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Information Sheet No. 1

ESTABLISHMENT



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This *Information Sheet* is published by the Secretariat of the Commission on Human and Peoples' Rights. Its purpose is to inform the African people and the ever-growing human rights audience about the existence of the Commission and its relevance to them, and to disseminate vital information on the activities of the Commission. This document is distributed free of charge. It deals with a brief history of the establishment of the Commission and the mandate conferred on the Commission by the African Charter on Human and Peoples' Rights.

The production of this Information Sheet in languages other than the original language is encouraged so long as no changes are made to its content and provided that the African Commission is mentioned as the source.



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Introduction

For almost two decades after the creation of the Organisation of African Unity (OAU) in May 1963, the focus of the Organisation remained almost entirely the decolonisation of the continent and the eradication of apartheid. In spite of the Organisation's endorsement of the principles of the Universal Declaration of Human Rights of 1948 in the preamble of the OAU Charter, the promotion and protection of human rights within OAU Member States was not a major priority. As such, it concentrated its efforts on political and economic independence, non-discrimination and the liberation of Africa, eradication of colonialism on the continent and apartheid in Southern Africa, at the expense of individual liberty.

In the early days of its existence, different groups which included the Media, the Church, inter-governmental and non-government organisations (NGOs) mounted pressure on the OAU by exposing some of the most gruesome human rights abuses on the continent.

They accused the Organisation of abandoning its primary goal of restoring dignity to the humiliated African peoples. It was accused of double standards for condemning apartheid in South Africa while failing to condemn the massive human rights violations committed by some of its own members.

At the same time, the said pressure groups were encouraging the establishment of a human rights protection mechanism on the continent. Thus, starting from the 1961 Lagos Conference organised by the International Commission of Jurists (ICJ), to the 1979 UN - sponsored Monrovia Seminar on the Establishment of Regional Commissions on Human Rights with Special Reference to Africa, pressure and assistance were simultaneous to ensure that the OAU and its leaders uphold the spirit that motivated the struggle for political independence, to restore to the African peoples their dignity lost during slave trade and colonial era - a cause for which they won international sympathy and support.

In July 1979, the OAU Assembly of Heads of State and Government met in Monrovia, Liberia and decided to place its members under an international obligation through a positivist approach. Accordingly, at this summit, a resolution was adopted calling on the then OAU Secretary General to form a Committee of Experts which would draft an African Charter on Human and Peoples' Rights, providing among other things, for mechanisms to promote and protect the rights embodied in the Charter.

The group of experts began work on a draft Charter in 1979 and produced a draft which was unanimously adopted at a 1981 meeting of the OAU Heads of States

and Government in Nairobi, Kenya. The Charter provides for a Human Rights Commission to ensure implementation of the rights enshrined therein.

This acceptance of a limitation on sovereign national authority (at least on human rights related matters), albeit minimal, was hailed as a significant step by African States. The move was generally viewed as ushering in a new era of recognition of individual rights.

On 21 October 1986, the Charter came into force. This date has been declared, and is being commemorated as Africa Human Rights Day.

Establishment, Composition and Functioning of the Commission

By virtue of **Article 30** of the African Charter “an African Commission on Human and Peoples’ Rightsshall be established within the Organisation of African Unity (the African Union) to promote human and peoples’ rights and ensure their protection in Africa”. The Commission is composed of eleven members serving in their personal and independent capacity and not as representatives of their countries. **Article 31 (1)** of Charter provides that the Commissioners shall be “chosen from amongst African personalities of the highest reputation, known for their high morality, integrity impartiality and competence in matters of human and peoples’ rights.....’ They are nominated by States Parties to the Charter and elected by the Assembly of Heads of State and Government for a renewable period of six years. At the beginning of their mandates, the members of the Commission solemnly declare to discharge their duties impartially and faithfully.

The Commission was officially inaugurated on 2 November 1987 in Addis Ababa, Ethiopia, after its members had been elected in July of the same year by the OAU 23rd Assembly of Heads of State and Government.

The Commission did not have a permanent Secretariat after its inauguration and thus, for its first five sessions, its activities were co-ordinated from the OAU General Secretariat in Addis Ababa. The Secretariat, which is also the Headquarters of the Commission, is located in Banjul, The Gambia, and was officially inaugurated by His Excellency, Sir Dawda Kairaba Jawara, former Head of State of the Republic of The Gambia, on 12 June 1989.

The Commission elects its Chairperson and Vice-Chairperson who constitute the Bureau. It meets twice a year – usually in April or May and in October or November. The sessions usually last for fifteen days, but are likely to increase as the workload of the Commission increases. The Commission can also hold Extraordinary Sessions.

Mandate of the Commission

Article 30 of the African Charter, prescribes two principal functions for which the Commission was established: Promotion and Protection of human and peoples' rights in Africa.

Article 45 of the Charter enumerates the functions of the Commission to be:

- the promotion of human and peoples' rights ;
- the protection of human and peoples' rights ;
- interpretation of the provisions of the Charter ; and
- any other task assigned to it by the OAU Assembly.

