

I

i :3 THE HUPâ\200\2301F-â\200\230tN

t

t

RIILJHIID- INUDI

I...

â\200\2302â\200\230

I

, investigations -. to other duties where they WQUld have no â\200\234PowerMOVi-\202 Wimc smi-\201rtmt ..

complatnants. Victims or relatives should have access to all relevant information and documents relating w the investi-\201gation and be granted an necessary facilities to present evidence. The Commission should be able to provide i-\201nancial assistance to witnesses enabling them to travel and be accommodated in order to present theh evidence before the Commission.

.

The Commission sh<>uld work in an open way with its hearings generally open to the public, Private hearings shouldttd be an exceptionaj measure and be resorted to only in Specific prc-established circumstances. The Commissionâ\200\230s methodology and the results of its investigations, together with offici-\201cia! reports, inctudâ\200\230mg post mortem: and other expert reports as well as police and court records, should in each case be published in full, in an easily accessible and comprehensible form.

The Commission should also prepare regtdar reports documenting all the complaints it has received, together with the action taken in each case, as well as an account of all its other activities for the promotion and protecĭ-\201on of human rights. The Commissionâ\200\230s reports should be presented periodically to representative national'and regional bodies.

The result of the Commisaion's investigations should be referred to appropriate judicial bodies without delay. Anyone the Commission alleges to have been teSponsibte for committing human rights violations or for ordering, encouraging or permitting them, sh0u\$d automatically be brought to justice. The government should ensure that any prosecutions for human rights-related offences are brought by authorities which are distinctly Independent from the security forces or other bodies allegemy impticatw ln the human rights violations.

The Commission should have powers to ensure that superior offici-\201cers are heId accountable for am committed under their authority and shou|d be mandated to closely follow subsequent tegat proceedings in the case, by monitoring trials, or if necessary appearing before the court to make legal submissions to press for appropriate legal action to be taken within a reasOnable time.

The Commission should have powers to ensure effective remedies, including interim measures to protect the iife and safety of an individual and free medical treatment where necessary; it should ensure that full and prompt co mpensation is paid and other measures of redress and rehabilitation are taken in all cases it ha}; taken up in which members of the security forces are found to have perpetrated human rights vioiations.

The government should undertake an obligation to respond, within a reasonable time, to the casc-spemĭ-\201c as well as the more general i-\201ndings, canclussions and recommendations made by the Commusnon. The government's response should be made while.

:39 THE;

HLâ\200\230T'THN

ID IRUOI

{V(b)

TO ?fbmbte had eocure the harmonization of national XegitiotionÂ§_
rgguletions and plauLlce with the internafinnhl human xightn instruments to
which the State is a party. and their trfack;v0 implementation:

To encourage ratification of the abeve-mentioned instrument: or

hccession to those instruments. and to ensure their implementation:

(c)

(6)

To contribute to the reports which States are required to submit to
United RatiOns bodies end committees. and to xegional institutions. pursuant
to their treaty obligations, and where necessary. to exprest an opinion on the
subject. with due respect for their independence:

(e)

To cooperate with the United Nations and any other organization
in the United Rations system. the regional institutions and the national
institutions of other countries that ere competent in the areas of the
promotion and protection of human rights:

(f)

To assist in the formulation of programmes for the teaching of. end'

rescatCh into. human right: end to take part in their execution in schooit,
universities and professional circles:

(9)

To publicize human rights and efforts to combat all forms of

discrimination. in particular racial discrimination, by increasing public
Awareness, especially through information and educetion and by making use of
all press organs.

CmPQLiLLQR49WM3WGMSL aguiuuu 5m

The composition of the national inititution and the appointment of its"

1.

members, whether by means of on election or otherwise. shall be esteblishea In
accordance with a procedure which affords 6ll necessary guarantees to ensure
the pluralist representation of the social forces (of civilian society)
involved in the promotion and protection of human rights. particulariy by
powers which will enable effective cooPeration to be established with. or
through the presence of. representatives of:

(e)

Non-governmentai organizations reeponsihie for human rights end
efforts to combat racial discrimination, trade unions, eencrned social and
professional organizations. for example. associations of lawyers, doctors,
jOUrualists and eminent scientgste;

Trends in philesophicai or religious thought:

Universities and qualified experts:

(b)

(a)

(6)

(e)

Parliament:

Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2.

The national institution shall have the infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises. In order to be independent of the Government and not be subject to financial control which might affect its independence.

The

—

In order to ensure the independence of the institution, its members should be appointed by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the renewal of the mandate is ensured.

without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the renewal of the mandate is ensured.

institution's membership is ensured.

CI: 35 :Ztituticgr',

(ii)

P.

.

-

6

.

.

.

Â»

I

W

-

Amnesty International\200\231s IS-Point Pt\200\230ogfam for Implemting Human Rights

I. The political role of the international community. The UN and its Member States should give priority, consistent and vigorous attention to human rights concerns when designing and implementing page: Settlements and should plan for a continuing human rights program in the post-peace-keeping phase. The international community must be prepared to publicly condemn human rights violations during and after the settlement process and to ensure that recommendations for institutional reform are fully and promptly implemented. Human rights promotion measures should be kept under review, strengthened as necessary and properly evaluated at the end of the operation.

All international individuals, including those engaged in military, 2. No international silent witnesses\200\231. civilian and humanitarian operations, should report through explicit and proper channels any human rights violations they may witness or receive. The UN should take appropriate steps, including preventive measures, to address any violations reported.

Peace agreements should include a detailed and 3. Human rights chapters in peace agreements. comprehensive list of international human rights laws and standards to be guaranteed in the transitions) and post-settlement phase. as well as providing for special and effective oversight mechanisms. Peace settlements should require eventual ratification of any human rights treaties and adherence to any international systems of human rights protection to which the state concerned is not yet a party.

4. Effective and independent human rights verification. A specialized international civilian human rights monitoring component should be part of all peace-keeping operations. These components should have adequate resources and staff with human rights expertise. Their mandates should include human rights verification, institution-building, legislative reform, education and training. Monitors should be trained and should operate under consistent guidelines and in conformity with international standards. Human rights components should be explicitly and structurally independent from the political considerations of the operation and on-going negotiations relating to the settlement and their decision-making mechanisms must not be constructed so as to permit parties to the conflict to obstruct investigations, Effective human rights mechanisms, such as advisory\200\235 or independent Jurists, should also be established in less comprehensive peace settlement monitoring. Mid should have an oversight role in matters such as the release of prisoners and the guarantee of rights to freedom of speech and

anembly.

5. Ensuring peace with justice. Peace settlements should provide for impartial investigation of past abuses, processes aimed at establishing the truth and measures to ensure that any perpetrators of human rights violations are brought to justice. Individual responsibility for human rights violations, past and present, must be made explicit and sweeping pre-conviction amnesties should not be part of peace settlements.

Human rights monitors should be mandated out to carry on

6. On-site human rights monitoring.

Investigations should verify compliance with human rights obligations and to take normative action in respect of

Violators - should have broad access to all sectors of society and relevant institutions and the full

protection of those who are in contact with them must be assured. Peace-building measures, web as

institutional and legislative reform and education and training, must complement but never replace the

verification role.

7. Frequent and public reporting. To guarantee the effectiveness, security and credibility of international

human rights personnel there must be frequent comprehensive public reports of their activities and findings -

which should be broadly disseminated nationally as well as internationally.

8. International civilian police monitors.

Civilian police monitors should monitor, monitor and train

24~RL|G-94 t-JEII

l

:
,

l
â\200\230

g
u Mx

â\200\231liHb.

HLII' IHRâ\200\230i RLUi¬\201IQ

m
p
.
C

â\200\224
Â«

~
-
.
â\200\235

a
n
u
u
l
u
q
u
~

r

â\200\224
â\200\230

u
o
w
-
-
-

.
m
u
-
â\200\230

r
r

w
~
n
~

JKPPFHÂÇDKXII..HMM

,

I

National institutions for the promotion and proteei¬\201on of human rights

Annex to Resolution 1992/54 on

Adopted by consensus by

(the United Nations Commission On Human Rights

3 March 1992

Erin; 191:5- met mg. 3.9. .m mm 5.21. \ mum; Lin msjgas

Mew 4. .mm mmâ\200\234: 1 13.13: a

A national institution the)! be vested with competence to promote and

1.
protect human rights.

A national institution shall be given as broad a mandate as possible.

