

COMPENDIUM OF KEY HUMAN RIGHTS DOCUMENTS OF THE AFRICAN UNION

Second Edition

Editors: Christof Heyns and Magnus Killander



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***Compendium of Key Human Rights Documents
of the African Union (Second Edition)***

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Foreword

(From first edition)

There is no subject more important than human rights in the search for peace, security and development in Africa and in the world in general. By definition, human rights encompass and touch on practically every aspect of our lives and must be guaranteed, guarded, defended and respected at all times. Respect for human rights provides the foundation upon which rests the political, economic, social and judicial structure of human freedoms. It is vital for the prevalence of peace, security, stability and development; and is also a prerequisite for the prevention of conflicts and the promotion of a durable and lasting peace in the world.

Human rights, human security and human development are interdependent, inter-related and indivisible and, thus, constitute inseparable ingredients in Africa's quest for prosperity. It is against this background that the African Union (AU) has sought to build on the important foundation laid by the Organisation of African Unity (OAU) to strengthen the continental framework to promote the realisation of human rights in Africa.

Since its establishment in 1963, the OAU recognised the intrinsic and sacred values of human and peoples' rights. In addition to its critical role in eradicating colonialism and apartheid on the African continent, the OAU adopted valuable instruments and decisions in the field of human rights and governance, notable among them the African Charter on Human and Peoples' Rights. By all accounts, the African Charter on Human and Peoples' Rights was a progressive statement of applicable human rights norms and standards and went beyond the international human rights regime at the time of its adoption in 1981.

The African Charter on the Rights and Welfare of the Child, the Convention Governing the Specific Aspects of Refugee Problems in Africa, the Grand Bay Declaration and Plan of Action, and numerous decisions of the Assembly or Summit constituted the human rights normative framework under the OAU. The OAU also established institutions to promote and protect human rights, prominent among them the African Commission on Human and Peoples' Rights.

Today, the African continent continues to face serious human rights challenges. The 1994 genocide in Rwanda is the most vivid reminder of the urgent need to strengthen our resolve and the mechanisms to achieve human rights for all throughout Africa. Poverty, pervasive conflict, natural disasters and a wide range of other diverse social, economic and political challenges add to the magnitude of the suffering of millions of Africans and underscore the imperative to redouble efforts at all levels.

Building on the legacy of the OAU, the pursuit of human rights in Africa was placed at the centre of the mission and commitment of the AU to 'take up the multifaceted challenges that confront our continent and peoples in the light of the social, economic and political changes taking place in the world'. Prominent among the objectives outlined in the Constitutive Act of the AU is to 'promote and protect human rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments', and to encourage international cooperation based on the precepts of the Charter of the United Nations and the 1948 Universal Declaration of Human Rights. The guiding principles of the AU also underscore the importance of human rights, more specifically respect for democratic principles, human rights, the rule of law and governance, respect for the sanctity of human life, and the condemnation and rejection of impunity.

Beyond these general principles, the promotion and protection of human rights are regarded as integral parts of the mandate of all the main organs of the AU. For example, under article 3(f) of the Protocol Establishing the Peace and Security Council, one of the primary objectives of the Council is to:

Promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law, as part of efforts for preventing conflict.

Likewise, the Statute of the recently launched Economic, Social and Cultural Council (ECOSOCC) as well as the Protocol establishing the Pan African Parliament highlight human rights, good governance, democracy, freedoms and social justice as integral parts of the AU's agenda. Clearly, therefore, the pursuit of human rights is no longer the sole responsibility of the African Commission on Human and Peoples' Rights, but of the continental body as a whole.

From its establishment in 2002, the Commission of the AU has moved expeditiously to translate these laudable objectives and principles into reality. The Commission has placed human rights at the core of its 'Vision, Mission, and Strategic Plan' which was adopted by the Summit in Abuja in January 2005. The Commission has a comprehensive agenda that seeks to integrate human rights in all its endeavours and in the process of achieving its vision. In this regard, it has added to the breadth of African human rights instruments and mechanisms for the promotion and protection of human rights, peace and stability, democracy and good governance, and socio-economic development for the effective realisation of the aspirations of the peoples of Africa, including those in the Diaspora. The Protocol on the Rights of Women in Africa, adopted by the Summit in Maputo, Mozambique, in July 2003, is one notable example. The Commission is also actively promoting the increased involvement of civil society organisations in this and other areas, as well as partnerships with other stakeholders in Africa and globally to make human rights a reality in the continent.

This *Compendium of Key Human Rights Documents of the African Union* is thus a timely and welcome publication. It brings together in one document, for the first time, all the essential human rights documents of the OAU and the AU, including instruments and mechanisms for the promotion and protection of human rights on the African continent. It also comprises mechanisms such as the African Peer Review Mechanism for making governments responsive and accountable for their actions and declarations.

The *Compendium* sheds light on the importance accorded to human rights on our continent and, specifically, on the work of the AU. Perhaps more importantly, it makes the basic documents of the OAU and the AU readily available as a source of information as well as a tool accessible to civil servants, government officials, human rights practitioners, judges, academics and students, and civil society organisations, among others, on the African continent and globally. The full realisation of human rights on the African continent will only materialise when there is widespread knowledge, understanding and awareness of the norms, principles and standards of human rights as well as the institutions designed to promote and protect them. Needless to say, the promotion and protection of human rights is everyone's responsibility and the best way to have one's rights protected is to work towards the protection of the rights of others. This *Compendium* will, no doubt, contribute to the realisation of these goals.

The Commission of the AU commends this laudable initiative by the United Nations affiliated University for Peace and the Centre for Human Rights, University of Pretoria, which underscores the role of civil society in the promotion and protection of human rights. It is in line with the space offered to the African peoples to participate in the activities of the AU, including promoting its human rights agenda.

Julia Dolly Joiner
Commissioner for Political Affairs
African Union

Introduction

This is the second edition of the *Compendium of key human rights documents of the African Union* updated to July 2006. This *Compendium* contains documents on human rights adopted under the auspices of the African Union (AU) and its predecessor, the Organization of African Unity (OAU), including documents adopted by the African Commission on Human and Peoples' Rights and those relating to the African Peer Review Mechanism (APRM) of the New Partnership for Africa's Development (NEPAD). The first edition of the *Compendium* was published in August 2005 and has been used widely by judges, lawyers, civil servants, NGOs and academics alike, in Africa and abroad who have an interest in the African human rights system.

Most of the documents reprinted here are also available in the reference work *Human Rights Law in Africa*, edited by Christof Heyns and Morné van der Linde and published by Marthinus Nijhoff, The Netherlands, 2004, and the *African Human Rights Law Reports*, published by Juta in Cape Town, South Africa. These two publications contain many more sources than are reprinted here. For comprehensive coverage of human rights law in Africa, including electronic versions of the two publications mentioned, and for updates on this material, see www.chr.up.ac.za.

The titles of documents used in the table of contents have in many cases been abbreviated; the full titles are used as headings in the text.

The *Compendium* is a joint publication of the Centre for Human Rights, University of Pretoria (www.chr.up.ac.za) and the University for Peace, in particular its Africa Programme (www.uceace.org). Profiles on both institutions are provided at the end of this publication.

This *Compendium* was compiled at the Centre for Human Rights, with Christof Heyns and Magnus Killander as editors, with the assistance of Frans Viljoen, Karen Stefszyn, Morné van der Linde and Michelo Hansungule. Lizette Besaans formatted the document, supervised the production process and held the whole project together. The organogrammes of the AU were compiled by Karen Stefszyn and Magnus Killander. Yolanda Booyzen provided IT assistance. The chart of ratifications was compiled by Isabeau de Meyer. Lizette Besaans is the manager of PULP.

Grateful thanks also go to Jean-Bosco Butera and Ameena Payne for their support and encouragement of this project, and to all team members of the UPEACE Africa Programme. We also thank the donors that are supporting the Africa Programme of UPEACE: The Netherlands Government, the Canadian International Development Agency (CIDA), the Swedish International Development Cooperation Agency (SIDA) and the Swiss Agency for Development and Co-operation (SDC).

We are most grateful to Ms Julia Joiner, Commissioner for Political Affairs of the AU, for her warm encouragement and support for this publication, as is reflected in the foreword.

The 2005 edition of the *Compendium* is also available in French, and will also be available in Arabic.

Christof Heyns

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August 2006

INSTRUMENTS OF THE AFRICAN UNION

Charter of the Organization of African Unity (1963/1963)

Adopted in Addis Ababa, Ethiopia, in May 1963 and entered into force in September 1963. Replaced in 2001 by the Constitutive Act of the African Union (see below), when the OAU was succeeded by the AU.

The full text is reprinted in *Human Rights Law in Africa* 2004 p 111 and further. Also available at www.africa-union.org

Excerpts

We, the Heads of African States and Governments assembled in the city of Addis Ababa, Ethiopia,

Convinced that it is the inalienable right of all people to control their own destiny;

Conscious of the fact that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples;

Conscious of our responsibility to harness the natural and human resources of our continent for the total advancement of our peoples in all spheres of human endeavour;

Inspired by a common determination to promote understanding among our peoples and co-operation among our states in response to the aspirations of our peoples for brotherhood and solidarity, in a larger unity transcending ethnic and national differences;

Convinced that, in order to translate this determination into a dynamic force in the cause of human progress, conditions for peace and security must be established and maintained;

Determined to safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of our states, and to fight against neo-colonialism in all its forms;

Dedicated to the general progress of Africa;

Persuaded that the Charter of the United Nations and the Universal Declaration of Human Rights, to the principles of which we reaffirm our adherence, provide a solid foundation for peaceful and positive co-operation among states;

Desirous that all African states should henceforth unite so that the welfare and well-being of their peoples can be assured;

Resolved to reinforce the links between our states by establishing and strengthening common institutions;

HAVE AGREED to the present Charter.

Establishment

Article 1

1. The High Contracting Parties do by the present Charter establish an Organization to be known as the Organization of African Unity.
2. The Organization shall include the continental African states, Madagascar and other islands surrounding Africa.

Purposes

Article 2

1. The Organization shall have the following purposes:
 - (a) To promote the unity and solidarity of the African states;
 - (b) To co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa;
 - (c) To defend their sovereignty, their territorial integrity and independence;
 - (d) To eradicate all forms of colonialism from the continent of Africa; and
 - (e) To promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.
2. To these ends, the member states shall co-ordinate and harmonise their general policies, especially in the following fields:
 - (a) Political and diplomatic co-operation;
 - (b) Economic co-operation, including transport and communications;
 - (c) Educational and cultural co-operation;
 - (d) Health, sanitation and nutritional co-operation;
 - (e) Scientific and technical co-operation; and
 - (f) Co-operation for defence and security.

Principles

Article 3

The member states, in pursuit of the purposes stated in article 2, solemnly affirm and declare their adherence to the following principles:

1. The sovereign equality of all member states;
2. Non-interference in the internal affairs of states;
3. Respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence;
4. Peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration;
5. Unreserved condemnation, in all its forms, of political assassination as well as of subversive activities on the part of neighbouring states or any other states;
6. Absolute dedication to the total emancipation of the African territories which are still dependent;
7. Affirmation of a policy of non-alignment with regard to all blocs.

...

Treaty Establishing the African Economic Community (1991/1994)

While the Organization of African Unity was a political body, the African Economic Community (AEC) was set up to pursue the economic integration of Africa. The Treaty Establishing the AEC was adopted in 1991 and entered into force in 1994, with the AEC forming an integral part of the OAU. A Pan-African Parliament is provided for under the AEC Treaty. When the AU replaced the OAU, the AU Constitutive Act left intact the AEC Treaty in so far as it does not contradict it (article 33(2) of the AU Constitutive Act).

Although the AEC is for practical purposes now dormant, the founding treaty remains relevant in that some of the AU organs, such as the Pan African Parliament, were created with reference to the AEC Treaty.
For the text of the AEC Treaty, see www.africa-union.org

Constitutive Act of the African Union (2000/2001)

Accepted in Lomé, Togo, in July 2000 and entered into force in May 2001. The Assembly of the AU held its inaugural meeting in Durban, South Africa in July 2002.

We, Heads of State and Government of the member states of the Organization of African Unity (OAU),

...

Inspired by the noble ideals which guided the founding fathers of our continental Organization and generations of Pan-Africanists in their determination to promote unity, solidarity, cohesion and co-operation among the peoples of Africa and African states;

Considering the principles and objectives stated in the Charter of the Organization of African Unity and the Treaty establishing the African Economic Community;

Recalling the heroic struggles waged by our peoples and our countries for political independence, human dignity and economic emancipation;

Considering that since its inception, the Organization of African Unity has played a determining and invaluable role in the liberation of the continent, the affirmation of a common identity and the process of attainment of the unity of our continent and has provided a unique framework for our collective action in Africa and in our relations with the rest of the world;

Determined to take up the multifaceted challenges that confront our continent and peoples in the light of the social, economic and political changes taking place in the world;

Convinced of the need to accelerate the process of implementing the Treaty establishing the African Economic Community in order to promote the socio-economic development of Africa and to face more effectively the challenges posed by globalisation;

Guided by our common vision of a united and strong Africa and by the need to build a partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion among our peoples;

Conscious of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda;

Determined to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law;

Further determined to take all necessary measures to strengthen our common institutions and provide them with the necessary powers and resources to enable them to discharge their respective mandates effectively;

Recalling the Declaration which we adopted at the Fourth Extraordinary Session of our Assembly in Sirté, the Great Socialist Peoples' Libyan Arab Jamahiriya, on 9 September 1999, in which we decided to establish and African Union, in conformity with the ultimate objectives of the Charter of our continental Organization and the Treaty establishing the African Economic Community;

HAVE AGREED as follows:

Article 1: Definitions

In this Constitutive Act:

- ‘Act’ means the present Constitutive Act;
- ‘AEC’ means the African Economic Community;
- ‘Assembly’ means the Assembly of Heads of State and Government of the Union;
- ‘Charter’ means the Charter of the OAU;
- ‘Commission’ means the Secretariat of the Union;
- ‘Committee’ means a Specialised Technical Committee of the Union;
- ‘Council’ means the Economic, Social and Cultural Council of the Union;
- ‘Court’ means the Court of Justice of the Union;
- ‘Executive Council’ means the Executive Council of Ministers of the Union;
- ‘Member state’ means a member state of the Union;
- ‘OAU’ means the Organization of African Unity;
- ‘Parliament’ means the Pan-African Parliament of the Union;
- ‘Union’ means the African Union established by the present Constitutive Act.

Article 2: Establishment

The African Union is hereby established in accordance with the provisions of this Act.

Article 3: Objectives

The objectives of the Union shall be to:

- (a) achieve greater unity and solidarity between the African countries and the peoples of Africa;
- (b) defend the sovereignty, territorial integrity and independence of its member states;
- (c) accelerate the political and socio-economic integration of the continent;
- (d) promote and defend African common positions on issues of interest to the continent and its peoples;
- (e) encourage international co-operation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;
- (f) promote peace, security, and stability on the continent;
- (g) promote democratic principles and institutions, popular participation and good governance;
- (h) promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments;
- (i) establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;
- (j) promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;
- (k) promote co-operation in all fields of human activity to raise the living standards of African peoples;
- (l) co-ordinate and harmonise the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;

6 Instruments of the AU

- (m) advance the development of the continent by promoting research in all fields, in particular in science and technology;
- (n) work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

Article 4: Principles

The Union shall function in accordance with the following principles:

- (a) sovereign equality and interdependence among member states of the Union;
- (b) respect of borders existing on achievement of independence;
- (c) participation of the African peoples in the activities of the Union;
- (d) establishment of a common defence policy for the African continent;
- (e) peaceful resolution of conflicts among member states of the Union through such appropriate means as may be decided upon by the Assembly;
- (f) prohibition of the use of force or threat to use force among member states of the Union;
- (g) non-interference by any member state in the internal affairs of another;
- (h) the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity;
- (i) peaceful co-existence of member states and their right to live in peace and security;
- (j) the right of member states to request intervention from the Union in order to restore peace and security;
- (k) promotion of self-reliance within the framework of the Union;
- (l) promotion of gender equality;
- (m) respect for democratic principles, human rights, the rule of law and good governance;
- (n) promotion of social justice to ensure balanced economic development;
- (o) respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;
- (p) condemnation and rejection of unconstitutional changes of governments.

Article 5: Organs of the Union

1. The organs of the Union shall be:

- (a) The Assembly of the Union;
- (b) The Executive Council;
- (c) The Pan-African Parliament;
- (d) The Court of Justice;
- (e) The Commission;
- (f) The Permanent Representatives Committee;
- (g) The Specialised Technical Committees;
- (h) The Economic, Social and Cultural Council;
- (i) The Financial Institutions.

2. Other organs that the Assembly may decide to establish.

Article 6: The Assembly

- 1. The Assembly shall be composed of Heads of State and Government or their duly accredited representatives.
- 2. The Assembly shall be the supreme organ of the Union.
- 3. The Assembly shall meet at least once a year in ordinary session. At the request of any member state and on approval by a two-thirds majority of the member states, the Assembly shall meet in extraordinary session.

4. The Office of the Chairman of the Assembly shall be held for a period of one year by a Head of State and Government elected after consultations among the member states.

Article 7: Decisions of the Assembly

1. The Assembly shall take its decisions by consensus or, failing which, by a two-thirds majority of the member states of the Union. However, procedural matters, including the question of whether a matter is one of procedure or not, shall be decided by a simple majority.

2. Two-thirds of the total membership of the Union shall form a quorum at any meeting of the Assembly.

Article 8: Rules of Procedure of the Assembly

The Assembly shall adopt its own Rules of Procedure.

Article 9: Powers and Functions of the Assembly

1. The functions of the Assembly shall be to:

- (a) determine the common policies of the Union;
- (b) receive, consider and take decisions on reports and recommendations from the other organs of the Union;
- (c) consider requests for membership of the Union;
- (d) establish any organ of the Union;
- (e) monitor the implementation of policies and decisions of the Union as well as ensure compliance by all member states;
- (f) adopt the budget of the Union;
- (g) give directives to the Executive Council on the management of conflicts, war and other emergency situations and the restoration of peace;
- (h) appoint and terminate the appointment of the judges of the Court of Justice;
- (i) appoint the Chairman of the Commission and his or her deputy or deputies and Commissioners of the Commission and determine their functions and terms of office.

2. The Assembly may delegate any of its powers and functions to any organ of the Union.

Article 10: The Executive Council

1. The Executive Council shall be composed of the Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the governments of member states.

2. The Executive Council shall meet at least twice a year in ordinary session. It shall also meet in an extra-ordinary session at the request of any member state and upon approval by two-thirds of all member states.

Article 11: Decisions of the Executive Council

1. The Executive Council shall take its decisions by consensus or, failing which, by a two-thirds majority of the member states. However, procedural matters, including the question of whether a matter is one of procedure or not, shall be decided by a simple majority.

2. Two-thirds of the total membership of the Union shall form a quorum at any meeting of the Executive Council.

Article 12: Rules of Procedure of the Executive Council

The Executive Council shall adopt its own Rules of Procedure.

Article 13: Functions of the Executive Council

1. The Executive Council shall co-ordinate and take decisions on policies in areas of common interest to the member states, including the following:

- (a) foreign trade;
- (b) energy, industry and mineral resources;
- (c) food, agricultural and animal resources, livestock production and forestry;
- (d) water resources and irrigation;
- (e) environmental protection, humanitarian action and disaster response and relief;
- (f) transport and communications;
- (g) insurance;
- (h) education, culture, health and human resources development;
- (i) science and technology;
- (j) nationality, residency and immigration matters;
- (k) social security, including the formulation of mother and child care policies, as well as policies relating to the disabled and the handicapped;
- (l) establishment of a system of African awards, medals and prizes.

2. The Executive Council shall be responsible to the Assembly. It shall consider issues referred to it and monitor the implementation of policies formulated by the Assembly.

3. The Executive Council may delegate any of its powers and functions mentioned in paragraph 1 of this article to the Specialised Technical Committees established under article 14 of this Act.

Article 14: The Specialised Technical Committees - Establishment and Composition

1. There is hereby established the following Specialised Technical Committees, which shall be responsible to the Executive Council:

- (a) The Committee on Rural Economy and Agricultural Matters;
- (b) The Committee on Monetary and Financial Affairs;
- (c) The Committee on Trade, Customs and Immigration Matters;
- (d) The Committee on Industry, Science and Technology, Energy, Natural Resources and Environment;
- (e) The Committee on Transport, Communications and Tourism;
- (f) The Committee on Health, Labour and Social Affairs; and
- (g) The Committee on Education, Culture and Human Resources.

2. The Assembly shall, whenever it deems appropriate, restructure the existing Committees or establish other Committees.

3. The Specialised Technical Committees shall be composed of Ministers or senior officials responsible for sectors falling within their respective areas of competence.

Article 15: Functions of the Specialised Technical Committees

Each Committee shall within its field of competence:

- (a) prepare projects and programmes of the Union and submit it to the Executive Council;
- (b) ensure the supervision, follow-up and the evaluation of the implementation of decisions taken by the organs of the Union;
- (c) ensure the co-ordination and harmonisation of projects and programmes of the Union;
- (d) submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of this Act; and
- (e) carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of this Act.

Article 16: Meetings

Subject to any directives given by the Executive Council, each Committee shall meet as often as necessary and shall prepare its Rules of Procedure and submit them to the Executive Council for approval.

Article 17: The Pan-African Parliament

1. In order to ensure the full participation of African peoples in the development and economic integration of the continent, a Pan-African Parliament shall be established.
2. The composition, powers, functions and organisation of the Pan-African Parliament shall be defined in a protocol relating thereto.

Article 18: The Court of Justice

1. A Court of Justice of the Union shall be established.
2. The statute composition and functions of the Court of Justice shall be defined in a protocol relating thereto.

Article 19: The Financial Institutions

The Union shall have the following financial institutions whose rules and regulations shall be defined in protocols relating thereto:

- (a) The African Central Bank;
- (b) The African Monetary Fund;
- (c) The African Investment Bank.

Article 20: The Commission

1. There shall be established a Commission of the Union, which shall be the Secretariat of the Union.
2. The Commission shall be composed of the Chairman, his or her deputy or deputies and the Commissioners. They shall be assisted by the necessary staff for the smooth functioning of the Commission.
3. The structure, functions and regulations of the Commission shall be determined by the Assembly.

Article 21: The Permanent Representatives Committee

1. There shall be established a Permanent Representatives Committee. It shall be composed of Permanent Representatives to the Union and other plenipotentiaries of member states.
2. The Permanent Representatives Committee shall be charged with the responsibility of preparing the work of the Executive Council and acting on the Executive Council's instructions. It may set up such sub-committees or working groups as it may deem necessary.

Article 22: The Economic, Social and Cultural Council

1. The Economic, Social and Cultural Council shall be an advisory organ composed of different social and professional groups of the member states of the Union.
2. The functions, powers, composition and organisation of the Economic, Social and Cultural Council shall be determined by the Assembly.

Article 23: Imposition of Sanctions

1. The Assembly shall determine the appropriate sanctions to be imposed on any member state that defaults in the payment of its contributions to the budget of the Union in the following manner: denial of the right to speak at meetings, to vote, to present candidates for any position or post within the Union or to benefit from any activity or commitments, therefrom.

2. Furthermore, any member state that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other member states, and other measures of a political and economic nature to be determined by the Assembly.

Article 24: The Headquarters of the Union

1. The headquarters of the Union shall be in Addis Ababa in the Federal Democratic Republic of Ethiopia.
2. There may be established such other offices of the Union as the Assembly may, on the recommendation of the Executive Council, determine.

Article 25: Working Languages

The working languages of the Union and all its institutions shall be, if possible, African languages, Arabic, English, French and Portuguese.

Article 26: Interpretation

The court shall be seized with matters of interpretation arising from the application or implementation of this Act. Pending its establishment, such matters shall be submitted to the Assembly of the Union which shall decide by a two-thirds majority.

Article 27: Signature, Ratification and Accession

1. This Act shall be open to signature, ratification and accession by the member states of the OAU in accordance with their respective constitutional procedures.
2. The instruments of ratification shall be deposited with the Secretary-General of the OAU.
3. Any member state of the OAU acceding to this Act after its entry into force shall deposit the instrument of accession with the Chairman of the Commission.

Article 28: Entry into Force

This Act shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the member states of the OAU.

Article 29: Admission to Membership

1. Any African state may, at any time after the entry into force of this Act, notify the Chairman of the Commission of its intention to accede to this Act and to be admitted as a member of the Union.
2. The Chairman of the Commission shall, upon receipt of such notification, transmit copies thereof to all member states. Admission shall be decided by a simple majority of the member states. The decision of each member state shall be transmitted to the Chairman of the Commission who shall, upon receipt of the required number of votes, communicate the decision to the state concerned.

Article 30: Suspension

Governments which come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.

Article 31: Cessation of Membership

1. Any state which desires to renounce its membership shall forward a written notification to the Chairman of the Commission, who shall inform member states thereof. At the end of one year from the date of such notifi-

cation, if not withdrawn, the Act shall cease to apply with respect to the renouncing state, which shall thereby cease to belong to the Union.

2. During the period of one year referred to in paragraph 1 of this article, any member state wishing to withdraw from the Union shall comply with the provisions of this Act and shall be bound to discharge its obligations under this Act up to the date of its withdrawal.

Article 32: Amendment and Revision

1. Any member state may submit proposals for the amendment or revision of this Act.

2. Proposals for amendment or revision shall be submitted to the Chairman of the Commission who shall transmit same to member states within thirty (30) days of receipt thereof.

3. The Assembly, upon the advice of the Executive Council, shall examine these proposals within a period of one year following notification of member states, in accordance with the provisions of paragraph 2 of this article.

4. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority and submitted for ratification by all member states in accordance with their respective constitutional procedures. They shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairman of the Commission by a two-thirds majority of the member states.

Article 33: Transitional Arrangements and Final Provisions

1. This Act shall replace the Charter of the Organization of African Unity. However, the Charter shall remain operative for a transitional period of one year or such further period as may be determined by the Assembly, following the entry into force of the Act, for the purpose of enabling the OAU/AEC to undertake the necessary measures regarding the devolution of its assets and liabilities to the Union and all matters relating thereto.

2. The provisions of this Act shall take precedence over and supersede any inconsistent or contrary provisions of the Treaty Establishing the African Economic Community.

3. Upon the entry into force of this Act, all necessary measures shall be undertaken to implement its provisions and to ensure the establishment of the organs provided for under the Act in accordance with any directives or decisions which may be adopted in this regard by the parties thereto within the transitional period stipulated above.

4. Pending the establishment of the Commission, the OAU General Secretariat shall be the interim Secretariat of the Union.

5. This Act, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic, shall be deposited with the Secretary-General of the OAU and, after its entry into force, with the Chairman of the Commission who shall transmit a certified true copy of the Act to the government of each signatory state. The Secretary-General of the OAU and the Chairman of the Commission shall notify all signatory states of the dates of the deposit of the instruments of ratification or accession and shall upon entry into force of this Act register the same with the Secretariat of the United Nations.

Protocol on Amendments to the Constitutive Act of the African Union (2003/)

Adopted in Maputo, Mozambique in July 2003. As of July 2006, 11 states had ratified the Protocol which requires ratification by two-thirds of the AU member states to enter into force.

The member states of the African Union states parties to the Constitutive Act of the African Union;

HAVE AGREED to adopt amendments to the Constitutive Act as follows:

Article 1: Definitions

In this Protocol, the following expressions shall have the meanings assigned to them hereunder unless otherwise specified:

‘Act’ means the Constitutive Act;

‘Assembly’ means the Assembly of Heads of State and Government of the African Union;

‘Chairperson’ means Chairperson of the Assembly;

‘Court’ means the Court of Justice of the Union and Court of Justice has the same meaning;

‘Union’ means the African Union;

Article 2: Preamble

In the first paragraph of the Preamble to the Constitutive Act, the replacement of the words ‘founding fathers’ with ‘founders’.

Article 3: Objectives

In article 3 of the Act (Objectives), the insertion of three new subparagraphs (i), (p) and (q) with consequential renumbering of subparagraphs:

The objectives of the Union shall be to:

...

(i) ensure the effective participation of women in decision-making, particularly in the political, economic and socio-cultural areas;

...

(p) develop and promote common policies on trade, defence and foreign relations to ensure the defence of the continent and the strengthening of its negotiating positions;

(q) invite and encourage the full participation of the African Diaspora as an important part of our continent, in the building of the African Union.

Article 4: Principles

In article 4 of the Act (Principles), the expansion of subparagraph (h) and the insertion of two new subparagraphs (q) and (r):

...

(h) the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity as well as a serious threat to legitimate order to restore peace and stability to the member state of the Union upon the recommendation of the Peace and Security Council;

...

- (q) restraint by any member state from entering into any treaty or alliance that is incompatible with the principles and objectives of the Union;
- (r) prohibition of any member state from allowing the use of its territory as a base for subversion against another member state.

Article 5: Organs of the Union

In article 5 of the Act (Organs of the Union), the insertion of a new subparagraph (f) with consequential renumbering of subsequent subparagraphs:

- ...
- (f) The Peace and Security Council

...

Article 6: The Assembly

In article 6 of the Act (The Assembly) and where-ever else it occurs in the Act, the substitution of the word ‘Chairman’ with ‘Chairperson’; the deletion of the second sentence of subparagraph 3 and the insertion of new paragraphs 4, 5, 6 and 7.

...

- 3. The Assembly shall meet at least once a year in ordinary session.
- 4. At the initiative of the Chairperson after due consultation with all member states, or at the request of any member state and upon approval by two-thirds majority of member states, the Assembly shall meet in Extraordinary Session.
- 5. The Assembly shall elect its Chairperson from among the Heads of State or Government at the beginning of each ordinary session and on the basis of rotation for a period of one year renewable.
- 6. The Chairperson shall be assisted by a Bureau chosen by the Assembly on the basis of equitable geographical representation.
- 7. Where the Assembly meets at the Headquarters, an election of the Chairperson shall be held taking into account the principle of rotation.

Article 7: Functions of the Chairperson of the Assembly

The insertion in the Act of a new article 7 (*bis*):

- 1. The Chairperson shall represent the Union, during his/her tenure with a view to promoting the objectives and principles of the African Union as stipulated in articles 3 and 4 of the Act. He/She shall also, with the collaboration of the Chairperson of the Commission, carry out the functions of the Assembly set out in article 9(e) and (g) of the Act.
- 2. The Chairperson may convene the meeting of the other organs through their Chairpersons or Chief Executives and in accordance with their respective Rules of Procedure.

Article 8: The Executive Council

In article 10 of the Act (The Executive Council), the insertion of a new paragraph 3:

...

- 3. The Chairperson of the Executive Council shall be assisted by a Bureau chosen by the Executive Council on the basis of equitable geographical representation.

Article 9: Peace and Security Council

The insertion in the Act of a new article 20(*bis*):

- 1. There is hereby established, a Peace and Security Council (PSC) of the Union, which shall be the standing decision-making organ for the prevention, management and resolution of conflicts.

2. The functions, powers, composition and organisation of the PSC shall be determined by the Assembly and set out in a protocol relating thereto.

Article 10: The Permanent Representatives Committee

In article 21 of the Act (The Permanent Representatives Committee) the insertion of a new paragraph 3:

...

3. The Chairperson of the Permanent Representatives Committee shall be assisted by a Bureau chosen on the basis of equitable geographical representation.

Article 11: Official Languages

In article 25 of the Act (Working Languages), replace the title ‘Working Languages’ by ‘Official Languages’ and substitute the existing provision with:

1. The official languages of the Union and all its institutions shall be Arabic, English, French, Portuguese, Spanish, Kiswahili and any other African language.

2. The Executive Council shall determine the process and practical modalities for the use of official languages as working languages.

Article 12: Cessation of Membership

Article 31 of the Act (Cessation of Membership) is deleted.

Article 13: Entry into Force

This Protocol shall enter into force thirty days after the deposit of the instruments of ratification by a two-thirds majority of the member states.

Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament (2001/2003)

The Pan-African Parliament (PAP) was provided for under the AU Constitutive Act as well as the Treaty Establishing the AEC. The Protocol Establishing PAP, reprinted here, was adopted in 2001 and entered into force in 2003. The first meeting of PAP was held in Addis Ababa, Ethiopia, in March 2004. PAP is presently based in Midrand, South Africa. Its powers are currently purely advisory and consultative. The full text is reprinted in *Human Rights Law in Africa* 2004 p 212 and further. Also available at www.africa-union.org

Excerpts

Preamble

The member states of the Organization of African Unity State Parties to the Treaty Establishing the African Economic Community:

...

Further noting that the establishment of the Pan-Parliament is informed by a vision to provide a common platform for African peoples and their grass-roots

organisations to be more involved in discussions and decision-making on the problems and challenges facing the continent;

Conscious of the imperative and urgent need to further consolidate the aspiration of the African peoples for greater unity, solidarity and cohesion in a larger community transcending cultural, ideological, ethnic, religious and national differences;

...

Determined to promote democratic principles and popular participation, to consolidate democratic institutions and culture and to ensure good governance;

Further determined to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;

Conscious of the obligations and legal implications for member states of the need to establish the Pan-African Parliament;

Firmly convinced that the establishment of the Pan-African Parliament will ensure effectively the full participation of the African peoples in the economic development and integration of the continent;

HEREBY AGREED as follows:

...

Article 3: Objectives

The objectives of the Pan-African Parliament shall be to:

1. facilitate the effective implementation of the policies and objectives of the OAU/AEC and, ultimately, of the African Union;
2. promote the principles of human rights and democracy in Africa;
3. encourage good governance, transparency and accountability in member states;
4. familiarise the peoples of Africa with the objectives and policies aimed at integrating the African Continent within the framework of the establishment of the African Union;
5. promote peace, security and stability.

Article 4: Composition

1. Member states shall be represented in the Pan-African Parliament by an equal number of Parliamentarians;
2. Each member state shall be represented in the Pan-African Parliament by five (5) members, at least one of whom must be a woman;
3. The representation of each member state must reflect the diversity of political opinions in each National Parliament or other deliberative organ.

...

Article 11: Functions and Powers

The Pan-African Parliament shall be vested with legislative powers to be defined by the Assembly. However, during the first term of its existence, the Pan-African Parliament shall exercise advisory and consultative powers only. In this regard, it may:

1. examine, discuss or express an opinion on any matter, either on its own initiative or at the request of the Assembly or other policy organs and make any recommendations it may deem fit relating to, *inter alia*, matters pertaining to respect of human rights, the consolidation of democratic institutions and the culture of democracy, as well as the promotion of good governance and the rule of law;
2. discuss its budget and the budget of the Community and make recommendations thereon prior to its approval by the Assembly;
3. work towards the harmonisation or co-ordination of the laws of member states;

4. make recommendations aimed at contributing to the attainment of the objectives of the OAU/AEC and draw attention to the challenges facing the integration process in Africa as well as the strategies for dealing with them;
5. request officials of the OAU/AEC to attend its sessions, produce documents or assist in the discharge of its duties;
6. promote the programmes and objectives of the OAU/AEC, in the constituencies of the member states;
7. promote the co-ordination and harmonisation of policies, measures, programmes and activities of the Regional Economic Communities and the parliamentary fora of Africa;
8. adopt its Rules of Procedure, elect its own President and propose to the Council and the Assembly the size and nature of the support staff of the Pan-African Parliament;
9. perform such other functions as it deems appropriate to achieve the objectives set out in article 3 of this Protocol.

...

Protocol relating to the Establishment of the Peace and Security Council of the African Union (2002/2003)

Adopted by the AU Assembly in Durban, South Africa in July 2002, in terms of article 5(2) of the AU Constitutive Act, and entered into force in December 2003.
Full text available at www.africa-union.org

Excerpts

We, the Heads of State and Government of the member states of the African Union;

...

Concerned about the continued prevalence of armed conflicts in Africa and the fact that no single internal factor has contributed more to socio-economic decline on the continent and the suffering of the civilian population than the scourge of conflicts within and between our states;

Concerned also by the fact that conflicts have forced millions of our people, including women and children, into a drifting life as refugees and internally displaced persons, deprived of their means of livelihood, human dignity and hope;

...

Aware also of the fact that the development of strong democratic institutions and culture, observance of human rights and the rule of law, as well as the implementation of post-conflict recovery programmes and sustainable development policies, are essential for the promotion of collective security, durable peace and stability, as well as for the prevention of conflicts;

Determined to enhance our capacity to address the scourge of conflicts on the Continent and to ensure that Africa, through the African Union, plays a central role in bringing about peace, security and stability on the Continent;

Desirous of establishing an operational structure for the effective implementation of the decisions taken in the areas of conflict prevention, peace-making, peace support operations and intervention, as well as peace-building and post-conflict reconstruction, in accordance with the authority conferred in that regard by article 5(2) of the Constitutive Act of the African Union;

...

Article 3: Objectives

The objectives for which the Peace and Security Council is established shall be to:

- (a) promote peace, security and stability in Africa, in order to guarantee the protection and preservation of life and property, the well-being of the African people and their environment, as well as the creation of conditions conducive to sustainable development;
- (b) anticipate and prevent conflicts. In circumstances where conflicts have occurred, the Peace and Security Council shall have the responsibility to undertake peace-making and peacebuilding functions for the resolution of these conflicts;
- (c) promote and implement peace-building and post-conflict reconstruction activities to consolidate peace and prevent the resurgence of violence;
- (d) co-ordinate and harmonise continental efforts in the prevention and combating of international terrorism in all its aspects;
- (e) develop a common defence policy for the Union, in accordance with article 4(d) of the Constitutive Act;
- (f) promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law, as part of efforts for preventing conflicts.

Article 4: Principles

The Peace and Security Council shall be guided by the principles enshrined in the Constitutive Act, the Charter of the United Nations and the Universal Declaration of Human Rights. It shall, in particular, be guided by the following principles:

- (a) peaceful settlement of disputes and conflicts;
- (b) early responses to contain crisis situations so as to prevent them from developing into full-blown conflicts;
- (c) respect for the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law;
- (d) interdependence between socio-economic development and the security of peoples and states;
- (e) respect for the sovereignty and territorial integrity of member states;
- (f) non interference by any member state in the internal affairs of another;
- (g) sovereign equality and interdependence of member states;
- (h) inalienable right to independent existence;
- (i) respect of borders inherited on achievement of independence;
- (j) the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, in accordance with article 4(h) of the Constitutive Act;
- (k) the right of member states to request intervention from the Union in order to restore peace and security, in accordance with article 4(j) of the Constitutive Act.

Article 5: Composition

1. The Peace and Security Council shall be composed of fifteen members elected on the basis of equal rights, in the following manner:

- (a) ten members elected for a term of two years; and
 - (b) five members elected for a term of three years in order to ensure continuity.
2. In electing the members of the Peace and Security Council, the Assembly shall apply the principle of equitable regional representation and rotation, and the following criteria with regard to each prospective member state:
- (a) commitment to uphold the principles of the Union;
 - (b) contribution to the promotion and maintenance of peace and security in Africa - in this respect, experience in peace support operations would be an added advantage;
 - (c) capacity and commitment to shoulder the responsibilities entailed in membership;
 - (d) participation in conflict resolution, peace-making and peacebuilding at regional and continental levels;
 - (e) willingness and ability to take up responsibility for regional and continental conflict resolution initiatives;
 - (f) contribution to the Peace Fund and/or Special Fund created for specific purposes;
 - (g) respect for constitutional governance, in accordance with the Lomé Declaration, as well as the rule of law and human rights;
 - (h) having sufficiently staffed and equipped Permanent Missions at the Headquarters of the Union and the United Nations, to be able to shoulder the responsibilities which go with the membership; and
 - (i) commitment to honour financial obligations to the Union.
3. A retiring member of the Peace and Security Council shall be eligible for immediate re-election.
4. There shall be a periodic review by the Assembly to assess the extent to which the members of the Peace and Security Council continue to meet the requirements spelt out in article 5(2) and to take action as appropriate.

Article 6: Functions

The Peace and Security Council shall perform functions in the following areas:

- (a) promotion of peace, security and stability in Africa;
- (b) early warning and preventive diplomacy;
- (c) peace-making, including the use of good offices, mediation, conciliation and enquiry;
- (d) peace support operations and intervention, pursuant to article 4(h) and (j) of the Constitutive Act;
- (e) peace-building and post-conflict reconstruction;
- (f) humanitarian action and disaster management;
- (g) any other function as may be decided by the Assembly.

Article 7: Powers

1. In conjunction with the Chairperson of the Commission, the Peace and Security Council shall:
- (a) anticipate and prevent disputes and conflicts, as well as policies that may lead to genocide and crimes against humanity;
 - (b) undertake peace-making and peace-building functions to resolve conflicts where they have occurred;
 - (c) authorise the mounting and deployment of peace support missions;
 - (d) lay down general guidelines for the conduct of such missions, including the mandate thereof, and undertake periodic reviews of these guidelines;
 - (e) recommend to the Assembly, pursuant to article 4(h) of the Constitutive Act, intervention, on behalf of the Union, in a member state in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, as defined in relevant international conventions and instruments;

- (f) approve the modalities for intervention by the Union in a member state, following a decision by the Assembly, pursuant to article 4(j) of the Constitutive Act;
- (g) institute sanctions whenever an unconstitutional change of government takes place in a member state, as provided for in the Lomé Declaration;
- (h) implement the common defense policy of the Union;
- (i) ensure the implementation of the OAU Convention on the Prevention and Combating of Terrorism and other relevant international, continental and regional conventions and instruments and harmonise and co-ordinate efforts at regional and continental levels to combat international terrorism;
- (j) promote close harmonisation, co-ordination and co-operation between Regional Mechanisms and the Union in the promotion and maintenance of peace, security and stability in Africa;
- (k) promote and develop a strong ‘partnership for peace and security’ between the Union and the United Nations and its agencies, as well as with other relevant international organisations;
- (l) develop policies and action required to ensure that any external initiative in the field of peace and security on the continent takes place within the framework of the Union’s objectives and priorities;
- (m) follow-up, within the framework of its conflict prevention responsibilities, the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law by member states;
- (n) promote and encourage the implementation of OAU/AU, UN and other relevant international Conventions and Treaties on arms control and disarmament;
- (o) examine and take such appropriate action within its mandate in situations where the national independence and sovereignty of a member state is threatened by acts of aggression, including by mercenaries;
- (p) support and facilitate humanitarian action in situations of armed conflicts or major natural disasters;
- (q) submit, through its Chairperson, regular reports to the Assembly on its activities and the state of peace and security in Africa; and
- (r) decide on any other issue having implications for the maintenance of peace, security and stability on the Continent and exercise powers that may be delegated to it by the Assembly, in accordance with article 9(2) of the Constitutive Act.

2. The member states agree that in carrying out its duties under the present Protocol, the Peace and Security Council acts on their behalf.

3. The member states agree to accept and implement the decisions of the Peace and Security Council, in accordance with the Constitutive Act.

4. The member states shall extend full co-operation to, and facilitate action by the Peace and Security Council for the prevention, management and resolution of crises and conflicts, pursuant to the duties entrusted to it under the present Protocol.

...

Article 14: Peace-Building

Institutional Capacity for Peace-building:

1. In post-conflict situations, the Peace and Security Council shall assist in the restoration of the rule of law, establishment and development of democratic institutions and the preparation, organisation and supervision of elections in the concerned member state.

Peace-building during Hostilities:

2. In areas of relative peace, priority shall be accorded to the implementation of policy designed to reduce degradation of social and economic conditions arising from conflicts.

Peace-building at the End of Hostilities:

3. To assist member states that have been adversely affected by violent conflicts, the Peace and Security Council shall undertake the following activities:

- (a) consolidation of the peace agreements that have been negotiated;
- (b) establishment of conditions of political, social and economic reconstruction of the society and government institutions;
- (c) implementation of disarmament, demobilisation and reintegration programmes, including those for child soldiers;
- (d) resettlement and reintegration of refugees and internally displaced persons;
- (e) assistance to vulnerable persons, including children, the elderly, women and other traumatised groups in the society.

Article 15: Humanitarian Action

1. The Peace and Security Council shall take active part in coordinating and conducting humanitarian action in order to restore life to normalcy in the event of conflicts or natural disasters.

2. In this regard, the Peace and Security Council shall develop its own capacity to efficiently undertake humanitarian action.

3. The African Standby Force shall be adequately equipped to undertake humanitarian activities in their mission areas under the control of the Chairperson of the Commission.

4. The African Standby Force shall facilitate the activities of the humanitarian agencies in the mission areas.

...

Article 19: Relationship with the African Commission on Human and Peoples' Rights

The Peace and Security Council shall seek close co-operation with the African Commission on Human and Peoples' Rights in all matters relevant to its objectives and mandate. The Commission on Human and Peoples' Rights shall bring to the attention of the Peace and Security Council any information relevant to the objectives and mandate of the Peace and Security Council.

...

Statutes of the Economic, Social and Cultural Council of the African Union (2004)

Adopted in Addis Ababa, Ethiopia in July 2004 by the AU Assembly, under article 22(2) of the AU Constitutive Act.

ECOSOCC is intended to provide a voice for civil society in the AU. The Council held its first meeting in March 2005 in Addis Ababa, Ethiopia.

Full text available at www.africa-union.org

Excerpts

Preamble

The Assembly of the African Union,
Recalling the objectives and principles enshrined in the Constitutive Act of the African Union;
Recalling further the establishment of ECOSOCC under the provision of articles 5 and 22 of the Constitutive Act;
Convinced that popular participation in the activities of the African Union, as enunciated in the African Charter for Popular Participation, is a prerequisite for its success;
Guided by the common vision of a united and strong Africa and by the need to build a partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion among our peoples;
Recalling the decision of the Assembly to invite and encourage the full participation of the African Diaspora as an important part of the continent, in the building of the African Union.

Agrees as follows:

...

Article 2: Objectives

ECOSOCC shall amongst other things, and in conformity of objectives of the African Union as provided in the Constitutive Act, perform the following functions:

1. Promote continuous dialogue between all segments of the African people on issues concerning Africa and its future;
2. Forge strong partnerships between governments and all segments of the civil society, in particular women, the youth, children, the diaspora, organised labour, the private sector and professional groups;
3. Promote the participation of African civil society in the implementation of the policies and programmes of the Union.
4. Support policies and programmes that will promote peace, security and stability in Africa, and foster development and integration of the continent;
5. Promote and defend a culture of good governance, democratic principles and institutions, popular participation, human rights and freedoms as well as social justice;
6. Promote, advocate and defend a culture of gender equality;
7. Promote and strengthen the institutional, human and operational capacities of the African civil society;

Article 3: Composition

1. ECOSOCC shall be an advisory organ of the African Union composed of different social and professional groups of the member states of the African Union.
2. These CSOs include but are not limited to the following:
 - (a) Social groups such as those representing women, children, the youth, the elderly and people with disability and special needs;
 - (b) Professional groups such as associations of artists, engineers, health practitioners, social workers, media, teachers, sport associations, legal professionals, social scientists, academia, business organisations, national chambers of commerce, workers, employers, industry and agriculture as well as other private sector interest groups;
 - (c) Non-governmental organisations (NGOs), community-based organisations (CBOs) and voluntary organisations;
 - (d) Cultural organisations.

3. ECOSOCC shall also include social and professional groups in the African Diaspora, organisations in accordance with the definition approved by the Executive Council.

...

Article 6: Eligibility Requirements for Membership

The requirements to be fulfilled by CSOs seeking membership are as follows:

1. Be national, regional, continental or African Diaspora CSO, without restriction to undertake regional or international activities.
2. Have objectives and principles that are consistent with the principles and objectives of the Union as set out in articles 3 and 4 of the Constitutive Act.
3. Registration and status:
 - (a) Be registered in a member state of the Union and/or;
 - (b) Meet the general conditions of eligibility for the granting of observer status to non-governmental organisations;
 - (c) Show a minimum of three (3) years proof of registration as either an African or an African Diaspora CSO prior to the date of submission of application, including proof of operations for those years.
4. Provide annual audit statements by an independent auditing company.
5. Show proof that the ownership and management of the CSO is made up of not less than fifty percent (50%) of Africans or of African Diaspora.
6. The basic resources of such an organisation shall substantially, at least fifty percent (50%), be derived from contributions of the members of the organisation. Where external voluntary contributions have been received, their amounts and donors shall be faithfully revealed in the application for membership. Any financial or other support or contribution, direct or indirect, from a government to the organisation shall be declared and fully recorded in the financial records of the organisation.
7. Provide information on funding sources in the preceding three (3) years.
8. For regional and continental CSOs, show proof of activities that engage or are operative in at least three (3) member states of the Union.
9. CSOs that discriminate on the basis of religion, gender, tribe, ethnic, racial or political basis shall be barred from representation to ECOSOCC.
10. Adherence to a Code of Ethics and Conduct for civil society organisations affiliated to or working with the Union.

Article 7: Functions

As an advisory organ, ECOSOCC shall:

1. Contribute, through advice, to the effective translation of the objectives, principles and policies of the Union into concrete programmes, as well as the evaluation of these programmes;
2. Undertake studies that are recommended or deemed necessary by any other organ of the Union and submit recommendations accordingly;
3. Carry out other studies as it deems necessary and submit recommendations as appropriate;
4. Contribute to the promotion of popularisation, popular participation, sharing of best practices and expertise, and to the realisation of the vision and objectives of the Union;
5. Contribute to the promotion of human rights, the rule of law, good governance, democratic principles, gender equality and child rights;
6. Promote and support efforts of institutions engaged in review of the future of Africa and forge Pan-African values in order to enhance an African social model and way of life;
7. Foster and consolidate partnership between the Union and CSOs through effective public enlightenment, mobilisation and feedback on the activities of the Union;

8. Assume such other functions as may be referred to it by any other organ of the Union.
-

African Charter on Human and Peoples' Rights (1981/1986)

Also sometimes called the ‘Banjul Charter’, the African Charter was adopted by the OAU in Nairobi, Kenya, in June 1981 and entered into force in October 1986. The Charter is the pivotal human rights instrument of the OAU/AU. It recognises individual rights as well as peoples’ rights, rights and duties, and some socio-economic rights, in addition to civil and political rights. The supervisory mechanism created by the Charter is the African Commission on Human and Peoples’ Rights, which had its first meeting in 1987. The Commission is now being supplemented with an African Human Rights Court. The Commission’s mandate includes the review of periodic state reports on the implementation of the Charter by state parties (see the Guidelines for National Periodical Reports, reprinted below). The Commission also has the power to review individual and inter-state complaints. Selected decisions on complaints concerning Charter violations committed by state parties are reprinted below.

There are two Protocols to the African Charter, reprinted below: one establishing an African Human Rights Court and one expanding the protection of women’s rights in the Charter.

Preamble

The African states member 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 dignity are essential objectives for the achievement of the 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 civilisation which should inspire and characterise their reflection on the concept of human and peoples’ rights;

Recognising 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 freedom also implies the performance of duties on the part of everyone;

Convinced that it is henceforth essential to pay 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, particularly those based on race, ethnic group, colour, sex, language, religion or political opinion;

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 recognise 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 recognised 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 violating his fundamental rights as recognised and guaranteed by conventions, laws, regulation 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 laws 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. State 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 recognised 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 and moral health.
2. The state shall have the duty to assist the family which is the custodian of morals and traditional values recognised 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. Colonised or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community.

3. All peoples shall have the right to the assistance of the state 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. State 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. State 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, state 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

State 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

State 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 state 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 state parties to the present Charter. When two candidates are nominated by a state, one of them may not be a national of that state.

Article 35

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

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

Article 36

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

Article 37

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

Article 38

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

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 also provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the costs 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 a 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 research on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and, should the case arise, give its views or make recommendations to governments;

- (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 legislations;
 - (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 Organization of African Unity or an African organisation recognised by the Organization of African Unity.
 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 reason 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 Organization of African Unity 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 state 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 stating the facts and its findings. This report shall be sent to the states concerned and communicated to the Assembly of Heads of State and Government.

Article 53

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

Article 54

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

Other Communications

Article 55

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

Article 56

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

1. Indicate their authors even if the latter 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 of the matter; and
7. Do not deal with cases which have been settled by the states involved in accordance with the principles of the Charter of the United Nations, or the Charter of the 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 findings and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly 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 provision 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 specialised international conventions laying down rules expressly recognised 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 recognised 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 recognised 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 the 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 state 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 state 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.

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998/2004)

Adopted in Addis Ababa, Ethiopia, in June 1998 and entered into force in January 2004. In terms of this Protocol, the protective mandate of the African Commission on Human and Peoples' Rights is complemented by the establishment of an African Human Rights Court. The first judges were sworn in during the July 2006 Summit meeting of the AU in Banjul, the Gambia. The seat of the Court is Arusha, Tanzania. A resolution to integrate the African Human Rights Court and the African Court of Justice was adopted by the Summit of the AU in July 2004. For the Protocol on the African Court of Justice (not yet in force) see www.africa-union.org.

The member states of the Organization of African Unity hereinafter referred to as the OAU, state parties to the African Charter on Human and Peoples' Rights:

Considering that the Charter of the Organization of African Unity recognises that freedom, equality, justice, peace and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples;

Noting that the African Charter on Human and Peoples' Rights reaffirms adherence to the principles of human and peoples' rights, freedoms and duties contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, and other international organisations;

Recognising that the twofold objective of the African Charter on Human and Peoples' Rights is to ensure on the one hand promotion and on the other protection of human and peoples' rights, freedoms and duties;

Recognising further, the efforts of the African Commission on Human and Peoples' Rights in the promotion and protection of human and peoples' rights since its inception in 1987;

Recalling Resolution AHG/Res 230 (XXX) adopted by the Assembly of Heads of State and Government in June 1994 in Tunis, Tunisia, requesting the Secretary-General to convene a Government Experts' Meeting to ponder, in conjunction with the African Commission, over the means to enhance the efficiency of the African Commission and to consider in particular the establishment of an African Court on Human and Peoples' Rights;

Noting the first and second Government Legal Experts' Meetings held respectively in Cape Town, South Africa (September 1995) and Nouakchott, Mauritania (April 1997) and the Third Government Legal Experts Meeting held in Addis Ababa, Ethiopia (December 1997), which was enlarged to include diplomats;

Firmly convinced that the attainment of the objectives of the African Charter on Human and Peoples' Rights requires the establishment of an African Court on Human and Peoples' Rights to complement and reinforce the functions of the African Commission on Human and Peoples' Rights;

HAVE AGREED as follows:

Article 1: Establishment of the Court

There shall be established within the Organization of African Unity an African Court on Human and Peoples' Rights (hereinafter referred to as 'the Court'),

the organisation, jurisdiction and functioning of which shall be governed by the present Protocol.

Article 2: Relationship between the Court and the Commission

The Court shall, bearing in mind the provisions of this Protocol, complement the protective mandate of the African Commission on Human and Peoples' Rights (hereinafter referred to as 'the Commission'), conferred upon it by the African Charter on Human and Peoples' Rights, hereinafter referred to as 'the Charter'.

Article 3: Jurisdiction

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the states concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 4: Advisory Opinions

1. At the request of a member state of the OAU, the OAU, any of its organs, or any African organisation recognised by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.
2. The Court shall give reasons for its advisory opinions provided that every judge shall be entitled to deliver a separate or dissenting opinion.

Article 5: Access to the Court

1. The following are entitled to submit cases to the Court:
 - (a) The Commission;
 - (b) The state party which has lodged a complaint to the Commission;
 - (c) The state party against which the complaint has been lodged at the Commission;
 - (d) The state party whose citizen is a victim of a human rights violation;
 - (e) African Intergovernmental Organisations.
2. When a state party has an interest in a case, it may submit a request to the Court to be permitted to join.
3. The Court may entitle relevant non-governmental organisations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34(6) of this Protocol.

Article 6: Admissibility of Cases

1. The Court, when deciding on the admissibility of a case instituted under article 5(3) of this Protocol, may request the opinion of the Commission which shall give it as soon as possible.
2. The Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter.
3. The Court may consider cases or transfer them to the Commission.

Article 7: Sources of Law

The Court shall apply the provisions of the Charter and any other relevant human rights instruments ratified by the states concerned.

Article 8: Consideration of Cases

The Rules of Procedure of the Court shall lay down the detailed conditions under which the Court shall consider cases brought before it, bearing in mind the complementarity between the Commission and the Court.

Article 9: Amicable Settlement

The Court may try to reach an amicable settlement in a case pending before it in accordance with the provisions of the Charter.

Article 10: Hearings and Representation

1. The Court shall conduct its proceedings in public. The Court may, however, conduct proceedings *in camera* as may be provided for in the Rules of Procedure.
2. Any party to a case shall be entitled to be represented by a legal representative of the party's choice. Free legal representation may be provided where the interests of justice so require.
3. Any person, witness or representative of the parties, who appears before the Court, shall enjoy protection and all facilities, in accordance with international law, necessary for the discharging of their functions, tasks and duties in relation to the Court.

Article 11: Composition

1. The Court shall consist of eleven judges, nationals of member states of the OAU, elected in an individual capacity from among jurists of high moral character and of recognised practical, judicial or academic competence and experience in the field of human and peoples' rights.
2. No two judges shall be nationals of the same state.

Article 12: Nominations

1. State parties to the Protocol may each propose up to three candidates, at least two of whom shall be nationals of that state.
2. Due consideration shall be given to adequate gender representation in the nomination process.

Article 13: List of Candidates

1. Upon entry into force of this Protocol, the Secretary-General of the OAU shall request each state party to the Protocol to present, within ninety (90) days of such a request, its nominees for the office of judge of the Court.
2. The Secretary-General of the OAU shall prepare a list in alphabetical order of the candidates nominated and transmit it to the member states of the OAU at least thirty days prior to the next session of the Assembly of Heads of State and Government of the OAU hereinafter referred to as 'the Assembly'.

Article 14: Elections

1. The judges of the Court shall be elected by secret ballot by the Assembly from the list referred to in article 13(2) of the present Protocol.
2. The Assembly shall ensure that in the Court as a whole there is representation of the main regions of Africa and of their principal legal traditions.
3. In the election of the judges, the Assembly shall ensure that there is adequate gender representation.

Article 15: Term of Office

1. The judges of the Court shall be elected for a period of six years and may be re-elected only once. The terms of four judges elected at the first election shall expire at the end of two years, and the terms of four more judges shall expire at the end of four years.
2. The judges whose terms are to expire at the end of the initial periods of two and four years shall be chosen by lot to be drawn by the Secretary-General of the OAU immediately after the first election has been completed.
3. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of the predecessor's term.
4. All judges except the President shall perform their functions on a part-time basis. However, the Assembly may change this arrangement as it deems appropriate.

Article 16: Oath of Office

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

Article 17: Independence

1. The independence of the judges shall be fully ensured in accordance with international law.
2. No judge may hear any case in which the same judge has previously taken part as agent, counsel or advocate for one of the parties or as a member of a national or international court or a commission of enquiry or in any other capacity. Any doubt on this point shall be settled by decision of the Court.
3. The judges of the Court shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law.
4. At no time shall the judges of the Court be held liable for any decision or opinion issued in the exercise of their functions.

Article 18: Incompatibility

The position of judge of the Court is incompatible with any activity that might interfere with the independence or impartiality of such a judge or the demands of the office, as determined in the Rules of Procedure of the Court.

Article 19: Cessation of Office

1. A judge shall not be suspended or removed from office unless, by the unanimous decision of the other judges of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court.
2. Such a decision of the Court shall become final unless it is set aside by the Assembly at its next session.

Article 20: Vacancies

1. In case of death or resignation of a judge of the Court, the President of the Court 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. The Assembly shall replace the judge whose office became vacant unless the remaining period of the term is less than one hundred and eighty (180) days.
3. The same procedure and considerations as set out in articles 12, 13 and 14 shall be followed for the filling of vacancies.

Article 21: Presidency of the Court

1. The Court shall elect its President and one Vice-President for a period of two years. They may be re-elected only once.
2. The President shall perform judicial functions on a full-time basis and shall reside at the seat of the Court.
3. The functions of the President and the Vice-President shall be set out in the Rules of Procedure of the Court.

Article 22: Exclusion

If a judge is a national of any state which is a party to a case submitted to the Court, that judge shall not hear the case.

Article 23: Quorum

The Court shall examine cases brought before it, if it has a quorum of at least seven judges.

Article 24: Registry of the Court

1. The Court shall appoint its own Registrar and other staff of the registry from among nationals of member states of the OAU according to the Rules of Procedure.
2. The office and residence of the Registrar shall be at the place where the Court has its seat.

Article 25: Seat of the Court

1. The Court shall have its seat at the place determined by the Assembly from among state parties to this Protocol. However, it may convene in the territory of any member state of the OAU when the majority of the Court considers it desirable, and with the prior consent of the state concerned.
2. The seat of the Court may be changed by the Assembly after due consultation with the Court.

Article 26: Evidence

1. The Court shall hear submissions by all parties and if deemed necessary, hold an enquiry. The states concerned shall assist by providing relevant facilities for the efficient handling of the case.
2. The Court may receive written and oral evidence including expert testimony and shall make its decision on the basis of such evidence.

Article 27: Findings

1. If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.
2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

Article 28: Judgment

1. The Court shall render its judgment within ninety (90) days of having completed its deliberations.
2. The judgment of the Court decided by majority shall be final and not subject to appeal.
3. Without prejudice to sub-article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure.
4. The Court may interpret its own decision.

5. The judgment of the Court shall be read in open court, due notice having been given to the parties.
6. Reasons shall be given for the judgment of the Court.
7. If the judgment of the Court does not represent, in whole or in part, the unanimous decision of the judges, any judge shall be entitled to deliver a separate or dissenting opinion.

Article 29: Notification of Judgment

1. The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the member states of the OAU and the Commission.
2. The Council of Ministers shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly.

Article 30: Execution of Judgment

The state parties to the present Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.

Article 31: Report

The Court shall submit to each regular session of the Assembly, a report on its work during the previous year. The report shall specify, in particular, the cases in which a state has not complied with the Court's judgment.

Article 32: Budget

Expenses of the Court, emoluments and allowances for judges and the budget of its registry, shall be determined and borne by the OAU, in accordance with criteria laid down by the OAU in consultation with the Court.

Article 33: Rules of Procedure

The Court shall draw up its Rules and determine its own Procedures. The Court shall consult the Commission as appropriate.

Article 34: Ratification

1. This Protocol shall be open for signature and ratification or accession by any state party to the Charter.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Secretary-General of the OAU.
3. The Protocol shall come into force thirty days after fifteen instruments of ratification or accession have been deposited.
4. For any state party ratifying or acceding subsequently, the present Protocol shall come into force in respect of that state on the date of the deposit of its instrument of ratification or accession.
5. The Secretary-General of the OAU shall inform all member states of the entry into force of the present Protocol.
6. At the time of the ratification of this Protocol or any time thereafter, the state shall make a declaration accepting the competence of the court to receive petitions under article 5(3) of this Protocol. The Court shall not receive any petition under article 5(3) involving a state party which has not made such a declaration.
7. Declarations made under sub-article 6 above shall be deposited with the Secretary-General, who shall transmit copies thereof to the state parties.

Article 35: Amendments

1. The present Protocol may be amended if a state party to the Protocol makes a written request to that effect to the Secretary-General of the OAU. The Assembly may adopt, by simple majority, the draft amendment after all

the state parties to the present Protocol have been duly informed of it and the Court has given its opinion on the amendment.

2. The Court shall also be entitled to propose such amendments to the present Protocol as it may deem necessary, through the Secretary-General of the OAU.

3. The amendment shall come into force for each state party which has accepted it thirty days after the Secretary-General of the OAU has received notice of the acceptance.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003/2005)

Adopted in Maputo in July 2003 and entered into force in November 2005.

The states parties to this Protocol,

Considering that article 66 of the African Charter on Human and Peoples' Rights provides for special protocols or agreements, if necessary, to supplement the provisions of the African Charter, and that the Assembly of Heads of State and Government of the Organization of African Unity meeting in its Thirty-first ordinary session in Addis Ababa, Ethiopia, in June 1995, endorsed by resolution AHG/Res.240 (XXXI) the recommendation of the African Commission on Human and Peoples' Rights to elaborate a Protocol on the Rights of Women in Africa;

Considering that article 2 of the African Charter on Human and Peoples' Rights enshrines the principle of non-discrimination on the grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

Further considering that article 18 of the African Charter on Human and Peoples' Rights calls on all states parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions;

Noting that articles 60 and 61 of the African Charter on Human and Peoples' Rights recognise regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as being important reference points for the application and interpretation of the African Charter;

Recalling that women's rights have been recognised and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the African Charter on the Rights and Welfare of the Child, and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights;

Noting that women's rights and women's essential role in development, have been reaffirmed in the United Nations Plans of Action on the Environment and Development in 1992, on Human Rights in 1993, on Population and Development in 1994 and on Social Development in 1995;

Recalling also United Nations Security Council's Resolution 1325 (2000) on the role of Women in promoting peace and security;

Reaffirming the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions and Decisions, which underline the commitment of the African states to ensure the full participation of African women as equal partners in Africa's development;

Further noting that the African Platform for Action and the Dakar Declaration of 1994 and the Beijing Platform for Action of 1995 call on all member states of the United Nations, which have made a solemn commitment to implement them, to take concrete steps to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender-based violence against women;

Recognising the crucial role of women in the preservation of African values based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy;

Bearing in mind related Resolutions, Declarations, Recommendations, Decisions, Conventions and other Regional and Sub-Regional Instruments aimed at eliminating all forms of discrimination and at promoting equality between women and men;

Concerned that despite the ratification of the African Charter on Human and Peoples' Rights and other international human rights instruments by the majority of states parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices;

Firmly convinced that any practice that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated;

Determined to ensure that the rights of women are promoted, realised and protected in order to enable them to enjoy fully all their human rights;

HAVE AGREED as follows:

Article 1: Definitions

For the purpose of the present Protocol:

(a) *African Charter* means the African Charter on Human and Peoples' Rights;

(b) *African Commission* means the African Commission on Human and Peoples' Rights;

(c) *Assembly* means the Assembly of Heads of State and Government of the African Union;

(d) *AU* means the African Union;

(e) *Constitutive Act* means the Constitutive Act of the African Union;

(f) *Discrimination against women* means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life;

(g) *Harmful practices* means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;

(h) *NEPAD* means the New Partnership for Africa's Development established by the Assembly;

- (i) *States parties* means the states parties to this Protocol;
- (j) *Violence against women* means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war;
- (k) *Women* means persons of female gender, including girls.

Article 2: Elimination of Discrimination Against Women

- 1. States parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
 - (a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
 - (b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;
 - (c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
 - (d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
 - (e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.
- 2. States parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

Article 3: Right to Dignity

- 1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.
- 2. Every woman shall have the right to respect as a person and to the free development of her personality.
- 3. States parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.
- 4. States parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

Article 4: The Rights to Life, Integrity and Security of the Person

- 1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.
- 2. States parties shall take appropriate and effective measures to:
 - (a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
 - (b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;

- (c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
- (d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;
- (e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
- (f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;
- (g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
- (h) prohibit all medical or scientific experiments on women without their informed consent;
- (i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
- (j) ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;
- (k) ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.

Article 5: Elimination of Harmful Practices

States parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States parties shall take all necessary legislative and other measures to eliminate such practices, including:

- (a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;

- (b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;
- (c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;
- (d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

Article 6: Marriage

States parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

- (a) no marriage shall take place without the free and full consent of both parties;
- (b) the minimum age of marriage for women shall be 18 years;
- (c) monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;
- (d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;

- (e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
- (f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname;
- (g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;
- (h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;
- (i) a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
- (j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

Article 7: Separation, Divorce and Annulment of Marriage

States parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that:

- (a) separation, divorce or annulment of a marriage shall be effected by judicial order;
- (b) women and men shall have the same rights to seek separation, divorce or annulment of a marriage;
- (c) in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance;
- (d) in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.

Article 8: Access to Justice and Equal Protection before the Law

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States parties shall take all appropriate measures to ensure:

- (a) effective access by women to judicial and legal services, including legal aid;
- (b) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;
- (c) the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women;
- (d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;
- (e) that women are represented equally in the judiciary and law enforcement organs;
- (f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

Article 9: Right to Participation in the Political and Decision-making Process

1. States parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:

- (a) women participate without any discrimination in all elections;
- (b) women are represented equally at all levels with men in all electoral processes;

(c) women are equal partners with men at all levels of development and implementation of state policies and development programmes.

2. States parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

Article 10: Right to Peace

1. Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.

2. States parties shall take all appropriate measures to ensure the increased participation of women:

(a) in programmes of education for peace and a culture of peace;
(b) in the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;
(c) in the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;

(d) in all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;

(e) in all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation.

3. States parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.

Article 11: Protection of Women in Armed Conflicts

1. States parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women.

2. States parties shall, in accordance with the obligations incumbent upon them under international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.

3. States parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.

4. States parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.

Article 12: Right to Education and Training

1. States parties shall take all appropriate measures to:

(a) eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;

(b) eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination;

(c) protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;

(d) provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment;

(e) integrate gender sensitisation and human rights education at all levels of education curricula including teacher training.

2. States parties shall take specific positive action to:

- (a) promote literacy among women;
- (b) promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology;
- (c) promote the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely.

Article 13: Economic and Social Welfare Rights

States parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. In this respect, they shall:

- (a) promote equality of access to employment;
- (b) promote the right to equal remuneration for jobs of equal value for women and men;
- (c) ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace;
- (d) guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognised and guaranteed by conventions, laws and regulations in force;
- (e) create conditions to promote and support the occupations and economic activities of women, in particular, within the informal sector;
- (f) establish a system of protection and social insurance for women working in the informal sector and sensitise them to adhere to it;
- (g) introduce a minimum age for work and prohibit the employment of children below that age, and prohibit, combat and punish all forms of exploitation of children, especially the girl-child;
- (h) take the necessary measures to recognise the economic value of the work of women in the home;
- (i) guarantee adequate and paid pre- and post-natal maternity leave in both the private and public sectors;
- (j) ensure the equal application of taxation laws to women and men;
- (k) recognise and enforce the right of salaried women to the same allowances and entitlements as those granted to salaried men for their spouses and children;
- (l) recognise that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the state and the private sector have secondary responsibility;
- (m) take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

Article 14: Health and Reproductive Rights

1. States parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:

- (a) the right to control their fertility;
- (b) the right to decide whether to have children, the number of children and the spacing of children;
- (c) the right to choose any method of contraception;
- (d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
- (e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections,

including HIV/AIDS, in accordance with internationally recognised standards and best practices;

(f) the right to have family planning education.

2. States parties shall take all appropriate measures to:

(a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;

(b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;

(c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

Article 15: Right to Food Security

States parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:

(a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;

(b) establish adequate systems of supply and storage to ensure food security.

Article 16: Right to Adequate Housing

Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, states parties shall grant to women, whatever their marital status, access to adequate housing.

Article 17: Right to Positive Cultural Context

1. Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.

2. States parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.

Article 18: Right to a Healthy and Sustainable Environment

1. Women shall have the right to live in a healthy and sustainable environment.

2. States parties shall take all appropriate measures to:

(a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;

(b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control;

(c) protect and enable the development of women's indigenous knowledge systems;

(d) regulate the management, processing, storage and disposal of domestic waste;

(e) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

Article 19: Right to Sustainable Development

Women shall have the right to fully enjoy their right to sustainable development. In this connection, the states parties shall take all appropriate measures to:

(a) introduce the gender perspective in the national development planning procedures;

- (b) ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;
- (c) promote women's access to and control over productive resources such as land and guarantee their right to property;
- (d) promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women;
- (e) take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes; and
- (f) ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.

Article 20: Widows' Rights

States parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

- (a) that widows are not subjected to inhuman, humiliating or degrading treatment;
- (b) that a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;
- (c) that a widow shall have the right to remarry, and in that event, to marry the person of her choice.

Article 21: Right to Inheritance

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.
2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.

Article 22: Special Protection of Elderly Women

The States parties undertake to:

- (a) provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training;
- (b) ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.

Article 23: Special Protection of Women with Disabilities

The States parties undertake to:

- (a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making;
- (b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

Article 24: Special Protection of Women in Distress

The States parties undertake to:

- (a) ensure the protection of poor women and women heads of families including women from marginalised population groups and provide an environment suitable to their condition and their special physical, economic and social needs;
- (b) ensure the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.

Article 25: Remedies

States parties shall undertake to:

- (a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated;
- (b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

Article 26: Implementation and Monitoring

1. States parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognised.
2. States parties undertake to adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognised.

Article 27: Interpretation

The African Court on Human and Peoples' Rights shall be seized with matters of interpretation arising from the application or implementation of this Protocol.

Article 28: Signature, Ratification and Accession

1. This Protocol shall be open for signature, ratification and accession by the States parties, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the AU.

Article 29: Entry into Force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15th) instrument of ratification.
2. For each state party that accedes to this Protocol after its coming into force, the Protocol shall come into force on the date of deposit of the instrument of accession.
3. The Chairperson of the Commission of the AU shall notify all member states of the coming into force of this Protocol.

Article 30: Amendment and Revision

1. Any state party may submit proposals for the amendment or revision of this Protocol.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the states parties within thirty (30) days of receipt thereof.
3. The Assembly, upon advice of the African Commission, shall examine these proposals within a period of one (1) year following notification of states parties, in accordance with the provisions of paragraph 2 of this article.
4. Amendments or revision shall be adopted by the Assembly by a simple majority.

5. The amendment shall come into force for each state party, which has accepted it thirty (30) days after the Chairperson of the Commission of the AU has received notice of the acceptance.

Article 31: Status of the Present Protocol

None of the provisions of the present Protocol shall affect more favourable provisions for the realisation of the rights of women contained in the national legislation of states parties or in any other regional, continental or international conventions, treaties or agreements applicable in these states parties.

Article 32: Transitional Provisions

Pending the establishment of the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights shall be seized with matters of interpretation arising from the application and implementation of this Protocol.

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969/1974)

Adopted in Addis Ababa, Ethiopia, in September 1969 and entered into force in June 1974. The Convention is similar in many respects to the UN Refugee Convention, although the definition of a refugee in article 1 of the African Convention is broader than the definition included in the Convention of the UN.

Preamble

We, the Heads of State and Government, assembled in the city of Addis Ababa, Ethiopia,

Noting with concern the constantly increasing numbers of refugees in Africa and desirous of finding ways and means of alleviating their misery and suffering as well as providing them with a better life and future;

Recognising the need for an essentially humanitarian approach towards solving the problems of refugees;

Aware, however, that refugee problems are a source of friction among many member states, and desirous of eliminating the source of such discord;

Anxious to make a distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside;

Determined that the activities of such subversive elements should be discouraged, in accordance with the Declaration on the Problems of Subversion and Resolution on the Problem of Refugees adopted at Accra in 1965;

Bearing in mind that the Charter of the United Nations and the Universal Declaration of Human Rights have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination;

Recalling Resolution 2312 (XXII) of 14 December 1967 of the United Nations General Assembly, relating to the Declaration on Territorial Asylum;

Convinced that all the problems of our continent must be solved in the spirit of the Charter of the Organization of African Unity and in the African context; Recognising that the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of states for refugees and their desire to establish common standards for their treatment;

Recalling Resolutions 26 and 104 of the OAU Assemblies of Heads of State and Government, calling upon member states of the Organisation who had not already done so to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa;

Convinced that the efficiency of the measures recommended by the present Convention to solve the problem of refugees in Africa necessitates close and continuous collaboration between the Organization of African Unity and the Office of the United Nations High Commissioner for Refugees;

HAVE AGREED as follows:

Article I: Definition of the Term ‘Refugee’

1. For the purposes of this Convention, the term ‘refugee’ shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

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

3. In the case of a person who has several nationalities, the term ‘a country of which he is a national’ shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of which he is a national if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

4. This Convention shall cease to apply to any refugee if:

(a) he has voluntarily re-availed himself of the protection of the country of his nationality, or

(b) having lost his nationality, he has voluntarily reacquired it, or

(c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or

(d) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or

(e) he can no longer, because the circumstances in connection with which he was recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or

(f) he has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee, or

(g) he has seriously infringed the purposes and objectives of this Convention.