(a) Promotion of human and peoples' rights

The promotion function of the Commission is explained in **Article 45 (1)** of the Charter. The main essence of this function is to sensitise the population and disseminate information on human and peoples' rights in Africa

To achieve this, the Commission is mandated under **Article 45 (1)** to 'collect document, undertake studies and researches on African problems in the field of human and peoples' rights, organise 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'.

The Commission has established a documentation centre used for research purposes. It has also organised several seminars, symposia and conferences aimed at promoting human and peoples' rights on the continent.

The Commission has also been co-operating with other human rights institutions; (inter-governmental or non-governmental) in many areas relating to the promotion and protection of human rights.

In a bid to strengthen co-operation, the Commission has been granting observer status to NGOs and affiliate status to NHRIs. As at its 45th Ordinary Session, over 380 NGOs and 21 NHRIs had received such status.

The Commission has also produced and distributed several human rights documents, including the Review of the African Commission, its Activity Reports, the African Charter, the Commission's Rules of Procedure, Mission reports and other relevant documents. These documents have gone a long way to

disseminate vital information about the Commission. They can be obtained free of charge at the Secretariat of the Commission.

Members of the Commission have also each been assigned a certain number of States in which they are required to undertake promotion activities. The members are expected to visit these States (countries) and organise among other activities, meetings, lectures, visit different stakeholders to discuss the African Charter, work of the Commission, and promotion of human rights generally. At each Ordinary Session of the Commission, they report on their intersession activities.

The Commission has established Special Mechanisms to enhance it promote work. These Special Mechanisms play a very significant role in the promotion of human rights in the Continent. For more information on the Special Mechanisms of the Commission, see information sheet No. 5

Article 45 (1) (b) of the Charter requires the Commission to “formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental problems upon which African governments may base their legislation. The Commission is mandated under **Article 45 (1) (c)** to co-operate with other African and international institutions concerned with the promotion and protection of human and peoples rights.

Co-operation has also been encouraged with other regional and international institutions, such as the European Court on Human Rights, the Inter-American Commission, Inter-American Commission on Human Rights, Office of High Commission for Human Rights, African Court of Human and Peoples’ Rights etc.

(b) Protection of human and people’s rights

The second principal function assigned to the Commission by the African Charter is stipulated in **Article 45 (2)** as: ‘to ensure the protection of human and peoples’ rights under conditions laid down in the present Charter’.

The protection mandate requires the Commission to take measure to ensure that the citizens enjoy the rights contained in the Charter. This entails ensuring that the States do not violate these rights and if they do, that the victims are reinstated in their rights.

To achieve this, the Charter provides for the ‘Communication procedures’. This is a system through which an individual, NGO or group of individuals who feel that their rights or those of others have been or are being violated, can petition (complain) to the Commission about these violations.

A communication can also be made by a State Party to the Charter which reasonably believes that another State Party has violated any of the rights in the Charter. The Communication will be studied by the Commission and if it meets the criteria set out in article 56 of the Charter, it will be formally accepted for consideration. The State concerned will then be informed of the allegations and invited to submit its comments on the same. Where more information is required from the complainant, the latter will be informed.

After carefully studying the arguments advanced by both parties, the Commission will decide whether there has been a violation or not, it will make recommendations to the State and to the Assembly of Head of States and Government on what the State should do, including how to remedy the victim where there is a violation.²

The Commission can also, and has on various occasions, initiate friendly settlements, where the complainant and the accused State enter into negotiations to settle the dispute amicably.

The Commission has undertaken missions to various States Parties to investigate allegations of massive and serious human rights violations. At the end of such mission, the Commission makes recommendations to the States concerned on how to improve the human rights situation.

In emergency situations, in particular, where the life of the victim is in imminent danger – the Commission might invoke provisional measures under Rule 111 of its Rules of Procedure requesting the State to delay any action pending its final decision on the matter.

(c) **Interpretation**

Article 45 (3) of the Charter also mandates the Commission to interpret the provisions of the Charter at the request of a State Party, an institution of the AU or an African Organisation recognised by the AU. To date, neither the AU nor a State Party to the Charter has approached the Commission for an interpretation of any of the provisions of the Charter.

However, some NGOs have sought and obtained through draft resolutions, the interpretation of some of the provisions in the Charter. Through this method, the Commission has adopted many resolutions which give clarity and a broader interpretation to some of the ambiguous provisions in the Charter.

² Decision for the Commission to submit its activity report to the Executive Council for consideration and submit to the AHS &G for endorsement.

(d) **Other tasks**

In terms of **Article 45 (4)**, the Commission can perform any other task which may be entrusted to it by the Assembly of Heads of State and Government.

Conclusion

The workload of the Commission increases every year. In spite of the challenges facing the Commission, it is an institution capable of responding to the present day challenges of the Continent. For it to do this however, people should make use of it.

The more it is used as a regional mechanism, the stronger and more useful it becomes in safeguarding human rights on the continent. NGOs, human rights advocates and lawyers should make use of the Commission and assist people to submit cases to the latter.

For more information, please contact:

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Other Information Sheets produced by the Secretariat of the Commission:

- Information Sheet No. 2 – Guidelines on the Submission of Communications
- Information Sheet No. 3 – Communication Procedure
- Information Sheet No. 4 – State Reporting Procedure
- Information Sheet No. 5 – Special Mechanisms of the African Commission

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