2.
which shall be clearly set forth in a constitutional or legislative text,
-
specifying its composition and its sphere of competence.

A national institution shall, in accordance with the following

3.
responsibilities

(a)

To submit to the Government, Parliament and any other competent

body, on an advisory basis either at the request of the authorities concerned
or through the exercise of its power to hear a matter without higher referral.
opinions, recommendations, proposals and reports on any matters concerning
the promotion and protection of human rights: the national institution may decide
to publicize them: these opinions, recommendations, proposals and reports, as
well as any prerogative of the national institution, shall relate to the
following areas:

(i)

(ii)

(iii)

(iv)

Any legislative or administrative provisions, as well as
provisions relating to judicial organization, intended to
preserve and extend the protection of human rights: in that
connection, the national institution shall examine the
legislation and administrative provisions in force, as well as
bills and proposals, and shall make such recommendations as it
deems appropriate in order to ensure that these provisions
conform to the fundamental principles of human rights: it
shall, if necessary, recommend the adoption of new legislation,
the amendment of legislation in force and the adoption or
amendment of administrative measures;

Any situation of violation of human rights which it decides to
take up:

The preparation of reports on the national situation with regard
to human rights in general, and on more specific matters:

Drawing the attention of the Government to situations in any
part of the country where human rights are violated and making
proposals: to it (or initiatives to put an end to such situations
and, where necessary, expressing an opinion on the positions
and reactions of the Government:

..

3

0

0

,

(i)

4â\200\234FÂ§L'Gâ\200\234â\200\23194

DIED

18:37â\200\234 THE HLIT'THN H1LaH1"-

11'Ã©URD1

be given to chged yiovlationsyof the right to life and security of the person. and the ti
ght
not to be tortured (rights from which he derogatiunâ\200\230â\200\235can b9 â\200\235matt
e by any government , ,
under any circumstances); as well as to the right net to be arbtttrmty arrested or detahte
d
to estabhsh effective cooperation with nonâ\200\224
o The Commission should be directed
governmentat organizations with i-\201rst-hand information about reports of human rtghts
viotattons

0 The Commission should also have the powers to conduct wide-tangâ\200\230mg national Inq
uiries

on human rights concerns of fundamental importance to the natâ\200\231tOn.

o It is recommended that initiatty the Commission conduCt a critâ\200\230tca! anaIysis of
the factors
which have contributed to the persistence of human rights violations within the nationat
territory, including the failure of existing institutions and Iegat mechanisms to provide
adequate human rights pretention. Recommendations for legal and institutiona! reform to
halt viotations may be proposed on the basis of the i-\201ndings of the study.

0 The Commission should be authorized to investigate the conduct of the security forces
throughout the national territory. To do this effeCtively, the Commission should have
adequate facilities to conduct thorough invesi-\201lgations, independent of the security f
orces,
whose conduct it will be called upon to assess.

Facilji-\202ngng methodglggy of th_e_Â§g_tnmission

o The Commission should have an necessary human and material resources to examine,
thoroughly, effectively, speedity and throughout the c0untry, the evidence and ether case
materiat concerning speciï-\201c allegations of violations reported to it.

0 The Commission should have its own investigative machinery and shoud have access to
expert assistance whenever required to verify alleged vioiatimts. It should have adequate
facilities to carry out on-the-spoc investigations. The Commission should have immediate
and unhindered access to all pIaces where detained persons are hetd or are suspected to
be held. Ofi-\201cials should be obliged to cooperate with the Commissionâ\200\230s inves
tigations.

0 The Commission should have powers to initiate investigations on its own initiative. 1!
should be able to receive communications nOt Only from the complainants themselves but
atso, if they themselves are unable or prevented from doing so, from lawyers, retatives
or others acting on their behalf, including nongovernmental groups. Investtgatlons
initiated by the Commission should be adequately pubtic'tzed, especiany at the tegâ\200
\230tOhal
and local levels, to enable and encourage witnesses to come forward to testify.

0 The Commission should have fun and effective powers to compel the attendance of
witnesses End the production of documents.

0 The Commission should have full and effeCtive powers to protect witnesses, comptainants
,
or others providing evidence to the Commission. including bringing about the suspension
or transfer of ofi-\201cials aHegedly invotved - without prejudice pending completion of

v
-
v
.

u
D
w
~
-

â\200\224
~

\
-
-
.
.
-
h
c
-
â\200\234

u
l
t
~
v
~

W
W
-
.
Y
-
.
Âç
m
â\200\230

w
\
-
-
.
.
-
â\200\224
:
~
â\200\230

.
-
.
-
v
-
;
~
:
~
.

Â»
.
.
.
e
m
M

24â\200\224QUGâ\200\224â\200\23034 NED

AN" tame} WM? :3

â\200\230

:34 THE HUPâ\200\230IQH RIGHTS TRUST

mnem
AMNtsn'A

INYIINANONM.

INTIRNACiONAL

h

r
f

-

;
â\200\234
Y
n
a
a

â\200\230
9
â\200\230

A

I

â\200\224_â\200\230 ,.-,â\200\224-â\200\224-. H â\200\2305

.. .Q ---â\200\224-

INTERNATIOML
' WMVHAPOAHM
A IIUUF'I't'u-â\200\230t-

-

i...

M- -.â\200\224-â\200\224-~â\200\224w

Fax P367515

Pm l
|=th

of
l?-
{Y {HT-

â\200\23010, MR A;.'....\..â\200\2312â\200\2310

lco. @99th co. SOGiLi-\\201-Ei-\\201ti-\\201

i

Dept. SA GDWBT MNO-OM SÃ@Sâ\\200\\230Wq
rutaaâ\\200\\230ijjgfseâ\\200\\230Ã@ae mm on: 5.64333- -â\\200\\230

17 August 1994

-

V

-

~

w

4

-

.
â\\200\\224

n
Âç
n
~

*

p
. .

.
u

.
I
I

.
. I
C

:
~

.
o
â\\200\\234
R
J
~

-
. .

.
~

-
-

Q
Âç
v

.
-
w
.

.
.

1

.
.

;
â\200\235
n
o
w

Â»
u
â\200\230
.
w
o
t

Open letter

â\200\231

I

I
I

i

to the members of the Council of Ministers of the

Southern African Development Community

meeting In Gaborone, Botswana, on 26 and 27 August 1994

Dear Minister,

We. are wrlting to you as you prepare for the meeting, of the Southern African Development Community (SADC) Council of MinlSlefs in Gaborone on 2.6 and 27 AuguSt 1994. At this meeting you will have before you for approval important recommendations for human rights pratection in the region and Other resolutions on military cooperation which have a bearing on human rights.

Amnestty International considers that the recommendations before you, which were drawn up at at SADC meeting tn Windhoek in July 1994, contain porentially important human right s PROVISlons. We woud like to offer some observations which we believe could contribute to strengthening the proposals even further and we how: that you will consider our comments during your discussions.

"

The recommendations include a proposal that the SADC should establish an autonomous

1.
and permanent Commission of Human Rights.

Such a Commission could be a powerful force for increasing respect and promotion for human rights both in the SADC member states and in the region. Its capacity to do so will . however, depend on it being given the necessary power and status and on its terms of refe rence, composition and mcthodology conforming to certain well cstablished standards. In accordan ce with these standards, the Commission should be independent from any government. It should have powers to receive communications from individuals and from non-govemmntal human

rights organizations. It should prepare regular and frequent public reports documenting the complaints received, together with the action taken by the Commission and the government's response to the Commission in each case. Amnesty international believes that it is essential for the effective functioning of the Commission that SADC governments undertake to give effect to the Commission's recommendations. We are appending to this letter, for your information, a copy of Amnesty International's Proposed Standards for National Human Rights Commission: (A! Index: 10R 40/01/93) which includes standards which are applicable to international as well as national human rights commissions.

r-~- â\200\230
i-\202 "-1

AMNESTY INTERNATIONAL Fâ\200\234 â\200\230

â\200\230 -_â\200\224.â\200\224--

*

â\200\230

â\200\230

u

â\200\230

iNTERNATtONAL SECRETARBAT

t Easton Street. London WC'IX 80.). United Kingdom

Tel (â\200\234M?UMG 5500 TeiogramsAmne-sty London wet Telex 28502 FAX:(Âç4)(71)9561157

Famaii'(GMNM\MN1â\200\2303m/\Mm.io mmMuAu cwâ\200\234...

