at the very beginning then, the linkage between national liberation and freedom, on the one hand, and commitment to adherence to human rights, on the other. Despite this formal indication of what may have been reasonably construed to be a commitment to collective (continental) and individual (national) protection and promotion of human rights, it took another eighteen years before the independent African countries could agree on a common human and peoples' rights convention or treaty. The African Charter on Human and Peoples' Rights was adopted on 26th June 1981 in Nairobi, Kenya. This evaluation is therefore taking place approximately fifteen years since the adoption of the Charter.

The adoption of a treaty, in this case in the form of the Charter, by states is an important signification of an intent or will or vision. It, however, does not usually translate into an expression of an

¹ Article 11 of the OAU Charter.

immediate readiness or preparedness to be committed to the requirements or terms of the treaty. It often takes long before a treaty which has been adopted gains the required sufficient number of signatories and ratifications to bring it into force. Thus, it was not until 21st October 1986² that the African Charter on Human and Peoples' Rights attracted the required number of signatures, ratifications and accessions to enable it to enter into force.

The entry into force of a treaty or a Charter, also does not necessarily or automatically translate into its enforcement or implementation. Institutional mechanisms or arrangements are required - and usually they are put into place only after the relevant treaty, convention or charter that caters for them has entered into force. The African Charter provides for the establishment of a Commission, as the primary organ or institution for the enforcement of the Charter. The relevant provision provides:

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.

An institution like the Commission is, of course, an expression of its functional authoritative officials, the Commissioners, the institutional linkages with the sources of authority and finances - in this case the OAU Secretariat in Addis Ababa, Ethiopia - physical location and the embodied and disembodied resources that are required for the Commission's work. In this particular case, it took the OAU another year from the time the Charter entered into force before it could elect the Commissioners and provide them with the necessary infrastructure to enable them to hold their first session.³

² This day, 21st October, is observed throughout Africa as the Africa Human Rights Day

³ The process for the election of the Commissioners is fully elaborated in the Charter as follows:

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,

The elections were held on 29 July 1987 and the First Session of the Commission convened on 2nd November 1987 - less than nine years ago, and approximately six years from the time the Charter was adopted.

The Commission is a quasi-judicial organ, in addition to its other subsidiary functions such as standard-setting. Because of this primary role or function, it could not have started operating as soon as

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 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 the 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.

the Commissioners had been selected and had held their First Session in Addis Ababa. They still required an essential part of the tools of trade of a judicial or quasi-judicial body or tribunal, the Rules of Procedure. It was not until during its Second Session that the Commission adopted its Rules of Procedure, on 18 February 1988.⁴

At its Third Ordinary Session held in Libreville, Gabon, from 18 - 28 April 1988, the Commission adopted and submitted several recommendations to the OAU Assembly of Heads of State and Government, among them the Headquarters Recommendation, which requested, among other things, for a Secretariat at a headquarter away from the seat of the OAU in Addis Ababa. That recommendation read in part:-

"Bearing in mind the quasi-legislative nature of the Commission and its need for a full time Secretariat, it is not desirable to have the Headquarters of the Commission where the political and administrative organs of the OAU are located.

Convinced that the Headquarters of the Commission can only be hosted by a State which has ratified the Charter and which offers to the Commission substantial material and human resource facilities for its establishment, work and researchers.

1. *RECOMMENDS to the OAU Assembly of Heads of State and Government to establish the Headquarters of the African Commission on Human and Peoples' Rights in a country other than the one hosting the political and administrative organs of the OAU;*

2. *RECOMMENDS ALSO to the Assembly of Heads of State and Government to choose, in order to establish the Headquarters of the Commission, a country which has ratified the African Charter on Human and Peoples' Rights and which offers to the Commission substantial material and human resource facilities for its establishment, work and researchers.⁵" [emphasis added]*

⁴ Article 42(2) of the Charter provides that "The Commission shall lay down its rules of procedure".

⁵ See, ACHPR, *First Activity Report*, in *ACHPR Documentation*, 1992, P.25

This Headquarters Recommendation appears to be quite important in this Evaluation for two reasons: First, the Commission needed a country that had ratified the Charter. The Gambia had taken an active part in the drafting stage of the Charter (the Charter is sometimes called "the Banjul Charter"⁶ by many commentators) and it had then an elected government and had experienced an uninterrupted civilian rule since attaining independence. This obviously endeared it in the eyes of many as the most appropriate country in which to locate the Commission and its Secretariat. Besides, at the time, there were many military regimes in Africa that had deposed civilian governments. Gambia therefore had formal "democracy" in place. The Second reason why Gambia subsequently won the bid to house the Commission and its Secretariat was because it had promised to provide adequate material and human resources, as the Headquarters Recommendation had requested and envisaged. Both of the above two main reasons for locating the Commission and its Secretariat in Gambia have undergone some serious challenge: a military *coup d'état* ousted the apparently corrupt civilian regime in 1994.

In addition, the promised financial, infrastructural and human support from both the former civilian regime and the current military regime have not been forthcoming, or are not adequately available given the small economy of Gambia. Effectively, the successive governments of Gambia had reneged on their promise. Part of the contribution the ICJ has made to ensure that the Commission has some support from Gambia has been its support for the African Centre for Democracy and Human Rights Studies.⁷ The ICJ also initiated support, in the form of financial sponsorship, to NGOs, journalists and other human rights activists and experts from all parts of the continent to enable them to travel to Gambia to attend and participate in the Commission's Sessions (See Annexure B). The present evaluator/author having participated in the Commission's work and observed the lack of capacity within the

⁶ Banjul is the capital of the Republic of Gambia

⁷ **The Report on the Activities of the African Centre for Democracy and Human Rights Studies 1994-1995** shows a restructured and more autonomous body than its initial form, which was very much under State control. The Secretary General of the ICJ, Mr Adama Dieng is an honorary member of its Governing Council.

Commission, and the absence of meaningful support for its work from the Gambian Government had the following criticism to make in the early 1990s:

The Commission's operations and effectiveness to date is, to be honest, appalling. It is inconceivable that an institution charged with the responsibilities that the Commission has could function at all, even assuming that the Commissioners were of the highest professionalism and courage, without at least a properly-stocked library, a permanent hall or halls for public and private sessions, and competent and able research and investigation team. Yet, the Commission as of October 1991 did not have any of the above, except their good intentions, potential professionalism of a few of the members of the Commission, and willingness to look for solutions to the material and professional deprivations that could provide the basis for more effective concentration on the more substantive responsibilities of protection and promotion of human and peoples' rights on the continent.

The Republic of Gambia has apparently reneged on its undertaking to the OAU to provide adequate facilities for the Commission's Headquarters. If anything, the government of Gambia appears to have competed with other governments for the responsibility of hosting the Commission in order to promote a statutory, partially government-controlled, "NGO"—the African Centre for Democracy and Human Rights Studies (Republic of Gambia, Laws, 1990). Of course, there is nothing wrong with a government initiating a human rights project since such efforts are to be judged by their performance in practice. The point being made here is that the Commission and the Centre are housed together in premises which are not suitable for the Commission. Over the years no adequate room was created that could house the public sessions which are attended by an ever-increasing number of authorised participants. To make the picture worse, the premises are next door to the posh, and as usual, imposing imperial USA Embassy, which is surrounded by a web of information-gathering and communication installations. During the 10th session, the Commission received the Report of Consultants it had appointed (apparently with financial backing from the United Nations Centre for Human Rights and the European Economic Community) to assess its needs and future priorities and recommend ways of attaining them..

With regard to the research and investigation staff, the Commission had none at all as of October 1991. In desperation, some makeshift arrangements were being considered by the Commission. But these, too, will also rely on temporarily "sponsored" persons who may not necessarily be the most compe-

tent and competitive on the Continent. The North will still make its influence felt through such ad-hoc sponsorship games. Under these conditions, it is unlikely that the Commission can seriously undertake: meaningful investigation work; verify country reports submitted under the requirements of Article 62 of the Charter; and make or sponsor competent research on either specific complaints brought before it or general thematic issues for reference and information.

On the administrative side, the Commission was even worse off. The then Secretary to the Commission, though having paper qualifications and work "experience" at his home country (Zaire) and at the OAU headquarters in Addis Ababa, appeared to have little if any interest and knowledge on human rights and democracy. Record keeping and retrieval seemed pathetic. The staff was very small in size but operating under the concentrated bureaucratic control of the Secretary. Perhaps the only "efficiency" that the present author saw in the entire duration of the 10th Session was in the organization of a cocktail reception to which we were invited and entertained, and in the efforts of some members of the junior staff. During the 12th Ordinary Session of the Commission in October 1992, there was a major clash between the Secretary to the Commission and the NGOs.

Given this appalling picture, one of the critical tests for the emerging new "human rights democracies" in Africa will be the extent to which they will, in practice, provide adequate financial, material and personnel backing for the Commission. Indeed, it is precisely because of the picture that is partially painted in the above critical observation that the NGOs' workshop recommended that the Commission be strengthened first, before the ideal of an African Court for Human and Peoples' Rights be considered seriously.⁸

With specific regard to areas pointed out in the above critique, there have been a few significant, but not sufficient, changes which have occurred since then:

- the posting of a competent senior legal officer from the OAU Secretariat in Addis Ababa to head the Secretariat in Banjul as the Secretary to the Commission;

⁸ SBO Gutto, *Human and Peoples' Rights for the Oppressed: Critical Essays on Theory and Practice from Sociology of Law Perspectives* (Lund, Lund University Press, 1993) 161 - 163.

- the establishment of a Documentation Unit with a trained documentalist (although with very limited resources still);
- appointment of a Senior Programme Officer as general assistant to the Secretary;
- attraction of African based interns who assist the Secretariat in managing the ICJ Workshops and the Commission's Sessions.

At the time of writing this Evaluation Report (September 1996), national elections had just been held with the incumbent Gambian military leader emerging as the winner of these elections. In spite of this "change" in government, for the Commission, the picture does not look promising. The challenge to the Commission and the OAU is whether it is still desirable for the Commission to have its headquarters in the Gambia at a time when there are no signs of possible improvements in the support it has received so far from the Gambian government.

1.2 The OAU and Broader Human Rights Concerns and Involvement:

Within the African continent, the role and involvement of the OAU in human and peoples' rights issues and problems are not confined to the Charter and its implementation machinery. Likewise, the European countries which are members of the "European human rights system" - under the (European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) - are also concerned with and involved in extra politico-economic and trade structures with human rights commitment and implications, such as the European Union,⁹ as well as in the politico-military associations also with human rights concerns, such as the Helsinki Accord or Conference of Security and Cooperation in Europe

⁹ HK Nielsen, "the Protection of Fundamental Rights in the Law of the European Union", Vol 63 *Acta Scandinavica juris gentium* (Nordic Journal of International Law (1994) 213 -243.

(CSCE)¹⁰. The OAU being the premier politico-legal institution for cooperation and collective action by African states in most inter and intra-continental relationships, has a broader concern with human rights problems beyond the central institutional framework established under the African Charter. Such concerns and efforts are not and should not be viewed as being in competition with the Charter system. They complement and reinforce the Banjul based human and peoples' rights system.

Articles 60 and 61 of the Charter provide express and clear indication that the Commission's role is to interpret and implement the Charter in conformity with, and by having regard to, the various African and relevant international human rights instruments:

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 Specialized 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.

¹⁰ Pieter Van Dijk, "A Critical Evaluation of the European system for the Promotion of Human Rights and their supervisory Mechanism", in CM Quironga (ed) **Training Course on International Human Rights Law for Judges and Lawyers of South America**, (Netherlands Institute of Human Rights, Utrecht, 1991) 143-157.

Faced with massive population displacements within and across African countries as a result of internal and external wars, including, at the time, armed struggles for national liberation, and displacements caused by natural disasters, the OAU responded by adopting the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.¹¹ This African Refugee Convention extended the then internationally recognised, but narrow, definition of the concept "refugee".

Article 1(1) adopted the definition of "refugee" similar to that under Article 1(2) of the Convention Relating to the Status of Refugees (the Geneva Convention) of 28 July 1951. However, because of the special conditions prevailing in Africa at the time, the 1969 Convention extended the definition of "refugee" under Article 1(2):

"2. The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality"

This expanded definition appears to have been influenced by the discussions and positions taken by some countries during the Eighth Session of the Asian-African Legal Consultative Committee held in Bangkok in 1966.¹² The African regional human rights system has, therefore, adopted this Refugee Convention as an integral normative instrument for the African continent.

Besides this Refugee Convention, the African human rights regime has environmental concerns within its ambit. The African Charter is the only existing regional human rights convention that specifically recognises environmental rights:

¹¹ The Convention was adopted by the Assembly of Heads of State and Government on 10 September 1969 and entered into force on 20th June 1974.

¹² "Principles Concerning Treatment of Refugees", adopted by the Asian-African Legal Consultative Committee at its Eight Session, Bangkok, 8 - 17 August 1966, in **Collection of International Instruments Concerning Refugees** (Geneva, UNHCR, 1990) 201.

Article 24:

All peoples shall have the rights to a general satisfactory environment favourable to their development.

Besides this core recognition of environmental rights, the OAU has adopted other treaties on the subject, the most recent and popular one being the Bamako Convention.¹³

Taking the cue from the United Nations, the OAU adopted its own regional African Charter on the Rights and Welfare of the Child in 1990.

In terms of institutions, besides the African Commission on Human and Peoples' Rights established under the Charter, the OAU is in the process of establishing an African Court on Human and Peoples' Rights. The ICJ and many African human rights non-governmental organisations have been actively campaigning for the establishment of a court within and outside the ambit of the NGO workshops. This is certainly one of the most important results of the programme for strengthening the participation of African NGOs in the work of Commission and in strengthening human rights institutions in general, as is indicated below in **Part 2, Section 3.2** of this Evaluation Report.

The Treaty establishing the African Economic Community does provide for the establishment of a Court of Justice.¹⁴ As has already been pointed out, such a court may play a major complementary role to the "pure" human rights commission and the future court on Human and Peoples' Rights - quite similar to the role being played by the European Court of Justice, as a complement to the Stras-

¹³ **Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa**, Adopted on 30 January 1991 in Bamako, Mali. The Preamble to this Convention specifically makes reference to the Provisions on environmental protection in the Charter (para 5).

¹⁴ The **African Economic Community Treaty** was adopted in Abuja, Nigeria, on 3rd June 1991 and formally received the required number of ratification to bring it into force on 12th May 1994. No institutional arrangements for its operation are in place as yet. Articles 18-20 of the Treaty provide for the Court of Justice.

bourg Human Rights Court. Issues of regional economic and trade relations are bound to impact very significantly on fundamental human rights and freedoms.

The recent establishment of the Mechanism for Conflict Prevention, Management and Resolution (MCPMR) within the OAU¹⁵ has also expanded institutional arrangements for confronting human rights problems on the African continent.

The object of the foregoing survey in this section of the Evaluation is meant to provide an important and necessary background to the African Charter and the overall context within which the institutions established under it operate or should operate and may be evaluated. The African regional human rights system needs to put in context, and should not be narrowly conceived as belonging only to the Charter and the Commission, as is often the case in the existing predominant literature and discourse.

¹⁵ The Heads of State and Government of the OAU at their meeting during the 29th Ordinary Session in Cairo, Egypt, 28-30 June 1993 adopted the **Declaration of the Assembly of Heads of State and Government on the Establishment, within the OAU of the Mechanism for Conflict Prevention, Management and Resolution**. For a critical comment on this Mechanism see SBO Gutto, "The OAU's Mechanism for Conflict Prevention, Management and Resolution and the Controversial Concept of Humanitarian Intervention in International Law", **South African Law Journal**, Vol 113 (1996) 314-324.

PART 2

The ICJ and the African Human and Peoples' Rights System: An Overview

2.1 The ICJ and the African Charter

Two recently published books on human rights in Africa and the work of the African Commission on Human and Peoples' Rights, one by an African currently domiciled in Europe but with active academic and practical involvement with human issues and institutions in Africa¹⁶ and the other by a leading North American "Africanist" human rights academic,¹⁷ have provided useful information on the background to the African Charter and the ICJ's involvement in the process. This part of the evaluation makes use of some relevant historical accounts contained in the two books, among other primary and secondary sources.

Claude Welch, Jr. traces the origins of the ICJ to the East-West Cold War era and demonstrates how the organization has changed its paradigms and shaken-off its birthmark as a tool for partisan global ideological wars. He captures the important role that the organization, through its Secretary-General, Legal Officer for Africa and Programme Coordinator, has played and is continuing to play, to strengthen the work of the Commission:

"The Geneva-based International Commission of Jurists (ICJ) has provided the best-informed consistent NGO pressure on the African Commission

¹⁶ Evelyn A Ankumah, *The African Commission on Human and Peoples' Rights: Practice and Procedures* (Martinus Nijhoff Publishers, The Hague, 1996), especially PP 4 - 8.

