

COMPENDIUM OF KEY HUMAN RIGHTS DOCUMENTS OF THE AFRICAN UNION

Sixth Edition

Editors: Christof Heyns and Magnus Killander

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of the African Union (Sixth Edition)***

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0002
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Introduction

This is the sixth edition of the *Compendium of key human rights documents of the African Union* updated to August 2016. 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, the African Court on Human and Peoples' Rights and the African Committee on the Rights and Welfare of the Child.

Due to space constraints only extracts are reprinted of many of the documents. This compendium is by no means comprehensive but includes some key documents of relevance for students of the African human rights system and others interested in its functioning. Extracts from documents related to the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM) reprinted in previous editions of this compendium have been left out of this edition.

For comprehensive coverage of human rights law in Africa, see www.chr.up.ac.za and the web sites listed at the end of this compendium.

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Magnus Killander
Editor
Associate Professor and
Head of Research
Centre for Human Rights,
Faculty of Law,
University of Pretoria,
Pretoria

Christof Heyns
Editor
Director of the Institute for
International and Comparative Law in
Africa and Professor of Human Rights
Faculty of Law,
University of Pretoria,
Pretoria

INSTRUMENTS OF THE AFRICAN UNION

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

Adopted in Addis Ababa, Ethiopia, on 25 May 1963 and entered into force on 13 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 available at www.au.int

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 Abuja, Nigeria, 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.au.int

Constitutive Act of the African Union (2000/2001)

Adopted in Lomé, Togo, on 11 July 2000 and entered into force on 26 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;
- (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 notification, 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 on 11 July 2003. As of August 2016, the Protocol had not entered into force.
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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 Sirte, Libya, on 2 March 2001 and entered into force on 14 December 2003. The first meeting of PAP was held in Addis Ababa, Ethiopia, in March 2004. PAP is based in Midrand, South Africa. Its powers are currently purely advisory and consultative. In June 2014 the AU adopted a Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament. For more information see www.pan-african-parliament.org. The full text is available at www.au.int

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 2: Establishment of the Pan-African Parliament

1. Member states hereby establish a Pan-African Parliament the composition, functions, powers and organisation of which shall be governed by the present Protocol.

2. The Pan-African Parliamentarians shall represent all the peoples of Africa.

3. The ultimate aim of the Pan-African Parliament shall be to evolve into an institution with full legislative powers, whose members are elected by universal adult suffrage. However, until such time as the member states decide otherwise by an amendment to this Protocol:

(i) The Pan-African Parliament shall have consultative and advisory powers only; and

(ii) The members of the Pan-African Parliament shall be appointed as provided for in article 4 of this Protocol.

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 5: Election, tenure and vacancies

1. The Pan-African Parliamentarians shall be elected or designated by the respective national parliaments or any other deliberative organs of the member states, from among their members.
2. The Assembly shall determine the beginning of the first term of office of the Pan-African Parliament at its session immediately following the entry into force of this Protocol.
3. The term of a member of the Pan-African Parliament shall run concurrently with his or her term in the national parliament or other deliberative organ.
4. The seat of a member of the Pan-African Parliament shall become vacant if he or she:
 - (a) dies;
 - (b) resigns in writing to the President;
 - (c) is unable to perform his or her functions for reasons of physical or mental incapacity;
 - (d) is removed on grounds of misconduct;
 - (e) ceases to be a member of the National Parliament or other deliberative organ;
 - (f) is recalled by the National Parliament or other deliberative organ; or
 - (g) ceases to be a Pan-African Parliamentarian in terms of article 19 of this Protocol.

Article 6: Vote

The Pan-African Parliamentarians shall vote in their personal and independent capacity.

Article 7: Incompatibility

Membership of the Pan-African Parliament shall not be compatible with the exercise of executive or judicial functions in a member state.

...

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 on 10 July 2002, in terms of article 5(2) of the AU Constitutive Act, and entered into force on 26 December 2003. Full text available at www.au.int
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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 8: Procedure

Organisation and Meetings:

1. The Peace and Security Council shall be so organised as to be able to function continuously. For this purpose, each member of the Peace and

Security Council shall, at all times, be represented at the headquarters of the Union.

2. The Peace and Security Council shall meet at the level of permanent representatives, ministers or heads of state and government. It shall convene as often as required at the level of permanent representatives, but at least twice a month. The ministers and the heads of state and government shall meet at least once a year, respectively.

3. The meetings of the Peace and Security Council shall be held at the headquarters of the Union.

4. In the event a member state invites the Peace and Security Council to meet in its country, provided that two-thirds of the Peace and Security Council members agree, that member state shall defray the additional expenses incurred by the Commission as a result of the meeting being held outside the headquarters of the Union.

...

Voting:

12. Each member of the Peace and Security Council shall have one vote.

13. Decisions of the Peace and Security Council shall generally be guided by the principle of consensus. In cases where consensus cannot be reached, the Peace and Security Council shall adopt its decisions on procedural matters by a simple majority, while decisions on all other matters shall be made by a two-thirds majority vote of its members voting.

Article 9: Entry points and modalities for action

1. The Peace and Security Council shall take initiatives and action it deems appropriate with regard to situations of potential conflict, as well as to those that have already developed into full-blown conflicts. The Peace and Security Council shall also take all measures that are required in order to prevent a conflict for which a settlement has already been reached from escalating.

2. To that end, the Peace and Security Council shall use its discretion to effect entry, whether through the collective intervention of the Council itself, or through its Chairperson and/or the Chairperson of the Commission, the Panel of the Wise, and/or in collaboration with the regional mechanisms.

Article 10: The role of the Chairperson of the Commission

1. The Chairperson of the Commission shall, under the authority of the Peace and Security Council, and in consultation with all parties involved in a conflict, deploy efforts and take all initiatives deemed appropriate to prevent, manage and resolve conflicts.

2. To this end, the Chairperson of the Commission:

(a) shall bring to the attention of the Peace and Security Council any matter, which, in his or her opinion, may threaten peace, security and stability in the Continent;

(b) may bring to the attention of the Panel of the Wise any matter which, in his or her opinion, deserves their attention;

(c) may, at his or her own initiative or when so requested by the Peace and Security Council, use his or her good offices, either personally or through special envoys, special representatives, the Panel of the Wise or the regional mechanisms, to prevent potential conflicts, resolve actual conflicts and promote peacebuilding and post-conflict reconstruction.

3. The Chairperson of the Commission shall also:

(a) ensure the implementation and follow-up of the decisions of the Peace and Security Council, including mounting and deploying peace support missions authorised by the Peace and Security Council. In this respect, the Chairperson of the Commission shall keep the Peace and Security Council informed of developments relating to the functioning of such missions. All

problems likely to affect the continued and effective functioning of these missions shall be referred to the Peace and Security Council, for its consideration and appropriate action;

(b) ensure the implementation and follow-up of the decisions taken by the Assembly in conformity with article 4(h) and (j) of the Constitutive Act;

(c) prepare comprehensive and periodic reports and documents, as required, to enable the Peace Security Council and its subsidiary bodies to perform their functions effectively.