5. The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes,
- (b) he committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee,
- (c) he has been guilty of acts contrary to the purposes and principles of the Organization of African Unity,
- (d) he has been guilty of acts contrary to the purposes and principles of the United Nations.

6. For the purposes of this Convention, the contracting state of asylum shall determine whether an applicant is a refugee.

Article II: Asylum

1. Member states of the OAU shall use their best endeavours consistent with their respective legislation to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.
2. The granting of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any member state.
3. No person shall be subjected by a member state to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in article I, paragraphs 1 and 2.
4. Where a member state finds difficulty in continuing to grant asylum to refugees, such member state may appeal directly to other member states and through the OAU, and such other member states shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the member state granting asylum.
5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with the preceding paragraph.
6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

Article III: Prohibition of Subversive Activities

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any member state of the OAU.
2. Signatory states undertake to prohibit refugees residing in their respective territories from attacking any state member of the OAU, by any activity likely to cause tension between member states, and in particular by use of arms, through the press, or by radio.

Article IV: Non-discrimination

Member states undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions.

Article V: Voluntary Repatriation

1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.
2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.

3. The country of origin, on receiving back refugees, shall facilitate their re-settlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.
4. Refugees who voluntarily return to their country shall in no way be penalised for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.
5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organisations, to facilitate their return.

Article VI: Travel Documents

1. Subject to article III, member states shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member states may issue such a travel document to any other refugee in their territory.
2. Where an African country of second asylum accepts a refugee from a country of first asylum, the country of first asylum may be dispensed from issuing a document with a return clause.
3. Travel documents issued to refugees under previous international agreements by state parties thereto shall be recognised and treated by member states in the same way as if they had been issued to refugees pursuant to this article.

Article VII: Co-operation of the National Authorities with the Organization of African Unity

In order to enable the Administrative Secretary-General of the Organization of African Unity to make reports to the competent organs of the Organization of African Unity, member states undertake to provide the Secretariat in the appropriate form with information and statistical data requested concerning:

- (a) the condition of refugees,
- (b) the implementation of this Convention, and
- (c) laws, regulations and decrees which are, or may hereafter be in force relating to refugees.

Article VIII: Co-operation with the Office of the United Nations High Commissioner for Refugees

1. Member states shall co-operate with the Office of the United Nations High Commissioner for Refugees.
2. The present Convention shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees.

Article IX: Settlement of Disputes

Any dispute between signatory states to this Convention, relating to its interpretation or application, which cannot be settled by other means, shall be referred to the Commission for Mediation, Conciliation and Arbitration of

the Organization of African Unity, at the request of any one of the parties to the dispute.

Article X: Signature and Ratification

1. This Convention is open for signature and accession by all member states of the Organization of African Unity and shall be ratified by signatory states in accordance with their respective constitutional processes. The instruments of ratification shall be deposited with the Administrative Secretary-General of the Organization of African Unity.
2. The original instrument, done if possible in African languages, and in English and French, all texts being equally authentic, shall be deposited with the Administrative Secretary-General of the Organization of African Unity.
3. Any independent African state, member of the Organization of African Unity, may at any time notify the Administrative Secretary-General of the Organization of African Unity of its accession to this Convention.

Article XI: Entry into Force

This Convention shall come into force upon deposit of instruments of ratification by one-third of the member states of the Organization of African Unity.

Article XII: Amendment

This Convention may be amended or revised if any member state makes a written request to the Administrative Secretary-General to that effect, provided, however, that the proposed amendment shall not be submitted to the Assembly of Heads of State and Government for consideration until all member states have been duly notified of it and a period of one year has elapsed. Such an amendment shall not be effective unless approved by at least two-thirds of the member state parties to the present Convention.

Article XIII: Denunciation

1. Any member state party to this Convention may denounce its provisions by a written notification to the Administrative Secretary-General.
2. At the end of one year from the date of such notification, if not withdrawn, the Convention shall cease to apply with respect to the denouncing state.

Article XIV: [Registration with the United Nations]

Upon entry into force of this Convention, the Administrative Secretary-General of the OAU shall register it with the Secretary-General of the United Nations, in accordance with article 102 of the Charter of the United Nations.

Article XV: Notifications by the Administrative Secretary-General of the Organization of African Unity

The Administrative Secretary-General of the Organization of African Unity shall inform all members of the Organization:

- (a) of signatures, ratifications and accessions in accordance with article X;
- (b) of entry into force, in accordance with article XI;
- (c) of requests for amendments submitted under the terms of article XII;
- (d) of denunciations, in accordance with article XIII.

Cultural Charter (1976/1990)

Adopted in Mauritius in 1976 and entered into force in 1990. This widely ratified but relatively unknown treaty deals with issues such as cultural diversity, national identity, cultural development, education, language, the mass media and inter-cultural co-operation.

For the text of the treaty, see www.africa-union.org.

African Charter on the Rights and Welfare of the Child (1990/1999)

Adopted in Addis Ababa, Ethiopia in July 1990 and entered into force in November 1999.

The African Children's Charter is similar to the UN Convention on the Rights of the Child in many ways. However, persons under the age of 18 years are protected to a higher level under the African Children's Charter, which also provides an individual complaint procedure. The African Children's Charter has its own monitoring body, the Committee on the Rights and Welfare of the Child, which held its first meeting in 2002.

Preamble

The African member states of the Organization of African Unity, parties to the present Charter entitled 'African Charter on the Rights and Welfare of the Child',

Considering that the Charter of the Organization of African Unity recognised the paramountcy of human rights and the African Charter on Human and Peoples' Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognised and guaranteed therein, 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;

Recalling [that] the Declaration on the Rights and Welfare of the African Child (AHG/ST 4 Rev. 1) adopted by the Assembly of Heads of State and Government of the Organization of African Unity, at its sixteenth ordinary session in Monrovia, Liberia, from 17 to 20 July 1979, recognised the need to take all appropriate measures to promote and protect the rights and welfare of the African Child;

Noting with concern that the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he or she needs special safeguards and care;

Recognising that the child occupies a unique and privileged position in the African society and that for the full harmonious development of his

personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding;

Recognising that the child, due to the needs of his physical and mental development, requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security;

Taking into consideration the virtues of their cultural heritage, historical background and the values of the African civilisation which should inspire and characterise their reflection on the concept of the rights and welfare of the child;

Considering that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone;

Reaffirming adherence to the principles of the rights and welfare of the child contained in the declarations, conventions and other instruments of the Organization of African Unity and of the United Nations and in particular the United Nations Convention on the Rights of the Child, and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child;

HAVE AGREED as follows:

PART I: RIGHTS AND DUTIES

CHAPTER ONE: Rights and Welfare of the Child

Article 1: Obligation of State Parties

1. The member states of the Organization of African Unity Parties to the present Charter shall recognise the rights, freedoms and duties enshrined in this Charter and shall undertake to take the necessary steps, in accordance with their constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.

2. Nothing in this Charter shall affect any provisions that are more conducive to the realisation of the rights and welfare of the child contained in the law of a state party or in any other international convention or agreement in force in that state.

3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

Article 2: Definition of a Child

For the purposes of this Charter, a child means every human being below the age of 18 years.

Article 3: Non-discrimination

Every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Charter irrespective of the child's or his or her parents' or legal guardians' race, ethnic group, colour, sex, language, relation, political or other opinion, national and social origin, fortune, birth or other status.

Article 4: Best Interests of the Child

1. In all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration.

2. In all judicial or administrative proceedings affecting a child who is capable of communicating his or her own views, [an] opportunity shall be

provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

Article 5: Survival and Development

1. Every child has an inherent right to life. This right shall be protected by law.
2. State parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.
3. Death sentence shall not be pronounced for crimes committed by children.

Article 6: Name and Nationality

1. Every child shall have the right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. State parties to the present Charter shall undertake to ensure that their constitutional legislations recognise the principles according to which a child shall acquire the nationality of the state in the territory of which he or she has been born if, at the time of the child's birth, he or she is not granted nationality by any other state in accordance with its laws.

Article 7: Freedom of Expression

Every child who is capable of communicating his or her own views shall be assured the right to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.

Article 8: Freedom of Association

Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.

Article 9: Freedom of Thought, Conscience and Religion

1. Every child shall have the right to freedom of thought, conscience and religion.
2. Parents, and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child.
3. State parties shall respect the duty of parents and, where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

Article 10: Protection of Privacy

No child shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.

Article 11: Education

1. Every child shall have the right to education.
2. The education of the child shall be directed to:
 - (a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;

(c) the preservation and strengthening of positive African morals, traditional values and cultures;

(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all peoples[,] ethnic, tribal and religious groups;

(e) the preservation of national independence and territorial integrity;

(f) the promotion and achievement of African unity and solidarity;

(g) the development of respect for the environment and natural resources;

(h) the promotion of the child's understanding of primary health care.

3. State parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of this right and shall in particular:

(a) provide free and compulsory basic education;

(b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;

(c) make higher education accessible to all on the basis of capacity and ability by every appropriate means;

(d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;

(e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

4. State parties to the present Charter shall respect the rights and duties of parents and, where applicable, of legal guardians to choose for their children schools, other than those established by public authorities, which conform to such minimum standards [as] may be approved by the state, to ensure the religious and moral education of the child in a manner [consistent] with the evolving capacities of the child.

5. State parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

6. State parties to the present Charter shall take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.

7. No part of this article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph 1 of this article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the states.

Article 12: Leisure, Recreational and Cultural Activities

1. State parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. State parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 13: Handicapped Children

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.
2. State parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of [unclear - ed] assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.
3. The state parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highways, buildings and other places to which the disabled may legitimately want to have access to.

Article 14: Health and Health Services

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. State parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
 - (a) to reduce the infant and child mortality rate;
 - (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) to ensure the provision of adequate nutrition and safe drinking water;
 - (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
 - (e) to ensure appropriate health care for expectant and nursing mothers;
 - (f) to develop preventive health care and family life education and provision of service;
 - (g) to integrate basic health service programmes in national development plans;
 - (h) to ensure that all sectors of the society, in particular parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
 - (i) to ensure the meaningful participation of non-governmental organisations, local communities and the beneficiary population in the planning and management of basic service programmes for children;
 - (j) to support through technical and financial means, the mobilisation of local community resources in the development of primary health care for children.

Article 15: Child Labour

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development;
2. State parties to the present Charter shall take all appropriate legislative and administrative measures to ensure the full implementation of this article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, state parties shall in particular:

- (a) provide through legislation, minimum ages for admission to every employment;
- (b) provide for appropriate regulation of hours and conditions of employment;
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article;
- (d) promote the dissemination of information on the hazards of child labour to all sectors of the community.

Article 16: Protection Against Child Abuse and Torture

1. State parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child.
2. Protective measures under this article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child abuse and neglect.

Article 17: Administration of Juvenile Justice

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.
2. State parties to the present Charter shall in particular:
 - (a) ensure that no child who is detained or imprisoned or otherwise deprived of his or her liberty is subjected to torture, inhuman or degrading treatment or punishment;
 - (b) ensure that children are separated from adults in their place of detention or imprisonment;
 - (c) ensure that every child accused of infringing the penal law:
 - (i) shall be presumed innocent until duly recognised guilty;
 - (ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
 - (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;
 - (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;
 - (d) prohibit the press and the public from trial.
3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.
4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Article 18: Protection of the Family

1. The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the state for its establishment and development.
2. State parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of the child.

3. No child shall be deprived of maintenance by reference to the parents' marital status.

Article 19: Parental Care and Protection

1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.

2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.

3. Where separation results from the action of a state party, the state party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. State parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.

4. Where a child is apprehended by a state party, his or her parents or guardians shall, as soon as possible, be notified of such apprehension by that state party.

Article 20: Parental Responsibilities

1. Parents or other persons responsible for the child shall have the primary responsibility for the upbringing and development of the child and shall have the duty:

- (a) to ensure that the best interests of the child are their basic concern at all times;
- (b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and
- (c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

2. State parties to the present Charter shall in accordance with their means and national conditions take all appropriate measures:

- (a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;
- (b) to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and
- (c) to ensure that the children of working parents are provided with care services and facilities.

Article 21: Protection Against Harmful Social and Cultural Practices

1. State parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

- (a) those customs and practices prejudicial to the health or life of the child; and
- (b) those customs and practices discriminatory to the child on the grounds of sex or other status.

2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years and make registration of all marriages in an official registry compulsory.

Article 22: Armed Conflicts

1. State parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.
2. State parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain, in particular, from recruiting any child.
3. State parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Article 23: Refugee Children

1. State parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receives appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the states are parties.
2. State parties shall undertake to co-operate with existing international organisations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives of an unaccompanied refugee child in order to obtain information necessary for reunification with the family.
3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.
4. The provisions of this article apply *mutatis mutandis* to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

Article 24: Adoption

State parties which recognise the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

- (a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counselling;
- (b) recognise that inter-country adoption in those states who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;

- (e) promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs;
- (f) establish a machinery to monitor the well-being of the adopted child.

Article 25: Separation from Parents

- 1. Any child who is permanently or temporarily deprived of his family environment for any reasons shall be entitled to special protection and assistance;
- 2. State parties to the present Charter:
 - (a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;
 - (b) shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.
- 3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background.

Article 26: Protection Against Apartheid and Discrimination

- 1. State parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under apartheid and in states subject to military destabilisation by the apartheid regime.
- 2. State parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in states subject to military destabilisation.
- 3. State parties shall undertake to provide, whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and apartheid on the African continent.

Article 27: Sexual Exploitation

- 1. State parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:
 - (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
 - (b) the use of children in prostitution or other sexual practices;
 - (c) the use of children in pornographic activities, performances and materials.

Article 28: Drug Abuse

State parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

Article 29: Sale, Trafficking and Abduction

State parties to the present Charter shall take appropriate measures to prevent:

- (a) the abduction, the sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child;
- (b) the use of children in all forms of begging.

Article 30: Children of Imprisoned Mothers

State parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
- (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- (c) establish special alternative institutions for holding such mothers;
- (d) ensure that a mother shall not be imprisoned with her child;
- (e) ensure that a death sentence shall not be imposed on such mothers;
- (f) the essential aim of the penitentiary system will be the reformation, the integration of the mother into the family and social rehabilitation.

Article 31: Responsibilities of the Child

Every child shall have responsibilities towards his family and society, the state and other legally recognised communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty:

- (a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;
- (b) to serve his national community by placing his physical and intellectual abilities at its service;
- (c) to preserve and strengthen social and national solidarity;
- (d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;
- (e) to preserve and strengthen the independence and the integrity of his country;
- (f) 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: COMMITTEE ON THE RIGHTS AND WELFARE OF THE CHILD

CHAPTER TWO: Establishment and Organisation of the Committee on the Rights and Welfare of the Child

Article 32: The Committee

An African Committee of Experts on the Rights and Welfare of the Child, hereinafter called 'the Committee', shall be established within the Organization of African Unity to promote and protect the rights and welfare of the child.

Article 33: Composition

1. The Committee shall consist of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child;

2. The members of the Committee shall serve in their personal capacity;
3. The Committee shall not include more than one national of the same state.

Article 34: Election

As soon as this Charter shall enter into force the members of the Committee shall be elected by secret ballot by the Assembly of Heads of State and Government from a list of persons nominated by the state parties to the present Charter.

Article 35: Candidates

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

Article 36: [Nomination Procedure]

1. The Secretary-General of the Organization of African Unity shall invite state parties to the present Charter to nominate candidates at least six months before the elections.
2. The Secretary-General of the Organization of African Unity shall draw up, in alphabetical order, a list of persons nominated and communicate it to the Heads of State and Government at least two months before the elections.

Article 37: Term of Office

1. The members of the Committee shall be elected for a term of five years and may not be re-elected. However, the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years.
2. 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 determine the names of those members referred to in subparagraph 1 of this article.
3. The Secretary-General of the Organization of African Unity shall convene the first meeting of the Committee at the Headquarters of the Organisation within six months of the election of the members of the Committee, and thereafter the Committee shall be convened by its Chairman, whenever necessary, at least once a year.

Article 38: Bureau

1. The Committee shall establish its own Rules of Procedure.
2. The Committee shall elect its officers for a period of two years.
3. Seven Committee members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The working languages of the Committee shall be the official languages of the OAU.

Article 39: Vacancy

If a member of the Committee vacates his or her office for any reason other than the normal expiration of a term, the state which nominated that member shall appoint another member from among its nationals to serve for the remainder of the term - subject to the approval of the Assembly.

Article 40: Secretariat

The Secretary-General of the Organization of African Unity shall appoint a Secretary for the Committee.

Article 41: Privileges and Immunities

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

CHAPTER THREE: Mandate and Procedure of the Committee

Article 42: Mandate

The functions of the Committee shall be:

- (a) To promote and protect the rights enshrined in this Charter and in particular to:
 - (i) collect and document information, commission inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organise meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to governments;
 - (ii) formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa;
 - (iii) co-operate with other African, international and regional institutions and organisations concerned with the promotion and protection of the rights and welfare of the child;
- (b) To monitor the implementation and ensure protection of the rights enshrined in this Charter;
- (c) To interpret the provisions of the present Charter at the request of a state party, an institution of the Organization of African Unity or any other person or institution recognised by the Organization of African Unity, or any state party;
- (d) Perform such other tasks as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU, or the United Nations.

Article 43: Reporting Procedure

1. Every state party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:

- (a) within 2 years of the entry into force of the Charter for the state party concerned; and
- (b) thereafter, every 3 years.

2. Every report made under this article shall:

- (a) contain sufficient information on the implementation of the present Charter to provide the Committee with a comprehensive understanding of the implementation of the Charter in the relevant country; and
- (b) shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.

3. A state party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1(a) of this article, repeat the basic information previously provided.

Article 44: Communications

1. The Committee may receive Communications from any person, group or non-governmental organisation recognised by the Organization of African Unity, by a member state, or the United Nations relating to any matter covered by this Charter.
2. Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.

Article 45: Investigations by the Committees

1. The Committee may resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the state parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures a state party has adopted to implement the Charter.
2. The Committee shall submit to each ordinary session of the Assembly of Heads of State and Government every two years, a report on its activities and on any communication made under article 44 of this Charter.
3. The Committee shall publish its report after it has been considered by the Assembly of Heads of State and Government.
4. State parties shall make the Committee's report widely available to the public in their own countries.

CHAPTER FOUR: Miscellaneous Provisions

Article 46: Sources of Inspiration

The Committee shall draw inspiration from international law on human rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

Article 47: Signature, Ratification or Adherence

1. The present Charter shall be open to signature by all the member states of the Organization of African Unity.
2. The present Charter shall be subject to ratification or adherence by member states of the Organization of African Unity. 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 30 days after the reception by the Secretary-General of the Organization of African Unity of the instruments of ratification or adherence of 15 member states of the Organization of African Unity.

Article 48: Amendment and Revision of the Charter

1. The present Charter may be amended or revised if any state party makes a written request to that effect to the Secretary-General of the Organization of African Unity, provided that the proposed amendment is not submitted to the Assembly of Heads of State and Government for consideration until all the state parties have been duly notified of it and the Committee has given its opinion on the amendment.
2. An amendment shall be approved by a simple majority of the state parties.

OAU Convention on the Prevention and Combating of Terrorism (1999/2002)

Adopted in Algiers, Algeria in July 1999 and entered into force in December 2002.
Full text available at www.africa-union.org

Excerpts

The member states of the Organization of African Unity,

Considering the purposes and principles enshrined in the Charter of the Organization of African Unity, in particular its clauses relating to the security, stability, development of friendly relations and co-operation among its member states;

Recalling the provisions of the Declaration on the Code of Conduct for Inter-African Relations, adopted by the thirtieth ordinary session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Tunis, Tunisia, from 13 to 15 June 1994;

Aware of the need to promote human and moral values based on tolerance and rejection of all forms of terrorism irrespective of their motivations;

Believing in the principles of international law, the provisions of the Charters of the Organization of Africa Unity and of the United Nations and the latter's relevant resolutions on measures aimed at combating international terrorism and, in particular, Resolution 49/60 of the General Assembly of 9 December 1994 together with the annexed Declaration on Measures to Eliminate International Terrorism as well as Resolution 51/210 of the General Assembly of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto;

Deeply concerned over the scope and seriousness of the phenomenon of terrorism and the dangers it poses to the stability and security of states;

Desirous of strengthening co-operation among member states in order to forestall and combat terrorism;

Reaffirming the legitimate right of peoples for self-determination and independence pursuant to the principles of international law and the provisions of the Charters of the Organization of African United Nations as well as the African Charter on Human and Peoples' Rights;

Concerned that the lives of innocent women and children are most adversely affected by terrorism;

Convinced that terrorism constitutes a serious violation of human rights and, in particular, the rights to physical integrity, life, freedom and security, and impedes socio-economic development through destabilisation of states;

Convinced further that terrorism cannot be justified under any circumstances and, consequently, should be combated in all its forms and manifestations, including those in which states are involved directly or indirectly, without regard to its origin, causes and objectives.

Aware of the growing links between terrorism and organised crime, including the illicit traffic of arms, drugs and money laundering;

Determined to eliminate terrorism in all its forms and manifestations;

HAVE AGREED as follows:

PART I: SCOPE OF APPLICATION

Article 1

For the purposes of this Convention:

1. ‘Convention’ means the OAU Convention on the Prevention and Combating of Terrorism.
2. ‘State party’ means any member state of the Organization of African Unity which has ratified or acceded to this Convention and has deposited its instrument of ratification or accession with the Secretary-General of the Organization of African Unity.
3. ‘Terrorist act’ means:
 - (a) any act which is a violation of the criminal laws of a state party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
 - (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
 - (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
 - (iii) create general insurrection in a state.
 - (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising, or procurement of any person, with the intent to commit any act referred to in paragraph (a)(i) to (iii).

Article 2

States parties undertake to:

- (a) review their national laws and establish criminal offences for terrorist acts as defined in this Convention and make such acts punishable by appropriate penalties that take into account the grave nature of such offences;

...

Article 3

1. Notwithstanding the provisions of article 1, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts.
2. Political, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act.

PART II: AREAS OF CO-OPERATION

Article 4

1. State parties undertake to refrain from any acts aimed at organising, supporting, financing, committing or inciting to commit terrorist acts, or providing havens for terrorists, directly or indirectly, including the provision of weapons and their stockpiling in their countries and the issuing of visas and travel documents.
2. States parties shall adopt any legitimate measures aimed at preventing and combating terrorist acts in accordance with the provisions of this Convention and their respective national legislation, in particular, they shall do the following:

- (a) prevent their territories from being used as a base for the planning, organisation or execution of terrorist acts or for the participation or collaboration in these acts in any form whatsoever;
- (b) develop and strengthen methods of monitoring and detecting plans or activities aimed at the illegal cross-border transportation, importation, export, stockpiling and use of arms, ammunition and explosives and other materials and means of committing terrorist acts;
- (c) develop and strengthen methods or controlling and monitoring land, sea and air borders and customs and immigration check points in order to pre-empt any infiltration by individuals or groups involved in the planning, organisation and execution of terrorist acts;
- (d) strengthen the protection and security of persons, diplomatic and consular missions, premises or regional and international organisations accredited to a state party, in accordance with the relevant conventions and rules or international law;
- (e) promote the exchange of information and expertise on terrorist acts and establish data bases for the collection and analysis of information and data on terrorist elements, groups, movements and organisations;
- (f) take all necessary measures to prevent the establishment of terrorist support networks in any form whatsoever;
- (g) ascertain, when granting asylum, that the asylum seeker is not involved in any terrorist act;
- (h) arrest the perpetrators of terrorist acts and try them in accordance with national legislation, or extradite them in accordance with the provisions of this Convention or extradition treaties concluded between the requesting state and the requested state and, in the absence of a treaty, consider facilitating the extradition of persons suspected of having committed terrorist acts; and
- (i) establish effective co-operation between relevant domestic security officials and services and the citizens of the states parties in a bid to enhance public awareness of the scourge of terrorist acts and the need to combat such acts, by providing guarantees and incentives that will encourage the population to give information on terrorist acts or other acts which may help to uncover such acts and arrest their perpetrators.

...

Protocol to the OAU Convention on the Prevention and Combating of Terrorism (2004/)

Adopted in Addis Ababa, Ethiopia in July 2004. The Protocol had as of July 2006 not entered into force. Full text available at www.africa-union.org

Excerpts

We, the Heads of State and Government of the member states of the African Union;

Gravely concerned at the increasing incidence of terrorist acts worldwide, including in Africa, and the growing risks of linkages between terrorism and

mercenarism, weapons of mass destruction, drug trafficking, corruption, transnational organised crimes, money laundering, and the illicit proliferation of small arms;

Determined to combat terrorism in all its forms and manifestations and any support thereto in Africa;

Aware of the capabilities of the perpetrators of terrorist acts to use sophisticated technology and communication systems for organising and carrying out their terrorist acts;

Bearing in mind that the root causes of terrorism are complex and need to be addressed in a comprehensive manner;

Convinced that acts of terrorism cannot be justified under any circumstances;
Determined to ensure Africa's active participation, co-operation and co-ordination with the international community in its determined efforts to combat and eradicate terrorism;

Guided by the principles and regulations enshrined in international conventions and the relevant decisions of the United Nations (UN) to prevent and combat terrorism, including resolution 1373 adopted by the Security Council on 28 September 2001, and the relevant General Assembly resolutions;

Reaffirming our commitment to the OAU Convention for the Elimination of Mercenarism in Africa, adopted in Libreville, Gabon, in July 1977;

Reaffirming our commitment to the Code of Conduct for Inter-African Relations adopted by the thirtieth ordinary session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) held in Tunis, Tunisia, from 13 to 15 June 1994;

Reaffirming our commitment to the OAU Convention on the Prevention and Combating of Terrorism adopted by the 35th OAU Summit in Algiers, Algeria, in July 1999;

Recalling the Dakar Declaration against terrorism adopted by the African Summit meeting, held in Dakar, Senegal, in October 2001;

Further recalling the Plan of Action for the Prevention and Combating of Terrorism adopted by the Intergovernmental High Level meeting of member states of the African Union, held in Algiers, Algeria, in September 2002;

Considering the Constitutive Act of the African Union, as well as the Protocol Relating to the Establishment of the Peace and Security Council of the African Union adopted by the Inaugural Summit of the Union in Durban, South Africa, in July 2002;

Reiterating our conviction that terrorism constitutes a serious violation of human rights and a threat to peace, security, development, and democracy;

Stressing the imperative for all member states of the African Union to take all necessary measures to protect their populations from acts of terrorism and to implement all relevant continental and international humanitarian and human rights instruments; and

Desirous of ensuring the effective implementation of the OAU Convention on the Prevention and Combating of Terrorism.

HEREBY AGREE as follows:

...

Article 3: Commitments by States Parties

1. States Parties commit themselves to implement fully the provisions of the Convention. They also undertake, among other things, to:

- (a) take all necessary measures to protect the fundamental human rights of their populations against all acts of terrorism;
- (b) prevent the entry into, and the training of terrorist groups on their territories;

- (c) identify, detect, confiscate and freeze or seize any funds and any other assets used or allocated for the purpose of committing a terrorist act, and to establish a mechanism to use such funds to compensate victims of terrorist acts or their families;
 - (d) establish national contact points in order to facilitate the timely exchange and sharing of information on terrorist groups and activities at the regional, continental and international levels, including the co-operation of States for suppressing the financing of terrorism;
 - (e) take appropriate actions against the perpetrators of mercenarism as defined in the OAU Convention for the Elimination of Mercenarism in Africa, adopted in Libreville, in 1977, and other relevant applicable international instruments;
 - (f) strengthen national and regional measures in conformity with relevant continental and international Conventions and Treaties, to prevent the perpetrators of terrorist acts from acquiring weapons of mass destruction;
 - (g) co-operate with the international community in the implementation of continental and international instruments related to weapons of mass destruction;
 - (h) submit reports to the PSC on an annual basis, or at such regular intervals as shall be determined by the PSC, on measures taken to prevent and combat terrorism as provided for in the Convention, the AU Plan of Action and in this Protocol;
 - (i) report to the PSC all terrorist activities in their countries as soon as they occur;
 - (j) become parties to all continental and international instruments on the prevention and combating of terrorism; and
 - (k) outlaw torture and other degrading and inhumane treatment, including discriminatory and racist treatment of terrorist suspects, which are inconsistent with international law.
2. States Parties shall implement the provisions of paragraph 1 above on the basis of all relevant African and international Conventions and Treaties, in conformity with article 22 of the Convention.

Article 4: Mechanism for Implementation

The Peace and Security Council (PSC) shall be responsible for harmonising and coordinating continental efforts in the prevention and combating of terrorism. In pursuing this endeavour, the PSC shall:

- (a) establish operating procedures for information gathering, processing and dissemination;
- (b) establish mechanisms to facilitate the exchange of information among States Parties on patterns and trends in terrorist acts and the activities of terrorist groups and on successful practices on combating terrorism;
- (c) present an annual report to the Assembly of the Union on the situation of terrorism on the Continent;
- (d) monitor, evaluate and make recommendations on the implementation of the Plan of Action and programmes adopted by the African Union;
- (e) examine all reports submitted by States Parties on the implementation of the provisions of this Protocol; and
- (f) establish an information network with national, regional and international focal points on terrorism.

...

African Convention on the Conservation of Nature and Natural Resources (Revised) (2003/)

In 1968, the OAU adopted the Algiers Convention on the Conservation of Nature and Natural Resources. The Convention entered into force in June 1969. In Maputo, Mozambique, in 2003, the AU adopted an amended version of the Convention, which is not yet in force. The amended Convention, reprinted here, sets out a framework for the protection of the environment and the sustainable use of natural resources. Article 3(1) of the Convention echoes article 24 of the African Charter dealing with environmental rights. Requiring 15 ratifications for its entry into force, the amended Convention had been ratified by four states as of July 2006. Full text available at www.africa-union.org

Excerpts

Preamble

We, the Heads of State and Government of the member states of the African Union (AU),

Conscious that the natural environment of Africa and the natural resources with which Africa is endowed are an irreplaceable part of the African heritage and constitute a capital of vital importance to the continent and humankind as a whole,

Confirming, as we accepted upon declaring our adherence to the Charter of the Organization of African Unity, that it is our duty ‘to harness the natural and human resources of our continent for the total advancement of our peoples in all spheres of human endeavour’,

...

Re-affirming that States have, in accordance with the Charter of the United Nations and the principles of international law, a sovereign right to exploit their own resources pursuant to their environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Re-affirming further that States are responsible for protecting and conserving their environment and natural resources and for using them in a sustainable manner with the aim to satisfy human needs according to the carrying capacity of the environment,

...

Desirous of undertaking individual and joint action for the conservation, utilisation and development of these assets by establishing and maintaining their sustainable use,

Recalling the Lagos Plan of Action for the Economic Development of Africa and the Final Act of Lagos as well as the African Charter on Human and Peoples’ Rights,

Taking note of the Charter of Economic Rights and Duties of States and of the World Charter for Nature adopted by the General Assembly of the United Nations,

...

HAVE AGREED as follows:

...

Article 2: Objectives

The objectives of this Convention are:

1. to enhance environmental protection;
2. to foster the conservation and sustainable use of natural resources; and
3. to harmonise and co-ordinate policies in these fields with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes.

Article 3: Principles

In taking action to achieve the objectives of this Convention and implement its provisions, the Parties shall be guided by the following:

1. the right of all peoples to a satisfactory environment favourable to their development;
2. the duty of states, individually and collectively to ensure the enjoyment of the right to development;
3. the duty of states to ensure that developmental and environmental needs are met in a sustainable, fair and equitable manner.

Article 4: Fundamental Obligation

The Parties shall adopt and implement all measures necessary to achieve the objectives of this Convention, in particular through preventive measures and the application of the precautionary principle, and with due regard to ethical and traditional values as well as scientific knowledge in the interest of present and future generations.

...

Article 6: Land and Soil

1. The Parties shall take effective measures to prevent land degradation, and to that effect shall develop long-term integrated strategies for the conservation and sustainable management of land resources, including soil, vegetation and related hydrological processes.
- ...
4. Parties shall develop and implement land tenure policies able to facilitate the above measures, *inter alia* by taking into account the rights of local communities.

Article 7: Water

1. The Parties shall manage their water resources so as to maintain them at the highest possible quantitative and qualitative levels. They shall, to that effect, take measures designed to:
 - (a) maintain water-based essential ecological processes as well as to protect human health against pollutants and water-borne diseases;
 - (b) prevent damage that could affect human health or natural resource in another state by the discharge of pollutants; and
 - (c) prevent excessive abstraction, to the benefit of downstream communities and States.
- ...

Article 8: Vegetation Cover

1. The Parties shall take all necessary measures for the protection, conservation, sustainable use and rehabilitation of vegetation cover.
- ...

Article 9. Species and Genetic Diversity

1. The Parties shall maintain and enhance species and genetic diversity of plants and animals whether terrestrial, fresh-water or marine. They shall, for that purpose, establish and implement policies for the conservation and sustainable use of such resources; particular attention shall be paid to socially, economically and ecologically valuable species, which are threatened and species which are only represented in areas under the jurisdiction of one party.

2. The Parties shall ensure the conservation of species and their habitats within the framework of land-use planning and of sustainable development.

...

Article 14: Sustainable Development and Natural Resources

1. The Parties shall ensure that:

- (a) conservation and management of natural resources are treated as an integral part of national and/or local development plans;
- (b) in the formulation of all development plans, full consideration is given to ecological, as well as to economic, cultural and social factors in order to promote sustainable development.

...

Article 16: Procedural Rights

1. The Parties shall adopt legislative and regulatory measures necessary to ensure timely and appropriate:

- (a) dissemination of environmental information;
- (b) access of the public to environmental information;
- (c) participation of the public in decision-making with a potentially significant environmental impact; and
- (d) access to justice in matters related to protection of environment and natural resources.

...

Article 17: Traditional Rights of Local Communities and Indigenous Knowledge

1. The Parties shall take legislative and other measures to ensure that traditional rights and intellectual property rights of local communities including farmers' rights are respected in accordance with the provisions of this Convention.

2. The Parties shall require that access to indigenous knowledge and its use be subject to the prior informed consent of the concerned communities and to specific regulations recognising their rights to, and appropriate economic value of, such knowledge.

3. The Parties shall take the measures necessary to enable active participation by the local communities in the process of planning and management of natural resources upon which such communities depend with a view to creating local incentives for the conservation and sustainable use of such resources.

...

African Union Convention on Preventing and Combating Corruption (2003/)

Adopted in Maputo, Mozambique in July 2003. As of July 2006, 12 states had ratified the Convention which requires 15 ratifications to enter into force. Full text available at www.africa-union.org

Excerpts

Preamble

The member states of the African Union;

Considering that the Constitutive Act of the African Union recognises that freedom, equality, justice, peace and dignity are essential objectives for the achievement of the legitimate aspiration of the African peoples;

Further considering that article 3 of the said Constitutive Act enjoins member states to co-ordinate and intensify their co-operation, unity, cohesion and efforts to achieve a better life for the peoples of Africa;

Cognisant of the fact that the Constitutive Act of the African Union, *inter alia*, calls for the need to promote and protect human and peoples' rights, consolidate democratic institutions and foster a culture of democracy and ensure good governance and the rule of law;

Aware of the need to respect human dignity and to foster the promotion of economic, social, and political rights in conformity with the provisions of the African Charter on Human and People's Rights and other relevant human rights instruments;

Bearing in mind the 1990 Declaration on the Fundamental Changes Taking Place in the World and their Implications for Africa; the 1994 Cairo Agenda for Action Relaunching Africa's Socio-economic Transformation; and the Plan of Action Against Impunity adopted by the nineteenth ordinary session of the African Commission on Human and Peoples Rights in 1996 as subsequently endorsed by the Sixty fourth ordinary session of the Council of Ministers held in Yaounde, Cameroon in 1996 which, among others, underlined the need to observe principles of good governance, the primacy of law, human rights, democratisation and popular participation by the African peoples in the processes of governance.

Concerned about the negative effects of corruption and impunity on the political, economic, social and cultural stability of African States and its devastating effects on the economic and social development of the African peoples;

Acknowledging that corruption undermines accountability and transparency in the management of public affairs as well as socio-economic development on the continent;

Recognising the need to address the root causes of corruption on the continent;

Convinced of the need to formulate and pursue, as a matter of priority, a common penal policy aimed at protecting the society against corruption, including the adoption of appropriate legislative and adequate preventive measures;

Determined to build partnerships between governments and all segments of civil society, in particular, women, youth, media and the private sector in order to fight the scourge of corruption;

Recalling Resolution AHG-Dec 126(XXXIV) adopted by the thirty-fourth ordinary session of the Assembly of Heads of State and Government in June 1998 in Ouagadougou, Burkina Faso, requesting the Secretary-General to convene, in co-operation with the African Commission on Human and Peoples' Rights, a high level meeting of experts to consider ways and means of removing obstacles to the enjoyment of economic, social and cultural rights, including the fight against corruption and impunity and propose appropriate legislative and other measures;

Further recalling the decision of the 37th ordinary session of the Assembly of Heads of State and Government of the OAU held in Lusaka, Zambia, in July 2001 as well as the Declaration adopted by the first session of the Assembly of the Union held in Durban, South Africa in July 2002, relating to the New

Partnership for Africa's Development (NEPAD) which calls for the setting up of a co-ordinated mechanism to combat corruption effectively.

HAVE AGREED as follows:

...

Article 2: Objectives

The objectives of this Convention are to:

1. Promote and strengthen the development in Africa by each state party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.
2. Promote, facilitate and regulate co-operation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa.
3. Co-ordinate and harmonise the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent.
4. Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights.
5. Establish the necessary conditions to foster transparency and accountability in the management of public affairs.

Article 3: Principles

The State Parties to this Convention undertake to abide by the following principles:

1. Respect for democratic principles and institutions, popular participation, the rule of law and good governance.
2. Respect for human and peoples' rights in accordance with the African Charter on Human and Peoples Rights and other relevant human rights instruments.
3. Transparency and accountability in the management of public affairs.
4. Promotion of social justice to ensure balanced socio-economic development.
5. Condemnation and rejection of acts of corruption, related offences and impunity.

Article 4: Scope of Application

1. This Convention is applicable to the following acts of corruption and related offences:

- (a) the solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- (b) the offering or granting, directly or indirectly, to a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- (c) any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
- (d) the diversion by a public official or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the State or its agencies,

to an independent agency, or to an individual, that such official has received by virtue of his or her position;

(e) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;

(f) the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;

(g) illicit enrichment;

(h) the use or concealment of proceeds derived from any of the acts referred to in this article; and

(i) participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or on any other manner in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this article.

2. This Convention shall also be applicable by mutual agreement between or among two or more State Parties with respect to any other act or practice of corruption and related offences not described in this Convention.

Article 5: Legislative and other Measures

For the purposes set-forth in article 2 of this Convention, State Parties undertake to:

1. Adopt legislative and other measures that are required to establish as offences, the acts mentioned in article 4 paragraph 1 of the present Convention.

2. Strengthen national control measures to ensure that the setting up and operations of foreign companies in the territory of a state party shall be subject to the respect of the national legislation in force.

3. Establish, maintain and strengthen independent national anticorruption authorities or agencies.

4. Adopt legislative and other measures to create, maintain and strengthen internal accounting, auditing and follow-up systems, in particular, in the public income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services.

5. Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities.

6. Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals.

7. Adopt national legislative measures in order to punish those who make false and malicious reports against innocent persons in corruption and related offences.

8. Adopt and strengthen mechanisms for promoting the education of populations to respect the public good and public interest, and awareness in the fight against corruption and related offences, including school educational programmes and sensitisation of the media, and the promotion of an enabling environment for the respect of ethics.

...

Article 9: Access to Information

Each state party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences.

...

Article 14: Minimum Guarantees of a Fair Trial

Subject to domestic law, any person alleged to have committed acts of corruption and related offences shall receive a fair trial in criminal proceedings in accordance with the minimum guarantees contained in the African Charter on Human and Peoples' Rights and any other relevant international human rights instrument recognised by the concerned States Parties.

...

Article 22: Follow up Mechanism

1. There shall be an Advisory Board on Corruption within the African Union.
2. The Board shall comprise 11 members elected by the Executive Council from among a list of experts of the highest integrity, impartiality, and recognised competence in matters relating to preventing and combating corruption and related offences, proposed by the State Parties. In the election of the members of the board, the Executive Council shall ensure adequate gender representation, and equitable geographical representation.
3. The members of the Board shall serve in their personal capacity.
4. Members of the Board shall be appointed for a period of two years, renewable once.
5. The functions of the Board shall be to:
 - (a) promote and encourage adoption and application of anticorruption measures on the continent;
 - (b) collect and document information on the nature and scope of corruption and related offences in Africa;
 - (c) develop methodologies for analysing the nature and extent of corruption in Africa, and disseminate information and sensitise the public on the negative effects of corruption and related offences;
 - (d) advise governments on how to deal with the scourge of corruption and related offences in their domestic jurisdictions;
 - (e) collect information and analyse the conduct and behaviour of multi-national corporations operating in Africa and disseminate such information to national authorities designated under article 18(1) hereof;
 - (f) develop and promote the adoption of harmonised codes of conduct of public officials;
 - (g) build partnerships with the African Commission on Human and Peoples' Rights, African civil society, governmental, Intergovernmental and non-governmental organisations to facilitate dialogue in the fight against corruption and related offences;
 - (h) submit a report to the Executive Council on a regular basis on the progress made by each state party in complying with the provisions of this Convention;
 - (i) perform any other task relating to corruption and related offences that may be assigned to it by the policy organs of the African Union.
6. The Board shall adopt its own rules of procedure.
7. States Parties shall communicate to the Board within a year after the coming into force of the instrument, on the progress made in the implementation of this Convention. Thereafter, each state party, through their relevant procedures, shall ensure that the national anticorruption authorities or agencies report to the Board at least once a year before the ordinary sessions of the policy organs of the AU.

...

Grand Bay (Mauritius) Declaration and Plan of Action (1999)

This influential document was adopted by the First OAU Ministerial Conference on Human Rights, held in April 1999 in Grand Bay, Mauritius.

The First OAU Ministerial Conference on Human Rights, meeting from 12 to 16 April 1999 in Grand Bay, Mauritius;

Considering that the promotion and protection of human rights is a matter of priority for Africa, and that the Conference provides a unique opportunity to carry out a comprehensive analysis and reflection on the mechanisms for the protection of human rights to guarantee human rights for accelerated development of the continent;

Recalling the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World adopted by the Assembly of Heads of State and Government of the OAU in 1990, as well as the Declaration establishing within the OAU, a Mechanism for Conflict Prevention, Management and Resolution adopted by the Assembly of Heads of State and Government of the OAU in Cairo, Egypt in June 1993;

Acknowledging that observance of human rights is a key tool for promoting collective security, durable peace and sustainable development as enunciated in the Cairo Agenda for Action on re-launching Africa's socio-economic transformation adopted by the extra-ordinary session of the Council of Ministers held in Cairo, Egypt, from 25 to 28 March 1995;

Taking note of the growing recognition that violations of human rights may constitute a burden for the international community;

Reaffirming its commitment to the purposes and principles contained in the OAU Charter, UN Charter, the Universal Declaration of Human Rights as well as the African Charter on Human and Peoples' Rights;

Deeply concerned by acts of genocide and other crimes against humanity perpetuated in certain parts of Africa;

Emphasising that respect for human rights is indispensable for the maintenance of regional and international peace and security and elimination of conflicts, and that it constitutes one of the fundamental bedrocks on which development efforts should be realised;

Considering the democratisation processes taking place on the Continent and the expressed desires of African peoples to live in a state of law which secures the full enjoyment of human rights and fundamental freedoms for all peoples, regardless of their gender, race, place of origin, religion, social status, ethnic background, political opinions or language;

Further considering the importance of the right to develop, the right to international peace and security and the principles of solidarity and friendly relations between states provided for in the African Charter on Human and Peoples' Rights;

Recalling the determination of the collective leadership in Africa to establish conditions which will ensure social justice and progress and thus enable African peoples to enjoy better standards of living in greater freedom and in the spirit of tolerance towards all;

Reiterating the need to constructively examine human rights issues in a spirit of justice, impartiality and non-selectivity, avoiding their use for political purposes;

Recognising the progress achieved by African states in the domain of human rights and the significant contribution of the African continent to the universalisation of these rights;

Further Recognising the contribution made by African NGOs to the promotion and protection of human rights in Africa;

Recalling the recommendations made by the Second Conference of National Human Rights Institutions held in Durban in 1998;

Determined to consolidate the gains made in Africa in the promotion and protection of human and peoples' rights;

Solemnly adopts:

1. The Ministerial Conference affirms the principle that human rights are universal, indivisible, interdependent and inter-related and urges governments, in their policies, to give priority to economic, social and cultural rights as well as civil and political rights.
2. The Conference also affirms that the right to development, the right to a generally satisfactory healthy environment and the right to national and international peace and security are universal and inalienable rights which from an integral part of fundamental human rights;
3. The Conference further affirms the interdependence of the principles of good governance, the rule of law, democracy and development.
4. The Conference recognises that the development of the rule of law, democracy and human rights calls for an independent, open, accessible and impartial judiciary, which can deliver justice promptly and at an affordable cost. To this end, such a system requires a body of professional and competent judges enjoying conducive conditions.
5. The Conference recognises that the core values on which Human Rights are founded, particularly (a) respect for the sanctity of life and human dignity, (b) tolerance of differences, and (c) desire for liberty, order, fairness, prosperity and stability, are shared across all cultures. In this connection, integrating positive traditional and cultural values of Africa into the human rights debate will be useful in ensuring their transmission to future generations.
6. The Conference notes that women and children's rights issues remain of concern to all. Therefore it welcomes the decision to elaborate a Protocol to the African Charter for the more effective protection of women's rights and calls on the OAU to convene a meeting of government experts to examine the instrument. It urges all African States to work assiduously towards the elimination of discrimination against women and the abolition of cultural practices which dehumanise or demean women and children. The Conference also recommends that states take the necessary measures to stop the practice of child-soldiers and to reinforce the protection of civilian populations, particularly children in conflict situations. The Conference further recommends that states adopt measures to eradicate violence against women and children, child labour, sexual exploitation of children, trafficking in children and to protect children in conflict with the law as well as refugee children.
7. The Conference notes that the rights of people with disability and people living with HIV/AIDS, in particular women and children, are not always observed and urges all African States to work towards ensuring the full respect of these rights.
8. The Conference is aware that violations of human rights in Africa are caused among others by:
 - (a) Contemporary forms of slavery;
 - (b) Neo-colonialism, racism and religious intolerance;

- (c) Poverty, disease, ignorance and illiteracy;
- (d) Conflicts leading to refugee outflows and internal population displacement;
- (e) Social dislocations which may arise from the implementation of certain aspects of structural adjustment programmes;
- (f) The debt problem;
- (g) Mismanagement, bad governance and corruption;
- (h) Lack of accountability in the management of public affairs;
- (i) Monopoly in the exercise of power;
- (j) Harmful traditional practices;
- (k) Lack of independent human rights institutions;
- (l) Lack of independence of the judiciary;
- (m) Lack of freedom of the press and associations;
- (n) Environment degradation;
- (o) Non-compliance with the provisions of the OAU Charter on territorial integrity [and inviolability of colonial borders and the right to self-determination];
- (p) Unconstitutional changes of government;
- (q) Terrorism;
- (r) Nepotism; and
- (s) Exploitation of ethnicity.

There is, therefore, the need to adopt a multi-faceted approach to the task of eliminating the cause of human rights violations in Africa.

9. While welcoming the improvements which have taken place in addressing the refugee problem, the Conference believes that the high number of refugees, displaced persons and returnees in Africa constitutes an impediment to development. It recognises the link between human rights violations and population displacement and calls for redoubled and concerted efforts by states and the OAU to address the problem.

10. The conference recognises that the development and energisation of the civil society, the strengthening of the family unit as the basis of human society, the removal of harmful traditional practices and consultation with community leaders should all be seen as building blocs in the process of creating an environment conducive to human rights in Africa and as tools for fostering solidarity among her peoples.

11. Deeply concerned about the acts of genocide, crimes against humanity and other war crimes being perpetuated in certain part of Africa, the Conference appeals to African states to ensure that such acts are definitively eradicated on the continent and recommends that these serious acts of violation be adequately dealt with.

12. Also concerned by the scourge of terrorism as a source of serious human rights violation, especially the most basic of such rights, namely the right to life, the Conference urges African countries to formulate and implement an African convention for co-operation in combating this scourge.

13. The Conference reaffirms the commitment of Africa to the promotion, protection and observance of human rights obligations. In this framework, the Conference requests those states which have not yet done so to give consideration to the ratification of all major OAU human rights conventions, in particular:

- (a) The African Charter on Human and Peoples' Rights;
- (b) The African Charter on the Rights and Welfare of the Child;
- (c) The Convention Governing Specific Aspects of Refugee Problems in Africa;
- (d) The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
- (e) International Covenant on Economic, Social and Cultural Rights;

- (f) International Covenant on Civil and Political Rights;
- (g) United Nations Convention on the Rights of the Child;
- (h) United Nations Convention relating to the status of Refugees and its Protocol;
- (i) Convention on the Elimination of All Forms of Discrimination Against Women;
- (j) The Four Geneva Conventions of 1949 as well as the two Additional Protocols;
- (k) UN Convention Against Torture;
- (l) UN Convention on the Elimination of All Forms of Racial Discrimination; and
- (m) The Statute of the International Criminal Court.

14. The Conference recognises the necessity for States to give effect to the African Charter on Human and Peoples' Rights, international humanitarian law and other major international human rights instruments which they have ratified, in their national legislations for wider effect throughout Africa.

15. The Conference reiterates the fact that the primary responsibility for the promotion and protection of human rights lies with the state. It therefore urges states to establish national human rights institutions and to provide them with adequate financial resources and ensure their independence.

16. The Conference recognises that the reporting of states parties under the African Charter on Human and Peoples' Rights provides an important mechanism and an opportunity for African governments to engage in a process of continuous dialogue with the African Commission on Human and Peoples' Rights. Accordingly, the Conference recommends that states parties take appropriate measures to meet their reporting obligations under the Charter.

17. The Conference recognises the importance of promoting an African civil society, particularly NGOs, rooted in the realities of the African continent and calls on African governments to offer their constructive assistance with the aim of consolidating democracy and durable development.

18. The Conference calls upon all international organisations - governmental, inter-governmental and non-governmental - to co-operate and harmonise their initiatives with the OAU and its relevant organs as well as the various sub-regional bodies within Africa for a more co-ordinated approach to the implementation of human rights in Africa and for maximum effect of such programmes and initiatives.

19. The Conference notes that the adoption of the UN Declaration on the Protection of Human Rights Defenders by the 54th Session of the UN Commission on Human Rights marks a significant turning point, and calls on African governments to take appropriate steps to implement the Declaration in Africa.

20. The Conference appeals to the Secretary-General of the OAU and the African Commission on Human and Peoples' Rights to develop appropriate strategies and take measures to sensitise and raise the awareness of African peoples about human rights and international humanitarian law through formal and non-formal educational processes comprising, among others, a special module in school curricula.

21. The Conference recognises that the media are important actors for building bridges between governments and peoples; it, therefore, urges state to guarantee a free and independent press within their national borders to enable it to play a role in the promotion of human rights in Africa. To this end, the Conference appeals to the Secretary-General of the OAU to look into the possibility of providing assistance to media organisations on the continent.

22. To ensure that human rights considerations are integrated into all OAU activities, the Conference recognises the need for human rights to be reflected in the programmes of the Organization.

23. The Conference, noting that the working of the African Commission on Human and Peoples' Rights is critical to the due observance of human rights in Africa, believes that there is a need to evaluate the structure and functioning of the Commission and to ascertain the extent to which it is implementing the Mauritius Plan of Action during the period 1996 - 2001, and to assist it to remove all obstacles to the effective discharge of its functions. There is also an urgent need to provide the Commission with adequate human, material and financial resources.
24. The Conference notes that, under the African Charter on Human and Peoples' Rights, it is the Assembly of Heads of State and Government that is authorised to take decisive action on the activity reports of the African Commission on Human and Peoples' Rights and expresses the hope that the Assembly would consider delegating this task to the Council of Ministers.
25. The Conference underscores the fact that co-operation between the African Commission and national human rights institutions will greatly enhance respect for human rights in Africa. In that regard, the Conference welcomes the decision by the African Commission on Human and Peoples' Rights to grant affiliated status to national human rights institutions.
26. Concerned by the fact that the external debt burden is crippling the development efforts of Africa and undermining the fostering and sustenance of respect for human rights, the Conference appeals to the international community, especially multilateral financial agencies, to alleviate the external debt and take all steps necessary to reduce this burden on states to enable them to fully realise the economic emancipation of their peoples and enhance the maximum enjoyment of human rights by African peoples.
27. The Conference requests the Secretary-General of the OAU to submit this Declaration to the Assembly of Heads of State and Government, all member states, the African Commission on Human and Peoples' Rights, the UN High Commissioner for Human Rights and other relevant UN organs and agencies and to examine the feasibility of making this Conference a regular feature of OAU activities.
28. The Conference recommends to states to formulate and adopt national action plans for the promotion and protection of human rights.
29. Finally, the Conference requests the Secretary-General of the OAU to submit a report to the next session of the Council of Ministers on the outcome of this Conference.
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Declaration on Unconstitutional Changes of Government (2000)

Adopted in Lomé, Togo by the OAU Assembly of Heads of State and Government in July 2000.

Full text reprinted in *Human Rights Law in Africa* 2004 p 280 and further, see also www.africa-union.org.

Excerpts

We, Heads of State and Governments of the Organization of African Unity, meeting at the thirty-sixth ordinary session of our Assembly in Lomé, Togo

from 10-12 July 2000 have undertaken a review of the political developments on the continent and in particular the state of consolidating democracy in Africa.

We express our grave concern about the resurgence of *coup d'état* in Africa. We recognise that these developments are a threat to peace and security of the Continent and they constitute a very disturbing trend and serious set back to the ongoing process of democratisation in the Continent.

We recognise that the phenomenon of *coup d'état* has resulted in flagrant violations of the basic principles of our Continental Organization and of the United Nations.

The phenomenon also contradicts and contravenes the position taken by our Organization in Harare in 1997 following the *coup d'état* in Sierra Leone, in which we unequivocally condemned and rejected any unconstitutional change of government. We reaffirm that *coups* are sad and unacceptable developments in our Continent, coming at a time when our people have committed themselves to respect of the rule of law based on peoples will expressed through the ballot and not the bullet.

... We reaffirm the provisions of the OAU Charter and the provisions of the African Charter on Human and Peoples' Rights.

We recognise that the principles of good governance, transparency and human rights are essential elements for building representative and stable governments and can contribute to conflict prevention.

Having reviewed the state of democracy in the continent, and bearing in mind all our previous decisions on this issue, as well as our strong determination to put an end to this unacceptable development.

We have agreed on the following elements of a Framework for an OAU response to Unconstitutional Changes of Government:

- (a) a set of common values and principles for democratic governance;
- (b) a definition of what constitutes an unconstitutional change; and
- (c) measures and actions that the OAU would progressively take to respond to an unconstitutional change of government; and
- (d) an implementation mechanism.

We are of the view that there is need to provide a solid underpinning to the OAU's agenda of promoting democracy and democratic institutions in Africa. Beyond invoking relevant Declarations issued by various sessions of our Assembly and the Council of Ministers, consideration could be given to the elaboration of a set of principles on democratic governance to be adhered to by all member states of the OAU. These principles are not new; they are, as a matter of fact, contained in various documents adopted by our Organization. What is required here is to enumerate them in a coherent manner which will bear witness to our adherence to a common concept of democracy and will lay down the guiding principles for the qualification of a given situation as constituting an unconstitutional change. In this regard, and without being exhaustive, we have also agreed on the following principles as a basis for the articulation of common values and principles for democratic governance in our countries:

- (i) adoption of a democratic constitution: its preparation, content and method of revision should be in conformity with generally acceptable principles of democracy;
- (ii) respect for the constitution and adherence to the provisions of the law and other legislative enactments adopted by parliament;
- (iii) separation of powers and independence of the judiciary;

- (iv) promotion of political pluralism or any other form of participatory democracy and the role of the African civil society, including enhancing and ensuring gender balance in the political process;
- (v) the principle of democratic change and recognition of a role for the opposition;
- (vi) organisation of free and regular elections, in conformity with existing texts;
- (vii) guarantee of freedom of expression and freedom of the press, including guaranteeing access to the media for all political stakeholders;
- (viii) constitutional recognition of fundamental rights and freedoms in conformity with the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981;
- (ix) guarantee and promotion of human rights.

We believe that the strict adherence to these principles and the strengthening of democratic institutions will considerably reduce the risks of unconstitutional change on our continent. Indeed, experience has shown that unconstitutional changes are sometimes the culmination of a political and institutional crisis linked to non-adherence to the above common values and democratic principles. Our Organization should therefore support all efforts aimed at promoting adherence to these principles.

In order to give practical effect to the principles we have enunciated, we have agreed on the following definition of situations that could be considered as situations of unconstitutional change of government:

- (i) military *coup d'état* against a democratically elected government;
- (ii) intervention by mercenaries to replace a democratically elected government;
- (iii) replacement of democratically elected Governments by armed dissident groups and rebel movements;
- (iv) the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections.

We have also decided that:

Whenever an unconstitutional change as provided for in the definition of unconstitutional change above, takes place in a member state, our Current Chairman of the OAU and our Secretary-General, on behalf of our Organization, should immediately and publicly condemn such a change and urge for the speedy return to constitutional order. The current Chairman and the Secretary-General should also convey a clear and unequivocal warning to the perpetrators of the unconstitutional change that, under no circumstances, will their illegal action be tolerated or recognised by the OAU. In that regard, the current Chairman and the Secretary-General should urge for consistency of action at the bilateral, inter-state, sub-regional and international levels. The Central Organ should thereafter convene, as a matter of urgency, to discuss the matter.

At the request of its Chairman, the Secretary-General or any OAU member state, the Central Organ may be convened to consider any given situation that could be considered as constituting an unconstitutional change. Following the initial response of condemning the unconstitutional change by the Central Organ:

- (a) A period of up to six months should be given to the perpetrators of the unconstitutional change to restore constitutional order. During the six month period, the government concerned should be suspended from participating in the Policy Organs of the OAU. Apart from the sanctions provided for under

article 115 of the OAU Financial Rules and Regulations, the governments concerned should not participate in meetings of the Central Organ and Sessions of the Council of Ministers and the Assembly of Heads of State and Government. Its exclusion from participating in the OAU Policy Organs should not affect the country's membership in the OAU and therefore will not preclude it from honouring its basic obligations towards the Organization including financial contributions to the OAU regular budget;

(b) The Secretary-General should, during this period gather facts relevant to the unconstitutional change of government and establish appropriate contacts with the perpetrators with a view to ascertaining their intentions regarding the restoration of constitutional order in the country; the Secretary-General should seek the contribution of African leaders and personalities in the form of discreet moral pressure on the perpetrators of the unconstitutional change in order to get them to co-operate with the OAU and facilitate the restoration of constitutional order in the member state concerned; the Secretary-General should speedily enlist the collaboration of the Regional Grouping to which the 'country in crisis' belongs.

At the expiration of the six months suspension period, a range of limited and targeted sanctions against the regime that stubbornly refuses to restore constitutional order should be instituted, in addition to the suspension from participation in the OAU Policy Organs. This could include visa denials for the perpetrators of an unconstitutional change, restrictions of government to government contacts, trade restrictions, etc. In implementing a sanctions regime, the OAU should enlist the co-operation of member states, Regional Groupings and the wider international/donor communities. Careful attention should be exercised to ensure that the ordinary citizens of the concerned country do not suffer disproportionately on account of the enforcement of sanctions.

In order to give effect to these measures, we have decided that existing OAU mechanisms, particularly the Central Organ, at all its three levels, will be the instrument for implementing this Framework for an OAU response to unconstitutional changes in Africa. In this regard, we request our Secretary-General to explore how best to enhance the capacity of that Policy Organ to enable it implement in an effective and credible manner, the principles contained in the Framework.

We have agreed on the establishment of a Central Organ Sanctions Sub-committee of 5 members chosen on the basis of regional representation. The Sub-committee will regularly monitor compliance with decisions taken on situations of unconstitutional changes and recommend appropriate review measures to the Policy Organs of the OAU.

Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) Solemn Declaration (2000)

Adopted in 2000 in Togo. The CSSDCA unit in the AU Commission has focused on civil society and diaspora participation in the AU structures, including the establishment of ECOSOCC. In 2005 it was renamed the African Citizens Directorate (CIDO).

Full text available at www.africa-union.org

Excerpts

...

DECLARATION OF PRINCIPLES

9. In recognition of the importance of the CSSDCA, which shall encompass four major areas henceforth called Calabashes: Security, Stability, Development and co-operation in furthering Africa's interests within the ambit of the OAU, we affirm the following general and specific principles:

GENERAL PRINCIPLES

...

(h) Democracy, good governance, respect for human and peoples' rights and the rule of law are prerequisites for the security, stability and development of the continent;

...

SPECIFIC PRINCIPLES

Security

10. Recognising that security should be seen in its wholesomeness and totality including the right of peoples to live in peace with access to the basic necessities of life, while fully enjoying the rights enshrined in the African Charter on Human and Peoples' Rights and freely participating in the affairs of their societies; and bearing in mind that Africa's security and that of its member states are inseparably linked with the security of all African peoples; We affirm that:

(a) Security should be recognised as a pillar of the CSSDCA process. It is an indispensable condition for peace, stability, development and co-operation. It underscores the organic links that exist between the security of member states as a whole and the security of each of them on the basis of their history, culture, geography and their common destiny. This implies individual and collective responsibilities exercised within the basic framework of the African Charter on Human and Peoples' Rights and other relevant international instruments;

(b) The concept of security must embrace all aspects of society including economic, political, social and environmental dimensions of the individual, family, community, local and national life. The security of a nation must be based on the security of the life of the individual citizens to live in peace and to satisfy basic needs while being able to participate fully in societal affairs and enjoying freedom and fundamental human rights;

...

Stability

11. Noting that stability requires that all states be guided by strict adherence to the rule of law, good governance, peoples' participation in public affairs, respect for human rights and fundamental freedoms, the establishment of political organisations devoid of sectarian, religious, ethnic, regional and racial extremism;

We affirm that:

- (a) The executive, legislative and judicial branches of government must respect their national constitutions and adhere to the provisions of the law and other legislative enactment promulgated by National Assemblies. No one should be exempted from accountability;
- (b) The active and genuine participation of citizens of every country in the decision-making processes and in the conduct of public affairs must be fostered and facilitated;
- (c) All rights and freedoms of citizens should be promoted and protected;
- (d) There shall be no hindrance to the promotion of political pluralism. All forms of extremism and intolerance foster instability;
- (e) Terrorism, in all its manifestations, is inimical to stability.

Development

12. Noting that the attainment of self-reliance, sustainable growth and economic development will be facilitated by the promotion of economic co-operation and integration; that effective diversification of the resource and production base is vital for rapid social and economic transformation; that popular participation, equal opportunity, transparency in public policy-making and partnership between government and peoples are necessary for the achievement of development ...

PLAN OF ACTION

14. Having identified the General and Specific Principles that will guide the CSSDCA process and having reached a consensus on the need to put in place measures for the implementation of those principles, we, the Heads of State and Government of the Organization of African Unity, have agreed on the following Plan of Action.

Security

...

- j) Address the root causes of the problem of refugees and displaced persons on the continent and work towards the mobilisation of resources to provide adequate assistance for asylum countries to enable them to mitigate the impact of the refugee burden;
- k) Address the phenomena of armed elements and political activists in refugee camps, impunity, crimes against humanity, child soldiers and drug addiction, which have contributed to the state of insecurity in some parts of the continent;

Stability

We agree to:

- (a) Intensify efforts aimed at enhancing the process of democratisation in Africa. In this regard, the strengthening of institutions that will sustain democracy on the continent including the holding of free and fair elections should be encouraged;

- (b) Adopt and implement a set of guidelines for dealing with unconstitutional and undemocratic changes in Africa in line with the Decisions that we took during the 35th ordinary session of our Assembly held in Algiers in 1999;
- (c) Encourage the participation and contribution of civil society in our states, to the efforts to bring about further democratisation in our continent;
- (d) Recommit ourselves to the promotion of good governance and a culture of peace and accountability by leaders and officials, as a shared community value;
- (e) Encourage civic education on good governance and the promotion of African values in African institutions and schools;
- (f) Uphold and guarantee the rule of law, the protection and defence of the rights of citizenship as acquired at independence and as provided for in national constitutions;
- (g) Vigorously combat racism, extreme nationalism, religious extremism and xenophobic tendencies;
- (h) Promote and encourage cohesion, national solidarity and identity within African societies;
- (i) Protect and promote respect for human rights and fundamental freedoms, such as the freedom of expression and association, political and trade union pluralism and other forms of participatory democracy;
- ...
- (k) Promote greater burden-sharing in addressing refugee problems in Africa and, especially, reduce its negative impact on the environment and the economies of asylum countries;
- (l) Condemn genocide, crimes against humanity and war crimes on the continent and undertake to co-operate with relevant institutions set up to prosecute the perpetrators. Similarly, we agree to take measures to prevent the occurrence of genocide on our continent, and encourage ratification of the Protocol on the Establishment of an African Court on Human and Peoples' Rights and the Statute of the International Criminal Court.

Development

- ...
- (n) Ensure the enactment of appropriate national laws to extend equal opportunities with respect to health, education, employment and other civic rights to all citizens, especially women and the girl-child;
- ...
- (q) Give special emphasis to the empowerment of women to enable them to actively and independently participate in activities aimed at promoting economic development;

IMPLEMENTATION MECHANISM

15. In order to implement the CSSDCA within the framework of our Organization and ensure the sustainability of the process, we agree to:
 - (a) Establish a Standing Conference which should meet every two years during our Summit. Provision should be made for African parliamentarians to make their contributions to the Conference through the Pan-African Parliament, while representatives of civil society may forward their views and recommendations to the Standing Conference through the OAU General Secretariat;
 - (b) Convene Review Meetings of Plenipotentiaries and Senior Officials of OAU member states to monitor the implementation of the CSSDCA decisions, in-between Sessions of the Standing Conference. To this end, we request our Secretary-General to work out the modalities and financial implications for realising this objective;

- (c) Incorporate CSSDCA principles and guidelines in national institutions that would have responsibility for helping in the monitoring of the implementation of CSSDCA activities;
 - (d) Request the Secretary-General to initiate internal administrative arrangements for designating, within the OAU Secretariat, a unit to co-ordinate CSSDCA activities;
 - (e) Take the necessary measures to ensure that detailed discussions are undertaken on the various Calabashes in order to implement the CSSDCA process. In this regard, the Secretary-General is requested to co-ordinate the consultations with a view to ensuring the convening of the meetings on the Calabashes;
- ...
-

Kigali Declaration (2003)

Adopted by the AU Ministerial Conference on Human Rights in Africa, May 2003 in Kigali, Rwanda.

Reaffirming its commitment to the objectives and principles contained in the Constitutive Act of the African Union, Lome, Togo 2000, the African Charter on Human and Peoples' Rights, Nairobi, Kenya, 1981, the Solemn Declaration of the Conference on Security, Stability, Development and co-operation in Africa (CSSDCA), Lome, Togo, 2000, the New Partnership for Africa's Development (NEPAD) of the AU, Lusaka, Zambia, 2001, the Declaration on the Code of Conduct on Relations between States adopted in Tunis, Tunisia, in June 1994, all relevant AU Declarations and Decisions as well as the UN Charter 1948 and the Universal Declaration of Human Rights and the Vienna Declarations of 1989 and 1993.

Recalling the Grand Bay Declaration and Plan of Action adopted by the OAU Ministerial Conference on Human Rights in Africa held in Grand Bay, Mauritius, from 12 to 16 April 1999, and *reaffirming* its commitment to the purposes and principles therein;

Reaffirming that respect for human rights is indispensable for the maintenance of national, regional and international peace and security and that it constitutes the fundamental bedrock for sustainable development;

Reaffirming further the principles enshrined in the Constitutive Act of the African Union, in particular, the prohibition of genocide, war crimes and crimes against humanity; and *determined* to fight the ideology of genocide and all its manifestations;

Recalling the report of the International Panel of Eminent Persons (IPEP) entitled 'The Preventable Genocide' endorsed by the 36th ordinary session of the Assembly of Heads of State and Government of the OAU held in Lomé, Togo, in July 2000 and the decision of the Assembly requesting the Secretary-General to actively pursue the implementation of the recommendations contained in the Report;

Deeply concerned by the continuing discrimination against women and girls, as well as harmful traditional practices in some parts of Africa that endanger the life or health of women and children;

Deeply concerned that in spite of the progress made in resolving conflicts on the Continent, the continuing armed and civil conflicts in some parts of Africa lead to gross violations of human rights and international humanitarian law, and create massive movements of refugee populations and internally displaced persons.

The Conference:

1. Reaffirms the principle that all human rights are universal, indivisible, inter-dependent and inter-related.
2. Notes with satisfaction the achievements made by member states in the promotion and protection of human and peoples' rights, especially since the adoption of the Grand Bay Declaration and Plan of Action, and recognises the need for member states to build upon these achievements for the benefit and welfare of all African peoples;
3. Reaffirms the right to development, and calls upon the international community to support member states in their continuing efforts to realise this right.
4. Urges member states and regional institutions to accord the same importance to economic, social and cultural rights and civil and political rights, and apply, at all levels, a rights-based approach to policy, programme planning, implementation and evaluation.
5. Calls upon member states to guarantee genuine independence, accessibility, affordability and due process of the Justice systems on the Continent, as a prerequisite to the entrenchment of the rule of law and democracy.
6. Reiterates the rejection of impunity and reaffirms the commitment to prosecute those responsible for genocide, war crimes and crimes against humanity, and appeals to all member states to fully co-operate with and provide political and financial support to the International Criminal Tribunal for Rwanda, particularly, as regards the arrest of suspects or accused, the protection of witnesses or victims, the enforcement of sentences and the compensation of victims and their beneficiaries.
7. Welcomes the Decision of the 2nd ordinary session of the Executive Council of the AU held in N'Djamena, Chad, in March 2003 that 7 April 2004, the 10th Anniversary of the Rwandan Genocide, be commemorated by the AU as a day of remembrance of the victims of genocide in Rwanda, and reaffirmation of Africa's resolve to prevent and fight genocide on the continent.
8. Reiterates the recommendation of the Executive Council to the United Nations, the international community at large and civil society to commemorate 7 April as a day of reflection on the Rwandan Genocide and of a renewed commitment to the prevention of genocide in the world.
9. Expresses its concern about the scourge of terrorism as a source of serious violations of human rights, particularly the right to life and to security, and urges the member states to implement the Convention on the Prevention and Combating of Terrorism adopted by the 35th ordinary session of the Assembly of Heads of State and Government of the OAU held in Algiers in July 1999.
10. Notes the important contribution made by the Durban World Conference Against Racism, Xenophobia and Related Intolerance and calls on all member states to strengthen their efforts to combat the scourge of racism, xenophobia and related intolerance and discrimination.
11. Takes note with satisfaction of the on-going efforts to address the plight of refugees, asylum seekers and internally displaced persons, and calls upon member states to recognise forced displacement as a grave violation of

fundamental rights to peace, security and dignity, and to take all necessary measures to address the problem.

12. Further calls upon all member states to implement all the relevant international and African instruments relating to the protection of refugees, internally displaced persons and returnees, and in particular to discharge their obligations under the AU Convention Governing the Specific Aspects of Refugee Problems in Africa.

13. Calls upon the member states that have not yet ratified the AU Convention Governing the Specific Aspects of Refugee Problems in Africa and any of the relevant international treaties to do so as soon as possible.

14. Requests the relevant organs of the AU, in the exercise of their peace building and conflict resolution functions, to ensure the inclusion of human rights, humanitarian principles and other legal protection measures in peace agreements, in order to facilitate the voluntary repatriation and reintegration of refugees, returnees and former combatants in their countries of origin.

15. Welcomes the signing of a Memorandum of Understanding between the African Commission on Human and Peoples' Rights and the United Nations High Commissioner for Refugees (UNHCR), and calls upon the international community and other stakeholders to support the efforts of the African continent to address the problems of refugees, returnees and internally displaced persons in a spirit of international solidarity and burden sharing.

16. Notes with great concern that the rights of women and children in spite of the progress achieved, remain insufficiently protected in many African countries; Welcomes the progress made towards the adoption of the Draft Protocol on the Rights of Women in Africa, and calls upon member states to take all necessary measures for its early adoption, signature and ratification, and upon coming into force, its timely implementation by States Parties to it.

17. Calls upon member states to fulfil their obligations under international law and, in particular, to take the necessary measures to put an end to the practice of child-soldiers and to ensure the protection of civilian populations, particularly children, women, elderly persons and persons with disability in situations of armed conflict.

18. Calls upon member states that have not yet ratified the African Charter on the Rights and Welfare of the Child to do so as soon as possible, and further calls upon the AU Policy Organs to provide an adequate Secretariat and the necessary financial and material resources to the African Committee of Experts on the Rights and Welfare of the Child to enable it to carry out its mandate effectively.

19. Notes also with great concern the plight of the vulnerable groups including persons with disability in general and calls upon member states to provide adequate support to the African Rehabilitation Institute (ARI) in Harare, Zimbabwe.

20. Further calls upon member states to develop a Protocol on the protection of the rights of people with disabilities and the elderly.

21. Notes also with great concern the alarming rate at which HIV/AIDS is spreading as well as the persistent prevalence of Malaria, Tuberculosis and other related infectious diseases in Africa, and urges member states to take measures to reinforce prevention programmes relating thereto and to promote and protect the rights of people living with HIV/AIDS.

22. Encourages member states to exert more efforts jointly with the international community, particularly the World Health Organization (WHO) to eradicate HIV/AIDS, Malaria, Tuberculosis and other related infectious diseases which constitute an impediment to the socio-economic development of the continent and an obstacle to the enjoyment of economic, social and cultural rights.

