



**REPORT OF  
THE RETREAT OF MEMBERS OF THE AFRICAN COMMISSION ON  
HUMAN AND PEOPLES' RIGHTS (ACHPR)  
facilitated by  
THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
(OHCHR)**

*African Union Conference Centre, Addis-Ababa, Ethiopia*

*24<sup>th</sup> to 26<sup>th</sup> September 2003*

The Retreat of Members of the African Commission on Human and Peoples' Rights (African Commission), facilitated by the Office of the High Commissioner for Human Rights (OHCHR), was held from 24-26 September 2003 in Addis Ababa, Ethiopia.

Twenty-eight participants comprising members of the African Commission, member of the NEPAD APRM Panel of Eminent Persons, Chairperson of the African Coordinating Committee of National Institutions, Vice Chairperson of the African Committee on the Rights and Welfare of the Child, Representatives of African Union (AU) units and programmes such as CSSDCA as well as representatives of partner institutions and the donor community participated in the Meeting. Resource Persons were drawn from African research institutions and the UN treaty body system and special mechanisms.

In his Welcome Address, the Chairman of the African Commission, Mr Kamel Rezag Bara requested participants to reflect critically on the functioning of the African human rights system and make concrete suggestions to improve the methods of work and procedures of the Commission and strengthen its Secretariat.

In his statement to the Retreat, delivered by Mr Tiyanjana Maluwa, the Acting UN High Commissioner for Human Rights, Mr. Bertrand Ramcharan, noted that the Retreat is part of the strategy of the OHCHR to engage in consultations with the partners, stakeholders and human rights actors in Africa aimed at strengthening national and regional capacities in the area of human rights. He noted that the establishment of the African Union (AU) and the primacy placed upon issues of human rights, democracy and the rule of law in the Constitutive Act of the Union, the establishment of the NEPAD and the CSSDCA processes as well as recent adoption of the Protocol to the African Charter on the Rights of Women in Africa and the Convention on the Prevention and Combating of Corruption reaffirm the commitment of African political leaders to the promotion and protection of human rights. He stated that the Retreat is expected to facilitate the sharing of experiences and best practices between the Office and the African Commission, leading to a more sustainable formal relationship between the human rights mechanisms of the AU and the UN while providing also, an orientation exercise for the three new members of the Commission.

In her Opening Speech on behalf of the Chairperson of the AU Commission, Mrs Julia Joiner, AU Commissioner for Political Affairs, expressed her pleasure at addressing the first ever Retreat organised for the African Commission. She noted that the meeting, coming more than fifteen years after the adoption of the African Charter and at a time when a number of new structures are being put in place which recognise the central role of human rights, provides the Commission with the opportunity to reflect on how to meet the new challenges posed by these facts. She added that closer collaboration needed to be established between the African Commission and other structures of the African Union, including the NEPAD steering Committee, the Pan-African Parliament and the proposed Economic and Social Council. She also said that the AU is well aware of the many challenges ahead and recognised that the African Commission had been working under tough conditions, which prevented it from achieving its maximum potential. She thanked the African Commission's partners including the donor community for their support and expressed wishes towards better cooperation between them, the African Commission and the AU so as to avoid duplication and wasting of resources. Commissioner Julia Joiner applauded the objectives of the Retreat as laudable and assured the audience of the AU's readiness to facilitate the implementation of the recommendations that would be adopted at the end of the meeting. Finally, she presented a message of condolence to OHCHR on the occasion of the untimely death of Mr. Sergio Vieira de Mello, Special Representative of the UN Secretary General to Iraq and High Commissioner on Human Rights.

The Retreat was conducted in plenary and working group sessions focussing on the main areas of the African Commission's mandate under Article 45 of the African Charter on Human and Peoples' Rights, i.e. the consideration of States Reports and the handling of Communications/Complaints. Other issues dealt with included the structural relationships between the African Commission and the African Union, the Members of the African Commission and its Secretariat, the African Commission and other programmes and institutions of the African Union such as NEPAD, CSSDCA and the African Committee on the Rights and Welfare of the Child, as well as the relationship between the African Commission and its partners, such as OHCHR, National Human Rights Institutions and NGOs.

Following is a summary of the challenges identified under each of the topics and the proposals / recommendations made during the Retreat:

## **I. CONSIDERATION OF STATES REPORTS:**

### *Challenges*

1. Although all Member States of the African Union have ratified the African Charter on Human and Peoples' Rights, eighteen countries have never submitted their reports as required by Article 62 of the Charter.
2. The institutions that have the responsibility for preparing and submitting states reports differ from country to country which makes it difficult for the African Commission to follow up with non-reporting states.