4. In the exercise of his/her functions and powers, the Chairperson of the Commission shall be assisted by the commissioner in charge of Peace and Security, who shall be responsible for the affairs of the Peace and Security Council. The Chairperson of the Commission shall rely on human and material resources available at the Commission, for servicing and providing support to the Peace and Security Council. In this regard, a Peace and Security Council Secretariat shall be established within the Directorate dealing with conflict prevention, management and resolution.

Article 11: Panel of the Wise

1. In order to support the efforts of the Peace and Security Council and those of the Chairperson of the Commission, particularly in the area of conflict prevention, a Panel of the Wise shall be established.

2. The Panel of the Wise shall be composed of five highly respected African personalities from various segments of society who have made outstanding contribution to the cause of peace, security and development on the continent. They shall be selected by the Chairperson of the Commission after consultation with the member states concerned, on the basis of regional representation and appointed by the Assembly to serve for a period of three years.

3. The Panel of the Wise shall advise the Peace and Security Council and the Chairperson of the Commission on all issues pertaining to the promotion, and maintenance of peace, security and stability in Africa.

4. At the request of the Peace and Security Council or the Chairperson of the Commission, or at its own initiative, the Panel of the Wise shall undertake such action deemed appropriate to support the efforts of the Peace and Security Council and those of the Chairperson of the Commission for the prevention of conflicts, and to pronounce itself on issues relating to the promotion and maintenance of peace, security and stability in Africa.

5. The Panel of the Wise shall report to the Peace and Security Council and, through the Peace and Security Council, to the Assembly.

6. The Panel of the Wise shall meet as may be required for the performance of its mandate. The Panel of the Wise shall normally hold its meetings at the headquarters of the Union. In consultation with the Chairperson of the Commission, the Panel of the Wise may hold meetings at such places other than the headquarters of the Union.

7. The modalities for the functioning of the Panel of the Wise shall be worked out by the Chairperson of the Commission and approved by the Peace and Security Council.

8. The allowances of members of the Panel of the Wise shall be determined by the Chairperson of the Commission in accordance with the financial rules and regulations of the Union.

Article 12: Continental Early Warning System

1. In order to facilitate the anticipation and prevention of conflicts, a Continental Early Warning System to be known as the Early Warning System shall be established.

2. The Early Warning System shall consist of:

(a) an observation and monitoring centre, to be known as 'The Situation Room', located at the Conflict Management Directorate of the Union, and responsible for data collection and analysis on the basis of an appropriate early warning indicators module; and

(b) observation and monitoring units of the regional mechanisms to be linked directly through appropriate means of communications to the Situation Room, and which shall collect and process data at their level and transmit the same to the Situation Room.

3. The Commission shall also collaborate with the United Nations, its agencies, other relevant international organisations, research centres, academic institutions and NGOs, to facilitate the effective functioning of the Early Warning System.

4. The Early Warning System shall develop an early warning module based on clearly defined and accepted political, economic, social, military and humanitarian indicators, which shall be used to analyse developments within the continent and to recommend the best course of action.

5. The Chairperson of the Commission shall use the information gathered through the Early Warning System timeously to advise the Peace and Security Council on potential conflicts and threats to peace and security in Africa and recommend the best course of action. The Chairperson of the Commission shall also use this information for the execution of the responsibilities and functions entrusted to him or her under the present Protocol.

6. The member states shall commit themselves to facilitate early action by the Peace and Security Council and or the Chairperson of the Commission based on early warning information.

7. The Chairperson of the Commission shall, in consultation with member states, the regional mechanisms, the United Nations and other relevant institutions, work out the practical details for the establishment of the Early Warning System and take all the steps required for its effective functioning.

Article 13: African Standby Force

Composition:

1. In order to enable the Peace and Security Council perform its responsibilities with respect to the deployment of peace support missions and intervention pursuant to article 4(h) and (j) of the Constitutive Act, an African Standby Force shall be established. Such Force shall be composed of standby multidisciplinary contingents, with civilian and military components in their countries of origin and ready for rapid deployment at appropriate notice.

2. For that purpose, the member states shall take steps to establish standby contingents for participation in peace support missions decided on by the Peace and Security Council or intervention authorised by the Assembly. The strength and types of such contingents, their degree of readiness and general location shall be determined in accordance with established African Union Peace Support Standard Operating Procedures (SOPs), and shall be subject to periodic reviews depending on prevailing crisis and conflict situations.

...

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 16: Relationship with regional mechanisms for conflict prevention, management and resolution

1. The regional mechanisms are part of the overall security architecture of the Union, which has the primary responsibility for promoting peace, security and stability in Africa. In this respect, the Peace and Security Council and the Chairperson of the Commission, shall:

- (a) harmonise and co-ordinate the activities of regional mechanisms in the field of peace, security and stability to ensure that these activities are consistent with the objectives and principles of the Union;
- (b) work closely with regional mechanisms, to ensure effective partnership between them and the Peace and Security Council in the promotion and maintenance of peace, security and stability. The modalities of such partnership shall be determined by the comparative advantage of each and the prevailing circumstances.

...

Article 17: Relationship with the United Nations and other international organisations

1. In the fulfillment of its mandate in the promotion and maintenance of peace, security and stability in Africa, the Peace and Security Council shall co-operate and work closely with the United Nations Security Council, which has the primary responsibility for the maintenance of international peace and security. The Peace and Security Council shall also co-operate and work closely with other relevant UN agencies in the promotion of peace, security and stability in Africa.

2. Where necessary, recourse will be made to the United Nations to provide the necessary financial, logistical and military support for the African Unions' activities in the promotion and maintenance of peace, security and

stability in Africa, in keeping with the provisions of chapter VIII of the UN Charter on the role of regional organisations in the maintenance of international peace and security.

3. The Peace and Security Council and the Chairperson of the Commission shall maintain close and continued interaction with the United Nations Security Council, its African members, as well as with the Secretary-General, including holding periodic meetings and regular consultations on questions of peace, security and stability in Africa.

4. The Peace and Security Council shall also co-operate and work closely with other relevant international organisations on issues of peace, security and stability in Africa. Such organisations may be invited to address the Peace and Security Council on issues of common interest, if the latter considers that the efficient discharge of its responsibilities does so require.

Article 18: Relationship with the Pan-African Parliament

1. The Mechanism shall maintain close working relations with the Pan-African Parliament in furtherance of peace, security and stability in Africa.

2. The Peace and Security Council shall, whenever so requested by the Pan African Parliament, submit, through the Chairperson of the Commission, reports to the Pan-African Parliament, in order to facilitate the discharge by the latter of its responsibilities relating to the maintenance of peace, security and stability in Africa.

3. The Chairperson of the Commission shall present to the Pan-African Parliament an annual report on the state of peace and security in the continent. The Chairperson of the Commission shall also take all steps required to facilitate the exercise by the Pan-African Parliament of its powers, as stipulated in article 11(5) of the Protocol to the Treaty establishing the African Economic Community relating to the Pan-African Parliament, as well as in article 11(9) in so far as it relates to the objective of promoting peace, security and stability as spelt out in article 3(5) of the said Protocol.

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.

Article 20: Relations with civil society organisations

The Peace and Security Council shall encourage non-governmental organisations, community-based and other civil society organisations, particularly women's organisations, to participate actively in the efforts aimed at promoting peace, security and stability in Africa. When required, such organisations may be invited to address the Peace and Security Council.

