

ANNEXES

**ADDRESS BY MR ARTHUR CHASKALSON, NATIONAL DIRECTOR,
LEGAL RESOURCES CENTRE, JOHANNESBURG,
AT THE BAR DINNER**

I am grateful to the Bar for the invitation to speak to you tonight. Bar dinners, even one such as this, which is being held to honour distinguished guests who have travelled from afar, are occasions for relaxation and enjoyment. The speaker's job is to entertain: to increase the mood of festivity rather than to contribute to the underlying purpose that has brought the guests together. This, however, was quite explicitly not the scope of the invitation put to me. I was, so I was told, to speak on the issue of human rights and South Africa. I have too much respect for the people involved in that struggle to treat it with levity, and you will therefore forgive me if I choose tonight to strike a sober rather than a festive note.

For over 300 years policies of segregation and discrimination have been pursued by white-controlled governments in South Africa. There is no need to discuss the details of these policies. They are well known and involve the manipulation of political power to advance the social and economic interests of the whites, at the expense of the majority of the population. As a result of these policies black South Africans have become substantially a voteless, landless and impoverished community.

There has been resistance to these policies but it has been curtailed by the enactment and enforcement of security legislation. This security legislation consists of a network of laws built up over a period of more than forty years. The process began, as it so often has in other places during the course of this century, with the passing of a law against communism. This was in 1950, and that law was followed by a series of statutes which curtailed civil liberties and proscribed political opposition. Bit by bit the edifice was constructed and over these forty years it has become as rigid and unyielding as the iron cage that Weber saw as the inevitable consequence of the modern bureaucratic state. An early part of the structure was the Unlawful Organisations Act passed in 1960 to empower the government to ban political organisations. First to be banned were the African National Congress and the Pan African Congress and over the years since then a large number of other organisations have also been banned. In 1963 provision was made for the detention of persons without trial which has since become a permanent feature of South African law and the cornerstone of security legislation.

Under the Internal Security Act and other legislation, state officials have been given a vast array of discretionary powers. In effect these powers enable state officials to control the flow of information, to proscribe political opposition, to break up political organisations that are seen to be threatening to the State, to cut off an organisation's source of funds, to pick off leaders of particular organisations and render them ineffective by detention, house arrest or other restrictions, to extract information from detainees to enable the security police to bring to trial persons alleged to have committed offences under the security legislation, and to instil fear in the hearts and minds of ordinary people who might otherwise have felt inclined to voice their opposition to the actions of the government. In June 1985 a state of emergency was declared, and this empowered the President to rule by decree.

The President has used his powers to vest in the security forces what for practical purposes are untrammelled powers of arrest, detention, interrogation, search, seizure and censorship.

This is the situation in South Africa today, yet it is not the entire story. There has been and still is an ongoing struggle against racism and all forms of discrimination, and as a result of that struggle, apartheid is slowly crumbling. There has been and still is an ongoing struggle against impoverishment and powerlessness, as a result of which workers and peasants have made gains and their interests have been advanced. This struggle for human rights in South Africa is part of a broader struggle. It has its roots in the history of Africa and is linked to the demand for self-determination. This demand for self-determination fanned the winds of change that have blown down Africa for more than thirty years. The winds were first felt in Algeria, and since then a familiar pattern has been witnessed, which has been repeated time and again. Colonial communities sought to cling to their privileges. Arab and African communities demanded change. Oppressive laws were enacted by colonial governments in an attempt to stem the resistance and stifle demands, but in vain. The sequence was oppression, resistance, repression and rebellion. In the process, societies were torn apart, countries impoverished by Civil War and at times violence and anarchy flourished. The last scene of this act is now being staged in South Africa. I believe that it may end sooner than most of us would have thought possible a few years ago. Certainly I hope that it will end in my lifetime, but that is not the issue. Time is not what I want to talk about. The point is that when the curtain comes down on that part of the struggle, the larger struggle for human rights, a struggle which involves Africa as well as other continents, will continue.

The present fight for human rights in South Africa is part of this larger struggle, and recent South African history shows just how tenuous human rights can be.

Racial discrimination had been present in South Africa for centuries prior to 1950. But the country had a well-developed legal system, an independent Bar and judiciary, and a tradition, if not of respecting universal political rights, at least of respecting other important freedoms. Yet precisely at a time when countries in the rest of the world, shocked by the events of the Hitler war and the disclosures concerning the Nazi regime, were moving away from racial discrimination, South Africa moved in the opposite direction institutionalising racial discrimination and becoming an increasingly repressive State. At the time of this crisis, the legal profession and the judiciary proved too weak to counter the ideology of apartheid, or to resist the oppression and injustices that accompanied it.