¹⁷ Claude E Welch, Jr., *Protecting Human Rights in Africa: Strategies and Roles of Non-Governmental Organizations* (University of Pennsylvania Press, Philadelphia, 1995), especially PP.163-169.

and its reporting mechanism to enhance efficiency and input. Indeed, were it not for the efforts of ICJ General Secretary Adama Dieng, the African Charter on Human and Peoples' Rights might still be languishing in the limbo of unratified treaties. It is nearly impossible to underestimate the ICJ's role in bringing both the Charter and the Commission to life".¹⁸

Like other commentators, Welch, Jr. identifies the beginning of the ICJ's commitment to the promotion of ideals of the rule of law and human rights in Africa to the 1961 African Conference on the Rule of Law in Lagos, Nigeria.¹⁹ The Lagos Conference adopted an important resolution, the "Law of Lagos". Since the "Law of Lagos" is often cited but rarely published in its entirety, it is necessary and appropriate to reproduce it in full in the present Evaluation:

Law of Lagos

The African Conference on the Rule of Law consisting of 194 judges, practising lawyers and teachers of law from 23 African nations as well as 9 countries of other continents.

Assembled in Lagos, Nigeria, in January 1961 under the aegis of the International Commission of Jurists,

Having discussed freely and frankly the Rule of Law with particular reference to Africa, and

Having reached conclusions regarding Human Rights in relation to Government security, Human Rights in relation to aspects of criminal and administrative law, and the responsibility of the Judiciary and of the Bar for the protection of the rights of the individual in society,

Now Solemnly

Recognizes that the Rule of Law is a dynamic concept which should be employed to safeguard and advance the will of the people

¹⁸ Claude Welch, Jr, op. cit. at P163

¹⁹ ICJ, *African Conference on the Rule of Law, A Report on the Proceedings of the Conference, Lagos, Nigeria, January, 3 - 7, 1961* (ICJ, Geneva, 1961)

and the political rights of the individual and to establish social, economic, educational and cultural conditions under which the individual may achieve his dignity and realize his legitimate aspirations in all countries, whether dependent or independent,

Reaffirms the Act of Athens and the Declaration of Delhi with special reference to Africa and

Declares

1. That the principles embodied in the Conclusions of this Conference which are annexed hereto should apply to any society, whether free or otherwise, but that the Rule of Law cannot be fully realized unless legislative bodies have been established in accordance with the will of people who have adopted their Constitution freely;
2. That in order to maintain adequately the Rule of Law all Governments should adhere to the principle of democratic representation in their Legislatures;
3. That fundamental human rights, especially the right to personal liberty, should be written and entrenched in the Constitutions of all countries and that such liberty should not in peacetime be restricted without trial in a Court of Law;
4. That in order to give full effect to the Universal Declaration of Human Rights of 1948, this Conference invites the African Governments to study the possibility of adopting an African Convention of Human Rights in such a manner that the Conclusions of this Conference will be safeguarded by the creation of a court of appropriate jurisdiction and that recourse thereto be made available for all persons under the jurisdiction of the signatory States;
5. That in order to promote the principles and the practical application of the Rule of Law, the judges, practising lawyers and teachers of law in African countries should take steps to establish branches of the International Commission of Jurists.

This Resolution shall be known as the Law of Lagos.

Done at Lagos this 7th day of January 1961.

As is clear in the "Law of Lagos", a call was made for African Governments to study the possibility of adopting an "African Convention of Human Rights" and an institutional mechanism of a court.

Welch, Jr. proceeds in tracing the developments in the quest for the African regional human convention thus:

In March 1977, the UN Commission adopted a Nigerian draft resolution (co-sponsored by Benin, the Philippines, Senegal, Tanzania, and Zaire) calling on the UN to urge regional organizations such as the Organization of African Unity to adopt regional human rights convention. A UN study group was established, which received documentation from the Council of Europe and the Organization of American States, but not the OAU. It expressed general agreement that member states and regional organizations should take the initiative, rather than the UN. In March 1978, the Commission adopted another Nigerian resolution, requesting the UN Secretary-General both to transmit the report to member states and regional organizations, and to organize suitable regional seminars. Events started to speed up. Meanwhile, the ICJ convened a colloquia in Dakar in 1977 whose report was widely distributed and used by the UN in its later Cairo and Monrovia meetings devoted to discussing a draft treaty. In what it later called the "decisive step," the ICJ called together 40 African lawyers from French-speaking countries in Dakar in 1978. Four members of this group lobbied ten French-speaking heads of state to support such a treaty. Mbaye²⁰ persuaded President Senghor of Senegal to introduce a resolution in 1979, calling on the OAU to convene African experts to prepare a draft human rights treaty. By mid-1981, the experts had finished their draft, having drawn heavily from proposals prepared by Mbaye, who in fact served as rapporteur of the drafting committee.²¹

This is echoed, from a different perspective, in Ankumah's account in a footnote on page 4 of her book:

The principal discussions took place during the following: Congress of African Jurists held in 1961 in Lagos, Nigeria; Congress of French Speaking African Jurists, held in 1969 in Dakar, Senegal; United Nations

²⁰ then Chief Justice of Senegal and President of the ICJ

²¹ Claude Welch, Jr., op. cit. at P165

Seminar, held in 1969 in Cairo, Egypt; United Nations Seminar, held in 1974 in Dar es Salaam Tanzania; Conference of the French Speaking African Bar Association, held in Dakar in 1979, and a United Nations Seminar held in Monrovia, Liberia in 1979.

She continues in the main text of her book at pages 6 - 8 :

From November 28 to December 7, 1979, a group of African experts gathered in Dakar, Senegal to prepare the first draft of the African Charter. Not surprisingly, the Charter was to reflect the history, values, tradition, and the economic development of the continent. This approach is not unique to Africa. Western conceptions of human rights are a result of Europe's historical experiences and values. This point was emphasized by former President Senghor of Senegal when he informed the experts meeting in Dakar that: Europe and America have construed their system of rights and liberties with reference to a common civilization, to respective peoples and to some specific aspirations. It is not for us Africans either to copy them or seek originality for originality's sake. It is for us to manifest both imagination and skill. Those of our traditions that are beautiful and positive may inspire us. You should therefore constantly keep in mind our values and the real needs of Africa'.....

Despite the conviction to produce a Charter that reflects African realities, the African experts were cautioned not to produce a Charter on the rights of the "African man". President Senghor correctly reasoned that "(bu)mankind is one and indivisible and the basic needs of (human beings) are similar everywhere".

The second draft of the Charter was prepared in Banjul, the Gambia in June 1980 and in January 1981. The second draft was different in some important respects from the first draft. In particular, the preamble which reflects the theme of the treaty no longer refers to co-operation with non African States. Rather it mentions the virtues of African tradition and the values of African civilization. The changes emphasize the regional character of the document. In addition, the Banjul draft stresses the interdependence of civil and political rights and economic, social and cultural rights. Furthermore, the Banjul draft addresses more forcefully the right to development, the elimination of colonialism, neo-colonialism, apartheid, Zionism and of "aggressive foreign military bases".

Another important difference between the Dakar and Banjul drafts relates to the Charter's enforcement. Article 56(3) of the Dakar draft empowered the Chairperson of the Assembly of Heads of States and government to take action in urgent cases in order to protect human and peoples' rights. This power was deleted in the Banjul draft making the decisions of the Assembly non-binding to States Parties. Furthermore, the publicity element, an effective tool in the promotion of human rights, is watered down in the Banjul draft. The Dakar draft provided that the Assembly could publicize reports on violations of human rights upon a decision of one third of its members. However, a decision of a simple majority is now required. In other instances the Banjul draft strengthens or weakens the Dakar draft.

The second draft was discussed by the OAU Ministerial Council in accordance with OAU practice. Although serious doubts were expressed about its future, the Council of Ministers referred it to the Assembly of Heads of State without changes.

After the Charter was adopted in Nairobi in 1981, the ICJ embarked on a continent-wide campaign for its ratification. The campaign targeted all persons and institutions that could influence government decision-makers. It was not limited only to lawyers. This is captured graphically in a write-up of a seminar which was held in Dakar in 1983 as a collaborative effort between the Council for the Development of Economic and Social Research in Africa (CODESRIA) and the ICJ:

After the OAU adopted the Charter in 1981, the focus of the campaign has now changed to making sure that African governments sign and ratify the Charter. In this process the Union of African Lawyers, the African Bar Association, the African Institute of Human Rights (there are two in Senegal, one in Nigeria) the OAU, some leading Heads of State, and many other organizations are all involved in this process. Indeed the joint seminar of the Inter-african Union of Lawyers and the African Institute of Human Rights in Dakar in 1982 set this process going. Eighteen countries have now already signed the Charter. Guinea was the first African country to ratify the Charter. Following Guinea, eight other countries have since ratified the Charter (Tunisia, Mali, Senegal, Nigeria, Togo, Congo, Gambia and Liberia), and ten other countries are in the process of ratifying it. It is expected that twenty African countries will have ratified the Charter before the next summit meeting to be held in Conakry in 1984. For the Charter to be enforced twenty six countries must ratify it.²²

The above ratification campaign seminar was followed by another major one in 1985, this time targeting leading jurists, religious and political leaders, at Limuru in Kenya.²³ The strategic importance of this particular seminar is that it brought together leaders from countries that had not yet ratified the Charter and Kenya was chosen as the country where the annual summit of the OAU Heads of State and Government was to be held in 1986. It was, therefore, not accidental that during the summit, the required number of ratifications was met, thus enabling the Charter to enter into force.

2.2 The ICJ and its Involvement in "Other" Human Rights Initiatives and Activities in Africa

Apart from the various forms of activities relating to the promotion and protection of the Rule of Law and Human Rights already mentioned in this Evaluation, the ICJ has been involved in a number of human rights activities in Africa of educational and "promotional" nature. In these activities it has interacted and cooperated with a number of African human rights activists and other organised formations in the form of non-governmental organisations (NGOs) and community based organisations. (CBOs). In these activities, the ICJ has either provided specialists or resources, or used local expertise. One area of such activities relevant to the specific programme presently under review is the one focused on strengthening or facilitating access to appropriate and affordable legal services to the rural communities, especially the poor. We have already mentioned the joint CODESRIA-ICJ Seminar which took place in Dakar in April 1983 and the Limuru-Nairobi Conference of December 1985.²⁴

²² CODESRIA and ICJ, *Development and Legal Services in Africa: Report of a Seminar on Development and Legal Services in Africa, Dakar-Senegal, April 1983* (CODESRIA, Dakar, 1983) "Preface" by Abdalla S Bujra and Niall MacDermot.

²³ ICJ, *Human and Peoples' Rights in Africa and the African Charter: Report of a Conference held in Nairobi, December 1985*. (ICJ, Geneva, 1986). The Conference had focused on the Charter and the need for its ratification as well as on legal services in rural areas and the institution of the Ombudsman in Africa.

²⁴ 23 Footnotes 21 and 22, above.

In 1993, the ICJ convened in Accra, Ghana, a West African regional seminar on legal services for the rural and urban poor with particular focus on the status of women. The Seminar was attended by scholars, activists and human rights NGOs drawn from Gambia, Ghana, Liberia, Nigeria, Sierra Leone and Cameroon.²⁵ According to the published proceedings just cited, the seminar focused on understanding and developing training strategies for *paralegals*. The institution of paralegals fills a yawning gap in legal and advice services for the poor or marginalised groups - who constitute the majority of the populations in practically all African countries. They, the paralegals, are more easily accessible to the marginalised and have much more holistic approach to dealing with complex problems facing the people, of which legal expertise is but only a component part of the larger picture. Traditional lawyers are in many instances limited by their professional training in responding to human rights problems globally. Often they get lost in the legalistic pursuits.

The Seminar under discussion actually used and further developed a paralegals' training programme that the ICJ was promoting, as a way of empowering organised structures at grassroots levels to confront human rights problems with some expertise and professionalism. Other such seminars had been held in the Gambia (1989), Zimbabwe (1990) and Burkina Faso (1993).²⁶ Earlier on in 1984, the ICJ, together with the African Bar Association and the All Africa Conference of Churches, had organised a Seminar in Limuru, Kenya, which had identified the problem of lack of legal and advice services for the poor in Africa.²⁷ The Workshops' initiatives of the 1990s were therefore informed by the earlier "brainstorming" or problem-identification contacts with people and organisations involved with marginalised sectors of society with needs and interests of legal and human rights nature.

²⁵ **Legal Services for Rural and Urban Poor and the Legal Status of Rural Women in Anglophone West Africa** (ICJ, Geneva, 1995)

²⁶ A Dieng and C Thompson (eds) **Paralegals in Rural Africa: Seminars in Banjul and Harare...** (ICJ, Geneva, 1991).

²⁷ *Ibid*, PP. 107-112

Much more recently, the ICJ commissioned two African women with wide experience in dealing with grassroots legal and human rights problems and needs to synthesize the knowledge existing in the field of, and activities connected to, paralegals work. They were charged with the duty to develop a manual on paralegal training relevant to the specific needs of Africa.²⁸

The above brief evaluative survey in this section focusing on one of activities of the ICJ in areas complementary to the efforts to strengthen the involvement of African legal and human rights NGOs in the work of the Commission is critical as it informs the ICJ as much as it informs the African NGOs, scholars and activists. The present author has in the past recorded sharp criticism of powerful international non-governmental organisations based in the North that have not demonstrated the willingness to associate with grassroots NGOs and CBOs on the basis of cooperation and mutual respect.²⁹ It is critical to keep in sight the fact that workshops, seminars and training sessions organised by the ICJ in collaboration with its African counterparts in areas such as those of capacity-building in the field of legal services through the use of paralegals and in strengthening participation in the work of the Commission be seen to be of mutual benefit to the ICJ and its African partners. This applies equally to collaboration and cooperation with NGOs which form part of the inner-core of "the ICJ family" - that is, ICJ, national sections that operate quite independently, such as the Kenyan Section of the ICJ³⁰ - and other affiliated, but independent NGOs. In order to effectively discharge its mandate, the ICJ needs these organisations; to empower themselves so as to be effective, these NGOs in turn need the type of support and other relationships they have developed with the ICJ. The ICJ has greater collective

²⁸ A S Tsanga and O Ige, *A Paralegal Trainer's Manual for Africa* (ICJ, Geneva, 1994)

²⁹ See Gutto, *op. cit.*, fn 8 at pages 158-161.

³⁰ The ICJ (Kenya Section) is one of the most consistent and active national "sections" of the ICJ in Africa. It accesses resources independently, undertakes activities autonomously, including the publication of its work. Some of its publications include books such as *Law and Society* (1989) and *Law and the Administration of Justice in Kenya* (1992). It also has established some semi-autonomous structures involved in legal and civic activities.

experience developed through its work in other parts of the world, especially in Latin America and in Asia (including the relevant parts of the Middle East which do not geographically fall within the African Continent), than any single individual organisation or a group of a few small NGOs or CBOs. The ICJ can, and does, also access greater resources.

PART 3

The ICJ Workshops on NGO Participation in the African Commission on Human and Peoples' Rights

3.1 Background to, Motivation and Vision for the Workshops

The background to, motivation and vision for the Workshops may be sourced from the writing of academics who have devoted some time to study the evolution and development of the African regional human rights system, as well as from the files in the archives of the ICJ and the Secretariat of the African Commission. In this evaluatory report, it is considered important to indicate the thinking behind the Workshops so as to provide the framework within which the achievements, or lack of the same, could be judged fairly.

The original proposal by the ICJ for the Workshops has the following to say:

The Problem to Be Addressed

The problem now is to invigorate the Commission. The Commission is hampered by a lack of funding and its work is not well known within Africa. Few governments are submitting the periodic reports required under the Charter to describe how they are implementing the Charter, and those submitted are perfunctory, distributed (untranslated) to members on the eve of debate, and the subject of little questioning. The Commission is thus not fulfilling its role of monitoring compliance with the Charter. It also has not been given the necessary funds to actively promote its work and spread knowledge of the African Charter.

Few grassroots NGOs, who could monitor and strengthen the Commission, and report on its activities in their own countries, are

able to attend Commission meetings. At the March 1991 meeting in Lagos, for instance, only 2 non-Nigerian NGOs (the Banjul Centre and the Arab Institute for Human Rights) were present.

The Two-fold ICJ Strategy

The ICJ strategy for meeting this problem is two-fold. On the one hand, the ICJ is organizing a high-level brainstorming session with OAU Secretary-General Salim Salim and a handful of leading African Statesmen to examine: the effectiveness of the Commission, including the operation of and OAU support for the Secretariat; the political support of member states for the work of the Commission and their obligation to submit periodic reports and to participate in the promotional work of the Commission; and the best way of changing foreign support to the Commission. This brainstorming session would be used by the OAU's Secretary-General to announce a Plan of Action to improve the efficiency.