Article 21: Funding

Peace Fund:

1. In order to provide the necessary financial resources for peace support missions and other operational activities related to peace and security, a special fund, to be known as the Peace Fund, shall be established. The operations of the Peace Fund shall be governed by the relevant Financial Rules and Regulations of the Union.

2. The Peace Fund shall be made up of financial appropriations from the regular budget of Union, including arrears of contributions, voluntary contributions from member states and from other sources within Africa,

including the private sector, civil society and individuals, as well as through appropriate fund raising activities.

3. The Chairperson of the Commission shall raise and accept voluntary contributions from sources outside Africa, in conformity with the objectives and principles of the Union.

4. There shall also be established, within the Peace Fund, a revolving Trust Fund. The appropriate amount of the revolving Trust Fund shall be determined by the relevant Policy Organs of the Union upon recommendation by the Peace and Security Council.

Assessment of Cost of Operations and Pre-financing:

5. When required, and following a decision by the relevant policy organs of the Union, the cost of the operations envisaged under article 13(3) of the present Protocol shall be assessed to member states based on the scale of their contributions to the regular budget of the Union.

6. The states contributing contingents may be invited to bear the cost of their participation during the first three (3) months.

7. The Union shall refund the expenses incurred by the concerned contributing states within a maximum period of six (6) months and then proceed to finance the operations.

...

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.au.int

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, on 27 June 1981 and entered into force on 21 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.

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 Ouagadougou, Burkina Faso, on 10 June 1998 and entered into force on 25 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 of the AU in Banjul, The Gambia. The seat of the Court is Arusha, Tanzania. This Protocol will be replaced by the Protocol on the Statute of the African Court of Justice and Human Rights, reprinted below, once the latter has entered into force. As of August 2016 seven states (Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali and Tanzania) had made a declaration under art 34(6) allowing direct access for individuals and NGOs to the Court. Rwanda withdrew its declaration in March 2016.

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 on the Statute of the African Court of Justice and Human Rights (2008/)

Adopted in Sharm el-Sheikh, Egypt, 1 July 2008. Once it has entered into force, this Protocol will replace the 1998 Protocol on the African Court on Human and Peoples' Rights and the 2003 Protocol on the African Court of Justice. As of May 2013 five states had ratified the Protocol. A Protocol extending the jurisdiction of the Court to international crimes has been drafted but had as of August 2016 not been adopted.

The member states of the African Union, parties to this Protocol,
Recalling the objectives and principles enunciated in the Constitutive Act of the African Union, adopted on 11 July 2000 in Lomé, Togo, in particular the commitment to settle their disputes through peaceful means;

Bearing in mind their commitment to promote peace, security and stability on the continent and to protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant instruments relating to human rights;

Considering that the Constitutive Act of the African Union provides for the establishment of a Court of Justice charged with hearing, among other things, all cases relating to interpretation or application of the said Act or of all other treaties adopted within the framework of the Union;

Further considering Decisions Assembly/AU/Dec.45 (III) and Assembly/AU/Dec.83 (V) of the Assembly of the Union, adopted respectively at its third (6-8 July 2004, Addis Ababa, Ethiopia) and fifth (4-5 July 2005, Sirte, Libya), ordinary sessions, to merge the African Court on Human and Peoples' Rights and the Court of Justice of the African Union into a single Court,

Firmly convinced that the establishment of an African Court of Justice and Human Rights shall assist in the achievement of the goals pursued by the African Union and that the attainment of the objectives of the African Charter on Human and Peoples' Rights requires the establishment of a judicial organ to supplement and strengthen the mission of the African Commission on Human and Peoples' Rights as well as the African Committee of Experts on the Rights and Welfare of the Child;

Taking due account of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted by the Assembly of Heads of States and Governments of the Organization of African Unity on 10 June 1998 at Ouagadougou, Burkina Faso, and which entered into force on 25 January 2004;

Taking due account also of the Protocol of the Court of Justice of the African Union, adopted by the Assembly of the Union on 11 July 2003 in Maputo, Mozambique;

Recalling their commitment to take all necessary measures to strengthen their common institutions and to endow them with the necessary powers and resources to carry out their missions effectively;

Cognisant of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the commitments contained in the Solemn Declaration on the gender equality in Africa (Assembly/AU/Decl.12 (III) adopted by the Assembly of the Union respectively at its second and third ordinary sessions held in July 2003 and 2004, in Maputo, Mozambique and in Addis Ababa, Ethiopia);

Convinced that that the present Protocol shall supplement the mandate and efforts of other continental treaty bodies as well as national institutions in protecting human rights:

HAVE AGREED AS FOLLOWS:

CHAPTER I: Merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union

Article 1: Replacement of the 1998 and 2003 Protocols

The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted on 10 June 1998 in Ouagadougou, Burkina Faso and which entered into force on 25 January 2004, and the Protocol of the Court of Justice of the African Union, adopted on 11 July 2003 in Maputo, Mozambique, are hereby replaced by the present Protocol and Statute annexed as its integral part hereto, subject to the provisions of article 5, 7 and 9 of this Protocol.

Article 2: Establishment of a single Court

The African Court on Human and Peoples' Rights established by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and the Court of Justice of the African Union established by the Constitutive Act of the African Union, are hereby merged into a single Court and established as 'The African Court of Justice and Human Rights'.

Article 3: Reference to the single Court in the Constitutive Act

References made to the 'Court of Justice' in the Constitutive Act of the African Union shall be read as references to the 'African Court of Justice and Human Rights' established under article 2 of this Protocol.

CHAPTER II: Transitional Provisions

Article 4: Term of office of the judges of the African Court on Human and Peoples' Rights

The term of office of the judges of the African Court on Human and Peoples' Rights shall end following the election of the judges of the African Court of Justice and Human Rights. However, the judges shall remain in office until the newly elected judges of the African Court of Justice and Human Rights are sworn in.

Article 5: Cases pending before the African Court on Human and Peoples' Rights

Cases pending before the African Court on Human and Peoples' Rights, that have not been concluded before the entry into force of the present Protocol, shall be transferred to the human rights section of the African Court of Justice and Human Rights on the understanding that such cases shall be dealt with in accordance with the protocol to the ACHPR on the establishment of the African Court on Human and Peoples' Rights.

Article 6: Registry of the Court

The Registrar of the African Court on Human and Peoples' Rights shall remain in office until the appointment of a new Registrar for the African Court of Justice and Human Rights.

Article 7: Provisional validity of the 1998 Protocol

The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights shall remain in force for a transitional period not exceeding one (1) year or any other period determined by the Assembly, after entry into force of the present Protocol, to enable the African Court on Human and Peoples' Rights to take the necessary measures for the transfer of its prerogatives, assets, rights and obligations to the African Court of Justice and Human Rights.

CHAPTER III: Final Provisions

Article 8: Signature, ratification and accession

1. The present Protocol shall be open for signature, ratification or accession by member states, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission of the African Union.
3. Any member state may, at the time of signature or when depositing its instrument of ratification or accession, or at any time thereafter, make a declaration accepting the competence of the Court to receive cases under article 30(f) involving a state which has not made such a declaration.