Why was it that the courts were unable to perform the traditional role to which they aspired, of protecting citizens against the State? To understand the answer to this question, we need to look at the process whereby the State gained power and rode roughshod over the rights of most of its citizens.

The technique adopted by the South African parliament to assert its supremacy is that commonly applied by oppressive regimes. First to make inroads into institutions which have been developed over the years to protect individuals and groups against arbitrary action. At the same time to create an atmosphere in which it would seem to be dangerous - and in fact became dangerous - to offer resistance. The first assault was directed against political opponents of the State. Its severity intimidated ordinary people who were reluctant to endanger their own position by resisting the inroads being made into their freedom and autonomy. One inroad after another was made, and on each occasion, decisions had to be taken whether or not to oppose the

actions of the State. Multiple delays weakened the will to resist until the time was reached when there no longer appeared to many people to be ways of opposing State policies effectively. Predictably, those who benefitted from these policies tended to rationalise their fears and anxieties, deluding themselves that conditions were not as bad as many in the outside world saw them to be, and that the victims of the State's actions were people who deserved to be punished, and had only themselves to blame for what had happened to them.

Some people were led to cooperate with the State by their fears or by opportunism, their mistaken assumption being that co-operation with the State might soften the worst excesses. In fact, inroads into freedom call for resistance as they occur: otherwise incursions become increasingly difficult to resist.

The process that I have described has taken place within South Africa over the past forty years. During this period there has on the one hand been a steady increase in the level of resistance to State policies, and on the other hand to fight off this resistance, a steady increase in the degree of coercion imposed by the State. The courts have remained open throughout this time. They function within a construction of the Roman Dutch Common Law which is of course also the common law of Zimbabwe, and which denies all forms of discrimination, and recognises and seeks to protect fundamental rights and freedoms. The South African courts have had to confront this conflict between the common law infrastructure, and the superstructure of apartheid laws built upon it. They have also had to deal with the conflict between the bureaucratic state which increasingly claimed the right to decide for people how they should lead their lives and how privilege should be distributed, and the demands for justice made by those who were the victims of the policies of the State.

These confrontations could not be avoided. There was and still is a vigorous human rights Bar within South Africa which continually brought and still brings issues before the courts and demands decisions upon them. The result has been that the courts were at one and the same time being asked to articulate and give effect to equitable common law principles, and to uphold and to enforce discriminatory laws: at one time to be an instrument of justice and at another to be an instrument of oppression. Through all this they have attempted to steer a course between Scylla and Charibdis clinging to the doctrine of parliamentary supremacy as the method whereby they could best serve two masters. The State proved to be the stronger of the two, and the result has been a steady but persistent narrowing of human rights protection, and a steady but persistent erosion of the powers and standing of the courts.

What is important for a proper understanding of what has taken place, is to appreciate that there has not been a total abdication of power by the South African Bar and judiciary.

Their role within South Africa has been and still is a complex one, and it would be an oversimplification and incorrect to see the South African courts and legal profession as being no more than instruments of a repressive State. The South African State is based on legal structures, and legalism had been an important feature of its government's policies and traditions. This means that the State and its officials are required to adhere to the forms of law, and as a result there are restraints upon the exercise of absolute power. True, laws can be changed when the courts rule against the State, as they often do, but there are political costs to such actions, and there are spaces and constraints which no government and no official is willing openly to claim.

Thus the forms of law do impose a restraining influence upon the State. If such restraints were to disappear, there would be no control whatever over the use or abuse of power; no restraint whatever over arbitrary or extralegal action. In such a situation the most oppressed section of the population, might prove to be the most vulnerable.

The balance sheet then shows that in South Africa there has been a persistent struggle within the forms of law in relation to the exercise and abuse of State power. It is a struggle in which the State has made gains, but has never achieved a total victory. Although the powers of the courts have been cut back, they remain independent and an important institution within which common law concepts have been kept alive. At times, within the spaces that do in fact exist in the network of apartheid, these principles have been allowed to flourish. It is the job of courts and lawyers to occupy these spaces, and to endeavour to make them wider. And that is what many South African lawyers are attempting to do.

Ultimately the protection of human rights depends to a material extent upon the powers and the will of the courts. Whatever merit the doctrine of parliamentary supremacy may have in a political system in which parliament reflects the will of the people, it can have none in a system in which the majority are voteless, and parliament is controlled by a small elite. What has happened in South Africa lays bare the hollowness of that doctrine. And although South Africa is ruled by a minority regime, the same course can be followed by other unrepresentative governments, and also by majority governments, where the opposition is weak, and the courts and legal profession are either not powerful enough, or not vigilant enough to resist incursions upon freedom. Judge Leared Hand told us that "liberty lies in the hearts of man and women; when it dies then no constitution, no law, no court can save it".