On the other hand, the ICJ will organize workshops for grassroots African NGOs before the next sessions of the Commission.

The Workshops of NGO Participation in the African Commission on Human and Peoples' Rights

At the March 1991 session of the Commission, the NGOs present supported the ICJ's proposal to organise a workshop for African NGOs prior to the next session of the Commission in Banjul in October 1991. It was also agreed, in principle, to hold similar workshops before subsequent Commission sessions. The African Centre for Democracy and Human Rights Studies was to be local co-sponsor. The Banjul-based Centre was set up in 1988 to promote the Charter throughout Africa by means of documentation, studies and seminars. It will be responsible for local organisation.

At the end of its March 1991 session, the Commission voted to co-sponsor and participate in the workshop.

Twenty-five local NGOs from all parts of Africa will be invited to the workshop, including at least two each from the four countries whose period reports on compliance with the Charter will be consid-

ered during the session. (For the October 1991 session, this will apparently be Egypt, Nigeria, Tanzania, Togo). The NGO participants will be chosen by the ICJ, in consultation with the Centre and the ACHPR, on the basis of expressed interest (as evidence by consultative status with the ACHPR) and potential.

In addition, non-African NGOs, such as Amnesty International, the Lawyers' Committee for Human Rights and Africas Watch will participate at their own cost. It is hoped that as many as possible of the members of the ACHPR will also take part.

The purpose of the seminar will be to:

- develop NGO strategies for working on a continental level - with each other and with the Commission - and on a national level for the promotion of the charter;
- promote a dialogue between NGOs and the Commission; and, most importantly,
- allow the NGOs to attend and participate in the Commission session.

The seminar will look at issues, including:

- the content of the African Charter;
- how NGOs may submit petitions (communications) to the Commission under the Charter;
- how NGOs may transmit information relating to states' reports to be considered by the Commission (eg by presenting information to the Commission, preparing "alternative reports", etc);
- how NGOs can become involved in the promotion of the African Charter within their own countries;
- how NGOs can make use domestically of the statements contained in their countries' compliance reports and of the Commission's questions and comments on the report;.....

Those participants from countries whose reports will be under consideration will be contacted well before the seminar in order to encourage them to prepare information on their countries' human rights situation for submission to members of the Commission.

In addition, as the NGO participants and the discussion-leaders will remain in Banjul throughout the session of the Commission, it is expected that informal NGO meetings would be organized each day, as well as during closed Commission meetings, to plan strategy.

After the meeting of the Commission, the participants will stay in touch through the newly-created network (probably coordinated by the Banjul Centre). The participants will be expected to report locally (through press conferences, media, NGO publication, etc) on the seminar, the Commission meeting and, especially on the Commission's consideration of their country's report, and inform the network. In this way, the work of the Commission, particularly, the country's commitments and the international discussion of those commitments will reach the domestic audience.

A similar seminar will be held before the March 1992 ACHPR meeting (and subsequent meetings), involving a same core group of NGOs, as well as new NGOs selected again according to the countries whose reports will be under consideration".

The foregoing indicates that the Workshops programme or project was conceived as a contribution to strengthening both the "promotion" and the "protection" mandates of the Commission. To do this, the strategic objectives appear to have been capacity building and institutional development of both the participating organisations and institutions (the NGOs) as well as the Commission itself. It was conceptualised that capacity building and institutional development of the African NGOs in so far as their work with the Commission is concerned would also lead to greater pressure being put on the national governments to contribute more effectively in supporting the Commission and also in meeting their reporting obligations under the Charter. It is also important to note that once the initial Workshop was organised, it was the collective will and demand by the African grassroots NGOs which had participated that future Workshops were necessary and needed to be organised on a regular basis. Thus, the ICJ "sold" an idea which the African human rights

community identified with and approved. The ICJ was thus empowered and legitimated to pursue the Workshop idea further. In the long run then, it could be said that the ICJ then became a facilitator of "what the people wanted", to use a popular political saying. It appears that most of the objectives have been met or realised, even though not in the exact ways as was originally conceived. For example, it will be seen in the later part of this Report, that the "networking" idea has taken different forms and become much more diversified than having a single network as the original conception had it. This is much more realistic and effective.

Those who have analysed the Workshops' programme from independent points of view have generally concluded that it has made significant contribution in enabling the NGOs to be more professional and effective in dealing with the Commission, besides helping the Commission to define and undertake its responsibilities with the degree of seriousness they deserve.³¹

The most important recent ICJ contribution to human rights in Africa has come through encouraging NGOs' awareness of each other and of the Commission. The process started in October 1991, with the first three-day, pre-session workshops for African and international human rights NGOs. Such efforts came naturally to the ICJ. For more than 30 of its 40 years, it had worked toward an effective, Africa-wide body focused on human rights. For the ICJ, bringing together grassroots organization and increasing the flow of communications to the African Commission were tasks happily undertaken. Thanks to financial assistance from Canada, Germany and Sweden, the workshops could be held; support from the African Commission itself (which officially co-sponsors the events) and the African Centre for Democracy and Human Rights Studies in Banjul have spread some of the administrative burden. An average of 50 participants from human rights NGOs have attended each workshop. They have received basic briefings on the African Commission's work, with some Commissioners happy to provide information. Each ICJ workshop has focused on particular themes; women's rights; the right to development; fair trial; a protocol establishing an African Court of Human Rights. Each has concluded with a set of resolutions exhorting the African Commission or the parent OAU to take specific steps, such as increas-

³¹ See Claude Welch, Jr, op cit. Fn 16, at 166-167

ing funding, improving Commission procedures, preparing guidelines, or clarifying the Charter and Rules of Procedure.

The ICJ-run workshops aim at facilitating independent activity by NGOs. Each attending NGO is encouraged to reach out directly to the African Commission. The ICJ would like to see NGOs consulted in the preparation of country's reports, active in documenting human rights issues independently, and willing to pressure the African Commission for action. In other words, the workshops ideally would both empower African human rights NGOs and strengthen the African Commission. All would gain by greater knowledge cooperation, so it appears. The ICJ thus took on an undisputed (though not tension-free) role as the leading international NGO focused on networking among African human rights NGOs. Its steps to build awareness of the Commission and to facilitate links among NGOs have paid off

It should be appreciated that the establishment of the African regional human and peoples' rights system signalled a great challenge to all African lawyers, jurists and human rights activists and practitioners. It also challenges those who are appointed as Commissioners. The diversity of legal systems and legal cultures in Africa is perhaps greater than in any other continent or existing regional system. Each country has a variety of indigenous, traditional, legal systems upon which layers of transplanted Euro-Asiatic and Arabic ones have been added over the last twenty-plus centuries. There exist numerous types of official and unofficial laws and legal practices, formal and informal, written and unwritten. Just from the European colonial and imperialist heritage Africa has English, Roman-Dutch, Portuguese, Italian, French, Spanish and Belgian legal traditions and influences. Middle Eastern and Asiatic influences are also fairly strong within the contemporary African laws and practices. The challenge has therefore been not only to overcome the language barriers within the Workshops, Sessions of the Commissions and in the networking initiatives but also to create conducive atmosphere and strategies within which the different understandings and approaches to human rights can be pursued with some degree of commonality and sense of purpose. The current evaluative survey cannot, of course, undertake a deeper sociological study of the dynamics of such a variety of "pluralism". It suffices to indicate that the Workshops and the processes of strengthening the capacity and work of the Commission and the NGOs has not been without inherent difficulties and challenges.

Regional systems such as the European human rights system which had started with few countries with not very dissimilar cultures and traditions are today experiencing the pressures and challenges of diversity and pluralism which they were not prepared for. This is as a result of the admission of a large number of Central and Eastern European countries into the Council of Europe's Strasbourg human rights system.

3.2 The Rights and Obligations of "Observer Status NGOs" and their Development in and by the Workshops

Before this evaluation proceeds to identify the practical ways in which the Workshops have influenced not only the procedures and outlook of the Commission but also those of the "Observer Status NGOs", it is important to note that the Commission's Rules of Procedure requires that each session's Agenda be distributed to these organisations/institutions:

Rule 7: Transmission and Distribution of the Provisional Agenda

- 1. The Provisional Agenda and the essential documents relating to each item shall be distributed to the members of the Commission by the Secretary-General who shall endeavour to transmit them to members at least six (6) weeks before the opening of the session.*
- 2. The Secretary-General shall communicate the Provisional Agenda of that session and have the essential documents relating to each Agenda item distributed at least six weeks before the opening session of the Commission to the members of the Commission, member States parties to the Charter, to the Current Chairman of the OAU.*
- 3. The Draft Agenda shall also be sent to the specialized agencies, to non-governmental Organizations and to the national liberation movements concerned with the agenda.*
- 4. In exceptional cases, the Secretary-General, may, while giving his reasons in writing, have the essential documents relating to some items of the Provisional Agenda distributed at least four (4) weeks prior to the opening of the session.*

There is also an obligation to distribute communiques regarding its proceedings, although the Rules are silent as to whether the non-state institutions are "entitled" to such information otherwise than through published sources:

Rule 33: Publication of Proceedings

At the end of each private sitting, the Commission or its subsidiary bodies may issue a communique through the Secretary-General.

The practice of sending out communiques, such as the one from the 19th Ordinary Session reproduced in Section 3.3 below, has partly developed extra-legally as a result of the dialogue during the Workshops. Such communiques constitute an important part of "publication" of the work of the Commission and is one of the practical ways of expressing the cooperation between the Commission and the NGOs as envisaged under Article 45 of the Charter:

Article 45:

The function 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) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

The practice is a good one and enables the participants at the Workshops to assess whether their participation at the Workshops and/or in the official public sessions of the Commission's proceedings are taken seriously and are reflected as such on record. More importantly, it records and identifies areas of "agreement" on what has been accomplished, what the plans are and what the aspirations of the human rights community are within the framework of the Charter system.

3.3 Introduction to the Workshops: The Commission's and ICJ's Communiqués in 1996

Perhaps the most graphic way in which the ICJ programme to enhance or strengthen the participation of African NGOs in the work of the Commission, can be illustrated is by a reproduction here of the full length of the most recent official communication sent to all the organisation/institutions enjoying observer status with the Commission:

African Commission on/Commission Africaine des Droits
Human and Peoples' Rights/de l'Homme et des Peuples

OAU - OUA

Kairaba Avenue Tel: (220) 392962
P.O. Box 673 Fax (220) 390764
BANJUL, The Gambia TlxL 2346 OAU BJL GV

Ref: ACHPR/REP/A028

Date: 22nd April 1996

Dear Madam/Sir

I have the honour to forward a copy of the Final Communiqué of the 19th Ordinary Session of the African Commission on Human and Peoples' Rights held in Ouagadougou, Burkina Faso, from march 26th to April 4th 1996.

In accordance with your observer status with the Commission, I would like to remind you your obligation to submit to the African Commission, every two years, a report covering your activities of protection and/or promotion in the field of human rights.

Sincerely Yours,

Germain Baricako, Secretary to the African Commission on
Human and Peoples' Rights.

To all the Organisations/Institutions
enjoying Observer Status with the African
Commission on Human and Peoples' Rights.

*Final Communiqué of the 19th Ordinary Session
of the African Commission on Human
and Peoples' rights*

1. The African Commission on Human and Peoples' Rights held its 19th Ordinary Session in Ouagadougou, Burkina Faso from 26th March to 4th April 1996. The Session was chaired by Professor Isaac Nguema.
2. The opening ceremony was attended by members of the Commission, members of the Government of Burkina Faso, members of the diplomatic corps, representatives of governmental and non-governmental organisations, members of the national and international press and invited guests.
3. At the opening ceremony, speeches were delivered by Professor Isaac Nguema, Chairman of the African Commission on Human and Peoples' Rights, Mr Halidou Ouadagoudou, Chairman of the Inter-African Union for Human Rights, Mrs. Tokunbo Ige, representing the Secretary General of the International Commission of Jurists and Hon. Hermann Yameogo, Minister of State for African Integration and Solidarity.
4. The Commission adopted the agenda comprising 21 items.
5. The Commission examined and adopted the report of its 18th Ordinary Session held from 2nd to 11th October 1995 in Praia, Cape Verde.
6. The Commission examined and adopted the report of the 2nd Extraordinary session held on the 18th and 19th December 1995, in Kampala, Uganda, on the Human rights situation in Africa, in general, and Nigeria and Burundi in particular.
7. The Commission granted observer status to 16 NGOs. The list of these NGOs is available at the Secretariat.
8. The report of the resolutions and recommendations of the workshop was submitted to the Commission. The workshop's emphasis was on the human rights situation in Africa, the indepen-

dence of the judiciary and the incorporation of the provisions of the African Charter in the national legislation of States Parties.

9. Representatives of the governments of Nigeria, Mauritania, Egypt and Senegal delivered messages to the Commission, underscoring the willingness of their countries to respect the provisions of the African Charter and reiterated their commitment to cooperate with the Commission.
10. With regard to the consideration of periodic state reports, the Commission examined the initial reports of Algeria and Mozambique. Government delegates presented state reports. During discussion following the representation of the reports, the Commission urged countries to observe the provisions of the African Charter and to respect human rights.
11. The Commission heard statements delivered by African and international NGOs taking part in the Session.
12. The Commission examined the possibility of revising the African Charter. Following fruitful discussion, in open session, participants noted that there is a need to update the Charter.
13. Participants also asserted that there is a need to strengthen the current early-warning mechanisms and to develop a mechanism for prompt and urgent intervention in order to prevent massive human rights violations.
14. With regard to promotional activities, Commissioners presented their activity reports for the intercession period.
15. With regard to the establishment of the African Court on Human and Peoples' Rights, the Secretary informed the Commission that the OAU Secretariat had sent a draft protocol as well as the report adopted in Cape Town by inter-governmental experts to all member states. The OAU Secretariat has invited member states and all interested parties to send to it their comments.
16. The human rights situation in Africa was examined in relation to Burundi, Angola, Nigeria and Sudan. The Commission confirmed its decision to send missions to these countries.

17. The Commission adopted a resolution commending democratic elections in Sierra Leone, Benin, and the Comoro Islands. The Commission also adopted resolutions on Burundi, Liberia, the independence of the judiciary and the incorporation of the provisions of the African Charter in the legislation of States Parties.
18. The Commission reiterated its decision to organise the following seminars:
 - The right to a fair trial
 - Popular Participation and Non-formal Education
 - Human Rights in the New South Africa
 - The peaceful resolution of ethnic and social conflicts with in the context of human rights
 - Contemporary forms of slavery in Africa
 - The Right to education : An Essential Condition for development in Africa
 - Freedom of Movement and the Right to Asylum in Africa
 - Prison Conditions in Africa
 - Economic, Social and Cultural Rights and the Right to Development
19. A seminar on Impunity was held on the 22nd and 23rd of March in Ouagadougou, Burkina Faso at the initiative of the Commission in collaboration with the International Centre for Human Rights and Democratic Development (based in Canada), IUHR, ICJ, GERDES AF and WILDAF. A plan of action was drawn up and adopted at the end of the seminar.
20. In order to promote the Review of the Commission, the Chairman urged participants to send articles for publication. He also called upon magistrates and judges to publish decisions related to human rights in order to establish an African jurisprudence on this subject.
21. The Commission deplored the inhuman conditions in most African prisons and agreed on the principle of appointing a special rapporteur on prisons in Africa.
22. The Commission also agreed on the principle of appointing a special rapporteur on the rights of women in Africa.

23. Concerning protection activities, the Commission examined, in closed session, twenty-one communications and received seven new communications. The commission took three decisions on seisin and five decisions on admissibility. The Commission has reiterated its decision to send missions to Mauritania, Rwanda and Senegal.
24. Outside the regular session, the Commission was received by His Excellency Blaise Compaore, President of Burkina Faso, Mr. Kadre Desire Ouadagoudou, the Prime Minister, Hon. Ablasse Ouadagoudou, Minister of Foreign Affairs and Mr Larba Yarga, Minister of Justice.
25. The closing ceremony of the 19th Session of the Commission took place on 4th April 1996 in the Conference Hall of the Ministry of Foreign Affairs. Hon. Hermann Yameogo, Minister of State for African Integration and Solidarity presided over the ceremony.
26. The Commission decided that its 20th Session, coinciding with the 10th Anniversary of the coming into effect of the Charter, will be held in Mauritius in October 1996 at the invitation of the Government of Mauritius.
27. After the closing ceremony, the Chairman of the Commission held a press conference.