23. Notes with satisfaction that the African Charter on Human and Peoples' Rights has been ratified by all member states, and calls upon the AU policy organs to provide the African Commission with suitable Headquarters, an appropriate structure and adequate human and financial resources for its proper functioning, including the establishment of a fund to be financed through voluntary contributions from member states, international and regional institutions.
24. Calls upon the AU Policy Organs to review the operation and composition of the African Commission on Peoples' Rights with a view to strengthening its independence and operational integrity and ensuring appropriate gender representativity and to report on the progress made to the appropriate AU Organs as soon as possible.
25. Urges member states which have not yet done so to incorporate in their domestic legislation, provisions of the African Charter on Human and Peoples' Rights, its protocols, international humanitarian law in particular the Four (4) Geneva Conventions (1949) and their Additional Protocols (1977) and other major international human rights instruments, which they have ratified, and to honour their obligations thereon, including reporting, where applicable.
26. Notes with concern that the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights which requires fifteen (15) ratifications to come into force, has been ratified by nine (9) Member states only, and, therefore, appeals to those member states that have not yet done so, to sign and/or ratify the Protocol to enable it to come into force by July 2003 as required by Dec. AHG/Dec.171 (XXXVIII).
27. Reiterates that the primary responsibility for the promotion and protection of human rights rests with member states and, therefore, urges those member states which have not yet done so, to establish independent national human rights institutions, provide them with adequate financial and other resources for their proper functioning, and guarantee their independence.
28. Recognises the important role of civil society organisations (CSOs) in general and human rights defenders in particular, in the promotion and protection of human rights in Africa, calls upon member states and regional institutions to protect them and encourage the participation of CSOs in decision-making processes with the aim of consolidating participatory democracy and sustainable development, and underscores the need for CSOs to be independent and transparent.
29. Recognises the media as an important vehicle for the realisation of the right to information, and therefore, urges member states to guarantee, through appropriate legislative and policy measures, a free and independent press.
30. Mindful of the fact that the legal norms contained in the international and regional human rights conventions and the establishment of human rights protection and promotion mechanisms cannot by themselves guarantee entrenchment of the principles of human rights and their observance by all, and appeals to member states to make the teaching of human rights a permanent feature in their school curricula, especially for law enforcement agents. To this end, it calls upon member states to step up their efforts with a view to a better and wider dissemination of the human rights culture, and urges them to popularise the international and regional conventions.
31. Calls for African solidarity with the peoples whose fundamental rights are grossly violated.
32. Welcomes the creation by the AU Assembly in Durban, South Africa in July 2002, of a Portfolio within the AU Commission responsible for the issues of democracy, human rights, governance and civil society that would contribute to spearheading efforts aimed at promoting human rights on the continent.

33. Recognises that implementation, monitoring and evaluation are critical to the effective realisation of the Grand Bay and this Declaration, requests the Chairperson of the AU Commission to co-ordinate the follow up of the implementation of these declarations and urges members states to submit reports on implementation to the AU Commission.

34. Expresses its satisfaction at the holding of this Conference, requests the Chairperson of the AU Commission to submit a report to the next ordinary session of the Executive Council on the outcome of this Conference, and recommends that the Ministerial Conference on Human Rights be held at intervals of not more than four years.

Solemn Declaration on Gender Equality in Africa (2004)

Adopted by the AU Assembly of Heads of State and Government in Addis Ababa, Ethiopia in July 2004.

We, the Heads of State and Government of member states of the African Union, meeting in the third ordinary session of our Assembly in Addis Ababa, Ethiopia, from 6-8 July 2004:

Reaffirming our commitment to the principle of gender equality as enshrined in article 4(l) of the Constitutive Act of the African Union, as well as other existing commitments, principles, goals and actions set out in the various regional, continental and international instruments on human and women's rights, including the Dakar Platform for Action (1994), the Beijing Platform for Action (1995), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), the African Plan of Action to Accelerate the Implementation of the Dakar and Beijing Platforms for Action for the Advancement of Women (1999); the Outcome Document of the Twenty-third Special Session of the United Nations General Assembly Special Session on the Implementation of the Beijing Platform for Action (2000); UN Resolution 1325 on Women, Peace and Security (2000); and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003);

Standing by our Decision on gender parity taken at the Inaugural Session of the AU Assembly of Heads of State and Government in July 2002 in Durban, South Africa, implemented during the second ordinary session of the Assembly in Maputo, Mozambique, 2003, through the election of five female and five male Commissioners;

Noting with satisfaction that our decision on gender parity is a historic achievement that does not yet exist in any other continent or regional organisations;

Re-affirming our commitment to continue, expand and accelerate efforts to promote gender equality at all levels;

Determined to build on the progress that we have achieved in addressing issues of major concern to the women of Africa;

Taking cognisance of the landmark decision to adopt the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in

Africa during the second ordinary session of the Assembly in Maputo, Mozambique, 2003;

Noting the decision of the Chairperson of the African Union Commission to transform the African Women's Committee on Peace and Development (AWCPD) into the African Union Women's Committee (AUWC), which will be located in the Gender Directorate and serve as an Advisory Body to the Chairperson on Gender and Development;

Recognising that major challenges and obstacles to gender equality still remain and require concerted and collective leadership and efforts from all of us including networks working on gender and development;

Deeply concerned about the status of women and the negative impacts on women of issues such the high incidence of HIV/AIDS among girls and women, conflict, poverty, harmful traditional practices, high population of refugee women and internally displaced women, violence against women, women's exclusion from politics and decision-making, illiteracy and limited access of girls to education;

Aware of the policies and programmes we have put in place to curb the spread of the HIV/AIDS pandemic as well as the current challenges in this campaign; *Concerned* that, while women and children bear the brunt of conflicts and internal displacement, including rapes and killings, they are largely excluded from conflict prevention, peace-negotiation, and peace-building processes in spite of African women's experience in peace-building;

Aware of the fact that low levels of women's representation in social, economic and political decision-making structures and feminisation of poverty impact negatively on women's ability to derive full benefit from the economies of their countries and the democratisation process;

Aware of the digital divide between the North and the South and men and women and the role of information telecommunication technologies (ICTS) in the advancement of the gender issue as stated in the e-gender Forum Declaration of Tunis, May 2004 in preparation for the World Summit on Information Society (WSIS) 2005;

HEREBY AGREE to:

1. *Accelerate the implementation* of gender specific economic, social, and legal measures aimed at combating the HIV/AIDS pandemic and effectively implement both Abuja and Maputo Declarations on Malaria, HIV/AIDS, Tuberculosis and Other Related Infectious Disease. More specifically we will ensure that treatment and social services are available to women at the local level making it more responsive to the needs of families that are providing care; enact legislation to end discrimination against women living with HIV/AIDS and for the protection and care for people living with HIV/AIDS, particularly women; increase budgetary allocations in these sectors so as to alleviate women's burden of care;
2. *Ensure* the full and effective participation and representation of women in peace process including the prevention, resolution, management of conflicts and post-conflict reconstruction in Africa as stipulated in UN Resolution 1325 (2000) and to also appoint women as Special Envoys and Special Representatives of the African Union;
3. *Launch*, within the next year, a campaign for systematic prohibition of the recruitment of child soldiers and abuse of girl children as wives and sex slaves in violation of their rights as enshrined in the African Charter on Rights of the Child;
4. *Initiate, launch and engage* within two years sustained public campaigns against gender based violence as well as the problem of trafficking in women and girls; Reinforce legal mechanisms that will protect women at the national

level and end impunity of crimes committed against women in a manner that will change and positively alter the attitude and behaviour of the African society;

5. *Expand and promote* the gender parity principle that we have adopted regarding the Commission of the African Union to all the other organs of the African Union, including its NEPAD programme, to the Regional Economic Communities, and to the national and local levels in collaboration with political parties and the National parliaments in our countries;

6. *Ensure* the active promotion and protection of all human rights for women and girls including the right to development by raising awareness or by legislation where necessary;

7. *Actively promote* the implementation of legislation to guarantee women's land, property and inheritance rights including their rights to housing;

8. *Take specific measures* to ensure the education of girls and literacy of women, especially in the rural areas, to achieve the goal of 'Education for All' (EFA);

9. *Undertake to sign and ratify* the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa by the end of 2004 and to support the launching of public campaigns aimed at ensuring its entry into force by 2005 and usher in an era of domesticating and implementing the Protocol as well as other national, regional and international instruments on gender equality by all States Parties;

10. *Establish* AIDS Watch Africa as a unit within the Office of the Chairperson of the Commission who should render annual reports on the HIV/AIDS situation in the continent during annual Summits; and promote the local production of anti-retroviral drugs in our countries;

11. *Accept* to establish an African Trust Fund for Women for the purpose of building the capacity of African women and further request the African Union Commission to work out the modalities for the operationalisation of the Fund with special focus on women in both urban and rural areas;

12. *Commit* ourselves to report annually on progress made in terms of gender mainstreaming and to support and champion all issues raised in this Declaration, both at the national and regional levels, and regularly provide each other with updates on progress made during our ordinary sessions;

13. *We request* the chairperson of the African Union Commission to submit, for our consideration, an annual report, during our ordinary sessions, on measures taken to implement the principle of gender equality and gender mainstreaming, and all issues raised in this Declaration both at the national and regional levels.

Guidelines for African Union Electoral Observation and Monitoring Missions (2004)

These Guidelines were contained in the Report of the Meeting of Experts on Elections, Democracy and Governance in Africa in Addis Ababa in May 2004 and approved by the Executive Council of the AU in July 2004.

Full text available at www.africa-union.org

1. Principles Governing Democratic Elections in Africa

1.1 Principles are important in guiding observers and monitors in coming to final assessments of the election processes and environments. The ‘principles’ are divided between the responsibilities of member states and the rights and obligations under which democratic elections must be held.

1.2 The Declaration of OAU Principles Governing Democratic Elections in Africa was adopted by the Heads of State and Governments at the 38th ordinary session of the Organization of African Unity on 8 July 2002 in Durban, South Africa, state the principles that should guide observers and monitors. The principles state that:

- (i) Democratic elections are the basis of the authority of any representative government;
- (ii) Regular elections constitute a key element of the democratisation process and therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development;
- (iii) The holding of democratic elections is an important dimension in conflict prevention, management and resolution;
- (iv) Democratic elections should be conducted:
 - (a) freely and fairly;
 - (b) under democratic constitutions and in compliance with supportive legal instruments;
 - (c) under a system of separation of powers that ensures in particular, the independence of the judiciary;
 - (d) at regular intervals, as provided for in National Constitutions;
 - (e) by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics;
- 1.3 The principles also spell out responsibilities of member states. Under the responsibilities, member states commit their governments to:
 - (i) take necessary measures to ensure the scrupulous implementation of the above principles, in accordance with the constitutional processes of our respective countries;
 - (ii) establish where none exist, appropriate institutions where issues such as codes of conduct, citizenship, residency, age requirements for eligible voters, compilation of voters’ registers, etc would be addressed;
 - (iii) establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections;
 - (iv) safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes;
 - (v) promote civic and voters’ education on the democratic principles and values in close co-operation with the civil society groups and other relevant stakeholders;
 - (vi) take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security;
 - (vii) ensure the availability of adequate logistics and resources for carrying out democratic elections, as well as ensure that adequate provision of funding for all registered political parties to enable them organise their work, including participation in electoral process;
 - (viii) ensure that adequate security is provided to all parties participating in elections;

- (ix) ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and other observers or monitors;
 - (x) encourage the participation of African women in all aspects of the electoral process in accordance with the national laws.
- 1.4 Member states also committed themselves to certain rights and obligations under which democratic elections are conducted:
- (i) Every citizen shall have the right to participate freely in the government of his or her country, either directly or through freely elected representatives in accordance with the provisions of the law.
 - (ii) Every citizen has the right to fully participate in the electoral processes of the country, including the right to vote or be voted for, according to the laws of the country and as guaranteed by the Constitution, without any kind of discrimination.
 - (iii) Every citizen shall have the right to free association and assembly in accordance with the law.
 - (iv) Every citizen shall have the freedom to establish or to be a member of a political party or organisation in accordance with the law.
 - (v) Individuals or political parties shall have the right to freedom of movement, to campaign and to express political opinions with full access to the media and information within the limits of the laws of the land.
 - (vi) Individual or political parties shall have the right to appeal and to obtain timely hearing against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country.
 - (vii) Candidates or political parties shall have the right to be represented at polling and counting stations by duly designated agents or representatives.
 - (viii) No individual or political party shall engage in any act that may lead to violence or deprive others of their constitutional rights and freedoms. Hence all stakeholders should refrain from, among others, using abusive language and/or incitement to hate or defamatory allegations and provocative language. These acts should be sanctioned by designated electoral authorities.
 - (ix) All stakeholders in electoral contests shall publicly renounce the practice of granting favours, to the voting public for the purpose of influencing the outcome of elections.
 - (x) In covering the electoral process, the media should maintain impartiality and refrain from broadcasting and publishing abusive language, incitement to hate, and other forms of provocative language that may lead to violence.
 - (xi) Every candidate and political party shall respect the impartiality of the public media by undertaking to refrain from any act which might constrain or limit their electoral adversaries from using the facilities and resources of the public media to air their campaign messages.
 - (xii) Every individual and political party participating in elections shall recognise the authority of the Electoral Commission or any statutory body empowered to oversee the electoral process and accordingly render full co-operation to such a Commission or Body in order to facilitate their duties.
 - (xiii) Every citizen and political party shall accept the results of elections proclaimed to have been free and fair by the competent national bodies as provided for in the Constitution and the electoral laws and accordingly respect the final decision of the competent Electoral Authorities or, challenge the result appropriately according to the law.

2. Introduction

...

2.2 Electoral observation and monitoring have become an integral part of the democratic and electoral processes in Africa. International, regional and national observers have come to play important roles in enhancing the transparency and credibility of elections and democratic governance in Africa and the acceptance of election results throughout the continent. Electoral observation and monitoring missions can also play key roles in diminishing conflicts before, during and after elections.

2.3 The African continent has made significant progress in institutionalising electoral democracy over the course of the past decade. This is reflected in a number of successful multiparty elections in most member states. Notwithstanding these achievements, however, major challenges remain. These include the prevalence of conflict in some countries of the continent, and violence and instability resulting from disputed elections. The major challenge is the need to improve the integrity of electoral processes. One way of improving the integrity of electoral processes is by involving local and international observers and monitors.

2.4 The following guidelines are proposed in the spirit of strengthening the democratisation and governance processes underway in Africa with a view to guiding the involvement of the AU in the observation and monitoring of elections in member states.

2.5 The following guidelines are proposed to cover all the three stages of the electoral process, namely: The pre-election, the election and the post-election phases.

...

4. Criteria for Determining the Nature and Scope of AU Electoral Observation and Monitoring

4.1 In performing their obligations, the election observers or monitors shall be guided by detailed guidelines prepared by the Commission drawing inspiration from the essential thrust of the OAU Declaration of Principles Governing Democratic Elections ('the Principles'). The specific mandates and terms of reference shall be determined by the particular case in question as well as the wider legal framework of the country staging elections.

4.2 In preparing for its election observation and monitoring roles, the Commission must maintain an up-to-date calendar of all future elections on the continent.

4.3 Formal invitation to the AU, in terms of paragraphs V (1) and V (3) of the OAU Declaration on the Principles Governing Democratic Elections in Africa (2002), is to be made by the country organising the elections, either through the National Electoral Commission (NEC), or electoral authority, or the said government, in accordance with the democratic legal framework of the country, as necessary elements for mounting observations.

4.4 The AU, after receiving the invitation to observe an election, must ensure:

- Adequate lead-time for preparations;
- Availability of essential planning information;
- Availability of professional expertise; and
- Financial and other resources.

4.5 The AU should expeditiously dispatch an Election Assessment Team to the country planning for an election.

4.6 The existence of a 'level playing field', which determines the conditions for electoral competition, is an important aspect that needs evaluation when determining the likely character of the electoral process. In advance of the election date, the Head of the AU Election Mission should advise the AU Commission whether the necessary conditions and environment for a free and fair election as agreed in the AU principles governing democratic elections, have been satisfied. Whatever the advice received by the Commission should

be confirmed in a public statement by the Chairperson of the Commission. The assessment team will establish whether or not conditions for organising credible, legitimate, free and fair elections in accordance with the Durban Declaration are in place in the country. The African Union should explore the possibility of observing elections outside the Continent. Issues to consider in the assessment will include the following:

4.6.1 Does the constitution and legal framework guarantee fundamental freedoms and human rights?

4.6.2 Is the electoral system premised on the right to freedom of association, and enables people to advance this right through the formation of political parties for the purposes of electoral competition?

4.6.3 Is the Electoral Commission independent and impartial, and exercise its powers and perform its functions without fear, favour or prejudice?

4.6.4 Are the rights of observers guaranteed?

4.6.5 Is it likely that the security forces will maintain a neutral role in the provision of election security?

4.6.6 Is the situation in the country generally peaceful or is there political violence? If so will the government's security measures provide an environment for a free election campaign or are there substantial restrictions on the freedom of expression, association and assembly?

4.6.7 Are there clearly articulated rules for political party funding to be respected by all parties and candidates?

4.6.8 Is the voter education that should be provided non-partisan, independent and co-ordinated throughout the country?

4.6.9 Will there be equitable use or access to public resources for election campaigning?

4.6.10 Is the registration of voters undertaken without prejudice or discrimination on the basis of gender, race, religion, region or ethnicity?

4.6.11 Does an Independent Media Authority responsible for monitoring and regulating the media to allow equitable access to the public media of all contesting parties and candidates function?

4.7 The decision about dispatching an observer and monitoring mission in a member country holding elections must be informed by a preliminary assessment of the country's social, economic, political and constitutional arrangements.

4.8 African states differ in terms of their organisational capacity, financial and human resources, infrastructural development - notably road, telecommunication and technological infrastructure - which have an impact on the way elections are organised across the continent. However, these factors should not compromise the conduct of free, fair and transparent elections.

4.9 The Electoral Assessment Team should advise the AU Electoral Assistance Unit on whether or not to undertake an AU mission. In both cases there are a number of options, which the AU could consider.

4.10 If the decision is to send an observation or monitoring mission, the Assessment Team must advise the AU on the nature of the mission—observation, technical assistance, monitoring or supervision—that should be undertaken. A combination of some of these options could also be envisaged. However the recommended mix of mandate should ensure there is no conflict of interest.

4.11 If the decision is not to send an observation or monitoring mission because of the prevailing unsatisfactory conditions in the country, two intermediate responses could be envisaged. First, if the host country is prepared to accept assistance from the AU to remedy the situation, a technical team or supervisory team could be considered to work with the Election Commission. Second, if the unsatisfactory conditions deteriorate,

and the host country is not prepared to accept outside assistance, the AU could consider not sending a mission at all, and this could include referring the matter further within the organs of the Union.

4.12 The AU assessment team will not only assess the conditions prevailing in a particular country at a particular time, but also the direction in which events are developing: different responses may be appropriate to different situations.

4.13 There should be prior understanding between the AU and the country organising elections that the AU reserves the right not to send or to withdraw observers in certain circumstances when conditions in the country do not meet the AU guiding principles for organising free and fair elections.

4.14 Regional Economic Communities (RECs) should be involved actively in elections observation and monitoring. In this way, the RECs should thus compliment continental electoral assistance efforts of the African Union and ensure mutual sharing of experience and resources.

...

Vision and Mission of the African Union Commission (2004)

Strategic plan of the African Union Commission, May 2004.
Full text available at www.africa-union.org

Excerpts

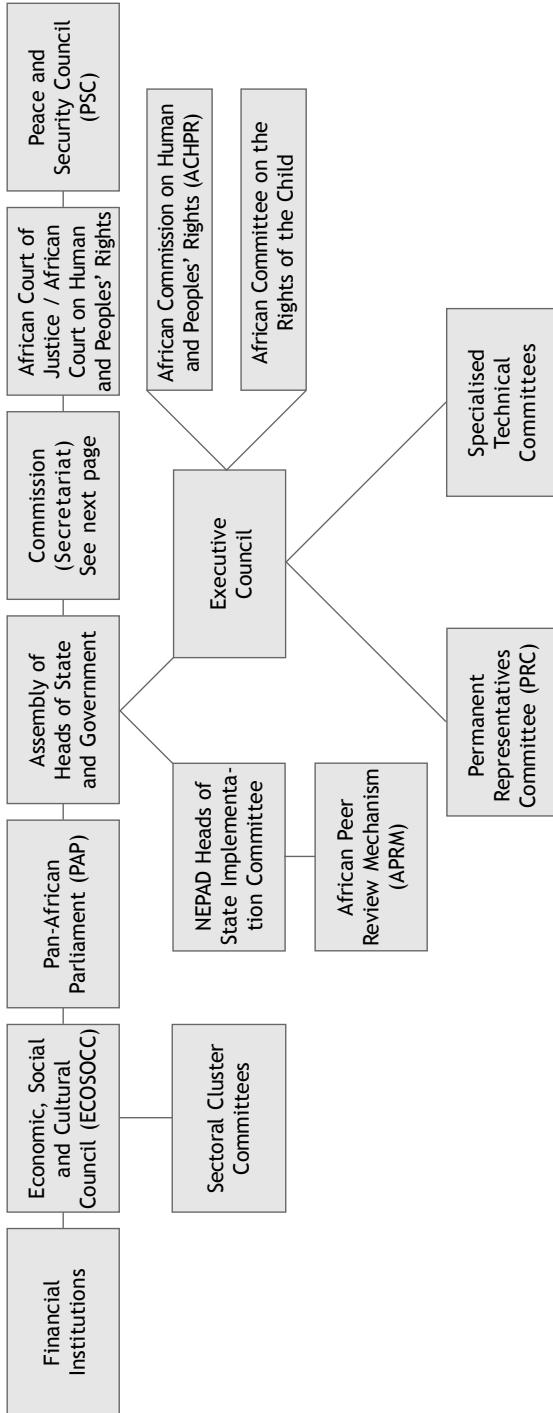
...

African leaders are increasingly conscious of the numerous negative factors standing in the way of the continent's progress towards economic and social development. They all recognise the interdependence of peace, security, stability, political and economic good governance and respect for human rights. They are aware that unconditional opposition to unconstitutional changes should necessarily be backstopped with deliberate efforts to organise transparent, free and fair elections. Similarly, African leaders understand that unless the imperatives of peace and good governance are taken on board, the continent's economic integration would remain illusory, and its economic progress, fragile.

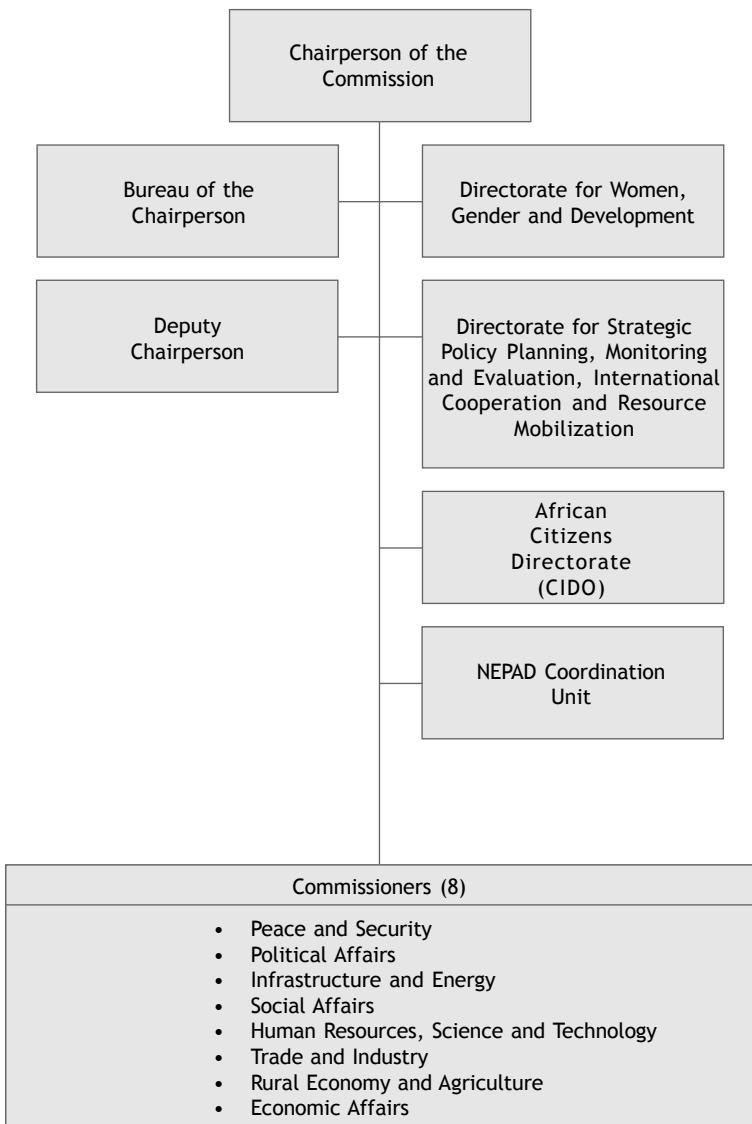
These ideas have been energetically articulated by Africans themselves at many continental (the Cairo Agenda, the CSSDCA Process, etc.) and international (TICAD Process, China-Africa Forum, United States - Africa Conference and Africa - Europe Partnership) fora; and there is currently wide consensus that, like in other regions of the world, peace and development in Africa go hand-in-hand; that peace is another name for development, and that respect for the cultural, sociological, ethnic and linguistic diversities that characterise the countries of the continent is the number one prerequisite for development.

...

Organogram: African Union



Commission of the African Union



**AFRICAN
COMMISSION ON
HUMAN AND
PEOPLES' RIGHTS**

Rules of Procedure of the African Commission on Human and Peoples' Rights (1995)

The African Commission on Human and Peoples' Rights was established under the African Charter on Human and Peoples' Rights (see above) in 1987. The Commission consists of 11 part-time commissioners and is based in Banjul, The Gambia. The Commission meets twice a year for up to two weeks at a time in regular sessions, either in The Gambia or in other African countries. For a full overview of the Commission, see Frans Viljoen 'Introduction to the African Commission and the regional human rights system' *Human Rights Law in Africa* 2004 p 385 and further. The current Rules of Procedure of the Commission, prescribing how it functions internally, were adopted by the African Commission in Praia, Cape Verde, in October 1995.

The African Commission on Human and Peoples' Rights,
Having considered the African Charter on Human and Peoples' Rights,
Acting in accordance with article 42(2) of the Charter,
Has adopted the present revised Rules of Procedure:

[PART ONE]: GENERAL PROVISIONS ORGANISATION OF THE COMMISSION

CHAPTER I: Sessions

Rule 1: Number of Sessions

The African Commission on Human and Peoples' Rights (hereinafter referred to as 'the Commission') shall hold the sessions which may be necessary to enable it to carry out satisfactorily its functions in conformity with the African Charter on Human and Peoples' Rights (hereinafter referred to as 'The Charter').

Rule 2: Opening Date

1. The Commission shall normally hold two ordinary sessions a year each lasting for about two weeks.
2. The ordinary sessions of the Commission shall be convened on a date fixed by the Commission on the proposal of its Chairman and in consultation with the Secretary-General of the Organization of African Unity (OAU) (hereinafter referred to as 'The Secretary-General').
3. The Secretary-General may change under exceptional circumstances, the opening date of a Session, in consultation with the Chairman of the Commission.

Rule 3: Extraordinary Session

1. The Commission may decide to hold extraordinary sessions. When the Commission is not in session, the Chairman may convene extraordinary sessions in consultation with the members of the Commission.
The Chairman of the Commission shall also convene extraordinary sessions:
 - (a) At the request of the majority of the members of the Commission; or
 - (b) At the request of the current Chairman of the Organization of African Unity.
2. Extraordinary sessions shall be convened as soon as possible on a date fixed by the Chairman, in consultation with the Secretary-General and the other members of the Commission.

Rule 4: Place of Meetings

The sessions shall normally be held at the Headquarters of the Commission. The Commission may, in consultation with the Secretary-General, decide to hold a Session elsewhere.

Rule 5: Notifications of the Opening Date of the Sessions

The Secretary of the Commission (hereinafter referred to as the Secretary) shall inform members of the Commission of the date and venue of the first meeting of each session. This notification shall be sent, in the case of an ordinary session, at least eight (8) weeks and, in the case of an Extraordinary Session, at least three (3) weeks, if possible, before the Session.

CHAPTER II: Agenda

Rule 6: Drawing up the Provisional Agenda

1. The Provisional Agenda for each ordinary session shall be drawn up by the Secretary in consultation with the Chairman of the Commission in accordance with the provisions of the Charter and these rules.
2. The Provisional Agenda shall include, if necessary, items on: 'Communications from States', and 'Other Communications' in conformity with the provisions of article 55 of the Charter. It should not contain any information relating to such communications.
3. Except as specified above on the communications, the Provisional Agenda shall include all the items listed by the present Rules of Procedure as well as the items proposed by:
 - (a) The Commission at a previous session;
 - (b) The Chairman of the Commission or another member of the Commission;
 - (c) A state party to the Charter;
 - (d) The Assembly of Heads of State and Government or the Council of Ministers of the Organization of African Unity;
 - (e) The Secretary-General of the Organization of African Unity on any issue relating to the functions assigned to him by the Charter;
 - (f) A national liberation movement recognised by the Organization of African Unity or by a non-governmental organisation;
 - (g) A specialised institution of which the state parties to the Charter are members.
4. The items to be included in the provisional agenda under sub paragraphs b, c, f and g of paragraph 3 must be communicated to the Secretary, accompanied by essential documents, not later than eight (8) weeks before the opening of the Session.
- 5.(a) All national liberation movements, specialised institutions, intergovernmental or non-governmental organisations wishing to propose the inclusion of an item in the Provisional Agenda must inform the Secretary at least ten (10) weeks before the opening of the meeting. Before formally proposing the inclusion of an item in the Provisional Agenda, the observations likely to be made by the Secretary must duly be taken into account.
- (b) All proposals made under the provisions of the present paragraph shall [only be included] in the Provisional Agenda of the Commission if at least two thirds (2/3) of the members present and voting so decide.
6. The Provisional Agenda of the Extraordinary Session of the Commission shall include only the item proposed to be considered at that Extraordinary Session.

Rule 7: Transmission and Distribution of the Provisional Agenda

1. The Provisional Agenda and the essential documents relating to each item shall be distributed to the members of the Commission by the Secretary who shall endeavour to transmit them to the members at least six (6) weeks before the opening of the Session.
2. The Secretary shall communicate the Provisional Agenda of that Session and have the essential documents relating to each agenda items distributed at least six weeks before the opening of the Session of the Commission to the members of the Commission, state parties to the Charter, to the current Chairman of the Organization of African Unity and observers.
3. The [provisional] Agenda shall also be sent to the specialised agencies, to non-governmental organisations and to the national liberation movements concerned with the agenda.
4. In exceptional cases the Secretary may, while giving his reasons in writing, have the essential documents relating to some items of the Provisional Agenda distributed at least four (4) weeks prior to the opening of the Session.

Rule 8: Adoption of the Agenda

At the beginning of each session, the Commission shall if necessary, after the election of officers in conformity with rule 17, adopt the agenda of the Session on the basis of the Provisional Agenda referred to in rule 6.

Rule 9: Revision of the Agenda

The Commission may, during the Session, revise the Agenda and if need be, adjourn, cancel or amend items. During the Session, only urgent and important issues may be added to the Agenda.

Rule 10: Draft Provisional Agenda for Next Session

The Secretary shall, at each session of the Commission, submit a Draft Provisional Agenda for the next session of the Commission, indicating with respect to each item, the documents to be submitted on that item and the decisions of the deliberative organ which authorised their preparation so to enable the Commission to consider these documents as regards the contribution they make to its proceedings, as well as their urgency and relevance to the prevailing situation.

CHAPTER III: Members of the Commission

Rule 11: Composition of the Commission

The Commission shall be composed of eleven (11) members elected by the Assembly of Heads of State and Government (hereinafter referred to as 'the Assembly'), in conformity with the relevant provisions of the Charter.

Rule 12: Status of the Members

1. The members of the Commission shall be the eleven (11) personalities appointed in conformity with the provisions of article 31 of the Charter.
2. Each member of the Commission shall sit on the Commission in a personal capacity. No member may be represented by another person.

Rule 13: Term of Office of the Members

1. The term of office of the members of the Commission elected on 29 July 1987 shall begin from that date. The term of office of the members of the Commission elected at subsequent elections shall take effect the day

following the expiry date of the term of office of the members of the Commission they shall replace.

2. However, if a member is re-elected at the expiry of his or her term of office, or elected to replace a member whose term of office has expired or will expire, the term of office shall begin from that expiry date.

3. In conformity with article 39(3) of the Charter, the member elected to replace a member whose term has not expired, shall complete the term of office of his or her predecessor, unless the remaining term of office is less than six (6) months. In the latter case, there shall be no replacement.

Rule 14: Cessation of Functions

1. If in the unanimous opinion of the 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.

2. In case of the death or resignation of a member of the Commission, the Chairman shall immediately inform the Secretary-General who shall declare the seat vacant from the date of the death or from that on which the resignation took effect. The member of the Commission who resigns shall address a written notification of his or her resignation directly to the Chairman or to the Secretary-General and steps to declare his or her seat vacant shall only be taken after receiving the said notification. The resignation shall make the seat vacant.

Rule 15: Vacant Seat

Every seat declared vacant in conformity with rule 14 of the present Rules of Procedure shall be filled on the basis of article 39 of the Charter.

Rule 16: Oath

Before coming into office, every member of the Commission shall make the following solemn commitment at a public sitting: 'I swear to carry out my duties well and faithfully in all impartiality'.

CHAPTER IV: Officers

Rule 17: Election of Officers

1. The Commission shall elect among its members a Chairman and Vice Chairman.

2. The elections referred to in the present rule shall be held by secret ballot. Only the members present shall vote, the member who shall obtain the two-thirds majority of the votes of the members present and voting shall be elected.

3. If no member obtains this two-thirds majority in a second, third and fourth ballot, the member having the highest number of votes at the fifth ballot shall be elected.

4. The officers of the Commission shall be elected for a period of two (2) years. They shall be eligible for re-election. None of them, may, however, exercise his or her functions if he or she ceases to be a member of the Commission.

Rule 18: Power of the Chairman

The Chairman shall carry out the functions assigned to him by the Charter, the Rules of Procedure and the decisions of the Commission. In the exercise of his functions the Chairman shall be under the authority of the Commission.

Rule 19: Absence of the Chairman

1. The Vice Chairman shall replace the Chairman during a session if the latter is unable to attend a whole or part of a sitting of a session.
2. In the absence of both the Chairman and Vice Chairman, members shall elect an acting Chairman.

Rule 20: Functions of the Vice Chairman

The Vice Chairman, acting in the capacity of the Chairman, shall have the same rights and the same duties as the Chairman.

Rule 21: Cessation of the Functions of an Officer

If any of the officers ceases to carry out his or her functions or declares that he or she is no longer able to serve as an officer or exercise the functions of a member of the Commission, a new officer shall be elected for the remaining term of office of his or her predecessor.

CHAPTER V: Secretariat

Rule 22: Functions of the Secretary-General

1. The Secretary-General or his representative may attend the meeting of the Commission. He shall neither participate in the deliberations, nor in the voting. He may, however, be called upon by the Chairman of the Commission to make written or oral statements at the sittings of the Commission.
2. He shall appoint, in consultation with the Chairman of the Commission, a Secretary of the Commission.
3. He shall, in consultation with the Chairman, provide the Commission with the necessary staff, means and services for it to carry out effectively the functions and missions assigned to it under the Charter.
4. The Secretary-General shall take all the necessary steps for the meetings of the Commission.

Rule 23: Functions of the Secretary to the Commission

The Secretary of the Commission shall be responsible for the activities of the Secretariat under the general supervision of the Chairman, and particularly:

- a. He or she shall assist the Commission and its members in the exercise of their functions;
- b. He or she shall serve as an intermediary for all the communications concerning the Commission;
- c. He or she shall be custodian of the archives of the Commission;
- d. The Secretary shall bring immediately to the knowledge of the members of the Commission all the issues that will be submitted to him or her.

Rule 24: Estimates

Before the Commission approves a proposal entailing expenses, the Secretary shall prepare and distribute, as soon as possible, to the members of the Commission, the financial implications to the proposal. It is incumbent on the Chairman to draw the attention of the members to those implications so that they discuss them when the proposal is considered by the Commission.

Rule 25: Financial Rules

The Financial Rules adopted pursuant to the provisions of articles 41 and 44 of the Charter, shall be appended to the present Rules of Procedure.

Rule 26: Financial Responsibility

The Organization of African Unity shall bear the expenses of the staff and the facilities and services placed at the disposal of the Commission to carry out its functions.

Rule 27: Records of Cases

A special record, with a reference number and initialled, in which shall be entered the date of registration of each petition and communication and that of the closure of the procedure relating to them before the Commission, shall be kept at the Secretariat.

CHAPTER VI: Subsidiary Bodies

Rule 28: Establishment of Committees and Working Groups

1. The Commission may during a session, taking into account the provisions of the Charter, establish, if it deems it necessary for the exercise of its functions, committees or working groups, composed of the members of the Commission and send them any agenda item for consideration and report.
2. These committees or working groups may, in consultation with the Secretary-General, be authorised to sit when the Commission is not in session.
3. The members of the committees or working groups shall be appointed by the Chairman subject to the approval of the absolute majority of the other members of the Commission.

Rule 29: Establishment of Sub-Commissions

1. The Commission may establish Sub-Commissions of experts after the prior approval of the Assembly.
2. Unless the Assembly decides otherwise, the Commission shall determine the functions and composition of each Sub-Commission.

Rule 30: Officers of the Subsidiary Bodies

Unless the Commission decides otherwise, the subsidiary bodies of the Commission shall elect their own officers.

Rule 31: Rules of Procedure

The Rules of Procedure of the Commission shall apply, as far as possible, to the proceedings of its subsidiary bodies.

CHAPTER VII: Public Sessions and Private Sessions

Rule 32: General Principle

The sittings of the Commission and of its subsidiary bodies shall be held in public unless the Commission decides otherwise or it appears from the relevant provisions of the Charter that the meeting shall be held in private.

Rule 33: Publication of Proceedings

At the end of each private or public sitting, the Commission or its subsidiary bodies may issue a communiqué.

CHAPTER VIII: Languages

Rule 34: Working Languages

The working languages of the Commission and of all its institutions shall be those of the Organization of African Unity.

Rule 35: Interpretation

1. The address delivered in one of the working languages shall be interpreted in the other working languages.
2. Any person addressing the Commission in a language other than one of the working languages, shall, in principle, ensure the interpretation in one of the working languages. The interpreters of the Secretariat may take the interpretation of the original language as source language for their interpretation in the other languages.

Rule 36: Languages to be Used for Minutes of Proceedings

The summary minutes of the sittings of the Commission shall be drafted in the working languages.

Rule 37: Languages to be Used for Resolutions and Other Official Decisions

All the official decisions and documents of the Commission will be rendered in the working languages.

Rule 38: Tape Recordings of the Session

The Secretariat shall record and preserve the tapes of the session of the Commission. It may also record and conserve the tapes of the sessions of the committees, working groups and sub-commissions of the Commission if the Commission so decides.

[CHAPTER IX: Minutes]

Rule 39: Summary Minutes of the Sessions

1. The Secretariat shall draft the summary minutes of the private and public sessions of the Commission and of its subsidiary bodies. It shall distribute them as soon as possible in a draft form to the members of the Commission and to all other participants in the session. All those participants may, in the thirty (30) days following the receipt of the draft minutes of the session, submit corrections to the Secretariat. The Chairman may, under special circumstances, in consultation with the Secretary-General, extend the time for the submission of the corrections.
2. In case the corrections are contested, the Chairman of the Commission or the Chairman of the subsidiary body whose minutes they are, shall resolve the disagreement after having listened to, if necessary, the tape recordings of the discussions. If the disagreement persists, the Commission or the subsidiary body shall decide. The corrections shall be published in a distinct volume after the closure of the session.

Rule 40: Distribution of the Minutes of the Private Sessions and Public Sessions

1. The final summary minutes of the public and private sessions shall be the document intended for general distribution, unless the Commission decides otherwise.
2. The minutes of the private sessions of the Commission shall be distributed forthwith to all members of the Commission.

Rule 41: Reports to be Submitted after each Session

The Commission shall submit to the current Chairman of the Organization of African Unity, a report on the deliberations of each session. This report shall contain a brief summary of the recommendations and statements on issues to which the Commission would like to draw the attention of the current Chairman and member states of the Organization of African Unity.

Rule 42: Submission of Official Decisions and Reports

The text of the decisions and reports officially adopted by the Commission shall be distributed to all members of the Commission as soon as possible.

CHAPTER X: Conduct of the Debates

Rule 43: Quorum

The quorum shall be constituted by seven (7) members of the Commission, as specified in article 42(3) of the Charter.

Rule 44: Additional Functions of the Chairman

1. In addition to the powers entrusted to him or her under other provisions of the present Rules of Procedure, the Chairman shall have the responsibility to open and close each session; he or she shall direct the debates, ensure the application of the present Rules of Procedure, grant the use of floor, submit to a vote matters under discussion and announce the result of the vote taken.
2. Subject to the provisions of the present Rules of Procedure, the Chairman shall direct the discussions of the Commission and ensure order during meetings. The Chairman may during the discussion of an agenda item, propose to the Commission to limit the time allotted to speakers, as well as the number of interventions of each speaker on the same issue and close the list of speakers.
3. He or she shall rule on the points of order. He or she shall also have the power to propose the adjournment and the closure of debates as well as the adjournment and suspension of a sitting. The debates shall deal solely with the issues submitted to the Commission and the Chairman may call a speaker, whose remarks are irrelevant to the matter under discussion, to order.

Rule 45: Points of Order

1. During the debate of any matter a member may, at any time, raise a point of order and the point of order shall be immediately decided by the Chairman, in accordance with the Rules of Procedure. If a member appeals against the decision, the appeal shall immediately be put to the vote and if the Chairman's ruling is not overruled by the majority of the members present, it shall be maintained.

2. A member raising a point of order cannot, in his or her comments, deal with the substance of the matter under discussion.

Rule 46: Adjournment of Debates

During the discussion on any matter, a member may move the adjournment of the debate on the matter under discussion. In addition to the proposer of the motion one member may speak in favour of and one against the motion after which the motion shall be immediately put to the vote.

Rule 47: Limit the Time accorded to Speakers

The Commission may limit the time accorded to each speaker on any matter, when the time allotted for debates is limited and a speaker spends more time than the time accorded, the Chairman shall immediately call him to order.

Rule 48: Closing the List of Speakers

The Chairman may, during a debate, read out the list of speakers and with the approval of the Commission, declare the list closed. Where there are no more speakers, the Chairman shall, with the approval of the Commission, declare the debate closed.

Rule 49: Closure of Debate

A member may, at any time, move for the closure of the debate on the matter under discussion, even if the other members or representatives expressed the desire to take the floor. The authorisation to take the floor on the closure of the debate shall be given only to two speakers before the closure, after which the motion shall immediately be put to the vote.

Rule 50: Suspension or Adjournment of the Meeting

During the discussion of any matter, a member may move for the suspension or adjournment of the meeting. No discussion on any such motion shall be permitted and it shall be immediately put to the vote.

Rule 51: Order of the Motions

Subject to the provisions of rule 45 of the present Rules of Procedure the following motions shall have precedence in the following order over all the other proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the item under discussion;
- (d) For the closure of the debate of the item under discussion.

Rule 52: Submission of Proposals and Amendment of Substance

Unless the Commission decides otherwise the proposals, amendments or motions of substance made by members shall be submitted in writing to the Secretariat; they shall be considered at the first sitting following their submission.

Rule 53: Decisions on Competence

Subject to the provisions of rule 45 of the Procedure, any motion tabled by a member for a decision on the competence of the Commission to adopt a proposal submitted to it shall immediately be put to the vote.

Rule 54: Withdrawal of a Proposal or a Motion

The sponsor of a motion or a proposal may still withdraw it before it is put to the vote, provided that it has not been amended. A motion or a proposal thus withdrawn may be submitted again by another member.

Rule 55: New Consideration of a Motion

When a proposal is adopted or rejected, it shall not be considered again at the same session, unless the Commission decides otherwise. When a member moves for the new consideration of a proposal, only one member may speak in favour of and one against the motion, after which it shall immediately be put to the vote.

Rule 56: Interventions

1. No member may take the floor at a meeting of the Commission without prior authorisation of the Chairman. Subject to rules 45, 48, 49 and 50 the Chairman shall grant the use of the floor to the speakers in the order in which it has been requested.

2. The debates shall deal solely with the matter submitted to the Commission and the Chairman may call to order a speaker whose remarks are irrelevant to the matter under discussion.
3. The Chairman may limit the time accorded to speakers and the number of the interventions which each member may make on the same issue, in accordance with rule 44 of the present Rules.
4. Only two members in favour and two against the motion of fixing such time limits shall be granted the use of the floor after which the motion shall immediately be put to the vote. For questions of procedure the time allotted to each speaker shall not exceed five minutes, unless the Chairman decides otherwise. When the time allotted to discussions is limited and a speaker exceeds the time accorded the Chairman shall immediately call him to order.

Rule 57: Right to Reply

The right of reply shall be granted by the Chairman to any member requesting it. The member must, while exercising this right, be as brief as possible and take the floor preferably at the end of the sitting at which this right has been requested.

Rule 58: Congratulations

The congratulations addressed to the newly elected members to the Commission shall only be presented by the Chairman or a member designated by the latter. Those addressed to the newly elected officers shall only be presented by the outgoing Chairman or a member designated by him.

Rule 59: Condolences

Condolences shall be exclusively presented by the Chairman on behalf of all the members. The Chairman may, with the consent of the Commission, send a message of condolence.

CHAPTER XI: Vote and Elections

Rule 60: Right to Vote

Each member of the Commission shall have one vote. In the case of equal number of votes the Chairman shall have a casting vote.

Rule 61: Asking for a Vote

A proposal or a motion submitted for the decision of the Commission shall be put to the vote if a member so requests. If a member asks for a vote, the Commission may adopt a proposal or a motion without a vote.

Rule 62: Required Majority

1. Except as otherwise provided by the Charter or other Rules of the present Rules of Procedure, decisions of the Commission shall be taken by a simple majority of the members present and voting.
2. For the purpose of the present Rules of Procedure, the expression 'members present and voting' shall mean members voting for or against. The members who shall abstain from voting shall be considered as non-voting members.
3. Decisions may be taken by consensus, failing which, the Commission shall resort to voting.

Rule 63: Method of Voting

1. Subject to the provisions of rule 68, the Commission, unless it otherwise decides, shall normally vote by show of hands, but any member may request

the roll-call vote, which shall be taken in the alphabetical order of the names of the members of the Commission beginning with the member whose name is drawn by lot by the Chairman. In all the votes by roll-call each member shall reply 'yes', 'no' or 'abstention'. The Commission may decide to hold a secret ballot.

2. In case of vote by roll-call, the vote of each member participating in the ballot shall be recorded in the minutes.

Rule 64: Explanation of Vote

Members may make brief statements for the only purpose of explaining their vote, before the beginning of the vote or once the vote has been taken. The member who is the sponsor of a proposal or a motion cannot explain his vote on that proposal or motion except if it has been amended.

Rule 65: Rules to be Observed while Voting

A ballot shall not be interrupted except if a member raises a point of order relating to manner in which the ballot is held. The Chairman may allow members to intervene briefly, whether before the ballot beginning or when it is closed, but solely to explain their vote.

Rule 66: Division of Proposal and Amendments

Proposals and amendments may be separated if requested. The parts of the proposals or of the amendments which have been adopted shall later be put to the vote as a whole; if all the operative parts of a proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Rule 67: Amendment

An amendment to a proposal is an addition to, deletion from or revision of part of that proposal.

Rule 68: Order of Vote on Amendments

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Commission shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all the amendments have been put to the vote. Nevertheless when the adoption of an amendment implies the rejection of another amendment, the latter shall not be put to the vote. If one or several amendments are adopted, the amended proposal shall then be put to the vote.

Rule 69: Order of Vote on the Proposals

1. If two or more proposals are made on the same matter, the Commission, unless it decides otherwise, shall vote on these proposals in the order in which they were submitted.

2. After each vote the Commission may decide whether it shall put the next proposal to the vote.

3. However, the motions which are not on the substance of the proposals shall be voted upon before the said proposals.

Rule 70: Elections

Elections shall be held by secret ballot unless the election is for a post for which only one candidate has been proposed and that candidate has been agreed upon by the members of the Commission.

CHAPTER XII: Participation of Non-Members of the Commission

Rule 71: Participation of States in the Deliberations

1. The Commission or its subsidiary bodies may invite any state to participate in the discussion of any issue that shall be of particular interest to that state.
2. A state thus invited shall have no voting right, but may submit proposals which may be put to the vote at the request of any member of the Commission or of the subsidiary body concerned.

Rule 72: Participation of Other Persons or Organisations

The Commission may invite any organisation or persons capable of enlightening it to participate in its deliberations without voting rights.

Rule 73: Participation of Specialised Institutions and Consultation with the Latter

1. Pursuant to the agreements concluded between the Organization of African Unity and the Specialised Institutions, the latter shall have the right to:
 - (a) Be represented in the public sessions of the Commission and its subsidiary bodies;
 - (b) Participate, without voting rights, through their representatives in deliberations on issues which shall be of interest to them and to submit, on these issues, proposals which may be put to vote at the request of any member of the Commission or the interested subsidiary body.
2. Before placing on the provisional agenda an issue submitted by a Specialised Institution, the Secretary-General should initiate such preliminary consultations as may be necessary, with this institution.
3. When an issue proposed for inclusion in the provisional agenda of a session, or which has been added to the agenda of a session pursuant to rule 5 of the present Rules of Procedure, contains a proposal requesting the Organization of African Unity to undertake additional activities relating to issues concerning directly one or more specialised institutions, the Secretary-General should enter into consultation with the institutions concerned and inform the Commission of the ways and means of ensuring co-ordinated utilisation of the resources of the various institutions.
4. When at a meeting of the Commission, a proposal calling upon the Organization of African Unity to undertake additional activities relating to issues directly concerning one or several specialised institutions, the Secretary-General, after consulting as far as possible the representatives of the interested institutions, should draw the attention of the Commission to the effects of that proposal.
5. Before taking a decision on the proposals mentioned above, the Commission shall make sure that the institutions concerned have been duly consulted.

Rule 74: Participation of Other Inter-Governmental Organisations

1. The Secretary shall inform, not later than 4 weeks before a session, non-governmental organisations with observer status of the days and agenda of a forthcoming session.
2. Representatives of Inter-Governmental Organisations to which the Organization of African Unity has granted permanent observer status and other Organisations recognised by the Commission, may participate, without voting rights, in the deliberations of the Commission on issues falling within the framework of the activities of these organisations.

CHAPTER XIII: Relations with and Representation of Non-Governmental Organisations

Rule 75: Representation

Non-governmental organisations, granted observer status by the Commission, may appoint authorised observers to participate in the public sessions of the Commission and of its subsidiary bodies.

Rule 76: Consultation

The Commission may consult the non-governmental organisations either directly or through one or several committees set up for this purpose. These consultations may be held at the invitation of the Commission or at the request of the organisation.

CHAPTER XIV: Publication and Distribution of the Reports and Other Official Documents of the Commission

Rule 77: Report of the Commission

Within the framework of the procedure of communications among state parties to the Charter, referred to in articles 47 and 49 of the Charter, the Commission shall submit to the Assembly a report containing, where possible, recommendations it shall deem necessary. The report shall be confidential. However, it shall be published by the Chairman of the Commission after reporting unless the Assembly directs otherwise.

Rule 78: Periodic Reports of Member States

Periodic Reports and other information submitted by state parties to the Charter as requested under article 62 of the Charter, shall be documents for general distribution. The same thing shall apply to other information supplied by a state party to the Charter, unless the Commission decides otherwise.

Rule 79: Reports on the Activities of the Commission

1. As stipulated in article 54 of the Charter, the Commission shall each year submit to the Assembly, a report on its deliberations, in which it shall include a summary of the activities.
2. The report shall be published by the Chairman after the Assembly has considered it.

Rule 80: Translation of Reports and Other Documents

The Secretary shall endeavour to translate all reports and other documents of the Commission into the working languages.

PART TWO: PROVISIONS RELATING TO THE FUNCTIONS OF THE COMMISSION

CHAPTER XV: Promotional Activities Reports Submitted by State Parties to the Charter under Article 62 of the Charter

Rule 81: Contents of Reports

1. State parties to the Charter shall submit reports in the form required by the Commission on measures they have taken to give effect to the rights recognised by the Charter and on the progress made with regard to the enjoyment of these rights. The reports should indicate, where possible, the

factors and difficulties impeding the implementation of the provisions of the Charter.

2. If a state party fails to comply with article 62 of the Charter, the Commission shall fix the date for the submission of that state party's report.
3. The Commission may, through the Secretary-General, inform state parties to the Charter of its wishes regarding the form and contents of the report to be submitted under article 62 of the Charter.

Rule 82: Transmission of the Reports

1. The Secretary may, after consultation with the Commission, communicate to the specialised institutions concerned, copies of all parts of the reports which may relate to their areas of competence, produced by member states of these institutions.
2. The Commission may invite the specialised institutions to which the Secretary has communicated parts of the report, to submit observations relating to these parts within a time limit that it may specify.

Rule 83: Submission of Reports

The Commission shall inform, as early as possible, state parties to the Charter, through the Secretary, of the opening date, duration and venue of the Session at which their respective reports shall be considered. Representatives of the state parties to the Charter may participate in the sessions of the Commission at which their reports shall be considered. The Commission may also inform a state party to the Charter from which it wanted complementary information, that it may authorise its representative to participate in a specific session. This representative should be able to reply to questions put to him or her by the Commission and make statements on reports already submitted by this state. He may also furnish additional information from his state.

Rule 84: Non-submission of Reports

1. The Secretary shall, at each session, inform the Commission of all cases of non-submission of reports or of additional information requested pursuant to rules 81 and 85 of the Rules of Procedure. In such cases, the Commission may send, through the Secretary, to the state party to the Charter concerned, a report or reminder relating to the submission of the report or additional information.
2. If, after the reminder referred to in paragraph 1 of this rule, a state party to the Charter does not submit the report or the additional information requested pursuant to rules 81 and 85 of the Rules of Procedure, the Commission shall point it out in its yearly report to the Assembly.

Rule 85: Examination of Information Contained in Reports

1. When considering a report submitted by a state party to the Charter under article 62 of the Charter, the Commission should first make sure that the report provides all the necessary information including relevant legislation pursuant to the provisions of rule 81 of the Rules of Procedure.
2. If, in the opinion of the Commission, a report submitted by a state party to the Charter, does not contain adequate information, the Commission shall request this state to furnish the additional information required, by indicating the date on which the information needed should be submitted.
3. If, following the consideration of the reports, and the information submitted by a state party to the Charter, the Commission decides that the state has not discharged some of its obligations under the Charter, it may address all general observations to the state concerned as it may deem necessary.

Rule 86: Adjournment and Transmission of the Reports

1. The Commission shall, through the Secretary, communicate to state parties to the Charter for comments, its general observations made following the consideration of the reports and the information submitted by state parties to the Charter which shall be public documents. The Commission may, when necessary fix a time limit for the submission of the comments by the state parties to the Charter.
2. The Commission may also transmit to the Assembly, the observations mentioned in paragraph 1 of this rule, accompanied by copies of the reports it has received from the state parties to the Charter as well as the comments supplied by the latter if possible.

Rule 87: Promotional Activities

1. The Commission shall adopt and carry out a programme of action which gives effect to its obligations under the Charter, particularly article 45(1).
2. The Commission shall carry out other promotional activities in member states and elsewhere on a continuing basis.
3. Each member of the Commission shall file a written report on his or her activities at each session including countries visited and organisations contacted.

CHAPTER XVI: Protection Activities
Communications from the States Parties to the Charter

SECTION I: Procedure for the Consideration of Communications Received in Conformity with Article 47 of the Charter: Procedure for Communications - Negotiations

Rule 88: Procedure

1. A communication under article 47 of the Charter should be submitted to the Secretary-General, the Chairman of the Commission and the state party concerned.
2. The communication referred to above should be in writing and contain a detailed and comprehensive statement on the actions denounced as well as the provisions of the Charter alleged to have been violated.
3. The notification of the communication to the state party to the Charter, the Secretary-General and the Chairman of the Commission shall be done through the most practicable and reliable means.

Rule 89: Register of Communications

The Secretary shall keep a permanent register for all communications received under article 47 of the Charter.

Rule 90: Reply and Time Limit

1. The reply of the state party to the Charter to which a communication is addressed should reach the requesting state party to the Charter within 3 months following the receipt of the notification of the communication.
2. It shall be accompanied particularly by:
 - (a) Written explanations, declarations or statements relating to the issues raised;
 - (b) Possible indications and measures taken to end the situation denounced;
 - (c) Indications on the law and rules of procedure applicable or applied;
 - (d) Indications on the local procedures for appeal already used, in process or still open.

Rule 91: Non-settlement of the Issue

1. If within three (3) months from the date the notification of the original communication is received by the addressee state, the issue has not been settled to the satisfaction of the two interested parties, through the selected channel of negotiation or through any other peaceful procedure selected by common consent of the parties, the issue shall be referred to the Commission, in accordance with the provisions of article 48 of the Charter.
2. The issue shall also be referred to the Commission if the addressee state party to the Charter fails to react to the request made under article 47 of the Charter, within the same 3 months' period of time.

Rule 92: Seisin [Seizing] of the Commission

At the expiration of the 3 months time limit referred to in article 47 of the Charter, and in the absence of a satisfactory reply or in case the addressee state party [fails to respond, the party] may submit the communication to the Commission through a notification addressed to its Chairman, the other interested state party and the Secretary-General.

SECTION II: Procedure for the Consideration of the Communications Received in Conformity with Articles 48 and 49 of the Charter: Procedure for Communications [and] Complaints

Rule 93: Seisin [Seizing] of the Commission

1. Any communication submitted under articles 48 and 49 of the Charter may be submitted to the Commission by any one of the interested state parties through notification addressed to the Chairman of the Commission, the Secretary-General and the state party concerned.
2. The notification referred to in paragraph 1 of the present rule shall contain information on the following elements or accompanied particularly by:
 - (a) Measures taken to try to resolve the issue pursuant to article 47 of the Charter including the text of the initial communications and any future written explanation from the interested state parties to the Charter relating to the issue;
 - (b) Measures taken to exhaust local procedure for appeal;
 - (c) Any other procedure for the international investigation or international settlement to which the interested state parties have resorted.

Rule 94: Permanent Register of Communications

The Secretary shall keep a permanent register for all communications received by the Commission under articles 48 and 49 of the Charter.

Rule 95: Seizing of the Members of the Commission

The Secretary shall immediately inform the members of the Commission of any notification received pursuant to rule 91 of the Rules of Procedure and shall send to them, as early as possible, a copy of the notification as well as the relevant information.

Rule 96: Private Session and Press Release

1. The Commission shall consider the communications referred to in articles 48 and 49 of the Charter in closed session.
2. After consulting the interested state parties to the Charter, the Commission may issue through the Secretary, releases on its private sessions for the attention of the media and the public.

Rule 97: Consideration of the Communication

The Commission shall consider a communication only when:

- (a) The procedure offered to the state parties by article 47 of the Charter has been exhausted;
- (b) The time limit set in article 48 of the Charter has expired;
- (c) The Commission is certain that all the available local remedies have been utilised and exhausted, in accordance with the generally recognised principles of international law, or that the application of these remedies is unreasonably prolonged or that there are no effective remedies.

Rule 98: Amicable Settlement

Except for the provisions of the rule 96 of the present Rules of Procedure, the Commission shall place its good offices at the disposal of the interested state parties to the Charter so as to reach an amicable solution on the issue based on the respect of human rights and fundamental liberties, as recognised by the Charter.

Rule 99: Additional Information

The Commission may through the Secretary request the state parties or one of them to communicate additional information or observations orally or in writing. The Commission shall fix a time limit for the submission of the written information or observations.

Rule 100: Representation of States Parties to the Charter

1. The state parties to the Charter concerned shall have the right to be represented during the consideration of the issue by the Commission and to submit observations orally and in writing or in either form.
2. The Commission shall notify, as soon as possible, the state parties concerned, through the Secretary, of the opening date, the duration and the venue of the session at which the issue will be examined.
3. The procedure to be followed for the presentation of oral or written observations shall be determined by the Commission.

Rule 101: Report of the Commission

1. The Commission shall adopt a report pursuant to article 52 of the Charter within 12 months, following the notification referred to in article 48 of the Charter and rule 90 of the present Rules of Procedure.
2. The provisions of paragraph 1 of rule 99 of these Rules of Procedure shall not apply to the deliberations of the Commission, relating to the adoption of the report.
3. The report referred to above shall concern the decisions and conclusions that the Commission will reach.
4. The report of the Commission shall be communicated to the state parties concerned through the Secretary.
5. The report of the Commission shall be sent to the Assembly through the Secretary-General, together with the recommendations that it shall deem useful.

CHAPTER XVII: Other Communications
Procedures for the Consideration of the Communications Received
in Conformity with Article 55 of the Charter

SECTION I: Transmission of Communications to the Commission

Rule 102: Seizing of the Commission

1. Pursuant to these Rules of Procedure, the Secretary shall transmit to the Commission the communications submitted to him for consideration by the Commission in accordance with the Charter.
2. No communications concerning a state which is not a party to the Charter shall be received by the Commission or placed on a list under rule 103 of the present rules.

Rule 103: List of Communications

1. The Secretary of the Commission shall prepare lists of communications submitted to the Commission pursuant to rule [102] above, to which he or she shall attach a brief summary to their contents and regularly cause the lists to be distributed to members of the Commission. Besides, the Secretary shall keep a permanent register of all these communications which shall be made public.
2. The full text of each communication referred to the Commission shall be communicated to each member of the Commission on request.

Rule 104: Request for Clarifications

1. The Commission, through the Secretary, may request the author of a communication to furnish clarifications on the applicability of the Charter to his or her communication, and to specify in particular:
 - (a) His name, address, age and profession by justifying his very identity, if ever he or she is requesting the communication to be kept anonymous;
 - (b) Name of the state party referred to in the communication;
 - (c) Purpose of the communication;
 - (d) Provision(s) of the Charter allegedly violated;
 - (e) The facts of the claim;
 - (f) Measures taken by the author to exhaust local remedies; or explanation why local remedies will be futile;
 - (g) The extent to which the same issue has been settled by another international investigating or settlement body.
2. When asking for clarification or information, the Commission shall fix an appropriate time limit for the author to submit the communication so as to avoid undue delay in the procedure provided for by the Charter.
3. The Commission may adopt a questionnaire for use by the author of the communication in providing the above-mentioned information.
4. The request for clarification referred to in paragraph 1 of this rule shall not prevent the inclusion of the communication on the lists mentioned in paragraph 1 of rule 102 above.

Rule 105: Distribution of Communications

For each communication recorded, the Secretary shall prepare as soon as possible, a summary of the relevant information received, which shall be distributed to the members of the Commission.

SECTION II: General Provisions Governing the Consideration of the Communications by the Commission or its Subsidiary Bodies

Rule 106: Private Sessions

The sessions of the Commission or of its subsidiary bodies during which the communications are examined as provided for in the Charter shall be private.

Rule 107: Public Sessions

The sessions during which the Commission may consider general issues, such as the application procedure of the Charter, shall be public.

Rule 108: Press Releases

The Commission may issue, through the Secretary and for the attention of the media and the public, releases on the activities of the Commission in its private session.

Rule 109: Incompatibilities

1. No member shall take part in the consideration of a communication by the Commission:
 - (a) If he or she has any personal interest in the case, or
 - (b) If he or she has participated, in any capacity, in the adoption of any decision relating to the case which is the subject of the communication.
2. Any issue relating to the application of paragraph 1 above shall be resolved by the Commission.

Rule 110: Withdrawal of a Member

If, for any reason, a member considers that he or she should not take part or continue to take part in the consideration of a communication, he or she shall inform the Chairman of his or her decision to withdraw.

Rule 111: Provisional Measures

1. Before making its final views known to the Assembly on the communication, the Commission may inform the state party concerned of its views on the appropriateness of taking provisional measures to avoid irreparable damage being caused to the victim of the alleged violation. In so doing, the Commission shall inform the state party that the expression of its views on the adoption of those provisional measures does not imply a decision on the substance of the communication.
2. The Commission, or when it is not in session, the Chairman, in consultation with other members of the Commission, may indicate to the parties any interim measure the adoption of which seems desirable in the interest of the parties or the proper conduct of the proceedings before it.
3. In case of urgency when the Commission is not in session, the Chairman in consultation with other members of the Commission, may take any necessary action on behalf of the Commission. As soon as the Commission is again in session, the Chairman shall report to it on any action taken.

Rule 112: Information to the State Party to the Charter

Prior to any substantive consideration, every communication should be made known to the state concerned through the Chairman of the Commission, pursuant to article 57 of the Charter.

SECTION III: Procedures to Determine Admissibility

Rule 113: Time Limits for Consideration of Admissibility

The Commission shall decide, as early as possible and pursuant to the following provisions, whether or not the communication shall be admissible under the Charter.

Rule 114: Order of Consideration of the Communications

1. Unless otherwise decided, the Commission shall consider the communications in the order they have been received by the Secretariat.
2. The Commission may decide, if it deems it good, to consider jointly two or more communications.

Rule 115: Working Groups

The Commission may set up one or more working groups; each composed of three of its members at most, to submit recommendations on admissibility as stipulated in article 56 of the Charter.

Rule 116: Admissibility of the Communications

The Commission shall determine questions of admissibility pursuant to article 56 of the Charter.

Rule 117: Additional Information

1. The Commission or a working group set up under rule 113 shall request the state party concerned or the author of the communication to submit in writing additional information or observations relating to the issue of admissibility of the communication. The Commission or the working group shall fix a time limit for the submission of the information or observations to avoid the issue dragging on too long.
2. A communication may be declared admissible if the state party concerned has been given the opportunity to submit the information and observations pursuant to paragraph 1 of this rule.
3. A request made under paragraph 1 of this rule should indicate clearly that the request does not mean that any decision whatsoever has been taken on the issue of admissibility.
4. However, the Commission shall decide on the issue of admissibility if the state party fails to send (a)written response within three (3) months from the date of notification of the text of the communication.

Rule 118: Decisions of the Commission on Admissibility

1. If the Commission decides that a communication is inadmissible under the Charter, it shall make its decision known as early as possible, through the Secretary to the author of the communication and, if the communication has been transmitted to a state party concerned, to that state.
2. If the Commission has declared a communication inadmissible under the Charter, it may reconsider this decision at a later date if it receives a request for reconsideration.

SECTION IV: Procedures for the Consideration of Communications

Rule 119: Proceedings

1. If the Commission decides that a communication is admissible under the Charter, its decision and text of the relevant documents shall as soon as possible, be submitted to the state party concerned, through the Secretary.

The author of the communication shall also be informed of the Commission's decision through the Secretary.

2. The state party to the Charter concerned shall, within the 3 ensuing months, submit in writing to the Commission, explanations or statements elucidating, the issue under consideration and indicating, if possible, measures it was able to take to remedy the situation.
3. All explanations or statements submitted by a state party pursuant to the present rule shall be communicated, through the Secretary, to the author of the communication who may submit in writing additional information and observations within a time limit fixed by the Commission.
4. State parties from whom explanations or statements are sought within specified times shall be informed that if they fail to comply within those times the Commission will act on the evidence before it.

Rule 120: Final Decision of the Commission

1. If the communication is admissible, the Commission shall consider it in the light of all the information that the individual and the state party concerned has submitted in writing; it shall make known its observations on this issue. To this end, the Commission may refer the communication to a working group, composed of 3 of its members at most, which shall submit recommendations to it.
2. The observations of the Commission shall be communicated to the Assembly through the Secretary-General and to the state party concerned.
3. The Assembly or its Chairman may request the Commission to conduct an in-depth study on these cases and to submit a factual report accompanied by its findings and recommendations, in accordance with the provisions of article 58(2) of the Charter. The Commission may entrust this function to a Special Rapporteur or a working group.

FINAL CHAPTER: Amendment and Suspension of the Rules of Procedure

Rule 121: Method of Amendment

Only the Commission may modify the present Rules of Procedure.

Rule 122: Method of Suspension

The Commission may suspend temporarily the application of any rule of the present Rules of Procedure, on condition that such a suspension shall not be incompatible with any applicable decision of the Commission or the Assembly or with any relevant provision of the Charter and that the proposal shall have been submitted 24 hours in advance. This condition may be set aside if no member opposes it. Such a suspension may take place only with a specific and precise object in view and should be limited to the duration necessary to achieve that aim.

Guidelines for National Periodic Reports under the African Charter (1998)

The general guidelines (adopted in 1989) for the reports for the reports that the state parties are required to submit every two years (per article 62 of the Charter) and that are considered by the African Commission are reprinted in *Human Rights Law in Africa* 2004 p 569 and further, and are also available on www.chr.up.ac.za. The African Commission adopted the simplified guidelines reprinted below as a supplement to the initial guidelines in 1998.

- ...
1. An initial report (the first report) should contain a brief history of the state, its form of government, the legal system and the relationship between the arms of government.
 2. The initial report should also include the basic documents - the constitution, the criminal code and procedure and landmark decisions on human rights.
 3. The major human rights instruments to which the state is a party and the steps taken to internalise them.
 4. How is the state party implementing the following rights protected by the Charter:
 - (a) civil and political rights;
 - (b) economic, social and cultural rights; and
 - (c) group rights?
 5. What is the state doing to improve the condition of the following groups mentioned in the Charter:
 - (a) women;
 - (b) children; and
 - (c) the disabled?
 6. What steps are being taken to protect the family and encourage its cohesion?
 7. What is being done to ensure that individual duties are observed?
 8. What are the problems encountered in implementing the Charter with regard to the political, economic or social circumstances of the state?
 9. How is the state carrying out its obligations under article 25 of the Charter - on human rights education?
 10. How is the state, as an interested party, using the Charter in its international relations, particularly in ensuring respect for it?
 11. Any other information relevant to the implementation and promotion of the Charter.

Sample Concluding Observations on a Periodic Report (2001)

The concluding observations reprinted here were adopted by the African Commission after consideration of a report submitted by Ghana in terms of the guidelines referred to above. They date from the 29th session of the African Commission, April 2001, and provide an example of how the system of reporting can function although adoption of concluding observations is not yet standard Commission practice.

Source: Secretariat of the African Commission

Positive Factors

1. The regularity with which the government of Ghana reports to the African Commission in compliance with its obligations under article 62 of the African Charter is commendable.
2. The Commission notes with appreciation that the report was submitted in March 2000 allowing enough time for its examination. This is proof of the seriousness which Ghana accords to international obligations and dialogue with the African Commission.
3. The tremendous efforts being made by the government of Ghana in disseminating and promoting human rights and introducing human rights education in school curricula are highly commendable.
4. The Commission commends the steps that the government of Ghana has taken as per its report towards eradicating harmful cultural practices like Trokosi and female genital mutilation and encourages it to continue towards their total eradication.
5. The Commission further commends the government of Ghana on its policy of free, compulsory and universal basic education.
6. The Commission commends the government of Ghana on the setting up of the National Human Rights Institution - the Commission on Human Rights and Administrative Justice.

Factors Inhibiting the Enjoyment of the Rights Under the African Charter

1. Despite the government's efforts to comply with the provisions of the Charter, it has not yet amended its domestic laws, more especially, the Constitution, to be in line with the Charter.
2. The strong gender differential in education is inhibiting the rights of the girl or child to the enjoyment of the rights under the Charter.
3. Harmful cultural practices like the banishment by traditional village authorities of teenagers who become pregnant, women who are suspected of witchcraft and its effects on these citizens, inhibits the enjoyment of the rights as set out in the Charter.
4. We note that there are inadequate measures in place to address the special needs of the vulnerable groups such as the elderly and people with disabilities.
5. We further note that the issue of vestal virgins, that is young virgins (*Trokosi*) being ceremoniously given to priests as slaves still continues in Ghana and its effects on these young girls inhibit the enjoyment of their rights under the Charter.
6. Trafficking in persons especially women and children, inhibit the enjoyment by these citizens of rights in the Charter.

Area of Concern

Though we commend Ghana for the regularity with which it submits its report, the report lacks information on the practical implementation of the provision of the Charter and the Constitution.

Recommendations

1. That the government of Ghana amends its national laws and brings them in line with the Charter.
2. The government of Ghana is advised to urgently introduce measures that will adequately address the situation of the vulnerable groups.
3. Article 270 of the Ghanaian Constitution which guarantees and insulates the institution of traditional village authorities from any control, is tantamount to institutionalising the practices of banning pregnant teenagers and people suspected of witchcraft, and as such the government of Ghana should endeavour to abolish this harmful practice. This article should be amended to enable government address this issue and eradicate this obnoxious practice.
4. The government of Ghana should strengthen its policy of free, compulsory and universal basic education, to eliminate gender differential.
5. That the government of Ghana must ensure that the Legal Aid Scheme in place serve every citizen.
6. That the government of Ghana must look into its conditions of prison with a view to bringing them in line with the Charter and International standards.
7. The government of Ghana must continue working closely with NGO's, towards making the rights under the Charter a reality for all its citizens.
8. We urge the government of Ghana to ratify, as soon as possible, the Protocol on the Establishment of the African Court and the African Charter on the Rights and Welfare of the Child.
9. The government of Ghana must urgently introduce stringent measures that will help towards the total eradication of all the harmful cultural practices that exist in Ghana.
10. The government of Ghana must further strengthen its national institutions by aiming towards enhancing their independence.

Selected Decisions of the African Commission

Under article 55 of the African Charter, the African Commission receives complaints by individuals against governments. Some examples of the decisions of the Commission in respect of these complaints are reprinted here. In most cases only excerpts are provided. The full text of the decisions reprinted here may be found in the *African Human Rights Law Reports* under the references provided (see also www.chr.up.ac.za). The first date in the reference, provided in brackets after the name of the case, refers to the date of publication of the *Reports*. After the acronym of the name of the *Reports* (AHRLR) the page number on which the decision starts may be found. The acronym for the African Commission on Human and Peoples' Rights, ACHPR, follows as well as the year in which the case was decided by the African Commission, in brackets. In respect of cases that have not yet been published in the AHRLR, the Activity Report of the African Commission in which the case was contained is cited.

Avocats Sans Frontières (on behalf of Bwampamye) v Burundi (2000) AHRLR 48 (ACHPR 2000)

In this case, the Commission found that Mr Bwampamye's right to a fair trial had been violated. Mr Bwampamye, the complainant, was sentenced to death after being found guilty of inciting public disorder. The finding focuses on issues such as legal representation and requests for adjournment, etc.

Summary of facts

...
2. On 25 September 1997, Mr Gaëtan Bwampamye was sentenced to death by the Criminal Chamber of the Appeal Court of Ngozi after being convicted for having, in Ruhoro on 21 October 1993, as author, co-author or accomplice, incited the population to commit crimes and for having, under the same circumstances, organised an attack geared towards provoking massacres and set up barricades with a view to hindering the enforcement of public order; all offences under articles 212, 417 and 425 of the Penal Code of Burundi.

...

Merits

24. Article 7(1)(c) of the Charter states that: 'Every individual shall have the right to have his cause heard. This comprises: . . . the right to defence, including the right to be defended by counsel of his choice'.

25. In its verdict of 5 October 1997, the Supreme Court of Burundi adjudged and stated:

Whereas this court is of the view that the law implies no obligation on the part of the judge to nominate a lawyer, though he may do so; whereas in the case under consideration, the accused had always been assisted by a lawyer, proof being that his 19 page written plea of 20 August was filed by his lawyer; and that they had appeared together at the public sitting; whereas, in view of such situation, the appellant has no reason to claim that the judge should appoint a lawyer for him, since he already had one who had performed all essential functions of a lawyer for him; this procedure is, therefore, also hereby rejected ...