-

--

s

,

â\200\234'p "-- '-â\200\224-----vvt1 tu.â\200\230

"wmvvu" â\200\234w W!

oath. no- --_

vwâ\200\230

1".Ii-\202f11

4

LJED

1E3

4L5

!"â\200\234t".

HUI'IHH KLUi~\201IQ 11â\200\230wv1

- --~â\200\224

Within the {ramevork of it: operation. the national institution Shal):

m_thgdagJJmumn

(1)

Freely consider any quentions falling within its competence. whether

they are submitted by the Govunment or â\200\235taken up by it without referral to u
higher authority. on the proposal of its'memhers or of any petitioner;

(b)

Hoar any person and obtain any information and any doonments

necessary for assessing tituations falling within Its competence;

Address public opinion directly or through any press organ,
particularly in order to publicize its opinions and retommendetlonig

(c)

(6)

Meet on a regular basis and whechcr neceSSAry in the presence of

all its members after they have been duly convened;

Establish vorking group; from hmong its members as necessary, Ind
set up local or regiOnal sections to ascist it in discharging its functions:

(a)

(f)

Maintain consultation with the Other bodies, Whether jurisdictional

or otherwise. responsible tor the promotion and pratection of human rights
(in particular. ombudsman, mediators and clmilar institutions);

-

-

w
Â«

.

.

*

w

-

â\200\224

s

\

o

.

-
4
-

-

1
.

I
I
I

-

.
â\200\234
I
O

Â§

—

t

.
,
â\200\230

.

â\200\224
q
a
â\200\230

-

I
,

I
Q

A
â\200\231
A
u
n

.

.

.

w

u

-

-

.

-

-

—
â\200\224
-
.
o

o

â\200\224
a
â\200\230
b
,

w
-
o
v
-
<

(9)

In view of the fundamental role played by the non-governmental

organizations in expanding the work of the national institutions, develop relations with the governmental organizations devoted to promoting and protecting human rights. to economic and social development. to combat racism. to protecting particularly vulnerable groups (especially children, migrant workers, refugees. physically and mentally disabled persons) 0: to specialized areas.

â\200\234

M65119awn Ci pm} 25.5211552thng tntusJL. comimvith

Wmudismal.,commnu

A national institution may be authorized to hear and consider complaints Cases may be brought before

and petitions concerning individual situations.
it by individuals. their representatives} third parties. non-governmental organizations. associations of trade unions or any other representative organizations.

stated above concerning the other powers of the commissions, the function: entrusted to them may be based on the following principles:

In such circumstances. and without prejudice to the principle:

(a)

Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality:

_ â\200\230(b)

Informing the party who filed the petition of his rights, in

phrtJCulhr the remedies Available to him, and promoting his access to them;

(C)

Hearing any complaints or petition: or transmitting them to any

other competent authority within the limits prescribed by the law:

(?)

Making recommendation: to the Competent authorities. especially by

proposang amendments or (cforms of the laws. regulations and administrative prthices: ?speclally it they have created the difficulties encountered by thÂ perSONs talxng the petitions in order to assert their rights.

(iii)

,
-
-
A
. I
-
o
~
,
Â§
â\200\230
-
Q
~

-
c

I.

C} 4!.

2

The Windhoek recommendations State that the Commission would be 'charged with the responsibility of promoting, monitoring and enforcing the already existing national, regional and international human rights instrumentsâ\200\234.

Amnesty International believes that it is crucial that the Commission should base its work on the most stringent and protective human rights standards, Therefore, it is concerned that when applying the Standards contained in human rights treaties, such as the African Charter on Human and Peoplesâ\200\230 Rights and the International Covenant on Civilâ\200\234 and Political Rights, the SADC Commission should ensure that it does not duplicate the work of the existing treaty monitoring bodies such as the African Commission on Human and Peoplesâ\200\231 Rights of the Organisation of African Unity (OAU) and the Human Rights Committee which monitors the implementation of the International Covenant on Civil and Political Rights. For example, it is important that a national of a state which is party to one of the international human rights treaties should not be prevented from taking a complaint directly to the relevant treaty monitoring body. It is in the interests of worldwide human rights promotion that the SADC Commission on Human Rights should cooperate with other treaty monitoring bodies and Other United Nations, regional or national mechanisms or institutions working for the promotion and protection of human rights. It could do so, for example, in the conducting of on-site visits to investigate human rights violations.

2.

The Windhoek recommendations suggest that the SADC Human Rights Commission should be given the task of promoting awareness of and respect for human rights in the region. It will not be able to do this adequately without cooperation from SADC governments. The Commission could therefore be empowered to make recommendations to SADC governments. For example, it could recommend that they implement the recommendations in the OAU Assembly of Heads of State and Government Resolution AHG/Res. 227 (XXIX) of 1993 by including human rights â\200\234in the curriculum at all levels of public and private education and in the training of all law enforcement officersâ\200\234 or by regularly broadcasting radio programs to publicize

human rights issues. The Commission should publish regular and frequent reports on what recommendations it has made and how these recommendations have been put into practice by SADC. The Commission should also be mandated to consult and cooperate with non-governmental organizations in the field of human rights promotion and protection.

3.

The Windhoek meeting in 1990 posed the question of establishing a Bill of Rights for Southern Africa at some future date. Amnesty International recommends, however, that the immediate priority should be for SADC to urge member states which have not yet done so to ratify existing international human rights treaties. To fulfill the reporting requirements of those treaties and to implement their provisions by incorporating them into their national law and practice. All SADC states except Swaziland are already parties to the OAU's African Charter on Human and Peoples' Rights. South Africa, which is reportedly about to join SADC, has also not yet ratified the African Charter. Some SADC States have ratified the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the United Nations (UN) Convention against Torture. All SADC States should also comply with international human rights standards including the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

4.

SADC ministers will also be considering recommendations with regard to military

-
-
u
J
â\200\230
U
:
,
-
-
.
A
.
â\200\224
w
â\200\224
-
a
~

P.UD

,

â\200\230

.

\

Weimmpmmmgmmissing

WW"-(â\200\231\~V'wÂ»iÂ»

kr'

'_

~~

.,

iv

0 The Commission should be independent from government and its Charter should reï-\202ect this. The Commission should be established by law or, preferably, by Constitutional amendment.

0 The Commission should consist of men and women known for their integrity and impartiality of judgment who shall decide matters before them on the basis of facts and in accordance with the 32lw, withom any resrriciï-\20lons, improper iniï-\202uences, induce ments, pressures, threats or interferences from any quarter or for any remon. Its members should be independent of government, have a proven expertise and competence in the field of protecting and promOting human rights, and should be drawn from a variety of different backgrounds. inciuding relevant professional groups and the non-governmentai setor.

0 The method of selection of its members should be fair and transparent and should afford ali necessary guarantees of independence and broad representation. Commission members should serve in their individual capacity and should be able to serve the Commission effeCtively The terms of their appointment, tenure and removal should be dearly Speciïï-\20led, laid down in the Charter and should afford the strongest possible guarante es of competence, imparttaity and independence.

0 The Commission should be mandated to monitor and report on compliance with and implementation of reievant international human rights standards, including the Universal Deciaration of Human RightS. the International Cowman! on Civil And Political Rights, the United Nations (UN) Decimation and Convention against Torture, as well as the UN. Code of Conduct for Law Enforcement Ofïï-\20lcials, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or imprisonment and the UN Prinriplec M the F%Nh'e Prevention and Envectigetion cf Extra Legai, â\200\234â\200\234HM - -

Summary Executions.

aIIMINO UH] V:l

0 The Commission should be mandated to review the effectiveness of existing legislation and or administrative provisions in protecting human rights and should be able to make recommendations for the amendment of such legislatiom or the introduction of new legislation as necessary. The Commission \$3lon al so examine bills and proposals for new legislation put forward by the government or parliament to verify its conformity with international human rights standards and to ensure the State's compliance with the above internationa! human rights instruments

0 The scope of the Commission's concerns should be principally and clearly deiïï-\20lned in terms of state obligations under international human rights law. its tlme and resources \$hould net be deiïï-\202ected by the examination of cases which should be dealt with under the

ordinary criminal justice system or by other state institutions.