Article 9: Entry into force

1. The present Protocol and the Statute annexed to it shall, enter into force thirty (30) days after the deposit of the instruments of ratification by fifteen (15) member states.
2. For each member state which shall ratify or accede to it subsequently, the present Protocol shall enter into force on the date on which the instruments of ratification or accession are deposited.
3. The Chairperson of the Commission shall inform all member states of the entry into force of the present Protocol.

ANNEX

STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS

CHAPTER I: General Provisions

Article 1: Definitions

In this Statute, except otherwise indicated, the following shall mean:
'African Charter' means the African Charter on Human and Peoples' Rights;

‘African Commission’ means the African Commission on Human and Peoples’ Rights;

‘African Committee of Experts’ means the African Committee of Experts on the Rights and Welfare of the Child;

‘African intergovernmental organisations’ means an organisation that has been established with the aim of ensuring socio-economic integration, and to which some member states have ceded certain competences to act on their behalf, as well as other sub-regional, regional or inter-African Organisations;

‘African non-governmental organisations’ means non-governmental organisations at the sub-regional, regional or inter-African levels as well as those in the diaspora as may be defined by the Executive Council;

‘Agent’ means a person mandated in writing to represent a party in a case before the Court;

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

‘Chamber(s)’ means a chamber established in accordance with article 19 of the Statute;

‘Constitutive Act’ means the Constitutive Act of the African Union;

‘Commission’ means the Commission of the Union;

‘Court’ means the African Court of Justice and Human Rights as well as its sections and chambers;

‘Executive Council’ means the Executive Council of Ministers of the Union;

‘Full Court’ means joint sitting of the general affairs and human rights sections of the Court;

‘Human rights section’ means the human and peoples’ rights section of the Court;

‘Judge’ means a judge of the Court;

‘Member state’ means a member state of the Union;

‘National human rights institutions’ means public institutions established by a state to promote and protect human rights;

‘President’ means the President of the Court elected in accordance with article 22(1) of the Statute;

‘Protocol’ means the Protocol on the Statute of the African Court of Justice and Human Rights;

‘Registrar’ means the person appointed as such in accordance with article 22(4) of the Statute;

‘Rules’ means the Rules of the Court;

‘Section’ means the general affairs or the human rights section of the Court;

‘Senior Judge’ means the person defined as such in the Rules of Court;

‘States parties’ means member states, which have ratified or acceded to this Protocol;

‘Statute’ means the present Statute;

‘Union’ means the African Union established by the Constitutive Act;

‘Vice President’ means the Vice President of the Court elected in accordance with article 22(1) of the Statute.

Article 2: Functions of the Court

1. The African Court of Justice and Human Rights shall be the main judicial organ of the African Union.

2. The Court shall be constituted and function in accordance with the provisions of the present Statute.

CHAPTER II: Organisation of the Court

Article 3: Composition

1. The Court shall consist of sixteen (16) judges who are nationals of states parties. Upon recommendation of the Court, the Assembly, may, review the number of judges.
2. The Court shall not, at any one time, have more than one judge from a single member state.
3. Each geographical region of the continent, as determined by the decisions of the Assembly shall, where possible, be represented by three (3) judges except the western region which shall have four (4) judges.

Article 4: Qualifications of judges

The Court shall be composed of impartial and independent judges elected from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are juris-consults of recognised competence and experience in international law and /or, human rights law.

Article 5: Presentation of candidates

1. As soon as the Protocol to this Statute enters into force, the Chairperson of the Commission shall invite each state party to submit, in writing, within a period of ninety (90) days, candidatures to the post of judge of the Court.
2. Each state party may present up to two (2) candidates and shall take into account equitable gender representation in the nomination process.

Article 6: List of candidates

1. For the purpose of election, the Chairperson of the Commission shall establish two alphabetical lists of candidates presented as follows: (i) List A containing the names of candidates having recognised competence and experience in International law; and (ii) List B containing the names of candidates possessing recognised competence and experience in human rights law.
2. States parties that nominate candidates possessing the competences required on the two lists shall choose the list on which their candidates may be placed.
3. At the first election, eight (8) Judges shall be elected from amongst the candidates of list A and eight (8) from among the candidates of list B. The elections shall be organised in a way as to maintain the same proportion of judges elected on the two lists.
4. The Chairperson of the Commission shall communicate the two lists to member states, at least thirty (30) days before the ordinary session of the Assembly or of the Council, during which the elections shall take place.

Article 7: Election of judges

1. The judges shall be elected by the Executive Council, and appointed by the Assembly.
2. They shall be elected through secret ballot by a two-thirds majority of member states with voting rights, from among the candidates provided for in article 6 of this Statute.
3. Candidates who obtain the two-thirds majority and the highest number of votes shall be elected. However, if several rounds of election are required, the candidates with the least number of votes shall withdraw.
4. The Assembly shall ensure that in the Court as a whole there is equitable representation of the regions and the principal legal traditions of the Continent.

5. In the election of the judges, the Assembly shall ensure that there is equitable gender representation.

Article 8: Term of office

1. The judges shall be elected for a period of six (6) years and may be re-elected only once. However, the term of office of eight (8) judges, four (4) from each section, elected during the first election shall end after four (4) years.

2. The judges, whose term of office shall end after the initial period of four (4) years, shall be determined for each section, by lot drawn by the Chairperson of the Assembly or the Executive Council, immediately after the first election.

3. A judge, elected to replace another whose term of office has not expired, shall complete the term of office of his predecessor.

4. All the judges except the President and the Vice-President, shall perform their functions on a part-time basis.

Article 9: Resignation, suspension and removal from office

1. A judge may resign his/her position in writing addressed to the President for transmission to the Chairperson of the Assembly through the Chairperson of the Commission.

2. A judge shall not be suspended or removed from office save, where, on the recommendation of two-thirds majority of the other members, he/she no longer meets the requisite conditions to be a judge.

3. The President shall communicate the recommendation for the suspension or removal of a judge to the Chairperson of the Assembly through the Chairperson of the Commission.

4. Such a recommendation of the Court shall become final upon its adoption by the Assembly.

Article 10: Vacancies

1. A vacancy shall arise in the Court under the following circumstances: (a) Death; (b) Resignation; (c) Removal from office.

2. In the case of death or resignation of a judge, the President shall immediately inform the Chairperson of the Assembly through the Chairperson of the Commission in writing, who shall declare the seat vacant.

3. The same procedure and consideration for the election of a judge shall also be followed in filling the vacancies.

Article 11: Solemn declaration

1. After the first election, the Judges shall, at the first session of the Court and in the presence of the Chairperson of the Assembly, make a Solemn Declaration as follows: 'I ... do solemnly swear (or affirm or declare) that I shall faithfully exercise the duties of my office as judge of the African Court of Justice and Human Rights of the African Union impartially and conscientiously, without fear or favour, affection or ill will and that I will preserve the integrity of the Court.'

2. The Chairperson of the Assembly or his/her duly authorised representative shall administer the Solemn Declaration.

3. Subsequently, the Solemn Declaration shall be made before the President of the Court.

Article 12: Independence

1. The independence of the judges shall be fully ensured in accordance with international law.

2. The Court shall act impartially, fairly and justly.

3. In performance of the judicial functions and duties, the Court and its judges shall not be subject to the direction or control of any person or body.