That may be true. But ordinary men and women need support in their fight to claim and to protect their liberties. And their natural protectors are courts, not governments. After all, most governments think that they know best what the public interest requires, and are inclined to play down, if not to ignore, the rights of those opposed to their policies. Courts need the power, as well as the will, to help governments resist such temptations. What the recent history of South Africa shows, is that slavish adherence to the doctrine of parliamentary sovereignty, is wholly inadequate for that purpose. There may come a time when courts all over the world will be able to shake off the shackles of parliamentary supremacy, and insist that legislation is not law if it is wholly unreasonable or immoral. Until that day, those of us who practice where parliamentary supremacy holds sway, will have to do the best we can within the spaces.

Albert Camus, writing about Algeria in 1958, said:

"There is no ideal freedom which will some day be given us all at once, as a pension comes at the end of one's life. There are liberties to be won painfully, one by one, and those we still have are stages, most certainly inadequate, but stages nevertheless on the way to total liberation. If we agree to suppress them, we do not progress nonetheless. On the contrary we retreat, we go backwards and some day we shall have to retrace our steps along that road, and that new effort will once more be made in the sweat and blood of men."

That is where we are in South Africa. And elsewhere, in other parts of the world, there are other people at different places on the same road. All of us, need all the help that we can get, to enable us to move along that road.

**TEXT PREPARED WITHIN THE ORGANISATION
OF AFRICAN UNITY**

**THE AFRICAN CHARTER ON HUMAN
AND PEOPLES' RIGHTS**

Nairobi, June 1981

Preamble

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

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

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and legitimate aspirations of the African peoples" ;

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

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

1. Text provided by the Division of Press and Information of the OAU General Secretariat.

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

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

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

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, language, religion or political opinions ;

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

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

Have agreed as follows :

PART I — RIGHTS AND DUTIES

Chapter I - Human and Peoples' Rights

Article 1

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

Article 2

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

Article 3

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

Article 4

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

Article 5

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

Article 6

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

Article 7

1. Every individual shall have the right to have his cause heard. This comprises :
 - a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force ;
 - b. the right to be presumed innocent until proved guilty by a competent court or tribunal ;

c. the right to defence, including the right to be defended by counsel of his choice ;

d. the right to be tried within a reasonable time by an impartial court or tribunal.

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

Article 8

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

Article 9

1. Every individual shall have the right to receive information.

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

Article 10

1. Every individual shall have the right to free association provided that he abides by the law.

2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

Article 11

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

Article 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

Article 13

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

Article 14

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

Article 15

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

Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 17

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

Article 18

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

Article 19

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

Article 20

1. All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the States Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.

4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively to ensure the exercise of the right to development.

Article 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that :

a. any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter.

b. their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

Article 24

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

Article 25

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

Article 26

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

Chapter II - Duties

Article 27

1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.

2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Article 28

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

Article 29

The individual shall also have the duty :

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family ; to respect his parents at all times, to maintain them in case of need ;
2. To serve his national community by placing his physical and intellectual abilities at its service ;
3. Not to compromise the security of the State whose national or resident he is ;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened ;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law ;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society ;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society.
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

PART II — MEASURES OF SAFEGUARD

Chapter I - Establishment and organisation of the African Commission on Human and Peoples' Rights

Article 30

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

Article 31

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

Article 32

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

Article 33

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

Article 34

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

Article 35

1. The Secretary General of the Organisation of African Unity shall invite States parties to the present Charter at least four months before the elections to nominate candidates.

2. The Secretary General of the Organization of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections.

Article 36

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

Article 37

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

Article 38

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

Article 39

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

Article 40

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

Article 41

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

Article 42

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

Article 43

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

Article 44

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

Chapter II - Mandate of the Commission

Article 45

The functions of the Commission shall be :

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

Chapter III - Procedure of the Commission

Article 46

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

Communication from states

Article 47

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

Article 48

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either 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 and submit 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 to the States concerned and communicated to the Assembly of Heads of State and Government.

Article 53

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

Article 54

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

Other communications

Article 55

1. Before each Session, the Secretary of the Commission shall make a list of the Communications other than those of States parties to the present Charter and transmit them to the Members of the Commission, who shall indicate which communications should be considered by the commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56

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

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

Article 57

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

Article 58

1. When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.

2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its finding and recommendations.

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

Article 59

1. All measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.

2. However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.

3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

Chapter IV - Applicable principles

Article 60

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

Article 61

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

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

Article 62

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

Article 63

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

PART III — GENERAL PROVISIONS

Article 64

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

Article 65

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

Article 66

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

Article 67

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

Article 68

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

*Adopted by the eighteenth Assembly of Heads of State
and Government - June 1981 - Nairobi, Kenya*