26. The Commission recalls that the right to fair trial involves fulfilment of certain objective criteria, including the right to equal treatment, the right to defence by a lawyer, especially where this is called for by the interests of justice, as well as the obligation on the part of courts and tribunals to conform to international standards in order to guarantee a fair trial to all. The

Commission shall examine the verdict of the Ngozi Court of Appeal, as well as that of the Supreme Court in the light of the above criteria.

27. The right to equal treatment by a jurisdiction, especially in criminal matters, means, in the first place, that both the defence and the public prosecutor shall have equal opportunity to prepare and present their pleas and indictment during the trial. Simply put, they should argue their cases before the jurisdiction on an equal footing. Secondly it entails the equal treatment of all accused persons by jurisdictions charged with trying them. This does not mean that identical treatment should be meted to all accused. The idea here is the principle that when objective facts are alike, the response of the judiciary should also be similar. There is a breach of the principle of equality if judicial or administrative decisions are applied in a discriminatory manner. In the case under consideration, it is expected of the Commission to attend to the first aspect, that is, observation of the rule of equality of the means utilised by the defence and the prosecution.

28. The right to defence also implies that at each stage of the criminal proceedings, the accused and his counsel be able to reply to the indictment of the public prosecutor and in any case, to be the last to intervene before the court retires for deliberations.

29. The Ngozi Court of Appeal had on 25 September 1997 handed down a verdict sentencing Mr Bwampamye to death, thereby following the prayer of the public prosecutor, paying no heed to the accused's prayer for adjournment of the case, pleading the absence of his lawyer. The Commission holds the view that the judge should have upheld the prayer of the accused, in view of the irreversible character of the penalty involved. This was all the more imperative considering that during the 20 August 1997 hearing he had upheld the arguments of the prosecutor who had refused to proceed with his pleading claiming that he needed time to study the written plea presented by counsel for the accused. The criminal court then decided to adjourn the case to 25 September 1997. The Commission holds that by refusing to accede to the request for adjournment, the Court of Appeal violated the right to equal treatment, one of the fundamental principles of the right to fair trial.

30. The Supreme Court, in its verdict, upholds the position of the lower court judge in refusing to designate a defence lawyer as follows: 'this court is of the view that the law implies no obligation on the part of the judge to nominate a lawyer, though he may do so.' The Commission emphatically recalls that the right to legal assistance is a fundamental element of the right to fair trial, more so where the interests of justice demand it. It holds the view that, in the case under consideration, considering the gravity of the allegations brought against the accused and the nature of the penalty he faced, it was in the interest of justice for him to have the benefit of the assistance of a lawyer at each stage of the case.

...

For these reasons, the Commission:

[32.] Finds the Republic of Burundi in violation of article 7(1)(c) of the African Charter;

[33.] Requests Burundi to draw all the legal consequences of this decision; and to take appropriate measures to allow the reopening of the file and the reconsideration of the case in conformity with the laws of Burundi and the pertinent provisions of the African Charter on Human and Peoples' Rights;

[34.] Calls on Burundi to bring its criminal legislation in conformity with its treaty obligations emanating from the African Charter.

Pagnoulle (on behalf of Mazou) v Cameroon
(2000) AHRLR 57 (ACHPR 1997)

This case deals with article 7(1)(d) of the Charter which protects the right to be tried within a reasonable time.

...

Law

...

Merits

[19.] Mr Mazou has not yet had a judgment on his case brought before the Supreme Court over two years ago, without being given any reason for the delay. At the 20th session the delegation held that the case might be decided upon by the end of October 1996, but still no news of it has been forwarded to the Commission. Given that this case concerns Mr Mazou's ability to work in his profession, two years without any hearing or projected trial date constitutes a violation of article 7(1)(d) of the African Charter.

...

Ligue Camerounaise des Droits de l'Homme v Cameroon
(2000) AHRLR 61 (ACHPR 1997)

According to the African Charter, complaints should not be written in disparaging or insulting language. In this case the use of such language was one of the reasons why the Commission did not admit the case.

...

Law

Admissibility

...

[12.] Article 56(3) of the Charter reads:

Communications relating to human and peoples' rights referred to in article 55, received by the Commission, shall be considered if they: Are not written in disparaging or insulting language directed against the state concerned and its institutions or to the Organization of African Unity.

[13.] The allegations submitted by the Ligue Camerounaise are of a series of serious and massive violations of the Charter. The communication contains statements such as: 'Paul Biya must respond to crimes against humanity', '30 years of the criminal neo-colonial regime incarnated by the duo Ahidjo/Biya', 'regime of torturers', and 'government barbarisms'. This is insulting language.

...

**Commission Nationale des Droits de l'Homme et des Libertés v
Chad**
(2000) AHRLR 66 (ACHPR 1995)

In this communication, the Commission finds that the government of Chad has committed serious and massive violations because it has failed to protect those within its borders, irrespective of the fact that their attackers had not been government agents. The Commission also held that the African Charter does not allow state parties to derogate from their Charter obligations during emergency situations.

The facts

1. The communication is brought by *La Commission Nationale des Droits de l'Homme et des Libertés de la Fédération Nationale des Unions de Jeunes Avocats de France*. The complaint alleges several massive and severe violations in Chad.
2. The complaint alleges that journalists are harassed, both directly and indirectly. These attacks are often by unidentified individuals whom the complainants claim to be security service agents of the government. The government denies responsibility.
3. The complaint alleges the arbitrary arrest of several people, among those four members of the opposition party, RDP, by the security services. These people were never brought before a court, although they were eventually set free. Fifteen more people were illegally detained, but have now been liberated.
4. There are several accounts of killings, disappearances and torture. Fifteen people are reported killed, 200 wounded, and several persons tortured as a result of the civil war between the security services and other groups.
5. The communication alleges the assassination of Basso Mamadou, who was attacked by armed individuals. The minister responsible was warned of the danger to Mr Basso, but he refused to issue protection. Subsequently, the minister did not initiate investigation into the killing.
6. The communication also alleges the assassination of Joseph Betudi, Vice-President of *Ligue Tchadienne des Droits de l'Homme*. It also contains allegations of inhuman treatment of prisoners.

...

Law

17. Article 1 of the African Charter reads:

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

18. In this case, the complainant claims that not only did government agents commit violations of the African Charter, but that the state failed to protect the rights in the Charter from violation by other parties.
19. The government claims that no violations were committed by its agents, and that it had no control over violations committed by other parties, as Chad is in a state of civil war.
20. The Charter specifies in article 1 that the states parties shall not only recognise the rights, duties and freedoms adopted by the Charter, but they should also ‘undertake . . . measures to give effect to them’. In other words, if a state neglects to ensure the rights in the African Charter, this can constitute a violation, even if the state or its agents are not the immediate cause of the violation.

21. The African Charter, unlike other human rights instruments, does not allow for state parties to derogate from their treaty obligations during emergency situations. Thus, even a civil war in Chad cannot be used as an excuse by the state violating or permitting violations of rights in the African Charter.

22. In the present case, Chad has failed to provide security and stability in the country, thereby allowing serious and massive violations of human rights. The national armed forces are participants in the civil war and there have been several instances in which the government has failed to intervene to prevent the assassination and killing of specific individuals. Even where it cannot be proved that violations were committed by government agents, the government had a responsibility to secure the safety and the liberty of its citizens, and to conduct investigations into murders. Chad therefore is responsible for the violations of the African Charter.

23. The complainant claims that the events in Chad constitute violations of articles 4 (right to life), 5 (prohibition of torture, inhuman and degrading treatment), 6 (right to security of person), 7 (right to a fair trial), and [9] (right to freedom of expression).

24. In the present case, there has been no substantive response from the government of Chad, only a blanket denial of responsibility.

25. The African Commission, in several previous decisions, has set out the principle that where allegations of human rights abuse go uncontested by the government concerned, the Commission must decide on the facts provided by the complainant and treat those facts as given. This principle conforms with the practice of other international human rights adjudicatory bodies and the Commission's duty to protect human rights. Since the government of Chad does not wish to participate in a dialogue, the Commission must, regrettably, continue its consideration of the case on the basis of facts and opinions submitted by the complaints alone.

26. Thus, in the absence of a substantive response by the government, in keeping with its practice, the Commission will take its decisions based on the events alleged by the complainants.

For these reasons, the Commission:

[27.] Finds that there have been serious and massive violations of human rights in Chad;

[28.] Finds that there have been violations of articles 4, 5, 6, 7 [and 9].

**Katangese Peoples' Congress v Zaire
(2000) AHRLR 72 (ACHPR 1995)**

Here, the Commission explores the meaning of the concept of a 'peoples' right to self-determination' in the context of a group claiming the independence of Katanga from Zaire (now Democratic Republic of Congo).

1. The communication was submitted in 1992 by Mr Gerard Moke, President of the Katangese Peoples' Congress requesting the African Commission on Human and Peoples' Rights to recognise the Katangese Peoples' Congress as a liberation movement entitled to support in the achievement of indepen-

dence for Katanga; to recognise the independence of Katanga and to help secure the evacuation of Zaire from Katanga.

Law

2. The claim is brought under article 20(1) of the African Charter on Human and Peoples' Rights. There are no allegations of specific breaches of other human rights apart from the claim of the denial of self-determination.

3. All peoples have a right to self-determination. There may, however, be controversy as to the definition of peoples and the content of the right. The issue in the case is not self-determination for all Zaireoises as a people but specifically for the Katangese. Whether the Katangese consist of one or more ethnic groups is, for this purpose, immaterial and no evidence has been adduced to that effect.

4. The Commission believes that self-determination may be exercised in any of the following ways – independence, self-government, local government, federalism, confederalism, unitarism or any other form of relations that accords with the wishes of the people, but is fully cognisant of other recognised principles such as sovereignty and territorial integrity.

5. The Commission is obligated to uphold the sovereignty and territorial integrity of Zaire, a member of the OAU and a party to the African Charter on Human and Peoples' Rights.

6. In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in government as guaranteed by article 13(1) of the African Charter, the Commission holds the view that Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.

For the above reasons, the Commission:

[7.] Declares that the case holds no evidence of violations of any rights under the African Charter. The request for independence for Katanga therefore has no merit under the African Charter on Human and Peoples' Rights.

Jawara v The Gambia

(2000) AHRLR 107 (ACHPR 2000)

Democratic rule in The Gambia came to an end in 1994 when the head of state of The Gambia, President Jawara, was deposed. Jawara brought a complaint against the new government of The Gambia concerning the circumstances and consequences of the 1994 *coup d'état* that removed him from power. In deciding the case, the Commission finds, among other things, that in deposing Jawara, the new government had violated the peoples' right to self-determination.

Summary of facts

...

1. The complainant is the former Head of State of the Republic of The Gambia. He alleges that after the military *coup d'état* of July 1994 that overthrew his government, there has been 'blatant abuse of power by . . . the

military junta'. The military government is alleged to have initiated a reign of terror, intimidation and arbitrary detention.

2. The complainant further alleges the abolition of the Bill of Rights as contained in the 1970 Gambia Constitution by Military Decree no 30/31, ousting the competence of the courts to examine or question the validity of any such decree.

3. The communication alleges the banning of political parties and of ministers of the former civilian government from taking part in any political activity. The communication alleges restrictions on freedom of expression, movement and religion. These restrictions were manifested, according to the complainant, by the arrest and detention of people without charge, kidnappings, torture and the burning of a mosque.

4. He further alleges that two former ministers of the Armed Forces Provisional Ruling Council (AFPRC) were killed by the regime, asserting that the restoration of the death penalty through Decree no 52 means 'the arsenal of the AFPRC is now complete'.

5. He also alleges that not less than 50 soldiers were killed in cold blood and buried in mass graves by the military government during what the complainant terms 'a staged-managed attempted coup'. Several members of the armed forces are alleged to have been detained some for up to six months without trial, following the introduction of Decree no 3 of July 1994. This decree gives the Minister of Interior the power to detain and to extend the period of detention *ad infinitum*. The decree further prohibits the proceedings of *habeas corpus* on any detention issued under it.

6. The complainant alleges further that Decree no 45 of June 1995, the National Intelligence Agency (NIA) Decree empowers the Minister of Interior or his designate to issue search warrants and authorise interference with correspondence, be it wireless or electronic.

7. Finally, the communication alleges disregard for the judiciary and contempt of court following the regime's disregard of a court order; the imposition of retroactive legislation following the Economic Crimes (Specified Offences) Decree of 25 November 1994, thus infringing on the rule and the due process of law.

...

Law

Admissibility

22. The admissibility of communications by the Commission is governed by article 56 of the African Charter. This article lays down seven conditions that, under normal circumstances, must be fulfilled for a communication to be admissible. Of the seven, the government claims that two conditions have not been fulfilled, namely article 56(4) and 56(5).

23. Article 56(4) of the Charter requires that communications: 'Are not based exclusively on news disseminated through the mass media.'

24. The government claims that the communication should be declared inadmissible because it is based exclusively on news disseminated through the mass media, and specifically made reference to the attached letter of Captain Ebou Jallow. While it would be dangerous to rely exclusively on news disseminated from the mass media, it would be equally damaging if the Commission were to reject a communication because some aspects of it are based on news disseminated through the mass media. This is borne out of the fact that the Charter makes use of the word 'exclusively'.

25. There is no doubt that the media remains the most important, if not the only source of information. It is common knowledge that information on human rights violations is always obtained from the media. The genocide in Rwanda, the human rights abuses in Burundi, Zaire, Congo, to name but a few, were revealed by the media.

26. The issue therefore should not be whether the information was obtained from the media, but whether the information is correct. Did the complainant try to verify the truth about these allegations? Did he have the means or was it possible for him to do so, given the circumstances of his case?

27. The communication under consideration cannot be said to be based exclusively on news disseminated through the mass media, because the communication is not exclusively based on Captain Jallow's letter. The complainant alleges extrajudicial execution and has attached the names of some of those he alleges have been killed. Captain Jallow's letter made no mention of this fact.

28. Article 56(5) of the Charter states that: 'Communications ... shall be considered if they: ... Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged ...'

29. The government also claims that the author has not attempted to exhaust local remedies. The government claims that the author should have sent his complaint to the police who would in turn have investigated the allegations and prosecuted the offenders 'in a court of law'.

30. This rule is one of the most important conditions for admissibility of communications, no doubt therefore, in almost all the cases, the first requirement looked at by both the Commission and the state concerned is the exhaustion of local remedies.

31. The rationale of the local remedies rule both in the Charter and other international instruments is to ensure that before proceedings are brought before an international body, the state concerned must have had the opportunity to remedy matters through its own local system. This prevents the Commission from acting as a court of first instance rather than a body of last resort (...). Three major criteria could be deduced from the practice of the Commission in determining this rule, namely: the remedy must be available, effective and sufficient.

32. A remedy is considered available if the petitioner can pursue it without impediment; it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint.

33. The government's assertion of non-exhaustion of local remedies will therefore be looked at in this light. As aforementioned, a remedy is considered available only if the applicant can make use of it in the circumstance of his case. The applicants ... had their communications declared admissible by the Commission because the competence of the ordinary courts had been ousted either by decrees or the establishment of special tribunals.

34. The Commission has stressed that, remedies, the availability of which is not evident, cannot be invoked by the state to the detriment of the complainant. Therefore, in a situation where the jurisdiction of the courts has been ousted by decrees whose validity cannot be challenged or questioned, as is the position with the case under consideration, local remedies are deemed not only to be unavailable but also non-existent.

35. The existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which it will lack the requisite accessibility and effectiveness. Therefore, if the applicant cannot turn to the judiciary of his country because of a generalised fear for his life (or even those of his relatives), local remedies would be considered to be unavailable to him.

36. The complainant in this case had been overthrown by the military, he was tried *in absentia*, former ministers and members of parliament of his government have been detained and there was terror and fear for lives in the country. It would be an affront to common sense and logic to require the complainant to return to his country to exhaust local remedies.

37. There is no doubt that there was a generalised fear perpetrated by the regime as alleged by the complainant. This created an atmosphere not only in the mind of the author but also in the minds of right-thinking people that returning to his country at that material moment, for whatever reason, would be risky to his life. Under such circumstances, domestic remedies cannot be said to have been available to the complainant.

38. According to the established case law of the Commission, a remedy that has no prospect of success does not constitute an effective remedy. The prospect of seizing the national courts, whose jurisdiction has been ousted by decrees, in order to seek redress is nil. This fact is reinforced by the government's response of 8 March 1996, *note verbale* no PA 203/232/ 01/(97-ADJ) in which it stated that 'The Gambian government . . . does not intend to spend valuable time responding to baseless and frivolous allegations by a deposed despot . . .'

39. As to whether there were sufficient remedies, one can deduce from the above analysis that there were no remedies capable of redressing the complaints of the author.

40. Considering the fact that the regime at that material time controlled all the arms of government and had little regard for the judiciary, as was demonstrated by its disregard of a court order in the *TK Motors*' case, and considering further that the Court of Appeal of The Gambia in the case of *Pa Salla Jagne v The State*, ruled that: '[There are no longer human rights] or objective laws in the country', it would be reversing the clock of justice to request the complainant to attempt local remedies.

41. It should also be noted that the government also claims that the communication lacks 'proofs in support'. The position of the Commission has always been that a communication must establish a *prima facie* evidence of violation. It must specify the provisions of the Charter alleged to have been violated. The state also claims that the Commission is allowed under the Charter to take action only on cases which reveal a series of serious or massive violations of human rights.

42. This is an erroneous proposition. Apart from articles 47 and 49 of the Charter, which empower the Commission to consider interstate complaints, article 55 of the Charter provides for the consideration of 'Communications other than those of states parties'. Further to this, article 56 of the Charter stipulates the conditions for consideration of such communications (see also chapter XVII of the Rules of Procedure entitled 'Procedure for the Consideration of the Communications Received in Conformity with article 55 of the Charter'). In any event, the practice of the Commission has been to consider communications even if they do not reveal a series of serious or massive violations. It is out of such useful exercise that the Commission has, over the years, been able to build up its case law and jurisprudence.

43. The argument that the action of the government is in conformity with regulations previously laid down by law is unfounded. The Commission decided in its decision on communication 101/93 [*Civil Liberties Organisation (in respect of Bar Association) v Nigeria*, paragraph 15], with respect to freedom of association, that:

... competent authorities should not enact provisions which would limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.

And more importantly, the Commission in its Resolution on the Right to Freedom of Association of 1992 had also reiterated that:

The regulation of the exercise of the right to freedom of association should be consistent with states' obligations under the African Charter on Human and Peoples' Rights.

It follows that any law which is pleaded for curtailing the enjoyment of any of the rights provided for in the Charter must meet this requirement. For these reasons, the Commission declared the communications admissible.

Merits

44. The complainant alleges that by suspending the Bill of Rights in the 1970 Gambian Constitution, the government violated articles 1 and 2 of the African Charter.

45. Article 1 of the Charter provides that: ‘The member states parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Charter’, while article 2 reads: ‘Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter’.

46. Article 1 gives the Charter the legally binding character always attributed to international treaties of this sort. Therefore a violation of any provision of the Charter automatically means a violation of article 1. If a state party to the Charter fails to recognise the provisions of the same, there is no doubt that it is in violation of this article. Its violation, therefore, goes to the root of the Charter.

47. The Republic of The Gambia ratified the Charter on 6 June 1983. In its first periodic report to the Commission in 1992, the Gambian government asserted that:

Most of the rights set out in the Charter have been provided for in chapter 3, sections 13 to 30 of the 1970 Constitution ... The Constitution predicts the Gambian accession to the covenants, but in fact gave legal effect to some of the provisions of the Charter.

This therefore means that the Gambian government gave recognition to some of the provisions of the Charter (ie those contained in chapter 3 of its Constitution), and incorporated them into its domestic law.

48. By suspending chapter 3 (the Bill of Rights), the government therefore restricted the enjoyment of the rights guaranteed therein, and, by implication, the rights enshrined in the Charter.

49. It should, however, be stated that the suspension of the Bill of Rights does not *ipso facto* mean the suspension of the domestic effect of the Charter. In communication 129/94 [*Civil Liberties Organisation v Nigeria*, paragraph 17], the Commission held that ‘the obligation of the ... government ... remains, unaffected by the purported revocation of the domestic effect of the Charter.’

50. The suspension of the Bill of Rights and consequently the application of the Charter was not only a violation of article 1 but also a restriction on the enjoyment of the rights and freedoms enshrined in the Charter, thus violating article 2 of the Charter as well.

...

57. Article 6 of the Charter reads:

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.

58. The military government has not refuted the allegations of arbitrary arrests and detentions, but has defended its position by stating that, its action must be ‘studied and placed in the context of the changed circumstances in The Gambia’. It also claims that it is acting within the confines of legislation ‘previously laid down by law’, as required by the wordings of article 6 of the Charter.

59. The Commission in its decision on communication 101/93 [*Civil Liberties Organisation (in respect of Bar Association) v Nigeria*, paragraph 15] laid down a general principle with respect to freedom of association that competent authorities should not enact provisions which would limit the

exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards. This principle therefore applies not only to freedom of association but also to all other rights and freedoms. For a state to avail itself of this plea, it must show that such a law is consistent with its obligations under the Charter. The Commission finds the arrests and incommunicado detention of the aforementioned persons inconsistent with The Gambia's obligations under the Charter. They constitute arbitrary deprivation of their liberty and thus a violation of article 6 of the Charter. Decree no 3 is, therefore, contrary to the spirit of article 6.

60. Article 7(1)(d) of the Charter reads: 'Every individual shall have the right to have his cause heard. This comprises: the right to be tried within a reasonable time by an impartial court or tribunal.'

61. Given that the Minister of Interior could detain anyone without trial for up to six months, and could extend the period *ad infinitum*, his powers in this case are analogous to that of a court, and for all intents and purposes, he is more likely to use his discretion to the detriment of the detainees, who are already in a disadvantaged position. The victims will be at the mercy of the minister who, in this case, will render favour rather than vindicating a right. This power granted to the minister renders valueless the provision enshrined in article 7(1)(d) of the Charter.

62. Article 7(2) of the Charter reads:

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 ...

63. This provision is a general prohibition on retroactivity. It is to ensure that citizens at all times are fully aware of the state of the law under which they are living. The Economic Crimes (Specified Offences) Decree of 25 November 1994, which was deemed to have come into force in July 1994, is therefore a serious violation of this right.

64. Article 9 of the Charter reads: '(1) Every individual shall have the right to receive information. (2) Every individual shall have the right to express and disseminate his opinion within the law.'

65. The government did not provide any defence to the allegations of arrests, detentions, expulsions and intimidation of journalists, made by the complainant. The intimidation and arrest or detention of journalists for articles published and questions asked deprives not only the journalists of their rights to freely express and disseminate their opinions, but also the public, of the right to information. This action is clearly a breach of the provisions of article 9 of the Charter.

66. The complainant alleges that political parties have been banned, and that an independent Member of Parliament and his supporters were arrested for planning a peaceful demonstration. In addition, ministers and members of parliament in the former regime have been banned from taking part in any political activity and some of them restricted from travelling out of the country, with a maximum sentence of three years for any default.

67. The imposition of the ban on former ministers and members of parliament is in contravention of their rights to participate freely in the government of their country provided for under article 13(1) of the Charter. Article 13(1) reads:

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.

68. Also, the banning of political parties is a violation of the complainants' rights to freedom of association guaranteed under article 10(1) of the Charter. In its decision on communication 101/93 [Civil Liberties Organisation

(*in respect of Bar Association v Nigeria*, paragraph 15], the Commission stated a general principle on this right, to the effect that: competent authorities should not enact provisions which would limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards. And more importantly, the Commission in its Resolution on the Right to Freedom of Association of 1992 had also reiterated that: ‘The regulation of the exercise of the right to freedom of association should be consistent with states’ obligations under the African Charter on Human and Peoples’ Rights.’ This principle does not apply to freedom of association alone but to all other rights and freedoms enshrined in the Charter, including the right to freedom of assembly. Article 10(1) provides: ‘Every individual shall have the right to free association provided that he abides by the law.’

69. The Commission also finds the ban an encroachment on the right to freedom of assembly guaranteed by article 11 of the Charter. Article 11 reads: ‘Every individual shall have the right to assemble freely with others’.

70. The restrictions on travel placed on the former ministers and members of parliament is also a violation of their right to freedom of movement and the right of ingress and egress provided for under article 12 of the Charter. Article 12 provides:

(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.

71. Section 62 of the Gambian Constitution of 1970 provides for elections based on universal suffrage, and section 85(4) made it mandatory for elections to be held within at most five years. Since independence in 1965, The Gambia has always had a plurality of parties participating in elections. This was temporarily halted in 1994 when the military seized power.

72. The complainant alleges that the Gambian peoples’ right to self-determination has been violated. He claims that the policy that the people freely choose to determine their political status since independence has been ‘hijacked’ by the military and that the military has imposed itself on the people.

73. It is true that the military regime came to power by force, albeit, peacefully. This was not through the will of the people who, since independence have known only the ballot box, as a means of choosing their political leaders. The military *coup d'état* was therefore a grave violation of the right of Gambian people to freely choose their government as entrenched in article 20(1) of the Charter. Article 20(1) provides: ‘All peoples shall . . . freely determine their political status . . . according to the policy they have freely chosen.’ (See also the Commission’s Resolution on the Military of 1994).

74. The rights and freedoms of individuals enshrined in the Charter can only be fully realised if governments provide structures which enable them to seek redress if they are violated. By ousting the competence of the ordinary courts to handle human rights cases, and ignoring court judgments, the Gambian military government demonstrated clearly that the courts were not independent. This is a violation of article 26 of the Charter. Article 26 reads:

State 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.

For the above reasons, the Commission:

[75.] Finds the government of The Gambia in violation of the following provisions of the Charter: articles: 1, 2, 6, 7(1)(d) and (2), 9(1) and (2), 10(1), 11, 12(1) and (2), 13(1), 20(1) and 26 of the Charter, for the period within which the violations occurred;

[76.] Urges the government of The Gambia to bring its laws into conformity with the provisions of the Charter.

Ouko v Kenya
(2000) AHRLR 135 (ACHPR 2000)

In this case, the Commission focuses on the requirements posed by the Charter in respect of conditions of detention.

...

Law

Merits

20. The complainant alleges that prior to his fleeing the country, he was arrested and detained for ten months without trial at the notorious basement cells of the Secret Service Department headquarters in Nairobi.

21. The respondent state party has not contested this claim. In fact, it has not responded to the many requests made by the secretariat of the Commission. In this circumstance and following its well laid down precedent on this, the Commission accepts the facts of the complainant as the facts of the case and finds the respondent state in violation of article 6 of the Charter.

Article 6 provides:

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.

22. The complainant claims that the detention facility had a 250 watts electric bulb, which was left on throughout his ten months detention. Furthermore, that throughout his period of detention, he was denied bathroom facilities and was subjected to both physical and mental torture.

23. The Commission finds the above condition which the complainant was subjected to in contravention of the respondent state party's obligation to guarantee to the complainant the right to the respect of his dignity and freedom from inhuman and degrading treatment under article 5 in violation of the Charter. Article 5 provides:

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.

24. Such conditions and treatment also runs contrary to the minimum standards contained in the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, particularly principles 1 and 6.

25. Principle 1 provides: 'All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.' Principle 6 on the other hand states:

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

26. Although the complainant has claimed a violation of his right to freedom from torture, he has not substantiated on this claim. In the absence of such information, the Commission cannot find a violation as alleged.

27. The complainant alleges that he was forced to flee his country because of his political opinions. He details some of the events that led to his strained relationship with the government. Article 9 of the African Charter provides: '(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.'

28. The above provision guarantees to every individual the right to free expression, within the confines of the law. Implicit in this is that if such opinions are contrary to laid down laws, the affected individual or government has the right to seek redress in a court of law. Herein lies the essence of the law of defamation. This procedure has not been followed in this particular instance. Rather the government has opted to arrest and detain the complainant without trial and to subject him to a series of inhuman and degrading treatments. The Commission finds this in violation of article 9 of the Charter.

...

Achuthan and Another (on behalf of Banda and Others) v Malawi
(2000) AHRLR 144 (ACHPR 1995)

One of the complainants in this case - Vera Chirwa - would later become a member of the African Commission. The Commission here confirms that new governments are responsible for the human rights violations of their predecessors.

Law

...
7. Article 5 of the African Charter provides as follows: '... All forms of ... torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.' The conditions of over crowding and acts of beating and torture that took place in prisons in Malawi contravened this article. Aspects of the treatment of Vera and Orton Chirwa such as excessive solitary confinement, shackling within a cell, extremely poor quality food and denial of access to adequate medical care, were also in contravention of this article.

...
10. Vera and Orton Chirwa were tried before the Southern Region Traditional Court without being defended by a counsel. This constitutes a violation of article 7(1)(c) of the African Charter.

11. The Commission notes that Malawi has undergone important political change after the submission of the communications. Multiparty elections have been held, resulting in a new government. The Commission hopes that a new era of respect for the human rights of Malawi's citizens has begun.

12. Principles of international law stipulate, however, that a new government inherits the previous government's international obligations,

including the responsibility for the previous government's mismanagement. The change of government in Malawi does not extinguish the present claim before the Commission. Although the present government of Malawi did not commit the human rights abuses complained of, it is responsible for the reparation of these abuses.

...

Malawi African Association and Others v Mauritania
(2000) AHRLR 149 (ACHPR 2000)

Following a *coup d'état* in 1984, a prolonged conflict between the 'Moor' majority in the North and the 'black ethnic' majority in the South characterised political life in Mauritania. In this communication, a large group of complainants (including widows of 'disappeared' Southern men), alleges that the government was involved in concomitant violations. Issues such as slavery, the peoples' right of existence and equality and a government's responsibility for the actions of non-state actors are dealt with.

...
Admissibility

82. The Commission notes that the amnesty law adopted by the Mauritanian legislature had the effect of annulling the penal nature of the precise facts and violations of which the plaintiffs are complaining; and that the said law also had the effect of leading to the foreclosure of any judicial actions that may be brought before local jurisdictions by the victims of the alleged violations.

83. The Commission recalls that its role consists precisely in pronouncing on allegations of violations of the human rights protected by the Charter of which it is seized in conformity with the relevant provisions of that instrument. It is of the view that an amnesty law adopted with the aim of nullifying suits or other actions seeking redress that may be filed by the victims or their beneficiaries, while having force within Mauritanian national territory, cannot shield that country from fulfilling its international obligations under the Charter.

84. Also, the Islamic Republic of Mauritania, being a party to the African Charter on Human and Peoples' Rights, has no basis to deny its citizens those rights that are guaranteed and protected by an international convention, which represents the minimum on which the states parties agreed, to guarantee fundamental human freedoms. The entry into force of the Charter in Mauritania created for that country an obligation of consequence, deriving from the customary principle *pacta sunt servanda*. It consequently has the duty to adjust its legislation to harmonise it with its international obligations. And, as this Commission has previously had to emphasise,

the African Charter, unlike other human rights instruments, does not allow for state parties to derogate from their treaty obligations during emergency situations. Thus, even a situation of civil war cannot be used as an excuse by the state violating or permitting violations of rights in the African Charter.

(Cf communication 74/92 [*Commission Nationale des Droits de l'Homme et des Libertés v Chad*, paragraph 21]).

...

Merits

...

133. Communications 54/91 and 98/93 allege that a majority of the Mauritanian population is composed of slaves. The government states that slavery had been abolished under the French colonial regime. The communications also allege that freed slaves maintain traditional and close links with their former masters and that this constitutes another form of exploitation.

134. During its mission to Mauritania in June 1996, the Commission's delegation noted that it was still possible to find people considered as slaves in certain parts of the country. Though Edict no 81-234 of 9 November [1981] had officially abolished slavery in Mauritania, it was not followed by effective measures aimed at the eradication of the practice. This is why, in many cases, the descendants of slaves find themselves in the service of the masters, without any remuneration. This is due either to the lack of alternative opportunities or because they had not understood that they had been freed of all forms of servitude for many years. From all appearances, some freed slaves chose to return to their former masters. From the Commission's point of view, the state has the responsibility to ensure the effective application of the edict and thus ensure the freedom of its citizens, to carry out inquiries and initiate judicial action against the perpetrators of violations of the national legislation.

135. Independently from the justification given by the defendant state, the Commission considers, in line with the provisions of article 23(3) of the Universal Declaration of Human Rights, that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. These provisions are complemented by those of article 7 of the International Covenant on Economic, Social and Cultural Rights. In view of the foregoing, the Commission deems that there was a violation of article 5 of the Charter due to practices analogous to slavery, and emphasises that unremunerated work is tantamount to a violation of the right to respect for the dignity inherent in the human being. It furthermore considers that the conditions to which the descendants of slaves are subjected clearly constitute exploitation and degradation of man; both practices condemned by the African Charter. However, the African Commission cannot conclude that there is a practice of slavery based on these evidences before it.

136. Article 17 of the Charter stipulates that:

(2) Every individual may freely take part in the cultural life of his community. (3) The promotion and protection of morals and traditional values recognised by the community shall be the duty of the state.

137. Language is an integral part of the structure of culture; it in fact constitutes its pillar and means of expression par excellence. Its usage enriches the individual and enables him to take an active part in the community and in its activities. To deprive a man of such participation amounts to depriving him of his identity.

138. The government made it known that there is in the country an institute of national languages, for over ten years now, and that this institute teaches those languages. However, a persisting problem is the fact that many of these languages are exclusively spoken in small parts of the country and that they are not written. Communication 54/91 alleges the violation of linguistic rights but does not provide any further evidence as to how the government denies the black groups the right to speak their own languages. Information available to the Commission does not provide it a sufficient basis to determine if there has been violation of article 17.

139. Article 23 of the Charter states that: '(1) All peoples shall have the right to national and international peace and security . . .'

140. As advanced by the Mauritanian government, the conflict through which the country passed is the result of the actions of certain groups, for which it is not responsible. But in the case in question, it was indeed the Mauritanian public forces that attacked Mauritanian villages. And even if they were rebel forces, the responsibility for protection is incumbent on the Mauritanian state, which is a party to the Charter (cf the Commission's decision in communication 74/92 [*Commission Nationale des Droits de l'Homme et des Libertés v Chad*]). The unprovoked attacks on villages constitute a denial of the right to live in peace and security.

141. Article 19 provides that: '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.'

142. At the heart of the abuses alleged in the different communications is the question of the domination of one section of the population by another. The resultant discrimination against black Mauritanians is, according to the complainants (cf especially communication 54/91) the result of a negation of the fundamental principle of the equality of peoples as stipulated in the African Charter and constitutes a violation of its article 19. The Commission must however admit that the information made available to it does not allow it to establish with certainty that there has been a violation of article 19 of the Charter along the lines alleged here. It has nevertheless identified and condemned the existence of discriminatory practices against certain sectors of the Mauritanian population (cf especially paragraph 164).

For these reasons, the Commission:

[143.] Declares that, during the period 1989-1992, there were grave or massive violations of human rights as proclaimed in the African Charter; and in particular of articles 2, 4, 5 (constituting cruel, inhuman and degrading treatments), 6, 7(1)(a),(b),(c) and (d), 9(2), 10(1), 11, 12(1), 14, 16(1), 18(1), [23(1)] and 26;

[The Commission] recommends to the government:

[144.] To arrange for the commencement of an independent inquiry in order to clarify the fate of persons considered as disappeared, identify and bring to book the authors of the violations perpetrated at the time of the facts arraigned;

[145.] To take diligent measures to replace the national identity documents of those Mauritanian citizens which were taken from them at the time of their expulsion and ensure their return without delay to Mauritania as well as the restitution of the belongings looted from them at the time of the said expulsion; and to take the necessary steps for the reparation of the deprivations of the victims of the above events;

[146.] To take appropriate measures to ensure payment of a compensatory benefit to the widows and beneficiaries of the victims of the above violations;

[147.] To reinstate the rights due to the unduly dismissed and/or forcibly retired workers, with all the legal consequences appertaining thereto;

[148.] As regards the victims of degrading practices, carry out an assessment of the status of such practices in the country with a view to identifying with precision the deep-rooted causes for their persistence and to put in place a strategy aimed at their total and definitive eradication;

[149.] To take appropriate administrative measures for the effective enforcement of Ordinance no 81-234 of 9 November 1981, on the abolition of slavery in Mauritania;

[150.] The Commission assures the Mauritanian state of its full co-operation and support in the application of the above measures.

**Constitutional Rights Project (in respect of Akamu and Others) v
Nigeria**
(2000) AHRLR 180 (ACHPR 1995)

In this case special tribunals had been created for the prosecution of certain offences punishable by death. No appeal to a higher court was possible.

...

Law

...

Merits

11. ... In this case, the fundamental rights in question are those to life and liberty provided for in articles 4 and 6 of the African Charter. While punishments decreed as the culmination of a carefully conducted criminal procedure do not necessarily constitute violations of these rights, to foreclose any avenue of appeal to 'competent national organs' in criminal cases bearing such penalties clearly violates article 7(1)(a) of the African Charter, and increases the risk that severe violations may go unredressed.

12. The Robbery and Firearms (Special Provisions) Act, section 8(1), describes the constitution of the tribunals, which shall consist of three persons; one judge, one officer of the army, navy or air force and one officer of the police force. Jurisdiction has thus been transferred from the normal courts to a tribunal chiefly composed of persons belonging to the executive branch of government, the same branch that passed the Robbery and Firearms (Special Provisions) Act, whose members do not necessarily possess any legal expertise. Article 7(1)(d) of the African Charter requires the court or tribunal to be impartial. Regardless of the character of the individual members of such tribunals, its composition alone creates the appearance, if not actual lack, of impartiality. It thus violates article 7(1)(d).

For the above reasons, the Commission:

[13.] Declares that there has been a violation of article 7(a), (c) and (d) of the African Charter and recommends that the government of Nigeria should free the complainants.

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

**Civil Liberties Organisation (in respect of Bar Association) v
Nigeria**
(2000) AHRLR 186 (ACHPR 1995)

Governmental control of the Nigerian Bar Association is held to be a violation of the right of freedom of association of practicing lawyers.

1. The communication is brought by the Civil Liberties Organisation, a Nigerian non-governmental organisation, in protest against the Legal

Practitioners' [(Amendment)] Decree [no 21 of 1993]. This decree establishes a new governing body of the Nigerian Bar Association, namely the Body of Benchers. Of the 128 members of this body, only 31 are nominees of the Bar Association. The rest are nominees of the government.

2. The functions of the Body of Benchers are (1) the prescription of practising fees one tenth of which are payable every year to the Body and (2) the disciplining of legal practitioners.

3. The decree excludes recourse to the courts and makes it an offence 'to commence or maintain an action or any legal proceeding whatever relating to or connected with or arising from the exercise of any of the powers of the Body of Benchers.' The decree is retrospective.

...

Law

...

14. Article 10 of the African Charter reads: '(1) Every individual shall have the right to free association provided that he abides by the law.' Freedom of association is enunciated as an individual right and is first and foremost a duty of the state to abstain from interfering with the free formation of associations. There must always be a general capacity for citizens to join, without state interference, in associations in order to attain various ends.

15. In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.

16. The Body of Benchers is dominated by representatives of the government and has wide discretionary powers. This interference with the free association of the Nigerian Bar Association is inconsistent with the preamble of the African Charter in conjunction with UN Basic Principles on the Independence of the Judiciary and thereby constitutes a violation of article 10 of the African Charter.

For the above reasons, the Commission:

[17.] Holds that there has been a violation of articles 6, 7, and 10 of the African Charter on Human and Peoples' Rights. The decree should therefore be annulled.

Constitutional Rights Project and Another v Nigeria (2000) AHRLR 191 (ACHPR 1998)

This case deals with the Abacha government's annulment of elections considered free and fair by international observers. The annulment is found to be a violation of the rights of individual voters as well as the right of all Nigerians as a 'people' to choose their government. The Commission also finds *ad hominem* restrictions on rights (as opposed to limitations through laws of general application) to be in violation of the Charter.

...

Law

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Merits

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48. A basic premise of international human rights law is that certain standards must be constant across national borders, and governments must be held accountable to these standards. The criteria for what constitutes free and fair elections are internationally agreed upon, and international observers are put in place to apply these criteria. It would be contrary to the logic of international law if a national government with a vested interest in the outcome of an election was the final arbiter of whether the election took place in accordance with international standards. In this case the government does not even attempt to defend its decision to overrule the judgment of international observers.

49. Article 13(1) of the Charter reads:

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.

50. To participate freely in government entails, among other things, the right to vote for the representative of one's choice. An inevitable corollary of this right is that the results of the free expression of the will of the voters are respected; otherwise, the right to vote freely is meaningless. In the light of this, the annulment of the election results, which reflected the free choice of the voters, is in violation of article 13(1).

51. Article 20(1) of the Charter provides: '[All peoples] shall freely determine their political status ... according to the policy they have freely chosen.'

52. The right of a people to determine their 'political status' can be interpreted as involving the right of Nigerians to be able to choose freely those persons or party that will govern them. It is the counterpart of the right enjoyed by individuals under article 13.

53. The election at issue here, held in conditions adjudged to be free and fair by international observers, was an exercise of the right of Nigerians to freely determine this political status. The subsequent annulment of the results by the authority in power is a violation of this right of the Nigerian people.

54. Article 6 of the African Charter guarantees that:

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.

55. The government does not dispute that many people, including human rights activists and journalists, were detained without having charges brought against them and without the possibility of bail. The government maintains that 'many' of these individuals have since been released. Where individuals have been detained without charges being brought, particularly since the time of the elections, a period of now over three years, this constitutes an arbitrary deprivation of their liberty and thus violates article 6.

56. In the words of article 9 of the African Charter: '(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.'

57. The government justifies its actions with regard to the journalists and proscription of publications by reference to the 'chaotic' situation that transpired after the elections were annulled. The Commission decided, in its decision on communication 101/93 [*Civil Liberties Organisation (in respect of Bar Association) v Nigeria*, paragraph 15], with respect to freedom of association, that:

Competent authorities should not enact provisions which would limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.

58. With these words the Commission states a general principle that applies to all rights, not only the freedom of association. Government should avoid restricting rights, and take special care with regard to those rights protected by constitutional or international human rights law. No situation justifies the wholesale violation of human rights. In fact, general restrictions on rights diminish public confidence in the rule of law and are often counter-productive.

59. Given that Nigerian law contains all the traditional provisions for libel suits, a governmental proscription of a particular publication, by name, is of particular concern. *Ad hominem* legislation, that is laws made to apply to specifically one individual or legal entity, raise the acute danger of discrimination and lack of equal treatment before the law guaranteed by article 2. The proscription of *The News* thus constitutes a violation of article 9. Equally, the seizure of 50 000 copies of *Tempo* and *The News* magazine [are not] justified in the face of article 9 of the Charter.

For the above reasons, the Commission:

[60.] Holds violations of articles 1, 6, 9, 13 and [20(1)] of the African Charter;
 [61.] Appeals to the government of Nigeria to release all those who were detained for protesting against the annulment of the elections and to preserve the traditional functions of the courts by not curtailing their jurisdiction.

Media Rights Agenda and Others v Nigeria
 (2000) AHRLR 200 (ACHPR 1998)

During the Abacha dictatorship, a number of decrees purported to 'oust' the jurisdiction of the courts. This decision of the Commission deals with the implications of such 'ouster clauses'. It also deals with 'claw-back' clauses contained in the African Charter, in the context of the banning and restriction of newspapers. A 'claw-back' clause is a provision in which a right is recognised provided one abides by 'the law'. This could create the impression that the protection of the right in question is subject to any limitations imposed by national law. Here, the Commission confirms as it does in other decisions, that a domestic law limiting the right in question must comply with international standards. The Commission also places emphasis on article 27(2) of the African Charter as setting the standards for all limitations of rights. The Commission also states that public officials (including the head of state) must face a higher degree of criticism than private citizens.

1. Communications 105/93, 128/94 and 130/94 state that after the annulment of the Nigerian elections of 12 June 1993, several decrees were issued by the government. These proscribed the publication of two magazines. State officials sealed the premises of the two magazines, embarking upon frequent seizures of copies of magazines critical of its decisions and the arrest of newspaper vendors selling such magazines.
2. By decree, the government also proscribed ten newspapers published by four different media organisations. The complainant alleges that the newspapers and their operators were not previously accused of any wrongdoing either publicly or before a court of law or given any opportunity to defend themselves before their premises were sealed up on 22 July and

they were subsequently outlawed by [the Newspapers, etc (Proscription and Prohibition from Circulation)] Decree 48 of 1993, which was released on 16 August 1993.

3. The Constitution (Suspension and Modification) Decree no 107 of 17 November 1993 article 5 specifies:

No question as to the validity of this decree or any other decree made during the period 31 December 1983 to 26 August 1993 or made after the commencement of this decree or of an edict shall be entertained by a court of law in Nigeria.

4. On 16 August 1993, the government also announced the promulgation of the Newspaper Decree no 43 of 1993. By virtue of section 7 of the decree, it is an offence, punishable with either a fine of N250 000 or imprisonment for a term of seven years or both for a person to own, publish or print a newspaper not registered under the decree. The registration of existing newspapers under a previously subsisting law (the Newspaper Act) is extinguished by the decree.

5. The decision whether or not to register a newspaper is vested exclusively in the Newspapers Registration Board set up under the decree. Compliance with the formal pre-registration requirements stipulated in the decree does not guarantee registration of a newspaper because the Newspaper Registration Board has total discretion to decide whether the registration of a newspaper is 'justified having regard to the public interest'. There are no procedures for challenging the Board's decision not to register a newspaper.

6. If the Board decides to register a newspaper, N100 000 must be paid as registration fee. Furthermore, N250 000 must be deposited into a fund to meet the amount of any penalty imposed on or damages awarded against the owner, printer, or publisher of the newspaper by a court of law in the future. Under the Newspapers Act (now repealed by Decree 43), a bond for N500 with sureties was sufficient security for possible penalties or damages which might be imposed on or awarded against a newspaper.

7. Although released by the government on 16 August 1993, the decree was given a retroactive commencement date to 23 June 1993 and persons intending to own, print or publish newspapers in Nigeria were obliged to apply for registration within three weeks of the commencement of the decree (ie by 14 July 1993) after complication with pre-registration requirements, thus making all newspapers in Nigeria immediately 'illegal', and owners, printers and publishers liable to be arrested and detained.

8. Communications 128/94 and 130/94 deal specifically with the events of 2 January 1994, when 50 000 copies of *TELL* magazine were seized by heavily armed policemen and other security officers on the printer's premises. In addition, 12 films and 14 plates, used for processing, were also confiscated. *TELL* is a popular weekly magazine whose aim is to promote and protect human rights in Nigeria. That week's issue was entitled: 'The Return of Tyranny – Abacha bares his fangs.' The story involved a critical analysis of certain legislation enacted by the military government which ousts the jurisdiction of the courts. The complainant stated that no remedies were available at the local level, the jurisdiction of the courts having been ousted in considering the validity of such actions.

9. Communication 152/96 was submitted by the Constitutional Rights Project. It states that on 23 December 1995 Mr Nosa Igbor, the Editor in Chief of *TELL* magazine was arrested and detained. The Constitutional Rights Project alleges that he was not told the reason for his arrest and that no charge has been made against him. Furthermore, the Constitutional Rights Project alleges that he has been denied access to his family, doctors and lawyers and that he has received no medical help even though his health is deteriorating.

10. The Constitutional Rights Project also claims that *TELL* magazine was declared illegal and in violation of Decree no 43 of 1993 which requires all newspapers to register with the Newspaper Registration Board and to pay a pre-registration fee of N250 000 and a non-refundable fee of N100 000. These payments would be put into a fund for payment of penalties from libel actions against the owner, publisher or printer. The Constitutional Rights Project stated that Decree no 43 of 1993 had been declared null and void by two different courts, namely the Ikeja High Court on 18 November 1993, and the Lagos High Court on 5 December 1993. The Nigerian government did not appeal against these decisions.

11. In his oral arguments before the Commission, the complainants' representative emphasised that the government's prerogative to make laws for peace and good government does not entitle it to evade its obligations under international law.

The state party's response and observations

12. The government has made no written submissions in respect of this communication. At the 19th session, held in March 1995 in Ouagadougou, Burkina Faso, the government sent a delegation of several persons. Mr Chris Osah, Assistant Director General of the Legal and Treaties Department at the Ministry of Foreign Affairs, made the following statements in his presentation on the communication.

13. He stated that:

Decree no 43 of 1993 was made to underscore not only the government's sovereign rights but also its policy of free enterprise. Registration fees are payable to an independent board. It is in the public interest that all newspaper providers or publishers should ensure registration of their enterprises. The government is convinced that such registration fees are reasonable and justifiable in any democratic society. In any case, many newspapers and magazines operate although they have not registered.

14. On the ouster of the jurisdiction of the courts, the government stated that there is nothing particularly new about this. It is the nature of military regimes to provide for ouster clauses, the reasons being that for a military administration which has come in, the resources of litigation become too cumbersome for the government to do what it wants to do.

15. As for retroactive effect, the government maintained that, although the decree technically did have retroactive effect, not a single newspaper was declared illegal or harassed for violating the decree.

The complaint

16. The communications allege violations of articles 6, 7, 9, 14 and 16 of the Charter.

Procedure

...

Admissibility

47. Article 56 of the African Charter reads: 'Communications ... shall be considered if they: ... (5) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged ...'

48. Specifically, in four decisions the Commission has already taken concerning Nigeria, article 56(5) is analysed in terms of the Nigerian context

...

49. All the decrees in question in the above Communications contain 'ouster' clauses. In the case of the special tribunals, these clauses prevent the ordinary courts from taking up cases placed before the special tribunals or from entertaining any appeals from the decisions of the special tribunals (communications 60/91 and 87/93). The Legal Practitioners [(Amendment)]

Decree specifies that it cannot be challenged in the courts and that anyone attempting to do so commits a crime (communication 101/93). The Constitution Suspension and Modification Decree prohibited them from being challenged in the Nigerian courts (communication 129/94).

50. In all the cases cited above, the Commission found that the ouster clauses render local remedies non-existent, ineffective or illegal. They create a legal situation in which the judiciary can provide no check on the executive branch of government. A few courts in the Lagos district have occasionally found that they have jurisdiction; in 1995 the Court of Appeal in Lagos, relying on common law, found that courts should examine some decrees notwithstanding ouster clauses, where the decree is 'offensive and utterly hostile to rationality' (reprinted in the *Constitutional Rights Journal*). It remains to be seen whether any Nigerian courts will be courageous enough to follow this holding, and whether the government will abide by their rulings should they do so.

51. In communication 152/96 the complainant states that the Newspapers Decree no 43 of 1993 has been declared null and void by two different courts, but these decisions have not been respected by the government. This is a dramatic illustration of the futility of seeking a remedy from the Nigerian courts.

52. For these reasons, consistent with its earlier decisions, the Commission declared the communications admissible.

Merits

53. Article 9 of the African Charter reads: '(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.'

54. This article reflects the fact that freedom of expression is a basic human right, vital to an individual's personal development, his political consciousness, and participation in the conduct of public affairs in his country. The problem at hand is whether the decrees requiring the registration of newspapers, and prohibiting many of them, violate this article.

55. A payment of a registration fee and a pre-registration deposit for payment of penalty or damages is not in itself contrary to the right to the freedom of expression. The government has argued that these fees are 'justifiable in any democratic society', and the Commission does not categorically disagree.

56. However, the amount of the registration fee should not be more than necessary to ensure administrative expenses of the registration, and the pre-registration fee should not exceed the amount necessary to secure against penalties or damages against the owner, printer or publisher of the newspaper. Excessively high fees are essentially a restriction on the publication of news media. In this case, the fees required for registration, while high, are not so clearly excessive that they constitute a serious restriction.

57. Of more concern is the total discretion and finality of the decision of the Registration Board, which effectively gives the government the power to prohibit publication of any newspapers or magazines they choose. This invites censorship and seriously endangers the rights of the public to receive information, as protected by article 9(1). There has thus been a violation of article 9(1).

58. Also of serious concern is the retroactivity of the decree. The government bases its defence on the non-enforcement of this aspect of the decree. The government representative offered this defence: Article 7(2) of the Charter is very specific: 'no one may be condemned', and we are saying that no one has been condemned. Second, it says 'no penalty may be inflicted'. We are

also submitting that there has been no penalty inflicted ... We are even going further to say that more than 3/4 of the newspapers in Nigeria have [not] registered and yet nobody has taken them to court.

59. While it is reassuring to hear that no one has suffered under the retroactivity clause of the Newspapers Decree no 43, the Commission must take a stand on the issue of justice underlying article 7(2) and condemn the literal, minimalist interpretation of the Charter offered by the representative of Nigeria. Article 7(2) must be read to prohibit not only condemnation and infliction of punishment for acts which did not constitute crimes at the time they were committed, but retroactivity itself. It is expected that citizens must take the laws seriously. If laws change with retroactive effect, the rule of law is undermined since individuals cannot know at any moment if their actions are legal. For a law-abiding citizen, this is a terrible uncertainty, regardless of the likelihood of eventual punishment.

60. Furthermore, the Commission unfortunately cannot rest total confidence in the assurance that no one and no newspaper has yet suffered under the retroactivity of Decree no 43. Potential prosecution is a serious threat. An unjust but unenforced law undermines, as above, the sanctity in which the law should be held. The Commission must thus holds that Decree no 43 violates article 7(2).

61. Communication 152/96 states that two different courts have declared Decree no 43 null and void, without any result.

62. This shows not only a shocking disrespect by the Nigerian government for the judgments of the courts, it is also a violation of article 7(1). The right to have one's cause heard by competent and independent courts must naturally comprise the duty of everyone, including the state, to respect and follow these judgments.

63. [The Newspapers, etc (Proscription and Prohibition from Circulation)] Decree no 48 proscribes approximately ten newspapers published by four different media organisations without having subjected them to the due process of the law. Decree no 48 likewise permitted the newspapers and their operators to have their premises sealed without being given any opportunity to defend themselves and without previously being accused of any wrongdoing before a court of law.

64. The Commission decided, in its decision on communication 101/93 [*Civil Liberties Organisation (in respect of Bar Association) v Nigeria*, paragraph 15], with respect to freedom of association, that:

Competent authorities should not enact provisions which would limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.

65. With these words the Commission states a general principle that applies to all rights, not only to freedom of expression. Governments should avoid restricting rights, and have special care with regard to those rights protected by constitutional or international human rights law. No situation justifies the wholesale violation of human rights. In fact, general restrictions on rights diminish public confidence in the rule of law and are often counter-productive.

66. According to article 9(2) of the Charter, dissemination of opinions may be restricted by law. This does not mean that national law can set aside the right to express and disseminate one's opinions; this would make the protection of the right to express one's opinions ineffective. To allow national law to have precedent over the international law of the Charter would defeat the purpose of the rights and freedoms enshrined in the Charter. International human rights standards must always prevail over contradictory national law. Any limitation on the rights of the Charter must be in conformity with the provisions of the Charter.

67. In contrast to other international human rights instruments, the African Charter does not contain a derogation clause. Therefore limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies or special circumstances.

68. The only legitimate reasons for limitations to the rights and freedoms of the African Charter are found in article 27(2), that is that the rights of the Charter 'shall be exercised with due regard to the rights of others, collective security, morality and common interest'.

69. The reasons for possible limitations must be founded in a legitimate state interest and the evils of limitations of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained.

70. Even more important, a limitation may never have as a consequence that the right itself becomes illusory.

71. The government has provided no evidence that the prohibition was for any of the above reasons given in article 27(2). Given that Nigerian law contains all the traditional provisions for libel suits, so that individuals may defend themselves where the need arises, for the government to proscribe a particular publication, by name, is disproportionate and uncalled for. Laws made to apply specifically to one individual or legal personality raise the serious danger of discrimination and lack of equal treatment before the law guaranteed by article 3. The proscription of *The News* [sic] cannot therefore be said to be 'within the law' and constitutes a violation of article 9(2).

72. Communications 128/94 and 130/94 allege that 50 000 copies of *TELL* magazine were seized without any possibility of having the decision judged by a court of law, because of an article critical of the government.

73. In the present case, the government has provided no evidence that seizure of the magazine was for any other reason than simple criticism of the government. The article in question might have caused some debate and criticism of the government, but there seems to have been no information threatening, for example, national security or public order in it. All the legislation criticised in the article was already known to members of the public, as laws must be in order to be effective.

74. The only person whose reputation was perhaps tarnished by the article was the Head of State. However, in the lack of evidence to the contrary, it should be assumed that criticism of the government does not constitute an attack on the personal reputation of the Head of State. People who assume highly visible public roles must necessarily face a higher degree of criticism than private citizens, otherwise public debate may be stifled altogether.

75. It is important for the conduct of public affairs that opinions critical of the government be judged according to whether they represent a real danger to national security. If the government thought that this particular article represented merely an insult towards it or the Head of State, a libel action would have been more appropriate than the seizure of the whole edition of the magazine before publication. The seizure of *TELL* therefore amounts to a violation of article 9(2).

76. Article 14 of the Charter reads:

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.

77. The government did not offer any explanation for the sealing up of the premises of many publications. Those affected were not previously accused in a court of law of any wrongdoing. The right to property necessarily includes a right to have access to property of one's own and the right not for one's property to be removed. The decrees which enabled these premises to be sealed and for publications to be seized cannot be said to be 'appropriate' or in the interest of the public or the community in general. The Commission

holds a violation of article 14. In addition, the seizure of the magazines for reasons that have not been shown to be in the public need or interest also violates the right to property.

78. In his oral argument, the complainant specifically raised the ouster of the court's jurisdiction over the decrees at issue here, denied the alleged victims the right to challenge the acts which affected them. The government offered the surprising defence that '[I]t is in the nature of military regimes to provide for ouster clauses', because without such clauses the volume of litigation would make it 'too cumbersome for the government to do what it wants to do.'

79. This argument rests on the assumption that ease of government action takes precedence over the right of citizens to challenge such action. It neglects the central fact that the courts are a critical monitor of the legality of government action, which no lawful government acting in good faith should seek to evade. The courts' ability to examine government actions and, if necessary, halt those that violate human rights or constitutional provisions, is an essential protection for all citizens.

80. It is true that if national tribunals are not deprived of their powers, they will almost certainly eventually pronounce on the legality of military government itself. The government representative's argument implicitly admits what the Commission has already said in its decision on communication 102/93 [*Constitutional Rights Project and Another v Nigeria*], which is that military regimes rest on questionable legal ground. Government by force is in principle not compatible with the rights of peoples to freely determine their political future.

81. A government that governs truly in the best interest of the people, however, should have no fears of an independent judiciary. The judiciary and the executive branch of government should be partners in the good ordering of society. For a government to oust the jurisdiction of the courts on a broad scale reflects a lack of confidence in the justifiability of its own actions, and a lack of confidence in the courts to act in accordance with the public interest and rule of law.

82. The Commission must therefore reject the defence of 'the nature of military regimes' offered by the government's representative, and holds that the ouster of the court's jurisdiction violates the right to have one's cause heard, under article 7(1).

83. Article 6 of the African Charter reads:

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.

84. Communication 152/96 alleges that Mr Nosa Igiebor was arrested and detained without being told any reason and without any charges being made.

85. The government has offered no substantive response to this allegation.

86. The Commission, in several previous decisions, has set out the principle that where allegations of human rights abuses go uncontested by the government concerned, even after repeated notifications, the Commission must decide on the facts provided by the [complainant and] treat those facts as given ... Therefore the Commission finds that there has been a violation of article 6.

87. Article 7 of the African Charter reads:

(1) Every individual shall have the right to have his cause heard. This comprises:
... (c) the right to defence, including the right to be defended by counsel of his own choice ...

88. The Constitutional Rights Project alleges that Mr Nosa Igiebor was denied access to lawyers. The government has made no response to this allegation. Therefore the Commission must take a decision on the facts as presented by

the complainant. To be denied access to a lawyer is a violation of article 7(1)(c) even if there were no charges against Mr Igiebor. People who are detained in violation of the Charter must not have lesser rights than those detained in conformity with the rules in article 7.

89. Article 16 of the African Charter reads:

(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health. (2) State 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.

90. The Constitutional Rights Project alleges Mr Nosa Igiebor was denied access to doctors and that he received no medical help even though his health was deteriorating through his detention. The government has made no response to this allegation. Therefore the Commission must take a decision on the facts as presented by the complainant.

91. The responsibility of the government is heightened in cases where the individual is in its custody and therefore someone whose integrity and well-being is completely dependent on the activities of the authorities. To deny a detainee access to doctors while his health is deteriorating is a violation of article 16.

For these reasons, the Commission:

[92.] Holds a violation of article 6, [7(1)] 7(1)(c), 7(2), 9(1), 9(2), 14 and 16 of the African Charter;

[93.] Requests that the government of Nigeria take the necessary steps to bring its law into conformity with the Charter.

International Pen and Others (on behalf of Saro-Wiwa) v Nigeria
(2000) AHRLR 212 (ACHPR 1998)

A complaint against Nigeria was brought to the Commission on behalf of the Ogoni environmental activist and writer, Ken Saro-Wiwa, after he (along with eight co-defendants) was sentenced to death. The communication alleged a number of irregularities in Saro-Wiwa's trial. The Commission adopted provisional measures urging that Saro-Wiwa and the others not be executed, pending the hearing of the case by the Commission. The Nigerian military government of Abacha disregarded the Commission's request and executed Saro-Wiwa and his co-defendants.

1. These communications were submitted to the African Commission by International Pen, the Constitutional Rights Project (CRP), Interights and the Civil Liberties Organisation respectively. They were joined because they all concern the detention and trial of Kenule Beeson Saro-Wiwa, a writer and Ogoni activist, President of the Movement for the Survival of the Ogoni People. Communications 139/94 and 154/96 also complain of similar human rights violations suffered by Mr Saro-Wiwa's co-defendants, also Ogoni leaders.

...
7. On 30 and 31 October 1995, Ken Saro-Wiwa and eight of the co-defendants (Saturday Dobee, Felix Nuate, Nordu Eawo, Paul Levura, Daniel Gbokoo, Barinem Kiobel, John Kpunien and Baribor Bera) were sentenced to death, while six others including Mr Mitee were acquitted. The CRP submitted

an emergency supplement to its communication on 2 November 1995, asking the Commission to adopt provisional measures to prevent the executions.

8. The Secretariat of the Commission faxed a *note verbale* invoking interim measures under revised rule 111 of the Commission's Rules of Procedure to the Ministry of Foreign Affairs of Nigeria, the Secretary-General of the OAU, the Special Adviser (Legal) to the Head of State, the Ministry of Justice of Nigeria, and the Nigerian High Commission in The Gambia. The *note verbale* pointed out that as the case of Mr Saro-Wiwa and the others was already before the Commission, and the government of Nigeria had invited the Commission to undertake a mission to that country, during which mission the communications would be discussed, the executions should be delayed until the Commission had discussed the case with the Nigerian authorities.

9. No response to this appeal was received before the executions were carried out.

...

Law

...

Merits

79. Article 5 prohibits not only torture, but also cruel, inhuman or degrading treatment. This includes not only actions which cause serious physical or psychological suffering, but which humiliate the individual or force him or her to act against his will or conscience.

...

97. Initially, the accused were defended by a team of lawyers of their own choice. According to communication 154/96 and communication 139/94, this team withdrew from the case because of harassment, both in the conduct of the trial and in their professional and private lives outside. Communication 154/96 alleges that two of the lawyers were seriously assaulted by soldiers claiming to be acting on the instruction of the military officer responsible for the trial. On three occasions defence lawyers were arrested and detained and two of the lawyers had their offices searched. When these lawyers withdrew from the case, the harassment subsided.

98. After the withdrawal of their chosen counsel, the accused were defended by a team assigned by the tribunal. However, this team also resigned, complaining of harassment. After that, the accused declined to accept a new team appointed by the tribunal, and the court proceedings were closed without the accused having legal representation for the duration.

99. Communication 154/96 also claims that the defence was denied access to the evidence on which the prosecution was based and that files and documents which were required by the accused for their defence were removed from their residences and offices when they were searched by security forces on different occasions during the trial.

100. The government claims that:

Their [the accused's] defence team which comprised sly human rights activists such as Femi Falana and Gani Fawehinmi, known to be more disposed towards melodrama than the actual defence of their clients, inexplicably withdrew from the special tribunal at a crucial stage of the trial in order to either play to the gallery or delay and frustrate the process.

101. This statement does not contradict the allegations of communication 154/96, that two different defence teams were harassed into quitting the defence of the accused persons; it merely attributed malicious motives to the defence. The government has not responded to the allegations of withholding evidence from the defence. The Commission therefore finds itself with no alternative but to conclude that a violation of article 7(1)(c) has occurred.

102. Article 4 of the African Charter reads:

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.

103. Given that the trial which ordered the executions itself violates article 7, any subsequent implementation of sentences renders the resulting deprivation of life arbitrary and in violation of article 4. The violation is compounded by the fact that there were pending communications before the African Commission at the time of the executions, and the Commission had requested the government to avoid causing any ‘irreparable prejudice’ to the subjects of the communications before the Commission had concluded its consideration. Executions had been stayed in Nigeria in the past on the invocation by the Commission of its rule on provisional measures (rule 109, now 111) and the Commission had hoped that a similar situation would obtain in the case of Ken Saro-Wiwa and others. It is a matter of deep regret that this did not happen.

104. The protection of the right to life in article 4 also includes a duty for the state not to purposefully let a person die while in its custody. Here at least one of the victims’ lives was seriously endangered by the denial of medication during detention. Thus, there are multiple violations of article 4.

...

111. Article 16 of the Charter reads:

(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health. (2) State 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.

112. The responsibility of the government is heightened in cases where an individual is in its custody and therefore someone whose integrity and well-being is completely dependent on the actions of the authorities. The state has a direct responsibility in this case. Despite requests for hospital treatment made by a qualified prison doctor, these were denied to Ken Saro-Wiwa, causing his health to suffer to the point where his life was endangered. The government has not denied this allegation in any way. This is a violation of article 16.

113. Nigeria has been a state party to the African Charter for over a decade, and is thus bound by article 1 of the African Charter.

114. The Commission assists states parties to implement their obligations under the Charter. Rule 111 of the Commission’s Rules of Procedure of 1995 aims at preventing irreparable damage being caused to a complainant before the Commission. Execution in the face of the invocation of rule 111 defeats the purpose of this important rule. The Commission had hoped that the government of Nigeria would respond positively to its request for a stay of execution pending the former’s determination of the communication before it.

115. This is a blot on the legal system of Nigeria which will not be easy to erase. To have carried out the execution in the face of pleas to the contrary by the Commission and world opinion is something which we pray will never happen again. That it is a violation of the Charter is an understatement.

116. The Nigerian government itself recognises that human rights are no longer solely a matter of domestic concern. The African Charter was drafted and acceded to voluntarily by African States wishing to ensure the respect of human rights on this continent. Once ratified, states parties to the Charter are legally bound to its provisions. A state not wishing to abide by the African Charter might have refrained from ratification. Once legally bound, however, a state must abide by the law in the same way an individual must.

For the above reasons, the Commission:

...

[122.] Holds that in ignoring its obligations to institute provisional measures, Nigeria has violated article 1.

Constitutional Rights Project and Others v Nigeria
(2000) AHRLR 227 (ACHPR 1999)

These excerpts deal with the limitation of rights under the African Charter and property rights.

...

Law

...

Merits

35. Article 9 of the African Charter reads: '(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.'

36. Freedom of expression is a basic human right, vital to an individual's personal development and political consciousness, and participation in the conduct of public affairs in his country. Under the African Charter, this right comprises the right to receive information and express opinions.

37. The proscription of specific newspapers by name and the sealing of their premises, without a hearing at which they could defend themselves or any accusation of wrong doing, legal or otherwise, amounts to harassment of the press. Such actions not only have the effect of hindering the directly affected persons in disseminating their opinions, but also poses an immediate risk that journalists and newspapers not yet affected by any of the decrees will subject themselves to self-censorship in order to be allowed to carry on their work.

38. Decrees like these pose a serious threat to the public of the right to receive information not in accordance with what the government would like the public to know. The right to receive information is important: article 9 does not seem to permit derogation, no matter what the subject of the information or opinions and no matter the political situation of a country. Therefore, the Commission finds that the proscription of the newspapers is a violation of article 9(1).

39. The complainant argues that article 9(2) must be read as referring to 'already existing law'. The government argues that the decrees were justified by the special circumstances; the complainant invokes the constancy of international obligations.

40. According to article 9(2) of the Charter, dissemination of opinions may be restricted by law. This does not however mean that national law can set aside the right to express and disseminate one's opinions guaranteed at the international level; this would make the protection of the right to express one's opinion ineffective. To permit national law to take precedence over international law would defeat the purpose of codifying certain rights in international law and indeed the whole essence of treaty making.

41. In contrast to other international human rights instruments, the African Charter does not contain a derogation clause. Therefore limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies or special circumstances. The only legitimate reasons for

limitations of the rights and freedoms of the African Charter are found in article 27(2), that is, that the rights of the Charter 'shall be exercised with due regard to the rights of others, collective security, morality and common interest.'

42. The justification of limitations must be strictly proportionate with and absolutely necessary for the advantages which follow. Most important, a limitation may not erode a right such that the right itself becomes illusory.

43. The government has provided no concrete evidence that the proscription was for any of the above reasons given in article 27(2). It has failed to prove that proscription of the newspapers was for any reason but simple criticism of the government. If the newspapers had been guilty of libel, for example, they could have individually been sued and called upon to defend themselves. There was no substantive evidence presented that the newspapers were threatening national security or public order.

44. For the government to proscribe a particular publication, by name, is thus disproportionate and not necessary. Laws made to apply specifically to one individual or legal personality raise the serious danger of discrimination and lack of equal treatment before the law, guaranteed by article 3. The proscription of these publications cannot therefore be said to be 'within the law' and constitutes a violation of article 9(2).

...
52. The complainants also allege that the government violated proprietary rights of owners of companies by the said decrees.

53. Article 14 of the Charter reads:

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.

54. The government did not offer any explanation for the sealing up of the premises of many publications, but maintained the seizure in violation of direct court orders. Those affected were not previously accused or convicted in court of any wrongdoing. The right to property necessarily includes a right to have access to one's property and the right not to have one's property invaded or encroached upon. The decrees which permitted the Newspapers premises to be sealed up and for publications to be seized cannot be said to be 'appropriate' or in the interest of the public or the community in general. The Commission finds a violation of article 14.

For these reasons, the Commission:

[55.] Finds that there have been violations of articles 5, 6, 7(1)(a), 9(1) and (2), and 14 of the African Charter; and

[56.] Invites the government to take all necessary steps to comply with its obligations under the Charter.

Constitutional Rights Project and Another v Nigeria
(2000) AHRLR 235 (ACHPR 1999)

The suspension of the right to *habeas corpus* of detainees in the circumstances prevailing at the time in Nigeria is held to constitute a violation of the Charter.

...

Law

...

Merits

21. Article 6 of the Charter reads:

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.

22. The problem of arbitrary detention has existed for hundreds of years. The writ of *habeas corpus* was developed as the response of common law to arbitrary detention, permitting detained persons and their representatives to challenge such detention and demand that the authority either release or justify all imprisonment.

23. *Habeas corpus* has become a fundamental facet of common law legal systems. It permits individuals to challenge their detention proactively and collaterally, rather than waiting for the outcome of whatever legal proceedings may be brought against them. It is especially vital in those instances in which charges have not, or may never be, brought against the detained individual.

24. Deprivation of the right to *habeas corpus* alone does not automatically violate article 6. Indeed, if article 6 was never violated, there would be no need for *habeas corpus* provisions. However, where violation of article 6 is widespread, *habeas corpus* rights are essential in ensuring that the individuals' rights in article 6 are respected.

25. The question thus becomes whether the right to *habeas corpus*, as it has developed in common law systems, is a necessary corollary to the protection of article 6 and whether its suspension thus violates this article.

26. The African Charter should be interpreted in a culturally sensitive way, taking into full account the differing legal traditions of Africa and finding expression through the laws of each country. The government has conceded that the right to *habeas corpus* is important in Nigeria, and emphasised that it will be reinstated 'with the democratisation of society'.

27. The importance of *habeas corpus* is demonstrated by the other dimensions of communication 150/96. The government argued that no one had actually been denied the right to *habeas corpus* under the amended decree. Communication 150/96 provides a list of such individuals who are detained without charges in very poor conditions, some *incommunicado*, and are unable to challenge their detention due to the suspension of this right. The government has however made no specific response.

28. First of all, in accordance with its well-established precedent [the Commission then cites unofficial versions of earlier decisions, which are omitted here – eds], since the government has presented no defence or contrary evidence that the conditions of detention are acceptable, the Commission accepts the allegations that the conditions of detention are a violation of article 5 of the Charter, which prohibits inhuman and degrading treatment. The detention of individuals without charge or trial is a clear violation of articles 6 and 7(1)(a) and (d).

29. Furthermore, these individuals are being held *incommunicado* with no access to lawyers, doctors, friends or family. Preventing a detainee access to his lawyer clearly violates article 7(1)(c) which provides for the 'right to defence, including the right to be defended by a counsel of his choice'. It is also a violation of article 18 to prevent a detainee from communicating with his family.

30. The fact that the government refuses to release Chief Abiola, despite the order for his release on bail made by the Court of Appeal, is a violation of article 26 which obliges states parties to ensure the independence of the

judiciary. Failing to recognise a grant of bail by the Court of Appeal militates against the independence of the judiciary.

31. These circumstances dramatically illustrate how a deprivation of rights under articles 6 and 7 is compounded by the deprivation of the right to apply for a writ of *habeas corpus*. Given the history of *habeas corpus* in the common law to which Nigeria is an heir, and its acute relevance in modern Nigeria, the amended decree suspending it must be seen as a further violation of articles 6 and 7(1)(a) and (d).

32. The government argues that *habeas corpus* actions are still available to most detainees in Nigeria, and that the right to bring *habeas corpus* actions is denied only to those detained for state security reasons under Decree no 2. While this does not create a situation as serious as when all detainees were denied the right to challenge their detention, the limited application of a provision does not guarantee its compatibility with the Charter. To deny a fundamental right to a few is just as much a violation as denying it to many.

33. The government attempts to justify Decree no 14 with the necessity for state security. While the Commission is sympathetic to all genuine attempts to maintain public peace, it must note that too often extreme measures to curtail rights simply create greater unrest. It is dangerous for the protection of human rights for the executive branch of government to operate without such checks as the judiciary can usefully perform.

...

Huri-Laws v Nigeria (2000) AHRLR 273 (ACHPR 2000)

Another case emanating from the period of Abacha's dictatorship, this matter deals with harassment and persecution of a Nigerian human rights NGO, the Civil Liberties Organisation (CLO). The issues dealt with include conditions of detention, the right to a fair trial, persecution of human rights defenders, freedom of movement and the right to property.

...

Law

Merits

40. The complainant alleges a violation of article 5 of the Charter with respect to Mr Ogaga Ifowodo only. Article 5 states:

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.

It is alleged that Mr Ogaga Ifowodo was detained in a sordid and dirty cell under inhuman and degrading conditions. Also that being detained arbitrarily, not knowing the reason or duration of detention, is itself a mental trauma. Moreover, this deprivation of contact with the outside world and the health-threatening conditions amount to cruel, inhuman and degrading treatment. Principle 1 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 1988 provides: 'All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.' Further, principle 6 states:

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

It is worth noting that the term 'cruel, inhuman or degrading treatment or punishment' is to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental (see UN Body of Principles).