Juxtaposing the above official Communique from the Commission's 19th Ordinary Session to that from the ICJ on the 10 ICJ Workshop on Participation in the African Commission on Human and Peoples Rights - both covering the same event and interaction and the ICJ's one being dated barely two days after that of the Commission - the symbiotic relationship that has developed between the two institutions becomes patently self-evident. As this report underscores, this symbiotic relationship between the two institutions is mediated, and indeed realised only in the context of the increased and more effective participation of the African NGOs, in addition to participation of the few, but strong, NGOs or quasi-NGOs based in the North.

The following is the Official ICJ Communique on the 10th Workshop:

INTERNATIONAL COMMISSION OF JURISTS
Commission internationale de juristes
Comision Internacional de Juristas

24 April 1996
Ref. 1/530/9
(please quote)

Tenth ICJ Workshop on Participation in The African Commission on Human and Peoples' Rights

Dear Colleagues,

On behalf of the International Commission of Jurists (ICJ), I would like to thank you for your participation in the 10th ICJ Workshop on Participation in the African Commission on Human and Peoples' Rights which was held in Ouagadougou, Burkina Faso, from 23 - 25 March 1996.

The Workshop brought together about 70 participants made up of members of the African Commission, representatives of African NGOs and members of the judiciary and international observers. The participation of the United Nations Special Rapporteur on the Independence of the Judiciary was highly beneficial to the workshop and in particular the preparations for the 19th Ordinary Session of the African Commission.

The African Commission at the 19th Session examined the initial reports of Algeria and Mozambique. The possibility of revising the African Charter was discussed, with participants noting the need for an update. Discussions on this and the need to strengthen the current early-warning mechanisms in order to develop a more effective system of responding to human rights violations promptly will continue at future Sessions. NGO input into these discussions are very useful, therefore efforts should be made to communicate ideas and suggestions to the Commission's Secretariat.

The success of this workshop is a further example of the importance of our collective effort. Bringing together, African and international NGOS, the African Commission and other important actors in the field of such as judges, public prosecutors, parliamentarians will assist us in making continuous progress towards greater respect for human rights in Africa.

Please find enclosed, the Commission's Final Communique,³² the Workshop's Conclusions and Recommendations and the Resolutions from the NGO Workshop.

We thank you for your participation in the 10th Workshop on Participation in the African Commission.

Yours sincerely

Tokunbo Ige
Legal Officer for Africa

Enclosures:

***TENTH ICJ WORKSHOP ON PARTICIPATION IN THE
AFRICAN COMMISSION ON HUMAN AND
PEOPLES' RIGHTS***

Organised by
The International Commission on Jurists (ICJ)
in collaboration with
The African Commission on Human and Peoples' Rights
(ACHPR) and
Mouvement Burkinabe des Droits de l'homme et des peuples
(MBDHP)

³² Since the Commission's Communique has already been reproduced above, it is not included in the part. (See pages 29-34)

CONCLUSIONS AND RECOMMENDATIONS

The ICJ workshop on Participation in the African Commission on Human and Peoples' Rights (ACHPR) met from 23 to 25 March 1996 in Ouagadougou, Burkina Faso. This workshop, the tenth in the series, was organised in collaboration with the African Commission on Human and Peoples' Rights and the Movement Burkinabe des Droits de L'Homme et des Peuples.

The workshop brought together about 70 participants comprising members of the African Commission, representatives of NGOs and the judiciary from 22 countries in African and international observers. The inclusion of judges in this workshop is a new strategy aimed at encouraging the participation in the work of the African Commission and to develop better relations with the NGO community. The participants welcomed this new initiative. The workshop was addressed by the United Nations Special Rapporteur on the Independence of the Judiciary.

The 10th workshop focussed primarily on the role of the judiciary in the protection of human rights in Africa. It examined and discussed:

- the human rights situation in Africa;
- mechanisms for strengthening the protection of human rights - building links between protection of human rights at the national, regional and international level;
- the independence of the judiciary; particularly the role of the United Nations special rapporteur on the independence of the judiciary;
- monitoring and documenting human rights violations in Africa - using computer software.

I. Human Rights Situation in Africa:

The Workshop received reports on the human rights situation in the following countries: **Angola, Burundi, Djibouti, Liberia, Morocco, Mozambique, Nigeria and Zaire.** The Workshop noted with regret the persistence of systematic and gross violations of human rights despite ongoing efforts at national, regional as well as the international levels to promote the recognition, protection and respect of human rights and the rule of law in these countries.

In particular, the workshop viewed with great concern the prevailing situation in Burundi and Nigeria. Participants noted with regret that the resolution on Nigeria adopted at the end of the extraordinary session of the African Commission held in Kampala, Uganda, from 18 to 19 December 1995 had not been implemented.

The Workshop passed resolutions on the human rights situation in Burundi, Liberia, Nigeria and Zaire.

II Mechanisms For Strengthening the Protection of Human Rights -Building Links Between Protection of Human Rights at the National, Regional and International Level

The Workshop examined the prevailing situation and considered practical measures towards building a relationship between the African Commission, national judicial systems and the NGOs for the promotion and protection of human rights in Africa. In this regard, the workshop identified the following obstacles in the way of building effective linkages: lack of peace, order and stability in various African countries, undemocratic attitudes of States Parties to the African Charter, general lack of awareness about human rights standards and instruments, widespread poverty, inadequate funding of the African Commission, and traditional attitudes and practices which conflict with human rights standards.

The Workshop noted that there is no existing effective methodology for building links between national, regional and international institutions. A lack of thorough understanding of the role and functioning of these different bodies and the need for mutual collabora-

tion between them were identified as some of the major obstacles that have to be overcome.

Furthermore, the workshop noted that in many countries, the incorporation of the African Charter and other international human rights instruments into domestic legislation has not been back up with effective implementation. Lawyers, judges and NGOs do not invoke the provisions of the instruments either as a result of ignorance of their existence, a lack of knowledge of human rights principles, or of their role in the preservation of respect for the rights enshrined therein. Practical ways and means of overcoming these obstacles need to be identified and implemented.

Participants emphasised the need for the judiciary to adopt a more dynamic approach towards protecting the rights of victims of human rights violations, by invoking treaty provisions. To this end, efforts must be made to develop a programme aimed at ensuring continuing education on human rights for judicial officers in Africa.

In particular, the African Commission has not given adequate attention to its mandate to disseminate information about the Charter. The initial limited interpretation of article 59 of the Charter and lack of adequate resources has prevented public awareness of the work of the Commission and hindered the evolution of a jurisprudence on human rights in Africa. The Commission needs to give a better insight into its decision making process in its activity reports.

All actors working for the protection and promotion of human rights have an obligation to ensure the effective dissemination of the Charter, and carry out educational programme on human rights principles and standards. Mutual exchange of information and materials on developments in human rights case law must be encouraged.

III The Independence of the Judiciary

The Workshop emphasised that the independence of the judiciary is indispensable to a democratic system of government, the respect for human rights and the rule of law.

The Workshop noted that the even though the constitutions of most African countries affirmed judicial independence, in reality most judiciaries do not enjoy this independence, for reasons such as general lack of accountability and transparency in government and respect for constitutionalism. Specifically the workshop expressed concern over the pattern in most African countries which make the process of appointments, promotion and tenure of members of the judiciary dependent on the executive and legislative arms of government. It also noted that the judiciary in most African countries are not financially independent.

The workshop also recognised the systematic attacks on the independence of the judiciary by the executive arm of government and their agents, as well as other sources such as powerful businessmen, multinationals and within the judiciary itself.

The Workshop passed resolutions on the **Role of lawyers and judges in integration of the Charter and enhancement of the Commission's work** and on **the independence of the judiciary**.

IV Monitoring Human Rights violations in Africa

The Workshop had two parallel sessions on strengthening the capabilities of NGOs in monitoring human rights violations around the world. From both sessions the workshop underscored the need for NGOs to use tools including computer software developed by HURIDOCS for monitoring documentation and reporting of human rights violations. The NGOs emphasised the need for continuous training in this regard.

The workshop adopted the following recommendations:
The NGOs should:

1. Embark upon and reinforce programmes for popular education on human rights. In particular those with observer status should report to the African Commission at its 21st session of efforts undertaken in this regard.
2. Develop more effective strategies for monitoring, documenting and disseminating information on the situation of human rights

and constitutional changes affecting the same in their respective countries.

3. In collaboration with the African Commission, develop a working relationship with the UN Special rapporteur on the Independence of the Judiciary with a view to ensuring the protection of the independence of judges and lawyers in the exercise of their professional duties.
4. Increase their efforts in training judicial officers in order to strengthen the independence of the judiciary.
5. Develop strategies towards involving the media in the education, promotion and protection of human rights and the independence of the judiciary.

The African Commission should:

1. In line with its mandate to promote human rights should organise training programmes for its members and judicial officers in Africa in order to strengthen the independence of the Commission and the judiciary.
2. Call upon states to take steps to disseminate widely the African Charter targeting judicial officers in their respective countries.
3. Dynamic in the exercise of their interpretative and judicial functions to enrich the evolving human rights jurisprudence in Africa. There should be indepth publication and dissemination of the legal reasoning used in the consideration of communications by the Commission.
4. Convene a meeting of all African Chief Judges, with a view of adopting practical ways and guidehnes for the implementation of the UN basic principles on the independence of the judiciary.

African Judges should:

1. Be more assertive in protecting their constitutional powers with a view to ensuring the independence of the judiciary.

2. Have regard to the African Charter and other international human rights instruments in the determination of questions before them.
3. Be more dynamic in carrying out their interpretative function.

African Governments should:

1. Respect and guarantee the independence of the judiciary through the adoption of democratic methods in the appointment and promotion of judges, ensuring security to tenure and financial independence.
2. Give details in their periodical reports to the African Commission of the steps they have taken to ensure the independence of the judiciary.
3. Domesticating international human rights standards and instruments.

*Resolution on the Role of Lawyers and
Judges in Integration of the Charter and Enhancement
of the Commission's Work in National
and Sub-regional Systems*

The 10th ICJ workshop on the participation in the work of the African Commission on Human and Peoples' held in Ouagadougou, Burkina Faso from March 23 - 25, 1996;

NOTING the central role that lawyers play in their advocacy in the Judicial and other adjudicative processes in the national legal systems and considering further how such roles may be used to promote reference to and reliance on the Charter in the Judicial and other adjudicative processes;

RECOGNIZING the importance of specialized training and continuing training in human and peoples' rights for legal practitioners, judges, magistrates and the Commissioners,

APPRECIATING the initiative of the Commonwealth judges to incorporate and further develop Human Rights instruments and principles in their work;

STRONGLY RECOMMENDS that judges and magistrates play a greater role in incorporating the Charter and future jurisprudence of the Commission in their judgements thereby playing a role as provided for in Article 26 of the Charter;

STRONGLY URGES lawyers to place greater reliance on the Charter and other international and regional human rights instruments in their various legal advocacy roles.

CALLS ON law societies, legal and human rights NGOs with Observer Status before the Commission, associations or organisations of judges and magistrate and the Commission to initiate specialized and comprehensive training for judicial officers, lawyers and the Commissioners at national and sub-regional levels.

REQUESTS the Commission to disseminate the Charter and its activity reports to judges and law societies in Africa.

***Resolution on the Respect and the Strengthening
of the Independence of the Judiciary***

The 10th ICJ workshop on participation in the work on the African Commission on Human and Peoples' Rights held in Ouagadougou, Burkina Faso from 23rd to 25th March 1996;

NOTING the fact that Justice is an integral part and constitutes an important dimension of human rights and is a sine qua non condition for democracy;

CONSIDERING the importance and the role of the judiciary, not only in the quest for maintenance of social equilibrium, but also in the economic development of African countries.

RECOGNIZING the need for African countries to have a strong and independent Judiciary enjoying the confidence of the people in order to enable to it fulfil its function;

CONSIDERING the need to train lawyers in human rights in order to enable them to apply judiciously international human rights instruments;

RECOMMENDS that African countries:

- remove from their legislation all provisions which are in contradiction with the principle of respect of the independence of the Judiciary, especially with regard to the appointment and posting of judges.
- provide with the assistance of the international community, especially the NGOs, the Judiciary with their own sufficient resources in order to enable the legal system to fulfill its function;
- provide judges with decent living and working conditions to enable them to maintain their independence and to realize their potential;
- incorporate in the Judicial Regulations universal principles establishing the independence of the Judiciary, especially with regard to security of tenure and the supervision of magistrates.
- refrain from taking any action which may threaten directly or indirectly the independence and the security of magistrates;

RECOMMENDS that the African Commission:

- include in its priorities the sensitisation of States Parties on the principles of the respect for the independence of the Judiciary;
- at its twenty first session, in collaboration with members of the judicial system and the NGO community organise a session to evaluate achievements and shortcomings related to the independence of the Judiciary.

RECOMMENDS that African judges organise nationally and regionally periodic meetings in order to exchange experience and evaluate efforts undertaken in various countries to bring about an effective independence of the Judiciary and inform the African Commission.

Resolution in Burundi

The 10th ICJ workshop on participation in the African Commission on Human and Peoples' Rights held from 23 to 25 March, 1996 at Ouagadougou, Burkina Faso;

EXTREMELY CONCERNED about the serious human rights violations and abuses occurring in Burundi, in particular extrajudicial executions and killings by members of the security forces, armed gangs and militias;

NOTING that impunity is a central feature of the continuing human rights violations in Burundi;

NOTING ALSO that an independent judiciary is crucial to the struggle against human rights violations and impunity;

CONCERNED ALSO about the plight of refugees and displaced persons and their vulnerability to human rights violations and abuses;

NOTING ALSO that hate media contributes to the human rights violations and abuses occurring in Burundi;

URGES the Government of Burundi to :

- a) undertake adequate and impartial investigations of all human rights violations and abuses;
- b) take adequate steps to guarantee the independence of the judiciary by ensuring, inter alia, that there is no interference in its functioning by the government or the security forces and that judges and magistrates are protected from other possible sources of interference;
- c) ensure that persons accused of human rights violations and abuses are tried speedily in accordance with international fair trial standards;
- d) improve the conditions of refugees and displaced persons, ensure their safety and security and create conditions to enable

them to return to their homes; and collaborate with international governmental and non-governmental organizations assisting refugees and displaced persons;

e) allow the Mission Internationale d'Observation au Burundi (MIOB) human rights monitors and special rapporteurs from the United Nations, African Commission on Human and Peoples' Rights, and other international bodies freedom of movement and take adequate effective steps to guarantee their safety and security without compromising their independence;

Further Urges:

- a) the African Commission to request its special rapporteur on extrajudicial, summary and arbitrary executions to undertake an investigation in Burundi of human rights violations pertaining to his mandate;
- b) the OAU to strengthen OMIB and to include human rights monitoring in its mandate;
- c) the UN to deploy human rights monitors in Burundi as soon as possible, taking adequate measures regarding their safety and security and urge the member states of the UN to fund the deployment of such monitors, as requested by the special rapporteur on Burundi;
- d) the UN to provide adequate resources to enable its Commission of inquiry to function efficiently and to complete its tasks as soon as possible;
- e) the UN, the OAU and all parties to the conflict to prevent human rights violations and abuses and to commit themselves to finding peaceful solutions to the crisis in Burundi.

CALLS on the international community to assist the government of Burundi and of neighbouring countries to render inoperative, media which are prove to be spreading propaganda aimed at encouraging inter-communal hatred.

Resolution on Nigeria

The 10th ICJ workshop on participation in the African Commission on Human and Peoples' Rights held from 23 to 25 March, 1996 at Ouagadougou, Burkina Faso

NOTING that the 8th and 9th ICJ workshops held in Lome, Togo and Praia, Cap Vert respectively, expressed their concern about the deteriorating human rights situation in Nigeria and the perpetuation of military rule adopted resolutions;

NOTING further that the resolution adopted by the ninth ICJ workshop called on the African Commission to undertake urgently a fact-finding mission to Nigeria;

RECALLING that as a result of the serious deterioration of the situation of human rights and in particular, the execution of nine Ogoni activists in violation of international human rights standards, the African Commission convened an extraordinary session from 18 to 19 December, 1995;

RECALLING further that at the end of the extraordinary session the African Commission resolved to undertake a fact finding mission to Nigeria. This resolution received the support of the government's delegation to the session;

REGRETS the non-implementation of the resolution thereby presenting a report from being considered by the 19th ordinary session of the Commission;

DEEPLY CONCERNED that the military government in Nigeria continues to arrest and detain many people without trial in violation of international human rights principles;

SERIOUSLY CONCERNED about the systematic disempowerment of the Courts in Nigeria by the enactment of decrees ousting their jurisdiction;

CONDEMNS the continued harassment, arrest and detention of journalist, human rights and political activists and members of their families by the Nigerian government;

CALLS UPON the military government to respect the fundamental rights and liberties of the Nigerian people as enshrined in the African Charter on Human and Peoples' Rights in particular, take urgent steps to return the country to democracy;

FURTHER CALLS UPON the military government to respect the status of the judiciary as an independence arm of government;

URGES the African Commission to ensure that the fact finding mission is conducted without further delay.