Article 13: Conflict of interest

1. Functions of a judge are incompatible with all other activities, which might infringe on the need for independence or impartiality of the judicial profession. In case of doubt, the Court shall decide.

2. A judge shall not exercise the function of agent, or counsel, or lawyer in any case before the Court.

Article 14: Conditions governing the participation of members in the settlement of a specific case

1. Where a particular judge feels he/she has a conflicting interest in a particular case, he/she shall so declare. In any event, he/she shall not participate in the settlement of a case for which he/she was previously involved as agent, counsel or lawyer of one of the parties, or as a member of a national or international court or tribunal, or a commission of enquiry or in any other capacity.

2. If the President considers that a judge should not participate in a particular case, he/she shall notify the judge concerned. Such notification from the President shall, after agreement by the Court, exclude that judge from participating in that particular case.

3. A judge of the nationality of a state party to a case before the full Court or one of its sections shall not have the right to sit on the case.

4. Where there is doubt on these points, the Court shall decide.

Article 15: Privileges and immunities

1. The judges shall enjoy, from the time of their election and throughout their term of office, the full privileges and immunities extended to diplomatic agents in accordance with international law.

2. The judges shall be immune from legal proceedings for any act or omission committed in the discharge of their judicial functions.

3. The judges shall continue, after they have ceased to hold office, to enjoy immunity in respect of acts performed by them when engaged in their official capacity.

Article 16: Sections of the Court

The Court shall have two (2) sections; a general affairs section composed of eight (8) Judges and a human rights section composed of eight (8) judges.

Article 17: Assignment of matters to sections

1. The general affairs section shall be competent to hear all cases submitted under article 28 of this Statute save those concerning human and/or peoples' rights issues.

2. The human rights section shall be competent to hear all cases relating to human and/or peoples' rights.

Article 18: Referral of matters to the full Court

When a section of the Court is seized with a case, it may, if it deems it necessary refer that case to the full Court for consideration.

Article 19: Chambers

1. The general affairs section and the human rights section may, at any time, constitute one or several chambers. The quorum required to constitute such chambers shall be determined in the Rules of Court.

2. A judgment given by any section or chamber shall be considered as rendered by the Court.

Article 20: Sessions

1. The Court shall hold ordinary and extraordinary sessions.
2. The Court shall decide each year on the periods of its ordinary sessions.
3. Extraordinary sessions shall be convened by the President or at the request of the majority of the judges.

Article 21: Quorum

1. A quorum of nine (9) judges shall be required for deliberations of the full Court.
2. A quorum of six (6) judges shall be required for the deliberations of the general affairs section.
3. A quorum of six (6) judges shall be required for the deliberations of the human and peoples' rights section.

Article 22: Presidency, Vice-Presidency and Registry

1. At its first ordinary session after the election of the judges, the full Court shall elect its President as well as the Vice-President from the different lists for a period of three (3) years. The President and the Vice-President may be re-elected once.
2. The President shall preside over all sessions of the full Court and those of the section to which he/she belongs; in the event of being unable to sit, the President shall be replaced by the Vice President for the full Court and by the most senior judge for the sessions of his/her section.
3. The Vice-President shall preside over all sessions of the section to which he/she belongs. In the event of being unable to sit, the Vice-President shall be replaced by the most senior judge of that section.
4. The Court shall appoint a Registrar and may provide for the appointment of such other officers as may be necessary.
5. The President, the Vice-President and the Registrar shall reside at the seat of the Court.

Article 23: Remuneration of judges

1. The President and the Vice-President shall receive an annual salary and other benefits.
2. The other judges shall receive a sitting allowance for each day on which he/she exercises his/her functions.
3. These salaries, allowances and compensation shall be determined by the Assembly, on the proposal of the Executive Council. They may not be decreased during the term of office of the judges.
4. Regulations adopted by the Assembly on the proposal of the Executive Council shall determine the conditions under which retirement pensions shall be given to the judges as well as the conditions under which their travel expenses shall be paid.
5. The above-mentioned salaries, allowances and compensation shall be free from all taxation.

Article 24: Conditions of service of the Registrar and Members of the Registry

The salaries and conditions of service of the Registrar and other court officials shall be determined by the Assembly on the proposal of the Court, through the Executive Council.

Article 25: Seat and seal of the Court

1. The seat of the Court shall be same as the seat of the African Court on Human and Peoples' Rights. However, the Court may sit in any other member state, if circumstances warrant, and with the consent of the member state concerned. The Assembly may change the seat of the Court after due consultations with the Court.
2. The Court shall have a seal bearing the inscription 'The African Court of Justice and Human Rights'.

Article 26: Budget

1. The Court shall prepare its draft annual budget and shall submit it to the Assembly through the Executive Council.
2. The budget of the Court shall be borne by the African Union.
3. The Court shall be accountable for the execution of its budget and shall submit report thereon to the Executive Council in conformity with the Financial Rules and Regulations of the African Union.

Article 27: Rules of Court

1. The Court shall adopt rules for carrying out its functions and the implementation of the present Statute. In particular, it shall lay down its own Rules.
2. In elaborating its Rules, the Court shall bear in mind the complementarity it maintains with the African Commission and the African Committee of Experts.

CHAPTER III: Competence of the Court

Article 28: Jurisdiction of the Court

The Court shall have jurisdiction over all cases and all legal disputes submitted to it in accordance with the present Statute which relate to:

- (a) the interpretation and application of the Constitutive Act;
- (b) the interpretation, application or validity of other Union treaties and all subsidiary legal instruments adopted within the framework of the Union or the Organization of African Unity;
- (c) the interpretation and the application of the African Charter, the 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, or any other legal instrument relating to human rights, ratified by the states parties concerned;
- (d) any question of international law;
- (e) all acts, decisions, regulations and directives of the organs of the Union;
- (f) all matters specifically provided for in any other agreements that states parties may conclude among themselves, or with the Union and which confer jurisdiction on the Court;
- (g) the existence of any fact which, if established, would constitute a breach of an obligation owed to a state party or to the Union;
- (h) the nature or extent of the reparation to be made for the breach of an international obligation.

Article 29: Entities eligible to submit cases to the Court

1. The following entities shall be entitled to submit cases to the Court on any issue or dispute provided for in article 28:
 - (a) State parties to the present Protocol;
 - (b) The Assembly, the Parliament and other organs of the Union authorised by the Assembly;

(c) A staff member of the African Union on appeal, in a dispute and within the limits and under the terms and conditions laid down in the Staff Rules and Regulations of the Union;

2. The Court shall not be open to states, which are not members of the Union. The Court shall also have no jurisdiction to deal with a dispute involving a member state that has not ratified the Protocol.

Article 30: Other entities eligible to submit cases to the Court

The following entities shall also be entitled to submit cases to the Court on any violation of a right guaranteed by the African Charter, by the 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, or any other legal instrument relevant to human rights ratified by the states parties concerned:

- (a) State parties to the present Protocol;
- (b) The African Commission on Human and Peoples' Rights;
- (c) The African Committee of Experts on the Rights and Welfare of the Child;
- (d) African intergovernmental organisations accredited to the Union or its organs;
- (e) African national human rights institutions;
- (f) Individuals or relevant non-governmental organisations accredited to the African Union or to its organs, subject to the provisions of article 8 of the Protocol.