41. The prohibition of torture, cruel, inhuman or degrading treatment or punishment is absolute. However, as observed by the European Court of Human Rights in *Ireland v United Kingdom* when called upon to decide on a similar provision of the European Convention on Human Rights

... the treatment prohibited under article 3 of the Convention is that which attains a minimum level of severity and ... the assessment of this minimum is, in the nature of things, relative ... It depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim etc.

(Judgment of 18 January 1987, series A no 25 paragraph 162; see also the European Commission on Human Rights decision in *Jose Antonio Urrutikoetxea v France*, decision of 5 December 1996, p 157). The treatment meted out to the victim in this case constitutes a breach of the provision of article 5 of the Charter and the relevant international human rights instruments cited above. Also the denial of medical attention under health threatening conditions and access to outside world do not fall into the province of 'the respect of the dignity inherent in a human being and to the recognition of his legal status', nor is it in line with the requirement of principles 1 and 6 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This, therefore, is a breach of article 5 of the Charter.

42. The complainant alleges that the detention of Ogaga Ifowodo and Olisa Agbakoba under the State Security (Detention of Persons) Decree no 2 of 1984 (as amended in 1990) is a violation of their guaranteed right to freedom from arbitrary detention under article 6 of the Charter. This is a violation of article 6 of the Charter which provides:

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 and detained.

43. Closely related to the above violation of the article 6 provision is the violation of the victims' right to fair hearing. The complainant states that up to the date of filing this communication no reason has been given for the victims' arrest and detention, nor have any charges been pressed against them. In expounding on the guarantees of the right to fair trial under the Charter, the Commission observed in its Resolution on the Right to Recourse and Fair Trial of 1992 thus:

(2) the right to fair trial includes, among other things, the following: (b) Persons who are arrested shall be informed, at the time of arrest, in a language which they understand, of the reason for their arrest and shall be informed promptly of any charges against them.

44. The failure and/or negligence of the security agents of the respondent government to scrupulously comply with these requirements is therefore a violation of the right to fair trial as guaranteed under the African Charter.

45. The complainant alleges violation of article 7(1)(a) and (d) of the Charter in that Mr Ifowodo and Agbakoba had no legal remedies available with which they could challenge their detentions. Further, that the absolute ouster of the jurisdiction of the court to adjudicate on the legality or otherwise of acts done under the decree is a violation of the above provision, and also a contravention of article 26 of the Charter. Article 7(1) of the African Charter states:

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 violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force.

Article 7(1)(d) states: ‘Every individual shall have ... the right to be tried within reasonable time by an impartial court or tribunal.’ This is reinforced by paragraph 2(c) of the Commission’s Resolution on the Right to Recourse and Fair Trial of 1992, which provides:

Persons arrested or detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within reasonable time or to be released.

46. The refusal and/or negligence on the part of the respondent government to bring Messrs Ifowodo and Agbakoba promptly before a judge or other judicial officer for trial is therefore a violation of article 7(1)(d) of the Charter. This is also in violation of article 26 which stipulates:

State 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.

47. The complainant contends that CLO is a human rights organisation, permitting its employees the opportunity to work together towards respect for human rights through organised programmes. Such programmes are aimed at enlightening the people as to their rights. The persecution of its employees and raids of its offices in an attempt to undermine its ability to function in this regard amount to an infringement of articles 9 and 10 of the Charter providing for the rights to freedom of expression and association respectively. Article 9 of the Charter provides: ‘(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.’

48. The complaint above is therefore a violation of this provision. On the other hand, article 10 states: ‘(1) Every individual shall have the right to free association provided that he abides by the law.’ In its Resolution on the Right to Freedom of Association of 1992 , the Commission observed thus:

(1) The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standard. (2) In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom. (3) The regulation of the exercise of the right to freedom of association should be consistent with state’s obligations under the African Charter on Human and Peoples’ Rights.

49. The above actions of the respondent state constitute a violation of article 10 of the Charter.

50. The complainant alleges that the arrest and detention of Messrs Ifowodo and Agbakoba while returning from trips abroad are a violation of article 12(2) of the Charter. In this regard, it is contended that when re-entry points become sites of frequent harassment and arrest, freedom of movement is infringed. Further, the Charter provides for restrictions on the right to freedom of movement only by law for the protection of national security, law and order, public health or morality. The arrest and subsequent detentions of the two men are unjustified by any appeal to these restrictions. Articles 12(1) and (2) state:

(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.

51. The said encroachment, not being in consonance with the above restrictions, is therefore a violation of the victims' right to freedom of movement under article 12(1) and (2) of the African Charter.

52. The complainant alleges that the search without warrant of CLO's premises and the seizure of its property is a violation of article 14 of the Charter. It is contended that article 14 implies that owners have the right to undisturbed possession, use and control of their property however they deem fit. Article 14 of the African Charter provides:

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.

53. The complainant further contends that no evidence was ever offered of public need or community interest to justify the search and seizure. The said encroachment therefore is a violation of article 14 of the Charter.

54. Unfortunately, to date, the government of the Federal Republic of Nigeria has neither responded to the Commission's request for additional information or observations nor for the arguments on the merits of the case. In these circumstances, the Commission is therefore compelled to accept the facts of the complainant as the facts of this case.

Forum of Conscience v Sierra Leone
(2000) AHRLR 293 (ACHPR 2000)

The excerpts below deal with fair trial in the context of the death penalty and the right to life.

...

Law

...

Merits

...

19. The right to life is the fulcrum of all other rights. It is the fountain through which other rights flow, and any violation of this right without due process amounts to arbitrary deprivation of life. Having found above that the trial of the 24 soldiers constituted a breach of due process of law as guaranteed under article 7(1)(a) of the Charter, the Commission consequently finds their execution an arbitrary deprivation of their rights to life provided for in article 4 of the Charter. Although this process cannot bring the victims back to life, it does not exonerate the government of Sierra Leone from its obligations under the Charter.

Amnesty International and Others v Sudan
(2000) AHRLR 297 (ACHPR 1999)

In this case the Commission deals with a variety of violations of the Charter by the government of Sudan following the *coup d'état* of 1989. Violations include failure to protect civilians during a civil war, and violations of freedom of religion and speech.

...

Law

...

Merits

...

50. In addition to the individuals named in the communications, there are thousands of other executions in Sudan. Even if these are not all the work of forces of the government, the government has a responsibility to protect all people residing under its jurisdiction (see communication 74/91, [*Commission, Nationale des Droits de l'Homme et des Libertés v Chad*, paragraph 21]). Even if Sudan is going through a civil war, civilians in areas of strife are especially vulnerable and the state must take all possible measures to ensure that they are treated in accordance with international humanitarian law.

51. The investigations undertaken by the government are a positive step, but their scope and depth fall short of what is required to prevent and punish extrajudicial executions. Investigations must be carried out by entirely independent individuals, provided with the necessary resources, and their findings should be made public and prosecutions initiated in accordance with the information uncovered. Constituting a commission of the district prosecutor and police and security officials, as was the case in the 1987 Commission of Inquiry set up by the Governor of South Darfur, overlooks the possibility that police and security forces may be implicated in the very massacres they are charged to investigate. This Commission of Inquiry, in the Commission's view, by its very composition, does not provide the required guarantees of impartiality and independence.

...

55. Torture is prohibited by the Sudanese Penal Code and perpetrators punishable with up to three months imprisonment or a fine.

56. The government does not deal with these allegations in its report. The Commission appreciates the fact that the government has brought some officials to trial for torture, but the scale of the government's measures is not commensurate with the magnitude of the abuses. Punishment of torturers is important, but so also are preventive measures such as halting of *incommunicado* detention, effective remedies under a transparent, independent and efficient legal system, and ongoing investigations into allegations of torture.

57. Since the acts of torture alleged have not been refuted or explained by the government, the Commission finds that such acts illustrate, jointly and severally, government responsibility for violations of the provisions of article 5 of the African Charter.

...

69. The dismissal of over 100 judges who were opposed to the formation of special courts and military tribunals is not contested by the government. To deprive courts of the personnel qualified to ensure that they operate impartially thus denies the right to individuals to have their case heard by

such bodies. Such actions by the government against the judiciary constitute violations of articles 7(1)(d) and 26 of the Charter.

...

73. Another matter is the application of *Shari'a* law. There is no controversy as to *Shari'a* being based upon the interpretation of the Muslim religion. When Sudanese tribunals apply *Shari'a*, they must do so in accordance with the other obligations undertaken by the State of Sudan. Trials must always accord with international fair trial standards. Also, it is fundamentally unjust that religious laws should be applied against nonadherents of the religion. Tribunals that apply only *Shari'a* are thus not competent to judge non-Muslims, and everyone should have the right to be tried by a secular court if they wish.

74. It is alleged that non-Muslims were persecuted in order to cause their conversion to Islam. They do not have the right to preach or build their churches; there are restrictions on freedom of expression in the national press. Members of the Christian clergy are harassed; Christians are subjected to arbitrary arrests, expulsions and denial of access to work and food aid.

75. In its various oral and written submissions to the African Commission, the government has not responded in any convincing manner to all the allegations of human [rights violations] made against it. The Commission reiterates the principle that in such cases where the government does not respect its obligation to provide the Commission with a response to the allegations of which it is notified, it shall consider the facts probable.

76. Other allegations refer to the oppression of Christian civilians and religious leaders and the expulsion of missionaries. It is alleged that non-Muslims suffer persecution in the form of denial of work, food aid and education. A serious allegation is that of unequal food distribution in prisons, subjecting Christian prisoners to blackmail in order [to] obtain food. These attacks on individuals on account of their religious persuasion considerably restrict their ability to practice freely the religion to which they subscribe. The government provides no evidence or justifications that would mitigate this conclusion. Accordingly, the Commission holds a violation of article 8.

77. Article 9(2) of the Charter reads: 'Every individual shall have the right to express and disseminate his opinions within the law.'

78. The communications under consideration allege that persons were detained for belonging to opposition parties or trade unions. The government confirmed that the 'Decree on Process and Transitional Powers Act 1989', promulgated on 30 June 1989, stipulates in section 7 that during a state of emergency any form of political opposition by any means to the regime of the Revolution for National Salvation is prohibited where there is 'imminent and grave threat to the security of the country, public safety, independence of the state or territorial integrity and economic stability'.

...

80. The Commission has established the principle that where it is necessary to restrict rights, the restriction should be as minimal as possible and not undermine fundamental rights guaranteed under international law (communication 101/93 [*Civil Liberties Organisation (in respect of Bar Association v Nigeria]*]). Any restrictions on rights should be the exception. The government here has imposed a blanket restriction on the freedom of expression. This constitutes a violation of the spirit of article 9(2).

**Social and Economic Rights Action Centre (SERAC) and
Another v Nigeria
(2001) AHRLR 60 (ACHPR 2001)**

This is probably the best known case of the African Commission, and is reprinted here in full. The complaint concerns the consequences of environmental degradation in Ogoniland (in the Niger Delta of Nigeria) caused by Shell Corporation in collusion with the Nigerian government. In its decision the Commission deals with the obligation of the state to ensure the realisation of rights (also by private parties). The decision also deals with socio-economic rights provided for in the African Charter, and finds some 'implied socio-economic rights' in the Charter.

Summary of facts

1. The communication alleges that the military government of Nigeria has been directly involved in oil production through the state oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC), and that these operations have caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni people.
2. The communication alleges that the oil consortium has exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways in violation of applicable international environmental standards. The consortium also neglected and/or failed to maintain its facilities causing numerous avoidable spills in the proximity of villages. The resulting contamination of water, soil and air has had serious short- and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, increased risk of cancers, and neurological and reproductive problems.
3. The communication alleges that the Nigerian government has condoned and facilitated these violations by placing the legal and military powers of the state at the disposal of the oil companies. The communication contains a memo from the Rivers State Internal Security Task Force, calling for 'ruthless military operations'.
4. The communication alleges that the government has neither monitored the operations of the oil companies nor required safety measures that are standard procedure within the industry. The government has withheld from the Ogoni communities information on the dangers created by oil activities. Ogoni communities have not been involved in the decisions affecting the development of Ogoniland.
5. The government has not required oil companies or its own agencies to produce basic health and environmental impact studies regarding hazardous operations and materials relating to oil production, despite the obvious health and environmental crisis in Ogoniland. The government has even refused to permit scientists and environmental organisations from entering Ogoniland to undertake such studies. The government has also ignored the concerns of Ogoni communities regarding oil development, and has responded to protests with massive violence and executions of Ogoni leaders.
6. The communication alleges that the Nigerian government does not require oil companies to consult communities before beginning operations, even if the operations pose direct threats to community or individual lands.

7. The communication alleges that in the course of the last three years, Nigerian security forces have attacked, burned and destroyed several Ogoni villages and homes under the pretext of dislodging officials and supporters of the Movement of the Survival of Ogoni People (MOSOP). These attacks have come in response to MOSOP's non-violent campaign in opposition to the destruction of their environment by oil companies. Some of the attacks have involved uniformed combined forces of the police, the army, the air force, and the navy, armed with armoured tanks and other sophisticated weapons. In other instances, the attacks have been conducted by unidentified gunmen, mostly at night. The military-type methods and the calibre of weapons used in such attacks strongly suggest the involvement of the Nigerian security forces. The complete failure of the government of Nigeria to investigate these attacks, let alone punish the perpetrators, further implicates the Nigerian authorities.

8. The Nigerian army has admitted its role in the ruthless operations which have left thousands of villagers homeless. The admission is recorded in several memos exchanged between officials of the SPDC and the Rivers State Internal Security Task Force, which has devoted itself to the suppression of the Ogoni campaign. One such memo calls for 'ruthless military operations' and 'wasting operations coupled with psychological tactics of displacement'. At a public meeting recorded on video, Major Okuntimo, head of the Task Force, described the repeated invasion of Ogoni villages by his troops, how unarmed villagers running from the troops were shot from behind, and the homes of suspected MOSOP activists were ransacked and destroyed. He stated his commitment to rid the communities of members and supporters of MOSOP.

9. The communication alleges that the Nigerian government has destroyed and threatened Ogoni food sources through a variety of means. The government has participated in irresponsible oil development that has poisoned much of the soil and water upon which Ogoni farming and fishing depended. In their raids on villages, Nigerian security forces have destroyed crops and killed farm animals. The security forces have created a state of terror and insecurity that has made it impossible for many Ogoni villagers to return to their fields and animals. The destruction of farm lands, rivers, crops and animals has created malnutrition and starvation among certain Ogoni communities.

The complaint

10. The communication alleges violations of articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter.

Procedure

11. The communication was received by the Commission on 14 March 1996. The documents were sent with a video.

12. On 13 August 1996 letters acknowledging receipt of the communication were sent to both complainants.

13. On 13 August 1996, a copy of the communication was sent to the government of Nigeria.

14. At the 20th ordinary session held in Grand Bay, Mauritius, in October 1996, the Commission declared the communication admissible, and decided that it would be taken up with the relevant authorities by the planned mission to Nigeria.

15. On 10 December 1996, the Secretariat sent a *note verbale* and letters to this effect to the government and the complainants respectively.

16. At its 21st ordinary session held in April 1997, the Commission postponed taking a decision on the merits to the next session, pending the receipt of

written submissions from the complainants to assist it in its decision. The Commission also awaits further analysis of its report of the mission to Nigeria.

17. On 22 May 1997, the complainants were informed of the Commission's decision, while the state was informed on 28 May 1997.

18. At the 22nd ordinary session, the Commission postponed taking a decision on the case pending the discussion of the Nigerian mission report.

19. At the 23rd ordinary session held in Banjul, The Gambia, the Commission postponed consideration of the case to the next session owing to lack of time.

20. On 25 June 1998, the Secretariat of the Commission sent letters to all parties concerned informing them of the status of the communication.

21. At the 24th ordinary session, the Commission postponed consideration of the above communication to the next session.

22. On 26 November 1998, the parties were informed of the Commission's decision.

23. At the 25th ordinary session of the Commission held in Bujumbura, Burundi, the Commission further postponed consideration of this communication to the 26th ordinary session.

24. The above decision was conveyed through separate letters of 11 May 1999 to the parties.

25. At its 26th ordinary session held in Kigali, Rwanda, the Commission deferred taking a decision on the merits of the case to the next session.

26. This decision was communicated to the parties on 24 January 2000.

27. Following the request of the Nigerian authorities through a *note verbale* of 16 February 2000 on the status of pending communications, the Secretariat, among other things, informed the government that this communication was set down for a decision on the merits at the next session.

28. At the 27th ordinary session of the Commission, held in Algeria from 27 April to 11 May 2000, the Commission deferred further consideration of the case to the 28th ordinary session.

29. The above decision was communicated to the parties on 12 July 2000.

30. At the 28th ordinary session of the Commission held in Cotonou, Benin, from 26 October to 6 November 2000, the Commission deferred further consideration of the case to the next session. During that session, the respondent state submitted a *note verbale* describing the actions taken by the government of the Federal Republic of Nigeria in respect of all the communications filed against it, including the present one. In respect of the instant communication, the *note verbale* admitted the gravamen of the complaints but went on to describe the remedial measures being taken by the new civilian administration. They included:

- Establishing, for the first time in the history of Nigeria, a Federal Ministry of Environment with adequate resources to address environment-related issues prevalent in Nigeria and as a matter of priority in the Niger delta area
- Enacting into law the establishment of the Niger Delta Development Commission (NDDC) with adequate funding to address the environmental and social problems of the Niger delta area and other oil producing areas of Nigeria
- Inaugurating the Judicial Commission of Inquiry to investigate the issues of human rights violations. In addition, the representatives of the Ogoni people have submitted petitions to the Commission of Inquiry on these issues and these are presently being reviewed in Nigeria as a top priority.

31. The above decision was communicated to the parties on 14 November 2000.

32. At the 29th ordinary session held in Tripoli, Libya, from 23 April to 7 May 2001, the Commission decided to defer the final consideration of the case to the next session to be held in Banjul, The Gambia, in October 2001.

33. The above decision was communicated to the parties on 6 June 2001.

34. At its 30th session held in Banjul, The Gambia, from 13 to 27 October 2001, the African Commission reached a decision on the merits of this communication.

Law

Admissibility

35. Article 56 of the African Charter governs admissibility. All of the conditions of this article are met by the present communication. Only the exhaustion of local remedies requires close scrutiny.

36. Article 56(5) requires that local remedies, if any, be exhausted, unless these are unduly prolonged.

37. One purpose of the exhaustion of local remedies requirement is to give the domestic courts an opportunity to decide upon cases before they are brought to an international forum, thus avoiding contradictory judgments of law at the national and international levels. Where a right is not covered by domestic law, it is unlikely that the case will be heard. Thus the potential of conflict does not arise. Likewise, if the right is not acknowledged, there cannot be effective remedial action or any remedial action at all.

38. Another rationale for the exhaustion requirement is that a government should be notified of a human rights violation in order to have the opportunity to remedy such violation before being called to account by an international tribunal. (See the Commission's decision on communications 25/89, 47/90, 56/91 and 100/93 [*Free Legal Assistance Group and Others v Zaire* (2000) AHRLR 74 (ACHPR 1995)]). The exhaustion of domestic remedies requirement should be properly understood to ensure that the state concerned has ample opportunity to remedy the situation pertaining to the applicant's complaint. It is unnecessary here to recount the international attention that Ogoniland has received as proof that the Nigerian government has had ample notice and, over the past several decades, more than sufficient opportunity to rectify the situation.

39. Requiring the exhaustion of local remedies also ensures that the African Commission does not become a tribunal of first instance for cases for which an effective domestic remedy exists.

40. The present communication does not contain any information on domestic court actions brought by the complainants to halt the violations alleged. However, on numerous occasions the Commission brought the complaint to the attention of the government at the time, but no response was made to the Commission's requests. In such cases the Commission has held that in the absence of a substantive response from the respondent state it must decide on the facts provided by the complainants and treat them as given. (See communications 25/89, 47/90, 56/91, 100/93 [*Free Legal Assistance Group and Others v Zaire* (2000) AHRLR 74 (ACHPR 1995)], 60/91 *Constitutional Right Project* (in respect of Akamu) v Nigeria [(2000) AHRLR 180 (ACHPR 1995)] and communication 101/93 *Civil Liberties Organisation v Nigeria* [(2000) AHRLR 186 (ACHPR 1995)]).

41. The Commission takes cognisance of the fact that the Federal Republic of Nigeria has incorporated the African Charter on Human and Peoples' Rights into its domestic law with the result that all the rights contained therein can be invoked in Nigerian courts including those violations alleged by the complainants. However, the Commission is aware that at the time of submitting this communication, the then military government of Nigeria had enacted various decrees ousting the jurisdiction of the courts and thus depriving the people in Nigeria of the right to seek redress in the courts for acts of government that violate their fundamental human rights.¹ In such

¹ See The Constitution (Suspension and Modification) Decree 1993.

instances, and as in the instant communication, the Commission is of the view that no adequate domestic remedies are existent (see communication 129/94 *Civil Liberties Organisation v Nigeria* [(2000) AHRLR 188 (ACHPR 1995)]).

42. It should also be noted that the new government in their *note verbale* referenced 127/2000 submitted at the 28th session of the Commission held in Cotonou, Benin, admitted to the violations committed then by stating:

There is no denying the fact that a lot of atrocities were and are still being committed by the oil companies in Ogoni Land and indeed in the Niger Delta area. The Commission therefore declared the communication admissible.

Merits

43. The present communication alleges a concerted violation of a wide range of rights guaranteed under the African Charter for Human and Peoples' Rights. Before we venture into the inquiry whether the government of Nigeria has violated the said rights as alleged in the complaint, it would be proper to establish what is generally expected of governments under the Charter and more specifically vis-à-vis the rights themselves.

44. Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights - both civil and political rights and social and economic - generate at least four levels of duties for a state that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote and fulfill these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties. As a human rights instrument, the African Charter is not alien to these concepts and the order in which they are dealt with here is chosen as a matter of convenience and should in no way imply the priority accorded to them. Each level of obligation is equally relevant to the rights in question.²

45. Firstly, the obligation to respect entails that the state should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of their action.³ With respect to socio-economic rights, this means that the state is obliged to respect the free use of resources owned or at the disposal of the individual alone or in any form of association with others, including the household or the family, for the purpose of rights-related needs. And with regard to a collective group, the resources belonging to it should be respected, as it has to use the same resources to satisfy its needs.

46. Secondly, the state is obliged to protect right-holders against other subjects by legislation and provision of effective remedies.⁴ This obligation requires the state to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realise their rights and freedoms. This corresponds to a large degree with the third obligation of the state to promote the enjoyment of all human rights. The state should make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures.

² See generally, Asbjørn Eide, 'Economic, Social and Cultural Rights As Human Rights' in Asbjørn Eide, Catarina Krause and Allan Rosas (eds), *Economic, Social, and Cultural Rights: A Textbook* (1995) 21-40.

³ Krzysztof Drzewicki, 'Internationalization of Human Rights and Their Juridization' in Raija Hanski and Markku Suksi (eds), Second Revised Edition, *An Introduction to the International Protection of Human Rights: A Textbook* (1999) 31.

⁴ Drzewicki, *ibid.*

47. The last obligation requires the state to fulfil the rights and freedoms it freely undertook under the various human rights regimes. It is more of a positive expectation on the part of the state to move its machinery towards the actual realisation of the rights. This also corresponds to a large degree with the duty to promote mentioned in the preceding paragraph. It could comprise the direct provision of basic needs such as food or resources that can be used for food (direct food aid or social security).⁵

48. Thus states are generally burdened with the above set of duties when they commit themselves under human rights instruments. Emphasising the all-embracing nature of the obligations, the International Covenant on Economic, Social and Cultural Rights, for instance, under article 2(1), stipulates explicitly that states ‘undertake to take steps ... by all appropriate means, including particularly the adoption of legislative measures’. Depending on the type of rights under consideration, the level of emphasis in the application of these duties varies. Sometimes the need meaningfully to enjoy some of the rights demands a concerted action from the state in terms of more than one of the said duties. Whether the government of Nigeria has, by its conduct, violated the provisions of the African Charter as claimed by the complainants is examined below.

49. In accordance with articles 60 and 61 of the African Charter, this communication is examined in the light of the provisions of the African Charter and the relevant international and regional human rights instruments and principles. The Commission thanks the two human rights NGOs which brought the matter under its purview: the Social and Economic Rights Action Centre (Nigeria) and the Centre for Economic and Social Rights (USA). This is a demonstration of the usefulness to the Commission and individuals of *actio popularis*, which is wisely allowed under the African Charter. It is a matter of regret that the only written response from the government of Nigeria is an admission of the gravity of the complaints which is contained in a *note verbale* and which we have reproduced above at paragraph 30. In the circumstances, the Commission is compelled to proceed with the examination of the matter on the basis of the uncontested allegations of the complainants, which are consequently accepted by the Commission.

50. The complainants allege that the Nigerian government violated the right to health and the right to a clean environment as recognised under articles 16 and 24 of the African Charter by failing to fulfil the minimum duties required by these rights. This, the complainants allege, the government has done by:

- Directly participating in the contamination of air, water and soil and thereby harming the health of the Ogoni population
- Failing to protect the Ogoni population from the harm caused by the NNPC Shell Consortium but instead using its security forces to facilitate the damage
- Failing to provide or permit studies of potential or actual environmental and health risks caused by the oil operations, article 16 of the African Charter reads:

(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 24 of the African Charter reads: ‘All peoples shall have the right to a general satisfactory environment favourable to their development.’

51. These rights recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment

⁵ See Eide, in Eide, Krause and Rosas, *op cit* 38.

affects the quality of life and safety of the individual.⁶ As has been rightly observed by Alexander Kiss:

An environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development of personality as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health.⁷

52. The right to a general satisfactory environment, as guaranteed under article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Nigeria is a party, requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in article 16(1) of the African Charter and the right to a generally satisfactory environment favourable to development (article [24]) already noted, oblige governments to desist from directly threatening the health and environment of their citizens. The state is under an obligation to respect these rights and this largely entails non-interventionist conduct from the state; for example, to desist from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual.⁸

53. Government compliance with the spirit of articles 16 and 24 of the African Charter must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.

54. We now examine the conduct of the government of Nigeria in relation to articles 16 and 24 of the African Charter. Undoubtedly and admittedly, the government of Nigeria, through NNPC has the right to produce oil, the income from which will be used to fulfil the economic and social rights of Nigerians. However, the care that should have been taken as outlined in the preceding paragraph and which would have protected the rights of the victims of the violations complained of was not taken. To exacerbate the situation, the security forces of the government engaged in conduct in violation of the rights of the Ogonis by attacking, burning and destroying several Ogoni villages and homes.

55. The complainants also allege a violation of article 21 of the African Charter by the government of Nigeria. The complainants allege that the military government of Nigeria was involved in oil production and thus did not monitor or regulate the operations of the oil companies and in so doing paved the way for the oil consortiums to exploit oil reserves in Ogoniland. Furthermore, in all their dealings with the oil consortiums, the government did not involve the Ogoni communities in the decisions that affected the

⁶ See also General Comment no 14 (2000) of the Committee on Economic, Social and Cultural Rights.

⁷ Alexander Kiss, 'Concept and Possible Implications of the Right to Environment' in Kathleen E Mahoney and Paul Mahoney (eds), *Human Rights in the Twenty-first Century: A Global Challenge*, 553.

⁸ See Scott Leckie 'The Right to Housing' in *Economic, Social and Cultural Rights*, Eide, Krause and Rosas (eds), Martinus Nijhoff Publishers (1995).

development of Ogoniland. The destructive and selfish role played by oil development in Ogoniland, along with repressive tactics of the Nigerian government, and the lack of material benefits accruing to the local population,⁹ may well be said to constitute a violation of article 21. Article 21 provides:

(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.

56. The origin of this provision may be traced to colonialism, during which the human and material resources of Africa were largely exploited for the benefit of outside powers, creating tragedy for Africans themselves, depriving them of their birthright and alienating them from the land. The aftermath of colonial exploitation has left Africa's precious resources and people still vulnerable to foreign misappropriation. The drafters of the Charter obviously wanted to remind African governments of the continent's painful legacy and restore cooperative economic development to its traditional place at the heart of African society.

57. Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties (see [*Commission Nationale des Droits de l'Homme et des Libertés v Chad* (2000) AHRLR 66 (ACHPR 1995)]¹⁰). This duty calls for positive action on the part of governments in fulfilling their obligation under human rights instruments. The practice before other tribunals also enhances this requirement as is evidenced in the case *Velásquez Rodríguez v Honduras*.¹¹ In this landmark judgment, the Inter-American Court of Human Rights held that when a state allows private persons or groups to act freely and with impunity to the detriment of the rights recognised, it would be in clear violation of its obligations to protect the human rights of its citizens. Similarly, this obligation of the state is further emphasised in the practice of the European Court of Human Rights, in *X and Y v Netherlands*.¹² In that case, the Court pronounced that there was an obligation on authorities to take steps to make sure that the enjoyment of the rights is not interfered with by any other private person.

58. The Commission notes that in the present case, despite its obligation to protect persons against interferences in the enjoyment of their rights, the government of Nigeria facilitated the destruction of the Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian government has given the green light to private actors, and the oil companies in particular, to devastatingly affect the well-

⁹ See a report by the Industry and Energy Operations Division West Central Africa Department 'Defining an Environmental Development Strategy for the Niger Delta' Volume 1 - paragraph B (1.6 - 1.7) at page 2-3.

¹⁰ Communication 74/92.

¹¹ See Inter-American Court of Human Rights, *Velásquez Rodríguez* case, judgment of 19 July 1988, Series C, no 4.

¹² 91 ECHR (1985) (Ser A) at 32.

being of the Ogonis. By any measure of standards, its practice falls short of the minimum conduct expected of governments, and therefore, is in violation of article 21 of the African Charter.

59. The complainants also assert that the military government of Nigeria massively and systematically violated the right to adequate housing of members of the Ogoni community under article 14 and implicitly recognised by articles 16 and 18(1) of the African Charter. Article 14 of the Charter reads:

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 18(1) provides: 'The family shall be the natural unit and basis of society. It shall be protected by the state ...'.

60. Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health and family life are adversely affected. It is thus noted that the combined effect of articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing which the Nigerian government has apparently violated.

61. At a very minimum, the right to shelter obliges the Nigerian government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes. The state's obligation to respect housing rights requires it, and thereby all of its organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to him or her in a way he or she finds most appropriate to satisfy individual, family, household or community housing needs.¹³ Its obligations to protect obliges it to prevent the violation of any individual's right to housing by any other individual or non-state actors like landlords, property developers, and landowners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies.¹⁴ The right to shelter even goes further than a roof over one's head. It extends to embody the individual's right to be left alone and to live in peace - whether under a roof or not.

62. The protection of the rights guaranteed in articles 14, 16 and 18 (1) leads to the same conclusion. As regards the earlier right, and in the case of the Ogoni people, the government of Nigeria has failed to fulfil these two minimum obligations. The government has destroyed Ogoni houses and villages and then, through its security forces, obstructed, harassed, beaten and, in some cases, shot and killed innocent citizens who have attempted to return to rebuild their ruined homes. These actions constitute massive violations of the right to shelter, in violation of articles 14, 16, and 18(1) of the African Charter.

63. The particular violation by the Nigerian government of the right to adequate housing as implicitly protected in the Charter also encompasses the right to protection against forced evictions. The African Commission draws inspiration from the definition of the term 'forced evictions' by the Committee on Economic, Social and Cultural Rights which defines this term as 'the permanent removal against their will of individuals, families and/or

¹³ Scott Leckie, 'The Right to Housing' in Eide, Krause and Rosas, *op cit*, 107-123, at 113.

¹⁴ *Ibid* 113-114.

communities from the homes and/or which they occupy, without the provision of, and access to, appropriate forms of legal or other protection'.¹⁵ Wherever and whenever they occur, forced evictions are extremely traumatic. They cause physical, psychological and emotional distress; they entail losses of means of economic sustenance and increase impoverishment. They can also cause physical injury and in some cases sporadic deaths. Evictions break up families and increase existing levels of homelessness.¹⁶ In this regard, General Comment no 4 (1991) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing states that '... all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.' (E/1992/23, annex III, paragraph 8(a)). The conduct of the Nigerian government clearly demonstrates a violation of this right enjoyed by the Ogonis as a collective right.

64. The communication argues that the right to food is implicit in the African Charter, in such provisions as the right to life (article 4), the right to health (article 16) and the right to economic, social and cultural development (article 22). By its violation of these rights, the Nigerian government disregarded not only the explicitly protected rights but also upon the right to food implicitly guaranteed.

65. The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation. The African Charter and international law require and bind Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens. Without touching on the duty to improve food production and to guarantee access, the minimum core of the right to food requires that the Nigerian government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves.

66. The government's treatment of the Ogonis has violated all three minimum duties of the right to food. The government has destroyed food sources through its security forces and state oil company; has allowed private oil companies to destroy food sources; and, through terror, has created significant obstacles to Ogoni communities trying to feed themselves. The Nigerian government has again fallen short of what is expected of it as under the provisions of the African Charter and international human rights standards, and hence, is in violation of the right to food of the Ogonis.

67. The complainants also allege that the Nigerian government has violated article 4 of the Charter which guarantees the inviolability of human beings and everyone's right to life and that the integrity of the person will be respected. Given the widespread violations perpetrated by the government of Nigeria and private actors (be it with its blessing or not), the most fundamental of all human rights, the right to life has been violated. The security forces were given the green light to deal decisively with the Ogonis, which was illustrated by the widespread terrorisations and killings. The pollution and environmental degradation to a level humanly unacceptable has made living in Ogoniland a nightmare. The survival of the Ogonis depended on their land and farms that were destroyed by the direct involvement of the government. These and similar atrocities not only persecuted individuals in Ogoniland but also the Ogoni community as a whole. They affected the life of the whole of the Ogoni society. The Commission conducted a mission to

¹⁵ See General Comment No 7 (1997) on the right to adequate housing (article 11(1)): Forced Evictions.

¹⁶ *Ibid* p 113.

Nigeria from 7-14 March 1997 and witnessed firsthand the deplorable situation in Ogoniland including the environmental degradation.

68. The uniqueness of the African situation and the special qualities of the African Charter on Human and Peoples' Rights imposes upon the African Commission an important task. International law and human rights must be responsive to African circumstances. Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective. As indicated in the preceding paragraphs, however, the Nigerian government did not live up to the minimum expectations of the African Charter.

69. The Commission does not wish to fault governments that are labouring under difficult circumstances to improve the lives of their people. The situation of the people of Ogoniland, however, requires, in the view of the Commission, a reconsideration of the government's attitude to the allegations contained in the instant communication. The intervention of multinational corporations may be a potentially positive force for development if the state and the people concerned are ever mindful of the common good and the sacred rights of individuals and communities. The Commission however takes note of the efforts of the present civilian administration to redress the atrocities that were committed by the previous military administration as illustrated in the *note verbale* referred to in paragraph 30 of this decision.

For the above reasons, the Commission:

[70.] Finds the Federal Republic of Nigeria in violation of articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter on Human and Peoples' Rights;

[71.] Appeals to the government of the Federal Republic of Nigeria to ensure protection of the environment, health and livelihood of the people of Ogoniland by:

- Stopping all attacks on Ogoni communities and leaders by the Rivers State Internal Securities Task Force and permitting citizens and independent investigators free access to the territory;
- Conducting an investigation into the human rights violations described above and prosecuting officials of the security forces, NNPC and relevant agencies involved in human rights violations;
- Ensuring adequate compensation to victims of the human rights violations, including relief and resettlement assistance to victims of government-sponsored raids, and undertaking a comprehensive clean-up of lands and rivers damaged by oil operations;
- Ensuring that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry; and
- Providing information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations.

[72.] Urges the government of the Federal Republic of Nigeria to keep the African Commission informed of the outcome of the work of:

- The Federal Ministry of Environment which was established to address environmental and environment-related issues prevalent in Nigeria, and as a matter of priority, in the Niger Delta area including the Ogoni land;
- The Niger Delta Development Commission (NDDC) enacted into law to address the environmental and other social related problems in the Niger Delta area and other oil producing areas of Nigeria; and
- The Judicial Commission of Inquiry inaugurated to investigate the issues of human rights violations.

Legal Resources Foundation v Zambia
(2001) AHRLR 84 (ACHPR 2001)

This complaint concerns an amendment to the Zambian Constitution that restricted the right to run for President to persons who could prove that both their parents were Zambian, and thus excluded former President Kaunda from running for President.

...

Law

Merits

52. The allegation before the Commission is that respondent state has violated articles 2, 3 and 19 of the Charter in that the Constitution of Zambia Amendment Act of 1996 is discriminatory. Article 34 provides that anyone who wishes to contest the Office of President of Zambia had to prove that both parents were Zambian citizens by birth or descent. The effect of this amendment was to prohibit a Zambian citizen, former president Dr Kenneth David Kaunda from contesting the elections having been duly nominated by a legitimate political party. It is alleged that the effect of the amendment was to disenfranchise some 35 per cent of the electorate of Zambia from standing as candidate presidents in any future elections for the highest office in the land.

...

64. All parties are agreed that any measure which seeks to exclude a section of the citizenry from participating in the democratic processes, as the amendment in question has managed to do, is discriminatory and falls foul of the Charter. Article 11 of the Constitution of Zambia provides that there shall be no discrimination on the grounds of 'race, place of origin, political opinions, colour, creed, sex or marital status ...'. The African Charter uses 'national and social origin ...' which could be encompassed within the expression 'place of origin' in the Zambian Constitution. Article 23(1) of the Zambian Constitution says that Parliament shall not make any law that 'is discriminatory either of itself or in its effect ...'.

...

70. The Commission has argued forcefully that no state party to the Charter should avoid its responsibilities by recourse to the limitations and 'claw-back' clauses in the Charter. It was stated, following developments in other jurisdictions, that the Charter cannot be used to justify violations of sections thereof. The Charter must be interpreted holistically and all clauses must reinforce each other. The purpose or effect of any limitation must also be examined, as the limitation of the right cannot be used to subvert rights already enjoyed. Justification, therefore, cannot be derived solely from popular will, as this cannot be used to limit the responsibilities of states parties in terms of the Charter. Having arrived at this conclusion, it does not matter whether one or 35 per cent of Zambians are disenfranchised by the measure; that anyone is, is not disputed and it constitutes a violation of the right.

71. The Commission has arrived at a decision regarding allegations of violation of article 13 by examining closely the nature and content of the right to equality (article 2). It cannot be denied that there are Zambian citizens born in Zambia but whose parents were not born in what has become known as the Republic of Zambia following independence in 1964. This is a particularly vexing matter as the movement of people in what had been the Central African Federation (now the states of Malawi, Zambia and Zimbabwe)

was free and that by Zambia's own admission, all such residents were, upon application, granted the citizenship of Zambia at independence. Rights which have been enjoyed for over 30 years cannot be lightly taken away. To suggest that an indigenous Zambian is one who was born and whose parents were born in what came (later) to be known as the sovereign territory of the state of Zambia may be arbitrary and its application retrospectively cannot be justifiable according to the Charter.

72. The Charter makes it clear that citizens should have the right to participate in the government of their country 'directly or through freely chosen representatives ...'. See UN Human Rights Committee General Comment no 25 (1996) where it says that '[p]ersons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence, or descent, or by reason of political affiliation ...'. The pain in such an instance is caused not just to the citizen who suffers discrimination by reason of place of origin, but [by the fact] that the rights of the citizens of Zambia to 'freely choose' political representatives of their choice is violated. The purpose of the expression 'in accordance with the provisions of the law' is surely intended to regulate how the right is to be exercised rather than that the law should be used to take away the right.

73. The Commission believes that recourse to article 19 of the Charter was mistaken. The section dealing with 'peoples' cannot apply in this instance. To do so would require evidence that the effect of the measure was to affect adversely an identifiable group of Zambian citizens by reason of their common ancestry, ethnic origin, language or cultural habits. The allegedly offensive provisions in the Zambia Constitution (Amendment) Act, 1996 do not seek to do that.

For the above reasons, the Commission:

[74.] Finds that the Republic of Zambia is in violation of articles 2, 3(1) and 13 of the African Charter;

[75.] Strongly urges the Republic of Zambia to take the necessary steps to bring its laws and Constitution into conformity with the African Charter; and

[76.] Requests the Republic of Zambia to report back to the Commission when it submits its next country report in terms of article 62 on measures taken to comply with this recommendation.

Interights and Others (on behalf of Bosch) v Botswana
(2003) AHRLR 55 (ACHPR 2003)

In this case the Commission had issued an ineffectual request for a stay of execution where the death penalty had been imposed. In its decision the Commission deals with the death penalty itself only in an indirect way.

Summary of facts:

1. The communication is submitted by Edward Luke II of Luke and Associates, Saul Lehrfreund of Simons Muirhead and Burton (practising advocates based in the United Kingdom and Botswana) and Interights, a

human rights NGO based in the United Kingdom on behalf of Mariette Sonjaleen Bosch who is of South African nationality.

2. Mrs Bosch was convicted of the murder of Maria Magdalena Wolmarans by the High Court of Botswana on 13 December 1999, and sentenced to death. She appealed to the Court of Appeal of Botswana, which dismissed her appeal on 30 January 2001.

...

Procedure

...

10. On 27 March 2001, the Chairman of the Commission wrote to the President of Botswana appealing for a stay of execution pending consideration of the communication by the Commission.

11. The President of Botswana did not respond to the appeal but information received at the Commission indicates that Mrs Bosch was executed by hanging on 31 March 2001.

...

Law

...

Merits

...

Alleged violation of the right to fair trial

...

30. The second issue relates to the allegation that the sentence of death in this case was a disproportionate penalty in the circumstances of this case and hence a violation of article 5 of the Charter.

...

37. Thus while the African Commission acknowledges that the seriousness or gruesome nature of an offence does not necessarily exclude the possibility of extenuation, it cannot be disputed that the nature of the offence cannot be disregarded when determining the extenuating circumstances. As such, the African Commission finds no basis for faulting the findings of both the trial court and Court of Appeal as it relates to this issue.

...

Alleged violation of articles 1, 4 and 7(1): Execution of applicant pending consideration of applicant's communication by the African Commission

49. The last argument is that article 1 of the African Charter obliges a state party to comply with the requests of the African Commission. The complainants base this argument on the letter written by the Chairperson of the African Commission to the President of Botswana on 27 March 2001 seeking a stay of execution. The letter was communicated by fax.

50. In its oral submissions during the 31st ordinary session, the respondent state argued that the fax was never received by the President. However, in this particular case, the African Commission is not in possession of any proof that the fax was indeed received by the President of Botswana.

51. Article 1 obliges state parties to observe the rights in the African Charter and to 'adopt legislative or other measures to give effect to them.' The only instance that a state party can be said to have violated article 1 is where the state does not enact the necessary legislative enactment.¹¹

52. However, it would be remiss for the African Commission to deliver its decision on this matter without acknowledging the evolution of international law and the trend towards abolition of the death penalty. This is illustrated by the UN General Assembly's adoption of the Second Optional Protocol to the ICCPR and the general reluctance by those states that have retained capital

¹¹ See the case of *Young, James and Webster* which discusses article 1 of the European convention which is similar to article 1 of the Charter.

punishment on their statute books to exercise it in practice. The African Commission has also encouraged this trend by adopting a Resolution Urging States to Envisage a Moratorium on the Death Penalty¹², and therefore encourages all states party to the African Charter on Human and Peoples' Rights to take all measures to refrain from exercising the death penalty.

...

Zegveld and Another v Eritrea (2003) AHRLR 84 (ACHPR 2003)

High-level government officials who had criticised government policies were arrested, detained and held without access to the outside world.

Summary of facts

...

2. The complainants allege that 11 former Eritrean government officials, namely, Petros Solomon, Ogbe Abraha, Haile Woldetensae, Mahmud Ahmed Sheriffo, Berhane Ghebre Eghzabiher, Astier Feshation, Saleh Kekya, Hamid Himid, Estifanos Seyoum, Germano Nati, and Beraki Ghebre Selassie were illegally arrested in Asmara, Eritrea on 18 and 19 September 2001 in violation of Eritrean laws and the African Charter on Human and Peoples' Rights. They were part of a group of 15 senior officials of the ruling Peoples Front for Democracy and Justice (PFDJ) who had been openly critical of the Eritrean Government policies. In May 2001, they wrote an open letter to ruling party members criticising the government for acting in an 'illegal and unconstitutional' manner. Their letter also called upon 'all PFDJ members and Eritrean people in general to express their opinion through legal and democratic means and to give their support to the goals and principles they consider just.' The government subsequently announced that the 11 individuals mentioned above, on whose behalf the present complaint is being filed, had been detained 'because of crimes against the nation's security and sovereignty.'

3. The complaint also alleges that the detainees could be prisoners of conscience, detained solely for the peaceful expression of their political opinions. Their whereabouts are currently unknown. The complainants allege that the detainees may be held in some management building between the capital Asmara and the port of Massawa. They have reportedly not been given access to their families or lawyers. The complainants fear for the safety of the detainees.

...

Merits

...

55. *Incommunicado* detention is a gross human rights violation that can lead to other violations such as torture or ill-treatment or interrogation without due process safeguards. Of itself, prolonged *incommunicado* detention and/or solitary confinement could be held to be a form of cruel, inhuman or

¹² Adopted at the 26th ordinary session of the African Commission held from 1 - 15 November 1999, Kigali, Rwanda.

degrading punishment and treatment. The African Commission is of the view that all detentions must be subject to basic human rights standards. There should be no secret detentions and states must disclose the fact that someone is being detained as well as the place of detention. Furthermore, every detained person must have prompt access to a lawyer and to their families and their rights with regards to physical and mental health must be protected as well as entitlement to proper conditions of detention.⁵

56. The African Commission holds the view that the lawfulness and necessity of holding someone in custody must be determined by a court or other appropriate judicial authority. The decision to keep a person in detention should be open to review periodically so that the grounds justifying the detention can be assessed. In any event, detention should not continue beyond the period for which the state can provide appropriate justification. Therefore, persons suspected of committing any crime must be promptly charged with legitimate criminal offences and the state should initiate legal proceedings that should comply with fair trial standards as stipulated by the African Commission in its Resolution on the Right to Recourse and Fair Trial⁶ and elaborated upon in its Guidelines on the Right to Fair Trial and Legal Assistance in Africa.⁷

...

Purohit and Another v The Gambia (2003) AHRLR 96 (ACHPR 2003)

This case was brought in regard to the legal and material conditions of detention in a Gambian mental health institution. In its decision, the Commission finds that requiring indigent people like the patients in this case, without legal assistance, to exhaust local remedies in The Gambia before they may approach the Commission is not realistic and should not be required. On the merits the Commission explores the prohibition of discrimination on the basis of disability and the meaning of the right to health, as provided for under the African Charter.

Summary of facts

1. The complainants are mental health advocates, submitting the communication on behalf of patients detained at Campama, a Psychiatric Unit of the Royal Victoria Hospital, and existing and ‘future’ mental health patients detained under the Mental Health Acts of the Republic of The Gambia.

...

3. The complainants allege that legislation governing mental health in The Gambia is outdated.

4. It is alleged that within the Lunatics Detention Act (the principle instrument governing mental health) there is no definition of who a lunatic is,

⁵ Consolidated communication 143/95, 150/96 - *Constitutional Rights Project and Civil Liberties Organisation v Nigeria* [(2000) AHRLR 235 (ACHPR 1999)].

⁶ Adopted by the African Commission at its 11th ordinary session held from 2 to 9 March 1992 in Tunis, Tunisia.

⁷ Adopted by the African Commission at its 33rd ordinary session held from 15 to 29 May 2003 in Niamey, Niger.

and that there are no provisions and requirements establishing safeguards during the diagnosis, certification and detention of the patient.

5. Further, the complainants allege that there is overcrowding in the Psychiatric Unit, no requirement of consent to treatment or subsequent review of continued treatment.

6. The complainants also state that there is no independent examination of administration, management and living conditions within the Unit itself.

7. The complainants also complain that patients detained in the psychiatric unit are not even allowed to vote.

8. The complainants notify the African Commission that there is no provision for legal aid and the Act does not make provision for a patient to seek compensation if his or her rights have been violated.

...

Law

Admissibility

32. The issue before the African Commission is whether or not there are domestic remedies available to the complainants in this instance.

33. The respondent state indicates that there are plans to amend the Lunatics Detention Act, which, in other words is an admission on part of the respondent state that the Act is imperfect and would therefore not produce real substantive justice to the mental patients that would be detained.

34. The respondent state further submits that even though the Act itself does not provide review or appeal procedures, there are legal procedures or provisions in terms of the constitution that the complainants could have used and thus sought remedies in court. However, the respondent state has informed the African Commission that no legal assistance or aid is availed to vulnerable groups to enable them to access the legal procedures in the country. Only persons charged with Capital Offences get legal assistance in accordance with the Poor Persons Defence (Capital Charge) Act.

35. In the present matter, the African Commission cannot help but look at the nature of people that would be detained as voluntary or involuntary patients under the Lunatics Detention Act and ask itself whether or not these patients can access the legal procedures available (as stated by the respondent state) without legal aid.

36. The African Commission believes that in this particular case, the general provisions in law that would permit anybody injured by another person's action are available to the wealthy and those that can afford the services of private counsel. However, it cannot be said that domestic remedies are absent as a general statement - the avenues for redress are there if you can afford it.

37. But the real question before this Commission is whether looking at this particular category of persons the existent remedies are realistic. The category of people being represented in the present communication are likely to be people picked up from the streets or people from poor backgrounds and as such it cannot be said that the remedies available in terms of the Constitution are realistic remedies for them in the absence of legal aid services.

38. If the African Commission were to literally interpret article 56(5) of the African Charter, it might be more inclined to hold the communication inadmissible. However, the view is that, even as admitted by the respondent state, the remedies in this particular instance are not realistic for this category of people and therefore not effective and for these reasons the African Commission declares the communication admissible.

Merits

...

44. The complainants submit that the provisions of the Lunatics Detention Act (LDA) condemning any person described as a ‘lunatic’ to automatic and indefinite institutionalisation are incompatible with and violate articles 2 and 3 of the African Charter. Section 2 of the LDA defines a ‘lunatic’ as including ‘an idiot or person of unsound mind’.

45. The complainants argue further that to the extent that mental illness is a disability,⁴ the practice of detaining persons regarded as mentally ill indefinitely and without due process constitutes discrimination on the analogous ground of disability.

46. Article 2 of the African Charter provides:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised 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 or social origin, fortune, birth or other status.

Article 3 of the African Charter provides: ‘(1) Every individual shall be equal before the law; (2) Every individual shall be entitled to equal protection of the law.’

47. In interpreting and applying the African Charter, the African Commission relies on its own jurisprudence, and as provided by articles 60 and 61 of the African Charter, on appropriate and relevant international and regional human rights instruments, principles and standards.

48. The African Commission is, therefore, more than willing to accept legal arguments with the support of appropriate and relevant international and regional human rights instruments, principles, norms and standards taking into account the well recognised principle of universality which was established by the Vienna Declaration and Programme of Action of 1993 and which declares that ‘All human rights are universal, indivisible and interdependent, and interrelated’.⁵

49. Articles 2 and 3 of the African Charter basically form the anti-discrimination and equal protection provisions of the African Charter. Article 2 lays down a principle that is essential to the spirit of the African Charter and is therefore necessary in eradicating discrimination in all its guises, while article 3 is important because it guarantees fair and just treatment of individuals within a legal system of a given country. These provisions are non-derogable and therefore must be respected in all circumstances in order for anyone to enjoy all the other rights provided for under the African Charter.

50. In their submissions to the African Commission, the respondent state conceded that under the LDA, persons declared ‘lunatics’ do not have the legal right to challenge the two separate medical certificates that constitute the legal basis of their detention. However, the respondent state argued, that in practice patients found to be insane are informed that they have a right to ask for a review of their assessment. The respondent state further argues that section 7(d) of the Constitution of The Gambia recognises that common law forms part of the laws of The Gambia. Therefore, such a vulnerable group of persons is free to seek remedies by bringing a tort action for false imprisonment or negligence if they believe they have been wrongly diagnosed and as a result of such diagnosis been wrongly institutionalised.

51. Furthermore, the respondent state submits that patients detained under the LDA have every right to challenge the Act in a constitutional court claiming that their detention under that Act deprives them of their right to

⁴ Para 17 of the Introduction to the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (UNGA Resolution 48/96 of 20th December 1993) provides that ‘The term “disability” summarises a great number of different functional limitations ... People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness.’

⁵ Vienna Declaration and Programme of action, A/CONF 157/23, para 5.

freedom of movement and association as provided for under the Constitution of The Gambia.

52. In view of the respondent state's submissions on the availability of legal redress, the African Commission questioned the respondent state as to whether legal aid or assistance would be availed to such a vulnerable group of persons in order for them to access the legal procedures of in the country. The respondent state informed the African Commission that only persons charged with Capital Offences are entitled to legal assistance in accordance with the Poor Persons Defence (Capital Charge) Act.

53. The category of persons that would be detained as voluntary or involuntary patients under the LDA are likely to be people picked up from the streets or people from poor backgrounds. In cases such as this, the African Commission believes that the general provisions in law that would permit anybody injured by another person's act can only be available to the wealthy and those that can afford the services of private counsel.

54. Clearly the situation presented above fails to meet the standards of anti-discrimination and equal protection of the law as laid down under the provisions of articles 2 and 3 of the African Charter and principle 1(4)⁶ of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Illnesses and the Improvement of Mental Health Care.⁷

55. The complainants further submit that the legislative scheme of the LDA, its implementation and the conditions under which persons detained under the Act are held, constitute separately and together violations of respect for human dignity in article 5 of the African Charter and the prohibition against subjecting anybody to cruel, inhuman or degrading treatment as contained in the same Charter provision.

56. Article 5 of the African Charter provides:

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.

57. Human dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities as the case may be, are entitled to without discrimination. It is therefore an inherent right which every human being is obliged to respect by all means possible and on the other hand it confers a duty on every human being to respect this right.

58. In *Media Rights Agenda v Nigeria*⁸ the African Commission held that the term 'cruel, inhuman or degrading punishment and treatment' is to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental; furthermore, in *Modise v Botswana*,⁹ the African Commission stated that exposing victims to 'personal suffering and indignity' violates the right to human dignity. Personal suffering and indignity can take many forms, and will depend on the particular circumstances of each communication brought before the African Commission.

59. Under the LDA, persons with mental illness have been branded as 'lunatics' and 'idiots', terms, which without any doubt dehumanise and deny them any form of dignity in contravention of article 5 of the African Charter.

⁶ Principle 1(4) provides: 'There shall be no discrimination on the grounds of mental illness. "Discrimination" means any distinction, exclusion or preference that has the effect of nullifying or impairing equal enjoyment of rights'.

⁷ GA Res 46/119, 46 UN GAOR Supp. (49) at 189, UN Doc A/46/49 (1991).

⁸ Communication 224/98 [(2000) AHRLR 262 (ACHPR 2000)].

⁹ Communication 97/93 (decision reached at the 27th ordinary session of the African Commission held in 2000) [(2000) AHRLR 30 (ACHPR 2000)].

60. In coming to this conclusion, the African Commission would like to draw inspiration from principle 1(2) of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Care. Principle 1(2) requires that ‘All persons with mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person’.

61. The African Commission maintains that mentally disabled persons would like to share the same hopes, dreams and goals and have the same rights to pursue those hopes, dreams and goals just like any other human being.¹⁰ Like any other human being, mentally disabled persons or persons suffering from mental illnesses have a right to enjoy a decent life, as normal and full as possible, a right which lies at the heart of the right to human dignity. This right should be zealously guarded and forcefully protected by all states party to the African Charter in accordance with the well established principle that all human beings are born free and equal in dignity and rights.¹¹

62. The complainants also submit that the automatic detention of persons considered ‘lunatics’ within the meaning of the LDA violates the right to personal liberty and the prohibition of arbitrary arrest and detention in terms of article 6 of the African Charter.

63. Article 6 of the African Charter provides:

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.

64. Article 6 of the African Charter guarantees every individual, be they disabled or not, the right to liberty and security of the person. Deprivation of such liberty is only acceptable if it is authorised by law and is compatible with the obligations of states parties under the African Charter.¹² However, the mere mention of the phrase ‘except for reasons and conditions previously laid down by law’ in article 6 of the African Charter does not mean that any domestic law may justify the deprivation of such persons’ freedom and neither can a state party to the African Charter avoid its responsibilities by recourse to the limitations and claw back clauses in the African Charter.¹³ Therefore, any domestic law that purports to violate this right should conform to internationally laid down norms and standards.

65. Article 6 of the African Charter further states that no one may be arbitrarily arrested or detained. Prohibition against arbitrariness requires among other things that deprivation of liberty shall be under the authority and supervision of persons procedurally and substantively competent to certify it.

66. Section 3(1) of the LDA prescribes circumstances under which mentally disabled persons can be received into a place of detention and they are: On submission of two certificates by persons referred to under the LDA as ‘duly qualified medical practitioners’; Upon an order being made by and signed by Judge of the Supreme Court, a Magistrate or any two Justices of the Peace.

¹⁰ Art 3 of the UN Declaration on the Rights of Disabled Persons, UNGA Resolution 3447 (XXX) of 9 December 1975, provides that ‘[d]isabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and as full as possible’.

¹¹ Art 1 Universal Declaration of Human Rights of 1948.

¹² Consolidated communications 147/95, 149/95 - *Jawara v The Gambia* [(2000) AHRLR 107 (ACHPR 2000)].

¹³ Communication 211/98 *Legal Resources Foundation v Zambia* [(2001) AHRLR 84 (ACHPR 2001)].

67. A ‘duly qualified medical practitioner’ under the LDA has been defined as ‘every person possessed of a qualification entitling him to be registered and practice medicine in The Gambia’.¹⁴

68. By these provisions, the LDA authorises the detention of persons believed to be mentally ill or disabled on the basis of opinions of general medical practitioners. Although the LDA does not lay out fixed periods of detention for persons found to be mentally disabled, the respondent state has submitted that in practice the length of time spent by patients in the unit ranges from two to four weeks and that it is only in exceptional circumstances that patients may be detained longer than this period. These exceptional circumstances apply to mainly schizophrenics, and vagrant psychotics without any family support and known addresses. The African Commission takes note of the fact that such general medical practitioners may not be actual experts in the field of mental health care and as such there is a possibility that they could make a wrong diagnosis upon which certain persons may be institutionalised. Additionally, because the LDA does not provide for review or appeal procedures, persons institutionalised under such circumstances would not be able to challenge their institutionalisation in the event of an error or wrong diagnosis being made. Although this situation falls short of international standards and norms¹⁵, the African Commission is of the view that it does not violate the provisions of article 6 of the African Charter because article 6 of the African Charter was not intended to cater for situations where persons in need of medical assistance or help are institutionalised.

69. The complainants also allege that institutionalisation of detainees under the LDA who are not afforded any opportunity of being heard or represented prior to or after their detention violates article 7(1)(a) and (c) of the African Charter.

70. Article 7(1)(a) and (c) of the African Charter provides:

- (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 recognised and guaranteed by conventions, laws, regulations and customs in force; ... (c) the right to defense, including the right to be defended by counsel of his choice.

71. It is evident that the LDA does not contain any provisions for the review or appeal against an order of detention or any remedy for detention made in error or wrong diagnosis or treatment. Neither do the patients have the legal right to challenge the two separate medical certificates, which constitute the legal basis of their detention. These omissions in the LDA clearly violate articles 7(1)(a) and (c) of the African Charter.

72. The guarantees in article 7(1) extend beyond hearings in the normal context of judicial determinations or proceedings. Thus article 7(1) necessitates that in circumstances where persons are to be detained, such persons should at the very least be presented with the opportunity to challenge the matter of their detention before the competent jurisdictions that should have ruled on their detention.¹⁶ The entitlement of persons with mental illness or persons being treated as such to be heard and to be represented by counsel in determinations affecting their lives, livelihood, liberty, property or status, is particularly recognised in principles 16, 17 and

¹⁴ Sec 2 Lunatics Detention Act Cap 40:05, Laws of The Gambia.

¹⁵ See principles 15, 16 and 17 of the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Care.

¹⁶ Communication 71/92, *Rencontre Africaine pour la defense des droits de l'homme v Zambia* [(2000) AHRLR 321 (ACHPR 1996)]; communication 159/96, *UIDH and Others v Angola* [(2000) AHRLR 18 (ACHPR 1997)].

18 of the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Care.

73. The complainants submit that the failure of the respondent state to provide for and enable the detainees under the LDA to exercise their civic rights and obligations, including the right to vote, violates article 13(1) of the African Charter which provides:

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.

74. In its earlier submissions, the respondent state admits that persons detained at Campama are not allowed to vote because they believe that allowing mental health patients to vote would open the country's democratic elections to much controversy as to the mental ability of these patients to make an informed choice as to which candidate to vote for. Subsequently, the respondent state in its more recent submissions suggests that there are limited rights for some mentally disabled persons to vote; however this has not been clearly explained.

75. The right provided for under article 13(1) of the African Charter is extended to 'every citizen' and its denial can only be justified by reason of legal incapacity or that the individual is not a citizen of a particular state. Legal incapacity may not necessarily mean mental incapacity. For example a state may fix an age limit for the legibility of its own citizens to participate in its government. Legal incapacity, as a justification for denying the right under article 13(1) can only come into play by invoking provisions of the law that conform to internationally acceptable norms and standards.

76. The provisions of article 13(1) of the African Charter are similar in substance to those provided for under article 25 of the International Covenant on Civil and Political Rights. In interpreting article 13(1) of the African Charter, the African Commission would like to endorse the clarification provided by the Human Rights Committee in relation to article 25. The Human Rights Committee has expressed that any conditions applicable to the exercise of article 25 rights should be based on objective and reasonable criteria established by law.¹⁷ Besides the view held by the respondent state questioning the mental ability of mentally disabled patients to make informed choices in relation to their civic duties and obligations, it is very clear that there are no objective bases within the legal system of the respondent state to exclude mentally disabled persons from political participation.

77. The complainants submit that the scheme and operation of the LDA both violate the right to health provided for in article 16 of the African Charter when read with article 18(4) of the African Charter.

78. Article 16 of the African Charter provides:

(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health; (2) State 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.

79. Article 18(4) of the African Charter provides: 'The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs'.

80. Enjoyment of the human right to health as it is widely known is vital to all aspects of a person's life and well-being, and is crucial to the realisation of all the other fundamental human rights and freedoms. This right includes the right to health facilities, access to goods and services to be guaranteed to all without discrimination of any kind.

¹⁷ Human Rights Committee, General Comment 25 (57), Adopted by the Committee at its 1510th meeting, UN Doc CCPR/C/21/Rev.1/Add.7 (1996), paragraph 4.

81. More so, as a result of their condition and by virtue of their disabilities, mental health patients should be accorded special treatment which would enable them not only attain but also sustain their optimum level of independence and performance in keeping with article 18(4) of the African Charter and the standards applicable to the treatment of mentally ill persons as defined in the Principles for the Protection of Persons with Mental Illness and Improvement of Mental Health Care.

82. Under the principles, ‘mental health care’ includes analysis and diagnosis of person’s mental condition and treatment, care and rehabilitation for a mental illness or suspected mental illness. The principles envisage not just ‘attainable standards’, but the highest attainable standards of health care for the mentally ill at three levels. First, in the analysis and diagnosis of a person’s mental condition; second, in the treatment of that mental condition and; thirdly, during the rehabilitation of a suspected or diagnosed person with mental health problems.

83. In the instant case, it is clear that the scheme of the LDA is lacking in terms of therapeutic objectives as well as provision of matching resources and programmes of treatment of persons with mental disabilities, a situation that the respondent state does not deny but which never-the-less falls short of satisfying the requirements laid down in articles 16 and 18(4) of the African Charter.

84. The African Commission would however like to state that it is aware that millions of people in Africa are not enjoying the right to health maximally because African countries are generally faced with the problem of poverty which renders them incapable to provide the necessary amenities, infrastructure and resources that facilitate the full enjoyment of this right. Therefore, having due regard to this depressing but real state of affairs, the African Commission would like to read into article 16 the obligation on part of states party to the African Charter to take concrete and targeted steps, while taking full advantage of its available resources, to ensure that the right to health is fully realised in all its aspects without discrimination of any kind.

85. The African Commission commends the respondent state’s disclosure that there is no significant shortage of drug supplies at Campama and that in the event that there are drug shortages, all efforts are made to alleviate the problem. Furthermore, that it has taken steps to improve the nature of care given to mental health patients held at Campama. The respondent state also informed the African Commission that it is fully aware of the outdated aspects of the LDA and has therefore long taken administrative steps to complement and/or reform the archaic parts of the LDA. This is however not enough because the rights and freedoms of human beings are at stake. Persons with mental illnesses should never be denied their right to proper health care, which is crucial for their survival and their assimilation into and acceptance by the wider society.

For the above reasons, the African Commission:

- Finds the Republic of The Gambia in violation of articles 2, 3, 5, 7 (1)(a) and (c), 13(1), 16 and 18(4) of the African Charter.
- Strongly urges the government of The Gambia to: (a) Repeal the Lunatics Detention Act and replace it with a new legislative regime for mental health in The Gambia compatible with the African Charter on Human and Peoples’ Rights and international standards and norms for the protection of mentally ill or disabled persons as soon as possible; (b) Pending (a), create an expert body to review the cases of all persons detained under the Lunatics Detention Act and make appropriate recommendations for their treatment or release; (c) Provide adequate medical and material care for persons suffering from mental health problems in the territory of The Gambia;

- Requests the government of The Gambia to report back to the African Commission when it submits its next periodic report in terms of article 62 of the African Charter on measures taken to comply with the recommendations and directions of the African Commission in this decision.
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Doeblbler v Sudan
(2003) AHRLR 153 (ACHPR 2003)

This case deals with corporal punishment for acts considered to be immoral in a context where *Shari'a* law applies, although the decision does not deal with *Shari'a* law specifically.

Summary of facts

1. The complainant alleges that on 13 June 1999, the students of the Nubia Association at Ahlia University held a picnic in Buri, Khartoum along the banks of the river. Although under the law no permission is necessary for such a picnic, the students nevertheless sought permission and got it from the local authorities.
2. After starting off for some hours, security agents and policemen accosted the students, beating some of them and arresting others. They were alleged to have violated 'public order' contrary to article 152 of the Criminal Law of 1991 because they were not properly dressed or acting in a manner considered being immoral.
3. The complainant avers that the acts constituting these offences comprised of girls kissing, wearing trousers, dancing with men, crossing legs with men, sitting with boys and sitting and talking with boys.
- ...
5. On 14 June 1999, the eight students referred to in the above paragraph were convicted and sentenced to fines and or lashes. The said punishment was executed through the supervision of the court. This type of punishment is widespread in Sudan.
6. Complainant alleges that the punishment meted out was grossly disproportionate, as the acts for which the students were punished were minor offences, which ordinarily would not have attracted such punishments. The alleged punishments therefore constitute cruel, inhuman and degrading punishment.
- ...

Merits

36. Article 5 of the Charter prohibits not only cruel but also inhuman and degrading treatment. This includes not only actions which cause serious physical or psychological suffering, but which humiliate or force the individual against his will or conscience.
37. While ultimately whether an act constitutes inhuman degrading treatment or punishment depends on the circumstances of the case. The African Commission has stated that the prohibition of torture, cruel, inhuman, or degrading treatment or punishment is to be interpreted as widely as possible to encompass the widest possible array of physical and mental

abuses. (See communication 225/98 [*Huri-Laws v Nigeria* (2000) AHRLR 273 (AChPR 2000)]).

38. The European Court of Human Rights in *Tyler v United Kingdom*,¹ applying article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 221, entered into force 3 February 1953, that is substantially similar prohibition of cruel, inhuman, and degrading punishment as article 5 of the Charter, has similarly held that even lashings that were carried out in private, with appropriate medical supervision, under strictly hygienic conditions, and only after the exhaustion of appeal rights violated the rights of the victim. The Court stated that:

The very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being. Furthermore, it is institutionalised violence that is in the present case violence permitted by law, ordered by the judicial authorities of the state and carried out by the police authorities of the state. Thus, although the applicant did not suffer any severe or long lasting physical effects, his punishment whereby he was treated as an object in the power of authorities - constituted an assault on precisely that which it is one of the main purposes of article 3 to protect, namely a person dignity and physical integrity. Neither can it be excluded that the punishment may have had adverse psychological effects.

39. The complainant alleges that the punishment meted out was grossly disproportionate, as the acts for which the students were punished were minor offences, which ordinarily would not have attracted such punishments.

40. The complainant submits that according to Islamic law the penalty of lashings may be meted out for some serious crimes. For example, *hadd* offenses may be punished with lashes under *Shari'a* because they are considered grave offences² and strict requirements of proof apply. Minor offenses, however, cannot be punished as *hadd* because the *Qur'an* does not expressly prohibit them with a prescribed penalty. The acts committed by the students were minor acts of friendship between boys and girls at a party.

41. The African Commission, however, wishes to assert that it was not invited to interpret Islamic *Shari'a* Law as obtains in the Criminal Code of the respondent state. No argument was presented before it nor did the African Commission consider arguments based on the *Shari'a* Law. The African Commission hereby states that the inquiry before it was confined to the application of the African Charter in the legal system of a state party to the Charter.

42. There is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning state sponsored torture under the Charter and contrary to the very nature of this human rights treaty.

43. The facts in this communication have not been disputed by the respondent state. In their oral submissions at the 33rd ordinary session, the respondent state confirmed this by stating that it was the opinion of the respondent state that it was better for the victims to have been lashed rather than hold them in detention for the said criminal offences and as such deny them of the opportunity to continue with their normal lives.

44. The law under which the victims in this communication were punished has been applied to other individuals. This continues despite the government being aware of its clear incompatibility with international human rights law.

¹ European Court of Human Rights, 26 Eur.Crt.H.R. (ser.A) (1978), 2 EHRR 1 (1979-80) at para 30 and *Ireland v United Kingdom*, European Court of Human Rights, 25 Eur.Crt.H.R. (1978), 2 EHRR 25 (1979-80) at para 162.

² There are six crimes to which *hadd* (fixed) penalties apply, namely, *zina* (fornication, *Qur'an* and *Sunnah*), *sariqa* (theft, *Qur'an* 5:38), *ridda* (apostasy), and *haraba* (rebellion, *Qur'an* 5:33). Also see Abdullahi Ahmed An-Na'im, *Towards an Islamic Reformation: Civil Liberties, Human Rights and International Law* (1990) at 108 and accompanying endnotes.

For these reasons, the African Commission:

- Finds the Republic of Sudan violation of article 5 of the African Charter on Human and Peoples' Rights and,
 - Requests the Government of Sudan to: immediately amend the Criminal Law of 1991, in conformity with its obligations under the African Charter and other relevant international human rights instruments; abolish the penalty of lashes; and take appropriate measures to ensure compensation of the victims.
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Law Office of Ghazi Suleiman v Sudan (I)
(2003) AHRLR 134 (ACHPR 2003)

This case deals with various aspects of the fair trial provisions of the African Charter.

...

Merits

...

54. In the communication under consideration, the complainant alleges that the victims were declared guilty in public by investigators and highly placed government officers. It is alleged that the government organised wide publicity around the case, with a view to convincing the public that there had been an attempted *coup* and that those who had been arrested were involved in it. The government showed open hostility towards the victims by declaring that 'those responsible for the bombings' will be executed.

55. The complainant alleges that in order to reconstitute the facts, the military court forced the victims to act as if they were committing crimes by dictating to them what to do and those pictures were filmed and used during the trial. It is claimed that the authorities attested to the guilt of the accused on the basis of these confessions. The African Commission has no proof to show that these officers were the same as those who presided over or were part of the military court that tried the case. These pictures were not presented to the African Commission as proof. In such conditions, the African Commission cannot carry out an investigation on the basis of non-established proof.

56. However, the African Commission condemns the fact that state officers carried out the publicity aimed at declaring the suspects guilty of an offence before a competent court establishes their guilt. Accordingly, the negative publicity by the government violates the right to be presumed innocent, guaranteed by article 7(1)(b) of the African Charter.

57. As shown in the summary of facts, the complainants did not get permission to get assistance from counsel and those who defended them were not given sufficient time nor access to the files to prepare their defense.

58. The victims' lawyer, Ghazi Suleiman, was not authorised to appear before the court and despite several attempts, he was deprived of the right to represent his clients or even contact them.

59. Concerning the issue of the right to defense, communications 48/90, 50/91, 52/91, 89/93, *Amnesty International & Others v Sudan* [(2000) AHRLR 297 (ACHPR 1999) para 64] are clear on this subject. The African Commission held in those communications that:

The right to freely choose one's counsel is essential to the assurance of a fair trial. To give the tribunal the power to veto the choice of counsel of defendants is an unacceptable infringement of this right. There should be an objective system for licensing advocates, so that qualified advocates cannot be barred from appearing in particular cases. It is essential that the national bar be an independent body which regulates legal practitioners, and that the tribunals themselves not adopt this role, which will infringe the right to defence.

60. Refusing the victims the right to be represented by the lawyer of their choice, Ghazi Suleiman, amounts to a violation of article 7(1)(c) of the African Charter.

61. It is alleged that the military court which tried the victims was neither competent, independent nor impartial insofar as its members were carefully selected by the Head of State. Some members of the court are active military officers. The government did not refute this specific allegation, but just declared that the counsels submitted an appeal to the Constitutional Court, thus suspending the course of military proceedings. The Constitutional Court delivered a final judgment, rendering void the decision of the military court against the accused.

62. In its Resolution on Nigeria (adopted at the 17th session), the African Commission stated that among the serious and massive acts of violation committed in the country, there was 'the restriction of the independence of the court and the establishment of military courts which had no independence nor rules of procedure to try individuals suspected of being opponents of the military regime'.

63. The government confirmed the allegations of the complainants concerning the membership of the military court. It informed the African Commission in its written submissions that the military court had been established by a presidential decree and that it was mainly composed of military officers; of the four members, three were active servicemen and that the trial had taken place legally.

64. This composition of the military court alone is evidence of impartiality. Civilians appearing before and being tried by a military court presided over by active military officers who are still under military regulations violates the fundamental principles of fair trial. Likewise, depriving the court of qualified staff to ensure its impartiality is detrimental to the right to have one's cause heard by competent organs.

65. In this regard, it is important to recall the general stand of the African Commission on the question of civilians being tried by military courts. In its Resolution on the right to a fair trial and legal aid in Africa, during the adoption of the Dakar Declaration and Recommendations, the African Commission noted that:

In many African countries, military courts or specialised criminal courts exist side by side with ordinary courts to hear and determine offences of a purely military nature committed by military staff. In carrying out this responsibility, military courts should respect the norms of a fair trial. They should in no case try civilians. Likewise, military courts should not deal with offences which are under the purview of ordinary courts.

66. Additionally, the African Commission considers that the selection of active military officers to play the role of judges violates the provisions of paragraph 10 of the fundamental principles on the independence of the judiciary which stipulates that: 'Individuals selected to carry out the functions of judges should be persons of integrity and competent, with adequate legal training and qualifications. (Communication 224/98 *Media Rights Agenda v Nigeria* [(2000) AHRLR 262 (ACHPR 2000)])'.

67. Article 7(1)(d) of the Charter requires the court to be impartial. Apart from the character of the membership of this military court, its composition alone gives an appearance, if not, the absence of impartiality, and this therefore constitutes a violation of article 7(1)(d) of the African Charter.