Resolution on the Independence of the Judiciary in Zaire

The tenth International Commission of Jurists' workshop on participation in the work of the African Commission on Human and Peoples' Rights, held in Ouagadougou, Burkina Faso from 23rd to 25th March 1996;

- considering the state of the administration of justice in Zaire, rendered impotent by the political desire to place the Judiciary at the exclusive service of the Executive;
- concerned with the fact that this state of affairs is characterized by repeated obstruction, by the Executive, to the application of judicial decisions and to the functioning of the Conseil Supérieur de la Magistrature and by extremely low salaries which make the Judiciary vulnerable to corruption and misappropriation of public funds and subservient to big business;
- considering that as a result of this situation, a parallel judiciary has developed, run primarily by the army and the security forces to the detriment of courts and tribunals - the only competent organs for the maintenance of public peace and tranquillity in a democratic society;
- recalling that Zaire has ratified legal instruments guaranteeing the independence of the Judiciary, notably Article 26 of the African Charter on Human and Peoples' Rights;

- recalling, furthermore, the reaffirmation of the of the fundamental principles of the independence of the Judiciary in the various United Nations resolutions, particularly the resolution calling upon governments to respect those principles and take them into consideration within the framework of their legislation and national norms;
- in view of the incorporation of these principles in the Constitution and the laws of Zaire;
- considering that the respect and the promotion of human rights can only be achieved through the strengthening of the independence of the Judiciary, the guarantor of social peace;

Recommends that

1. the government take concrete measures to make the application of legal instruments, practices and general legal principles guaranteeing and strengthening the independence of the Judiciary effective;
2. an end be put to the existence of a parallel system of justice run by the army and the security services in order to guarantee the rule of law and public peace and tranquillity and that law should be administered exclusively by competent constitutional organs;
3. there be established a national programme to fight corruption which is usually organized by big business and to encourage the efforts of the magistrates in this regard by reducing the excessively high expenditure of the security in favour of the Judiciary;
4. Every thing be done to convene in the near future a forum bringing together members of the Judiciary in order to find ways and means of rehabilitating it.

Resolution on Liberia

The 10th ICJ workshop on participation in the work of the African Commission on Human and Peoples' Rights, meeting in Ouagadougou, Burkina Faso 23-25 March 1996;

RECALLING the Resolution on Liberia unanimously adopted by the Ninth ICJ workshop on participation in the African Commission on Human and Peoples' Rights, held in Cape Verde, Praia, in September 1995;

RECALLING the Abuja Agreement signed by all the parties to the Liberian conflict under which the heads of the Warring Factions were allocated seats to the Governing Council of state with the promise that such an arrangement would induce and facilitate disarmament of their fighters, a sine qua non for free elections;

TAKING NOTE with appreciation that the Council of State of the Liberia Transitional Government (LNTG), created in pursuance of the Abuja Agreement, has been installed into office and that the government including the Judiciary and the Legislative has been freely constituted and are now functional;

CONSIDERING however, that notwithstanding the seating of the Council of State, the Warring Factions have failed reflected and refused to disarm, coupled with the fact that Liberia contrary to Abuja, still remains fragmented and partitioned among warring factions, and that hostilities still exist, all of which have the potential to derail the peace process and prolong the suffering of the Liberia people and the strain on the West African Sub-Region;

CONSIDERING further, that if peace is to be restored to Liberia, a civil government installed through a free and fair elections, and democratic institutions established with respect for human rights under the rule of law, Liberians themselves, and with the support of the International Community, must exert efforts to cease all hostilities, disarm their combatants, to have them encamped, demobilized and re-integrated into civil society, as conditions precedent.

ENDORSES the Abuja Peace Accord as the best Avenue for the cessation of hostilities and the Restoration of Peace to Liberia and calls upon all parties to this Agreement to freely cooperate with good faith in its implementation.

CALLS upon the Warring Factions to take all necessary steps to disarm their fighters to the West African Peace Keeping Force (ECOMOG), to cooperate with ECOMOG and UNOMIC in hav-

ing their fighters encamped, demobilized and re-integrated into civil society so as to pave the way for a free and fair general election.

CALLS upon the Council of State to extend its authority to and over the length and breath of Liberia and to guarantee genuine respect for the rights and liberties of all its citizens and residents, and in this regard to observe the independence of the Judiciary.

CALLS upon the International Community especially the United Nations, to facilitate Liberia's transition from war to peace by enhancing the capacity of the West African Peace Keeping Force (ECOMOG) to disarm all combatants and to keep the peace through the provision of financial and logistic support; and to alleviate the suffering and the daily struggle of the Liberian people for survival through the provision of humanitarian, relief and medical supplies.

CALLS upon the government to take all necessary measures to fight against impunity and to ensure that all perpetrators of crimes against the Liberian people are brought to justice.

From the two reports reproduced above, the following issues and points clearly emerge:

- i) The Official Commission's communique is addressed "to all organisations/institutions enjoying Observer Status with the African Commission...". These organisations and institutions include all the African NGOs and international NGOs such as Amnesty International (London), Interights (London) and the ICJ itself.
- ii) The official Commission's communique reminds these "private" or "quasi-private" organisations/institutions about their "obligation to submit to the African Commission, every two years, a report covering....activities of protection and/or promotion in the field of human rights". This important "reporting obligation" of the non-state entities enjoying observer status with the Commission has developed extra-legally as a result of the often heated dialogue between the Commissioners and the representatives of the NGOs during the Workshops and the public sessions of the

Commission's proceedings. Neither the main body of the Charter nor the Rules of Procedure provide for this novel practice which expresses the notion of "accountability" on the part of the organisations/institutions to the Commission. The procedure or requirement developed partly as a result of the requests made by the organisers of the Workshops (often the ICJ in collaboration with the Commission) and a "host-NGO" located at the venue of the particular Commission's session) and partly as a result of mutual realisation by the Commission and the NGOs themselves that these "non-state reports" are extremely useful to the Commissions when it examines "periodic state reports" as required by Article 62 of the Charter:

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.

All that the Charter provides is that the Commission has the mandate to:

*"Cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights"*³³

and that in carrying out its protection and promotion activities, it "may resort to any appropriate method of investigation..."³⁴

Thus, the Workshops have been able to strengthen the capacity of the Commission not only to verify and evaluate "state reports", but also to use the NGOs in gathering appropriate information for assessing individual complaints against states under the "Other Communications" provisions.³⁵

iii) The Commission's Communique clearly points out important issues from the Workshops:-

³³ Article 45 of the charter

³⁴ Article 46 of the Charter

³⁵ Article 55-58 of the Charter

- a) Under paragraphs 8 and 17, that the resolutions from the Workshops that preceded its 19th session were deliberated upon and adopted by the Commission. The process of impressing upon the Commission the importance of the topics for resolutions and their possible wording generally involves representatives of the NGOs in lobbying and developing skills in drafting of resolutions. These are skills and expertise which do not come easily to many grassroots NGOs -especially those which have limited professional capacity, or who are located in areas with poor communication and limited intellectual infrastructure. For this reason the focus of the fifth workshop included discussions and practising of lobbying skills by NGOs.
- b) Under paragraphs 12 and 15, regarding the issue of up-dating and revising the Charter and its institutions. Here again, the Workshops have played a major role in providing opportunity for the participating NGOs to make significant input. For example, with regard to revision of the Charter with a view to the establishment of a second organ for protection of rights, the African Court of Human and Peoples' Rights, a selected number of experts were assembled by the ICJ in Dakar, Senegal in January 1993 to "brainstorm" on the idea.³⁶ The outcome was a set of recommendations in the form of a preliminary draft protocol **(Additional Protocol to the African Charter on Human and Peoples' Rights)** The draft was officially discussed with all the organizations and institutions that participated in the 5th Workshop held in Addis Ababa, Ethiopia, between 28-30 November 1993. It was during the discussions over the preliminary draft protocol that representatives of the African NGOs strongly resisted the idea that the Court once created will replace the Commission. The African NGOs felt that the promotional activities of the Commission together with its other functions such as those of allowing strong NGO participation as well as the power to conduct on the spot investigation and appoint special rapporteurs would be destroyed once it is replaced by a Court. Courts, even regional courts of human rights, tend to be legislative and narrow in their approach to rights problems. They are

³⁶ "Brainstorming Session on the African Charter on Human and Peoples' Rights - Summary Report", ICJ, Geneva, 1993.

also less participatory and tend to exclude participation of non-lawyers such as paralegals. Besides, the African NGOs and scholars saw the initial proposal as reflecting an uncritical copying of the developments within the European human rights system where, at the moment, there is a move to try and eliminate the Commission and to transfer its work to a restructured Court.³⁷ The African NGOs participating in the Workshop therefore contributed significantly to the reworking of the whole idea of the Court and in preserving the continuation with the Commission as a complementary organ to the former.

The improved Draft Protocol was vigorously "sold" to a number of influential and key opinion-moulders on the continent. When the OAU Summit was held in Tunis in 1994, the ICJ mobilised NGOs and others to persuade the Heads of State and Government to approve the idea of the Court in principle, which they did.³⁸ It is on the strength of this that the ICJ then proceeded to facilitate, together with the OAU Secretariat, the meeting of government legal experts to formally draft a Protocol for the establishment of the Court, very much along the earlier ICJ-NGOs' draft.

What is significant is that when the ICJ and the Commission once again called a select number of representatives of NGOs and legal/human rights experts from Africa to work through the final draft of the proposed protocol in Cape Town, South Africa, in September 1995, the bulk of the expertise was drawn from those sources that had become part of the "NGO Workshop Participation Community". These "experts", of whom the present author was privileged to be part of, moulded the draft which was then presented to the official OAU meeting of gov-

³⁷ **Protocol No. 11 of the European Convention**, which was adopted in Strasbourg on 11 May 1994, is for "Restructuring the Control Machinery" of the Convention by abolishing the Commission and replacing it with a restructured Court.

³⁸ **Resolution AHG/230 (XXX)** requested the Secretary-General to convene a Government expert's meeting to ponder, in conjunction with the African Commission, over the means to enhance the efficiency of the African Commission in considering particularly the establishment of an African Court of Human and Peoples' Rights.

ernment legal experts who further developed the draft protocol and then adopted the final version on 12th September 1995.³⁹ Whether or not the initiatives for the establishment of the Court is part of the Workshop Participation programme of the ICJ, the important conclusion for the present purposes is that the relationships forged in the process of participation in the work of the Commission has had varied and substantial influence on other human rights initiatives on the Continent. The establishment of the Court is, of course, very closely linked to the work of the Commission. The two cannot be evaluated in isolation from each other.

The issue of revision of the Charter is a much more broader one than the specific adoption of the Protocol for the establishment of the Court. Other organizations, for example Amnesty International⁴⁰ and Interights, both based in London, England, are also playing some important role in pushing for some aspects of the desired reforms. These international human rights organisations with Observer Status with the Commission also benefit from the Workshops - especially in their interaction, and sometimes collaboration, with the grassroots African NGOs whose participation are directly or indirectly facilitated by the ICJ Programme. A number of the African NGOs which have been strengthened by the workshops also make useful independent contributions to the debate for reform of the Charter and the functioning of the Commission.⁴¹

- c) Under paragraphs 21 and 22, the Commission's Communiqué indicates the Commission's agreement in principle to the establishment of **special rapporteurs** on Prisons and on the Rights of

³⁹ Draft Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted by Meeting of Government Legal Experts, Cape Town, 6-12 September 1995, OAU/LEGL/EXP/AFC/HPR(I). The present writer was part of the official delegation of the Republic of South Africa for the meeting of government legal experts.

⁴⁰ AI, "Amnesty International's Observations on Possible Reform of the African Charter on Human and Peoples' Rights", AI Index: IOR 63/03/93, AI, London, June 1993

⁴¹ See, for example, "Critical Observations on the African Charter for Human and Peoples' Rights", presented to the 14th Ordinary Session of the Commission in Addis Ababa (1-10 December, 1993) by the Legal Research and Resource Centre for Human Rights, Cairo, Egypt.

Women in Africa. The Workshops have in the past dealt with the processorial (rapporteurs) and burning thematic issues. These have no doubt been mutually beneficial to the Commission and the participating organisations and institutions. As far as the issue of rapporteurs is concerned, it is within the Workshops that the suggestions were made, discussions took place, resolutions passed and lobbying the Commissioners done. The first rapporteur appointed by the Commission was in 1994, when the then Vice Chairman of the Commission, Prof Hatem Ben Salem, was appointed a special Rapporteur on Extra-judicial Executions. The anticipated appointment of rapporteurs for prisons and human rights of women is, therefore, an extension of the work of the Commission in collaboration with the participating NGOs. Within its constitutional competence, the Commission may appoint rapporteurs (Articles 45(1)(a) and 46 of the Charter). The point here is that the Commission is unlikely to have appointed such rapporteurs without the pressure from and the support guaranteed by the Workshop participants. The work of the rapporteurs can only be successful and relevant with the support of the human rights community on the ground in each of the African countries.

- 2) Under paragraphs 6, 9, 11 and 16 of the Commission's Communique the issue of "Extraordinary Sessions" is mentioned. More importantly, it is noted that the named countries (Nigeria, Burundi, Egypt, Senegal, Mauritania, Angola and Sudan) were either discussed in an Extraordinary Session (Nigeria, Burundi) or had their representatives attend and participate in the public sessions during the 19th Ordinary Session in Ouagadougou (Nigeria, Mauritania, Egypt and Senegal) or were specifically discussed in plenary during the public sessions of the 19th Ordinary Session (Burundi, Angola, Nigeria and Sudan). For purposes of this evaluation, what needs to be highlighted is that where countries send delegations to either present "Country reports" or to participate generally in the Commission's sessions, there has developed a healthy, but serious, criticism and counter-criticism between the participating NGO representatives and the government representatives. These are non-adversarial in the judicial sense, but they have helped the Commission and the NGOs from other countries to appreciate the real relations between the human rights institutions and the governments

concerned. For example, during the 19th Ordinary Session in Ouagadougou, the large government delegation from Nigeria became rather belligerent and tried to threaten the Nigerian human rights organisations for presenting information and analysis that contradicted the official government version. It is therefore, not only the official Workshops that are informative to the human rights community involved but also the Commission's public sessions. The knowledge gained in both these fora can only enrich the work of the participating organisations individually and all of them collectively. Affording the NGOs the right to be heard before the Commission is empowering and valuable - especially to NGOs struggling to promote and protect rights under conditions of repression and where institutions for redress, such as the courts, are themselves part of the repressive systems.

- e) Penultimately, as far as the Commission's Communique is concerned, paragraphs 14, 18 and 20 have something in common worth pointing out and highlighting in this evaluation. The "promotion" of human rights, with a view to developing a culture of human rights in every society, is an inherent and integral role of all the human rights NGOs and the Commission.

The Workshops and the public sessions of the Commission's deliberations in themselves provide fora for "promotional activities". The themes chosen for the workshops are usually motivated or facilitated by experts in the chosen topics. The participants then contribute ideas and opinions and present varied experiences which inform understanding of the subject matter under discussion. These contributions relate naturally to "promotion" and "protection" - the two are really opposite sides of the same coin.

Article 45(1)(a)-(c) of the Charter provides a lengthy catalogue of the "promotion" mandate of the Commission. In practice, the pre-session Workshops have perhaps become one of the most important expression of such "promotion". It provides the Commissioners and the representatives of the human rights NGOs a regular and unique opportunity to meet and exchange ideas and experiences on topics that are determined in advance. The participants come well-prepared - or, at the very least informed. The promotional activities of the Commission during the intersession period in practice consist not so much of programmes of the

Commission qua Commission but are based on invitations extended to the Commissioner's by NGOs and other organisations and institutions in different parts of Africa. For example, some NGOs enjoying Observer Status with the Commission and which have been regular participants in the Workshops organised a workshop on human rights education in Durban, South Africa, in September 1994. Two Commissioners, Professors Ben Salem and Umozurike, were invited to participate, and they did participate. The seminar was addressed by President Nelson Mandela who gave a very inspiring speech and mingled easily with the excited participants.⁴² It may be said that it is such

⁴² 38 "Mr Chairman, members of the African Commission on Human and Peoples Rights, Judges of the Supreme Court, Vice-Chancellors, Delegates to the workshop on **Human Rights Education in Africa**, Ladies and Gentlemen

It is a special privilege for me to address this workshop on Human Rights Education in Africa. Let me at the outset congratulate the organizers of this conference. We note that this is an African workshop conceived and organized by Africans involving 42 delegates from 38 African countries.