0 The Commission should have precisely defined powers to investigate on its own initiative situations and cases of reported human rights violations and set clear priorities for its work :H i-\2021â\200\230lâ\200\230i-\2011'di-\202i-\201i-\201i-\201 noith tho cn fhï-\201nfnntn Isâ\200\234 â\200\23443 COâ\200\230Aâ\200\230nO: aaaaaaa --.l .- 2. i-\202 .9- -0...

I
-- 9-" 'I!' u-- Ivuvuvvu VI NH- '0\â\200\235H~â\200\230VhlÂ§ Ivyul â\200\234U â\200\230V
lb. I IIUI [by)IIUIIU

. -----

.0

I

e

g

—

—

.

â\200\234

—

—

.

4

.

1

.

i-\201

v

o

I

â\200\230

—

l

A

—

.

l

â\200\230

â\200\224

v

â\200\230

â\200\224

.

o

.

—

â\200\224

:

~

.

W

<

—

b

â\200\230

w

K

â\200\231

M

.
m
â\200\224
u
s
â\200\234

A
.

i
-
l

,
-

e

.
.
â\200\230
.
â\200\230

.
N
,

<
â\200\231

-
.
}
e

V
.
.

.
"
J
N

,
4

.
.
.
.
.
.
.
.

I mug I

I

.-

~!

i:. Q

national police and security forces and Verify their adherence to international human rights and criminal justice standards. Police monitors should cooperate fully with any human rights component or mechanisms and should themselves be trained in and fully respect international human rights and criminal justice standards at all times.

There should be: full public reporting of their activities.

9. "Long-term Itlemut'ca in: human tight: y. uttiion. Human rights campsms i: pats: kmp ing cpuci-\201cn:

should Assist In the establishment of permanent, independent and effective national institutions for the long.

term protection of human rights and the institution of the rule of law, including an independent judiciary

and fair criminal justice system. Other mechanisms, such as ombudsman or national commissions, may be

encouraged to reinforce respect for human rights. Such mechanisms must be impartial, independent and

competent with the necessary powers and resources to be effective. They should conform to international

guidelines and must never be a substitute for a fair and independent judicial system. While national institutions

are being constituted, consideration should be given to establishing an international relationship with relaxant

international tribunals.

10. Human rights education and advisory assistance programs. Public education and training on human

rights standards and complaints procedures should be provided to all sectors, particularly the judiciary.

lawyers and law enforcement officials. Other technical assistance programs should be provided, including

drafting legislation in conformity with international standards and support for national human rights NGOs.

Such programs should not be a substitute for human rights verification by a Specialized monitoring component.

H. The protection of refugees, internally displaced persons and returnees. Refugee repatriation programs

International refugee

should include an effective monitoring and protection aspect for as long as necessary.

law and protection standards must be adhered to at all times, including the principles of non-refoulment, the

right to seek asylum and repatriation only on a voluntary basis with international supervision.

Measures should be taken to guarantee consideration and respect for the

12. The gender dimension.

particular needs of women in armed conflict situations. Peacekeeping personnel should receive information

on local cultural traditions and should respect the inherent rights and dignity of women at all times. Human

rights components should include experts in the area of violence against women, including rape and sexual

abuse.

13. Adherence of international peacekeeping forces to human rights and humanitarian law standards.

The UN should declare its formal adherence to international humanitarian law and human rights and criminal

justice standards, including in relation to the detention of prisoners and the use of force. The UN should

ensure all troops participating in international peacekeeping Operations are fully trained in those standards

and understand their obligation to adhere to them. There should be specific mechanisms at the international level for monitoring, investigating and reporting on any violations of international norms by peacekeeping personnel and to ensure that personnel responsible for serious violations are brought to justice. In accordance with international standards.

14. Prosecution of war crimes and attacks on international peace-keeping personnel. The investigation and prosecution of violations of humanitarian and human rights law or attacks against international peace-keeping personnel should be undertaken by appropriate national authorities or under international jurisdiction. Any international mechanisms must conform to international fair trial standards and the creation of a permanent institution for the prosecution of international crimes should be encouraged.

Effective

15. Continued promotion and protection of human rights in the post-settlement phase. International human rights monitoring and assistance should be continued for as long as necessary, until it is clear that the government concerned is implementing international human rights guarantees effectively. The UN's human rights bodies should develop a more effective and comprehensive role in the post-settlement phase.

4*RLJGâ\200\23194 LIED 19:36 THI:

Hurquuw m;u...v

..V____

"o'

â\200\230- i

k

â\200\2301

.

I

I

Âç

*

I

-

amnesty international

Preposed Standards

for

National Human Rights

Commissions

JANUA_R_Y 1993

__-.a;â\200\224-

-

-

.

â\200\230

{u mpgx: IOR 40/91/93

The creation of a national human rights commlssion can he an important mechanism for strengthening human rights protection but can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and eftâ\200\230ecuve legal structures enforced

by an independent, impartial, adequatety resourced and aCCessibtejudiciary. The creation of

such a human rights commisston should go hand in hand with a thorough review of existing 1:32! and other institutions in order to make these men: effective instruments of human r ights

protecï-\201on. These initiatives should be accompanied by a determined government policy aimed at hoiding the perpetrators of human rights violations fully accountable, thus enSu râ\200\230mg

that those who violate human rights cannot do so with impunity.

-

v

a

.

In March 1992 the United Nations Commission on Human Rights endorsed the Principles relating to the status of national human rights institutions. These internationally recognized Principles should serve as the basic minimum guidelines for the establishment of national institutions for the promotion and protection of human rights.

Amnesty International would like to recommend the following standards, as essential elements for consideration in the establishment and functioning of national human rights commissions.

' In March 1992 the United Nations Commission on Human Rights adopted by consensus Resolution 1993/54, which reaffirmed the importance of developing effective national institutions for the promotion and protection of human rights, and included the Principles relating to the minimum standards for national human rights institutions. The text of the Principles is appended to this document at the end of the document.

..\....._

â\200\230 cooperattan m the ' region; we â\200\230urge'ydu tdâ\200\230esmbnsâ\200\230h' " 3â\200\230s "i-\201rmâ\200\230bâ\200\230tincipiesfâ\200\230iâ\200\230irSt, mm â\200\230an y"â\200\2305"â\200\234ADc military agreements compiy fully with the requirements of international humanitarian and human tightc law and. comndly, that ttthc aaranmantt thnttm newt rtrrnd tn thtâ\200\230 nmvisin n nf military is likely to be Wed in violation of hardware. or Other cooperation in circumstances where it international humanitarian or human rights iaw.

"

"

3

Amnesty International ls pleased to note that there are proposals that the role of the S. security and military machinery in the region should be guided by principles which includ e ensuring that the armed forces should be subordinate and acc0untable to civil authority; that the military and the police should Operate Strictiy within the law; and that military trainin g should include civic education. We urge that such agreements state speciï-\201caiiy that the act ions and conduct of military or paramilitary personnel must conform to both national law and inter national humanitarian iaw. Furthermore. since military forces are sometimes called upon to underta ke an intcmal law enforcement rote, there should also he provisions requiring them to abide, wh ere relevant. by internationai human rights standards inciuding the UN Basic Principles on th e Use of Force and Firearms by Law Enforcement Ofï-\201cials and the UN Code of Conduct for Law Enforcement Ofï-\201cials. We urge that any agreements on military training should explic itly require that murses include theoretical and practical training in hummtitarian law and relevant a speCts of internationai human rights law; we recommend that such proarams be deveIOped in close cooperation with the Internationai Committee of the Red Cross. This is particularly impor tant with respect to training national forces to serve in peace-keeping situations.

Regarding the pmposal for the establishment of a Southern African Interpol Headquarters 6. and the prowslon of extradition treaties, Amnesty Internationai recommends the inclusion of ÂçDrpnlh'3fl4. â\200\234lhli-\202h â\200\230|'Iâ\200\230"â\200\230A AHPâ\200\230IPQ fkï-\201' b\h Ann UIIAQIâ\200\230I. kn 1.6â\200\234...â\200\23051â\200\231 In .- .Âç.-.-n_L

t .I

I.

.

.