For these reasons, the African Commission:

- Finds the Republic of Sudan in violation of the provisions of articles 5, 6 and 7(1) of the African Charter;
 - Urges the government of Sudan to bring its legislation in conformity with the African Charter;
 - Requests the government of Sudan to duly compensate the victims.
-

Law Office of Ghazi Suleiman v Sudan (II)
(2003) AHRLR 144 (ACHPR 2003)

Here, different aspects of the rights of a human rights defender are highlighted. (See also the above case in which the current complainant was the legal representative.)

...

Merits

39. Article 9 of the Charter provides: ‘Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law’.

40. The African Commission affirms the ‘fundamental importance of freedom of expression and information as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms’.¹

41. The African Commission also holds that article 9 ‘reflects the fact that freedom of expression is a basic human right, vital to an individual’s personal development, his political consciousness, and participation in the conduct of public affairs in his country’. (Communications 105/93, 128/94, 130/94 and 152/96 *Media Agenda and Others v Nigeria* [(2000) AHRLR 200 (ACHPR 1998) para 54]).

42. The communication alleges that Mr Ghazi Suleiman was arrested, detained, mistreated, and punished for his promotion and encouragement of human rights, which the respondent state claims are inconsistent with its laws. These activities consisted of speaking out about violations of human rights, encouraging the government to respect human rights, encouraging democracy in his public speeches and interviews, and discussing democracy and human rights with others. These activities have not been conducted secretly, but have been carried out in public by Mr Ghazi Suleiman for many years.

43. It is alleged that Mr Ghazi Suleiman was exercising his right to freedom of expression to advocate for human rights and democracy in Sudan and was stopped; or, he was contemplating the exercise of his human rights for the same reasons but was prevented from exercising these rights.

44. During the 27th ordinary session of the African Commission, the representative of the respondent state did not contest the facts adduced by the complainant, however, he states that the 1998 Constitution of Sudan guarantees the right to freedom of movement (article 23), right to freedom of expression (article 25) and the right to freedom of association (article 26).

¹ Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples’ Rights 32nd ordinary session, October 2002.

He did not provide any defence to the allegations of arrests, detentions and intimidation of Mr Ghazi Suleiman.

45. The respondent state did not submit arguments on the merits in respect of this communication. In the view of the foregoing, the African Commission shall base its argument on the elements provided by the complainant and condemn the state's failure not to submit arguments on the merits.

46. In adopting the Resolution on the Right to Freedom of Association, the African Commission noted that governments should be especially careful that:

In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom. The regulation of the exercise of the right to freedom of association should be consistent with states' obligations under the African Charter on Human and Peoples' Rights.²

(Mr Ghazi Suleiman's speech is a unique and important part of political debate in his country.)

47. Article 60 of the Charter provides that the African Commission shall draw inspiration from international law on human and people's rights.

48. The European Court on Human Rights recognises that 'freedom of political debate is at the very core of the concept of a democratic society ...'³

49. The African Commission's view affirms those of the Inter-American Court of Human Rights which held that:

Freedom of expression is a cornerstone upon which the very existence of a society rests. It is indispensable for the formation of public opinion. It is also a *condition sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.⁴

50. The Inter-American Court states that: 'when an individual's freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to "receive" information and ideas'.⁵ It is particularly grave when information that others are being denied concerns the human rights protected in the African Charter as did each instance in which Mr Ghazi Suleiman was arrested.

51. The charges levied against Mr Ghazi Suleiman by the government of Sudan indicate that the government believed that his speech threatened national security and public order.

52. Because Mr Suleiman's speech was directed towards the promotion and protection of human rights, 'it is of special value to society and deserving of special protection'.⁶

53. In keeping with its important role of promoting democracy in the continent, the African Commission should also find that a speech that contributes to political debate must be protected. The above challenges to Mr Ghazi Suleiman's freedom of expression by the government of Sudan violate his right to freedom of expression under article 9 of the African Charter. However, the allegations of arrests, detentions and threats constitute also a violation of article 6 of the Charter.

² See Resolution on the Freedom of Association, adopted at the 11th ordinary session in Tunis from 2 to 9 March 1992.

³ *Lingens v Austria*, judgment of the Eur Crt HR Series AN 236 (April 1992) and *Thorgeirson v Iceland*, judgment of the Eur Crt HR Series AN 239 (June 1992).

⁴ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts 13 and 29 of the American Convention on Human Rights) Advisory Opinion OC-5/85, 13 November 1985, Inter-Am Court HR Ser AN 5 at para 70.

⁵ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts 13 and 29 of the American Convention on Human Rights) Advisory Opinion OC-5/85, 13 November 1985, Inter-Am Court HR Ser AN 5 at para 30.

⁶ Article 6 of the UN Human Rights Defender's Declaration.

54. Article 10 of the Charter provides: 'Every individual shall have the right to free association provided that he abides by the law'.

55. Article 11 of the Charter provides:

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

56. By preventing Mr Ghazi Suleiman from gathering with others to discuss human rights and by punishing him for doing so, the respondent state had violated Mr Ghazi Suleiman's human rights to freedom of association and assembly which are protected by articles 10 and 11 of the African Charter.

...

64. By stopping Mr Ghazi Suleiman from travelling to Sinnar, which is located in the Blue Nile State, a part within the country under the control of the government of Sudan, to speak to a group of human rights defenders, the government of Sudan violated Mr Ghazi Suleiman's right to freedom of movement in his own country. This constitutes a violation of article 12 of the Charter.

65. The fact that Mr Ghazi Suleiman advocates peaceful means of action and his advocacy has never caused civil unrest is additional evidence that the complained about actions of the respondent state were not proportionate and necessary to the achievement of any legitimate goal. Furthermore, the actions of the government of Sudan not only prevent Mr Ghazi Suleiman from exercising his human rights, but these actions have a seriously discouraging effect on others who might also contribute to promoting and protecting human rights in Sudan.

66. For the above reasons, the interference with Mr Ghazi Suleiman's rights of freedom of expression, association and assembly cannot be justified.

Therefore, the African Commission:

- Finds the Republic of Sudan in violation of articles 6, 9, 10, 11 and 12 of the African Charter on Human and Peoples' Rights; and
 - Requests the government of Sudan to amend its existing laws to provide for *de jure* protection of the human rights to freedom of expression, assembly, association and movement.
-

Interights and Others v Mauritania
[Communication 242/2001 - 17th Annual Activity Report]

In this case, the main opposition party in Mauritania had been dissolved by the government. The Commission applies the standard of strict proportionality in respect of limitations.

Summary of facts

...

2. The complainants, mandated by Mr Ahmed Ould Daddah, allege the following facts. By Decree 2000/116.PM/MIPT, dated 28 October 2000, *Union des Forces Démocratiques/Ere nouvelle* (UFD/EN), the main opposition party in Mauritania, led by Mr Ahmed Ould Daddah was dissolved by the Prime

Minister of the Islamic Republic of Mauritania, Mr Cheick El Avia Mohamed Khouna.

3. This measure, taken pursuant to Mauritanian law (in particular articles 11 and 18 of the Mauritanian Constitution, and Ordinance 91.024 of 25 July 1991 which deals with political parties in articles 4, 25 and 26), was imposed, according to this senior official, following a series of actions and undertakings committed by the leaders of this political organisation, and which:

- were damaging to the good image and interests of the country;
- incited Mauritians to violence and intolerance; and
- led to demonstrations which compromised public order, peace and security.

...

On the legality of the Act governing dissolution and the illegal and unjustified lapses blamed on the political party UFD/Ere nouvelle

...

76. According to the interpretation given by the African Commission to freedom of expression and to the right of association as defined in the African Charter, states have the right to regulate, through their national legislation, the exercise of these two rights. Articles 9(2), 10(1) and 13(1) of the African Charter all specifically refer to the need to respect the provisions of national legislation in the implementation and enjoyment of such rights. In this particular case, the relevant provisions of Mauritanian laws that had been applied are articles 11 and 18 of the Constitution and articles 4, 25 and 26 of the Decree 91-024 of the 25 July 1991 relative to political parties.

77. However these regulations should be compatible with the obligations of states as outlined in the African Charter.²⁸ In the specific case of the freedom of expression that the African Commission considers as a fundamental human right, essential for the development of the individual, for his political awareness and his participation in public affairs,²⁹ a recent decision³⁰ clearly delineated that the right of states to restrain, through national legislation, the expression of opinions did not mean that national legislation could push aside entirely the right to expression and the right to express one's opinion. This, in the Commission's view, would make the protection of this right inoperable. To allow national legislation to take precedence over the Charter would result in wiping out the importance and impact of the rights and freedoms provided for under the Charter. International obligations should always have precedence over national legislation, and any restriction of the rights guaranteed by the Charter should be in conformity with the provisions of the latter.

78. For the African Commission the only legitimate reasons for restricting the rights and freedoms contained in the Charter are those stipulated in article 27(2), namely that the rights 'shall be exercised with due regard to the rights of others, collective security, morality and common interest'.³¹ And even in this case the restrictions should 'be based on legitimate public interest and the inconvenience caused by these restrictions should be strictly proportional and absolutely necessary for the benefits to be realised'.³²

79. Furthermore, the African Commission requires that for a restriction imposed by the legislators to conform to the provisions of the African Charter,

²⁸ Cf Resolution on the right to freedom of association, paragraph 3.

²⁹ Communication 212/98, *Amnesty v Zambia* paragraph 54 [(2000) AHRLR 325 (ACHPR 1999)].

³⁰ Communications 105/93, 128/94, 130/94 and 152/96, *Media Rights Agenda and Constitutional Rights Project v Nigeria*, paragraph 66 [(2000) AHRLR 200 (ACHPR 1998)].

³¹ Ibid, paragraph 68.

³² Ibid, paragraph 69.

it should be done 'with respect for the rights of others, collective security and common interest',³³ that it should be based 'on a legitimate public interest ... and should be strictly proportional and absolutely necessary' to the sought after objective.³⁴ And more over, the law in question should be in conformity with the obligations to which the state has subscribed in ratifying the African Charter³⁵ and should not 'render the right itself an illusion'.³⁶

80. It is worthy of note that freedom of expression and the right to association are closely linked because the protection of opinions and the right to express them freely constitute one of the objectives of the right of association. And this amalgamation of the two norms is even clearer in the case of political parties, considering their essential role for the maintenance of pluralism and the proper functioning of democracy. A political group should therefore not be hounded for the simple reason of wanting to hold public debates, with due respect for democratic rules, on a certain number of issues of national interest.

...

85. The African Commission notes that the respondent state contends rightly that the attitudes or declarations of the leaders of the dissolved party could indeed have violated the rights of individuals, the collective security of the Mauritanians and the common interest, but the disputed dissolution measure was 'not strictly proportional' to the nature of the breaches and offences committed by the UFD/EN.

For these reasons, the African Commission:

- Finds that the dissolution of UFD/*Ere nouvelle* political party by the respondent state was not proportional to the nature of the breaches and offences committed by the political party and is therefore in violation of the provisions of article 10(1) of the African Charter.
-

**African Institute for Human Rights and Development (on behalf of
Sierra Leonean Refugees in Guinea) v Guinea
[Communication 249/2002 - 20th Activity Report]**

This case relates to the violation of refugees' rights in Guinea, one of the main countries hosting refugees in Africa. For the first time, the Commission finds a violation not only of the African Charter, but also of the OAU Refugee Convention.

Summary of facts

1. It is alleged by the complainant that on 9 September 2000, Guinean President Lansana Conté proclaimed over the national radio that Sierra Leonean refugees in Guinea should be arrested, searched and confined to refugee camps. His speech incited soldiers and civilians alike to engage in

³³ Cf communication 140/94 cited above, paragraph 41 [*Constitutional Rights Project and Others v Nigeria* (2000) AHRLR 227 (ACHPR 1999)].

³⁴ Cf communication 140/94 cited above, paragraph 42.

³⁵ Cf communication 147/95 and 149/96, *Sir Dawda K. Jawarav The Gambia*, paragraph 59 [(2000) AHRLR 107 (ACHPR 2000)].

³⁶ Cf communication 140/94 cited above, paragraph 42.

mass discrimination against Sierra Leonean refugees in violation of article 2 of the African Charter.

...
26. At the 35th ordinary session, the respondent state was not represented due to the change of the venue. At the 35th ordinary session, the Commission heard oral submissions from complainants and testimonies from witnesses on the merits of the communication.

...
Admissibility

31. Article 56(5) requires the exhaustion of local remedies as a condition of the presentation of a complaint before the Commission is premised on the principle that the respondent state must first have an opportunity to redress by its own means within the framework of its own domestic legal system, the wrong alleged to have been done to the individual.

32. Concerning the matter of exhausting local remedies, a principle endorsed by the African Charter as well as customary international law, the complainant argues that any attempt by Sierra Leonean refugees to seek local remedies would be futile for three reasons:

33. First, the persistent threat of further persecution from state officials has fostered an ongoing situation in which refugees are in constant danger of reprisals and punishment. When the authorities tasked with providing protection are the same individuals persecuting victims an atmosphere in which domestic remedies are available is compromised. Furthermore, according to the precedent set by the African Commission in communication 147/95 and 149/96 *Jawara v The Gambia* [(2000) AHRLR 107 (ACHPR 2000)], the need to exhaust domestic remedies is not necessarily required if the complainant is in a life-threatening situation that makes domestic remedies unavailable.

34. Second, the impractical number of potential plaintiffs makes it difficult for domestic courts to provide an effective avenue of recourse. In September of 2000, Guinea hosted nearly 300,000 refugees from Sierra Leone. Given the mass scale of crimes committed against Sierra Leonean refugees – 5,000 detentions, mob violence by Guinean security forces, widespread looting – the domestic courts would be severely overburdened if even a slight majority of victims chose to pursue legal redress in Guinea. Consequently, the requirement to exhaust domestic remedies is impractical.

35. Finally, exhausting local remedies would require Sierra Leonean victims to return to Guinea, the country in which they suffered persecution, a situation that is both impractical and unadvisable. According to precedent set by the Commission in communication 71/92 *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia*, victims of persecution are not necessarily required to return to the place where they suffered persecution to exhaust local remedies.

36. In this present case, Sierra Leonean refugees forced to flee Guinea after suffering harassment, eviction, looting, extortion, arbitrary arrests, unjustified detentions, beatings and rapes. Would it be required to return to the same country in which they suffered persecution? Consequently, the requirement to exhaust local remedies is inapplicable.

37. For these reasons, the communication is declared admissible.

Merits

...
68. The African Commission is aware that African countries generally and the Republic of Guinea in particular, face a lot of challenges when it comes to hosting refugees from neighbouring war torn countries. In such circumstances

some of these countries often resort to extreme measures to protect their citizens. However, such measures should not be taken to the detriment of the enjoyment of human rights.

69. When countries ratify or sign international instruments, they do so willingly and in total cognisance of their obligation to apply the provisions of these instruments. Consequently, the Republic of Guinea has assumed the obligation of protecting human rights, notably the rights of all those refugees who seek protection in Guinea.

70. In communication 71/92 *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* [(2000) AHRLR 321 (ACHPR 1996)], the African Commission pointed out that 'those who drafted the Charter considered large scale expulsion as a special threat to human rights'. In consequence, the action of a state targeting specific national, racial, ethnic or religious groups is generally qualified as discriminatory in this sense as it has no legal basis.

71. The African Commission notes that Guinea is host to the second largest refugee population in Africa with just under half a million refugees from neighbouring Sierra Leone and Liberia. It is in recognition of this role that Guinea was selected to host the 30th Anniversary celebrations of the 1969 OAU Convention on the Specific Aspects of Refugee Problems in Africa, which was held in Conakry, Guinea in March 2000.

72. The African Commission appreciates the legitimate concern of the Guinean Government in view of the threats to its national security posed by the attacks from Sierra Leone and Liberia with a flow of rebels and arms across the borders.

73. As such, the government of Guinea is entitled to prosecute persons that they believe pose a security threat to the state. However, the massive violations of the human rights of refugees as are outlined in this communication constitute a flagrant violation of the provisions of the African Charter.

74. Although the African Commission was not provided with a transcript of the speech of the President, submissions before the Commission led it to believe that the evidence and testimonies of eye witnesses reveal that these events took place immediately after the speech of the President of the Republic of Guinea on 9 September 2000.

75. The African Commission finds that the situation prevailing in Guinea during the period under consideration led to certain human rights violations.

For the above reasons, the African Commission:

- Finds the Republic of Guinea in violation of articles 2, 4, 5, 12 (5) and 14 of the African Charter and article 4 of the OAU Convention Governing the Specific Aspects of Refugees in Africa of 1969.
- Recommends that a Joint Commission of the Sierra Leonean and the Guinea governments be established to assess the losses by various victims with a view to compensate the victims.

Prince v South Africa
[Communication 255/2002 - 36th ordinary session, still to be
published in an Activity Report]

In this case, the complainant alleges that his freedom of religion is violated because he has to choose between adhering to his Rastafarian beliefs and his professional career as a lawyer. Finding that the relevant legislation constitutes reasonable limitations to the right, the Commission also reiterates that the principle of subsidiarity and the margin of appreciation doctrine does not minimise its oversight mandate.

...
Decision on merits

28. As per the original complaint, the complainant is a 32 years old man who wishes to become an attorney in the courts of South Africa. Having satisfied all the academic requirements of the South African Attorney's Act (the Act), he applies to register a contract of community service with the Law Society of the Cape of Good Hope (the Law Society). Under the same Act, registering articles of clerkship or performing community service, as Mr Prince wished to do, is another requirement that an applicant should fulfil before he or she could be admitted as an attorney to practice before the High Court. Per the provisions of the Act, the applicant, such as Mr Prince should serve for a period of one year. Before serving so, however, the Act requires that the applicant should provide proof to the satisfaction of the Law Society that he or she is 'fit and proper person'. In his application to the Society, and as part of the legal requirement, Mr Prince disclosed not only that he had two previous convictions for possession of cannabis under the Drugs and Drug Trafficking Act (the Drugs Act) but that he intended to continue using cannabis as inspired and required by his Rastafarian religion.

29. The Law Society declined to register Mr Prince's contract of community service taking the view that a person who, while having two previous convictions for possession of cannabis, declares his intention to continue using the substance, is not a 'fit and proper person' to be admitted as an attorney. Mr Prince alleged that the Law Society's refusal to register meant that as long as he adhered to the requirements of his Rastafari faith, he would never be admitted as an attorney. Accordingly, Mr Prince brought this complaint alleging violation of articles 5, 8, 15, and 17(2) of the African Charter. In his prayers to the African Commission, the complainant requested the African Commission to find the respondent in violation of the said articles, and that he be entitled to an exemption for the sacramental use of cannabis reasonably accommodating him to manifest his beliefs in accordance with his Rastafari religion.

...
Violation of the right to freedom of religion: Article 8 of the African Charter

40. The complainant alleges violation of this article due to the respondent state's alleged proscription of the sacramental use of cannabis and for failure to provide a religious exemption for Rastafari. The crux of his argument is that manifestation of Rastafari religious belief, which involves the sacramental use of cannabis, places the Rastafari in conflict with the law and puts them at risk of arrest, prosecution and conviction for the offence of possession or use of cannabis. While admitting the prohibition serves a rational and legitimate purpose, he nonetheless holds that this prohibition is disproportionate as it included within its scope the sacramental use of cannabis by Rastafari.

41. Although the freedom to manifest one's religion or belief cannot be realised if there are legal restrictions preventing a person from performing actions dictated by his or her convictions, it should be noted that such a freedom does not in itself include a general right of the individual to act in accordance with his or her belief. While the right to hold religious beliefs should be absolute, the right to act on those beliefs should not. As such, the right to practice one's religion must yield to the interests of society in some circumstances. A parent's right to refuse medical treatment for a sick child, for instance, may be subordinate to the state's interest in protecting the health, safety, and welfare of its minor children.

42. In the present case, thus, the Commission upholds the respondent state's restriction, which is general and happens to affect Rastafari incidentally (*de facto*), along the lines of the UN Human Rights Committee, which, in the case *K Singh Bhinder v Canada* (communication 208/1986) upheld restrictions against the manner of manifestation of one's religious practice. That case concerned the dismissal of the complainant from his post as maintenance electrician of the government-owned Canadian National Railway Company. He had insisted on wearing a turban (as per the edicts of his Sikh religion) instead of safety headgear at his work, which led to the termination of his labour contract. The UN Human Rights Committee held:

If the requirement that a hard hat be worn is seen as a discrimination *de facto* against persons of the Sikh religion under article 26, then, applying criteria now well established in the jurisprudence of the Committee, the legislation requiring that workers in federal employment be protected from injury and electric shock by the wearing of hard hats is to be regarded as reasonable and directed towards objective purposes that are compatible with the Covenant.

43. The African Commission considers that the restrictions in the two South African legislations on the use and possession of cannabis are similarly reasonable as they serve a general purpose and that the Charter's protection of freedom of religion is not absolute. The only legitimate limitations to the rights and freedoms contained in the African Charter are found in article 27(2); ie that the rights in the African Charter 'shall be exercised with due regard to the rights of others, collective security, morality, and common interest'. The limitation is inspired by well-established principle that all human and peoples' rights are subject to the general rule that no one has the right to 'engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms' recognised elsewhere. And the reasons for possible limitations must be founded in a legitimate state interest and the evils of limitations of rights must be strictly proportionate with and absolutely necessary for the advantages, which are to be obtained. It is noted that the respondent state's interest to do away with the use of cannabis and its abuse or trafficking stems from the fact that, and this is also admitted by the complainant, cannabis is an undesirable dependence-producing substance. For all intents and purposes, this constitutes a legitimate limitation on the exercise of the right to freedom of religion within the spirit of article 27(2) cum article 8.

44. Besides, the limitations so visited upon the complainant and his fellow Rastafari fall squarely under article 2 of the African Charter which requires states to ensure equal protection of the law. As the limitations are of general application, without singling out the complainant and his fellow Rastafari but applying to all across the board, they cannot be said discriminatory so as to curtail the complainant's free exercise of his religious rights.

Violation of the right to occupational choice: Article 15 of the African Charter

45. The complainant has alleged that because of his religious beliefs, the Law Society refused to register his contract of community service, thereby

violating his right to occupational choice. He argued that the effect of the legal restrictions on cannabis in effect denied the Rastafari access to a profession.

46. One purpose of this Charter provision is to ensure that states respect and protect the right of everyone to have access to the labour market without discrimination. The protection should be construed to allow certain restrictions depending on the type of employment and the requirements thereof. Given the legitimate interest the state has in restricting the use and possession of cannabis as shown above, it is held that the complainant's occupational challenge can be done away with should he chose to accommodate these restrictions. Although he has the right to choose his occupational call, the Commission should not give him or any one a leeway to bypass restrictions legitimately laid down for the interest of the whole society. There is no violation, thus, of his right to choose his occupation as he himself chose instead to disqualify himself from inclusion by choosing to confront the legitimate restrictions.

Violation of the right to dignity and cultural life: Articles 5 and 17(2) of the Charter

47. The complainant lists down the main characteristics for identifying the Rastafari way of life (culture): hairstyle, dress code, dietary code, usage of cannabis, the worship of Jah Rastafari, the Living God and others. He further states that the critical form of social interaction amongst the followers of this religion is the worship of the Creator, which is not possible without cannabis, and to which the respondent state argues to the contrary.

48. The Commission notes that the participation in one's culture should not be at the expense of the overall good of the society. Minorities like the Rastafari may freely choose to exercise their culture, yet, that should not grant them unfettered power to violate the norms that keep the whole nation together. Otherwise, as the respondent state alleged, the result would be anarchy, which may defeat everything altogether. Given the outweighing balance in favour of the whole society as opposed to a restricted practice of Rastafari culture, the Commission should hold that the respondent state violated no cultural rights of the complainant.

49. With respect to the alleged violation of the right to human dignity, the Commission holds that the complainant's treatment by the respondent state does not constitute unfair treatment so as to result in his loss of self-worth and integrity. As he or his fellow Rastafari are not the only one's being proscribed from the use or possession of cannabis, the complainant has no grounds to feel devalued, marginalised, and ignored. Thus, the Commission should find no violation of the right to dignity.

With respect to the arguments of the respondent state invoking the inter-related principle of subsidiarity and the margin of appreciation doctrine

50. The African Commission notes the meaning attached to these doctrines by the respondent state as outlined in its submissions to the former. The principle of subsidiarity indeed informs the African Charter, like any other international and/or regional human rights instrument does to its respective supervisory body established under it, in that the African Commission could not substitute itself for internal or domestic procedures found in the respondent state that strive to give effect to the promotion and protection of human and peoples' rights enshrined under the African Charter.

51. Similarly, the margin of appreciation doctrine informs the African Charter in that it recognises the respondent state in being better disposed in adopting national rules, policies and guidelines in promoting and protecting human and peoples' rights as it indeed has direct and continuous knowledge of its

society, its needs, resources, economic and political situation, legal practices, and the fine balance that need to be struck between the competing and sometimes conflicting forces that shape its society.

52. Both doctrines establish the primary competence and duty of the respondent state to promote and protect human and peoples' rights within its domestic order. That is why, for instance, the African Charter, among others, requires complainants to exhaust local remedies under its article 56. It also gives member states the required latitude under specific articles in allowing them to introduce limitations. The African Commission is aware of the fact that it is a regional body and cannot, in all fairness, claim to be better situated than local courts in advancing human and peoples' rights in member states.

53. That underscored, however, the African Commission does not agree with the respondent state's implied restrictive construction of these two doctrines relating to the role of the African Commission, which, if not set straight, would be tantamount to ousting the African Commission's mandate to monitor and oversee the implementation of the African Charter. Whatever discretion these two doctrines may allow member states in promoting and protecting human and peoples' rights domestically, they do not deny the African Commission's mandate to guide, assist, supervise and insist upon member states on better promotion and protection standards should it find domestic practices wanting. They do allow member states to primarily take charge of the implementation of the African Charter in their respective countries. In doing so, they are informed by the trust the African Charter has on member states to fully recognise and give effect to the rights enshrined therein. What the African Commission would not allow, however, is a restrictive reading of these doctrines, like that of the respondent state, which advocates for the hands-off approach by the African Commission on the mere assertion that its domestic procedures meet more than the minimum requirements of the African Charter.

For these reasons, the African Commission:

- Finds no violation of the complainant's rights as alleged.
-

Lawyers for Human Rights v Swaziland
[Communication 251/2002 - 18th Annual Activity Report]

In 1973, the Swazi King repealed the 1968 Constitution and Bill of Rights. Although Swaziland has only ratified the Charter in 1995, the repeal of the Constitution in the view of the Commission constitutes an ongoing violation, and as a result the Commission has jurisdiction. The Commission finds Swaziland to be in violation of a range of provisions of the African Charter.

...
Admissibility

23. The complainant submits that as a result of the King's Proclamation to the Nation 12 of 1973, the written and democratic Constitution of the Kingdom of Swaziland enacted in 1968 containing a Bill of Rights was repealed. Furthermore, the Proclamation prohibited the Courts of the

Kingdom of Swaziland from enquiring into the validity of the Proclamation or any acts undertaken in accordance with the Proclamation.

24. The complainant indicates that under the Proclamation, the King assumes supreme power in the Kingdom and judicial power is vested in him and he retains the power to overturn all court decisions, thereby removing any meaningful legal avenue for redress. The complainant quotes the case of *Professor Dlamini v The King* to illustrate instances where the King has exercised his power to undermine decisions of the courts. In that case, the Court of Appeal overturned the Non-Bailable Offences Order of 1993, which ousted the courts' jurisdiction to entertain bail applications. Following the decision of the Court of Appeal, the King issued a decree, 2 of 2001 reinstating the Non Bailable Offences Order. However, due to international pressure, the King later repealed aspects of the reinstated Non Bailable Offenses Order by Decree 3 of 2001.

25. Therefore the complainant argues it cannot exhaust domestic remedies because they are unavailable by virtue of the Proclamation and even where a matter could be instituted and won in the courts of Swaziland, it would not constitute a meaningful, durable remedy because the King would nullify such legal victory.

26. The complainant provides all the proclamations made by the King and after perusing the proclamations, the African Commission notes that nowhere in all the proclamations is there an ouster clause to the effect that the courts of the Kingdom of Swaziland are prohibited from enquiring into the validity of the proclamation or any acts undertaken in accordance with the Proclamation.

27. The African Commission has considered this matter and realises that for the past 31 years the Kingdom of Swaziland has had no Constitution. Furthermore, the complainant has presented the African Commission with information demonstrating that the King is prepared to utilise the judicial power vested in him to overturn court decisions. As such, the African Commission believes that taking into consideration the general context within which the judiciary in Swaziland is operating and the challenges that they have been faced with especially in the recent past, any remedies that could have been utilised with respect to the present communication would have likely been temporary. In other words, the African Commission is of the view that the likelihood of the complainant succeeding in obtaining a remedy that would redress the situation complained of in this matter is so minimal as to render it unavailable and therefore ineffective. For the reasons stated herein above, the African Commission declares this communication admissible.

...

Commission's decision on the merits

41. In making this decision on the merits, the African Commission would like to point out that it is disappointed with the lack of co-operation from the respondent state. The decision on the merits was taken without any response from the state. As a matter of fact, since the communication was submitted to the Commission and in spite several correspondences to the state, there hasn't been any response from the latter on the matter. Under such circumstances, the Commission is left with no other option than to take a decision based on the information at its disposal.

42. It must be stated however that, by relying on the information provided by the complainant, the Commission did not rush into making a decision. The Commission analysed each allegation made and established the veracity thereof.

43. A preliminary matter that has to be addressed by the African Commission is the competence of the commission to entertain allegations of human rights violations that took place before the adoption of the Charter or even its

coming into force. In making this determination the Commission has to differentiate between allegations that are no longer being perpetrated and violations that are ongoing.

44. In case of the former, that is, violations that occurred before the coming into force of the Charter but which are no longer or which stopped before the coming into force of the Charter, the Commission has no competence to entertain them. The events which occurred before the date of ratification of the Charter are therefore outside the Commission's competence *ratione temporis*. The Commission is only competent *ratione temporis* to consider events which happened after that date or, if they happened before then, constitute a violation continuing after that date.

45. In the present communication, the violations are said to have started in 1973 following the Proclamation by the King, that is, prior to the coming into force of the African Charter and continued after the coming into force of the Charter through when the respondent state ratified the Charter and is still ongoing to date. The Commission therefore has the competence to deal with the communication.

46. The Commission has competence *ratione loci* to examine the case because the petition alleges violations of rights protected by the African Charter, which have taken place within the territory of a state party to that Charter. It has competence *ratione materiae* as the petition alleges violations of human rights protected by the Charter, and lastly it has competence *ratione temporis* as the facts alleged in the petition took place when the obligation to respect and guarantee the rights established in the Charter was in force for the Kingdom of Swaziland. Given that Swaziland signed the Charter in 1991 and later ratified on 15 September 1995, it is clear that the alleged events continues to be perpetrated when the state became under the obligation to respect and safeguard all rights enshrined in the Charter, giving the Commission *rationae temporis* competence.

47. The two stages of signature and ratification of an international treaty provides states with the opportunity to take steps to ensure that they make the necessary domestic arrangements to ensure that by the time they ratify a treaty the latter is in conformity with their domestic law. When ratifying the Charter, the respondent state was aware of the violation complained of and had the obligation to take all the necessary steps to comply with its obligations under article 1 of the Charter - to adopt legislative and other measures to give effect to the rights and freedoms in the Charter.

48. From the above, it is the Commission's opinion that it is competent to deal with the matter before it.

49. Having determined that it is competent to deal with the matter, the Commission will now proceed to examine each of the rights alleged to have been violated by the respondent state.

50. The complainant argues that by ratifying the African Charter and not adopting legislative and other measures to bring the 1973 Proclamation in conformity with the Charter, the respondent state has violated article 1 of the African Charter. The use of the term 'other measures' in article 1 provides state parties with a wide choice of measures to use to deal with human rights problems. In the present situation when a decree has been passed by the head of state abrogating the constitution, it was incumbent on the same head of state and other relevant institutions in the country to demonstrate good faith and either reinstate the constitution or amend the Decree to bring it in conformity with the Charter provisions during or after ratification.

51. In the opinion of the Commission, by ratifying the Charter without at the same time taking appropriate measures to bring domestic laws in conformity with it, the respondent state's action defeated the very object and spirit of the Charter and thus violating article 1 thereof.

52. The complainant also alleges violation of article 7 of the Charter stating that the Proclamation vests all powers of state to the King, including judicial powers and the authority to appoint and remove judges and Decree 3/2001 which ousts the courts' jurisdiction to grant bail on matters listed in the schedule. According to the complainant this illustrates that courts are not independent.

53. Article 7 of the African Charter provides for fair trial guarantees - safeguards to ensure that any person accused of an offence is given a fair hearing. In its Resolution on Fair Trial adopted at its 11th ordinary session, in Tunis, Tunisia, from 2 to 9 March 1992, the African Commission held that the right to fair trial includes, among other things, the right to be heard, the right of an arrested person to be informed at the time of arrest in a language he or she understands, of the reason for the arrest and to be informed promptly of any charges against them, the right of arrested or detained persons to be brought promptly before a judge or other officer authorised by law to exercise judicial power and be tried within a reasonable time or be released, and the right to be presumed innocent until proven guilty by a competent court.

54. In the present communication the Proclamation of 1973 and the Decree of 2001 vested judicial power in the King and ousted the jurisdiction of the court on certain matters. The acts of vesting judicial power in the King or ousting the jurisdiction of the courts on certain matters in themselves do not only constitute a violation of the right to fair trial as guaranteed in article 7 of the Charter, but also tend to undermine the independence of the judiciary.

55. Article 26 of the Charter provides that states parties shall have the duty to guarantee the independence of the courts. Article 1 of the UN Basic Principles on the Independence of the Judiciary states that:

The independence of the judiciary shall be guaranteed by the state and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of judiciary.

Article 11 of the same Principles states that 'the term of office of judges, their independence, security ... shall be adequately secured by law'. Article 18 provides that 'Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties'. Article 30 of the International Bar Association (IBA)'s Minimum Standards of Judicial Independence also guarantees that: a Judge shall not be subject to removal unless, by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity, he has shown himself manifestly unfit to hold the position of judge and article 1(b) states that 'Personal independence means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control'.

56. By entrusting all judicial powers to the Head of State with powers to remove judges, the Proclamation of 1973 seriously undermines the independence of the judiciary in Swaziland. The main *raison d'être* of the principle of separation of powers is to ensure that no organ of government becomes too powerful and abuses its power. The separation of power amongst the three organs of government - executive, legislature and judiciary ensure checks and balances against excesses from any of them. By concentrating the powers of all-three government structures into one person, the doctrine of separation of power is undermined and subject to abuse.

57. In its Resolution on the Respect and the Strengthening on the Independence of the Judiciary adopted at its 19th ordinary session held from 26 March to 4 April 1996 at Ouagadougou, Burkina Faso, the African Commission 'recognised the need for African countries to have a strong and

independent judiciary enjoying the confidence of the people for sustainable democracy and development'. The Commission then:

Urged all state parties to the Charter to repeal all their legislation which are inconsistent with the principles of respect of the independence of the judiciary, especially with regard to the appointment and posting of judges and to refrain from taking any action which may threaten directly or indirectly the independence and the security of judges and magistrates.

58. Clearly, retaining a law which vest all judicial powers in the Head of State with possibility of hiring and firing judges directly threatens the independence and security of judges and the judiciary as a whole. The Proclamation of 1973, to the extent that it allows the Head of State to dismiss judges and exercise judicial power is in violation of article 26 of the African Charter.

59. With regards allegation of violation of articles 10 and 11, the complainant submits that the Proclamation of 1973 abolishes and prohibits the existence and the formation of political parties or organisations of a similar nature and that the Proclamation also violates article 11 - right to assemble peacefully as the right to associate cannot be divorced from the right to assembly freely and peacefully.

60. Article 10 of the African Charter provides that 'every individual shall have the right to free association provided that he abides by the law'. Article 11 provides that '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 communication 225/98 the African Commission, quoting its Resolution on the Right to Freedom of Association held that the regulation of the exercise of the right to freedom of association should be consistent with states' obligations under the African Charter and in regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom. That the competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standards. The Commission reiterated this in communications 147/95 and 149/96 and concluded that this principle does not apply to freedom of association alone but also to all other rights and freedoms enshrined in the Charter, including, the right to freedom of assembly.

61. Admittedly, the Proclamation restricting the enjoyment of these rights was enacted prior to the coming into effect of the Charter. However, the respondent state had an obligation to ensure that the Proclamation conforms to the Charter when it ratified the latter in 1995. By ratifying the Charter without taking appropriate steps to bring its laws in line with the same, the African Commission is of the opinion that the state has not complied with its obligations under article 1 of the Charter and in failing to comply with the said duty, the prohibition on the establishment of political parties under the Proclamation remained effective and consequently restricted the enjoyment of the right to freedom of association and assembly of its citizens. The Commission therefore finds the state to have violated these two articles by virtue of the 1973 proclamation.

62. The complainant also alleges violation of article 13 of the African Charter claiming that the King's Proclamation of 1973 restricted participation of citizens in governance as according to the complainant the import of sections 11 and 12 of the Proclamation is that citizens can only participate in issues of governance only within structures of the Tinkhundla. In communications 147/95 and 146/96 *Jawara v The Gambia* [(2000) AHRLR 107 (ACHPR 2000)] the Commission held that:

The imposition of the ban on former Ministers and Members of Parliament is in contravention of their rights to participate freely in the government of their country provided for under article 13(1) of the Charter Also the ban on political

parties is a violation of the complainants rights to freedom of association guaranteed under article 10(1) of the Charter.

63. In the present communication, the King's Proclamation clearly outlaws the formation of political parties or any similar structure. Political parties are one means through which citizens can participate in governance either directly or through elected representatives of their choice. By prohibiting the formation of political parties, the King's Proclamation seriously undermined the ability of the Swaziland people to participate in the government of their country and thus violated article 13 of the Charter.

From the above reasoning, the African Commission:

- Is of the view that the Kingdom of Swaziland by its Proclamation of 1973 and the subsequent Decree 3 of 2001 violated articles 1, 7, 10, 11, 13 and 26 of the African Charter.
 - Recommends as follows: that the Proclamation and the Decree be brought in conformity with the provisions of the African Charter; that the state engages with other stakeholders, including members of civil society in the conception and drafting of the new Constitution; and that the Kingdom of Swaziland should inform the African Commission in writing within six months on the measures it has taken to implement the above recommendations.
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Democratic Republic of the Congo v Burundi, Rwanda and Uganda [Communication 227/99 - 20th Activity Report]

In its first inter-state communication the Commission finds the respondent states to have violated a number of human and peoples' rights including the right to self-determination, the right to development and the right to peace and security.

Summary of facts

...
2. The communication is filed against the Republics of Burundi, Rwanda and Uganda (hereinafter referred to, respectively, as 'Burundi', 'Rwanda' and 'Uganda'). It alleges grave and massive violations of human and peoples' rights committed by the armed forces of these three countries in the Congolese provinces where there have been rebel activities since 2 August 1998, and for which the Democratic Republic of Congo blames Burundi Uganda and Rwanda. In support of its complaint the Democratic Republic of Congo states that the Ugandan and Rwandan governments have acknowledged the presence of their respective armed forces in the eastern provinces of the Democratic Republic of Congo under what it terms the 'fallacious pretext' of 'safeguarding their interests'. The complaint states, furthermore, that the Congolese government has 'sufficient and overwhelming evidence of Burundi's involvement'.

...

Law

Admissibility

...
58. The Commission is of the view that the procedure outlined in article 47 of the Charter is permissive and not mandatory. This is borne out by the use

of the word ‘may’. Witness the first sentence of this provision: ‘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’.

59. Moreover, where the dispute is not settled amicably, article 48 of the Charter requires either state to submit the matter to the Commission through the Chairman and to notify the other states involved. It does not, however, provide for its submission to the Secretary-General of the OAU. Nevertheless, based on the decision of the Commission at its 25th ordinary session, requesting it to forward a copy of its complaint to the Secretary-General of the OAU (see paragraph 14 above), the complainant state had done so.

...

61. Article 49 on the other hand, provides for a procedure where the complainant state directly seizes the Commission without passing through the conciliation phase. Accordingly, the complainant state may refer the matter directly to the Commission by addressing a communication to the Chairman, the Secretary-General of the OAU and the state concerned. Such a process allows the requesting state to avoid making contacts with the respondent state in cases where such contacts will not be diplomatically either effective or desirable. In the Commission’s considered opinion that seems to be the case here. Indeed, the situation of undeclared war prevailing between the Democratic Republic of Congo and its neighbours to the east did not favour the type of diplomatic contact that would have facilitated the application of the provisions of articles 47 and 48 of the Charter. It was also for this reason that the Commission took the view that article 52 did not apply to this communication.

62. The Commission is mindful of the requirement that it can consider or deal with a matter brought before it if the provisions of article 50 of the Charter and rule 97(c) of the Rules of Procedure are met, that is if all local remedies, if they exist, have been exhausted, unless such would be unduly prolonged.

63. The Commission takes note that the violations complained of are allegedly being perpetrated by the respondent states in the territory of the complainant state. In the circumstances, the Commission finds that local remedies do not exist, and the question of their exhaustion does not, therefore, arise.

64. The effect of the alleged activities of the rebels and armed forces of the respondent states parties to the Charter, which also back the rebels, fall not only within the province of humanitarian law, but also within the mandate of the Commission. The combined effect of articles 60 and 61 of the Charter compels this conclusion; and it is also buttressed by article 23 of the African Charter.

...

From the foregoing, the Commission declares the communication admissible.

The merits

66. The use of armed force by the respondent states, which the Democratic Republic of Congo complains of contravenes the well-established principle of international law that states shall settle their disputes by peaceful means in such a manner that international peace, security and justice are not endangered. Indeed, there cannot be both national and international peace and security guaranteed by the African Charter under the conditions created by the respondent states in the eastern provinces of the complainant state.

67. Rwanda and Uganda, in their oral arguments before the Commission at its 27th ordinary session held in Algeria had argued that the decision of the complainant state to submit the communication directly to the Chairman of the Commission without first notifying them and the Secretary-General of the

OAU, is procedurally wrong and therefore fatal to the admissibility of the case. But the African Commission found otherwise.

68. The Commission finds the conduct of the respondent states inconsistent with the standard expected of them under UN Declaration on Friendly Relations, which is implicitly affirmed by the Charters of the UN and OAU, and which the Commission is mandated by article 23 of the African Charter on Human and Peoples' Rights to uphold. Any doubt that this provision has been violated by the respondent states is resolved by recalling an injunction in the UN Declaration on Friendly Relations:

No state or group of states has the right to intervene directly or indirectly, for any reason whatever, in the internal or external affairs of any other states. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements are in violation of international law ... Also no state shall organise, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state or interfere in civil strife in another state.

The substance of the complaint of the Democratic Republic of Congo against the respondents is covered by the foregoing prohibition. The respondent states have therefore violated article 23 of the African Charter. The conduct of the respondent states also constitutes a flagrant violation of the right to the unquestionable and inalienable right of the peoples of the Democratic Republic of Congo to self-determination provided for by article 20 of the African Charter, especially clause 1 of this provision.

69. The complainant state alleges grave and massive violations of human and peoples' rights committed by the armed forces of the respondent states in its eastern provinces. It details series of massacres, rapes, mutilations, mass transfers of populations and looting of the peoples' possessions, as some of those violations. As noted earlier on, the series of violations alleged to have been committed by the armed forces of the respondent states fall within the province of humanitarian law, and therefore rightly covered by the four Geneva Conventions and the Protocols additional to them. And the Commission having found the alleged occupation of parts of the provinces of the complainant state by the respondents to be in violation of the Charter cannot turn a blind eye to the series of human rights violations attendants upon such occupation.

70. The combined effect of articles 60 and 61 of the African Charter enables the Commission to draw inspiration from international law on human and peoples' rights, the Charter of the United Nations, the Charter of the Organisation of African Unity and also to take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules recognised by member states of the Organization of African Unity, general principles recognised by African states as well as legal precedents and doctrine. By virtue of articles 60 and 61 the Commission holds that the four Geneva Conventions and the two Additional Protocols covering armed conflicts constitute part of the general principles of law recognised by African states, and take same into consideration in the determination of this case.

71. It is noted that article 75(2) of the First Protocol of the Geneva Conventions of 1949, prohibits the following acts at any time and in all places whatsoever, whether committed by civilian or by military agents:

Violence to life, health, or physical or mental well-being of persons, in particular; murder; torture of all kinds, whether physical or mental; corporal punishment; mutilations; and outrages upon personal dignity, in particular, humiliating and degrading treatment; enforced prostitution and any form of indecent assault.

72. The complainant state alleges the occupation of the eastern provinces of the country by the respondent states' armed forces. It alleges also that most parts of the affected provinces have been under the control of the rebels

since 2 August 1998, with the assistance and support of the respondent states. In support of its claim, it states that the Ugandan and Rwandan governments have acknowledged the presence of their respective armed forces in the eastern provinces of the country under what it calls the ‘fallacious pretext’ of ‘safeguarding their interests’. The Commission takes note that this claim is collaborated by the statements of the representatives of the respondent states during the 27th ordinary session held in Algeria.

73. Article 23 of the Charter guarantees to all peoples the right to national and international peace and security. It provides further that ‘[t]he 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.’ The principles of solidarity and friendly relations contained in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among states in Accordance with the Charter of the United Nations (Res. 2625 (XXV), adopted by the UN General Assembly on 24 October 1970, prohibits threat or use of force by states in settling disputes. Principle 1 provides: Every state has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

74. In the same vein, article 33 of the United Nations Charter enjoins ‘parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security ... first of all, to seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice’. Chapter VII of the same Charter outrightly prohibits threats to the peace, breaches of the peace and acts of aggression. Article III of the OAU Charter states that:

The member states, in pursuit of the purposes stated in article II, solemnly affirm and declare their adherence to the following principles: ... (2) Non-interference in the internal affairs of states; (3) Respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence; (4) *Peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration.*

75. It also contravenes the well-established principle of international law that states shall settle their disputes by peaceful means in such a manner that international peace and security and justice are not endangered. As noted in paragraph 66 above, there cannot be both national and international peace and security guaranteed by the Charter with the conduct of the respondent states in the eastern provinces of the complainant state.

76. The Commission therefore disapproves of the occupation of the complainant's territory by the armed forces of the respondent forces and finds it impermissible, even in the face of their argument of being in the complainant's territory in order to safeguard their national interests and therefore in contravention of article 23 of the Charter. The Commission is of the strong belief that such interests would better be protected within the confines of the territories of the respondent states.

77. It bears repeating that the Commission finds the conduct of the respondent states in occupying territories of the complainant state to be a flagrant violation of the rights of the peoples of the Democratic Republic of Congo to their unquestionable and inalienable right to self-determination provided for by article 20 of the African Charter.

78. As previously stated, the Commission is entitled, by virtue of articles 60 and 61 of the African Charter, to draw inspiration from international law on

Human and Peoples' Rights, ... the Charter of the United Nations, the Charter of the Organisation of African Unity ... and also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules recognised by member states of the Organisation of African Unity ... general principles recognised by African states as well as legal precedents and doctrine. Invoking these provisions, the Commission holds that the four Geneva Conventions and the two Additional Protocols covering armed conflicts, fall on all fours with the category of special international conventions, laying down rules recognised by member states of the Organisation of African Unity and also constitute part of the general principles recognised by African states, and to take same into consideration in the determination of this case.

79. The Commission finds the killings, massacres, rapes, mutilations and other grave human rights abuses committed while the respondent states' armed forces were still in effective occupation of the eastern provinces of the complainant state reprehensible and also inconsistent with their obligations under Part III of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 and Protocol 1 of the Geneva Convention.

80. They also constitute flagrant violations of article 2 of the African Charter, such acts being directed against the victims by virtue of their national origin; and article 4, which guarantees respect for life and the integrity of one's person and prohibits the arbitrary deprivation rights.

81. The allegation of mass transfer of persons from the eastern provinces of the complainant state to camps in Rwanda, as alleged by the complainant and not refuted by the respondent, is inconsistent with article 18(1) of the African Charter, which recognises the family as the natural unit and basis of society and guarantees it appropriate protection. It is also a breach of the right to freedom of movement, and the right to leave and to return to ones country guaranteed under article 12(1) and (2) of the African Charter respectively.

82. Article 56 of the First Protocol Additional to the Geneva Conventions of 1949 provides:

Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made object of military attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

The special protection against attack provided by paragraph 1 shall cease: (a) for a dam or dyke only if it is used for other than its normal function in a regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support ...

In all cases, the civilian population and individual civilians shall remain entitled to all the protection accorded them by international law, including the protection of precautionary measures provided for in article 57.

83. As noted previously, taking article 56, quoted above into account, and by virtue of articles 60 and 61 of the African Charter, the Commission concludes that in besieging the hydroelectric dam in Lower Congo province, the respondent states have violated the Charter.

84. The besiege of the hydroelectric dam may also be brought within the prohibition contained in The Hague Convention (II) with Respect to the Laws and Customs of War on Land which provides in article 23 that 'besides the prohibitions provided by special Conventions, it is especially prohibited ... to destroy the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war'. By parity of reason, and bearing in mind articles 60 and 61 of the Charter, the respondent states are in violation of the Charter with regard to the just noted article 23.

85. The case of *the International Criminal Tribunal for Yugoslavia v Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo* (the Celebici Judgment;

Nov., 16, 1998 at para. 587) is supportive of the Commission's stance. It states, *inter alia*, that

international law today imposes strict limitations on the measures which a party to an armed conflict may lawfully take in relation to the private and public property of an opposing party. The basic norms in this respect, which form part of customary international law ... include the fundamental principle ... that private property must be respected and cannot be confiscated ... pillage is formally forbidden.

86. The raping of women and girls, as alleged and not refuted by the respondent states, is prohibited under article 76 of the first Protocol Additional to the Geneva Conventions of 1949, which provides that 'women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any form of indecent assault.' It also offends against both the African Charter and the Convention on the Elimination of All Forms of Discrimination Against Women; and on the basis of articles 60 and 61 of the African Charter find the respondent states in violation of the Charter.

87. The Commission condemns the indiscriminate dumping of and or mass burial of victims of the series of massacres and killings perpetrated against the peoples of the eastern province of the complainant state while the armed forces of the respondent states were in actual fact occupying the said provinces. The Commission further finds these acts barbaric and in reckless violation of Congolese peoples' rights to cultural development guaranteed by article 22 of the African Charter, and an affront on the noble virtues of the African historical tradition and values enunciated in the preamble to the African Charter. Such acts are also forbidden under article 34 of the First Protocol Additional to the Geneva Conventions of 1949, which provides for respect for the remains of such peoples and their gravesites. In disregarding the last provision, the respondent states have violated the African Charter on the basis of articles 60 and 61 of this instrument.

88. The looting, killing, mass and indiscriminate transfers of civilian population, the besiege and damage of the hydro-dam, stopping of essential services in the hospital, leading to deaths of patients and the general disruption of life and state of war that took place while the forces of the respondent states were occupying and in control of the eastern provinces of the complainant state are in violation of article 14 guaranteeing the right to property, articles 16 and 17 (all of the African Charter), which provide for the rights to the best attainable state of physical and mental health and education, respectively.

89. Part III of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949, particularly in article 27 provides for the humane treatment of protected persons at all times and for protection against all acts of violence or threats and against insults and public curiosity. Further, it provides for the protection of women against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Article 4 of the Convention defines a protected person as those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals.

90. The complainant state alleges that between October and December 1998, the gold produced by the OKIMO firm and by local diggers yielded \$100,000,000 (one hundred million US dollars) to Rwanda. By its calculation, the coffee produced in the region and in North Kivu yielded about \$70,000,000 (seventy million US dollars) to Uganda in the same period. Furthermore, Rwanda and Uganda took over control of the fiscal and customs revenue collected respectively by the Directorate General of Taxes. The plunder of

the riches of the eastern provinces of Congo is also affecting endangered animal species such as okapis, mountain gorillas, rhinoceros, and elephants.

91. Indeed, the respondent states, especially, Uganda, has refuted these allegations, pretending for example that its troops never stepped in some of the regions they are accused of human rights violations and looting of the natural resources of the complainant states. However, the African Commission has evidence that some of these facts did take place and are imputable to the armies and agents of the respondent states. In fact, the United Nations have acknowledged that during the period when the armies of the respondent states were in effective control over parts of the territory of the complainant state, there were lootings of the natural resources of the complainant state. The United Nations set up a Panel of Experts to investigate this matter¹.

92. The report of the Panel of Experts, submitted to the Security Council of the United Nations in April 2001 (under reference S/2001/357) identified all the respondent states among others actors, as involved in the conflict in the Democratic Republic of Congo². The report profusely provides evidence of the involvement of the respondent states in the illegal exploitation of the natural resources of the complainant state. It is stated in paragraph 5 of the Summary of the report:

During this first phase (*called Mass-scale looting phase by the experts*), stockpiles of minerals, coffee, wood, livestock and money that were available in territories conquered by the armies of Burundi, Rwanda and Uganda were taken, and either transferred to those countries or exported to international markets by their forces and nationals.³

93. Paragraph 25 of the reports further states:

The illegal exploitation of resources (of the Democratic Republic of Congo) by Burundi, Rwanda and Uganda took different forms, including confiscation, extraction, forced monopoly and price-fixing. Of these, the first two reached proportions that made the war in the Democratic Republic of the Congo a very lucrative business.

94. The Commission therefore finds the illegal exploitation/looting of the natural resources of the complainant state in contravention of article 21 of the African Charter, which provides:

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 ... 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.

95. The deprivation of the right of the people of the Democratic Republic of Congo, in this case, to freely dispose of their wealth and natural resources, has also occasioned another violation - their right to their economic, social and cultural development and of the general duty of states to individually or collectively ensure the exercise of the right to development, guaranteed under article 22 of the African Charter.

96. For refusing to participate in any of the proceedings although duly informed and invited to respond to the allegations, Burundi admits the allegations made against it.

¹ See resolution 1457 (2003) of the Security Council of the United Nations adopted on 24/01/2003 on the Panel of Experts on the illegal exploitation of the natural resources of the Democratic Republic of Congo. Also see presidential statement dated 2 June 2000 (S/PRST/2000/20), whereby the Security Council requested the Secretary-General of the United Nations to establish a Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo for a period of six months

² See Point 10(a) of the summary of the Report.

³ Also see paras 26, 27, 32, 55, 64, etc of the report.

97. Equally, by refusing to take part in the proceedings beyond admissibility stage, Rwanda admits the allegations against it.

98. As in the case of Rwanda, Uganda is also found liable of the allegations made against it.

For the above reasons, the Commission:

Finds the respondent states in violation of articles 2, 4, 5, 12(1) and (2), 14, 16, 17, 18(1) and (3), 19, 20, 21, 22, and 23 of the African Charter on Human and Peoples' Rights.

Urges the respondent states to abide by their obligations under the Charters of the United Nations, the Organisation of African Unity, the African Charter on Human and Peoples' Rights, the UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among states and other applicable international principles of law and withdraw its troops immediately from the complainant's territory.

Takes note with satisfaction, of the positive developments that occurred in this matter, namely the withdrawal of the respondent states armed forces from the territory of the complainant state.

Recommends that adequate reparations be paid, according to the appropriate ways to the complainant state for and on behalf of the victims of the human rights by the armed forces of the respondent states while the armed forces of the respondent states were in effective control of the provinces of the complainant state, which suffered these violations.

Resolutions of the African Commission

Part of the mandate of the Commission is to adopt resolutions on human rights issues. Resolutions may address matters of procedure, but often they serve to further define standards set by the African Charter. Most of the resolutions below are reprinted in *Human Rights Law in Africa* 2004. All are available at www.achpr.org and www.chr.up.ac.za.

Resolution on Electoral Process and Participatory Governance (1996)

ASSERTS that elections are the only means by which the people can elect democratically the government of their choice in conformity to the African Charter of Human and Peoples' Rights;

COMMENDS the governments and the people of the Republic of Benin, the Comoros and the Republic of Sierra Leone for having organised successfully free and fair elections and hopes that their example will encourage and motivate other countries in transition to democratic rule;

EMPHASISES that it is the duty of state parties to the Charter to take the necessary measures to preserve and protect the credibility of the electoral process. These measures should include the presence of national and international observers during the elections and guarantee them access to the electoral process and personal safety to enable them to fulfil their mission and prepare their report on elections in a proper manner;

FURTHER EMPHASISES that it is the responsibility of state parties to provide electoral commissions and other organs entrusted with the task of organising elections in their countries with adequate material, resources and any items necessary for the preparation and holding of elections;

REAFFIRMS the importance for African countries and institutions to participate in observation of elections in state parties; and reasserts its willingness to place at the disposal of state parties and other institutions its expertise and that of its members in observing elections.

Resolution on Granting Observer Status to National Human Rights Institutions in Africa (1998)

In more than 30 African countries there are national human rights institutions, with a greater or lesser degree of independence. They interact with the Commission in accordance with this Resolution.

...
Considering the preamble of the African Charter on Human and Peoples' Rights which reaffirms the adherence of African states to 'human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the organisation of African Unity, the Movement of Non-Aligned countries and the United Nations';

Considering that article 26 of the African Charter on Human and Peoples' Rights stipulates that 'states parties to the present Charter shall have the

duty to ... allow the establishment and the improvement of appropriate national institutions entrusted with the promotion and protection of rights'; *Considering* the recommendation adopted in the Programme of Action of the World Conference on Human Rights held in Vienna, Austria in June 1993 and United Nations resolutions on human rights, particularly Resolution 1992/54 of 3 March 1992 of the Commission Human Rights and Resolution 48/134 of 20th of December 1993 of the United Nations General Assembly;

Considering the decisions, resolutions, recommendations and the final declaration adopted by the first conference of national human rights institutions in Africa held in Yaounde, Cameroon from 5 to 7 February 1996 and the 2nd Conference held in Durban, South Africa on 1 to 3 July 1998;

Convinced of the importance of the role of national institutions in the promotion and protection of human rights and in creating public awareness in Africa with regard to the institutional defense of human rights;

1. COMMENDS the increasing interests shown by African states in establishing and strengthening national institutions for the protection and promotion of human rights based on the principles of independence and pluralism.

2. RECOGNISES that it is the right of each state to establish, according to its sovereign prerogatives and within the most appropriate legislative framework, a national institution charged with the promotion and protection of human rights according to internationally recognised norms.

3. NOTES WITH SATISFACTION the significant participation of African National Institutions in the deliberations of the sessions of the African Commission on Human and Peoples' Rights and registers positively the wish expressed by several institutions to be granted an observer status with the Commission.

4. DECIDES to grant special observer status to any African national institution established in Africa and functioning according to internationally recognised norms and standards.

(a) that the following criteria for the status of affiliated institution shall apply:

- the national institution should be duly established by law, constitution or by decree;
- that it shall be a national institution of a state party to the African Charter;
- that the national institution should conform to the Principles relating to the Status of National Institutions, also known as the Paris Principles, adopted by the General Assembly of the United Nations under Resolution 48/144 of 20th December 1993;
- that a National Institution shall formally apply for status in the African Commission.

(b) that such institutions shall have the following rights and responsibilities.

- be invited to sessions of the African Commission according to rule 6 of the Rules and Procedures,
- be represented in public sessions of the commission and its subsidiary bodies,
- participate, without voting rights, in deliberations on issues which are of interest to them and to submit proposals which may be put to the vote at the request of any member of the Commission.

(c) that any national institution shall be required to submit reports to the Commission every two years on its activities in the promotion and protection of the rights enshrined in the Charter and;

(d) that the National Institution will assist the Commission in the promotion and protection of human rights at national level.

Criteria for the Granting of and for Maintaining Observer Status with the African Commission on Human and Peoples' Rights (1999)

The African Commission is unique in its close relationship with NGOs.

Chapter I

1. All non-governmental organisations applying for observer status with the African Commission on Human and Peoples' Rights shall be expected to submit a documented application to the Secretariat of the Commission, with a view to showing their willingness and capability work for the realisation of the objectives of the African Charter on Human and Peoples' Rights.
2. All organisations applying for observer status with the African Commission shall consequently:
 - Have objectives and activities in consonance with the fundamental principles and objectives enunciated in the OAU Charter and in the African Charter on Human and Peoples' Rights;
 - Be organisations working in the field of human rights;
 - Declare their financial resources.
3. To this effect, such an organisation shall be requested to provide:
 - A written application addressed to the Secretariat stating its intentions, at least three months prior to the ordinary session of the Commission which shall decide on the application, in order to give the Secretariat sufficient time in which to process the said application;
 - Its statutes, proof of its legal existence, a list of its members, its constituent organs, its sources of funding, its last financial statement, as well as a statement on its activities.
4. The statement of activities shall cover the past and present activities of the organisation, its plan of action and any other information that may help to determine the identity of the organisation, its purpose and objectives, as well as its field of activities.
5. No application for Observer Status shall be put forward for examination by the Commission without having been previously processed by the Secretariat.
6. The Commission's Bureau shall designate a rapporteur to examine the dossiers. The Commission's decision shall be notified without delay to the applicant NGO.

Chapter II: Participation of Observers in Proceedings of the African Commission

1. All observers shall be invited to be present at the opening and closing sessions of all Sessions of the African Commission; an observer accredited by the Commission shall not participate in its proceedings in any manner other than as provided for in the Rules of Procedure governing the conduct of sessions of the African Commission.
2. All observers shall have access to the documents of the Commission subject to the condition that such documents:

- shall not be of a confidential nature;
- deal with issues that are of relevance to their interests.

The distribution of general information documents of the African Commission shall be free of charge; the distribution of specialised documents shall be on a paid-for basis, except where reciprocal arrangements are in place.

3. Observers may be invited specially to be present at closed sessions dealing with issues of particular interest to them.

4. Observers may be authorised by the Chairman of the African Commission to make a statement on an issue that concerns them, subject to the text of the statement having been provided, with sufficient lead-time, to the Chairman of the Commission through the Secretary of the Commission.

5. The Chairman of the Commission may give the floor to observers to respond to questions directed at them by participants.

6. Observers may request to have issues of a particular interest to them included in the provisional agenda of the African Commission, in accordance with the provisions of the Rules of Procedure.

Chapter III: Relations Between the African Commission and Observers

1. Organisations enjoying observer status shall undertake to establish close relations of co-operation with the African Commission and to engage in regular consultations with it on all matters of common interest.

2. NGOs enjoying observer status shall present their activity reports to the Commission every two years.

3. Administrative arrangements shall be made, whenever necessary, to determine the modalities of this co-operation.

Chapter IV: Final Provisions

1. The provisions of the General Convention on the privileges and immunities of the OAU and those of the Headquarters Agreement of the African Commission shall not apply to observers except as regards the granting of visas.

2. The Commission reserves the right to take the following measures against NGOs that are in default of their obligations:

- non-participation in sessions;
- denial of documents and information;
- denial of the opportunity to propose items to be included in the Commission's agenda and of participating in its proceedings.

3. Observer status may be suspended or withdrawn from any organisation that does not fulfil the present criteria, after deliberation by the Commission.

Dakar Declaration and Recommendations on the Right to Fair Trial (1999)

The African Charter deals with detention and fair trial standards in a cursory manner. In the frequently quoted 'Dakar Declaration', the Commission gives an exposition of its understanding of the contents and scope of these standards.

...
The right to a fair trial is a fundamental right, the non-observance of which undermines all other human rights. Therefore the right to a fair trial is a non-

derogable right, especially as the African Charter does not expressly allow for any derogations from the rights it enshrines. The realisation of this right is dependent on the existence of certain conditions and is impeded by certain practices. These include:

1. Rule of Law, Democracy and Fair Trial

The right to a fair trial can only be fully respected in an environment in which there is respect for the rule of law and fundamental rights and freedoms. The rule of law includes the existence of fully accountable political institutions.

2. Independence and Impartiality of the Judiciary

While there are constitutional and legal provisions which provide for the independence of the judiciary in most African countries, the existence of these provisions alone do not ensure the independence and impartiality of the judiciary. Issues and practices which undermine the independence and impartiality of the judiciary include the lack of transparent and impartial procedures for the appointment of judges, interference and control of the judiciary by the executive, lack of security of tenure and remuneration and inadequate resources for the judicial system.

3. Military Courts and Special Tribunals

In many African countries, military courts and special tribunals exist alongside regular judicial institutions. The purpose of military courts is to determine offences of a pure military nature committed by military personnel. While exercising this function, military courts are required to respect fair trial standards. They should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, special tribunals should not try offences which fall within the jurisdiction of regular courts.

4. Traditional Courts

It is recognised that traditional courts are capable of playing a role in the achievement of peaceful societies and exercise authority over a significant proportion of the population in African countries. However, these courts also have serious shortcomings, which result in many instances in a denial of a fair trial. Traditional courts are not exempt from the provisions of the African Charter relating to fair trial.

5. Independence of Lawyers and Bar Associations

An independent Bar Association is essential to the protection of fair trial guarantees. Bar Associations should protect and uphold the independence of their members. The ability of lawyers to represent their clients without any harassment, intimidation or interference is an important tenet of the right to a fair trial. In many countries lawyers who represent unpopular causes or persons or groups who are perceived to be opponents of the government themselves become targets for harassment or persecution. An important safeguard for lawyers is that they should not be identified with their clients or their clients' causes as a result of discharging their functions. Cross-border relationships between Bar Associations and the ability of African lawyers to represent a person in countries other than their own enhances the independence of lawyers and Bar Associations.

6. Other Human Rights Defenders

Paralegals, parents or families of victims of human rights violations and crime or of suspects and accused persons and human rights workers representing victims, suspects or accused persons should not be identified with the persons

they represent and should not face harassment, intimidation or persecution when they act to protect the human rights of such persons, including the right to a fair trial.

7. Impunity and Effective Remedies

The failure of the state to deal adequately with human rights violations often results in the systematic denial of justice and, in some instances, conflict and civil war. In societies recovering from conflict situations, the right to effective redress and justice is often discarded in favour of political expediency. The right to a fair trial does not permit the use of amnesty to absolve perpetrators of human rights violations from accountability.

8. Victims of crimes and abuse of power

The right to a fair trial would be meaningless unless victims of crimes and abuse of power have access to the courts and to an effective remedy. Fair trial standards and national laws and procedures do not adequately protect the rights and interests of such victims who are entitled to judicial procedures that are fair and which protect their wellbeing and dignity.

9. Legal Aid

Access to justice is a paramount element of the right to a fair trial. Most accused and aggrieved persons are unable to afford legal services due to the high cost of court and professional fees. It is the duty of governments to provide legal assistance to indigent persons in order to make the right to a fair trial more effective. The contribution of the judiciary, human rights NGOs and professional associations should be encouraged.

10. Women and Fair Trial

Judicial processes and institutions reflect societal discrimination against women. Gender discrimination affects women in accessing justice and as prospective litigants, accused in criminal trials, victims of crime, witnesses and as legal representatives before judicial institutions. Women are not adequately represented in judicial positions and legal procedures are not sufficiently sensitive to issues that affect them.

11. Children and Fair Trial

Children are entitled to all the fair trial guarantees and rights applicable to adults and to some additional protection. The African Charter on the Rights and Welfare of the Child requires that: 'Every child accused of or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect of human rights and fundamental freedoms.'

RECOMMENDATIONS

The African Commission should:

- Consolidate and expand all its pronouncements on the right to fair trial into a coherent body of principles, acting under article 45(1)(b) of the African Charter;
- Prioritise specific aspects of fair trial in Africa, such as access to legal aid, proceedings before military and traditional courts, impunity, and discrimination against women in judicial proceedings for discussion in the agenda of its regular sessions;

- Direct its Special Rapporteurs to focus special attention on aspects of the right to fair trial which fall within or are related to their mandates;
- Monitor the improvement of access to justice and effective redress by requesting state parties to include in their reports a special section which addresses the implementation of the right to a fair trial, including an analysis of the resources provided to judicial institutions as a proportion of the national budget of the state;
- Take up the issue of the right to a fair trial, including the independence of the judiciary, and establish contact with the judiciary and local bar associations during promotional and protective mission to states;
- Work in collaboration with the Office of the High Commissioner for Human Rights and other appropriate intergovernmental institutions to provide technical assistance to states for enhancing the performance and procedures of judicial institutions in the realisation of the right to fair trial;
- Establish a specific mechanism of follow up and monitoring of the right to fair trial in Africa;
- Disseminate annually a compendium of its decisions and resolutions to the Ministry of Justice of each state with a request that it be distributed to law schools, judicial officials, judicial training centres, bar associations and law enforcement agencies;
- Transmit this document to the Minister of Justice and the head of the judiciary in each state party with a request that it be disseminated to judicial and law enforcement officials, bar associations and law schools.

State parties to the African Charter should:

- Allocate adequate resources to judicial and law enforcement institutions to enable them to provide better and more effective fair trial guarantees to users of the legal process;
- Urgently examine ways in which legal assistance could be extended to indigent accused persons, including through adequately funded public defender and legal aid schemes;
- In collaboration with Bar Associations and NGOs enable innovative and additional legal assistance programmes to be established including allowing paralegals to provide legal assistance to indigent suspects at the pre-trial stage and *pro-bono* representation for accused in criminal proceedings;
- Seek technical assistance from the Office of the High Commissioner, other UN agencies and bilateral and multilateral sources to reform constitutional and legal provisions for effective implementation of the right to a fair trial, including the protection of the rights of victims of crime and abuse of power and their defenders;
- Improve judicial skills through programmes of continuing education, giving specific attention to the domestic implementation of international human rights standards, and to increase the resources available to judicial and law enforcement institutions;
- Incorporate the African Charter into domestic law and adopt concrete measures at the national level to implement their obligations under the Charter, including specific measures to uphold their obligation to protect the right to a fair trial;
- Take immediate measures to ensure better and effective representation of women in judicial institutions, reform judicial

- procedures which discriminate against women and provide gender awareness training to judicial and law enforcement officials;
- Include in their periodic reports to the Commission a special section which addresses the implementation of the right to a fair trial, including an analysis of the resources provided to judicial institutions as a proportion of the national budget of the state;
- Work in collaboration with local communities to identify and address issues within the traditional courts which are obstacles to the realisation of the right to a fair trial;
- Ensure that the law is applied without discrimination to ordinary persons and state officials alike and that abuse of power is promptly investigated and those found responsible prosecuted;
- Establish an age of criminal responsibility below which children may be presumed incapable of committing a crime and establish separate or specialised procedures and institutions to deal with accused children;
- Ratify all treaties relevant to the right to a fair trial, including the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child and the Statutes of the International Criminal Court, if they have not done so already;
- Respect the independence of lawyers and bar associations, including their right to undertake their duties without any interference and/or intimidation;
- Ensure that all trials before military courts respect the right to a fair trial and that civilians are not tried before such courts;
- Take measures to ensure that all cases involving civilians are tried before regular courts and that special courts, where they exist, are abolished and phased out;
- Take progressive steps to abolish the death penalty and in the meanwhile to ensure that all persons tried for an offence where the death penalty is a competent sentence are afforded all the rights to a fair trial;
- Afford rights of audience to lawyers from other African countries and consider the adoption of regional or sub-regional treaties for this purpose, where such instruments do not exist.

Judicial officials should:

- Examine shortcomings in constitutional and legal provisions which affect the right to a fair trial, including the rights of victims, and make specific recommendations to the authorities to remedy them;
- Make recommendations to the national authorities on the resources and training needs of the judiciary to improve the implementation of fair trial guarantees;
- Establish, where it does not exist, a forum for regular discussion between representatives of judicial institutions, law schools, and law enforcement agencies to address problems which undermine the right to a fair trial;
- Establish contact with the African Commission for the purposes of obtaining regular information on developments relevant to domestic implementation of the right to a fair trial under the African Charter;
- Bring to the attention of the Commission cases or practices which threaten the independence and impartiality of the judiciary;
- Take measures and institute processes to tackle practices, including corruption, which undermine their independence and impartiality;

- Adopt measures to ensure the elimination of discrimination against women both as regards their appointment as judicial officials and as participants in judicial proceedings.

Bar Associations should:

- In collaboration with appropriate government institutions and NGOs enable paralegals to provide legal assistance to indigent suspects at the pre-trial stage;
- Establish programmes for *pro-bono* representation of accused in criminal proceedings;
- Establish a forum for regular discussions with government and judicial officials on ways in which the implementation of the right to a fair trial could be improved;
- Take steps to protect and assure the integrity and independence of members of the legal profession;
- Take active steps to support the recruitment and appointment of women to judicial positions and provide gender awareness training to their members;
- Institute a programme of continuing education for its members on issues that advance fair trial rights and seek appropriate technical assistance and resources to realise this;
- Establish programmes of co-operation with legal professional organisations in other countries and encourage states to afford rights of audience to lawyers from other African countries where such rights do not exist.

Non-governmental Organisations and Community Based Organisations should:

- Consider innovative and alternative ways in providing legal assistance to indigent accused including through the establishment of paralegal programmes, legal aid clinics, legal defence funds and public interest litigation programmes;
- Establish programmes in conjunction with the judiciary and other state bodies to contribute to the training of judicial and law enforcement officials in aspects of fair trial rights;
- Undertake studies of fair trial issues and make recommendations regarding the measures to be taken by the different organs of state to improve the delivery of justice and fair trials;
- In collaboration with law enforcement agencies, to produce posters in simple language on the rights of accused persons or detainees and display these in all places of detention;
- Assist the Commission to disseminate its decisions and distribute to law schools, judicial officials, judicial training centres, law enforcement agencies and bar associations, documents and information relevant to fair trial.

Resolution urging the States to Envisage a Moratorium on the Death Penalty (1999)

Unlike other regional human rights instruments in the world, the African Charter is not supplemented by protocols proscribing the death penalty. In this resolution the Commission asks states to consider imposing a moratorium on the execution of the death penalty.

Recalling article 4 of the African Charter on Human and Peoples' Rights which affirms the right of everyone to life and article V(3) of the African Charter on the Rights and Welfare of the Child providing that the death sentence shall not be pronounced for crimes committed by children;

Recalling UN Commission on Human Rights' Resolutions 1998/8 and 1999/61, which calls upon all states that still maintain the death penalty to, *inter alia*, establish a moratorium on executions, with a view to abolishing the death penalty;

Recalling UN Sub-Commission on the Promotion and Protection of Human Rights' Resolution 1999/4 which calls upon all states that retain the death penalty and do not apply the moratorium on executions, in order to mark the millennium, to commute the sentences of those under sentence of death on 31 December 1999 at least to sentences of life imprisonment and to commit themselves to a moratorium on the imposition of the death penalty throughout the year 2000;

Noting that three state parties to the African Charter have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolition of the death penalty;

Noting further that at least 19 state parties have *de facto* or *de jure* abolished the death penalty;

Considering the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are authorised to impose;

Concerned that some state parties impose the death penalty under conditions not in conformity with the rights pertaining to a fair trial guaranteed in the African Charter on Human and Peoples' Rights;

1. URGES all state parties to the African Charter on Human and Peoples' Rights that still maintain the death penalty to comply fully with their obligations under the treaty and to ensure that persons accused of crimes for which the death penalty is a competent sentence are afforded all the guarantees in the African Charter;

2. CALLS upon all state parties that still maintain the death penalty to: limit the imposition of the death penalty only to the most serious crimes; consider establishing a moratorium on executions of death penalty; reflect on the possibility of abolishing the death penalty.