It is appropriate that the Universities of Natal and Witwatersrand, and the Lawyers for Human Rights, have taken this initiative in collaboration with the African Commission on Human and Peoples Rights and other 6 other African organizations

The organizations gathered here represent a most impressive array of Human Rights and Non-Governmental organizations on our continent. We regard this as a manifestation of the growing Human Rights movement in Africa, and an indication that movement has taken root in civil society amongst the people themselves.....

We are also aware that the pre-eminence of our own struggle frequently displaced your own concerns on the international Human Rights agenda. We have, therefore, an obligation to re-instate the continent's Human Rights concerns to its rightful place. A first step towards this is to establish a just and functioning democracy and to deepen South Africa's own culture of Human Rights.....

Indeed, I have recently urged the Ministers of Justice and Foreign Affairs to take the necessary steps to ratify those International and specially African Human Rights agreements and conventions to which South Africa is not a signatory. This measure will also take place in the Government within an international framework of monitoring and reporting on its human rights record. By virtue of section 35 of the Constitution, those documents and instruments must also be interpretive aids in the application of our domestic law.

We are attempting to expedite our accession to the African Human Rights framework - a framework which finds expression in the African Charter for Human and Peoples' Rights, together with African Commission on Human and Peoples' Rights based in Banjul. It is our intention to be a part of this system, to learn from the experiences of our fellow Africans but also to make our own contribution and to bring our own considerations to bear".

"promotional activities" that created the informal networks and relationships that later were useful in persuading the South African government to host the meeting of government legal experts who drafted and adopted the protocol for the establishment of the Court. More to the point, the Workshop created a "human rights education network", among the participating NGOs from all over Africa, which is continuing to meet once every year to develop and strengthen formal and informal human rights education strategies, methods and material which is relevant to Africa. The Commissioners are learning as much from the NGOs and other organisations as the latter are learning from the Commission.

Another example of the spin-offs from the Workshops is the recent seminar organised by the Centre for Applied Legal Studies, Wits University, Johannesburg, South Africa, on land rights and land reform in eastern, central and southern Africa (Johannesburg, 26-28 June 1996). The seminar drew some of the participants from "Workshop participants" who had been part of the land rights brain-storming session which was held in Addis Ababa during the 5th Workshop and the 14th Ordinary Session of the Commission.⁴³ The sub-regional network for research and activism on land rights and land reform which is being formed in this field has benefited from the Workshops and, once it is in place and is effective, will in turn inspire the future participants in the Workshops to focus on issues of human rights in this important area of peoples lives throughout the continent.

The open "shopping list" indicated under Paragraph 18 of the Commission's Communique is therefore not based on what the Commission itself will initiate, plan and fund but rather an identification of areas in which the participating NGOs and other institutions may assume responsibility for and then invite the Commission to be a partner. A lot, therefore, rests on the shoulders of the Workshop participants, especially those enjoying observer status with the Commission.

⁴³ R. Plant, "Land Rights in Human Rights and Development: Introducing a New ICJ Initiative", *ICJ Review*, Vol. 51 (1993) 10-30

As far as the **Review of the African Commission on Human and Peoples' Rights** is concerned (see Paragraph 20 of the Communique, above), what is relevant to the present evaluation report is the fact that its publication is entrusted to African Society of International and Comparative Law, one of the regular participants in the Workshops, although not under the ICJ's sponsorship. Most of the contributions published in the journal have come from participants in the Workshops - thus, ensuring relevance and topicality of the issues covered. It has high intellectual but also practical components. The Review is also a source of documentary record of the Commission's Communique or activity reports.

Increasingly, the publications of organisations and institutions with Observer Status with the Commission and who are regular participants in the Workshops carry news and information about the promotion and protection activities of the Commission - although the "protection activities" strictly speaking is still weak. Organisations such as the Lawyers for Human Rights, South Africa, have produced a simplified promotional booklet on the Charter system.⁴⁴ The magazine of the organisation also regularly reports on the Commission's sessions.⁴⁵ The same is true of the newsletter of the Lagos based Legal Research and Resource Development Centre,⁴⁶ the London based magazine, **African Topics**,⁴⁷ and the Accra and Maastricht based organ of the Africa Legal Aid.⁴⁸ African Topics is one of few independent magazines in the public arena dedicated to issues of human rights, governance, democracy and the development of civil society in this regard with focus on Africa. The magazine was established in 1993 in response to the need to expose the efforts being made towards promoting and protecting human rights in Africa. The decision to publish the magazine was based on the need to correct the imbalance between the work being done by the African

⁴⁴ Lawyers for Human Rights, **An Introduction to the African System of Human and Peoples' Protection** (LHR, Pretoria, 1995).

⁴⁵ **Rights** - a Publication of Lawyers for Human Rights, see for example Vol 1 May 1995, PP.18-19.

⁴⁶ See, for example, **Empowerment**, Vol. 1. No. 6, Jan-March 1996, PP 1,3 - 9.

⁴⁷ See, for example, Issue No.10, Nov-Dec. 1995, 4-9.

⁴⁸ See, for example, **AFLA Quarterly**, April-June 1996, 11-13

Commission and NGOs and the little knowledge of these efforts as facilitated by the NGO workshops.

- f) Finally, with regard to the aspects of the Commission's Communique which are relevant to the present evaluation, is the "protection mandate" of the Commission. Paragraphs 20 and 23 of the Communique refer to the "protection". Whereas paragraph 23 is directly on the point, paragraph 20 focuses on it in a rather indirect manner. Calling on magistrates and judges to publish decisions of their domestic /national legal courts which relate to human rights in the Commission's Review is important for two interrelated reasons: first it raises the question whether the Commission itself is engaged in making substantive publishable decisions in the cases that are brought before it and secondly, whether the national/domestic courts in Africa make use of the Charter and other important African rights treaties (conventions, covenants, charters and other inter-or intra-state agreements) in their judicial roles.

Since the beginning of the Workshops in the early 1990s, participating organisations and institutions have urged and tried to persuade the Commission to take its protection role seriously. The bulk of the Commission's "protection" work theoretically would involve dealing with inter-state complaints as provided for under Articles 47-54 of the Charter:

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 sat-

isfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State 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 by a written or oral representation.*

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.

To date, there has not been a single interstate complaint filed before the Commission. Indeed, interstate complaints are rare even

in the well-established and older regional systems like the European and Inter-American ones, and even before the central international procedures of the United Nations. This notwithstanding, the absolute absence of such interstate complaints in Africa can only be interpreted as evidence of low-level prioritisation of human and peoples' rights issues in the foreign affairs policies of all African states parties to the Charter.

The same cannot be said of private individual or group applications, technically called "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 requests 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 the States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organizations of African Unity or the provisions of the present Charter.*

Article 57:

Provisions 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 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 findings and recommendations.*
- 3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly who may request an in-depth study.*

The "war" between the Commission and the participating organisations and institutions, both during the Workshops and in the sessions of the Commission's deliberations, has been over the reluctance, until very recently, on the part of the Commission itself to publish its decisions on individual/group complaints. The Commission interpreted the "confidentiality" provision in the Charter (Article 59(1) very literally and conservatively. It failed - and still fails - to read the whole of Article 59 together. Sub-sections (2) and (3) of Article 59 provide ample indication that the framers of the Charter did not intend the critical work of the Commission to be shrouded in secrecy.

Numerous resolutions and recommendations of the Workshops since the first one in October 1991 have called on the Commission to publicise or report on its decisions so as to contribute to the development of jurisprudence of the African regional system.⁴⁹ The

⁴⁹ ICJ, *The Participation of Non-Governmental Organizations (NGOs) in the Work of the African Commission on Human and Peoples' Rights (ACHPR): A Compilation of Basic Documents - October 1991 - April 1994* (ICJ, Geneva, 1994) Part 1., PP. 15, 20 and 26.

central issue, however, is not whether the Commission publicises a record of its varied activities in general. This it has been done consistently since it commenced its work in November 1987.⁵⁰ The central issue has been **the quality of the decisions** it has made, both at the level of admissibility or inadmissibility of particular complaints/petitions/communications **and** on the actual finding that a violation has either occurred or not. It has been an issue of publishing substantive decisions with jurisprudential value. The success of the campaign by the Workshop participants⁵¹ to have the Commission publicise the result of its work on cases submitted before it was finally realised during the Thirtieth Session of the Assembly of Heads of State and Government held in Tunis, Tunisia, between the 13th and 15th June 1994. The Commission's Seventh Activity Report covering the period 1993-1994 contained, for the first time, a list of all the cases determined by the Commission since 1988.⁵² This was a welcome development, which really confirmed the view held by the critics of the Commission that it was its timidity and/or reluctance to publicise its decisions and not the wording of the Charter or conservatism of the Assembly of the Heads of State and Government that was the obstacle to transparency.

An improvement appears to have been made in the publication of the decisions of the Commission in the subsequent publication. The Report of the 8th Annual Activity of the African Commission on Human and Peoples' Rights covering the period 1994 -1995⁵³ is more substantial in its detail on the cases reported. Going through

⁵⁰ Its first to the Seventh Ordinary Sessions (1st to 3rd Activity Reports) is published in **ACHPR Documentation**, published by the OAU in October 1991. The Activity Report, covering the 8th and 9th Ordinary Sessions, is published in the 1991 Vol. 1 of the **Review of the African Commission on Human and Peoples' Rights**. The subsequent Activity Reports have likewise been published in the various issues of the **Review** as well as in special Annual Activity Reports published by the OAU.

⁵¹ See, for example, the Interights input by Chidi A Odinkalu, "the Theory and Experiences of Confidentiality in Human Rights Procedures: A Comparative Survey with reference to the African Charter on Human and Peoples' Rights", submitted at the 5th ICJ Workshop, Addis Ababa, Ethiopia, November/December 1993; Ankumah, Section fn. 16, above, at 38-40.

⁵² 48 **ACHPR Seventh Activity Report: 1993-1994**, AHG/198/(XXX), Annex IX.

⁵³ ACHPR/RPT/8th/XIX. The document was issued in limited copies during the 19th Ordinary Session in Ouagadougou, burkina faso, 26th March - 4th April, 1996.

the Seventh and Eighth Annual Reports, it stands out that most cases that have received substantial attention are those that have been brought by or through the assistance of NGOs and organisations that have been consistent and regular participants in the Workshops, most of them sponsored by the ICJ - at least up till the end of 1995. Among these are the Civil Liberties Organisation, Lawyers Committee for Human Rights, Amnesty International, International PEN, the ICJ, Constitutional Rights Project, Committee for the Defense of Human Rights and Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO).

The 8th Annual Activity Report has also a more detailed description of the issues in the cases and the applicable laws than the 7th Annual Activity Report. Such advances are due mainly to the constructive pressures generated directly or indirectly through the Workshops. The report on the decisions by the Commission are, however, not yet comparable to the case reports of comparable institutions such as the European Commission of Human Rights.⁵⁴

It is necessary to point out that the majority of the individual/group "communications" to the Commission alleging violation of rights and interference with freedoms were declared "inadmissible" for the principal reason that the complaints were levelled against states or entities which are "non-state parties to the Charter" - and therefore not bound. To put it another way, the Commission had no jurisdiction to entertain and decide on cases against states which have not signed and ratified the Charter. There are three kinds of states or entities for which the communications have been declared inadmissible:

- non-African states which could not be parties to the regional charter or convention system: the USA, Haiti, Yugoslavia, Indonesia and Bahrain
- African states eligible to be parties to the Charter but which had not done so as the time the complaints were filled, e.g. Ghana, Ethiopia, Kenya, Malawi, Morocco and others. Most of these have since then ratified the Charter.

⁵⁴ See, for example, European Commission of Human Rights, Application No. 17419/90, *Wingrove v the United Kingdom*, Report of the Commission, adopted on 10 January 1995 (25 pages). The case is currently before the European Court of Human Rights (Case No.19/1995/525/611).

- non-state entities which cannot be parties to the Charter according to the Charter requirements, eg. The OAU.

A bit of knowledge of public international law and international human rights principles of enforcement could easily have assisted the aggrieved parties to realise that their applications stood no chance of being declared admissible. It is actually surprising that some of the cases against non-state parties or entities were filed on behalf of victims by international human rights organisations! What the Workshops have done - at least in the initial stages, was to "train" NGOs with Observer Status on how to address and represent cases before the Commission. The ICJ developed a manual based on these "training" sessions,⁵⁵ and other participants also made their contributions.⁵⁶ Article 56 of the Charter (see above) lays down some of the conditions for "other communications", that is, the individual/group applications. However, practice or training on the spot with the Commissioners and within the Commission has proved more instructive and empowering to the participating institutions and organisations - and their constituencies back home.

While on this training on procedural aspects of the Charter system, it is important to also point that in some of the Workshops, some Geneva-based international NGOs with experience in the functioning of the UN system have also had the opportunity to share the knowledge with the participating African grassroots institutions and organisations. In this regard, the International Service for Human Rights may be singled out as having been most consistent in imparting knowledge on the use and functioning of the UN system. Also important to note here is the subsidiary activities relating to training in documentation, especially the HURIDOCS system. Many other "networking activities", which do not fall under the formal arrangements of the workshops, have evolved out of the opportunities provided by the Workshops.

⁵⁵ ICJ, *How to Address A Communication To the African Commission on Human and Peoples' Rights* (ICJ, Geneva, 1992).

⁵⁶ W Benedek and Christopher K Hall, "NGO-Participation in the Work of the African Commission on Human and Peoples' Rights", undated paper presented to the Workshop participants early in 1990s.

With regard to the issue of use of the African Charter in domestic jurisdictions and the development and dissemination of African human rights jurisprudence, the need for it is great. By resisting publication of its decisions and by restricting its reports to the bare minimum, the Commission has not facilitated and contributed to the development of such jurisprudence. Now that it publishes its decisions and tries to provide more substantive reasoning, it is to be hoped that this *lacunae* will be filled as speedily as possible. The domestic systems can only develop sound and relevant jurisprudence (case law) on the Charter through mutual interaction with the Commission. It is therefore heartening to note that the focus of the 10th ICJ Workshop of March 1996 in Ouagadougou was on the subject of "the role of the judiciary in the implementation of the African Charter".

To give examples on how domestic/national judicial systems have innovatively used the Charter in the Courts, especially in countries where participants have benefited from the Workshops and transferred the knowledge "back home", one could point out to Botswana and South Africa. It should be noted that the latter, newly "independent" country, has only just ratified the Charter in 1996. The Courts have been assuming the leading position, taking advantage of a human rights friendly political climate which was created in 1994. In the historic and celebrated case of Attorney-General v Dow,⁵⁷ the Government of Botswana which is a party to the Charter argued that its provisions were not applicable in the domestic courts even though one of the Commissioners (then the Attorney General and later the Chief Justice) was from Botswana. The Court ruled that even though the Charter is not directly applicable in Botswana, it could be used as an aid to interpreting the equivalent provisions in the Botswana Constitution.⁵⁸ This is an innovative way of introducing the Charter in the national legal system. This Botswana's example is particularly telling because the earlier Workshops had challenged the then Commissioner-cum-Attorney General. Some of the participants had even given notice that they will bring the case to the Commission should the national courts fail to do justice to Ms Unity Dow.

⁵⁷ 1994(6)*BCLR* 1 (Botswana)

⁵⁸ *Ibid*, pp 28-30.

The contribution in and of the South African courts has been even more dramatic. In the landmark and highly contentious court decision that outlawed the "death penalty" or "capital punishment" in South Africa, the South African Constitutional Court referred to various international human rights instruments as required by Section 35 of the South African Interim Constitution. Among the instruments referred to for comparative purposes was the African Charter of Human and Peoples' Rights (Article 4).⁵⁹ The significance of such use of the Charter in the domestic sphere lie not so much on whether the Courts agree with the formulations in the Charter but rather on considering provisions in the Charter as important human rights norms that ought to be examined and used, with or without approval in specific cases.