.

u

tuna ._.-----' v. unvvuuvu v. v: vvvvuunb u Pl1Ji-IIIOVI Ul VUHDHIVHVM " HN'IL â\200\2303 AdLh-lb-Q- ..E- -.-a.....

u: um HUH'VIU'ICIH pvittwm VIEW), UI Ull BUUUUIR 01 net 01' ms

ue

nu

','

t

â\200\230

inshrirnni-\201 rnâ\200\231n'u knhnnu-A l.â\200\234 Lâ\200\230s
â\200\235â\200\235l" auv-Iwu own") uvuous. U!
religion. colour, race or sex.

n

I

Finaiiy, concerning the proposais for conflict resolution, we would recommend that any
7.
agreements or protocols concerning conï-\202iCts within the SADC region be developed in
coordination and cooperation with the OAU Mechanism for the Prevention, Management and
Resotution of Conï-\202ict. Alt agreements and mechanisms for the prevention and resoluti
on of
conï-\202iCt must contain ample provisions for human rights monitoring and protection. We
enciosc
lS-Point Program for
with
â\200\230 impiementing Human Rights in Internationai Peace-kecping Operations.

for your information, Amnesty International's

ietter,

this

We hope that these comments are useful and wish the SADC Councili of Ministers success

.
m formttiatng policies which will increase human rights protection in the region.

Q; hmÂ» 1:" lAOj/Vâ\200\234

Pierre SanÃ©
Seeretary General
Amnesty international
Augusu 1994

-

~

o

a

m

.

.

.

a

~

-

.

.

a

-

u

t

a
w
o

â\200\230

v
u
-
v
-
M
-

-

w
u
~
u

A

â\200\230

.
u
a
.

-

I
I
V

â\200\224

*
,

N

,

A
I

â\200\234

-

v
h

-

â\200\224

.
-

,

,

.

.
.

|

.
.

,
.

.
p

-

,

.
-

-

.
.

t

w
.
D
â\200\224
M
I
D
,

.
l
ï¬\202
o
,
l
o
w
â\200\230

v
u
l

â\200\230
I

national police and security forces and verify their adherence to international human rights standards. Police monitors should cooperate fully with any human rights component or mechanisms and should themselves be trained in and fully respect international human rights and criminal justice standards at all times. There should be full public reporting of their activities.

9. Long-term institutional human rights: permanent. Human rights component: its parts: keeping abreast: should assist in the establishment of permanent, independent and effective national institutions for the long-term protection of human rights and the reinstitution of the rule of law, including an independent judiciary and fair criminal justice system. Other mechanisms, such as ombudsmen or national commissions, may be encouraged to reinforce respect for human rights. Such mechanisms must be impartial, independent, and competent with the necessary powers and resources to be effective. They should conform to international guidelines and must never be a substitute for a fair and independent judicial system. While national institutions are being constituted, consideration should be given to establishing an interim relationship with relevant international tribunals.

10. Human rights education and advisory assistance programs. Public education and training on human rights standards and complaints procedures should be provided to all sectors, particularly the judiciary. lawyers and law enforcement officials. Other technical assistance programs should be provided, including drafting legislation in conformity with international standards and support for national human rights NGOs. Such programs should not be a substitute for human rights verification by a specialized monitoring component.

H. The protection of refugees, internally displaced persons and returnees. Refugee repatriation programs should include an effective monitoring and protection aspect for as long as necessary. In international refugee law and protection standards must be adhered to at all times, including the principles of non-refoulement, the right to seek asylum and repatriation only on a voluntary basis with international supervision.

12. The gender dimension. Measures should be taken to guarantee consideration and respect for the particular needs of women in armed conflict situations. Peacekeeping personnel should receive information on local cultural traditions and should respect the inherent rights and dignity of women at all times. Human rights components should include experts in the area of violence against women, including rape and sexual abuse.

13. Adherence of international peacekeeping forces to human rights and humanitarian law standards. The UN should declare its formal adherence to international humanitarian law and human rights standards. Including in relation to the detention of prisoners and the use of force. The UN should ensure all troops participating in international peacekeeping operations are fully trained in those standards and understand their obligation to adhere to them. There should be specific mechanisms at the international level for monitoring, investigating and reporting on any violations of international norms by peacekeeping personnel and to ensure that personnel responsible for serious violations are brought to

Justice in accordance
with international standards.

* 14. Prosecution of war crimes and attacks on international peace-keeping personnel. The investigation and prosecution of violations of humanitarian and human rights law or attacks against international peace-keeping personnel should be undertaken by appropriate national authorities or under international jurisdiction. Any international mechanisms must conform to international fair trial standards and the creation of a permanent institution for the prosecution of international crimes should be encouraged.

IS. Continued promotion and protection of human rights in the post-settlement phase.

Effective international human rights monitoring and assistance should be continued for as long as necessary, until it is clear that the government concerned is implementing international human rights guarantees effectively. The UN's human rights bodies should develop a more effective and comprehensive role in the post-settlement phase.

2.4"RL'Gâ\200\23094 LIED 19:36 â\200\230THI;

HUI'IPâ\200\230IIW

r'aAuuu-w

..V___-

amnegty in tema tional

Preposed Standards

for

Na tional Human Righ ts

Commissions

JANUARY 7993

b-.â\200\234___â\200\230_

â\200\230

4

,3: {Now IOR 40/91/93

The creation of a national human rights commlssion can he an important mechanism for strengthening human rights protection but can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and emotive legal structures enforced by an independent, impartiat, adequately resourced and aCCessibtejudiciary. The creation of such a human rights commission should go hand in hand with a thorough review of existing legal and other institutions in order to make these more effective instruments of human r ights promotion. These initiatives 5210qu be accompanied by a determined government policy aimed at hoiding the perpetrators of human rights violations fulfy accountable, thus enSu râ\200\230mg that then who violate human rights cannot do so with impunity.

In March 1992 the United Nations Commission on Human Rights endorsed the Pnâ\200\230nriples ralanâ\200\231ng lo the 3mm of national imdmrions.â\200\231 These inte rnationally recognized Principles should serve as the basic minimum guidelines for the esmblishment of national institutions for the promotion and protecĩ-\201on of human rights.

AmneSty International wauId like to recommend the. following standards, as esscntial elements for consideration in the escablishmem and functioning of national human rights commissions.

â\200\224â\200\231

â\200\224â\200\224

' In March 1992 thÂ¢ United Nations Commission on Human Rights adepted by consensus Rcsotution 1992/54. which reafĩ-\201rmcd lh: importance of developing effective national institutions for the promotion and promction of human rights, and included the Principlm- relating to : I'm Mum's afnunâ\200\230unul in.w!iluliu.~'. The text of the Principies is appended to this document â\200\230

Inge.

McootIertItioIIin the region. We urge you toesmbhsh 5s i~\201rnt ptInCIpies, i~\201tSt, t
hatanySADC
military agreements compiy fully with the requirements of international humanitarian and
human
rights Inn and conondly that tuch agreement: IhnIIId hem rIIIend tn the nmvisinn tIf mili
tary
hardware or other cooperation In circumstances where it is likely to be used 'In violatio
n of
Wm national humanitarian or human rights law.

"

3

Amnesty International is pleased to note that there are proposals that the role of the
5.
security and military machinery in the region shoIIid be guided by principles which inclu
de
ensuring that the armed forces shOuld be subordinate and accountable to civil authority;
that the
military and the police should Operate Strictiy within the law; and that military trainin
g should
include civic education. We urge that such agreements state speciï~\201caiyy that the act
ions and
conduct of military or paramilitary personnel must conform to both national law and inter
national
humanitarian iaw. Furthermore. since military forces are sometimes called upon to underta
ke an
intetIIai law enforcement rote there should also be previsions requiring them to abide, w
here
relevant by internatoinai human rights standards including the UN Basic Principles on the
Use
of Force and Firearms by Law Enforcement Ofi~\201cials and the UN Code of Conduct for Law
Enforcement Ofi~\201cials. We urge that any agreements on military training should explic
itly require
that murses include theoreticai and practical training in hummIIaIian law and relevant a
speus
of internatoinai human rights law; we recommend that such pregrams be deveIOped in close
cooperation with the Internatoinai Committee of the Red Cross. This is particularly iIIIp
ortztnt
with respect to training national forces to serve in peace-keeping situations.

6.
Regarding the preposai for the establishment of a Southern African Interpol Headquarters
and the provison of extradition treaties Amnesty International recommends the inclusion
of
CDrPi~\202H'Jfâ\200\230AO uthmh â\200\234Inn!!! guru": darn nn Ann .. m. .tA L... -c...
.....A .5-._..

.L

..|

.

u.

.