Resolution on the HIV/AIDS Pandemic - Threat against Human Rights and Humanity (2001)

Noting the rampant escalation of the HIV/AIDS pandemic in Africa especially in sub-Saharan Africa where estimates show that some 9 million people have died and within the next decade some 25 million people will become infected; *Noting* with satisfaction the convening of the Africa Summit on HIV/AIDS in Abuja, Nigeria, from 24 - 26 April 2001 where the crisis was declared and interventions of emergency proportions called for;

Welcoming the statement of the Abuja Summit and the emergency measures declared there, especially the announcement by the Secretary-General of the UN on the establishment of a US\$10 billion war chest to fight HIV/AIDS in Africa;

Welcoming the forthcoming UN General Assembly Special Session on HIV/AIDS to be held in June 2001 and trusting that it will increase awareness of the need for international action to fight the pandemic and devise strategies by international co-operation against HIV/AIDS;

Mindful of the mandate of the Commission in terms of the Charter to 'promote human and peoples' rights and ensure their protection in Africa' and especially in this regard allow the right of every individual to 'enjoy the best attainable state of physical and mental health' (article 16);

1. DECLARES that the HIV/AIDS pandemic is a human rights issue which is a threat against humanity;
 2. CALLS upon African governments, state parties to the Charter to allocate national resources that reflect a determination to fight the spread of HIV/AIDS, ensure human rights protection of those living with HIV/AIDS against discrimination, provide support to families for the care of those dying of AIDS, devise public health care programmes of education and carry out public awareness especially in view of free and voluntary HIV testing, as well as appropriate medical interventions;
 3. CALLS upon the international pharmaceutical industries to make affordable and comprehensive health care available to African governments for urgent action against HIV/AIDS and invites international aid agencies to provide vastly increased donor partnership programmes for Africa including funding of research and development projects.
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Declaration of Principles on Freedom of Expression in Africa (2002)

Preamble

Reaffirming the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms;

Reaffirming article 9 of the African Charter on Human and Peoples' Rights; *Desiring* to promote the free flow of information and ideas and greater respect for freedom of expression;

Convinced that respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy;

Convinced that laws and customs that repress freedom of expression are a disservice to society;

Recalling that freedom of expression is a fundamental human right guaranteed by the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as other international documents and national constitutions;

Considering the key role of the media and other means of communication in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy;

Aware of the particular importance of the broadcast media in Africa, given its capacity to reach a wide audience due to the comparatively low cost of receiving transmissions and its ability to overcome barriers of illiteracy;

Noting that oral traditions, which are rooted in African cultures, lend themselves particularly well to radio broadcasting;

Noting the important contribution that can be made to the realisation of the right to freedom of expression by new information and communication technologies;

Mindful of the evolving human rights and human development environment in Africa, especially in light of the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights, the principles of the Constitutive Act of the African Union, 2000, as well as the significance of the human rights and good governance provisions in the New Partnership for Africa's Development (NEPAD); and

Recognising the need to ensure the right to freedom of expression in Africa, the African Commission on Human and Peoples' Rights declares that:

1. The Guarantee of Freedom of Expression

1. Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

2. Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

2. Interference with Freedom of Expression

1. No one shall be subject to arbitrary interference with his or her freedom of expression.

2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

3. Diversity

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things:

- availability and promotion of a range of information and ideas to the public;

- pluralistic access to the media and other means of communication, including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups;

- the promotion and protection of African voices, including through media in local languages; and
- the promotion of the use of local languages in public affairs, including in the courts.

4. Freedom of Information

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
 - everyone has the right to access information held by public bodies;
 - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
 - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
 - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
 - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
 - secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

5. Private Broadcasting

1. States shall encourage a diverse, independent private broadcasting sector. A state monopoly over broadcasting is not compatible with the right to freedom of expression.
2. The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:
 - there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community;
 - an independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions;
 - licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting; and
 - community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves.

6. Public Broadcasting

State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

- public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;
- the editorial independence of public service broadcasters should be guaranteed;
- public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
- public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
- the public service ambit of public broadcasters should be clearly

defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.

7. Regulatory Bodies for Broadcast and Telecommunications

1. Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
2. The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.
3. Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.

8. Print Media

1. Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.
2. Any print media published by a public authority should be protected adequately against undue political interference.
3. Efforts should be made to increase the scope of circulation of the print media, particularly to rural communities.
4. Media owners and media professionals shall be encouraged to reach agreements to guarantee editorial independence and to prevent commercial considerations from unduly influencing media content.

9. Complaints

1. A public complaints system for print or broadcasting should be available in accordance with the following principles:
 - complaints shall be determined in accordance with established rules and codes of conduct agreed between all stakeholders; and
 - the complaints system shall be widely accessible.
2. Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts.
3. Effective self-regulation is the best system for promoting high standards in the media.

10. Promoting Professionalism

1. Media practitioners shall be free to organise themselves into unions and associations.
2. The right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions.

11. Attacks on Media Practitioners

1. Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.
2. States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.
3. In times of conflict, states shall respect the status of media practitioners as non-combatants.

12. Protecting Reputations

1. States should ensure that their laws relating to defamation conform to the following standards:
 - no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
 - public figures shall be required to tolerate a greater degree of criticism; and
 - sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.
2. Privacy laws shall not inhibit the dissemination of information of public interest.

13. Criminal Measures

1. States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.
2. Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

14. Economic Measures

1. States shall promote a general economic environment in which the media can flourish.
2. States shall not use their power over the placement of public advertising as a means to interfere with media content.
3. States should adopt effective measures to avoid undue concentration of media ownership, although such measures shall not be so stringent that they inhibit the development of the media sector as a whole.

15. Protection of Sources and Other Journalistic Material

Media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except in accordance with the following principles:

- the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;
- the information or similar information leading to the same result cannot be obtained elsewhere;
- the public interest in disclosure outweighs the harm to freedom of expression; and
- disclosure has been ordered by a court, after a full hearing.

16. Implementation

States parties to the African Charter on Human and Peoples' Rights should make every effort to give practical effect to these principles.

Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa ('Robben Island Guidelines on Torture')
(2002)

...

Adopts the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).

Establishes a Follow-up Committee comprising of the African Commission, the Association for the Prevention of Torture and any prominent African Experts as the Commission may determine.

Assigns the following mandate to the Follow-up Committee:

- To organise, with the support of interested partners, seminars to disseminate the Robben Island Guidelines to national and regional stakeholders.
- To develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels.
- To promote and facilitate the implementation of the Robben Island Guidelines within member states.
- To make a progress report to the African Commission at each ordinary session.

Urges Special Rapporteurs and members of the African Commission to widely disseminate the Robben Island Guidelines as part of their promotional mandate.

Encourages states parties to the African Charter, in their periodic reports to the African Commission, to bear in mind the Robben Island Guidelines.

Invites NGOs and other relevant actors to widely disseminate and utilise the Robben Island Guidelines in the course of their work.

Robben Island Guidelines (2002)

Part I: Prohibition of Torture

A. Ratification of Regional and International Instruments

1. States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:

- a) Ratification of the Protocol to the African Charter of Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights;
- b) Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under articles 21 and 22 and recognising the competency of the Committee to conduct inquiries pursuant to article 20;
- c) Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;
- d) Ratification of or accession to the Rome Statute establishing the International Criminal Court;

B. Promote and Support Co-operation with International Mechanisms

2. States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on prisons and conditions of detention in Africa, the Special Rapporteur on arbitrary, summary and extra-judicial executions in Africa and the Special Rapporteur on the rights of women in Africa.
3. States should co-operate with the United Nations Human Rights Treaties Bodies, with the UN Commission on Human Rights' thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.

C. Criminalisation of Torture

4. States should ensure that acts, which fall within the definition of torture, based on article 1 of the UN Convention against Torture, are offences within their national legal systems.
5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.
6. National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with article 5(2) of the UN Convention against Torture.
7. Torture should be made an extraditable offence.
8. The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.
9. Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
10. Notions such as necessity, national emergency, public order, and *ordre public* shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.
12. Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.
13. No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.
14. States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.

D. Non-Refoulement

15. States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.

E. Combating Impunity

16. In order to combat impunity states should:
 - (a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process.
 - (b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law.

- (c) Ensure expeditious consideration of extradition requests to third states, in accordance with international standards.
- (d) Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody.
- (e) Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.

F. Complaints and Investigation Procedures

17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.

18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.

19. Investigations into all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol).

Part II: Prevention of Torture

A. Basic Procedural Safeguards for those Deprived of their Liberty

20. All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:

- (a) The right that a relative or other appropriate third person is notified of the detention;
- (b) The right to an independent medical examination;
- (c) The right of access to a lawyer;
- (d) Notification of the above rights in a language, which the person deprived of their liberty understands;

B. Safeguards during the Pre-trial Process

States should:

21. Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

22. Ensure that those subject to the relevant codes of criminal procedure conduct criminal investigations.

23. Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.

24. Prohibit the use of incommunicado detention.

25. Ensure that all detained persons are informed immediately of the reasons for their detention.

26. Ensure that all persons arrested are promptly informed of any charges against them.

27. Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.

28. Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and

consider the feasibility of the use of video and/or audio taped recordings of interrogations.

29. Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings except against persons accused of torture as evidence that the statement was made.

30. Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, *inter alia*, the date, time, place and reason for the detention.

31. Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.

32. Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

C. Conditions of Detention

States should:

33. Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the UN standard minimum rules for the treatment of prisoners.

34. Take steps to improve conditions in places of detention, which do not conform to international standards.

35. Take steps to ensure that pre-trial detainees are held separately from convicted persons.

36. Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.

37. Take steps to reduce over-crowding in places of detention by *inter alia*, encouraging the use of non-custodial sentences for minor crimes.

D. Mechanisms of Oversight

States should:

38. Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary.

39. Encourage professional legal and medical bodies, to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.

40. Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.

41. Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights.

42. Encourage and facilitate visits by NGOs to places of detention.

43. Support the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty by a state party.

44. Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.

E. Training and Empowerment

45. Establish and support training and awareness-raising programmes which reflect human rights standards and emphasise the concerns of vulnerable groups.

46. Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.

F. Civil Society Education and Empowerment

47. Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.

48. The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.

Part III: Responding to the Needs of Victims

49. Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.

50. The obligation upon the state to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all states should ensure that all victims of torture and their dependents are:

- (a) Offered appropriate medical care;
 - (b) Have access to appropriate social and medical rehabilitation;
 - (c) Provided with appropriate levels of compensation and support;
- In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.

Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003)

Following the appointment of a Working Group on the Right to a Fair Trial per its 1999 Resolution on the Right to a Fair Trial and Legal Assistance, the Commission adopted the following principles and guidelines.

...

A. GENERAL PRINCIPLES APPLICABLE TO ALL LEGAL PROCEEDINGS

1. Fair and public hearing

In the determination of any criminal charge against a person, or of a person's rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body.

2. Fair hearing

The essential elements of a fair hearing include:

- (a) equality of arms between the parties to a proceeding, whether they be administrative, civil, criminal, or military;
- (b) equality of all persons before any judicial body without any distinction whatsoever as regards race, colour, ethnic origin, sex, gender, age, religion, creed, language, political or other convictions, national or social origin, means, disability, birth, status or other circumstances;
- (c) equality of access by women and men to judicial bodies and equality before the law in any legal proceedings;
- (d) respect for the inherent dignity of the human persons, especially of women who participate in legal proceedings as complainants, witnesses, victims or accused;
- (e) adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;
- (f) an entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings;
- (g) an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the judicial body;
- (h) an entitlement to have a party's rights and obligations affected only by a decision based solely on evidence presented to the judicial body;
- (i) an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions; and
- (j) an entitlement to an appeal to a higher judicial body.

3. Public hearing

- (a) All the necessary information about the sittings of judicial bodies shall be made available to the public by the judicial body;
- (b) A permanent venue for proceedings by judicial bodies shall be established by the state and widely publicised. In the case of ad-hoc judicial bodies, the venue designated for the duration of their proceedings should be made public;
- (c) Adequate facilities shall be provided for attendance by interested members of the public;
- (d) No limitations shall be placed by the judicial body on the category of people allowed to attend its hearings where the merits of a case are being examined;
- (e) Representatives of the media shall be entitled to be present at and report on judicial proceedings except that a judge may restrict or limit the use of cameras during the hearings;
- (f) The public and the media may not be excluded from hearings before judicial bodies except if it is determined to be:
 - (1) in the interest of justice for the protection of children, witnesses or the identity of victims of sexual violence
 - (2) for reasons of public order or national security in an open and democratic society that respects human rights and the rule of law.
- (g) Judicial bodies may take steps or order measures to be taken to protect the identity and dignity of victims of sexual violence, and the identity of witnesses and complainants who may be put at risk by reason of their participation in judicial proceedings.
- (h) Judicial bodies may take steps to protect the identity of accused persons, witnesses or complainants where it is in the best interest of a child.
- (i) Nothing in these Guidelines shall permit the use of anonymous witnesses where the judge and the defence is unaware of the witness' identity at trial.

Any judgment rendered in legal proceedings, whether civil or criminal, shall be pronounced in public.

4. Independent tribunal

- (a) The independence of judicial bodies and judicial officers shall be guaranteed by the constitution and laws of the country and respected by the government, its agencies and authorities;
- (b) Judicial bodies shall be established by law to have adjudicative functions to determine matters within their competence on the basis of the rule of law and in accordance with proceedings conducted in the prescribed manner;
- (c) The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for decision is within the competence of a judicial body as defined by law;
- (d) A judicial body's jurisdiction may be determined, *inter alia*, by considering where the events involved in the dispute or offence took place, where the property in dispute is located, the place of residence or domicile of the parties and the consent of the parties;
- (e) Military or other special tribunals that do not use the duly established procedure of the legal process shall not be created to displace the jurisdiction belonging to the ordinary judicial bodies;
- (f) There shall not be any inappropriate or unwarranted interference with the judicial process nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentence by competent authorities, in accordance with the law;
- (g) All judicial bodies shall be independent from the executive branch;
- (h) The process for appointments to judicial bodies shall be transparent and accountable and the establishment of an independent body for this purpose is encouraged. Any method of judicial selection shall safeguard the independence and impartiality of the judiciary;
- (i) The sole criteria for appointment to judicial office shall be the suitability of a candidate for such office by reason of integrity, appropriate training or learning and ability;
- (j) Any person who meets the criteria shall be entitled to be considered for judicial office without discrimination on any grounds such as race, colour, ethnic origin, language, sex, gender, political or other opinion, religion, creed, disability, national or social origin, birth, economic or other status. However, it shall not be discriminatory for states to:
 - (1) prescribe a minimum age or experience for candidates for judicial office;
 - (2) prescribe a maximum or retirement age or duration of service for judicial officers;
 - (3) prescribe that such maximum or retirement age or duration of service may vary with different level of judges, magistrates or other officers in the judiciary; and
 - (4) require that only nationals of the state concerned shall be eligible for appointment to judicial office.
- (k) No person shall be appointed to judicial office unless they have the appropriate training or learning that enables them to adequately fulfil their functions;
- (l) Judges or members of judicial bodies shall have security of tenure until a mandatory retirement age or the expiry of their term of office;
- (m) The tenure, adequate remuneration, pension, housing, transport, conditions of physical and social security, age of retirement, disciplinary and recourse mechanisms and other conditions of service of judicial officers shall be prescribed and guaranteed by law;
- (n) Judicial officers shall not be:

- (1) liable in civil or criminal proceedings for improper acts or omissions in the exercise of their judicial functions;
- (2) removed from office or subject to other disciplinary or administrative procedures by reason only that their decision has been overturned on appeal or review by a higher judicial body; and
- (3) appointed under a contract for a fixed term.
- (o) Promotion of judicial officials shall be based on objective factors, in particular ability, integrity and experience;
- (p) Judicial officials may only be removed or suspended from office for gross misconduct incompatible with judicial office, or for physical or mental incapacity that prevents them from undertaking their judicial duties;
- (q) Judicial officials facing disciplinary, suspension or removal proceedings shall be entitled to guarantees of a fair hearing including the right to be represented by a legal representative of their choice and to an independent review of decisions of disciplinary, suspension or removal proceedings;
- (r) The procedures for complaints against and discipline of judicial officials shall be prescribed by law. Complaints against judicial officers shall be processed promptly, expeditiously and fairly;
- (s) Judicial officers are entitled to freedom of expression, belief, association and assembly. In exercising these rights, they shall always conduct themselves in accordance with the law and the recognised standards and ethics of their profession;
- (t) Judicial officers shall be free to form and join professional associations or other organisations to represent their interests, to promote their professional training and to protect their status;
- (u) States may establish independent or administrative mechanisms for monitoring the performance of judicial officers and public reaction to the justice delivery processes of judicial bodies. Such mechanisms, which shall be constituted in equal part of members of the judiciary and representatives of the Ministry responsible for judicial affairs, may include processes for judicial bodies receiving and processing complaints against its officers; and
- (v) States shall endow judicial bodies with adequate resources for the performance of its their functions. The judiciary shall be consulted regarding the preparation of the budget and its implementation.

5. Impartial tribunal

- (a) A judicial body shall base its decision only on objective evidence, arguments and facts presented before it. Judicial officers shall decide matters before them without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.
- (b) Any party to proceedings before a judicial body shall be entitled to challenge its impartiality on the basis of ascertainable facts that the fairness of the judge or judicial body appears to be in doubt.
- (c) The impartiality of a judicial body could be determined on the basis of three relevant facts:
 - (1) that the position of the judicial officer allows him or her to play a crucial role in the proceedings;
 - (2) the judicial officer may have expressed an opinion which would influence the decision-making;
 - (3) the judicial official would have to rule on an action taken in a prior capacity.
- (d) The impartiality of a judicial body would be undermined when:
 - (1) a former public prosecutor or legal representative sits as a judicial officer in a case in which he or she prosecuted or represented a party;
 - (2) a judicial official secretly participated in the investigation of a case;
 - (3) a judicial official has some connection with the case or a party to the case;

(4) a judicial official sits as member of an appeal tribunal in a case which he or she decided or participated in a lower judicial body.

In any of these circumstances, a judicial official would be under an obligation to step down.

(e) A judicial official may not consult a higher official authority before rendering a decision in order to ensure that his or her decision will be upheld.

B. JUDICIAL TRAINING

(a) States shall ensure that judicial officials have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of accused persons, victims and other litigants and of human rights and fundamental freedoms recognised by national and international law.

(b) States shall establish, where they do not exist, specialised institutions for the education and training of judicial officials and encourage collaboration amongst such institutions in countries in the region and throughout Africa.

(c) States shall ensure that judicial officials receive continuous training and education throughout their career including, where appropriate, in racial, cultural and gender sensitisation.

C. RIGHT TO AN EFFECTIVE REMEDY

(a) Everyone has the right to an effective remedy by competent national tribunals for acts violating the rights granted by the constitution, by law or by the Charter, notwithstanding that the acts were committed by persons in an official capacity.

(b) The right to an effective remedy includes:

- (1) access to justice;
- (2) reparation for the harm suffered;
- (3) access to the factual information concerning the violations.

(c) Every state has an obligation to ensure that:

- (1) any person whose rights have been violated, including by persons acting in an official capacity, has an effective remedy by a competent judicial body;
- (2) any person claiming a right to remedy shall have such a right determined by competent judicial, administrative or legislative authorities;
- (3) any remedy granted shall be enforced by competent authorities;
- (4) any state body against which a judicial order or other remedy has been granted shall comply fully with such an order or remedy.

(d) The granting of amnesty to absolve perpetrators of human rights violations from accountability violates the right of victims to an effective remedy.

D. COURT RECORDS AND PUBLIC ACCESS

(a) All information regarding judicial proceedings shall be accessible to the public, except information or documents that have been specifically determined by judicial officials not to be made public.

(b) States must ensure that proper systems exist for recording all proceedings before judicial bodies, storing such information and making it accessible to the public.

(c) All decisions of judicial bodies must be published and available to everyone throughout the country.

(d) The cost to the public of obtaining records of judicial proceedings or decisions should be kept to a minimum and should not be so high as to amount to a denial of access.

E. LOCUS STANDI

States must ensure, through adoption of national legislation, that in regard to human rights violations, which are matters of public concern, any individual, group of individuals or non-governmental organisation is entitled to bring an issue before judicial bodies for determination.

F. ROLE OF PROSECUTORS

(a) States shall ensure that:

(1) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognised by national and international law, including the Charter.

(2) Prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

(b) Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, housing, transport, conditions of physical and social security, pension and age of retirement and other conditions of service shall be set out by law or published rules or regulations.

(c) Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

(d) Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognised standards and ethics of their profession.

(e) Prosecutors shall be free to form and join professional associations or other organisations to represent their interests, to promote their professional training and to protect their status.

(f) The office of prosecutors shall be strictly separated from judicial functions.

(g) Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorised by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of decisions of judicial bodies and the exercise of other functions as representatives of the public interest.

(h) Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

(i) In the performance of their duties, prosecutors shall:

(1) carry out their functions impartially and avoid all political, social, racial, ethnic, religious, cultural, sexual, gender or any other kind of discrimination;

(2) protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

- (3) keep matters in their possession confidential, unless the performance of duty or needs of justice require otherwise;
 - (4) consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the provisions below relating to victims.
- (j) Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.
- (k) Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognised by international law and, where authorised by law or consistent with local practice, the investigation of such offences.
- (l) When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the judicial body accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.
- (m) In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to co-operate with the police, judicial bodies, the legal profession, paralegals, non-governmental organisations and other government agencies or institutions.
- (n) Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors, which allege that they acted in a manner that is inconsistent with professional standards, shall be processed expeditiously and fairly under appropriate procedures prescribed by law. Prosecutors shall have the right to a fair hearing including the right to be represented by a legal representative of their choice. The decision shall be subject to independent review.
- (o) Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics.

G. ACCESS TO LAWYERS AND LEGAL SERVICES

- (a) States shall ensure that efficient procedures and mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, gender, language, religion, political, or other opinion, national or social origin, property, disability, birth, economic or other status.
- (b) States shall ensure that an accused person or a party to a civil case is permitted representation by a lawyer of his or her choice, including a foreign lawyer duly accredited to the national bar.
- (c) States and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental rights and freedoms.

H. LEGAL AID AND LEGAL ASSISTANCE

- (a) The accused or a party to a civil case has a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused or party to a civil case if he or she does not have sufficient means to pay for it.
- (b) The interests of justice should be determined by considering:
 - (1) in criminal matters:
 - (i) the seriousness of the offence;
 - (ii) the severity of the sentence.
 - (2) in civil cases:
 - (i) the complexity of the case and the ability of the party to adequately represent himself or herself;
 - (ii) the rights that are affected;
 - (iii) the likely impact of the outcome of the case on the wider community.
- (c) The interests of justice always require legal assistance for an accused in any capital case, including for appeal, executive clemency, commutation of sentence, amnesty or pardon.
- (d) An accused person or a party to a civil case has the right to an effective defence or representation and has a right to choose his or her own legal representative at all stages of the case. They may contest the choice of his or her court-appointed lawyer.
- (e) When legal assistance is provided by a judicial body, the lawyer appointed shall:
 - (1) be qualified to represent and defend the accused or a party to a civil case;
 - (2) have the necessary training and experience corresponding to the nature and seriousness of the matter;
 - (3) be free to exercise his or her professional judgment in a professional manner free of influence of the state or the judicial body;
 - (4) advocate in favour of the accused or party to a civil case;
 - (5) be sufficiently compensated to provide an incentive to accord the accused or party to a civil case adequate and effective representation.
- (f) Professional associations of lawyers shall co-operate in the organisation and provision of services, facilities and other resources, and shall ensure that:
 - (1) when legal assistance is provided by the judicial body, lawyers with the experience and competence commensurate with the nature of the case make themselves available to represent an accused person or party to a civil case;
 - (2) where legal assistance is not provided by the judicial body in important or serious human rights cases, they provide legal representation to the accused or party in a civil case, without any payment by him or her.
- (g) Given the fact that in many states the number of qualified lawyers is low, states should recognise the role that paralegals could play in the provision of legal assistance and establish the legal framework to enable them to provide basic legal assistance.
- (h) States should, in conjunction with the legal profession and non-governmental organisations, establish training, the qualification procedures and rules governing the activities and conduct of paralegals. States shall adopt legislation to grant appropriate recognition to paralegals.
- (i) Paralegals could provide essential legal assistance to indigent persons, especially in rural communities and would be the link with the legal profession.
- (j) Non-governmental organisations should be encouraged to establish legal assistance programmes and to train paralegals.
- (k) States that recognise the role of paralegals should ensure that they are granted similar rights and facilities afforded to lawyers, to the extent necessary to enable them to carry out their functions with independence.

I. INDEPENDENCE OF LAWYERS

- (a) States, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognised by national and international law.
- (b) States shall ensure that lawyers:
 - (1) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;
 - (2) are able to travel and to consult with their clients freely both within their own country and abroad;
 - (3) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.
- (c) States shall recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.
- (d) It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.
- (e) Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a judicial body or other legal or administrative authority.
- (f) Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
- (g) Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.
- (h) Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.
- (i) Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognised by national and international law and shall at all times act freely and diligently in accordance with the law and recognised standards and ethics of the legal profession.
- (j) Lawyers shall always loyally respect the interests of their clients.
- (k) Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and the protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognised standards and ethics of the legal profession.
- (l) Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional association shall be elected by its members and shall exercise its functions without external interference.
- (m) Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognised international standards and norms.
- (n) Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate

procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

(o) Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or even before a judicial body, and shall be subject to an independent judicial review.

(p) All disciplinary proceedings shall be determined in accordance with the code of professional conduct, other recognised standards and ethics of the legal profession and international standards.

J. CROSS BORDER COLLABORATION AMONGST LEGAL PROFESSIONALS

(a) States shall ensure that national legislation does not prevent collaboration amongst legal professionals in countries in their region and throughout Africa.

(b) States shall encourage the establishment of agreements amongst states and professional legal associations in their region that permit cross-border collaboration amongst lawyers including legal representation, training and education, and exchange of information and expertise.

K. ACCESS TO JUDICIAL SERVICES

(a) States shall ensure that judicial bodies are accessible to everyone within their territory and jurisdiction, without distinction of any kind, such as discrimination based on race, colour, disability, ethnic origin, sex, gender, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

(b) States must take special measures to ensure that rural communities and women have access to judicial services. States must ensure that law enforcement and judicial officials are adequately trained to deal sensitively and professionally with the special needs and requirements of women.

(c) In countries where there exist groups, communities or regions whose needs for judicial services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, states shall take special measures to ensure that adequate judicial services are accessible to them.

(d) States shall ensure that access to judicial services is not impeded including by the distance to the location of judicial institutions, the lack of information about the judicial system, the imposition of unaffordable or excessive court fees and the lack of assistance to understand the procedures and to complete formalities.

L. RIGHT OF CIVILIANS NOT TO BE TRIED BY MILITARY COURTS

(a) The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel.

(b) While exercising this function, Military Courts are required to respect fair trial standards enunciated in the African Charter and in these guidelines.

(c) Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences which fall within the jurisdiction of regular courts.

M. PROVISIONS APPLICABLE TO ARREST AND DETENTION

1. Right to liberty and security

- (a) States shall ensure that the right of everyone on its territory and under its jurisdiction to liberty and security of person is respected.
- (b) States must ensure that no one shall be subject to arbitrary arrest or detention, and that arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorised for that purpose, pursuant to a warrant, on reasonable suspicion or for probable cause.
- (c) Each state shall establish rules under its national law indicating those officials authorised to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.
- (d) Each state shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorised by law to use force and firearms.
- (e) Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, states must ensure that they are not kept in custody pending their trial. However, release may be subject to certain conditions or guarantees, including the payment of bail.
- (f) Expectant mothers and mothers of infants shall not be kept in custody pending their trial, but their release may be subject to certain conditions or guarantees, including the payment of bail.
- (g) States shall ensure, including by the enactment of legal provisions, that officials or other persons who arbitrarily arrest or detain any person are brought to justice.
- (h) States shall ensure, including by the enactment of legal provisions and adoption of procedures, that anyone who has been the victim of unlawful arrest or detention is enabled to claim compensation.

2. Rights upon arrest

- (a) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed, in a language he or she understands, of any charges against him or her.
- (b) Anyone who is arrested or detained shall be informed upon arrest, in a language he or she understands, of the right to legal representation and to be examined by a doctor of his or her choice and the facilities available to exercise this right.
- (c) Anyone who is arrested or detained has the right to inform, or have the authorities notify, their family or friends. The information must include the fact of their arrest or detention and the place the person is kept in custody.
- (d) If the arrested or detained person is a foreign national, he or she must be promptly informed of the right to communicate with his or her embassy or consular post. In addition, if the person is a refugee or stateless person or under the protection of an inter-governmental organisation, he or she must be notified without delay of the right to communicate with the appropriate international organisation.
- (e) States must ensure that any person arrested or detained is provided with the necessary facilities to communicate, as appropriate, with his or her lawyer, doctor, family and friends, and in the case of a foreign national, his or her embassy or consular post or an international organisation.

(f) Any person arrested or detained shall have prompt access to a lawyer and, unless the person has waived this right in writing, shall not be obliged to answer any questions or participate in any interrogation without his or her lawyer being present.

(g) Anyone who is arrested or detained shall be given reasonable facilities to receive visits from family and friends, subject to restriction and supervision only as are necessary in the interests of the administration of justice and of security of the institution.

(h) Any form of detention and all measures affecting the human rights of a person arrested or detained shall be subject to the effective control of a judicial or other authority. In order to prevent arbitrary arrest and detention or disappearances, states should establish procedures that require police or other officials with the authority to arrest and detain to inform the appropriate judicial official or other authority of the arrest and detention. The judicial official or other authority shall exercise control over the official detaining the person.

3. Right to be brought promptly before a judicial officer

(a) Anyone who is arrested or detained on a criminal charge shall be brought before a judicial officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

(b) The purpose of the review before a judicial or other authority includes to:

- (1) assess whether sufficient legal reason exists for the arrest;
- (2) assess whether detention before trial is necessary;
- (3) determine whether the detainee should be released from custody, and the conditions, if any, for such release;
- (4) safeguard the well-being of the detainee;
- (5) prevent violations of the detainee's fundamental rights;
- (6) give the detainee the opportunity to challenge the lawfulness of his or her detention and to secure release if the arrest or detention violates his or her rights.

4. Right of arrested or detained person to take proceedings before a judicial body

Anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a judicial body, in order that that judicial body may decide without delay on the lawfulness of his or her detention and order release if the detention is not lawful.

5. Right to *habeas corpus*

(a) States shall enact legislation, where it does not exist, to ensure the right to *habeas corpus*, *amparo* or similar procedures.

(b) Anyone concerned or interested in the well-being, safety or security of a person deprived of his or her liberty has the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of such a person and/or identifying the authority ordering or carrying out the deprivation of liberty.

(c) In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

(d) Any other competent authority entitled under law of the state or by any international legal instrument to which the state is a party may also have access to such places.

(e) Judicial bodies shall at all times hear and act upon petitions for *habeas corpus*, *amparo* or similar procedures. No circumstances whatever must be

invoked as a justification for denying the right to *habeas corpus*, *amparo* or similar procedures.

6. Right to be detained in a place recognised by law

- (a) Any person deprived of liberty shall be held in an officially recognised place of detention.
- (b) Accurate information shall be recorded regarding any person deprived of liberty including:
 - (1) his or her identity;
 - (2) the reasons for arrest;
 - (3) the time of arrest and the taking of the arrested person to a place of custody;
 - (4) the time of his first appearance before a judicial or other authority;
 - (5) the identity of the law enforcement officials concerned;
 - (6) precise information concerning the place of custody;
 - (7) details of the judicial official or other authority informed of the arrest and detention.
- (c) Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be promptly available to their family members, their legal representative or to any other persons having a legitimate interest in the information.
- (d) An official up-to-date register of all persons deprived of liberty shall be maintained in every place of detention and shall be made available to any judicial or other competent and independent national authority seeking to trace the whereabouts of the a detained person.

7. Right to humane treatment

- (a) States shall ensure that all persons under any form of detention or imprisonment are treated in a humane manner and with respect for the inherent dignity of the human person.
- (b) In particular states must ensure that no person, lawfully deprived of his or her liberty is subjected to torture or to cruel, inhuman or degrading treatment or punishment. States shall ensure that special measures are taken to protect women detainees from ill-treatment, including making certain that their interrogation is conducted by women police or judicial officials.
- (c) Women shall at all times be detained separately from men and while in custody they shall receive care, protection and all necessary individual assistance - psychological, medical and physical - that they may require in view of their sex and gender.
- (d) It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him or her to confess, to incriminate himself or herself or to testify against any other person.
- (e) No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his or her capacity of decision or his or her judgment.
- (f) No detained person shall, even with his or her consent, be subjected to any medical or scientific experimentation which could be detrimental to his or her health.
- (g) A detained person or his or her legal representative or family shall have the right to lodge a complaint to the relevant authorities regarding his or her treatment, in particular in case of torture or other cruel, inhuman or degrading treatment.
- (h) States shall ensure that effective mechanisms exist for the receipt and investigation of such complaints. The right to lodge complaints and the existence of such mechanisms should be promptly made known to all arrested or detained persons.

(i) States shall ensure, including by the enactment of legal provisions, that officials or other persons who subject arrested or detained persons to torture or to cruel, inhuman or degrading treatment are brought to justice.

(j) States shall ensure, including by the enactment of legal provisions and adoption of procedures, that anyone who has been the victim of torture or cruel, inhuman or degrading treatment or punishment is enabled to claim compensation.

8. Supervision of places of detention

(a) In order to supervise strict observance of relevant laws and regulations and international standards applicable to detainees, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention.

(b) A detained person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with the above principle, subject to reasonable conditions to ensure security and good order in such places.

N. PROVISIONS APPLICABLE TO PROCEEDINGS RELATING TO CRIMINAL CHARGES

1. Notification of charge

(a) Any person charged with a criminal offence shall be informed promptly, as soon as a charge is first made by a competent authority, in detail, and in a language which he or she understands, of the nature and cause of the charge against him or her.

(b) The information shall include details of the charge or applicable law and the alleged facts on which the charge is based sufficient to indicate the substance of the complaint against the accused.

(c) The accused must be informed in a manner that would allow him or her to prepare a defence and to take immediate steps to secure his or her release.

2. Right to counsel

(a) The accused has the right to defend him or herself in person or through legal assistance of his or her own choosing. Legal representation is regarded as the best means of legal defence against infringements of human rights and fundamental freedoms.

(b) The accused has the right to be informed, if he or she does not have legal assistance, of the right to defend him or herself through legal assistance of his or her own choosing.

(c) This right applies during all stages of any criminal prosecution, including preliminary investigations in which evidence is taken, periods of administrative detention, trial and appeal proceedings.

(d) The accused has the right to choose his or her own counsel freely. This right begins when the accused is first detained or charged. A judicial body may not assign counsel for the accused if a qualified lawyer of the accused's own choosing is available.

3. Right to adequate time and facilities for the preparation of a defence

(a) The accused has the right to communicate with counsel and have adequate time and facilities for the preparation of his or her defence.

(b) The accused may not be tried without his or her counsel being notified of the trial date and of the charges in time to allow adequate preparation of a defence.

(c) The accused has a right to adequate time for the preparation of a defence appropriate to the nature of the proceedings and the factual circumstances of the case. Factors which may affect the adequacy of time for preparation of a defence include the complexity of the case, the defendant's access to evidence, the length of time provided by rules of procedure prior to particular proceedings, and prejudice to the defence.

(d) The accused has a right to facilities which assist or may assist the accused in the preparation of his or her defence, including the right to communicate with defence counsel and the right to materials necessary to the preparation of a defence.

(e) All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate with a lawyer, without delay, interception or censorship and in full confidentiality.

(1) The right to confer privately with one's lawyer and exchange confidential information or instructions is a fundamental part of the preparation of a defence. Adequate facilities shall be provided that preserve the confidentiality of communications with counsel.

(2) States shall recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

(3) The accused or the accused's defence counsel has a right to all relevant information held by the prosecution that could help the accused exonerate him or herself.

(4) It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

(5) The accused has a right to consult legal materials reasonably necessary for the preparation of his or her defence.

(6) Before judgment or sentence is rendered, the accused and his or her defence counsel shall have the right to know and challenge all the evidence which may be used to support the decision. All evidence submitted must be considered by the judicial body.

(7) Following a trial and before any appellate proceeding, the accused or the defence counsel has a right of access to (or to consult) the evidence which the judicial body considered in making a decision and the judicial body's reasoning in arriving at the judgment.

4. The right to an interpreter

(a) The accused has the right to the free assistance of an interpreter if he or she cannot understand or speak the language used before the judicial body.

(b) The right to an interpreter does not extend to the right to express oneself in the language of one's choice if the accused or the defence witness is sufficiently proficient in the language of the judicial body.

(c) The right to an interpreter applies at all stages of the proceedings, including pre-trial proceedings.

(d) The right to an interpreter applies to written as well as oral proceedings. The right extends to translation or interpretation of all documents or statements necessary for the defendant to understand the proceedings or assist in the preparation of a defence.

(e) The interpretation or translation provided shall be adequate to permit the accused to understand the proceedings and for the judicial body to understand the testimony of the accused or defence witnesses.

(f) The right to interpretation or translation cannot be qualified by a requirement that the accused pay for the costs of an interpreter or translator. Even if the accused is convicted, he or she cannot be required to pay for the costs of interpretation or translation.

5. Right to trial without undue delay

- (a) Every person charged with a criminal offence has the right to a trial without undue delay.
- (b) The right to a trial without undue delay means the right to a trial which produces a final judgment and, if appropriate a sentence without undue delay.
- (c) Factors relevant to what constitutes undue delay include the complexity of the case, the conduct of the parties, the conduct of other relevant authorities, whether an accused is detained pending proceedings, and the interest of the person at stake in the proceedings.

6. Rights during a trial

- (a) In criminal proceedings, the principle of equality of arms imposes procedural equality between the accused and the public prosecutor.
 - (1) The prosecution and defence shall be allowed equal time to present evidence.
 - (2) Prosecution and defence witnesses shall be given equal treatment in all procedural matters.
- (b) The accused is entitled to a hearing in which his or her individual culpability is determined. Group trials in which many persons are involved may violate the person's right to a fair hearing.
- (c) In criminal proceedings, the accused has the right to be tried in his or her presence.
 - (1) The accused has the right to appear in person before the judicial body.
 - (2) The accused may not be tried in absentia. If an accused is tried in absentia, the accused shall have the right to petition for a reopening of the proceedings upon a showing that inadequate notice was given, that the notice was not personally served on the accused, or that his or her failure to appear was for exigent reasons beyond his or her control. If the petition is granted, the accused is entitled to a fresh determination of the merits of the charge.
 - (3) The accused may voluntarily waive the right to appear at a hearing, but such a waiver shall be established in an unequivocal manner and preferably in writing.
- (d) The accused has the right not to be compelled to testify against him or herself or to confess guilt.
 - (1) Any confession or other evidence obtained by any form of coercion or force may not be admitted as evidence or considered as probative of any fact at trial or in sentencing. Any confession or admission obtained during incommunicado detention shall be considered to have been obtained by coercion.
 - (2) Silence by the accused may not be used as evidence to prove guilt and no adverse consequences may be drawn from the exercise of the right to remain silent.
- (e) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
 - (1) The presumption of innocence places the burden of proof during trial in any criminal case on the prosecution.
 - (2) Public officials shall maintain a presumption of innocence. Public officials, including prosecutors, may inform the public about criminal investigations or charges, but shall not express a view as to the guilt of any suspect.
 - (3) Legal presumptions of fact or law are permissible in a criminal case only if they are rebuttable, allowing a defendant to prove his or her innocence.
- (f) The accused has a right to examine, or have examined, witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.
 - (1) The prosecution shall provide the defence with the names of the witnesses it intends to call at trial within a reasonable time prior to trial which allows the defendant sufficient time to prepare his or her defence.
 - (2) The accused's right to examine witnesses may be limited to those witnesses whose testimony is relevant and likely to assist in ascertaining the truth.

(3) The accused has the right to be present during the testimony of a witness. This right may be limited only in exceptional circumstances such as when a witness reasonably fears reprisal by the defendant, when the accused engages in a course of conduct seriously disruptive of the proceedings, or when the accused repeatedly fails to appear for trivial reasons and after having been duly notified.

(4) If the defendant is excluded or if the presence of the defendant cannot be ensured, the defendant's counsel shall always have the right to be present to preserve the defendant's right to examine the witness.

(5) If national law does not permit the accused to examine witnesses during pre-trial investigations, the defendant shall have the opportunity, personally or through defence counsel, to cross-examine the witness at trial. However, the right of a defendant to cross-examine witnesses personally may be limited in respect of victims of sexual violence and child witnesses, taking into consideration the defendant's right to a fair trial.

(6) The testimony of anonymous witnesses during a trial will be allowed only in exceptional circumstances, taking into consideration the nature and the circumstances of the offence and the protection of the security of the witness and if it is determined to be in the interests of justice.

(g) Evidence obtained by illegal means constituting a serious violation of internationally protected human rights shall not be used as evidence against the accused or against any other person in any proceeding, except in the prosecution of the perpetrators of the violations.

7. Right to benefit from a lighter sentence or administrative sanction

(a) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit therefrom.

(b) A lighter penalty created any time before an accused's sentence has been fully served should be applied to any offender serving a sentence under the previous penalty.

(c) Administrative tribunals conducting disciplinary proceedings shall not impose a heavier penalty than the one that was applicable at the time when the offending conduct occurred. If, subsequent to the conduct, provision is made by law for the imposition of a lighter penalty, the person disciplined shall benefit thereby.

8. Second trial for same offence prohibited

No one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

9. Sentencing and punishment

(a) Punishments constituting a deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.

(b) In countries that have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime.

(c) Sentence of death shall not be imposed or carried out on expectant mothers and mothers of infants and young children.

(d) States that maintain the death penalty are urged to establish a moratorium on executions, and to reflect on the possibility of abolishing capital punishment.

(e) States shall provide special treatment to expectant mothers and to mothers of infants and young children who have been found guilty of infringing the penal law and shall in particular:

- (1) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
- (2) establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- (3) establish special alternative institutions for holding such mothers;
- (4) ensure that a mother shall not be imprisoned with her child;
- (5) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

10. Appeal

(a) Everyone convicted in a criminal proceeding shall have the right to review of his or her conviction and sentence by a higher tribunal.

(1) The right to appeal shall provide a genuine and timely review of the case, including the facts and the law. If exculpatory evidence is discovered after a person is tried and convicted, the right to appeal or some other post-conviction procedure shall permit the possibility of correcting the verdict if the new evidence would have been likely to change the verdict, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to the accused.

(2) A judicial body shall stay execution of any sentence while the case is on appeal to a higher tribunal.

(b) Anyone sentenced to death shall have the right to appeal to a judicial body of higher jurisdiction, and states should take steps to ensure that such appeals become mandatory.

(c) When a person has by a final decision been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law.

(d) Every person convicted of a crime has a right to seek pardon or commutation of sentence. Clemency, commutation of sentence, amnesty or pardon may be granted in all cases of capital punishment.

O. CHILDREN AND THE RIGHT TO A FAIR TRIAL

(a) In accordance with the African Charter on the Rights and Welfare of the Child, a child is any person under the age of 18. States must ensure that domestic legislation recognises any person under the age of 18 as a child.

(b) Children are entitled to all the fair trial guarantees applicable to adults and to some additional special protection.

(c) States must ensure that law enforcement and judicial officials are adequately trained to deal sensitively and professionally with children who interact with the criminal justice system whether as suspects, accused, complainants or witnesses.

(d) States shall establish laws and procedures which set a minimum age below which children will be presumed not to have the capacity to infringe the criminal law. The age of criminal responsibility should not be fixed below 15 years of age. No child below the age of 15 shall be arrested or detained on allegations of having committed a crime.

(e) No child shall be subjected to arbitrary arrest or detention.

(f) Law enforcement officials must ensure that all contacts with children are conducted in a manner that respects their legal status, avoids harm and promotes the well-being of the child.

(g) When a child suspected of having infringed the penal law is arrested or apprehended, his or her parent, guardians or family relatives should be notified immediately.

(h) The child's right to privacy shall be respected at all times in order to avoid harm being caused to him or her by undue publicity and no information that could identify a child suspected or accused of having committed a criminal offence shall be published.

(i) States shall consider, wherever appropriate, with the consent of the child and his or parents or guardians, dealing with a child offender without resorting to a formal trial, provided the rights of the child and legal safeguards are fully respected. Alternatives to criminal prosecution, with proper safeguards for the protection of the well-being of the child, may include:

- (1) The use of community, customary or traditional mediation;
- (2) Issuing of warnings, cautions and admonitions accompanied by measures to help the child at home with education and with problems and difficulties.
- (3) Arranging a conference between the child, the victim and members of the community;
- (4) Making use of community programmes such as temporary supervision and guidance, restitution and compensation to victims.

(j) Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Any child who has been arrested for having committed a crime shall be released into the care of his or her parents, legal guardians or family relatives unless there are exceptional reasons for his or her detention. The competent authorities shall ensure that children are not held in detention for any period beyond 48 hours.

(k) Children who are detained pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

(l) Every child arrested or detained for having committed a criminal offence shall have the following guarantees:

- (1) to be treated in a manner consistent with the promotion of the child's dignity and worth;
- (2) to have the assistance of his or her parents, a family relative or legal guardians from the moment of arrest;
- (3) to be provided by the state with legal assistance from the moment of arrest;
- (4) to be informed promptly and directly, in a language he or she understands, of the reasons for his or her arrest and of any charges against him or her, and if appropriate, through his or her parents, other family relative, legal guardians or legal representative;
- (5) to be informed of his or her rights in a language he or she understands;
- (6) not to be questioned without the presence of his or her parents, a family relative or legal guardians, and a legal representative;
- (7) not to be subjected to torture or any other cruel, inhuman or degrading treatment or punishment or any duress or undue pressure;
- (8) not to be detained in a cell or with adult detainees.

(m) States shall establish separate or specialised procedures and institutions for dealing with cases in which children are accused of or found responsible for having committed criminal offences. The establishment of such procedures and institutions shall be based on respect for the rights of the child, shall take into account the vulnerability of children and shall promote the child's rehabilitation.

(n) Every child accused of having committed a criminal offence shall have the following additional guarantees:

- (1) to be presumed innocent until proven guilty according to the law;
- (2) to be informed promptly and directly, and in a language that he or she understands, of the charges, and if appropriate, through his or her parents or legal guardians;
- (3) to be provided by the state with legal or other appropriate assistance in the preparation and presentation of his or her defence;

- (4) to have the case determined expeditiously by a competent, independent and impartial authority or judicial body established by law in a fair hearing;
 - (5) to have the assistance of a legal representative and, if appropriate and in the best interests of the child, his or her parents, a family relative or legal guardians, during the proceedings;
 - (6) not to be compelled to give testimony or confess guilt; to examine or have examined adverse witnesses and to obtain the participation of witnesses on his or her behalf under conditions of equality;
 - (7) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (8) to have the free assistance of an interpreter if he or she cannot understand or speak the language used;
 - (9) to have his or her privacy fully respected at all stages of the proceedings.
- (o) In disposing of a case involving a child who has been found to be in conflict with the law, the competent authority shall be guided by the following principles:
- (1) The action taken against the child shall always be in proportion not only to the circumstances and gravity of the offence but also the best interest of the child and the interests of society;
 - (2) Non-custodial options which emphasise the value of restorative justice should be given primary consideration and restrictions on the personal liberty of a child shall only be imposed after careful consideration and shall be limited to the possible minimum. Non-custodial measures could include:
 - (i) Care, guidance and supervision orders;
 - (ii) Probation;
 - (iii) Financial penalties, compensation and restitution;
 - (iv) Intermediate treatment and other treatment orders;
 - (v) Orders to participate in group counselling and similar activities;
 - (vi) Orders concerning foster care, living communities or other educational settings;
 - (3) A child shall not be sentenced to imprisonment unless the child is adjudicated of having committed a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
 - (4) Capital punishment shall not be imposed for any crime committed by children and children shall not be subjected to corporal punishment.
- (p) States shall ensure that child witnesses are able to give their best evidence with the minimum distress. Investigation and practices of judicial bodies should be adapted to afford greater protection to children without undermining the defendant's right to a fair trial. States are required, as appropriate, to adopt the following measures in regard to child witnesses:
- (1) Child witnesses shall not be questioned by the police or any investigating official without the presence of his or her parents, a family relative or legal guardians, or where the latter are not traceable in the presence of a social worker;
 - (2) Police and investigating officials shall conduct their questioning of child witnesses in a manner that avoids any harm and promotes the well-being of the child;
 - (3) Police and investigating officials shall ensure that child witnesses, especially those who are victims of sexual abuse, do not come into contact with or be made to confront the alleged perpetrator of the crime;
 - (4) The child's right to privacy shall be respected at all times and no information that could identify a child witness shall be published;
 - (5) Where necessary, a child witness shall be questioned by law enforcement officials through an intermediary;
 - (6) A child witness should be permitted to testify before a judicial body through an intermediary, if necessary;
 - (7) Where resources and facilities permit, video-recorded pre-trial interviews with child witnesses should be presented;
 - (8) Screens should be set up around the witness box to shield the child witness from viewing the defendant;
 - (9) The public gallery should be cleared, especially in sexual offence cases and cases involving intimidation, to enable evidence to be given in private;
 - (10) Judicial officers, prosecutors and lawyers should wear ordinary dress during the testimony of a child witness;

- (11) Defendants should be prevented from personally cross-examination child witnesses;
- (12) The circumstances in which information about the previous sexual history of alleged child victims may be sought or presented as evidence in trials for sexual offences must be restricted.

P. VICTIMS OF CRIME AND ABUSE OF POWER

- (a) Victims should be treated with compassion and respect for their dignity. They are entitled to have access to the mechanisms of justice and to prompt redress, as provided for by national legislation and international law, for the harm that they have suffered.
- (b) States must ensure that women who are victims of crime, especially of a sexual nature, are interviewed by women police or judicial officials.
- (c) States shall take steps to ensure that women who are complainants, victims or witnesses are not subjected to any cruel, inhumane or degrading treatment.
- (d) Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
- (e) States are required to investigate and punish all complaints of violence against women, including domestic violence, whether those acts are perpetrated by the state, its officials or agents or by private persons. Fair and effective procedures and mechanisms must be established and be accessible to women who have been subjected to violence to enable them to file criminal complaints and to obtain other redress for the proper investigation of the violence suffered, to obtain restitution or reparation and to prevent further violence.
- (f) Judicial officers, prosecutors and lawyers, as appropriate, should facilitate the needs of victims by:
 - (1) Informing them of their role and the scope, timing and progress of the proceedings and the final outcome of their cases;
 - (2) Allowing their views and concerns to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
 - (3) Providing them with proper assistance throughout the legal process;
 - (4) Taking measures to minimise inconvenience to them, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (5) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
- (g) Informal mechanisms for the resolution of disputes, including mediation, arbitration and traditional or customary practices, should be utilised where appropriate to facilitate conciliation and redress for victims.
- (h) Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses, the provision of services and the restoration of rights.
- (i) States should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
- (j) Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws or international law, the

victims should receive restitution from the state whose officials or agents were responsible for the harm inflicted.

(k) When compensation is not fully available from the offender or other sources, states should endeavour to provide financial compensation to:

- (1) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- (2) The family, in particular dependants of persons who have died or become physically or mentally incapacitated.

(l) States are encouraged to establish, strengthen and expand national funds for compensation to victims.

(m) States must ensure that:

- (1) Victims receive the necessary material, medical, psychological and social assistance through state, voluntary, non-governmental and community-based means.
- (2) Victims are informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
- (3) Police, justice, health, social service and other personnel concerned receive training to sensitise them to the needs of victims, and guidelines are adopted to ensure proper and prompt aid.

Q. TRADITIONAL COURTS

(a) Traditional courts, where they exist, are required to respect international standards on the right to a fair trial.

(b) The following provisions shall apply, as a minimum, to all proceedings before traditional courts:

- (1) equality of persons without any distinction whatsoever as regards race, colour, sex, gender, religion, creed, language, political or other opinion, national or social origin, means, disability, birth, status or other circumstances;
- (2) respect for the inherent dignity of human persons, including the right not to be subject to torture, or other cruel, inhuman or degrading punishment or treatment;
- (3) respect for the right to liberty and security of every person, in particular the right of every individual not to be subject to arbitrary arrest or detention;
- (4) respect for the equality of women and men in all proceedings;
- (5) respect for the inherent dignity of women, and their right not to be subjected to cruel, inhuman or degrading treatment or punishment;
- (6) adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;
- (7) an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the traditional court;
- (8) an entitlement to seek the assistance of and be represented by a representative of the party's choosing in all proceedings before the traditional court;
- (9) an entitlement to have a party's rights and obligations affected only by a decision based solely on evidence presented to the traditional court;
- (10) an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions;
- (11) an entitlement to an appeal to a higher traditional court, administrative authority or a judicial tribunal;
- (12) all hearings before traditional courts shall be held in public and its decisions shall be rendered in public, except where the interests of children require or where the proceedings concern matrimonial disputes or the guardianship of children;

(c) The independence of traditional courts shall be guaranteed by the laws of the country and respected by the government, its agencies and authorities:

- (1) they shall be independent from the executive branch;
- (2) there shall not be any inappropriate or unwarranted interference with proceedings before traditional courts.

(d) States shall ensure the impartiality of traditional courts. In particular, members of traditional courts shall decide matters before them without any

restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter.

- (1) the impartiality of a traditional court would be undermined when one of its members has:
 - (1.1)expressed an opinion which would influence the decision-making;
 - (1.2)some connection or involvement with the case or a party to the case;
 - (1.3)a pecuniary or other interest linked to the outcome of the case.
- (2) Any party to proceedings before a traditional court shall be entitled to challenge its impartiality on the basis of ascertainable facts that the fairness of any of its members or the traditional court appears to be in doubt.

(e) The procedures for complaints against and discipline of members of traditional courts shall be prescribed by law. Complaints against members of traditional courts shall be processed promptly and expeditiously, and with all the guarantees of a fair hearing, including the right to be represented by a legal representative of choice and to an independent review of decisions of disciplinary, suspension or removal proceedings.

R. NON-DEGRADABILITY CLAUSE

No circumstances whatsoever, whether a threat of war, a state of international or internal armed conflict, internal political instability or any other public emergency, may be invoked to justify derogations from the right to a fair trial.

S. USE OF TERMS

For the purpose of these Principles and Guidelines:

- (a) '*Arrest*' means the act of apprehending a person for the alleged commission of an offence or by the action of an authority.
- (b) '*Criminal charge*' is defined by the nature of the offence and the nature and degree of severity of the penalty incurred. An accusation may constitute a criminal charge although the offence is not classified as criminal under national law.
- (c) '*Detained person*' or '*detainee*' means any individual deprived of personal liberty except as a result of conviction for an offence.
- (d) '*Detention*' means the condition of a detained person.
- (e) '*Imprisoned person*' or '*prisoner*' means any individual deprived of personal liberty as a result of conviction for an offence.
- (f) '*Imprisonment*' means the condition of imprisoned persons.
- (g) '*Suspect*' means a person who has been arrested but not arraigned or charged before a judicial body.
- (h) '*Judicial body*' means a dispute resolution or adjudication mechanism established and regulated by law and includes courts and other tribunals.
- (i) '*Judicial office*' means a position on a judicial body.
- (j) '*Judicial officer*' means a person who sits in adjudication as part of a judicial body.
- (k) '*Legal proceeding*' means any proceeding before a judicial body brought in regard to a criminal charge or for the determination of rights or obligations of any person, natural or legal.
- (l) '*Traditional court*' means a body which, in a particular locality, is recognised as having the power to resolve disputes in accordance with local customs, cultural or ethnic values, religious norms or tradition.
- (m) '*Habeas corpus*', '*amparo*' is a legal procedure brought before a judicial body to compel the detaining authorities to provide accurate and detailed information regarding the whereabouts and conditions of detention of a person or to produce a detainee before the judicial body.

(n) ‘Victim’ means persons who individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws or that do not yet constitute violations of national criminal laws but of internationally recognised norms relating to human rights. The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress.

Resolution on the Protection of Human Rights Defenders in Africa (2004)

Recognising the crucial contribution of the work of human rights defenders in promoting human rights, democracy and the rule of law in Africa;

Seriously concerned about the persistence of violations targeting individuals and members of their families, groups or organisations working to promote and protect human and peoples' rights and by the growing risks faced by human rights defenders in Africa;

Noting with deep concern that impunity for threats, attacks and acts of intimidation against human rights defenders persists and that this impacts negatively on the work and safety of human rights defenders;

Recalling that it is entrusted by the African Charter on Human and Peoples' Rights with the mandate to promote human and peoples' rights and ensure their protection in Africa;

Reaffirming the importance of the observance of the purposes and principles of the African Charter for the promotion and protection of all human rights and fundamental freedoms for human rights defenders and all persons on the continent;

Bearing in mind the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders);

Mindful that in the Grand Bay (Mauritius) Declaration, the Organisation of African Unity called on member states ‘to take appropriate steps to implement the UN Declaration on Human Rights Defenders in Africa’;

Mindful that the Kigali Declaration recognises ‘the important role that the human rights defenders play in the promotion and protection of human rights in Africa’;

Recalling its decision to include on its agenda the situation of human rights defenders and to nominate a Special Rapporteur on human rights defenders;

1. Now decides to appoint a Special Rapporteur on Human Rights Defenders in Africa for a period of two years with the following mandate:

(a) To seek, receive, examine and to act upon information on the situation of human rights defenders in Africa;

(b) To submit reports at every ordinary session of the African Commission on the situation of human rights defenders in Africa;

(c) To co-operate and engage in dialogue with member states, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders, human rights defenders and other stake holders;

(d) To develop and recommend effective strategies to better protect

- human rights defenders and to follow up on his/her recommendations;
- e. To raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa.
 2. Further decides to nominate Commissioner Jainaba Johm as Special Rapporteur on Human Rights Defenders in Africa for the current duration of her mandate within the African Commission;
 3. Reiterates its support for the work carried out by human rights defenders in Africa;
 4. Calls upon member states to promote and give full effect to the UN Declaration on Human Rights Defenders, to take all necessary measures to ensure the protection of human rights defenders and to include information on measures taken to protect human rights defenders in their periodic reports;
 5. Invites its members to mainstream the issue of human rights defenders in their activities;
 6. Urges member states to co-operate with and assist the Special Rapporteur in the performance of his/her tasks and to provide all necessary information for the fulfilment of his/her mandate;
 7. Requests the African Union to provide adequate resources, assistance and support in the implementation of this Resolution.
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Resolution on the Mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa (2004)

Mindful of the fact that the African Charter on Human and Peoples' Rights recognises and guarantees enjoyment, promotion and the protection of the rights and freedoms of every individual, 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;

Considering that the African Charter, while guaranteeing the freedom of movement and freedom of residence of every individual within a state subject to being law abiding, recognises that when persecuted, every individual shall have the right to seek and obtain asylum in other countries in accordance with the respective laws of the said countries, and international law,

Conscious of the fact that in spite of the adoption of the 1969 OAU Convention Governing the Specific Aspects of Refugees Problems in Africa, refugees in Africa continue to face untold suffering arising principally from the lack of respect of their basic and fundamental human rights as individuals, *inter alia*, women, children and the elderly being the most vulnerable among refugees,

Aware also that in the recent past the incidence of conflicts, and in certain cases, natural calamities have forced mass movement of people to seek refuge, thus causing a huge problem of internal displacement of populations within national borders,

Recalling the Memorandum of Understanding signed between the African Commission and the United Nations High Commissioner for Refugees on strengthening mutual co-operation in the effective promotion and protection of the human rights of refugees, asylum seekers, returnees and other persons of concern in Africa;

Recalling that the African Commission, during its 34th ordinary session designated a focal point on refugees and internally displaced persons, with a limited responsibility of monitoring developments concerning the plight of

refugees and internally displaced persons in Africa, while the Commission reviewed its special rapporteur mechanism,

Recalling its decision to establish the position of Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa at its 35th ordinary session held from 21 May to 4 June 2004 in Banjul, The Gambia and decided to designate, for an initial period of two years, Commissioner Bahame Tom Nyanduga, as the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa;

Reaffirming the importance of the mechanism of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa;

Noting the numerous problems faced by refugees, asylum seekers and internally displaced persons in Africa and the urgent need to develop appropriate strategies to ensure their protection;

1. *Decides that* the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa shall operate under the following mandate to:

- (a) seek, receive, examine and act upon information on the situation of refugees, asylum seekers and internally displaced persons in Africa;
- (b) undertake studies, research and other related activities to examine appropriate ways to enhance the protection of refugees, asylum seekers and internally displaced persons in Africa;
- (c) undertake fact-finding missions, investigations, visits and other appropriate activities to refugee camps and camps for internally displaced persons;
- (d) assist member states of the African Union to develop appropriate policies, regulations and laws for the effective protection of refugees, asylum seekers and internally displaced persons in Africa;
- (e) co-operate and engage in dialogue with member states, National Human Rights Institutions, relevant intergovernmental and non governmental bodies, international and regional mechanisms involved in the promotion and protection of the rights of refugees, asylum seekers and internally displaced persons;
- (f) develop and recommend effective strategies to better protect the rights of refugees, asylum seekers and internally displaced persons in Africa and to follow up on his recommendations;
- (g) raise awareness and promote the implementation of the UN Convention on Refugees of 1951 as well as the 1969 OAU Convention Governing the Specific Aspects of Refugees Problems in Africa;
- (h) submit reports at every ordinary session of the African Commission on the situation of refugees, asylum seekers and internally displaced persons in Africa;

2. *Calls upon* member states to take all necessary measures to ensure the protection of refugees, asylum seekers and internally displaced persons and to include information on measures taken to that effect;

3. *Urges* member states to co-operate with and assist the Special Rapporteur in the performance of his tasks and to provide all necessary information for the fulfilment of his mandate;

4. *Invites* its members to incorporate the issue of refugees, asylum seekers and internally displaced persons in their promotional activities;

5. *Requests* the African Union to provide adequate resources, assistance and support in the implementation of this Resolution.

Resolution on the Mandate and Appointment of a Special Rapporteur on Freedom of Expression in Africa (2004)

Recalling the Resolution on Freedom of Expression adopted at its 29th ordinary session held from 23 April to 7 May 2001, in Tripoli, Libya to initiate an appropriate mechanism to assist it review and monitor adherence to freedom of expression standards and to investigate violations and make appropriate recommendations to the African Commission;

Recalling the Declaration of Principles on Freedom of Expression in Africa adopted at its 32nd ordinary session held from 17 to 23 October 2002, in Banjul, The Gambia;

Recalling further the decision taken at its 33rd ordinary session held in Niamey, Niger from 15 - 29 May 2003 to nominate a Focal Point responsible for overseeing any activity relating to the implementation of the Declaration of Principles on Freedom of Expression in Africa in line with the resolution adopting the Declaration;

Bearing in mind the recommendations of the Johannesburg Consultative Meeting on Freedom of Expression held in Johannesburg in August 2003 and the African Conference on Freedom of Expression held in Pretoria in February 2004;

Recalling the decision taken at its 35th ordinary session held from 21 May - 4 June 2004, in Banjul, The Gambia to postpone the appointment of a Special Rapporteur on Freedom of Expression pending the elaboration of an appropriate mandate;

Reaffirming the commitment of the African Commission on Human and Peoples' Rights to promote the right to freedom of expression and monitor the implementation of the Declaration of Principles on Freedom of Expression in Africa within member states of the African Union;

1. *Decides* to appoint a Special Rapporteur on Freedom of Expression in Africa with the following mandate:

- (a) analyse national media legislation, policies and practice within member states, monitor their compliance with freedom of expression standards in general and the Declaration of Principles on Freedom of Expression in particular, and advise member states accordingly;
- (b) undertake investigative missions to member states where reports of massive violations of the right to freedom of expression are made and make appropriate recommendations to the African Commission;
- (c) undertake country Missions and any other promotional activity that would strengthen the full enjoyment of the right to freedom of expression in Africa;

(d) make public interventions where violations of the right to freedom of expression have been brought to his/her attention. This could be in the form of issuing public statements, press releases, urgent appeals;

(e) keep a proper record of violations of the right to freedom of expression and publish this in his/her reports submitted to the African Commission; and

(f) submit reports at each ordinary session of the African Commission on the status of the enjoyment of the right to freedom of expression in Africa.

2. *Further decides* to appoint Commissioner Andrew Ranganayi Chigovera as Special Rapporteur on the Right to Freedom of Expression in Africa for the remainder of his mandate;

3. *Calls upon* member states of the African Union to take all necessary measures to ensure the protection of the right to freedom of expression and to include information on measures taken to ensure the enjoyment of the

right to freedom of expression in their periodic reports to the African Commission;

4. *Urges* member states of the African Union to co-operate with and assist the Special Rapporteur in the performance of his tasks and to provide all necessary information for the fulfilment of his mandate;

5. *Invites* its members to incorporate the issue of freedom of expression in their promotional activities to member states;

6. *Requests* the African Union to provide adequate resources, assistance and support for the implementation of this Resolution.

Pretoria Declaration on Economic, Social and Cultural Rights in Africa (2004)

In conformity with its mandate under article 45 of the African Charter on Human and Peoples' Rights to promote and protect human and peoples' rights in Africa, the African Commission on Human and Peoples' Rights in collaboration with the International Centre for Legal Protection of Human Rights (INTERIGHTS), the Social and Economic Rights Action Centre (SERAC) and the Cairo Institute for Human Rights Studies (CIHR) and the Centre for Human Rights, University of Pretoria, held a Seminar on Economic, Social and Cultural Rights in Pretoria, South Africa, from 13 - 17 September 2004. The participants at the workshop, who included members of the African Commission, representatives of 12 African states, civil society organisations, national human rights institutions, academics and representatives of UN organisations and Regional Economic Communities (RECs) adopted the following Statement, which is recommended for consideration and adoption by the African Commission on Human and Peoples' Rights at its 36th ordinary session:

Preamble

Recalling that the African Charter enshrines economic, social and cultural rights, in particular in its article 14, article 15, article 16, article 17, article 18, article 21 and article 22;

Recognising the existence of regional and international human rights standards that stress the indivisibility, interdependence and universality of all human rights. Among these are the African Charter, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Universal Declaration of Human Rights, the Declaration on the Right to Development, the International Covenant on Economic, Social and Cultural Rights and the Convention for the Elimination of All Forms of Discrimination Against Women; *Recognising also* that the objectives and principles of the Constitutive Act include a commitment to the promotion and protection human and peoples' rights, respect for democratic principles, human rights, the rule of law and good governance and the promotion of social justice to ensure balanced economic development;

Noting that despite the consensus on the indivisibility of human rights, economic, social and cultural rights remain marginalised in their implementation;

Concerned that there is resistance to recognising economic, social and cultural rights that results in the continued marginalisation of these rights, which excludes the majority of Africans from the enjoyment of human rights; *Appreciating* the positive impact that information and communication technologies (ICTs) can have on the promotion, protection and realisation of economic, social and cultural rights;

Recognising that there are several constraints that preclude the full realisation of economic, social and cultural rights in Africa;

Deeply disturbed by the ongoing and longstanding conflicts in the regions of Africa, which impede the realisation of economic, social and cultural rights;

Concerned further by the lack of human security in Africa due to the prevailing conditions of poverty and under-development and the failure to address poverty through development;

Further recognising the urgent need for human rights, judicial and administrative institutions in Africa to promote human dignity based on equality and to tackle the core human rights issues facing Africans including, food security, sustainable livelihoods, human survival and the prevention of violence;

The participants state that:

1. States parties to the African Charter on Human and Peoples' Rights have solemnly undertaken to respect, protect, promote and fulfil all the rights in the Charter including economic, social and cultural rights.

2. By doing so, states parties have agreed to adopt legislative and other measures, individually or through international co-operation and assistance, to give full effect to the economic, social and cultural rights contained in the African Charter, by using the maximum of their resources. States parties have an obligation to ensure the satisfaction of, at the very least, the minimum essential levels of each of the economic, social and cultural rights contained in the African Charter.

3. States are therefore called upon to address with all appropriate measures their obligations in relation to the full realisation of economic, social and cultural rights as well as tackling the following constraints:

- Lack of good governance and planning and failure to allocate sufficient resources for implementation of economic, social and cultural rights;
- Lack of political will;
- Corruption, misuse and misdirection of financial resources;
- Poor utilisation of human resources and absence of effective measures to curtail brain drain;
- Failure to ensure equitable distribution of income from natural resources;
- Trafficking in women and children;
- Continued outflow and existence of refugees and internally displaced persons;
- Illiteracy and lack of awareness,
- Conditionality of aid and unserviceable debt burdens,
- Privatisation of essential services
- Cost recovery including access fees and charges for essential services;
- Lack of support for and recognition of the work of civil society organisations;
- Lack of implementation of obligations assumed under international law into national law,
- Under development of social amenities;
- Limited engagement with human rights on the part of some judges;
- Lack of protection of African indigenous knowledge;

- Failure to enforce some judicial decisions against the state;
 - The adverse effects of globalisation.
4. States parties have also undertaken to eliminate all forms of discrimination, including all forms of discrimination against women, and to promote the equal enjoyment of all human rights. Non-discrimination and equal treatment are the key components of economic, social and cultural rights since vulnerable and marginal groups including refugees and internally displaced persons are disproportionately affected by a failure of the state to respect, protect and fulfill these rights.
5. The right to property in article 14 of the Charter relating to land and housing entails among other things the following:
- Protection from arbitrary deprivation of property;
 - Equitable and non-discriminatory access, acquisition, ownership, inheritance and control of land and housing, especially by women;
 - Adequate compensation for public acquisition, nationalisation or expropriation;
 - Equitable and non-discriminatory access to affordable loans for the acquisition of property;
 - Equitable redistribution of land through due process of law to redress historical and gender injustices;
 - Recognition and protection of lands belonging to indigenous communities;
 - Peaceful enjoyment of property and protection from arbitrary eviction;
 - Equal access to housing and to acceptable living conditions in a healthy environment.
6. The right to work in article 15 of the Charter entails among other things the following:
- Equality of opportunity of access to gainful work, including access for refugees, disabled and other disadvantaged persons;
 - Conducive investment environment for the private sector to participate in creating gainful work;
 - Effective and enhanced protections for women in the workplace including parental leave;
 - Fair remuneration, a minimum living wage for labour, and equal remuneration for work of equal value;
 - Equitable and satisfactory conditions of work, including effective and accessible remedies for work place-related injuries, hazards and accidents;
 - Creation of enabling conditions and taking measures to promote the rights and opportunities of those in the informal sector, including in subsistence agriculture and in small scale enterprises activities;
 - Promotion and protection of equitable and satisfactory conditions of work of women engaged in household labour;
 - The right to freedom of association, including the rights to collective bargaining, strike and other related trade union rights;
 - Prohibition against forced labour and economic exploitation of children, and other vulnerable persons;
 - The right to rest and leisure, including reasonable limitation of working hours, periodic holidays with pay and remuneration for public holidays.
7. The right to health in article 16 of the Charter entails among other things the following:
- Availability of accessible and affordable health facilities, goods and services of reasonable quality for all;

- Access to the minimum essential food which is nutritionally adequate and safe to ensure freedom from hunger to everyone and to prevent malnutrition;
 - Access to basic shelter, housing and sanitation and adequate supply of safe and potable water;
 - Access to reproductive, maternal and child health care based on the life cycle approach to health;
 - Immunisation against major infectious diseases;
 - Education, prevention and treatment of HIV/AIDS, malaria, tuberculosis and other major killer diseases;
 - Education and access to information concerning the main health problems in the community including methods of preventing and controlling them;
 - Training for health personnel including education on health and human rights;
 - Access to humane and dignified care of the elderly and for persons with mental and physical disabilities;
8. The right to education in article 17 of the African Charter entails among other things the following:
- Provision of free and compulsory basic education that will also include a programme in psycho-social education for orphans and vulnerable children;
 - Provision of special schools and facilities for physically and mentally disabled children;
 - Access to affordable secondary and higher education;
 - Accessible and affordable vocational training and adult education;
 - Addressing social, economic and cultural practices and attitudes that hinder access to education by girl children;
 - Availability of educational institutions that are physically and economically accessible to everyone;
 - Development of curricula that address diverse social, economic and cultural settings and which inculcate human rights norms and values for responsible citizens;
 - Liberty of parents and guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down by the state, and to ensure the religious and moral education of their children in conformity with their own convictions;
 - Continued education for teachers and instructors including education on human rights and the continuous improvement of the conditions of work of teaching staff;
 - Education for development that links school curricula to the labour market and society's demands for technology and self-reliance.
9. The right to culture in articles 17 and 18 of the African Charter entail among other things the following:
- Positive African values consistent with international human rights realities and standards;
 - Eradication of harmful traditional practices that negatively affect human rights;
 - Participation at all levels in the determination of cultural policies and in cultural and artistic activities;
 - Measures for safeguarding, protecting and building awareness of tangible and intangible cultural heritage, including traditional knowledge systems;
 - Recognition and respect of the diverse cultures existing in Africa;

10. The social, economic and cultural rights explicitly provided for under the African Charter, read together with other rights in the Charter, such as the right to life and respect for inherent human dignity, imply the recognition of other economic and social rights, including the right to shelter, the right to basic nutrition and the right to social security.

11. Having highlighted the core contents of economic, social and cultural rights under the African Charter, participants make the following recommendations:

(a) States parties should:

- (i) Ratify, if they have not done so, the treaties mentioned in the Preamble, especially the Protocol on the Rights of Women in Africa;
- (ii) Incorporate into domestic law and fully implement the provisions of regional and international treaties on economic, social and cultural rights;
- (iii) Establish constitutional protection of economic, social and cultural rights subject to non-discrimination and equality;
- (iv) Come up with National Action Plans, which set out benchmark indicators for the progressive realisation of social economic and cultural rights;
- (v) Take effective measure to ensure budgetary processes are transparent and consultative;
- (vi) Involve civil society in meaningful consultations in policymaking and in the implementation of economic, social and cultural rights generally;
- (vii) Review all national policies, which undermine the realisation of specific economic, social and cultural rights;
- (viii) Provide reports under article 62 of the Charter on how far they have gone in making economic, social and cultural rights both accessible and non discriminatory;
- (ix) Adopt measures for the prudent use of resources, including the investigation of affordable alternatives for health drugs e.g. generic vs. patent medicines
- (x) Ensure effective citizen participation in government through credible electoral processes, liberalisation of the mass media and in the formulation of legislation and policies;
- (xi) Adopt special measures for women and address the economic, social and cultural rights of vulnerable and marginalised groups including children, indigenous peoples, displaced persons, refugees, persons living with HIV/AIDS and the disabled;
- (xii) Develop mechanisms to hold non-state actors especially multi-national corporations and businesses accountable for violations of economic, social and cultural rights in such matters relating to child labour, industrial safety standards, protection against forced evictions and low wages, protection of the environment, including global warming and its impact on ecosystems, livelihood and food security;
- (xiii) Strengthen the capacity of state institutions to produce disaggregate data that would provide an accurate assessment of the implementation of economic, social and cultural rights;
- (xiv) Promulgate and implement comprehensive ICT policies and programmes;
- (xv) Consult with civil society organisations in the nomination and election of members of the African Commission and judges of the African Court;
- (xvi) Ratify the Protocol on the African Human Rights Court and make the declaration under article 34(6) of the Protocol allowing individuals and non-governmental organisations to file cases, if they have not done so;
- (xvii) Nominate and elect judges of the African Human Rights Court so that it may be established without further delay;

(xviii) Take necessary measures to reduce military spending significantly in favour of increasing spending on the implementation of economic, social and cultural rights;

(xix) Ensure that economic, social and cultural rights take primacy in the negotiations of bilateral and multilateral trade and economic agreements;

(xx) Create independent, impartial and well-resourced national human rights institutions and if they already exist to strengthen their independence and impartiality.