The most recent court decision in South Africa in which the provisions in the Charter was used is yet another celebrated case, this time dealing with racial segregation in schools.⁶⁰ The issue here was that of "self-determination" and the lawyers and the Judge made extensive use of Articles 20 and 22 of the Charter.⁶¹

- g) As far as the official ICJ Communique on the 10th Workshop referred to in pages 45-50 is concerned, it has already been pointed out that it contains a lot that is common with the Commission's Communique that has formed the framework for the analysis, comment and evaluation of what has been done in various areas of the Commission's work and the NGOs' participation since 1991 when the Workshops were started. To avoid unnecessary repetition, the remaining part of this section will isolate only the few key issues that require further elaboration and/or explanation and those not yet touched on at all or sufficiently.
- The ICJ Communique points out that the composition of the participants in the 10th Workshop included representatives of African and international NGOs, judges, commissioners, spe-

⁵⁹ *S V Makwanyane and Another* 1995 (3) SA 391 at pages 414 (footnote 52, per Chaskalson P) and 505 (footnote 221 per O'Regan J)

⁶⁰ *Matukane and Others v Laerskool Potgietersrus* 1996 (3) SA 223 TPD, per Spoelstra J

⁶¹ It should be noted, however, that both the legal counsel and the honourable Judge misnamed the Charter and called it the "United Nations" Charter on Human and Peoples' Rights"! (Ibid, per Spoelstra J at page 233).

cialist from the UN Commission on Human Rights, public prosecutors, and parliamentarians. In fact, there were also human rights scholars and an ombudsperson/public protector. The Communique emphasises "the importance of our collective effort", an important factor in the "success" of the Workshops' programme/project, which this Report constantly attempts to underline. The participation of the UN Special Rapporteur is also particularly significant in that, as has been pointed out in this Report, the African Commission has instituted the "special rapporteur" system of its own. Interaction and sharing of experiences and strategies with the UN specialists helps to strengthen the approaches that the Commission's rapporteurs may adopt in their work, in addition to the educative impact on the NGOs with limited exposure to the broader international human rights system. The three tiers of human rights standard-setting and enforcement need to interact and coordinate more than they are doing at present. As has already been pointed out, bringing the key institutional role players at the national level - such as judges and the NGOs to find or construct common approaches to enhancing the understanding and practical commitment to human rights can only be regarded as positive. In some cases, judges, lawyers and human rights NGOs from certain countries are only able to find each other out in such neutral fora and countries.

- The regional human rights systems are really the bridges connecting the national constitutional and human rights systems to the international, specifically the UN system. Without this bridge, the connection between national and the international remains rather tenuous. The participation of key role players from the UN in the public sessions of the Commission's work as well as in the Workshops therefore fulfills a greater functional role than the immediate ideas and strategies shared with the Commissioners and other role-players at that level. The international NGOs need to connect more closely with the grassroots NGOs who are located "where the action is" - whether "the action" is defined in terms of peoples' needs or in terms of being the site of rights violations and/or denial.
- The need for specialised training in human rights and for continuing education and training for major role-players in the human

rights field is important and crucial. The focus of the 10th Workshop on this topic and the specific targeting of lawyers and judges should be viewed as an important "sowing of the seeds" for a more effective judicial contribution to development of a human rights culture in Africa. The assumption, a wrong one, that those who are trained as lawyers are necessarily knowledgeable about and likely to be committed to legal protection and promotion of a rights culture is no longer sustainable. The continent is replete with cases of judicial insensitivity to and even collaboration with repressive political forces in systematic violations and denial of human rights. Thus, this new initiative by the ICJ is of critical importance and should be encouraged.

- Most importantly, a study of both the ICJ's and the Commission's Communiqués clearly demonstrates the influence that the Workshop deliberations and results have had on the work of the Commission. The Commission discharges its responsibilities independently, yet the Communiqués reveal how the Workshops, which take place prior to the Commission's Sessions, identifies the issues and areas of concern and sets part of the agenda for the official work of the Commission. The participation of the Commissioners in the Workshops facilitates this intimate, although by no means easy or automatic relationship. In a way, the participating Commissioners identify with the broad consensus reached at the Workshops and they become agents for selling the ideas when they sit as Commissioners in their official deliberations. It is possible then to conclude that the Workshops would have been more of talkshops without direct impact on the Commission's work if the strategy had not included the participation of the Commissioners. Likewise, the Commission's capacity and performance would have been poorer and less focused had there not been the Workshops. This dialectic and synergy should be one of the real points of focus in evaluating the Workshops and the participation of the NGOs.
- The ICJ Communiqué records the mini Workshop on information gathering and processing following the HURIDOCs system. This has been a feature of some of the earlier Workshops as well. Reporting human rights violations and denial has become an important feature of modern human rights practice. Several organisations, both governmental and non-governmental

or quasi-governmental, operate actively in the field. At the international level, the United States of America's State Departments annual human rights reports on countries, the regular reports by the ICJ's Centre for the Independence of Judges and Lawyers (CIJL) in the series of **Attacks on Justice**, the various reports by the structures constituting the Washington, D.C. based Human Rights Watch, Amnesty International's regular reports on the specific areas of its concerns and the reports by African grassroots NGOs all require training in methodology and use of appropriate data gathering and processing techniques. For African NGOs, it cannot be doubted that they face enormous difficulties in handling such information. They are at the site where the violations and denial of rights occur, yet most of them lack the capacity and professionalism needed for handling the knowledge and experiences in such a way that they can be used for promotion and protection of human rights by themselves and the broader international human rights community. Thus, it can only be emphasised here that training in information gathering, processing and dissemination is crucial and should be strengthened. The only criticism one could advance here is that there is greater need for those involved to be trained in adhering to accuracy and contextualisation of the information. There is greater need to combine technical training with sociological sensitivity in the field. Information that is processed out of context can be dangerous and at the very least not very useful.

PART 4

Conclusions and Recommendations

Evaluating a dynamic historical process within a relatively short period of time - in this case 6 years - is not an easy undertaking. The series of Workshops directed at effecting some positive change in the thinking, capacity and operations of the numerous NGOs, the ICJ, the Commission and the African States in relation to human and peoples' rights is not, and cannot be, an easy one. What this Report has attempted to do, is first to provide a general historical overview and context of the evolution and development of the African regional human and peoples' rights system. Secondly, the Report traces and critiques the involvement of the ICJ in this historical process. Thirdly, the Report attempts to capture the institutional framework and linkages within which the African regional human rights system is operating. The latter provides the constitutional basis for the activities of the Commission, the NGOs and the Workshops - expressing and symbolising dynamic relations between or among the major role players in translating what exists in theory in the African Charter into practice.

The specific visions and objectives of the Workshops are explored and explained, using the latest "products" - the Communique of the Commission and the ICJ - as the point of departure and concrete expression of what is happening at this stage of the initiative that was started in 1991. The analysis of the Communiques is put within the context of the original purpose (vision and motivation) for the Workshops. In addition, the evaluation has used some existing information of a "secondary" nature - commentaries, activities of the various organizations and networks that have developed from or been encouraged by the Workshops, selective personal recollections of the author who has been a participant in close to more than half of the 10 Workshops held so far, and discussion with other people or organizations that have had "live experiences" of the Workshops and the work of the Commission.

By way of conclusion, this Report identifies the major areas of activities that have been accomplished in the Workshops and in the operation of the Commission which may be regarded as the "success" of the Workshops. The Report points out areas where progress is still being made and which require further action of some form or the other. The whole undertaking is viewed as a learning process, as capacity and institutional building are by their very nature dynamic historical processes that cannot be frozen in time. Constant vigilance and improvements should be the guiding principle and objective. On the whole, the Workshops have achieved their intended objectives - but a lot remains to be done.

In summary, the following could be identified as the main achievements of the Workshops:

Capacity building and empowerment of the NGOs in :

- understanding the African Charter and the role of the Commission
- knowing how to file complaints before the Commission
- contributing to knowledge of the Commission about human rights situations in the various countries
- providing useful critique of state reports
- improving on reporting capacity using computer systems.
- understanding how the international human rights systems especially the UN system operates
- connecting and creating contacts with international human rights and institutions
- creating opportunities for regional networking in areas of mutual interest
- lobbying the Commissioners
- broadening the understanding and approaches to tackling common human rights problems in Africa
- contributing to the promotion, knowledge and use of the African Charter.

Strengthening the African Commission by:

- encouraging and assisting the Commissioners to understand and take seriously their promotion and protection mandates
- encouraging the initiation of the "special rapporteur" procedure
- improving on the capacity of the Commission to examine state reports critically
- involving the Commission in the revision of the Charter, including the drafting and adoption of the Protocol for establishment of the African Court on Human and Peoples' Rights
- pressuring states to effect equal participation of women in the Commission as Commissioners (there are now 2, there was none when the Commission was established)
- assisting the Commissioners in carrying out their promotional activities using the "network" of the NGOs throughout the continent.
- supporting the Commission in its struggle to demand for better support from the OAU Secretariat
- persuading the Commission to discard its early notion of "confidentiality" and to publish more substantive reports of cases.
- helping the Commission to publicise its activities through the **Review** and the involvement of the media in its activities.

Highlighting Major Human and Peoples' Rights Problems

Through "thematic" and "geographical" topics chosen for the Workshops, the following have received high profile in the work of the Commission and the NGOs:

- Women's human rights problems, especially violence against women and their social marginalisation.
- Independence of the judiciary, judges, magistrates, prosecutors and lawyers

- Promotion of the use of the Charter in domestic courts
- Prison conditions and rights of prisoners
- Human rights education
- The struggle for justice and against impunity for systematic and gross violation of human and peoples' rights
- Land rights
- Conditions in countries with high incidents of systematic of violation rights eg. South Africa (until, 1994), Kenya, Nigeria, Somalia, Rwanda, Burundi, Tunisia, Zaire, Liberia, Sierra Leone (until recently), Sudan, Mozambique etc.

Some global suggestions:

There are some major challenges still facing the African regional human rights system which ought to be focused upon by the community that has developed around the work of the Commission and participation of the NGOs and other local actors.

- a) As the **Annexure B** shows, the African NGOs, who have participated in the Ten Workshops over the last six years represent the variety of the diversity that is Africa: a large number of countries; numerous major religious and linguistic regions; different and pluralistic legal traditions and systems; different mixtures of major races and cultures; countries with different levels of material development and industrialisation, etc. The Workshops have drawn from all these and have succeeded in creating conditions favourable to the exchange of ideas, experiences and resources. It has also provided the basis for greater forging of different types of networking among African NGOs. This has, no doubt, been one of the most important and enduring achievements of the Workshops. The African human rights scene would be the poorer had the Workshops not been there.

In addition to the other more specific conclusions and recommendations in this part of the Evaluation, and those in the main body of the Report not repeated here, a continuation of the

Workshops is recommended, not necessarily in the form in which they have been conducted. A re-focused and restructured method that takes account of the "successes" and the unmet goals and challenges identified in this Report is necessary. For example, where certain countries have not been adequately represented in the Workshops an increase in participation from such countries ought to be enhanced. The corollary to this is that a minimal reduction in the frequency of sponsorship given to certain organisations which have always been sponsored but which add little value to the overall tasks at the Workshops and in the work of the Commission should be considered. To avoid the "collapse" of such organisations, the ICJ and other powerful African and international NGOs could facilitate the securing of funding for such organisations from other sources.

- b) When the Workshops started, the training of participating NGOs' representatives and other activists to empower them to understand the Charter and the procedures of the Commission was a priority. This has been very successful. Far greater number of African NGOs can now use the regional system quite efficiently. They are also able to educate the human rights communities in their respective countries about the system. The increasing use of the Charter in the national/domestic legal systems provides at least a partial evidence for this conclusion. It is recommended, however, that future workshops continue to emphasise the element of "training" on the Charter and the Commission's procedures - this time using the decisions of the Commission as part of the resource materials. The reason for this is that new participants in the Workshops tend to be "lost", as the seasoned ones assume that the procedural issues are common knowledge - which they are not. Secondly, the Communications decided on by the Commission involve a significant number that are declared to be "inadmissible" for reasons that could be avoided by better practical knowledge of the Charter, the Procedures and the practice of the Commission to date.
- c) The Workshops have in the past paid a lot of attention to the issues of competence and independence of the Commissioners. As much as the Commissioners who attend and participate in the Workshops have benefited by understanding the human rights issues in Africa better as well as improving on the areas of their

work within the Commission (e.g. approaches to evaluation of State Reports, providing reasoned decisions, etc), the issue of incompatibility of roles still remains. Heads of State and Government ought to be made much more aware that Commissioners who are assigned certain political roles for their countries (e.g. as Ministers responsible for state security and the police, ambassadors and similar functions) are not perceived to be independent and impartial. This is irrespective of the personal integrity of the particular individuals. As far as the competence of the Commissioners is concerned, it should be recommended to the Commissioners themselves that once appointed, they ought to ensure that they improve their own knowledge in the field of human rights. Continuous learning is important for all, including the best of the "experts".

- d) The long and sustained campaign by the Workshop participants for gender balance within the Commission has yielded two Women (Ms Vera Duarte Martins and Ms Julianne Ondziel) among the eleven Commissioners. This can only lead to strengthening and broadening the Commission's perspectives and approaches to human rights issues and problems within their mandate and activities. However, two out of a total of eleven is not near the balance that is desirable. The campaign for an increased number of Women Commissioner should be intensified, particularly in the light of the ongoing process towards the integration of women's rights issues in the Commission's work.
- e) The ICJ and NGOs' efforts through the Workshops have contributed most significantly to the Commission's practice with regard to Article 59 of the Charter -the confidentiality provision. Not only has the Commission abandoned its earlier practice of total opaqueness as regards the decisions it makes on complaints (communications), it, the Commission, has significantly improved on the jurisprudential quality of its decisions. A comparison of the joint decisions on Communications 64, 68 and 79 against Malawi and the decision on Communication 60 against Nigeria in **Annexure A**, below illustrates this conclusion. The workshops should continue to assist in the identification of other provisions of the Charter which may require studying in order to improve the work of the Commission.

- f) The question of resources available to the Commission has been tackled in the Workshops and by the ICJ in other fora. Indeed, there have been improvements. However, the resources available to the Commission from contributions by State parties to the Charter remains inadequate. No matter how efficient and independent the Commissioners may be or desire to be, they will always remain hampered in their work by lack of adequate resources. When the Court is established the system will even need greater resources. The NGO community ought to continue with the campaign for greater resourcing of the system.
- g) As noted in several of the ICJ's and Commission's Communiqués, as well as in **Resolution 230 (XXX)** of the Assembly of Heads of State and Government, the revision of the Charter is a priority. The Workshops have contributed greatly in raising the issue and the ICJ has undertaken steps to facilitate the realisation of this objective. The Draft Protocol for the establishment of the Court is on the table, but other areas of the Charter also need reviewing. For example, the Commission (and later the Court) could be empowered in the revision exercise to monitor the implementation of other regional human and peoples' rights conventions such as those relating to the environment, the rights and welfare of the child, and refugees. Future campaigns to further strengthen the regional system ought to focus on these, in addition to other areas such as the appointment of special rapporteurs on important issues and greater networking on areas such as land rights and environmental degradation. Of immediate challenge is a campaign for the Draft Protocol for the Court to be adopted and then ratified within the shortest time possible and the appointment of the special rapporteurs in the areas already agreed upon.
- h) Future workshops, or equivalent arrangements, should ensure that issues relating to rights of women, impunity, social, economic and cultural rights, which have been covered in the past but have yet to be enhanced are made the centre focus in theoretical and practical commitments by the Commission/Court and the various networks.

ANNEXURE "A"

64/92 Krishna Achuthan vs Malawi

68/92 Amnesty International vs Malawi

78/92 Amnesty International vs Malawi

Communication on wrongful detentions and denial of rights.

Final decision:

The Commission finds that the state is in breach of Articles 4, 5 and 7 of the African Charter on Human and Peoples' Rights and decides to refer the situation to the Assembly of Heads of State and Government under Article 58(1) of the Charter on Human and Peoples' Rights.

60/91 Constitutional Rights Project v Nigeria

(in respect of Wahab Akamu, G Adega and Others)

The facts

1. Communication 60/91 was brought by the Constitutional Rights Project, a Nigerian NGO, on behalf Wahab Akamu, Gbolahan Adeaga and others sentenced to death under Robbery and Firearms (Special Provision) Decree No. 5 of 1984. This decree creates special tribunals, composed of one serving or retired judge, one member of the armed forces and one member of the police force. The decree does not provide for any judicial appeal of sentences. Sentences are subject to confirmation or disallowance by the Governor of a state.
2. Wahab Akamu was convicted and sentenced to death on August 12, 1991 and Gbolahan Adeaga was convicted and sentenced on August 14, 1991. Both were sentenced by the Robbery and Firearms Tribunal 1, Lagos. The complaint alleges that both were tortured to extract confessions while they were in custody.

Argument

3. The communication argues that the prohibition on judicial review of the special tribunals and lack of judicial appeals for judgments of these tribunals violates the right to an appeal to competent national organs against acts violating fundamental rights, guaranteed by Article 7, paragraph 1 (a) of the African Charter.
4. The communication also argues that the practice of setting up special tribunals, composed of members of the armed forces and police in addition to judges, violates the right to be tried by an impartial tribunal guaranteed by Article 7, paragraph 1 (d).

Admissibility

5. The case was decided admissible at the 14th Session of the Commission on the following ground:

The case raises the question of whether the remedies available are of a nature that requires exhaustion.