I

u

""'Câ\200\230 ._.-...-' y-

no em Iv!- v. v. vvv-v 0- no? u râ\200\235 IJU'HHI U1 UUHDhIVIIIV " HIGL t)

C

H

uâ\200\230nhrtrnnñ-\201 budâ\200\234... kI-IIAA
4-.â\200\234 L' a a.-
n- 0" sum." Ivu 4v en] UUâ\200\230 {JUJC U! â\200\234a u;

lâ\200\230

religion. colour, race or sex

I.
H w IICIII-V'IUIÃ@m pwltwm VIEW). UI Ull dLâ\200\230UUUHL 0] DC! 01' nis

Finaiiy, concerning the proposais for conflict resolution, we would recommend that any
7.
agreements or protocols concerning conĩ-\202ius within the SADC region be developed in
coordination and cooperation with the OAU Mechanism for the Prevention, Management and
Resotution of Conĩ-\202ict. Alt agreements and mechanisms for the prevention and resoluti
on of
conĩ-\202im must contain ample provisions for human rights monitoring and protection. We
enciose
lS-Point Program for
with

for your information, Amnesty International's

ietter,

this

â\200\230 impiementing Human Rights in International Peace-keeping Operations.

We hope that these comments are useful and wish the SADC Councili of Ministers success

.
In formuiatmg policies which will increase human rights protection in the region.

Im 'II")AOa-M

Pierre SanÃ©
SeCretary General
Amnesty International
AugUS! 1994

I.

C} 4!.

2

The Windhoek recommendations state that the Commission would be 'charged with the responsibility of promoting, monitoring and enforcing the already existing national, regional and international human rights instruments'.

Amnesty International believes that it is crucial that the Commission should base its work on the most stringent and protective human rights standards. Therefore, it is concerned that when applying the standards contained in human rights treaties, such as the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights, the SADC Commission should ensure that it does not duplicate the work of the existing treaty monitoring bodies such as the African Commission on Human and Peoples' Rights of the Organisation of African Unity (OAU) and the Human Rights Committee which monitors the implementation of the International Covenant on Civil and Political Rights. For example, it is important that a national of a state which is party to one of the international human rights treaties should not be prevented from taking a complaint directly to the relevant treaty monitoring body. It is in the interests of worldwide human rights promotion that the SADC Commission on Human Rights should cooperate with other treaty monitoring bodies and other United Nations, regional or national mechanisms or institutions working for the promotion and protection of human rights. It could do so, for example, in the conducting of on-site visits to investigate human rights violations.

2.

The Windhoek recommendations suggest that the SADC Human Rights Commission should be given the task of promoting awareness of and respect for human rights in the region. It will not be able to do this adequately without cooperation from SADC governments. The Commission could therefore be empowered to make recommendations to SADC governments. For example, it could recommend that they implement the recommendations in the OAU Assembly of Heads of State and Government Resolution AHG/Res. 227 (XXIX) of 1993 by including human rights in the curriculum at all levels of public and private education and in the training of all law enforcement officials or by regularly broadcasting radio programs to publicize human rights issues. The Commission should publish regular and frequent reports on what recommendations it has made and how these recommendations have been put into practice by SADC. The Commission should also be mandated to consult and cooperate with non-governmental organizations in the field of human rights promotion and protection.

3.

The Windhoek meeting in 1990 posed the question of establishing a Bill of Rights for Southern Africa at some future date. Amnesty International recommends, however, that the immediate priority should be for SADC to urge member states which have not yet done so to ratify existing international human rights treaties, to fulfil the reporting requirements of those treaties and to implement their provisions by incorporating them into their national law and practice. All SADC states except Swaziland are already parties to the OAU's African Charter on Human and Peoples' Rights. South Africa, which is reportedly about to join SADC, has also not yet ratified the African Charter. Some SADC States have ratified the International Covenant on

LWH and rouncat Klgnts, the intctttatiutmi Cuvcttmtt UH 3min}, Eeunumit'. and 8615575} Rights
and the United Nations (UN) Convention against Torture. All SADC States should also comply
with international human rights standards including the UN Body of Principles for the Protection
of All Persons under Any Form of Detention or Imprisonment, the UN Principles on the Effective Prevention and investigation of Extra-Legal, Arbitrary or Summary Executions and the
UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

4.

SADC ministers will also be Considering recommendations with regard to military

1-F-â\200\2304LJG-94

LIED 18:36 THE HUPâ\200\230iF-â\200\230thl RIGHTS TFZLPEZT

P.Iï-\201D

Weasemmmmsmmissm

-:~ wÂ» w

mge~...\....i.â\200\230...,

'y'

.

\

I The Commission should be independent from government and its Chaner should rei-\202ect this. The Commission should be established by law or, preferabiy, by Constitutional amendment.

9 The Commission should consist of men and women known for their integrity and impartiality of judgment who shall decide matters before them on the basis of facts and in accordance With the iaw, withom any resrriCtions, improper ini-\202uences, inducements

, pressures, threats or interferences from any quarter or for any rmson. Its members should be independent of government, have a proven expertise and competence in the field of protecting and promOting human rights. and should be drawn from a variety of different backgrounds. inciuding relevant professional groups and the nongovernmental sector.

0 The method of selection of its members should be fair and transparent and should afford a" necessary guarantees of independence and broad representation. Commission members should serve in their individual capacity and shottld be able to serve the Commission effectively The terms of their appointment, tenure and removal should be dearly speciï-\20led, laid down in the Charter and should afford the strongest possible guarante es of competence, imparttaiity and independence.

0 The Commission should be mandated to monitor and report on compliance with and implementation of reievant international human rights standards, including the Universal Declaration of Human Rights, the Internatiouat Covenant on Civil end Political Rights, the United Nations (UN) Decimation and Convention against Torture, as well as the UN. Code of Conduct for Law Enforcement Ofï-\20lcials, the UN Body of Principles for the Protection of All PerSOns under Any Form of Detention or Imprisonment and the UN prinripiac rm rim Fï-\202â\200\231ertiug P!9"Ã@!â\200\234.â\200\231fiâ\200\231.â\200\230! â\200\230! 9:54 Ent'ectÃ@geticn cf Extra Legai, â\200\230vL!o;na.. - Summary Executions.

CIIN'NO CU] Vii

0 The Commission should be mandated to review the effectiveness of existing legislatmn and or administrative provisions in protecting human rights and should be able to make ieeommendations for the amendment of such legislatiom or the introduction of new legislation as necessary. The Commission shoudt also examine bills and proposais for new legislation put forward by the government or parliament to verify its conformity with international human rights standards and to ensure the State's compliance with the above international human rights instruments

0 The scope of the Commission's concerns shoudt be principally and clearly dei-\20lned in terms of state obligations under international human rights law. its time and resources \$hould net be dei-\202ected by the examination of cases which should be dealt with under the ordinary criminal justice system or by other state institutions.

0 The Commission should have preciseiy dei-\20lned powers to investigate on its own initi ative Situations and cases of reported human rights vioiations and set clear priorities for its

wnrâ\200\230r â\200\2301'! iï-\202Ptâ\200\230iï-\2011â\200\230AQHFO Iâ\200\23011â\200\230fh tho lâ\200\230APâ\200\230AnPn-srn At â\200\23445 coinâ\200\230noi nnnnnnn --.l .- 2. iï-

\202 .9- ~0....

I
' "" "" ""' " "" "" â\200\235" ""â\200\234"â\200\234vâ\200\230"- ' v' â\200\234â\200\234v 'â
\200\234Hâ\200\230Nâ\200\230VHJ l'vtâ\200\231Ul â\200\234HI bu â\200\234a I IIUI â\200
\234y Â§â\200\234UUâ\200\230U

.n

I

:35? THE HLIFTHN Nlbī-\201lt-

Irauuu

be given to alleged violations of the life and security of the person. and the right not to be tortured (rights from which no derogation can be made by any government-under any circumstances); as well as to the right not to be arbitrarily arrested or detained

The Commission should be directed to establish effective cooperation with human rights governmental organizations with first-hand information about reports of human rights violations

The Commission should also have the powers to conduct wide-ranging national inquiries on human rights concerns of fundamental importance to the nation.

It is recommended that initially the Commission conduct a critical analysis of the factors which have contributed to the persistence of human rights violations within the national territory, including the failure of existing institutions and legal mechanisms to provide adequate human rights protection. Recommendations for legal and institutional reform to halt violations may be proposed on the basis of the findings of the study.