3. Lack of resources to make reports available in working languages of the African Union constrains all Commissioners from full participation in the exercise of consideration of reports.
4. The guidelines for the process for the consideration of states reports require streamlining.
5. States parties have been unable to comply with the treaty requirement of submitting their state reports every two years after submission of the Initial Report

*Recommendations:*

1. The African Commission should develop user-friendly guidelines and model reports to serve as precedents and assist states in preparing their reports.
2. The African Commission should, in collaboration with the African Union, find ways of urging the eighteen States that have never submitted their periodic report to do so.
3. Shadow reports by National Human Rights Institutions and NGOs are useful sources of information on the human rights situation in countries. National Human Rights Institutions should be encouraged to prepare and submit Shadow reports.
4. The African Commission should utilise the Shadow Reports alongside other sources of information to prepare reports and conclusions on the human rights situation in states that fail to submit periodic reports.
5. States should be encouraged to designate a focal point to which the African Commission can refer on issues relating to it.
6. In conformity with the provisions of the African Charter, States Parties are encouraged to ensure adequate representation at the time of consideration of their reports.
7. To ease the burden of multiple reporting States should be encouraged to use the same information they have provided in reports to the UN treaty bodies to prepare their reports to the African Commission.
8. The African Commission and the UN treaty bodies should develop a more systematic working relationship to facilitate sharing of information, joint action and programming. This can ease the burden of reporting and facilitate the work of the monitoring mechanisms, especially in relation to follow-up to recommendations.
9. To further ease the burden of reporting on State Parties, only initial reports should be comprehensive and include background political and other information. Subsequent reports might be submitted every 4 years and comprise specific information about progress made since the initial report.

10. Members of the African Commission should undertake at least 1 promotional mission every two years to each country under their responsibility.
11. The AU should ensure adequate resources to the African Commission to enable it to consider the reports it receives. For example, there's a need to ensure translation of the reports into the AU working languages.
12. The African Commission should establish a follow-up mechanism for its recommendations to States Reports.
13. The African Commission should carry out regular training of state officials at sub-regional levels but not less than one per year. To facilitate this, the African Commission should seek collaboration with the Office of the High Commissioner for Human Rights. The training should utilise appropriate methods such as practical sessions.

## **II. HANDLING COMPLAINTS/COMMUNICATIONS:**

### *Challenges*

1. The existing procedure of handling communications does not allow the African Commission to address urgent human rights matters.
2. Responding to the increase in communications received by the African Commission under its protective mandate is constrained by a number of administrative and procedural factors, including shortage of qualified legal staff.
3. The extensive time lapse between the receipt of communications and the delivery of a decision by the African Commission arises from a number of factors including deficient submissions necessitating that the African Commission request for additional information in order to be able to deal with the communication; failure to respond or delay in responding by States to allegations contained in individual communications;
4. Non-compliance by States Parties with the recommendations of the African Commission.
5. The absence of a follow up system or mechanism to ensure that decisions and recommendations of the African Commission are complied with by States Parties;

### *Recommendations*

1. The African Commission should adhere to the time frame for communications as stipulated by the Charter.
2. The African Commission should consider a communication even where the State fails to respond to correspondences relating to the communication.

3. In order to speed up the consideration of communications the African Commission should combine the process of seizure and admissibility while dealing with communications.
4. The African Commission should establish a follow-up mechanism for its decisions and recommendations on communications. In this regard, the African Commission could seek partnership with the UN treaty body system.
5. The African Union should provide adequate human and financial resources, particularly the human resources to enhance the African Commission's capacity to consider communications.

### **III. THE AFRICAN COMMISSION, ITS' SECRETARIAT AND THE AFRICAN UNION - STRUCTURE AND RELATIONSHIP**

#### *Challenges*

1. The African Commission is faced with problems of lack of capacity. The current number of Commissioners (11 members) is too small and their meeting period of 30 days per year is grossly inadequate to meet the responsibilities linked to the mandate of the African Commission.
2. The African Union's responsibility for ensuring that the African Commission functions in an autonomous and sustainable way has not been fully met.
3. In the election of Commissioners the provisions of the African Charter relating to possession of human rights knowledge, expertise and incompatibility, which have a bearing on the independent functioning of the African Commission have not been coherently adhered to by Member States.
4. The level of expertise and number of legal staff in the African Commission's Secretariat is inadequate to meet the expected level of efficiency and professionalism. Most of the existing staff work under difficult conditions. For example, of the five Legal Officers presently at the Secretariat, only two are paid from the regular budget of the AU. The others are employed on short-term contracts funded by extra-budgetary grants from donors with inferior terms of employment.
5. The budgetary allocation to the African Commission from the AU is grossly inadequate and extra-budgetary funds are not properly planned for or managed. For example, the dual function of administrator and accounts officer currently undertaken by the same officer should be revisited.
6. Rule 25 of the African Commission's Rules of Procedure adopted pursuant to Articles 41 and 44 of the African Charter, requires that the Financial Rules of the African Commission should be appended to the Rules of Procedure, this has never been done.