The Act complained of in Communication No. 60/91 is the Robbery and Firearms (Special Provisions) Act, Chapter 398, in which Section 11, paragraph 4 provides:

“No appeal shall lie from a decision of a tribunal constituted under this Act or from any confirmation nor dismissal of such decision by the Governor”.

The Robbery and Firearms Act entitles the Governor to confirm or disallow the conviction of the Special Tribunal.

This power is to be described as discretionary extraordinary remedy of a non-judicial nature. The object of the remedy is to obtain a favour and not to vindicate a right. It would be improper to insist on the complainants seeking remedies from sources which do not operate impartially and have no obligation to decide according to legal principles. The remedy is neither adequate nor effective.

Therefore, the Commission is of the opinion that the remedy available is not of a nature that requires exhaustion according to Article 56, paragraph 5 of the African Charter.

The Merits of the Case

6. The Robbery and Firearms (Special Provisions) Act, Section 11, Subsection 4 provides:

"No appeal shall lie from a decision of a tribunal constituted under this Act or from any confirmation or dismissal of such decision by the Governor".

7. A "decision of a tribunal constituted under this Act or any confirmation or dismissal of such decision by the Governor" may certainly constitute an "act violating fundamental rights" as described in Article 7.1(a) of the Charter. In this case, the fundamental rights in question are those to life and liberty provided for in Articles 4 and 6 of the African Charter. While punishments decreed as the culmination of a carefully conducted criminal procedure do not necessarily constitute violations of these rights, to foreclose any avenue of appeal to "competent national organs" in criminal cases bearing such penalties clearly violates Article 7.1(a) of the African Charter, and increases the risk that severe violations may go unredressed.
8. The Robbery and Firearms (Special Provisions) Act, Section 8(1) describes the constitution of the tribunals, which shall consist of three persons: one judge, one officer of the Army, Navy or Air Force and one officer of the Police Force. Jurisdiction has thus been transferred from the normal courts to a tribunal chiefly composed of person belonging to the executive branch of government, the same branch that passed the Robbery and Firearms Decree, whose members do not necessarily possess any legal expertise. Article 7.1(d) of the African Charter.

Charter requires the court or tribunal to be impartial. Regardless of the character of the individual members of such tribunals, its composition alone creates the appearance, if not actual lack of impartiality. It thus violates Article 7.1(d).

For the above Reasons, the Commission

declares that there has been a violation of Article 7.1(a), © and (d) of the African Charter; and

recommends that the Government of Nigeria should free the complainants.

At the 17th Session the Commission decided to bring the file to Nigeria for the planned mission in order to verify that the complainants have been released.

ANNEXURE "B"

Directory of African NGOs which Have participated in the 10 Workshops

Ligue Algérienne
des Droits de l'Homme
40-42, rue Ben M'Hidi
Alger - Algérie
Tel n°: 21 34 - 94 71 54

Associacao Angolana Dos
Direitos Humanos
Rua Conselheiro dos Vilhena
No 24, 5 Andra, 19
Luanda - Angola
Tel n°: 2442 - 391 943
fax n°: 392 289

Association pour
le Développement
des Initiatives Villageoises
B.P. 06733
Cotonou - Bénin
Tel n°: 229 - 32 15 22
fax n°: 31 37 01 / 31 38 09

Commission Beninoise
des Droits de l'Homme
B.P. 04-0607
Cotonou - Benin
Tel n°: 229 - 31 23 04 / 30 15 14

Ligue Béninoise des Droits de
l'Homme
B.P. 03 - 2686

Cotonou - Bénin
Tel n°: 229 - 31 43 34
fax n°: 31 59 31

Union Interafricaine
des Droits de l'Homme
(UIDH) BP 03.630
Cotonou - Bénin
Tel n°: 229 - 31 51 53
fax n°: 31 46 84

The Botswana Centre
for Human Rights
Private Bag 00416
Gaberone - Botswana
Tel n°: 267 - 306 998, 373 742
fax n°: 307 778

Groupe de Recherche, d'Etudes
et de Formation «Femmes-
Action»/GREFFA
01 BP 633
01 Ouagadougou - Burkina Faso
Tel n°: 226 - 31 23 16
fax n°: 30 67 67
c/o Hôtel Indépendance

Mouvement Burkinabé des
Droits de l'Homme
01 BP 2055
Ouagadougou - Burkina Faso
Tel n°: 226 - 31 31 50
fax n°: 31 32 28

Union InterAfricaine
des Droits de l'Homme
01 BP 2055
Ouagadougou - Burkina Faso
Tel n°: 226 - 31 31 50
fax n°: 31 32 28

Association des Femmes
Juristes du Burkina
03 B.P. 7024
Ouagadougou 3 - Burkina-Faso
Tel n°: 226 - 30 66 11
fax n°: 33 45 81

Ligue Burundaise
des Droits de l'Homme
(ITEKA)
BP 1714
Bujumbura - Burundi
Tel n°: 257 - 21 52 28
fax n°: 22 00 04

Zonta Club
15, Avenue Source du Nil
BP 721 Bujumbura - Burundi
Tel n°: 257 - 21 12 83

Association des Magistrats
Cap Verdiens
Supremo Tribunal de Justica
CP 117 Praia - Cabo Verde
Tel n°: 238 - 61 58 10
fax n°: 61 17 51

Commissao Nacional
dos Dereitos do Homen
Avenida Che Guevara

CP 63 Praia - Cabo Verde
Tel n°: 238 - 61 61 19 / 61 40 87
fax n°: 63 17 34

Ligue Capeverdienne des
Droits de l'Homme
C.P. 586
Praia - Cabo Verde
Tel n°: 238 - 61 35 39
fax n°: 61 11 73

Ordre des Avocats
R. 5 de Julho 11
Praia - Cabo Verde
Tel n°: 238 - 61 43 87
fax n°: 61 43 87

National Organisation of
Women for Freedom (freedom
Now)
B.P. 5213
Douala - Cameroon
Tel n°: 235 - 42 29 70
fax n°: 42 29 70

Ligue Camerounaise des Droits
de la Personne
B.P. 1514
Yaoundé - Cameroun
Tel n°: 237 - 31 70 18 / 23 39 81
fax n°: 235 428

Comite National des Droits de
l'Homme du Congo
B.P. 900
Brazzaville - Congo
Tel n°: 242 - 83 19 86

Association Chrétienne pour
l'Abolition des Tortures et pour
le respect des Droits de
l'Homme (ACATDH)
20 B.P. 1377
Abidjan 20 - Côte d'Ivoire
Tel n°: 225 - 43 46 51
fax n°: 20 49 49

Association Internationale pour
la Démocratie en Afrique
(AID)
08 BP 203
Abidjan - Cote d'Ivoire
Tel n°: 225 - 22 18 63
fax n°: 22 48 57

Ligue Ivoirienne
des Droits de l'Homme
08 B.P. 2343
08 Abidjan - Côte d'Ivoire
Tel n°: 225 - 44 44 53
fax n°: 43 00 74

Arab Lawyers Union
13 Ittehad El-Mouhameen
El-Arab St, Garden City
Cairo - Egypt
Tel n°: 202 - 355 24 86 / 356 39 31

Arab Organisation
for Human Rights
17 Midan Aswan
Muhandseen Giza - Egypt
Tel n°: 202 - 346 65 82
fax n°: 344 81 66

Egyptian Organisation for
Human Rights
8/10 Mathaf el Manial Street
El-Manial Cairo - Egypt
Tel n°: 202 - 363 68 11
fax n°: 362 16 13

Legal Research and Resource
Center for Human Rights
7 Al Higaz - St Heliopolis
Cairo - Egypt
Tel n°: 202 - 259 66 22
fax n°: 259 66 22

Sudanese Organisation for
Human Rights
El-Tayaran Street 7
Nasr City Cairo - Egypt
Tel n°: 202 - 260 31 21 ; fax n°:
260 31 21

Regional Centre for Human
Rights and Development
P.O.Box 600
Asmara - Eritrea
Tel n°: 29 11 - 117 675
fax n°: 111 221

Ad Hoc Committee for Peace
and Development (AHCPD)
PO BOX 41879
Addis Abeba - Ethiopia
Tel n°: 2511 - 511 966
fax n°: 515 714

Ethiopian Human
Rights Organization
Woreda 17
P.O BOX 40058
Addis Abeba - Ethiopia
Tel n°: 25 11 - 11 36 90

Délégué auprès de l'OUA
International Committee of the
Red Cross
P.O BOX 5701
Addis Abeba - Ethiopia
Tel n°: 25 11 - 511 083/ 518 366
fax n°: 513 161

LEM the Environment and
Development Society
of Ethiopia
P.O BOX 8632
Addis Abeba - Ethiopia
Tel n°: 25 11 - 18 69 37
fax n°: 517 810

Commission Africaine des Pro-
moteurs de la Santé et des
Droits de l'Homme (CAPSDH)
Rabito Clinic
PO Box 7286 Accra-North
Ghana
Tel n°: 233 21 - 777 465
fax n°: 777 465 / 773 418

Ghana Committee on Human
& Peoples' Rights
PO Box 1551 - Accra - Ghana
Tel n°: 233 21 - 66 86 14
fax n°: 220 307

Women in Law & Development
in Africa /WILDAF
P.O BOX 6192
Accra North - Ghana
Tel n°: 233 21 - 22 54 79
fax n°: 22 30 24

Ligue Guinéenne
des Droits de l'Homme
UNESCO - Guinée, BP 964
Conakry - Guinée
Tel n°: 224 - 44 49 57

Organisation Guinéenne de
Défense des Droits de l'Homme
(OGDH)
B.P. 561
Conakry - Guinée
Tel n°: 224 - 44 22 20
fax n°: 44 22 20

Forum des ONG des Droits de
l'Homme et de l'Enfant des
Pays Africains Lusophone
B.P. 599
Bissau - Guinée-Bissau
Tel n°: 245 - 21 37 77 / 21 13 68
fax n°: 20 17 66

Ligue Bissau Guinéenne
des Droits de l'Homme
BP 599
Bissau - Guinée-Bissau
Tel n°: 245 - 20 17 60 / 21 51 31
fax n°: 20 15 98

Union InterAfricaine des Droits
de l'Homme
B.P. 599
Bissau - Guinée-Bissau
Tel n°: 245 - 21 13 68
fax n°: 20 17 66

Kenya Section of the ICJ
P.O. Box 59743
Westlands, Rhapta Road
Nairobi - Kenya
Tel n°: 2542 - 44 47 65
fax n°: 442 978

Institute for Democracy and
Human Rights (IDHR)
PO Box 987
Malabo - Guinée-Equatoriale
Tel n°: 240-9 - 34 38
fax n°: 34 38

Community Legal Resource and
Advice Centre
P.O. Box 0383
105 Maseru West - Lesotho
Tel n°: 266 - 31 03 61
fax n°: 31 03 61 / 31 02 37

All Africa Conference of
Churches
P.O.Box 14205, westlands
Waiyaki Way
Nairobi - Kenya
Tel n°: 2542 - 44 14 83
fax n°: 44 32 41

Lesotho Catholic Bishops'
Conference
PO BOX 200
100 Maseru - Lesotho
Tel n°: 266 - 312 535 / 323 092
fax n°: 310 294

FIDA - International
Federation of Women Lawyers
- Kenya chap.
P.O.Box 46324
Nairobi - KENYA
Tel n°: 25 42 - 717 169 / 716 840
fax n°: 716 840

WUS Lesotho
P.O.Box Roma 180
Lesotho - Lesotho
Tel n°: 266 - 34 06 01
fax n°: 34 00 00

Institute for Education in
Democracy
P.O. Box 43874
Nairobi - Kenya
Tel n°: 2542 - 21 37 26 / 22 70 05
fax n°: 22 21 78

Association of Female Lawyers
of Liberia
Law Librabry, Ashmun Street
PO Box 20-4248 Monrovia
Liberia
Tel n°: 231 - 22 19 43
fax n°: 226 092

Center for Law & Human
Rights Education
Corner Warren Street & Camp
Johnson Road
PO Box 2314 Monrovia
Liberia
Tel n°: 231 - 226 171 / 221 867
fax n°: 226 171

CNOE
Rue Rajakoba Augustin
Ankadivato
Antananarivo - Madagascar
Tel n°: 2612 - 217 63
fax n°: 338 64

Ligue Africaine des Droits de
l'Homme et des Peuples -
Section Malgache
Logement E.4 Cité des Profes-
seurs - L.T.I. BP 1590
Antananarivo - Madagascar

Association Malienne des
Droits de l'Homme
BP 3129
Bamako - Mali
Tel n°: 223 - 23 01 92
fax n°: 22 34 62 / 22 93 77

Muso Yiriwa
Faladi Sema
BP 1945
Bamako - Mali
Tel n°: 223 - 22 94 21
fax n°: 22 77 97

Réseau Femmes Africaines et
Droits Humains
B.P. 1530
Bamako - Mali
Tel n°: 223 - 23 02 37
fax n°: 22 21 78

Organisation Marocaine des
Droits de l'Homme (OMDH)
24 Avenue de France-Agdal
Rabat - Maroc
Tel n°: 21 27 - 77 00 60
fax n°: 77 46 15

Association Mauritanienne des
Droits de l'Homme
BP 522
Nouakchott - Mauritanie
Tel n°: 22 22 - 515 02
fax n°: 528 94

Ligue Mauritanienne des Droits
de l'Homme
Banque Centrale de Mauritanie
B.P. 623
Nouakchott - Mauritanie
Tel n°: 22 22 - 522 06

Liga Moçambicana dos Direitos
do Homen
Avenida Maguiguana No 1042
Maputo - Mozambique
Tel n°: 2581 - 42 57 66
fax n°: 43 07 06

Mozambique Human Rights
Group (MULEIDE)
147 Rua Pereira do Lago
5th floor
Maputo - Mozambique
Tel n°: 25 81 - 41 75 71
fax n°: 41 60 62

Legal Assistance Centre
P.O. Box 604
Windhoek - Namibia
Tel n°: 264 61 - 22 33 56
fax n°: 23 49 53

National Society for Human
Rights
PO Box 23592
Windhoek - Namibia
Tel n°: 264 61 - 236 183
fax n°: 234 286

Association des Femmes
Juristes du Niger
B.P. 10689
Niamey - Niger
Tel n°: 227 - 75 34 06
fax n°: 73 42 23

Association Nigérienne pour la
Défense des Droits de l'Homme
BP 10269
Niamey - Niger
Tel n°: 227 - 74 12 94 / 74 02 07

Rassemblement Démocratique
des Femmes du Niger
BP 11933
Niamey - Niger
Tel n°: 227 - 73 24 65
fax n°: 73 48 68

Réseau Sous-Regional Femmes
Africaines et Droits Humains
(REFAD)
B.P. 2619
Niamey - Niger
Tel n°: 227 - 72 20 59
fax n°: 73 34 30

Constitutional Rights Project
18 Awoyemi Close
P.O. Box 4447
Surulere Lagos - Nigeria
Tel n°: 23 41 - 584 30 41 / 584 84 98
fax n°: 584 85 71

Civil Liberties Organisation
24 Mbonu Ojike Street
Surulere, Lagos
Tel n°: 234-1-5826 876
fax n°: 234-1-5876 876

Inter-African Committee (IAC)
5, Taslim Elias Close
Victoria Island
Marina
PO Box 6051 Lagos - Nigeria
Tel n°: 234 1 - 614 909
fax n°: 263 25 47

Legal Research and Resource
Development Centre
386 Murtala Muhammed Way
PO Box 752 42 Lagos - Nigeria
Tel n°: 234 1 - 862 097 / 865 188
fax n°: 610 450

Community Law Centre
Berea Centre, Seventh Floor
249 Berea Road
4001 Durban
Republic of South Africa
Tel n°: 27 31 - 202 71 90
fax n°: 21 01 40

Institut des Droits de l'Homme
et de promotion
de la Démocratie
B.P. 08-1120
Cotonou - République Bénin
Tel n°: 229 - 30 27 06
fax n°: 30 27 07

Ligue Centrafricaine des Droits
de l'Homme
BP 889 - Bangui
République Centrafricaine
Tel n°: 236 - 61 27 13
fax n°: 61 22 10

Association pour la Défense des
Droits de l'Homme et des
Libertés
Rue de Moscou - B.P 1441
Djibouti
République de Djibouti
Tel n°: 253 - 35 34 49
fax n°: 35 23 71

Association des Femmes
Juristes de Guinée (AFJG)
Avocat Général Cour Suprême
de Guinée
BP 564 Conakry
République de Guinée
Tel n°: 224 - 44 29 50
fax n°: 41 34 76

Union des avocats d'Afrique
Centrale
BP 2041 - Brazzaville
République du Congo
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