Article 31: Applicable law

1. In carrying out its functions, the Court shall have regard to:

- (a) The Constitutive Act;
- (b) International treaties, whether general or particular, ratified by the contesting states;
- (c) International custom, as evidence of a general practice accepted as law;
- (d) The general principles of law recognised universally or by African states;
- (e) Subject to the provisions of paragraph 1, of article 46 of the present Statute, judicial decisions and writings of the most highly qualified publicists of various nations as well as the regulations, directives and decisions of the Union, as subsidiary means for the determination of the rules of law;
- (f) Any other law relevant to the determination of the case.

2. This article shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

CHAPTER IV: Procedure

Article 32: Official languages

The official and working languages of the Court shall be those of the Union.

Article 33: Institution of proceedings before the General Affairs Section

1. Cases brought before the Court by virtue of article 29 of the present Statute shall be submitted by written application addressed to the Registrar. The subject of the dispute, the applicable law and basis of jurisdiction shall be indicated.

2. The Registrar shall forthwith give notice of the application to the parties concerned.

3. The Registrar shall also notify, through the Chairperson of the Commission, all member states and, if necessary, the organs of the Union whose decisions are in dispute.

Article 34: Institution of proceedings before the Human Rights Section

1. Cases brought before the Court relating to an alleged violation of a human or peoples' right shall be submitted by a written application to the Registrar. The application shall indicate the right(s) alleged to have been violated, and, insofar as it is possible, the provision or provisions of the African Charter on Human and Peoples' Rights, the Charter on the Rights and Welfare of the Child, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa or any other relevant human rights instrument, ratified by the State concerned, on which it is based.
2. The Registrar shall forthwith give notice of the application to all parties concerned, as well as the Chairperson of the Commission.

Article 35: Provisional measures

1. The Court shall have the power, on its own motion or on application by the parties, to indicate, if it considers that circumstances so require any provisional measures which ought to be taken to preserve the respective rights of the parties.
2. Pending the final decision, notice of the provisional measures shall forthwith be given to the parties and the Chairperson of the Commission, who shall inform the Assembly.

Article 36: Representation of parties

1. The States, parties to a case, shall be represented by agents.
2. They may, if necessary, have the assistance of counsel or advocates before the Court.
3. The organs of the Union entitled to appear before the Court shall be represented by the Chairperson of the Commission or his /her representative.
4. The African Commission, the African Committee of Experts, African inter-governmental organisations accredited to the Union or its organs and African national human rights institutions entitled to appear before the Court shall be represented by any person they choose for that purpose.
5. Individuals and non-governmental organisations accredited to the Union or its organs may be represented or assisted by a person of their choice.
6. The agents and other representatives of parties before the Court, their counsel or advocates, witnesses, and any other persons whose presence is required at the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties or the smooth functioning of the Court.

Article 37: Communications and notices

1. Communications and notices addressed to agents or counsel of parties to a case shall be considered as addressed to the parties.
2. For the service of all communications or notices upon persons other than the agents, counsel or advocates of parties concerned, the Court shall direct its request to the government of the state upon whose territory the communication or notice has to be served.
3. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 38: Procedure before the Court

The procedures before the Court shall be laid out in the Rules of Court, taking into account the complementarity between the Court and other treaty bodies of the Union.

Article 39: Public hearing

The hearing shall be public, unless the Court, on its own motion or upon application by the parties, decides that the session shall be closed.

Article 40: Record of proceedings

1. A record of proceedings shall be made at each hearing and shall be signed by the Registrar and the presiding judge of the session.
2. This record alone shall be authentic.

Article 41: Default judgment

1. Whenever one of the parties does not appear before the Court, or fails to defend the case against it, the Court shall proceed to consider the case and to give its judgment.
2. The Court shall before doing so, satisfy itself, not only that it has jurisdiction in accordance with articles 28, 29 and 30 of the present Statute, but also that the claim is well founded in fact and law, and that the other party had due notice.
3. An objection by the party concerned may be lodged against the judgment within ninety (90) days of it being notified of the default judgment. Unless there is a decision to the contrary by the Court, the objection shall not have effect of staying the enforcement of the default judgment.

Article 42: Majority required for decision of the Court

1. Without prejudice to the provisions of article 50(4) of the present Statute, the decisions of the Court shall be decided by a majority of the Judges present.
2. In the event of an equality of votes, the presiding judge shall have a casting vote.

Article 43: Judgments and decisions

1. The Court shall render its judgment within ninety (90) days of having completed its deliberations.
2. All judgments shall state the reasons on which they are based.
3. The judgment shall contain the names of the judges who have taken part in the decision.
4. The judgment shall be signed by all the judges and certified by the presiding Judge and the Registrar. It shall be read in open session, due notice having been given to the agents.
5. The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the member states and the Commission.
6. The Executive Council shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly.

Article 44: Dissenting opinion

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate or dissenting opinion.

Article 45: Compensation

Without prejudice to its competence to rule on issues of compensation at the request of a party by virtue of paragraph 1(h), of article 28 of the present Statute, the Court may, if it considers that there was a violation of a human or peoples' right, order any appropriate measures in order to remedy the situation, including granting fair compensation.

Article 46: Binding force and execution of judgments

1. The decision of the Court shall be binding on the parties.
2. Subject to the provisions of paragraph 3, article 41 of the present Statute, the judgment of the Court is final.
3. The parties shall comply with the judgment made by the Court in any dispute to which they are parties within the time stipulated by the Court and shall guarantee its execution.
4. Where a party has failed to comply with a judgment, the Court shall refer the matter to the Assembly, which shall decide upon measures to be taken to give effect to that judgment.
5. The Assembly may impose sanctions by virtue of paragraph 2 of article 23 of the Constitutive Act.

Article 47: Interpretation

In the event of any dispute as to the meaning or scope of a judgment, the Court shall construe it upon the request of any party.

Article 48: Revision

1. An application for revision of a judgment may be made to the Court only when it is based upon discovery of a new fact of such nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, provided that such ignorance was not due to negligence.
2. The proceedings for revision shall be opened by a ruling of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision, and declaring the revision admissible on this ground.
3. The Court may require prior compliance with the terms of the judgment before it admits proceedings in revision.
4. The application for revision shall be made within six (6) months of the discovery of the new fact.
5. No application may be made after the lapse of ten (10) years from the date of the judgment.

Article 49: Intervention

1. Should a member state or organ of the Union consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene. It shall be for the Court to decide upon this request.
2. If a member state or organ of the Union should exercise the option offered under paragraph 1 of the present article, the interpretation contained in the decision shall be equally binding upon it.
3. In the interest of the effective administration of justice, the Court may invite any member state that is not a party to the case, any organ of the Union or any person concerned other than the claimant, to present written observations or take part in hearings.

Article 50: Intervention in a case concerning the interpretation of the Constitutive Act

1. Whenever the question of interpretation of the Constitutive Act arises, in a case in which member states other than the parties to the dispute have expressed an interest, the Registrar shall notify all such states and organs of the Union forthwith.
2. Every state party and organ of the Union so notified has the right to intervene in the proceedings.