The Commission should be authorized to investigate the conduct of the security forces throughout the national territory. To do this effectively, the Commission should have adequate facilities to conduct thorough investigations, independent of the security forces, whose conduct it will be called upon to assess.

activities of the commission

The Commission should have an necessary human and material resources to examine, thoroughly, effectively, speedily and throughout the country, the evidence and other case material concerning specific allegations of violations reported to it.

The Commission should have its own investigative machinery and should have access to expert assistance whenever required to verify alleged violations. It should have adequate facilities to carry out on-the-spot investigations. The Commission should have immediate and unhindered access to all places where detained persons are held or are suspected to be held. Officials should be obliged to cooperate with the Commission's investigations.

The Commission should have powers to initiate investigations on its own initiative. It should be able to receive communications not only from the complainants themselves but also, if they themselves are unable or prevented from doing so, from lawyers, relatives or others acting on their behalf, including non-governmental groups. Investigations initiated by the Commission should be adequately publicized, especially at the regional and local levels, to enable and encourage witnesses to come forward to testify.

The Commission should have full and effective powers to compel the attendance of witnesses and the production of documents.

The Commission should have full and effective powers to protect witnesses, complainants, or others providing evidence to the Commission, including bringing about the suspension or transfer of officials allegedly involved - without prejudice pending completion of

24â\200\224RUG-94 NED

w Wt Wi?

i

:34 THE HUMQH RIGHTS TR:|_IE;T

INYIINANONM.
'AMN'STâ\200\230A ._
mttamcuomt

â\200\231

t

.

M
â\200\230
*
a

.
9
â\200\230

,

—

NTERNATIOML
' wutwanonnm
A_IIUUFâ\200\230I'I'u-E-

.

.1

*3

— __ M

l

t
uh i- \201t
mâ\200\234;
Pm:M%_ Wâ\200\235

~12

..

-. . . puâ\200\224u-uâ\200\224rv

"kggayza
to; M2 A N 20
mm. SA onmmâ\200\230 PhoM-NO-OLU SSMSCHQ

00. W Wt?!) Â°Â°- W â\200\230

*WSZ'KSSEEQQ ram out 564333uj

..â\200\224.â\200\224-....u- .-

.7

.

â\200\231

i

17 August 1994

Open letter

,

-

to the members of the Council of Ministers of the

Southern African Development Community

meeting In Gaborone, Botswana, on 26 and 27 August 1994

Dear Minister,

We are wrlting to you as you prepare for the meeting of the Southern African
Dcvetoptttent Community (SADC) Council of Minisrers in Gaborone on 26 and 27 AuguSt 1994.
At: this meeting ycm will have before you for approval important recommendations for huma
n
rights pratection in the region and Other resoiutions on military cooperation which have
a bearing
on human rights.

Amnestty International considers that the recommendations before you, which were drawn
up at at SADC meeting tn Wmdhoek in My 1994, contain patentially important human rights
prowstons. We would like to offer some observations which we believe could contribute. to
strengthening the proposais even further and we hOpe that you will consider our comments
during
your thscussions.

1.
and permanent Commission of Human Rights.

The recommendations include a proposal that the SADC should establish an autonomous

Such a Commission could be a powerful force for increasing respect and pretention for
human rights both in the SADC member states and in the region. Its capacity to do so will
however, depend on it being given the necessary power and status and on its terms of refe
rence,
composition and methodology conforming to certain well established Standards. In accordan
ce
with these standards, the Commission should be independent from any government. It should
have powers to receive communications from individuals and from nongovernmental human
rights organizations. It should prepare regular and frequent public reports documenting t
he
complaints received, together with the action taken by the Commission and the governmtsnt
â\200\231s
response to the Commission in each case. Anmesty International believes that it is essent
ial for

the effective functioning of the Commission that SADC governments undertake to give effect to the Commission's recommendations. We are appending to this letter, for your information, a Copy of Amnesty International's Proposed Standards for National Human Rights Commission: (AI Ittdcx: 10R 40/01/93) which includes standards which are applicable to international as well as national human rights commissions.

rm
"1

AMNESTY INTERNATIONAL re 234 "

- 224 224

230

u

230

230

230

INTERNATIONAL SECRETARY

1 Easton Street. London WC1X 9BD. United Kingdom

Tel (4001) 234. 23055500 Telexgrams. Amnesty London WC1 Telex 28502 FAX: (234) (71) 956 1157

Rmali' IGMNan mmt-amhoemJo mmmman A«MM... 2342.... -.- ---

... .. 224.----'u" tu 230 230v 230yytuuv. 231 HlIusvp 230 I 230Wulluw V's

nu.

4-

230

.
.

:2;4-â\200\224ran4t:-â\202-9:4

tdEEIJ

1 E1- Ezgâ\200\230

1 Fit.

HLJI'IHrâ\200\230i mLuri-â\201uu

IUHPE\$U5EXIlhhwh

National institutions for the promotion and protection of human rights

Anncx to Resolution 1992/54 on

Adopted by consensus by '

the United Nations Commission 011 Human Rights

3 March 1992

min; 121.95- 1:19.: Sum. 3.9..m mm5.91.. \ pm; Lin musms

Mewd._wn um..ilim n:

A national institution shall be vested with competence to promote and

1.
protect human rights.

A national institution shall be given as broad a mandate as possible.-

2.
vhxch shall be clearly set forth in a constitutional u: legislative text,
specifying its composition and its sphere of Competence.

A national institution shall, inngmÃ@llg, have the following

3.
responsibilities:

(5)

To submit to the Government, Parliamept and any other competht

body, on an advisory basis either at the request of the authorities concerned
at through the exercise of its power to hear a matter without higher referral.
opinions. recommendations. proposals and reports on any matters concerning the.
promotion and protection of human rights: the national institution may decide
to publicize them: these opinions, recommendations. proposals and reports, as-
well as any prerogative or the national institution, shall relate to the
tclovlnq areas:

(i)

Any legislative or administrative provisions. as H911 as
provisions relating to judicial organization, intended to
preserve and extend the protection of human rights: in that
connection, theâ\200\230national institution shall examine the
legislation and administrative provisions in force, as well as
bills and proposals, and shall make such recommendations as it
deem: appropriate in order to ensure that these provisions
conform to the fundamental principles at human rights: it
shall, it necessary. recommend the adoption of new legislation.
the amendment of legislation in force and the adoption or
amendment of administrative measures

(ii)

Any situation of violation of human rights which it decides to

take up:

,

(iii)

The preparation of reports on the national situation with regard to human rights in general, and on more specific matters:

(iv)

Drawing the attention of the Government to situations in any part of the country where human rights are violated and Making proposals to it (or initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government:

(i)

â\200\224ÂçâL:c;~ .94

lâ\200\230JED

lâ\200\2303qu1

['â\200\234it1

HUI' IHH KLUï- \201IQ 1lxwwu

- --~

Utjhoï- \202iï- \2011Jmumñ

(t)

Freely consider any questions falling within it: competence, whether

they are submitted by the GOVERNment or taken up by it without referral to .
higher authority. on the proposal of its' members or of any petitioner:

(b)

Hoar any person and obtain any information and any documents

necessary for assessing situations falling within Its competence;

(c)

Address public opinion directly or through any press organ,

pArticularly in order to publicize its Opinions and recommendation;;

(6)

Meet on a regular basis and whenever necessary in the presence of

:11 its members after they have been duly convened;

(9)

Establish vetting group: from among its members as necessary, and
set up local or regional sections to assist it in discharging its functions:

\

(f)

Maintain consultation with the Other bodies. Whether jurisdictional

or otherwise. responsible for the promotion and protection of human rights
(in particular, ombudsman, mediators and similar institutions):

(9)

In view of the fundamental role played by the non-governmental
organizations in expanding the work of the national institutions, develop
relations with the non-governmental organizations devoted to promoting and
protecting human rights, to economic and social development, to combating
racism. to protecting particularly vulnerable groups (especially children,
migrant workers, refugees, physically and mentally disabled persons) or to
specialized areas.

-â\200\230

MdjtiözaMncipzmmummcmmmxmum

mï- \201ï- \201mï- \201dumï- \202momï- \202mu

A national institution may be authorized to hear and consider complaints
Cases may be brought before

and petitions concerning individual situations.
it by individuals. their representatives} third parties, non-governmental
organizations. associations of trade unions or any other representative
organizations.
stated above concerning the other powers of the commissions, the function:
entrusted to them may be based on the following principles:

In such circumstances, and without prejudice to the principle:

(a)

Seeking an amicable settlement through conciliation or, within the
limits prescribed by the law. through binding decisions or, where necessary,
on the basis of confidentiality:

—

(b)

Informing the party who filed the petition of his rights, in
particular the remedies available to him, and promoting his access to them;

(c)

Hearing any complaints or petition: or transmitting them to any
other competent authority within the limits prescribed by the law:

(?)