7. The relationship between the African Commission and its Secretariat, between the African Commission and the AU Commission, and between the Secretariat of the African Commission and the AU Commission are not clearly defined. This affects coordination, transparency and accountability as well as efficiency of the African Commission and its Secretariat.
8. Secretariat services provided to backstop the Commission have been inadequate. For example, there are no regular minutes of meetings of the Commission.
9. The absence of Ground Rules to delineate the relationship between the African Commission, the Secretariat and the AU Commission has sometimes resulted in breakdown of trust and confidence between the members of the African Commission and the Secretariat.
10. A number of evaluations and studies have been conducted on the African Commission and its management in the past but their recommendations have not been fully implemented.
11. The decision of the African Commission to review its special mechanisms is outstanding and needs to be finalized urgently.
12. The recommendations of the Grand Bay and Kigali Ministerial Conferences have not been fully implemented.

### *Recommendations*

1. The AU should look urgently into the need to increase the number of Commissioners to between 15 and 18 members while adhering to the principles of geographical and gender representation.
2. States Parties are urged to nominate and elect only persons with requisite knowledge, expertise and commitment to human rights and whose regular assignments do not compromise their independence.
3. There is urgent need for dialogue between the African Commission and the AU Commission to address concerns regarding the effectiveness of the Secretariat of the African Commission and issues of staffing, funding, fundraising and funds management.
4. The duty to provide adequate resources, whether from budgetary or extra budgetary sources, to the African Commission in the discharge of its mandate rests with the AU Commission. Therefore, the AU should take responsibility for providing adequate resources to the African Commission for the discharge of its mandate.
5. The AU should develop clear policy and guidelines on extra-budgetary funding of the African Commission and its activities.

6. The AU Commission and the Secretariat of the African Commission should take urgent steps to redress the present arrangement whereby the dual functions of administrator and accounts officer are combined in one officer.
7. In line with Rule 25 of the Rules of Procedure of the African Commission, the AU Financial Rules should be appended to the Rules of Procedure of the African Commission.
8. The structure of the relationships between the African Commission and its Secretariat, the African Commission and the AU Commission, and between the Secretariat of the African Commission and the AU Commission need to be clearly and urgently defined.
9. The AU should take urgent steps to review the evaluation reports/studies, including the report of this Retreat, on the African Commission, its management and functioning with a view to implementing the outcomes and encouraging its efficiency.
10. The African Commission should take urgent steps to conclude the on-going review process of the Special Rapporteur mechanism, including consideration of the use of Independent African Experts.
11. Attention of all stakeholders, especially AU Members States should be drawn to the need to ensure the full implementation of the recommendations of the Grand Bay and Kigali Ministerial Conferences.

#### **IV. THE AFRICAN COMMISSION, ITS RELATIONSHIP WITH OTHER BODIES OF THE AFRICAN HUMAN RIGHTS SYSTEM AND INITIATIVES OF THE AFRICAN UNION**

##### *Challenges*

1. In recent times there has been a proliferation of African instruments, programmes and plans with implication for the protection and promotion of human rights. The African Commission should be in the forefront of ensuring that standards set up by the African system do not go below what has been accepted at the international level.
2. The African human rights system is larger than the African Charter on Human and Peoples' Rights. Some instruments and mechanisms like the OAU Convention on the Specific Problems of Refugees, the African Charter on the Rights and Welfare of the Child and NEPAD Peer Review Mechanism are outside the mandate of the African Commission. Also, a number of protocols have been adopted as a way of improving the African Charter on Human and Peoples' Rights. There is a lack of coordination between the monitoring mechanisms for these instruments and programmes and the activities of the African Commission.

3. Some of the structures have not been provided adequate resources to allow them to function effectively. For example, the African Committee on the Rights and Welfare of the Child does not have a functioning Secretariat.
4. There is no human rights expertise nor adequate mechanism within the Commission of the AU in Addis Ababa to support the work of the African Commission and other initiatives with human rights implications.