3. The decisions of the Court concerning the interpretation and application of the Constitutive Act shall be binding on member states and organs of the Union, notwithstanding the provisions of paragraph 1, of article 46 of this Statute.

4. Any decision made by virtue of this article shall be made by a qualified majority of at least two (2) votes and in the presence of at least two-thirds of the judges.

Article 51: Intervention in a case concerning the interpretation of other treaties

1. Whenever the question is that of interpretation of other treaties ratified by member states other than the parties to a dispute, the Registrar shall notify all such states and the organs of the Union forthwith.

2. Every state party and organ of the Union so notified has the right to intervene in the proceedings, and if it exercises this right, the interpretation given by the judgment shall be equally binding upon it.

3. This article shall not be applicable to cases relating to alleged violations of a human or peoples' right, submitted by virtue of articles 29 or 30 of the present Statute.

Article 52: Costs

1. Unless otherwise decided by the Court, each party shall bear its own costs.

2. Should it be required in the interest of justice, free legal aid may be provided for the person presenting an individual communication, under conditions to be set out in the Rules of Court.

CHAPTER V: Advisory Opinion

Article 53: Request for advisory opinion

1. The Court may give an advisory opinion on any legal question at the request of the Assembly, the Parliament, the Executive Council, the Peace and Security Council, the Economic, Social and Cultural Council (ECOSOCC), the Financial Institutions or any other organ of the Union as may be authorised by the Assembly.

2. A request for an advisory opinion shall be in writing and shall contain an exact statement of the question upon which the opinion is required and shall be accompanied by all relevant documents.

3. A request for an advisory opinion must not be related to a pending application before the African Commission or the African Committee of Experts.

Article 54: Service of notice

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states or organs entitled to appear before the Court by virtue of article 30 of the present Statute.

2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or any intergovernmental organisation considered by the Court, or should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this article,

such state may express the desire to submit a written statement or to be heard, and the Court shall decide.

4. States and organisations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organisations in the form, to the extent, and within the time limits which the Court, or should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due course communicate any such written statements to states and organisations having submitted similar statements.

Article 55: Delivery of advisory opinion

The Court shall deliver its advisory opinion in open court, notice having been given to the Chairperson of the Commission and member states, and other international organisations directly concerned.

Article 56: Application by analogy of the Provisions of the Statute applicable to contentious cases

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognises them to be applicable.

CHAPTER VI: Report to the Assembly

Article 57: Annual activity report

The Court shall submit to the Assembly, an annual report on its work during the previous year. The report shall specify, in particular, the cases in which a party has not complied with the judgment of the Court.

CHAPTER VII: Procedure for Amendments

Article 58: Proposed amendments from a state party

1. The present Statute may be amended if a state party makes a written request to that effect to the Chairperson of the Commission, who shall transmit same to member states within thirty (30) days of receipt thereof.

2. The Assembly may adopt by a simple majority, the proposed amendment after the Court has given its opinion on it.

Article 59: Proposed amendments from the Court

The Court may propose such amendments to the present Statute as it may deem necessary, to the Assembly through written communication to the Chairperson of the Commission, for consideration in conformity with the provisions of article 58 of the present Statute.

Article 60: Entry into force of amendments

The amendment shall enter into force for every state which has accepted it in conformity with its constitutional laws thirty (30) days after the Chairperson of the Commission is notified of this acceptance.

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014/)

This Protocol provides the African Court of Justice and Human Rights with criminal jurisdiction. The Protocol was adopted in Malabo, Equatorial Guinea on 27 June 2014. As of August 2016 no state had ratified the Protocol.

Statute of the African Court of Justice and Human Rights (as amended)

...

CHAPTER III: Competence of the Court

Article 28: Jurisdiction of the Court

The Court shall have jurisdiction over all cases and all legal disputes submitted to it in accordance with the present Statute which relate to:

- (a) the interpretation and application of the Constitutive Act;
- (b) the interpretation, application or validity of other Union Treaties and all subsidiary legal instruments adopted within the framework of the Union or the Organization of African Unity;
- (c) the interpretation and the application of the African Charter, the 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, or any other legal instrument relating to human rights, ratified by the States Parties concerned;
- (d) The crimes contained in this Statute, subject to a right of appeal.
- (e) any question of international law;
- (f) all acts, decisions, regulations and directives of the organs of the Union;
- (g) all matters specifically provided for in any other agreements that States Parties may conclude among themselves, or with the Union and which confer jurisdiction on the Court;
- (h) the existence of any fact which, if established, would constitute a breach of an obligation owed to a State Party or to the Union;
- (i) the nature or extent of the reparation to be made for the breach of an international obligation.

Article 28A: International criminal jurisdiction of the Court

1. Subject to the right of appeal, the International Criminal Law Section of the Court shall have power to try persons for the crimes provided hereunder:

- (1) Genocide
- (2) Crimes against humanity
- (3) War crimes
- (4) The crime of unconstitutional change of government;
- (5) Piracy
- (6) Terrorism
- (7) Mercenarism
- (8) Corruption
- (9) Money laundering
- (10) Trafficking in persons
- (11) Trafficking in drugs
- (12) Trafficking in hazardous wastes

(13) Illicit exploitation of natural resources

(14) The crime of aggression

2. The Assembly may extend upon the consensus of States Parties the jurisdiction of the Court to incorporate additional crimes to reflect developments in international law.

3. The crimes within the Jurisdiction of the Court shall not be subject to any statute of limitations.

...

Article 28E: The crime of unconstitutional change of government

1. For the purposes of this Statute, 'unconstitutional change of government' means committing or ordering to be committed the following acts, with the aim of illegally accessing or maintaining power:

(a) A putsch or *coup d'état* against a democratically elected government;

(b) An intervention by mercenaries to replace a democratically elected government;

(c) Any replacement of a democratically elected government by the use of armed dissidents or rebels or through political assassination;

(d) Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections;

(e) Any amendment or revision of the Constitution or legal instruments, which is an infringement on the principles of democratic change of government or is inconsistent with the Constitution;

(f) Any substantial modification to the electoral laws in the last six (6) months before the elections without the consent of the majority of the political actors.

2. For purposes of this Statute, 'democratically elected government' has the same meaning as contained in AU instruments.

...

Article 28N: Modes of responsibility

An offence is committed by any person who, in relation to any of the crimes or offences provided for in this Statute: i. Incites, instigates, organizes, directs, facilitates, finances, counsels or participates as a principal, co-principal, agent or accomplice in any of the offences set forth in the present Statute; ii. Aids or abets the commission of any of the offences set forth in the present Statute; iii. Is an accessory before or after the fact or in any other manner participates in a collaboration or conspiracy to commit any of the offences set forth in the present Statute; iv. Attempts to commit any of the offences set forth in the present Statute.

Article 29: Entities eligible to submit cases to the Court

1. The following entities shall be entitled to submit cases to the Court on any issue or dispute provided for in Article 28:

(a) State Parties to the present Protocol;

(b) The Assembly, the Peace and Security Council, the Parliament and other organs of the Union authorized by the Assembly;

(c) A staff member of the African Union on appeal, in a dispute and within the limits and under the terms and conditions laid down in the Staff Rules and Regulations of the Union;

(d) The Office of the Prosecutor.