(b) The African Union should:

(i) Urge member states that have not done so, to ratify the human rights treaties mentioned in the Preamble, in particular the Protocol on the Rights of Women in Africa;

(ii) Provide sufficient funds for African human rights institutions to enable them to effectively fulfil their mandate;

(iii) Establish the African Court on Human and Peoples' Rights without further delay;

(iv) Urge member states that have not done so to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, and to make the necessary declaration under article 34(6) of the Protocol;

(v) Establish the Human Rights Fund as recommended by the First AU Ministerial Conference on Human Rights held in Kigali, Rwanda, in May 2003;

(vi) Strengthen the Secretariat to enhance the functioning of the African Commission;

(vii) Urge the AU Peace and Security Council to adopt urgent measures to address the conflicts in Africa in order to create a conducive environment for the respect of economic, social and cultural rights;

(viii) Call upon the organs of the AU to encourage member states to uphold economic, social and cultural rights and to hold them accountable for violations of economic, social and cultural rights;

(ix) Integrate the monitoring of economic, social and cultural rights into the work of relevant AU institutions as well as the CSSDCA Peer Review Mechanism and New Partnership for Africa's Development (NEPAD) African Peer Review Mechanism process;

(x) Follow up recommendations of the African Commission to ensure implementation of its decisions by member states.

(c) The African Commission should:

(i) Elaborate principles and guidelines on economic, social and cultural rights and establish a working group for this purpose;

(ii) Integrate economic, social and cultural rights into the mandates of existing Special Rapporteurs and Working Groups;

(iii) Urge states to duly submit their reports to the African Commission under article 62 of the African Charter;

(iv) Address economic, social and cultural rights during the examination of State Reports under article 62 during questions and concluding observations;

(v) Review its guidelines for state reporting pertaining to economic, social and cultural rights;

(vi) Consider alternative means of examining implementation of provisions of the Charter by a state that is in perpetual default of its reporting obligations under article 62 of the Charter.

(vii) Provide substantive recommendations to the AU Assembly on economic, social and cultural rights;

(viii) Undertake studies and research under article 45 on specific economic, social and cultural rights;

(ix) Pay special attention to economic, social and cultural rights during promotional visits to states;

- (x) Ensure effective dissemination of relevant decisions and resolutions of the Commission in collaboration with relevant governmental and non-governmental national and sub-regional institutions;
- (xi) Further elaborate the economic and social rights implicit in the African Charter;
- (xii) Urge the AU to establish the African Human Rights Court without further delay and those states that have not done so, to ratify the Protocol establishing the Court and to make the necessary declaration under article 34(6) of the Protocol.
- (d) Civil Society should:
 - (i) Play a more pro-active role in the nomination of and lobby for the election of candidates to the African Commission who are conversant with economic, social and cultural rights;
 - (ii) Advocate for states to ratify the Protocol of the African Human Rights Court and to make the declaration allowing NGOs and individuals to file cases;
 - (iii) Advocate for the African Human Rights Court to be established without further delay;
 - (iv) Prioritise monitoring of economic, social and cultural rights in their advocacy work;
 - (v) Play a role in raising public awareness of economic, social and cultural rights and the obstacles to fulfillment of these rights in particular harmful cultural practices;
 - (vi) Actively participate in the budgetary process, both in terms of formulation and analysis;
 - (vii) Develop partnerships with both the state and private sector, where possible, for the protection of economic, social and cultural rights;
 - (viii) Compile and submit to the African Commission shadow reports on economic, social and cultural rights;
 - (ix) Improve networking amongst NGOs and their support activities of the African Commission and its Special Rapporteurs and Working Groups;
 - (x) Bring more cases on economic, social and cultural rights to the African Commission, the African Committee on the Rights and Welfare of the Child, national courts, and the African Human Rights Court, when it is established;
 - (xi) Become involved in specific projects in the implementation of economic, social and cultural rights especially in the rural areas;
 - (xii) Advocate for comprehensive national and regional ICT policies and programmes, and to incorporate ICT training, provision and access in their work plans.
- (e) National Human Rights Institutions should:
 - (i) Undertake studies, monitor and report on economic, social and cultural rights;
 - (ii) Scrutinise existing laws and administrative acts and make submissions to Parliament on bills relating to economic, social and cultural rights;
 - (iii) Publish and distribute their reports on economic, social and cultural rights;
 - (iv) Establish regional networks /coalitions and involve NGOs in these coalitions;
 - (v) Apply for affiliate status with the African Commission, if they have not done so;
 - (vi) Raise awareness on economic, social and cultural rights among particular groups such as the public service, the judiciary, the private sector and the labour movement and encourage the Government to integrate human rights in the school curricula;
 - (vii) Examine complaints of infringements of economic, social and cultural rights and make recommendations on redress, and where possible file cases before national courts;

- (viii) Conduct follow up activities in the implementation of recommendations of international treaty bodies and publicise their reports, especially on economic, social and cultural rights;
 - (ix) Advocate for states to ratify the Protocol of the African Human Rights Court and to make the declaration allowing NGOs and individuals to file cases;
 - (x) Advocate for the African Human Rights Court to be established without further delay;
- (f) International and regional entities should:
- (i) Pay particular attention to African needs related to development and the realisation of economic, social and cultural rights;
 - (ii) Cancel the unserviceable debt burdens of African states;
 - (iii) Ensure that bilateral and multilateral trade and economic agreements conform to international treaty obligations relating to economic, social and cultural rights;
 - (iv) Play a role in the implementation of economic, social and cultural rights including through assistance and co-operation with African states;
 - (v) Take measures to regulate trade in extractive industries (such as oil, mining) that are exploitative, corrupt and fuel conflicts in Africa;
 - (vi) Co-operate with African countries in their efforts to repatriate money and cultural artefacts that have been unlawfully removed from African countries;
 - (vii) Ensure compliance with the principles of corporate social responsibility.

12. In conclusion, the African Union, its member states, international and national organisations and non-state actors should fully recognise human rights as a fundamental objective of development and that development has to achieve the full realisation of all human rights. Economic, social and cultural rights should therefore be integrated into development planning and implementation so that African needs and aspirations are fully addressed.

Resolution on the Status of Women in Africa and the Entry into Force of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2005)

Recalling the commitments of the Heads of States and Governments in the Solemn Declaration on Gender Equality in Africa made during the 3rd ordinary session held in Addis Ababa, Ethiopia, from 6 - 8 July 2004;

Noting with appreciation the election in Liberia of the first female President in Africa;

Further noting with appreciation the member states of the African Union that have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which entered into force on 25 November 2005, namely Benin, Cape Verde, Comoros, Djibouti, Gambia, Libya, Lesotho, Mali, Malawi, Namibia, Nigeria, Rwanda, the Republic of South Africa, Senegal and Togo;

Recognising that women in Africa continue to be subject to discriminatory laws and practices;

Reiterating its commitment to continue working to promote the rights of women in Africa;

1. Congratulates all women in Africa on the occasion of the historic and speedy entry into force of the *Protocol*;
 2. Congratulates the Liberian people on the election, in November 2005, of the first female President in Africa, Ms Ellen Johnson Sirleaf;
 3. Urges member states of the African Union that have not already done so to urgently ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa without reservations and to remove reservations where these have been included;
 4. Further urges member states that have already ratified this *Protocol* to immediately undertake measures for domestication, including the amendment of internal laws to conform with the provisions of the *Protocol*;
 5. Encourages member states to increase the participation of women in peacekeeping initiatives in the continent;
 6. Calls on member states to implement strategies, including affirmative action, to ensure that women can attain the highest levels of education and leadership in governance;
 7. Urges member states to respect their commitments under the CEDAW and the Beijing Platform of Action and urgently repeal or amend all laws and policies and eradicate all practices that are discriminatory against women; Urges member states, the African Union and international organisations to provide more support to the work of the Special Rapporteur on the Rights of Women.
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Resolution on Ending Impunity in Africa and on the Domestication and Implementation of the Rome Statute of the International Criminal Court (2005)

Recalling the Resolution on the Ratification of the Treaty on the International Criminal Court (the Rome Statute) by the African Commission on Human and Peoples' Rights, Banjul, 31 October 1998 and the Resolution on the Ratification of the Statute of the International Criminal Court by OAU member states, Pretoria, 16 May 2002;

Noting with concern the numerous human rights abuses in parts of the African continent, most notably that men, women and children have been the victims of genocide, war crimes, crimes against humanity and other crimes recognised under international human rights law and international humanitarian law;

Noting that the perpetrators of these crimes are rarely brought to justice, while the victims are frequently denied an effective remedy;

Noting that the Constitutive Act of the African Union, article 3(h) and 4(o), expressly condemns and rejects impunity;

Further noting that 27 African states have ratified the Rome statute and that some of them have made efforts to give legal effect to the application of the Rome Statute nationally;

Deeply Concerned that some African governments that have ratified the Rome Statute have not taken the necessary measures to incorporate it at the national level;

Considering that, under the Rome Statute, the International Criminal Court has jurisdiction to try individuals suspected of having committed genocide, war crimes and crimes against humanity;

1. Urges the member states of the African Union to ensure that the perpetrators of crimes under international human rights law and international humanitarian law should not benefit from impunity;
 2. Urges member states of the African Union that have not yet done so to ratify the Rome Statute and to adopt a national action plan for the effective implementation of the Rome Statute at the national level;
 3. Urges African governments to withdraw from the article 98 Bilateral Immunity Agreements and refrain from engaging in acts that would weaken the effectiveness of the Court in line with their international obligations;
 4. Calls on civil society organisations in Africa to work in collaboration and develop partnerships in order to further respect for the rule of law internationally and to strengthen the Rome Statute;
 5. Encourages the Assembly of Heads of State and Government of the African Union to urge its members states to condemn and reject impunity.
-

Resolution on the Protection of Human Rights and the Rule of Law in the Fight Against Terrorism (2005)

Considering the preamble to the African Charter on Human and Peoples' Rights requesting member states to re-affirm their support to human and peoples' rights and liberties contained in the Declarations, Treaties and other Instruments adopted within the framework of the United Nations and of the African Union;

Bearing in mind the provisions of the Constitutive Act of the African Union in article 3(h), which enshrines the objective of the African Union to promote and protect human rights, and article 4(o), which requires respect for the sanctity of human life, condemns impunity, political assassinations, acts of terrorism and subversive activities;

Taking into consideration article 23 of the African Charter on Human and Peoples' Rights which guarantees the right of people to peace and security and prohibits states from allowing their territories to be used as bases for subversive or terrorist activities;

Considering also the fundamental importance of guaranteeing respect of all human and peoples' rights and the standards of the rule of law when legislating and implementing anti-terrorism laws;

Bearing in mind articles 45(1) and (2) of the African Charter on Human and Peoples' Rights mandating the African Commission on Human and Peoples' Rights to formulate and lay down principles on human rights issues upon which African Governments may base their legislation and requiring it to ensure the protection of human and peoples' rights as well as article 60 permitting the African Commission on Human and Peoples' Rights to draw inspiration from international law on human and peoples' rights;

Recalling article 22(1) of the Convention of the Organisation African Unity (OAU) on the Prevention and Combating of Terrorism that stipulates that no provisions of the Convention may be interpreted in a manner that derogates from the general principles of international law, particularly the principles of international humanitarian law and the African Charter on Human and Peoples' Rights;

Further recalling article 3(k) of the Protocol to the OAU Convention on the Prevention and Combating of Terrorism under which states parties commit themselves to outlaw torture and other degrading and inhuman treatment,

including, discriminatory and racist treatment of terrorist suspects, which are inconsistent with international law;

Considering the role of the Peace and Security Council of the African Union as enshrined in the Protocol relating to the Establishment of the Peace and Security Council to co-ordinate and harmonise continental efforts in the prevention and combating of terrorism;

Considering further the role assigned to the African Commission on Human and Peoples' Rights in the Protocol relating to the Establishment of the Peace and Security Council of the African Union: 'to seek close co-operation with the Peace and Security Council and to draw the attention of the Peace and Security Council to all issues of relevance to its mandate';

Recalling Resolutions 1373 and 1456 of the United Nations Security Council, Resolutions 57/219 and 58/187 of the General Assembly, Resolutions 2003/68 and 2004/87 of the Human Rights Commission, Resolutions 2003/15 and 2004/14 of the Sub-Committee on the Promotion and Protection of Human Rights re-affirming that states should ensure that all measures taken to combat terrorism conform to their obligations under the terms of international law in general, and international human rights law, international humanitarian law and the rights of refugees in particular;

Deeply concerned by the increase in the number of terrorist acts perpetrated on the continent and legislations, measures and practices of states parties, that may be inconsistent with the provisions of the African Charter on Human and Peoples' Rights;

Reaffirming the role of the African Commission on Human and Peoples' Rights in the implementation and monitoring of the respect for the provisions of the African Charter on Human and Peoples' Rights;

Recognising that the acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental liberties and democracy, constitute a threat to territorial integrity, the security of states and seek to destabilise legally constituted Governments;

1. Calls on all African states to take the necessary measures to reinforce their activities of co-operation in order to prevent and combat terrorism;
2. Reaffirms that African states should ensure that the measures taken to combat terrorism fully comply with their obligations under the African Charter on Human and Peoples' Rights and other international human rights treaties, including the right to life, the prohibition of arbitrary arrests and detention, the right to a fair hearing, the prohibition of torture and other cruel, inhuman and degrading penalties and treatment and the right to seek asylum;
3. Undertakes to ensure that all the special procedures and mechanisms of the African Commission on Human and Peoples' Rights consider within the framework of their mandates, the protection of human rights and fundamental freedoms in the context of measures aimed at preventing and combating terrorism and to co-ordinate their efforts, as appropriate, in order to promote a coherent approach in this regard;
4. Decides to organise a meeting of experts on the protection of human rights and the rule of law within the framework of the fight against terrorism in Africa;
5. Appeals to the relevant organs of the African Union and requests its other partners to provide the required assistance in the quest for resources and modalities to organise this experts' meeting;
6. Instructs the Secretariat to follow-up and co-ordinate this activity.

Resolution on the Situation of Human Rights in the Darfur Region in Sudan (2005)

The African Commission adopts both thematic and country resolutions. In January 2006 the AU Executive Council decided to authorise the publication of the 19th Activity Report of the Commission with the exception of resolutions on Eritrea, Ethiopia, Sudan, Uganda and Zimbabwe. These states were given three months to submit written comments to the Commission. The resolutions (with the exception of the one on Eritrea) were published together with the states' comments in the 20th Activity Report adopted by the AU Executive Council in June 2006. Reprinted below is the resolution on Sudan, followed by the response of the Sudanese government.

Considering the provisions of the Constitutive Act of the African Union (AU) and the Charter of the United Nations Organisation (UN), as well as those of the African Charter on Human and Peoples' Rights and other regional and international human rights instruments to which the Sudan is a state party; *Recalling* relevant decisions and communiqués adopted by the AU Assembly of Heads of State and Government and those of the Peace and Security Council on the situation in Darfur, most notably Decisions AU/Dec.54(III) and Assembly/AU/Dec.68 (IV) adopted at the 3rd and 4th ordinary sessions of the AU Assembly of Heads of State and Government respectively, as well as communiqués PSC/PR/Comm (XIII) and PSC/PR/Comm (XVII) adopted by the AU Peace and Security Council at their 13th and 17th meetings respectively; *Recalling* Resolutions 1556/2004 of 30 July 2004 and 1590/2005, 1591/2005 and 1593/2005 adopted by the UN Security Council on the situation in Darfur, Sudan in March 2005;

Recalling also Resolution ACHPR /Res74 (XXXVII) 05 adopted by the 37th ordinary session of the African Commission on Human and Peoples' Rights on 11 May 2005 on the situation in the Darfur region of Sudan and Resolution ACHPR/Res 68 (XXXV) 04 adopted by the 35th ordinary session on 4 June 2004, as well as Resolution E/CN.4/RES/2005/82 adopted by the UN Commission on Human Rights on 21 April 2005 on the situation of human rights in Sudan;

Deeply concerned about the continuing grave violations of human rights and international humanitarian law in Darfur committed by parties to the conflict, in particular the continued depopulation of vast areas in the region of their indigenous owners, threats of violence, intimidate and assault against UN agencies and humanitarian organisations, the targeting and killing of AU troops in Darfur, and the killing and abduction of staff members of national and international humanitarian organisations;

Concerned that the African Commission undertook a fact-finding mission to the Darfur region of Sudan in July 2004 and dispatched its report to the government of Sudan but has not yet received a response;

1. Calls on the government of Sudan to submit its comments to the African Commission with respect to its report on the 2004 fact-finding mission to Sudan;
2. Calls on the government of Sudan to comply with its obligations under the African Charter on Human and Peoples' Rights, the AU Constitutive Act, the UN Charter and other relevant instruments to which the Sudan is a state party, and comply with the following:

(a) Cease, with immediate effect, all attacks against civilians in Darfur and end the grave violations of human and peoples' rights, in particular the forced depopulation of entire areas in the region, rape and sexual violence against

women and girls, abduction of women and children, and to cease all support to the *Janjaweed* militiamen, including the provision of supplies.

(b) Provide the necessary support to all international agencies and humanitarian organisations in order to ensure effective and full access to the war affected areas of Darfur and to facilitate delivery of humanitarian assistance to civilian populations.

(c) Fully and unconditionally co-operate with the Office of the Prosecutor of the International Criminal Court in his efforts to investigate and bring to justice all persons suspected of perpetrating war crimes and crimes against humanity as prescribed in the report of the International Commission of Inquiry on Darfur.

(d) Take all appropriate measures to ensure the effective implementation of the Resolutions 1556/2004 of 30 July 2004 and 1590/2005, 1591/2005 and 1593/2005 adopted on 29 and 31 March 2005 by the United Nations Security Council;

3. Calls on all parties to the conflict to return to negotiations and to co-operate with the international organs and humanitarian organisations.

Comments of the Sudan on the Decision of the African Commission on Human and Peoples' Rights concerning Darfur during its 38th Ordinary Session held in Bajul, the Gambia, from 21 November to 5 December 2005:

We wish to refer to the above subject and the decision of the AU Assembly of Heads of State and Government held in Khartoum from 16 - 24 January 2006 asking for Sudan's view on, and response to the Decision of the African Commission on Human and Peoples Rights on Darfur during its 38th ordinary session held in Banjul, the Gambia, from 21 November to 5 December 2005.

We wish to further state that the points raised in the decision only reflected what was orchestrated by some media quarters which rely on allegations that cannot be substantiated.

We wish to also point out that the situation in Darfur was examined in accordance with the AU Constitutive Act and resolved in line with UN Charter where the UN Security Council issued Resolution 1593 referring the case in Darfur to the International Criminal Court. Resolution 1591 establishing a Committee of Experts was also adopted among other resolutions. It is worth noting that the decision of the African Commission on Human and Peoples Rights has also made reference to the decisions of the African Union and its Peace and Security Council as well as those of the UN Security Council.

First observations on the report of the African Commission on Human and Peoples Rights on the fact finding mission that visited the Sudan in 2004. We had earlier submitted our response to the first report of the mission. Our response to the second report had articulated Sudan's position on the holding of an extraordinary session in Pretoria, South Africa without the approval of, or funding by the African Union Commission. The Sudan had lodged a complaint on this to the Chair of the African Union, but no response has so far been forthcoming.

Second, regarding Sudan's commitment to the African Charter on Human and Peoples Rights and to other international agreements and conventions, the Sudanese Government takes all necessary measures to promote human rights in the Sudan and ensure decent life by eliminating poverty, disease and illiteracy inherited from colonialism. At the same time, Sudan strives to preserve its political sovereignty and territorial integrity. Since the eruption of the troubles in Darfur, the Sudan has been keenly engaged in the search for

solutions to the problem through direct negotiations with the rebels as a result of which the Abbeche, Njamina and Abuja agreements were concluded. However, negative signals sent by several external circles have encouraged the rebels not to care much about the implementation of these Agreements.

The government has always shown concern about the safety of civilians by taking measures against all those who break the law. As a proof of that, civilians have been fleeing from abuses by the rebels to the areas under government control. Even in the areas that were shelled by mistake, the government has compensated the victims. The international community as a whole is witness to that and the most glaring example is the victims of air raid in the Habil area where the government blood money of those killed and compensated the inhabitants for their properties. As for the question of forced displacement, as we said earlier, this is in conflict with the reality as displacement only occurs after rebel attacks on villages using such displacement as a weapon against the government. The government of the Sudan has concluded an agreement with IOM which supervises the programmes of repatriating the displaced persons. The government is concerned with the rehabilitation programme in the areas of displacement and it has also established a committee which is now one of the three committees set up based on the recommendations of the National Investigation Committee presided over by the former head of the judiciary to define the pastoral routes and confirm land ownership.

Concerning the alleged rape and violence against women, the Sudanese courts receive statements on the basis of which it has tried a number of police and army officers and names have been submitted to human rights observers in this regard. A list is hereto attached.

The government has also adopted a plan for the prevention of violence against women in Darfur (copy attached) and amended the criminal proceedings to enable the victims of violence to receive treatment without filling Form No 8 with the police authorities. Hospitals and foreign treatment units of the international and voluntarily organisations have also been allowed to treat those affected. Groups of the AU troops participate in joint patrols to escort women when they go out of their camps in search of firewood, which has considerably minimised cases of violence against women.

As for the need to open the way for the international organisations, and humanitarian agencies, the entire international community is witness to Sudan's co-operation and facilitation of humanitarian work without any customs restrictions or formalities. It has issued visas to the personnel of some 600 voluntary organisations that now work in Darfur.

The government has affirmed that it does not give support to any of the parties in Darfur, that are prohibited under the Ceasefire Agreement, from any movement without prior knowledge of the AU troops, and are also banned from the use of air-force.

On co-operation with the Office of the Prosecutor General of the International Criminal Court, even though this is not within the jurisdiction of the African Union Commission on Human and Peoples Rights, our response is that the Sudan has provided all the facilities to enable the said office to perform its duty and provided it with the necessary documentation.

Regarding the implementation of UN Security Council Resolutions 1556/2005, 1590/2005, 1591/2005 and 1593/2005, the Sudan has always co-operated with the UN. This has been confirmed by the Representative of the UN Secretary-General in the Sudan in his monthly reports. There are more than 25 human rights observers in Darfur and they are allowed to visit the prisons in all parts of the Sudan as indicated in the reports of the UN Secretary-General. Meetings are also held between the Human Rights Division of the United Nations and the Human Rights Consultation Council at the office of the Sub-Jim every two weeks. Fact-finding missions are undertaken by both sides in Darfur and joint seminars organised to amend the criminal proceedings and the rules of implementing Form No 8.

In conclusion, we would have liked to see the African Commission, instead of sending timid signals about the atrocities by the rebels, adopt a bold and firm position by considering the atrocities they have been perpetrating in Darfur since the eruption of the war, particularly their recruitment of child soldiers to attack humanitarian workers and their convoys.

Communication form: Individual complaint under the African Charter on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights

Confidentiality: If any of the information contained in the present communication should be kept confidential, please print the word "CONFIDENTIAL" next to the relevant entry.

Part 1: Details of complainant(s)/representative

If complaint is filed
in personal capacity:

Details of complainant (victim)

Title	
Surname	
Other names	
Date of birth	
Occupation	

Contact address

Postcode	
Country	

	Home	Work
Telephone		
Fax		
Email		
Present nationality		

(This form was developed by students in the LLM (Human Rights and Democratisation in Africa) programme at the Centre for Human Rights of the University of Pretoria, South Africa, and is not an official AU document.)

Details of legal representative (*if applicable*)

Title	
Surname	
Other names	
Contact address	
Postcode	
Country	
Telephone	
Fax	
Email	

**If complaint is filed
on behalf of a victim:**

Details of victim

Title	
Surname	
Other names	

Contact address**Permanent address**

Postcode	Postcode
Country	Country

Telephone	
Fax	
Email	

Details of complainant/organisation submitting the complaint

Title	
Surname	
Other names	

Contact address

Postcode	
Country	
Telephone	
Fax	
Email	

Details of legal representative (*if applicable*)

Title	
Surname	
Other names	

Contact address

Permanent address

Contact address	Permanent address
Postcode <hr/>	Postcode <hr/>
Country	Country
Telephone	
Fax	
Email	

Part 2: Facts constituting alleged violation(s)

Which government is accused of the alleged violation(s)?

What are the facts pertaining to the alleged violation?

**Has the case been taken to the highest court in the country concerned?
If not, why? (Provide details)**

Is the case urgent? (If yes, explain)

Are provisional measures required? (optional)

**Which provisions of the Charter have allegedly been violated? (optional
- for a copy of the African Charter see: www.chr.up.ac.za)**

**What are the names of government authorities or institutions involved
in the alleged violation? (If possible, provide other relevant details such
as contact persons, telephone and fax numbers and addresses)**

Part 3: Evidence in support of allegation

Witness(es) to the violation

Title		
Surname		
Other names		
	Home	Work
Contact address		
Telephone		
Fax		
Email		

If possible, proof that the case has already been taken to the highest court possible in the country (*list or attach records of these cases*)

Have domestic legal remedies been pursued? (*list or attach copies of judgments or decisions on the alleged violation*)

Have any other international human rights bodies been approached?

Part 4: Remedies required

Are any specific remedies required?

Part 5: Additional information

Declaration by author(s)

I/we declare that the information given on this form is complete and correct to the best of my/our knowledge.

Signed		Date	
Signed		Date	
Signed		Date	

If there is any additional material that you wish to send, please attach it securely to this form. Please submit the form to the address below.

The African Commission on
Human and Peoples' Rights
PO Box 673
Banjul
The Gambia

Tel: +220 392962
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THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT

The New Partnership for Africa's Development (NEPAD) Declaration (2001)

The Declaration of the New Partnership for Africa's Development (NEPAD) was adopted at the first meeting of the Heads of States and Government Implementation Committee of NEPAD in Abuja, Nigeria, in October 2001. NEPAD is the development agenda of the AU, and has a strong human rights component.

The full text is reprinted in *Human Rights Law in Africa* 2004 p 187 and further. It is also available on www.chr.up.ac.za.

Excerpts

I. Introduction

1. This *New Partnership for Africa's Development* is a pledge by African leaders, based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development and, at the same time, to participate actively in the world economy and body politic. The Programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world.
2. The poverty and backwardness of Africa stand in stark contrast to the prosperity of the developed world. The continued marginalisation of Africa from the globalisation process and the social exclusion of the vast majority of its peoples constitute a serious threat to global stability.
3. Historically accession to the institutions of the international community, the credit and aid binomial has underlined the logic of African development. Credit has led to the debt deadlock which, from instalments to rescheduling, still exists and hinders the growth of African countries. The limits of this option have been reached. Concerning the other element of the binomial - aid - we can also note the reduction of private aid and the upper limit of public aid, which is below the target set in the 1970s.
4. In Africa, 340 million people, or half the population, live on less than US \$1 per day. The mortality rate of children under 5 years of age is 140 per 1000, and life expectancy at birth is only 54 years. Only 58 per cent of the population have access to safe water. The rate of illiteracy for people over 15 is 41 per cent. There are only 18 mainline telephones per 1000 people in Africa, compared with 146 for the world as a whole and 567 for high-income countries.
5. The *New Partnership for Africa's Development* calls for the reversal of this abnormal situation by changing the relationship that underpins it. Africans are appealing neither for the further entrenchment of dependency through aid, nor for marginal concessions.
6. We are convinced that an historic opportunity presents itself to end the scourge of underdevelopment that afflicts Africa. The resources, including capital, technology and human skills, that are required to launch a global war on poverty and underdevelopment exist in abundance and are within our reach. What is required to mobilise these resources and to use them properly, is bold and imaginative leadership that is genuinely committed to a sustained human development effort and the eradication of poverty, as well as a new global partnership based on shared responsibility and mutual interest.
7. Across the continent, Africans declare that we will no longer allow ourselves to be conditioned by circumstance. We will determine our own

destiny and call on the rest of the world to complement our efforts. There are already signs of progress and hope. Democratic regimes that are committed to the protection of human rights, people-centred development and market-oriented economies are on the increase. African peoples have begun to demonstrate their refusal to accept poor economic and political leadership. These developments are, however, uneven and inadequate and need to be further expedited.

8. The *New Partnership for Africa's Development* is about consolidating and accelerating these gains. It is a call for a new relationship of partnership between Africa and the international community, especially the highly industrialised countries, to overcome the development chasm that has widened over centuries of unequal relations.

...

A. Conditions for Sustainable Development

The Peace, Security, Democracy and Political Governance Initiatives

71. African leaders have learned from their own experiences that peace, security, democracy, good governance, human rights and sound economic management are conditions for sustainable development. They are making a pledge to work, both individually and collectively, to promote these principles in their countries and subregions and on the continent.

(i) Peace and Security Initiative

72. The Peace and Security Initiative consists of three elements:

- Promoting long-term conditions for development and security;
- Building the capacity of African institutions for early warning, as well as enhancing their capacity to prevent, manage and resolve conflicts;
- Institutionalising commitment to the core values of the *New Partnership for Africa's Development* through the leadership.

73. Long-term conditions for ensuring peace and security in Africa require policy measures for addressing the political and social vulnerabilities on which conflict is premised. These are dealt with by the Political and Economic Governance Initiatives, the Capital Flows and Market Access Initiatives, and the Human Development Initiative.

74. Efforts to build Africa's capacity to manage all aspects of conflict must focus on the means necessary to strengthen existing regional and subregional institutions, especially in four key areas:

- Prevention, management and resolution of conflict;
- Peacemaking, peacekeeping and peace enforcement;
- Post-conflict reconciliation, rehabilitation and reconstruction;
- Combating the illicit proliferation of small arms, light weapons and landmines.

75. The leadership of the *New Partnership for Africa's Development* will consider, within six months of its establishment, setting out detailed and costed measures required in each of the four areas above. The exercise will also include the actions required of partners, and the nature and sources of financing such activities.

76. The envisaged Heads of State Forum will serve as a platform for the leadership of the *New Partnership for Africa's Development* to seek to enhance the capacity of African institutions to promote peace and security on the continent, to share experience and to mobilise collective action. The Forum will ensure that the principles and commitments implicit in this initiative are fulfilled.

77. Aware of that requirement, Africans must make all efforts to find a lasting solution to existing conflicts, to strengthen their internal security and to promote peace among the countries.

78. At the Lusaka Summit, the AU decided to take drastic measures in reviving the organs responsible for conflict prevention and resolution.

(ii) Democracy and Political Governance Initiative

79. It is generally acknowledged that development is impossible in the absence of true democracy, respect for human rights, peace and good governance. With the *New Partnership for Africa's Development*, Africa undertakes to respect the global standards of democracy, the core components of which include political pluralism, allowing for the existence of several political parties and workers' unions, and fair, open and democratic elections periodically organised to enable people to choose their leaders freely.

80. The purpose of the Democracy and Political Governance Initiative is to contribute to strengthening the political and administrative framework of participating countries, in line with the principles of democracy, transparency, accountability, integrity, respect for human rights and promotion of the rule of law. It is strengthened by and supports the Economic Governance Initiative, with which it shares key features. Taken together, these initiatives will contribute to harnessing the energies of the continent towards development and the eradication of poverty.

81. The Initiative consists of the following elements:

- A series of commitments by participating countries to create or consolidate basic governance processes and practices;
- An undertaking by participating countries to take the lead in supporting initiatives that foster good governance;
- The institutionalisation of commitments through the leadership of the *New Partnership for Africa's Development* to ensure that the core values of the initiative are abided by.

82. The states involved in the *New Partnership for Africa's Development* will also undertake a series of commitments towards meeting basic standards of good governance and democratic behaviour while, at the same time, giving support to each other. Participating states will be supported in undertaking such desired institutional reforms where required. Within six months of its institutionalisation, the leadership of the *New Partnership for Africa's Development* will identify recommendations on appropriate diagnostic and assessment tools, in support of compliance with the shared goals of good governance, as well as identify institutional weaknesses and seek resources and expertise for addressing these weaknesses.

83. In order to strengthen political governance and build capacity to meet these commitments, the leadership of the *New Partnership for Africa's Development* will undertake a process of targeted capacity-building initiatives. These institutional reforms will focus on:

- Administrative and civil services;
- Strengthening parliamentary oversight;
- Promoting participatory decision-making;
- Adopting effective measures to combat corruption and embezzlement;
- Undertaking judicial reforms.

84. Countries participating in the initiative will take the lead in supporting and building institutions and initiatives that protect these commitments. They will dedicate their efforts towards creating and strengthening national, subregional and continental structures that support good governance.

85. The Heads of State Forum on the *New Partnership for Africa's Development* will serve as a mechanism through which the leadership of the *New Partnership for Africa's Development* will periodically monitor and assess the progress made by African countries in meeting their commitment towards achieving good governance and social reforms. The Forum will also

provide a platform for countries to share experiences with a view to fostering good governance and democratic practices.

...

Heads of State Implementation Committee

200. A Heads of State Implementation Committee composed of the five heads of state, promoters of the *New Partnership for Africa's Development* and ten others (two from each region) will be appointed for the implementation.

201. The functions of the Implementation Committee will consist of:

- Identifying strategic issues that need to be researched, planned and managed at the continental level;
- Setting up mechanisms for reviewing progress in the achievement of mutually agreed targets and compliance with mutually agreed standards;
- Reviewing progress in the implementation of past decisions and taking appropriate steps to address problems and delays.

VIII. Conclusion

202. The objective of the *New Partnership for Africa's Development* is to consolidate democracy and sound economic management on the continent. Through the Programme, African leaders are making a commitment to the African people and the world to work together in rebuilding the continent. It is a pledge to promote peace and stability, democracy, sound economic management and people-centred development, and to hold each other accountable in terms of the agreements outlined in the Programme.

203. In proposing the partnership, Africa recognises that it holds the key to its own development. We affirm that the *New Partnership for Africa's Development* offers an historic opportunity for the developed countries of the world to enter into a genuine partnership with Africa, based on mutual interest, shared commitments and binding agreements.

204. The adoption of a development strategy as set out in the broad approach outlined above, together with a detailed programme of action, will mark the beginning of a new phase in the partnership and cooperation between Africa and the developed world.

205. In fulfilling its promise, this agenda must give hope to the emaciated African child that the 21st century is indeed Africa's century.

Declaration on Democracy, Political, Economic and Corporate Governance (2002)

Adopted by the Assembly of Heads of State and Government of the AU, Durban, South Africa in July 2002.

Preamble

1. We, the participating Heads of State and Government of the member states of the African Union (AU), met in Durban, South Africa, at the inaugural Assembly of the African Union and considered the report of the *New Partnership for Africa's Development* (NEPAD) Heads of State and Government

Implementation Committee established at the Organization of African Unity (OAU) Summit in Lusaka, Zambia, in July 2001.

2. In the general context of our meeting, we recalled our shared commitment underlying the establishment of NEPAD to eradicate poverty and to place our countries, individually and collectively, on a path of sustainable growth and development and, at the same time, to participate actively in the world economy and body politic on equal footing. We reaffirm this pledge as our most pressing duty.

3. In reviewing the report of the NEPAD Heads of State and Government Implementation Committee and considering the way forward, we were also mindful of the fact that, over the years, successive OAU Summits have taken decisions aimed at ensuring stability, peace and security, promoting closer economic integration, ending unconstitutional changes of government, supporting human rights and upholding the rule of law and good governance. Among these decisions are:

- (a) the Lagos Plan of Action, and the Final Act of Lagos (1980);
- (b) the African (Banjul) Charter on Human and Peoples' Rights (1981);
- (c) the African Charter for Popular Participation in Development (1990);
- (d) the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World (1990);
- (e) the African Charter on the Rights and Welfare of the Child (1990);
- (f) the Abuja Treaty establishing the African Economic Community (1991);
- (g) the 1993 Cairo Declaration Establishing the Mechanism for Conflict Prevention, Management and Resolution;
- (h) the Protocol on the Establishment of an African Court on Human and Peoples' Rights (1998);
- (i) the 1999 Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights;
- (j) the Framework for an OAU Response to Unconstitutional Changes of Government (adopted at the 2000 OAU Summit in Lome, Togo, and based on the earlier decision of the 1999 Algiers OAU Summit);
- (k) the Conference on Security, Stability, Development and Cooperation (CSSDCA) Solemn Declaration (2000); and
- (l) the Constitutive Act of the African Union (2000).

4. We, member states parties to the aforementioned instruments, reaffirm our full and continuing commitment to these and other decisions of our continental organisation, as well as the other international obligations and undertakings into which we have entered in the context of the United Nations. Of particular significance in this context are the Charter of the United Nations and the United Nations Universal Declaration of Human Rights and all conventions relating thereto, especially the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Declaration.

5. Africa faces grave challenges and the most urgent of these are the eradication of poverty and the fostering of socio-economic development, in particular, through democracy and good governance. It is to the achievement of these twin objectives that the NEPAD process is principally directed.

6. Accordingly, we the participating Heads of State and Government of the member states of the African Union have agreed to work together in policy and action in pursuit of the following objectives:-

- Democracy and Good Political Governance
- Economic and Corporate Governance
- Socio-Economic Development
- African Peer Review Mechanism.

Democracy and Good Political Governance

7. At the beginning of the new century and millennium, we reaffirm our commitment to the promotion of democracy and its core values in our respective countries. In particular, we undertake to work with renewed determination to enforce:

- the rule of law;
- the equality of all citizens before the law and the liberty of the individual;
- individual and collective freedoms, including the right to form and join political parties and trade unions, in conformity with the constitution;
- equality of opportunity for all;
- the inalienable right of the individual to participate by means of free, credible and democratic political processes in periodically electing their leaders for a fixed term of office; and
- adherence to the separation of powers, including the protection of the independence of the judiciary and of effective parliaments.

8. We believe in just, honest, transparent, accountable and participatory government and probity in public life. We therefore undertake to combat and eradicate corruption, which both retards economic development and undermines the moral fabric of society.

9. We are determined to increase our efforts in restoring stability, peace and security in the African continent, as these are essential conditions for sustainable development, alongside democracy, good governance, human rights, social development, protection of environment and sound economic management. Our efforts and initiatives will also be directed at seeking speedy peaceful solutions to current conflicts and at building Africa's capacity to prevent, manage and resolve all conflicts on the continent.

10. In the light of Africa's recent history, respect for human rights has to be accorded an importance and urgency all of its own. One of the tests by which the quality of a democracy is judged is the protection it provides for each individual citizen and for the vulnerable and disadvantaged groups. Ethnic minorities, women and children have borne the brunt of the conflicts raging on the continent today. We undertake to do more to advance the cause of human rights in Africa generally and, specifically, to end the moral shame exemplified by the plight of women, children, the disabled and ethnic minorities in conflict situations in Africa.

11. In Africa's efforts at democracy, good governance and economic reconstruction, women have a central role to play. We accept it as a binding obligation to ensure that women have every opportunity to contribute on terms of full equality to political and socio-economic development in all our countries.

12. To fulfil these commitments we have agreed to adopt the following action plan.

13. In support of democracy and the democratic process. We will:

- ensure that our respective national constitutions reflect the democratic ethos and provide for demonstrably accountable governance;
- promote political representation, thus providing for all citizens to participate in the political process in a free and fair political environment;
- enforce strict adherence to the position of the African Union (AU) on unconstitutional changes of government and other decisions of our continental organisation aimed at promoting democracy, good governance, peace and security;
- strengthen and, where necessary, establish an appropriate electoral administration and oversight bodies, in our respective countries and provide the necessary resources and capacity to conduct elections which are free, fair and credible;
- reassess and where necessary strengthen the AU and sub-regional election monitoring mechanisms and procedures; and heighten public

awareness of the African Charter on Human and Peoples' Rights, especially in our educational institutions.

14. In support of Good Governance. We have agreed to:

- adopt clear codes, standards and indicators of good governance at the national, sub-regional and continental levels; accountable, efficient and effective civil service;
- ensure the effective functioning of parliaments and other accountability institutions in our respective countries, including parliamentary committees and anti-corruption bodies; and
- ensure the independence of the judicial system that will be able to prevent abuse of power and corruption.

15. To promote and protect human rights. We have agreed to:

- facilitate the development of vibrant civil society organisations, including strengthening human rights institutions at the national, sub-regional and regional levels;
- support the Charter, African Commission and Court on Human and People's Rights as important instruments for ensuring the promotion, protection and observance of Human Rights;
- strengthen cooperation with the UN High Commission for Human Rights; and
- ensure responsible free expression, inclusive of the freedom of the press.

Economic and Corporate Governance

16. Good economic and corporate governance including transparency in financial management are essential pre-requisites for promoting economic growth and reducing poverty. Mindful of this, we have approved eight prioritised codes and standards for achieving good economic and corporate governance.

17. These prioritised codes and standards represent those 'fundamental' internationally, regionally, and domestically accepted codes and standards that all African countries should strive to observe within their capacity capabilities. In other words, they are the codes and standards that need to be complied with as a minimum requirement, given a country's capacity to do so.

18. We believe the eight prioritised and approved codes and standards set out below have the potential to promote market efficiency, to control wasteful spending, to consolidate democracy, and to encourage private financial flows - all of which are critical aspects of the quest to reduce poverty and enhance sustainable development. These codes and standards have been developed by a number of international organisations through consultative processes that involved the active participation of and endorsement by African countries. Thus, the codes and standards are genuinely global as they were agreed by experts from a vast spectrum of economies with different structural characteristics. They are the following:

- (a) Code of Good Practices on Transparency in Monetary and Financial Policies;
 - (b) Code of Good Practices on Fiscal Transparency;
 - (c) Best Practices for Budget Transparency;
 - (d) Guidelines for Public Debt Management;
 - (e) Principles of Corporate Governance;
 - (f) International Accounting Standards;
 - (g) International Standards on Auditing; and the
 - (h) Core Principles for Effective Banking Supervision.
- 19. We have also approved other key codes and standards in transparency and financial Management.** These include:
- (a) Principles for Payment Systems;
 - (b) Recommendations on Anti-money laundering and;
 - (c) Core principles for securities and insurance supervision and regulation.

Socio-Economic Development

20. We believe that poverty can only be effectively tackled through the promotion of:

- democracy, good governance, peace and security;
- the development of human and physical resources;
- gender equality;
- openness to international trade and investment;
- allocation of appropriate funds to social sector and;
- new partnerships between governments and the private sector, and with civil society.

21. We reaffirm our conviction that the development of Africa is ultimately the responsibility of Africans themselves. Africa's development begins with the quality of its human resources. We, therefore, undertake to work towards the enhancement of our human resources through the provision of more and better education and training, especially in Information and Communications Technology (ICT) and other skills central to a globalising world; and better healthcare, with priority attention to addressing HIV/AIDS and other pandemic diseases.

22. The marginalisation of women remains real despite the progress of recent years. We will, therefore, work with renewed vigour to ensure gender equality and ensure their full and effective integration of women in political and socioeconomic development.

23. Globalisation and liberalisation does not mean that there should be no role for government in socio-economic development. It only means a different type of government. We, therefore, undertake to foster new partnerships between government and the private sector; a new division of labour in which the private sector will be the veritable engine of economic growth, while governments concentrate on the development of infrastructure and the creation of a macroeconomic environment. This includes expanding and enhancing the quality of human resources and providing the appropriate institutional framework to guide the formulation and execution of economic policy.

24. The regional economic communities remain the building blocks for Africa's economic integration. We will, therefore, continue to strengthen them in every way practicable and to relate their evolution more closely to the development of the African Union.

25. We welcome the strong international interest in and support for NEPAD. It is our intention to build on this promising foundation, working with our development partners and the wider international community to:

- forge new forms of international cooperation in which the benefits of globalisation are more evenly shared;
- create a stable international economic environment in which African countries can achieve growth through greater market access for their exports; the removal of trade barriers, especially non-tariff barriers and other forms of protectionism; increased flows of direct foreign investment; debt cancellation; a meaningful increase in ODA; and the diversification of their economies;
- Africa's prosperity will be a multiplier in world prosperity.

26. NEPAD is founded on a hardheaded assessment of the political and socio-economic realities in Africa today. We do not, therefore, underestimate the challenges involved in achieving NEPAD's objectives, but we share a common resolution to work together even more closely in order to end poverty on the continent and to restore Africa to a place of dignity in the family of nations.

27. No African country is a replica of another and no African society is a mirror image of another. However, we believe that the variety within our oneness can be enriching. It is part of the purpose of this Declaration to mobilise all those enriching qualities to build African unity, in respect of the specific of our countries.

African Peer Review Mechanism

28. We have separately agreed to establish an African Peer Review Mechanism (APRM) on the basis of voluntary accession. The APRM seeks to promote adherence to and fulfilment of the commitments contained in this Declaration. The Mechanism spells out the institutions and processes that will guide future peer reviews, based on mutually agreed codes and standards of democracy, political, economic and corporate governance.

African Peer Review Mechanism (APRM): Base Document (2003)

Adopted at the 6th summit of the NEPAD Heads of State and Government Implementation Committee, March 2003, Abuja, Nigeria. The APRM is a system of peer review to which states may submit themselves and receive feedback on their compliance with NEPAD governance standards, including political governance and human rights.

1. The African Peer Review Mechanism (APRM) is an instrument voluntarily acceded to by Member States of the African Union as an African self-monitoring mechanism.

Mandate of the APRM

2. The mandate of the African Peer Review Mechanism is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance. The APRM is the mutually agreed instrument for self-monitoring by the participating member governments.

Purpose of the APRM

3. The primary purpose of the APRM is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through sharing of experiences and reinforcement of successful and best practice, including identifying deficiencies and assessing the needs for capacity building.

Principles of the APRM

4. Every review exercise carried out under the authority of the Mechanism must be technically competent, credible and free of political manipulation. These stipulations together constitute the core guiding principles of the Mechanism.

Participation in the African Peer Review Process

5. Participation in the process will be open to all member states of the African Union. After adoption of the Declaration on Democracy, Political, Economic and Corporate Governance by the African Union, countries wishing to participate in the APRM will notify the Chairman of the NEPAD Heads of State and Government Implementation Committee. This will entail an

undertaking to submit to periodic peer reviews, as well as to facilitate such reviews, and be guided by agreed parameters for good political governance and good economic and corporate governance.

Leadership and Management Structure

6. It is proposed that the operations of the APRM be directed and managed by a Panel of between 5 and 7 Eminent Persons. The members of the Panel must be Africans who have distinguished themselves in careers that are considered relevant to the work of the APRM. In addition, members of the Panel must be persons of high moral stature and demonstrated commitment to the ideals of Pan Africanism.

7. Candidates for appointment to the Panel will be nominated by participating countries, short-listed by a Committee of Ministers and appointed by Heads of State and Government of the participating countries. In addition to the criteria referred to above, the Heads of State and Government will ensure that the Panel has expertise in the areas of political governance, macro-economic management, public financial management and corporate governance. The composition of the Panel will also reflect broad regional balance, gender equity and cultural diversity.

8. Members of the Panel will serve for up to 4 years and will retire by rotation.

9. One of the members of the Panel will be appointed Chairman by the Heads of State and Government of participating countries. The Chairperson will serve for a maximum period of 5 years. The criteria for appointment to the position of Chairperson will be the same as for other members of the Panel, except that the candidate will be a person with a proven leadership record in one of the following areas; government, public administration, development and private sector.

10. The Panel will exercise the oversight function over the review process, in particular to ensure the integrity of the process. Its mission and duties will be outlined in a Charter, which will also spell out reporting arrangements to the Heads of State and Government of participating countries. The Charter will secure the independence, objectivity and integrity of the Panel.

11. The Secretariat may engage, with the approval of the Panel, the services of African experts and institutions that it considers competent and appropriate to act as its agents in the peer review process.

12. The Panel will be supported by a competent Secretariat that has both the technical capacity to undertake the analytical work that underpins the peer review process and also conforms to the principles of the APRM. The functions of the Secretariat will include; maintaining extensive database information on political and economic developments in all participating countries, preparation of background documents for the Peer Review Teams, proposing performance indicators and tracking performance of individual countries.

Periodicity and Types of Peer Review

13. At the point of formally acceding to the peer review process, each State should clearly define a time-bound Programme of Action for implementing the Declaration on Democracy, Political, Economic and Corporate Governance, including periodic reviews.

14. There will be four types of reviews:

- The first country review is the base review that is carried out within eighteen months of a country becoming a member of the APRM process;
- Then there is a periodic review that takes place every two to four years;
- In addition to these, a member country can, for its own reasons, ask for a review that is not part of the periodically mandated reviews; and
- Early signs of impending political or economic crisis in a member country would also be sufficient cause for instituting a review. Such a review can

be called for by participating Heads of State and Government in a spirit of helpfulness to the government concerned.

APRM Process

15. The process will entail periodic reviews of the policies and practices of participating states to ascertain progress being made towards achieving mutually agreed goals and compliance with agreed political, economic and corporate governance values, codes and standards as outlined in the Declaration on Democracy, Political, Economic and Corporate Governance.
16. The peer review process will spur countries to consider seriously the impact of domestic policies, not only on internal political stability and economic growth, but also on neighboring countries. It will promote mutual accountability, as well as compliance with best practice.
17. Bearing in mind that African countries are at different levels of development, on joining the Mechanism, a country will be assessed (the base review) and a timetable (Programme of Action) for effecting progress towards achieving the agreed standards and goals must be drawn up by the state in question, taking into account the particular circumstances of that state.

Stages of the Peer Review Process

18. Stage One will involve a study of the political, economic and corporate governance and development environment in the country to be reviewed, based principally on up-to-date background documentation prepared by the APRM Secretariat and material provided by national, sub-regional, regional and international institutions.
19. In Stage Two, the Review Team will visit the country concerned where its priority order of business will be to carry out the widest possible range of consultations with the government, officials, political parties, parliamentarians and representatives of civil society organisations (including the media, academia, trade unions, business, professional bodies).
20. Stage Three is the preparation of the Team's report. The report is prepared on the basis of the briefing material prepared by the APRM Secretariat and the information provided in-country by official and unofficial sources during the wide-ranging consultations and interactions with all stakeholders. The report must be measured against the applicable political, economic and corporate governance commitments made and the Programme of Action.
21. The Team's draft report is first discussed with the government concerned. Those discussions will be designed to ensure the accuracy of the information and to provide the government with an opportunity both to react to the Team's findings and to put forward its own views on how the identified shortcomings may be addressed. These responses of the government will be appended to the Team's report.
22. The Team's report will need to be clear on a number of points in instances where problems are identified. Is there the will on the part of the government to take the necessary decisions and measures to put right what is identified to be amiss? What resources are necessary to take corrective measures? How much of these can the government itself provide and how much is to come from external sources? Given the necessary resources, how long will the process of rectification take?
23. The Fourth Stage begins when the Team's report is submitted to the participating Heads of State and Government through the APRM Secretariat. The consideration and adoption of the final report by the participating Heads of State and Government, including their decision in this regard, marks the end of this stage.

24. If the government of the country in question shows a demonstrable will to rectify the identified shortcomings, then it will be incumbent upon participating Governments to provide what assistance they can, as well as to urge donor governments and agencies also to come to the assistance of the country reviewed. However, if the necessary political will is not forthcoming from the government, the participating states should first do everything practicable to engage it in constructive dialogue, offering in the process technical and other appropriate assistance. If dialogue proves unavailing, the participating Heads of State and Government may wish to put the government on notice of their collective intention to proceed with appropriate measures by a given date. The interval should concentrate the mind of the government and provide a further opportunity for addressing the identified shortcomings under a process of constructive dialogue. All considered, such measures should always be utilised as a last resort.

25. Six months after the report has been considered by the Heads of State and Government of the participating member countries, it should be formally and publicly tabled in key regional and sub-regional structures such as the Pan-African Parliament, the African Commission on Human and Peoples' Rights, the envisaged Peace and Security Council and the Economic, Social and Cultural Council (ECOSOCC) of the African Union. This constitutes the Fifth and final stage of the process.

Duration of the Peer Review

26. The duration of the review process per country should not be longer than six months, commencing on the date of the inception of Stage One up to the date the report is submitted for the consideration of the Heads of State and Government.

Funding of the Peer Review Mechanism

27. Funding for the Mechanism will come from assessed contributions from participating member states.

Review of the APRM

28. To enhance its dynamism, the Conference of the participating countries will review the APRM once every five years.

Country Self-assessment for the African Peer Review Mechanism (2004)

The first, and perhaps most important phase of APRM is the self-assessment of the country under review. This questionnaire was prepared by the Panel of Eminent Persons of the APRM for states to prepare their self-assessment.

The full document is available at www.chr.up.ac.za.

Excerpts

The Questionnaire is divided into four major sections corresponding to the four focus areas in the ‘Objectives, Standards, Criteria and Indicators for the APRM’ document:

- (a) Democracy and Good Political Governance
- (b) Economic Governance and Management
- (c) Corporate Governance
- (d) Socio-economic Development

...
SECTION 1: DEMOCRACY AND GOOD POLITICAL GOVERNANCE

...
1.1. A Guaranteed Framework of Equal Citizen Rights

This category of concerns includes issues such as access to justice, respect for the rule of law, the freedoms of expression, association and assembly, as well as the basic economic and social rights to enable citizens to exercise these freedoms effectively.

These issues are to be addressed in terms of objectives such as:

1.1.1. Preventing and reducing intra- and inter-state conflicts with particular attention to the extent to which the country under review strives to sustain peace and security within its borders and to contribute to peace and stability in its neighbourhood. In this connection, the existence of effective early warning systems, whether formal or informal, in a country or at the regional level is considered as an indicator (Objective 1);

1.1.2. Constitutional democracy and the rule of law are treated as two separate but related sub-issues. On the one hand constitutional democracy refers to constitutionally established provisions and institutions which enable citizens to enjoy their rights of freedom of membership of political associations of their choosing and the free participation of these political groups and other associations in open political competition. Constitutional democracy is also empowering people at the grassroots level through the decentralisation mechanism that allows local communities to participate in decision-making affecting their destiny. On the other hand, the rule of law and the supremacy of the Constitution ensure that all individuals are subject to and treated equally according to the law, and that no one is exposed to arbitrary treatment by the state. The rule of law also means that all authorities, including armed forces and security forces must obey the law. Furthermore, the legislative Acts of government should be enacted in conformity with the Constitution which is both the supreme law at the domestic level and the foundation on which the exercise of all powers within the state is based (Objective 2).

1.1.3. The promotion of economic, social, cultural, civil and political liberties ensures that the integrity and rights of people are respected by the state which should also take necessary steps to protect citizens’ rights from violation either by its agents and/or a third party. In this connection, the institutionalisation of a system of due process involving competent judges who are able to apply the law independent of outside pressures and with impartiality is critical. Indicators related to this objective are underpinned by the principle of ensuring that the will of the people constitutes the basis of authority of the government. The popular will is measured, *inter alia*, through the right of citizens to participate directly and freely in the election of representatives and the equality of access to public service. Other indicators that are relevant for consideration include the capacity of the state to provide people with an adequate standard of living, education, housing and health care (Objective 3).

1.1.4. Upholding the separation of powers, including the protection of the independence of the judiciary and the fostering of an autonomous and effective parliament are also critical issues in the governance system. This

objective ensures the establishment of a functioning system of separation of powers among the Judiciary, the Legislature and the Executive. The separation of power evaluates the system of checks and balances within the branches of government. An independent Judiciary gives confidence to citizens - individual, group, and corporate - that their rights will be protected by the courts; it also helps to foster the kind of enabling environment that can promote economic growth and the reduction of poverty. An independent parliament that is alive to its oversight responsibilities is critical to the successful reduction of public sector corruption and the abuse of power by the Executive (Objective 4).

1.2. Institutions of Representative and Accountable Government

This encompasses the regular organisation of free and fair elections as one of the principal means for ensuring popular participation in the constitution of the government and the monitoring of its performance. It also touches on the procedures that are designed to ensure the continuous accountability of officials, elected as well as non-elected, to the public. The questions that have been included in the questionnaire on this issue address two broad objectives:

1.2.1. Ensuring that public office holders and civil servants are accountable, efficient and effective. The indicators under this objective are meant to establish the quality of service delivery and ensure the accountability of public officials to the public. Good public service delivery enables citizens to express their views on the performance of the government, and to hold civil servants accountable for their actions (objective 5).

1.2.2. Fighting corruption in the political sphere. Corruption misrepresents the real state of a country's economy and therefore is a disincentive for attracting much needed investment. Under this objective an attempt is made to assess the level of corruption in the country and the mechanisms that have been put in place to contain such practices (Objective 6).

1.3. A Vibrant Civil Society

This includes the existence of free and pluralistic media and vibrant civil society organisations. It also touches upon the system of public consultation for encouraging popular participation in the political process, involving marginalised groups in decisionmaking, eliciting governmental responsiveness to public opinion, and improving public service delivery. Close attention will be paid to the extent to which women, children and other marginalised groups such as internally displaced persons and refugees are integrated into the consultative process. Among some of the key objectives for which questions have been formulated are:

1.3.1. The promotion and protection of the rights of women and the mainstreaming of gender equality. The concern here is to ensure that women have a meaningful status in the country and to explore the frameworks necessary to further deepen their participation - political, economic, cultural and social. The indicators also seek to encourage governments to provide evidence of women's empowerment in the domain of access to and control of productive resources and services, as well as their role in decision-making, including conflict prevention and resolution. Issues pertaining to women's rights which are not covered under this objective are treated exhaustively in the economic governance and socio-economic development sections of the questionnaire (Objective 7).

1.3.2. The promotion and protection of the rights of the child and young persons. This objective aims to address the issues of children in armed conflict, child slavery, other abuses that prevent children from realising their full potential and rehabilitation mechanisms put in place (Objective 8).

1.3.3. The promotion and protection of the rights of vulnerable groups, including internally displaced persons and refugees. The failure to protect vulnerable groups represents an under-utilisation of a country's capacities through the exclusion of a part of the society. The questions also address the rights of displaced persons and refugees through their integration into the existing communities, thus contributing to regional stability (Objective 9).

Given the number of standards and codes that define the objectives under this Section, it is pertinent that respondents include a list enumerating which of the standards or codes the country has signed, ratified or is presently complying with. Thereafter, respondents may go ahead to elaborate on the first question, providing as much evidence as is possible.

Since indicators in Democracy and Political Governance are not amenable to quantitative measurement, the focus is on qualitative assessment. The indicators that follow are not intended to be exhaustive. You may want to elaborate on your answers and add key indicators, which relate to your country but which are not captured by the suggested indicators.

Kindly note that if your country has adopted and implemented any international standards that are not listed in the questionnaire, you are at liberty to provide relevant information concerning the date of adoption, the institutional arrangements in place, and the human and financial capacity for implementation.

2. STANDARDS AND CODES

2.1. International Instruments and Standards

- The Charter of the United Nations (all objectives)
- The Universal Declaration of Human Rights (all objectives)
- The International Covenant on Civil and Political rights (1966) (objective 3)
- The International Covenant on Economic, Social and Cultural Rights (objective 3)
- The Optional Protocol to the International Covenant on Civil and Political Rights (objective 2)
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms: A/RES/53/144 (objective 3)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (objective 2)
- International Convention on the Elimination of All Forms of Racial Discrimination (objectives 2 and 3)
- Convention on the Political Rights of Women (objective 7)
- Convention on the Elimination of All Forms of Discrimination Against Women (objective 7)
- Declaration on the Elimination of Violence Against Women (objective 7)
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief (objectives 2 and 3)
- Declaration on Fundamental Principles Concerning the Contribution to the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War (objectives 2 and 3)
- UN GA Resolution 1325 on Women in Conflict (objective 1)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (objectives 1 and 3)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (objectives 3 and 9)
- Convention on the Rights of the Child (objective 8)

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (objective 1 and 8)
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (objective 8)
- Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (objective 8)
- Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (objectives 2 and 3)
- Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (objective 2)
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (objectives 2, 3 and 8)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (objectives 2 and 3)
- Convention relating to the Status of Refugees (objective 9)
- Protocol relating to the Status of Refugees (objective 9)
- Declaration on the Rights of Disabled Persons (objective 9)
- Geneva Convention relative to the Protection of Civilian Persons in Time of War (objective 2)
- The OECD Convention on Combating Bribery of Public Officials
- Convention on Protection of Rights of Migrant Workers (entered into force on 1 July 2003) (objective 3)

2.2. Regional Instruments and Standards

- The Constitutive Act of the African Union (2000) (all objectives)
- The African Charter on Human and Peoples Rights (1990) (objectives 2, 3, 7, 8 and 9)
- Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights (1999) (objectives 2 and 3)
- The Durban Declaration on Principles Governing Democratic Elections in Africa (2002) (objective 2)
- The AU Declaration on Democracy, Political, Economic and Corporate Governance (objectives 2, 5 and 6)
- The AU Convention on Preventing and Combating Corruption (objectives 5 and 6)
- The AU Peace and Security Protocol (objective 1)
- African Charter on the Rights and Welfare of the Child (1990) (objective 8)
- The African Platform on the Right to Education (1999)
- The OAU Refugee Convention of 1969 (objective 9)
- Protocol on the Rights of Women in Africa (2003) (objective 7)
- Cairo Declaration on the Establishment, Within the OAU, of the Mechanism for Conflict Prevention, Management and Resolution (1993) (objective 1)
- The Memorandum of Understanding (MOU) of the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) Solemn Declaration (2000) (objective 2)
- Declaration on Framework for an OAU Response to Unconstitutional Changes of Governments (2000) (objective 2)
- The Declaration and Plan of Action on Control of Illicit Drug Trafficking and Abuse in Africa (2002) (objective 1)
- The NEPAD Framework Documents (all objectives)

3. QUESTION RELATING TO STANDARDS AND CODES

To what extent has the country taken measures to sign, ratify, adopt and comply with these standards?

Indicators

- (i) Present evidence of signature, ratification or accession to any of the above standards and codes where applicable.
- (ii) List the steps being taken to complete ratification and compliance of any of these codes and standards deemed appropriate to your country's circumstances.
- (iii) Outline other legislative, policy or institutional frameworks that have been put in place to implement any of the issues covered by the above standards and codes in a manner that more suitably addresses your country's requirements and priorities.
- (iv) Outline the challenges experienced and the steps taken to address shortfalls and capacity constraints.

...

Chart of Ratifications: AU Human Rights Treaties

Source: <http://www.africa-union.org> (accessed 14 July 2006)

						African Charter on Human and Peoples' Rights
COUNTRY	Ratified/Acceded	Ratified/Acceded	Ratified/Acceded	Ratified/Acceded	Ratified/Acceded	Protocol on the Pan-African Parliament
Algeria	21/06/95	23/05/01		22/04/03	29/01/03	1/03/87
Angola	11/04/92	19/09/01		29/10/03	30/08/04	2/03/90
Benin	10/05/99	3/07/01	1/12/05	11/11/03	10/05/04	20/01/86
Botswana	27/06/96	1/03/01		10/07/01	21/06/05	17/07/86
Burkina Faso	19/05/92	27/02/01	5/04/05	23/06/03	1/12/03	6/07/84
Burundi	5/08/92	28/02/01		4/11/03	4/11/03	28/07/89
Cameroon	20/12/95	9/11/01		4/11/03	4/11/03	20/06/89
Cape Verde	12/04/93	21/06/01		17/02/04		2/06/87
Central African Republic	18/06/93	16/02/01		12/03/04		26/04/86
Chad	26/06/93	16/01/01		7/01/04	7/04/04	9/10/86
Comoros	6/06/94	16/02/01	2/04/04	13/03/04	26/07/03	1/06/86
Congo	30/07/96	18/02/02		23/02/04	23/02/04	9/12/82
Côte d'Ivoire	22/02/93	27/02/01				6/01/92
Democratic Republic of Congo	19/06/93	7/07/02				20/07/87
Djibouti		4/12/00		10/03/04	18/10/05	11/11/91
Egypt	18/12/92	5/07/01		8/10/03	1/02/05	20/03/84
Equatorial Guinea	20/12/02	26/12/00		3/02/04	29/01/03	7/04/86
Eritrea		1/03/01				14/01/99
Ethiopia	5/11/92	8/03/01		29/05/03	29/05/03	15/06/98
Gabon		17/05/01		29/12/03	29/12/03	20/02/86
The Gambia	20/04/93	22/02/01		4/07/03	19/11/03	8/06/83
Ghana	25/09/91	11/05/01		15/09/03	4/07/03	24/01/89
Guinea	17/07/92	23/04/02		15/03/04		16/02/82
Guinea-Bissau	24/06/92	14/01/01				4/12/85
Kenya	18/06/93	4/07/01		19/12/03	19/12/03	23/01/92
Lesotho	12/08/97	16/02/01	26/10/04	16/04/03	30/06/03	10/02/92

						African Charter on Human and Peoples' Rights
						Protocol on the Peace and Security Council
						Protocol on the Pan-African Parliament
Liberia	23/06/93	26/02/01				4/08/82
Libya	2/11/92	25/10/00	23/05/04	10/08/02	24/06/03	19/07/86
Madagascar		5/06/03		9/02/04	28/06/04	9/03/92
Malawi	26/06/93	3/02/01		3/07/02	7/07/03	17/11/89
Mali	13/11/92	11/08/00	7/05/04	26/05/01	28/02/03	21/12/81
Mauritania	20/11/01	20/11/01		22/12/03		14/06/86
Mauritius	14/02/92	13/04/01		9/02/04	16/06/03	19/06/92
Mozambique	14/05/92	17/05/01	17/07/04	20/05/03	20/05/03	22/02/89
Namibia	28/06/92	28/02/01		13/08/02	19/11/03	30/07/92
Niger	22/06/92	26/01/01		7/08/03	7/08/03	15/07/86
Nigeria	31/12/91	29/03/01		23/12/03	23/12/03	22/06/83
Rwanda	1/10/93	16/04/01	25/10/04	22/08/01	19/05/03	15/07/83
Sahrawi Arab Democratic Rep.	25/08/92	27/12/00		4/06/01	10/05/04	2/05/86
São Tomé and Príncipe	2/06/93	27/02/01			22/09/03	23/05/86
Senegal	26/02/92	28/08/00	14/02/06	14/10/03	9/09/03	13/08/82
Seychelles	11/10/91	20/03/01		24/03/03		13/04/92
Sierra Leone	15/03/94	9/02/01		16/06/03	16/06/03	21/09/83
Somalia		26/02/01				31/07/85
South Africa	31/05/01	3/03/01	16/03/04	3/07/02	15/05/03	9/07/96
Sudan	8/02/93	22/11/00		16/10/02	5/07/03	18/02/86
Swaziland	6/06/01	8/08/01		11/03/04		15/09/95
Tanzania	10/01/92	6/04/01	14/04/04	4/07/02	3/09/03	18/02/84
Togo	5/05/98	30/08/00		3/01/03	23/02/04	5/11/82
Tunisia	3/05/94	13/03/01		1/03/04		16/03/83
Uganda	31/12/91	3/04/01		9/07/03	10/03/04	10/05/86
Zambia	26/10/92	21/02/01		21/11/03	4/07/03	10/01/84
Zimbabwe	6/11/91	3/03/01		7/07/03	2/02/04	30/05/86
TOTAL NUMBER OF STATE PARTIES	48	53	11	46	40	53

Morocco withdrew its membership from the OAU in 1984.

					African Children's Charter
COUNTRY	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded
Algeria	22/04/03		24/05/74	8/11/86	8/07/03
Angola			30/04/81	25/06/84	11/04/92
Benin		30/09/05	26/02/73	10/08/81	17/04/97
Botswana			4/05/95		10/07/01
Burkina Faso	31/12/98		19/03/74	17/10/86	8/06/92
Burundi	2/04/03		31/10/75	2/03/90	28/06/04
Cameroon			7/09/85	29/08/81	5/09/97
Cape Verde		21/06/05	16/02/89		20/07/93
Central African Republic			23/07/70		
Chad			12/08/81	15/08/90	30/03/00
Comoros	23/12/03	18/03/04	2/04/04		18/03/04
Congo			16/01/71	13/04/81	
Côte d'Ivoire	7/01/03		26/02/98		
Democratic Republic of Congo			14/02/73		
Djibouti		2/02/05		11/04/78	
Egypt			12/06/80	26/06/78	9/05/01
Equatorial Guinea			8/09/80		20/12/02
Eritrea					22/12/99
Ethiopia			15/10/73	7/06/77	2/10/02
Gabon	14/08/00		21/03/86		
The Gambia	30/06/99	25/05/05	12/11/80		14/12/00
Ghana	25/08/04		19/06/75	15/06/77	10/06/05
Guinea			18/10/72	2/02/78	27/05/99
Guinea-Bissau			27/06/89	12/12/76	
Kenya	4/02/04		23/06/92	28/10/81	25/07/00
Lesotho	28/10/03	26/10/04	18/11/88		27/09/99
Liberia			1/10/71		
Libya	19/11/03	23/05/04	25/04/81	12/01/77	23/09/00
Madagascar				1/12/76	30/03/05
Malawi		20/05/05	4/11/87	3/07/87	16/09/99
Mali	10/05/00	13/01/05	10/10/81	25/03/82	3/06/98
Mauritania	19/05/05	21/09/05	22/07/72		21/09/05

					African Children's Charter
					Cultural Charter
					OAU Refugee Convention
Protocol on the African Human Rights Court		Protocol on the Rights of Women			
Mauritius	3/03/03			18/03/86	14/02/92
Mozambique	17/07/04	9/12/05	22/02/89		15/07/98
Namibia		11/08/04			23/07/04
Niger	17/05/04		16/09/71	22/08/78	11/12/99
Nigeria	20/05/04	16/12/04	23/05/86	24/09/86	23/07/01
Rwanda	5/05/03	25/06/04	19/11/79	16/05/78	11/05/01
Sahrawi Arab Democratic Rep.					
São Tomé and Príncipe					
Senegal	29/09/98	27/12/04	1/04/71	23/05/77	29/09/98
Seychelles		9/03/06	11/09/80	3/03/77	13/02/92
Sierra Leone			28/12/87		13/05/02
Somalia				9/04/78	
South Africa	3/07/02	17/12/04	15/12/95		7/01/00
Sudan			24/12/72	7/07/81	
Swaziland			16/01/89		
Tanzania	7/02/06		10/01/75	5/05/78	16/03/03
Togo	23/06/03	12/10/05	10/04/70	31/08/78	5/05/98
Tunisia			17/11/89	22/06/77	
Uganda	16/02/01		24/07/87	10/05/86	17/08/94
Zambia			30/07/73	6/06/86	
Zimbabwe			28/09/85	5/07/88	19/01/95
TOTAL NUMBER OF STATE PARTIES	23	18	45	33	38

Morocco withdrew its membership from the OAU in 1984.

						African Convention on the Conservation of Nature (Revised)
						African Union Convention on Preventing and Combating Corruption
COUNTRY	Ratified/Acceded	Ratified/Acceded	Ratified/Acceded	Ratified/Acceded	Ratified/Acceded	1968 OAU Convention on the Conservation of Nature
Algeria	16/09/00			5/02/83		Protocol to the Convention on the Prevention and Combating of Terrorism
Angola	20/08/99					
Benin	1/03/04					
Botswana						
Burkina Faso	23/06/03			16/08/69	29/11/05	
Burundi	4/11/03				18/01/05	
Cameroon				18/07/77		
Cape Verde	3/05/02					
Central African Republic				16/03/70		
Chad						
Comoros	13/09/02			18/03/04	2/04/04	2/04/04
Congo				4/04/81		
Côte d'Ivoire				15/01/69		
Democratic Republic of Congo				29/05/76		
Djibouti	16/05/04			11/04/78		
Egypt	8/02/01			6/03/72		
Equatorial Guinea	20/12/02					
Eritrea	22/12/99					
Ethiopia	24/02/03					
Gabon	25/02/05			9/05/88		
The Gambia						
Ghana	30/08/02			17/05/69		
Guinea	20/06/03					
Guinea-Bissau						
Kenya	28/11/01			12/05/69		
Lesotho	6/03/02				26/10/04	26/10/04
Liberia				21/09/78		
Libya	16/01/02				23/05/04	
Madagascar	12/09/03			2/09/71	6/10/04	
Malawi	23/06/03			6/03/73		
Mali	11/03/02			3/06/74	17/12/04	13/01/05
Mauritania	3/03/04					

African Convention on the Conservation of Nature (Revised)					
African Union Convention on Preventing and Combating Corruption					
1968 OAU Convention on the Conservation of Nature					
Mauritius	27/01/03				
Mozambique	21/10/02		28/02/81		
Namibia				5/08/04	
Niger	14/09/04	3/03/06	10/01/70		
Nigeria	28/04/02		2/04/74		
Rwanda	29/04/02		19/11/79	25/06/04	25/06/04
Sahrawi Arab Democratic Rep.	9/01/02				
São Tomé and Príncipe					
Senegal	21/01/02		3/02/72		
Seychelles	17/07/03		31/08/77		
Sierra Leone					
Somalia					
South Africa	7/11/02			11/11/05	
Sudan	15/04/03		9/10/73		
Swaziland			25/03/69		
Tanzania	3/09/03		7/09/74	22/02/05	
Togo	3/01/03		24/10/79		
Tunisia	13/11/01		21/12/76		
Uganda	17/10/03		15/11/77	30/08/04	
Zambia			29/03/72		
Zimbabwe					
TOTAL NUMBER OF STATE PARTIES	36	1	30	12	4

Morocco withdrew its membership from the OAU in 1984.

Useful websites

African Union	www.africa-union.org
African Commission on Human and Peoples' Rights	www.achpr.org
NEPAD	www.nepad.org
Pan-African Parliament	www.pan-african-parliament.org
Centre for Human Rights, University of Pretoria	www.chr.up.ac.za
Institute for Security Studies	www.issafrica.org
University of Minnesota, Human Rights Library	http://www1.umn.edu/humanrts/regional.htm

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Profiles

UNIVERSITY FOR PEACE

The University for Peace was established by a General Assembly Resolution of the United Nations to provide humanity with an international institution of higher education for peace. It aims to promote among all human beings the spirit of understanding, tolerance and peaceful co-existence, to stimulate co-operation among peoples, and to help lessen obstacles and threats to world peace and progress, in keeping with the noble aspirations proclaimed in the Charter of the United Nations. In the extension of its programmes worldwide, the Africa Programme of UPEACE aims at assisting African Universities and institutions to increase their capacity in teaching, research, and training in areas related to peace, security, and development. Human rights is seen as a significant component of the quest for lasting peace.

For more information, see www.upeace.org.

CENTRE FOR HUMAN RIGHTS

The Centre for Human Rights of the University of Pretoria was established in 1986. The Centre is an academic department of the Faculty of Law and focuses on human rights law in Africa. In addition to the wide range of publications on human rights law in Africa is published on a regular basis by the Centre - *Human Rights Law in Africa*, *African Human Rights Law Reports*, *African Human Rights Law Journal* and *Constitutional Law of South Africa* - the Centre also offers masters' programmes on human rights and short courses on good governance issues. These are attended by students, academics, government officials, practitioners, civil society leaders and others from across the African continent. The Centre also organises the annual African Human Rights Moot Court Competition.

For more information, see www.chr.up.ac.za.