Making recommendation: to the competent authorities. especially by
proposing amendments or reforms of the laws. regulations and administrative
practices especially if they have created the difficulties encountered by the
persons taking the petitions in order to assert their rights.

(iii)

-":?4

MEI! 18:39 THE;

HL'Pâ\200\230IHN

KLL-Pâ\200\230IID

-

ivib)

TO gramo c and ensure the harmonization of national ioqinintlon _f'
regulation: and psauLlcco with tho inttrnarinnhl human rights instruments to
which the State is a party. and theii tffcctÂfvd implementation:

1:)

To encourage ratification of the above-mentloned instrument: or

hccession to those instruments. and to ensure their implementation:

(6)

To contribute to the reports which States are required to gubmit to

United RatLOhs bodies and committees. and to :egional institutions, pursuant
to their treaty obligations, and where necessary. to exptoas an opinion on the
subjÂct. with due respect for their independence:

(e)

To cooperate with the United Natidns and any other organization

in the United Nations system. the regional institutions and the national
institutions of other countries that hre competent in the areas of the
promotion and protgctiou of human rights:

(1)

To assist in the formulation of programme: for the teaching of. and'

research into. human right: and to take part in their execution in schooit,
Universities and professional circles:

(9)

To publicize human rights and efforts to combat all forms of

discrimination, in particular racial discrimination, by increasing public
awareness, especially through information and education and by making use of
all press organs.

CQQPMBM-AA\$WLM-QMÂçEPSL 93:41am m

The composition of the national inÃ©titution and the appointment of its'

1.
members. whether by means of on election or otherwise. shall be established in
accordance with a procedure which affords 511 necessary guarantees to ensure
the pluralist representation of the social forces (of civilian society)
involved in the promotion and protection of human rights. particularly by
powers which will enable effective cooPeration to be established with. or
through the preschce of. representatives of:

(a)

Non-governmental organizations reÃ©ponsible for human rights and

efforts to combat racial discrimination, trade unions, concerned :ociai and
professional organizations. for example. associations of lawyers, doctors,

journalists and eminent scientists;

(b)

(c)

Trends in philosophical or religious thought:

Universities and qualified Experts:

(d)

Parliament:

(2)

Government departments (if they are included, these representatives

The national institution shall have an infrastructure which is suited to

should participate in the deliberations only in an advisory capacity).

2.

the smooth conduct of its activities, in particular adequate funding.
purpose of this funding should be to enable it to have its own staff and
premises, in order to be independent of the Government and not be subject to
financial control which might affect its independence.

The

‘—

in order to ensure the independence of the institution, the Government shall ensure that the institution has sufficient financial resources to enable it to carry out its functions independently of the Government.
(11)

without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate.

institution's membership is ensured—

(11)

This mandate may be renewable, provided that the pluralism of the

;

1 THE HUPâ\200\230lF-â\200\230tN hiltaiñ\201lb IKUDI

0

l'â\200\224

a t. I

investigations 2 to other duties where .theVyWQUtldiñ\201haVe 00,.POW91'MOVH Wimcsmiñ\202
orviñ\202,
complainants. Victims or relatives should have access to all relevant information and
documents relating w the investigation and be granted all necessary facilities to present
evidence. The Commission should be able to provide iñ\201nancial assistance to witnesses
enabling them to travel and be accommodated in order to present their evidence before
the Commission.

—
The Commission should work in an open way with its hearings generally open to the
public, Private hearings should be an exceptional measure and be resorted to only in
specificñ\201c preâ\200\230established circumstances. The Commissionâ\200\230s methodology a
nd the results of
its investigations, together with official reports, including post mortem: and other
expert
reports as well as police and court records, should in each case be published in full, in
an easily accessible and comprehensible form.

The Commission should also prepare regular reports documenting all the complaints it has
received. together with the action taken in each case, as well as an account of all its o
ther
activities for the promotion and protection of human rights. The Commissionâ\200\230s rep
orts
should be presented periodically to representative national and regional bodies.

The result of the Commission's investigations should be referred to appropriate judicial
bodies without delay. Anyone the Commission alleges to have been responsible for
committing human rights violations or for ordering, encouraging or permitting them,
should automatically be brought to justice. The government should ensure that any
prosecutions for human rights-related offences are brought by authorities which are
distinctly independent from the security forces or other bodies allegedly implicated in t
he
human rights violations.

The Commission should have powers to ensure that superior officialñ\201cers are held accountab
le
for acts committed under their authority and should be mandated to closely follow
subsequent legal proceedings in the case, by monitoring trials, or if necessary appearing
before the court to make legal submissions to press for appropriate legal action to be
taken within a reasonable time.

The Commission should have powers to ensure effective remedies, including interim
measures to protect the life and safety of an individual and free medical treatment where
necessary; it should ensure that full and prompt compensation is paid and other measures
of redress and rehabilitation are taken in all cases it has taken up in which members of
the security forces are found to have perpetrated human rights violations.

The government should undertake an obligation to respond. within a reasonable time, to
the case-specificñ\201c as well as the more general iñ\201ndings, conclusions and recommend
ations
made by the Commission. The governmentâ\200\231s response should be made public.

H.

11

Amnesty International200\231s IS-Point Program for Implementing Human Rights

..

.

.v

,. h v

In International Peace-keeping Operations ,.

._

,

_. V, 200\230,

t. The political mission of the international community. The UN and its Member States should give early, consistent and vigorous attention to human rights concerns when designing and implementing peace settlements and should plan for a continued human rights program in the post-peace-keeping phase. The international community must be prepared to publicly condemn human rights violations during and after the settlement process and to ensure that recommendations for institutional reform are fully and promptly implemented. Human rights protection measures should be kept under review, strengthened as necessary and properly evaluated at the end of the operation.

2. No international silent witnesses200\231. All international field personnel, including those engaged in military, civilian and humanitarian operations, should report through explicit and proper channels any human rights violations they may witness or serious allegations they receive. The UN should take appropriate steps, including preventive measures, to address any violations reported.

3. Human rights chapters in peace agreements. Peace agreements should include a detailed and comprehensive list of international human rights laws and standards to be guaranteed in the transitions and post-settlement phase, as well as providing for specific and effective oversight mechanisms. Peace settlements should require eventual ratification of any human rights treaties and adherence to any international systems of human rights protection to which the state concerned is not yet a party.

4. Effective and independent human rights verification. A specialized international civilian human rights monitoring system should be part of all peace-keeping operations. These components should have adequate resources and staff with human rights expertise. Their mandates should include human rights verification, institution-building, legislative reform, education and training. Monitors should be trained and should operate under consistent guidelines and in conformity with international standards. Human rights components should be explicitly and structurally independent from the political considerations of the operation and on-going negotiations relating to the settlement and their decision-making mechanisms must not be constructed so as to permit parties to the conflict to obstruct investigations. Effective human rights

mechanisms, Such as advisers

Or independent jurists, should also be established in less comprehensive peace settlements and should have an oversight role in matters such as the release of prisoners and the guarantee of rights to freedom of speech and assembly.

5. Ensuring peace with Justice. Peace settlements should provide for impartial investigation of past abuses; processes aimed at establishing the truth and measures to ensure that any perpetrators of human rights violations are brought to justice. Individual responsibility for human rights violations, past and present, must be made explicit and sweeping pre-conviction amnesties should not be part of peace settlements,

6' On-site human rights monitoring.

Human rights monitors should be mandated out to carry out

investigations and Verify compliance with human rights obligations and to take corrective action in respect of

Violations- They should have broad access to all sectors of society and relevant institutions and the full

protection of those who are in contact with them must be assured. Peace-building measures, such as

institutional and legislative reform and education and training, must complement but never replace the

verification role.

7. Frequent and public reporting. To guarantee the effectiveness, security and credibility of international

human rights personnel there must be frequent comprehensive public reports of their activities and findings.

These should be widely disseminated nationally as well as internationally.

8. International civilian police monitors.

Civilian police monitors should monitor, supervise and train