#### *Recommendations*

1. The African Commission should, as was requested by the Assembly of Heads of State and Government of the African Union at its Second Ordinary Session held in July 2003, in Maputo, Mozambique (Assembly /AU/Dec.11 (ii), clarify its relationships with other bodies within the African human rights system, organs of the AU and initiatives with human rights components such as the CSSDCA and NEPAD.
2. The NEPAD African Peer Review Mechanism (APRM) makes provision for the participation of the African Commission in its process. The African Commission should therefore develop guidelines for a working relationship with the APRM review process, where applicable.
3. The African Commission should take effective steps to develop working relationships with AU structures such as the Peace and Security Council and ECOSOCC as well as initiatives such as the CSSDCA.
4. The AU should take urgent steps to establish a functional secretariat for the Committee on Rights and Welfare of the Child.
5. There is need to strengthen the capacity of the Commission of the AU in the area of human rights. In this regard, professional human rights officers with appropriate expertise should be recruited to work in the Political Affairs Department.

## **V. THE AFRICAN COMMISSION AND RELATIONSHIP WITH ITS PARTNERS**

#### *Challenges*

1. The OAU First Ministerial Conference on Human Rights in Africa's Grand Bay Declaration recognised the lack of effective cooperation between the ACHPR and national human rights institutions (NHRIs) and called for the relationships to be formalised and strengthened.
2. The Grand Bay Declaration also recognised the lack of proper co-ordination of the relationship between international organizations - governmental, inter-governmental and non-governmental – and the OAU (read AU), especially the African Commission, and urged for harmonisation and strengthening of the relationships.

3. The First AU Ministerial Conference on Human Rights in Africa's Kigali Declaration recognised the inadequacy of funding for the African Commission from the budget of the AU and called upon the AU policy organs to establish a Fund to be financed through voluntary contributions from Member States, international and regional institutions.
4. The African Commission has not yet developed a strategy for the exchange of information with UN human rights treaty bodies in order to facilitate its benefiting from the latter's experience.
5. The African Commission has yet to take advantage to build an effective partnership relationship with the Office of the High Commissioner for Human Rights in areas of capacity building, even though the OHCHR has established regional offices in different parts of Africa, including an office in Addis Ababa.
6. Although protocols exist, it is apparent that there is no common understanding and agreement among the Commissioners, the secretariat and potential donors on how extra-budgetary finances and other resources are acquired and managed.
7. The African Commission has difficulty in ensuring regular publication of its annual activity reports and other documents relevant for its promotion mandate.
8. The African Commission has developed a good and effective working relationship with international and national NGOs. NGOs obtain observer status which allows them to participate in public sessions of the African Commission, to submit shadow reports and to represent complainants in communications. Nevertheless, there is a growing recognition that increasingly only well resourced NGOs can afford to participate and access the African Commission's Secretariat.

### *Recommendations*

1. The African Commission should provide NHRIs with enhanced affiliate status and develop a clear working relationship, especially in the area of follow-up to the decisions, observations and recommendations of the Commission. The UN human rights system has developed similar relationship and roles with the NHRIs.
2. A focal point for the NHRIs should be established in the Secretariat of the African Commission.
3. The work of the NHRIs, together with those of the national civil society structures, ought to form the basis for fact-finding missions and a source for shadow reports.
4. The AU and OHCHR should develop a strategy to assist Experts of African human rights treaty bodies to benefit from the experiences of the

UN human rights treaty bodies and special mechanisms. This Retreat should be the foundation for a long term strategy for support to be developed between the AU, African Commission and OHCHR.

5. The African Commission should build an effective partnership with the OHCHR to facilitate capacity building, joint programming and resource mobilisation. This could be initiated at different levels depending on the needs with OHCHR in Geneva and/or with the OHCHR's regional offices in Africa.
6. The acquisition and management of donor funds and other extra-budgetary resources from partners should be carried out in line with the AU financial management and accounting rules. The African Commission should always be involved in the processes.
7. The African Commission should build partnerships with research institutions with printing and editing capacity in order to guarantee regular publication of its annual activity reports and other documents relevant for its promotion mandate.
8. The African Commission should collaborate with partners in order to assist national NGOs to enhance their role in supporting its country missions and to participate more effectively in its public sessions, to submit shadow reports and to represent complainants in the submission of communications.
9. The Secretariat should endeavour to assist NGOs to overcome some of the logistical difficulties they encounter while attending the sessions of the African Commission. In this regard the African Commission should create a desk or designate a legal officer at the Secretariat charged with responsibility of facilitating cooperation between itself and NGOs and also provide them with support where necessary.

### **The Way Forward**

Participants agreed that the Report of the Retreat lays out issues raised, conclusions, proposals and recommendations. The Report will be discussed in greater detail by Members of the African Commission who will draw up a concrete plan for implementing the recommendations, possibly with the support of its partners. It was agreed that the African Commission during its meeting with the Commission of the African Union should bring up issues relating to the relationship and structural problems raised during the Retreat. The possibility of the African Union carrying out a major evaluation of the African Commission was also raised.

*Done in Addis Ababa, September 26, 2003*