2. The Court shall not be open to States, which are not members of the Union. The Court shall also have no jurisdiction to deal with a dispute involving a Member State that has not ratified the Protocol.

...

Article 43A: Sentences and penalties under the international criminal jurisdiction of the Court

1. Without prejudice to the provisions of article 43, the Court shall pronounce judgment and impose sentences and/ or penalties, other than the death penalty, for persons convicted of international crimes under this Statute.

2. For the avoidance of doubt, the penalties imposed by the Court shall be limited to prison sentences and/ or pecuniary fines.

3. The sentences and/ or penalties shall be pronounced in public and, wherever possible, in the presence of the accused.

4. In imposing the sentences and/ or penalties, the Court should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

5. In addition to the sentences and/ or penalties, the Court may order the forfeiture of any property, proceeds or any asset acquired unlawfully or by criminal conduct, and their return to their rightful owner or to an appropriate Member State.

...

Article 45: Compensation and reparations to victims

1. Without prejudice to the provisions of paragraph (i) of article 28, the Court shall establish in the Rules of Court principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss or injury to, or in respect of, victims and will state the principles on which it is acting.

2. With respect to its international criminal jurisdiction, the Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

3. Before making an order the Court may invite and take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

4. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

...

CHAPTER IVA: Provisions specific to the international criminal jurisdiction of the Court

...

Article 46A bis: Immunities

No charges shall be commenced or continued before the Court against any serving AU Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office.

Article 46B: Individual criminal responsibility

1. A person who commits an offence under this Statute shall be held individually responsible for the crime.

2. Subject to the provisions of article 46A bis of this Statute, the official position of any accused person shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in article 28A of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior

failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to the order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Court determines that justice so requires.

Article 46C: Corporate criminal liability

1. For the purpose of this Statute, the Court shall have jurisdiction over legal persons, with the exception of States.

2. Corporate intention to commit an offence may be established by proof that it was the policy of the corporation to do the act which constituted the offence.

3. A policy may be attributed to a corporation where it provides the most reasonable explanation of the conduct of that corporation.

4. Corporate knowledge of the commission of an offence may be established by proof that the actual or constructive knowledge of the relevant information was possessed within the corporation.

5. Knowledge may be possessed within a corporation even though the relevant information is divided between corporate personnel.

6. The criminal responsibility of legal persons shall not exclude the criminal responsibility of natural persons who are perpetrators or accomplices in the same crimes.

...

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

Adopted in Maputo, Mozambique on 11 July 2003 and entered into force on 25 November 2005. The Commission has adopted guidelines on state reporting under the Protocol reprinted below. The Commission adopted general comments on various aspects of article 14 of the Protocol in 2012 and 2014, see <http://www.achpr.org/instruments/>

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, on 10 September 1969 and entered into force on 20 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 re-settlement 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.

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

Adopted in Addis Ababa, Ethiopia on 11 July 1990 and entered into force on 29 November 1999. The African Children's Charter is similar to the UN Convention on the Rights of the Child. 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, 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 be re-elected only once. 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 on 14 July 1999 and entered into force on 6 December 2002. Full text available at www.au.int

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 terrorists 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 terrorists 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 of 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 (2004/2014)

Adopted in Addis Ababa, Ethiopia on 8 July 2004. The Protocol entered into force on 2 July 2014. Full text available at www.au.int

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 September 1968, the OAU adopted the Convention on the Conservation of Nature and Natural Resources which entered into force in June 1969. On 11 July 2003 in Maputo, Mozambique, the AU adopted an amended version of the Convention. 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. As of August 2016 the revised Convention had not entered into force. On the protection of the environment, see also the Bamako Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa adopted in January 1991 and entered into force in April 1998. Full text available at www.au.int

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 (2003/2006)

Adopted in Maputo, Mozambique on 11 July 2003 and entered into force on 5 August 2006. The Advisory Board on Corruption established in terms of article 22 of the Convention held its first meeting in May 2009.

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 Peoples' 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 1: Definitions

1. For the purposes of this Convention;

'Chairperson of the Commission' means Chairperson of the Commission of the African Union;

'Confiscation' means any penalty or measure resulting in a final deprivation of property, proceeds or instrumentalities ordered by a court of law following proceedings in relation to a criminal offence or offences connected with or related to corruption;

'Corruption' means the acts and practices including related offences proscribed in this Convention;

'Court of Law' means a court duly established by a domestic law;

'Executive Council' means the Executive Council of the African Union;

'Illicit enrichment' means the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income;

'Private sector' means the sector of a national economy under private ownership in which the allocation of productive resources is controlled by market forces, rather than public authorities and other sectors of the economy not under the public sector or government;

'Proceeds of corruption' means assets of any kind corporeal or incorporeal, movable or immovable, tangible or intangible and any document or legal instrument evidencing title to or interests in such assets acquired as a result of an act of corruption;

'Public official' means any official or employee of the state or its agencies including those who have been selected, appointed or elected to perform activities or functions in the name of the state or in the service of the state at any level of its hierarchy;

'Requested state party' means a state party requested to extradite or to provide assistance under this Convention;

'Requesting state party' means a state party making a request for extradition or assistance in terms of this Convention;

'State party' means any member state of the African Union which has ratified or acceded to this Convention and has deposited its instruments of ratification or accession with the Chairperson of the Commission of the African Union.

2. In this Convention, the singular shall include the plural and vice versa.

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 6: Laundering of the proceeds of corruption

States parties shall adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) The conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action;

(b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences;

(c) The acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences.

Article 7: Fight against corruption and related offences in the public service

In order to combat corruption and related offences in the public service, state parties commit themselves to:

1. Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service;
2. Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitise and train public officials on matters of ethics;
3. Develop disciplinary measures and investigation procedures in corruption and related offences with a view to keeping up with technology and increase the efficiency of those responsible in this regard;
4. Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service;
5. Subject to the provisions of domestic legislation, any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials.

Article 8: Illicit enrichment

1. Subject to the provisions of their domestic law, state parties undertake to adopt necessary measures to establish under their laws an offence of illicit enrichment.
2. For state parties that have established illicit enrichment as an offence under their domestic law, such offence shall be considered an act of corruption or a related offence for the purposes of this Convention.
3. Any state party that has not established illicit enrichment as an offence shall, in so far as its laws permit, provide assistance and co-operation to the requesting state with respect to the offence as provided in this Convention.

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 10: Funding of political parties

Each state party shall adopt legislative and other measures to:

- (a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and
- (b) Incorporate the principle of transparency into funding of political parties.

Article 11: Private sector

State parties undertake to:

1. Adopt legislative and other measures to prevent and combat acts of corruption and related offences committed in and by agents of the private sector;
2. Establish mechanisms to encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights;
3. Adopt such other measures as may be necessary to prevent companies from paying bribes to win tenders.

Article 12: Civil Society and media

State parties undertake to:

1. Be fully engaged in the fight against corruption and related offences and the popularisation of this convention with the full participation of the media and civil society at large;
2. Create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs;
3. Ensure and provide for the participation of civil society in the monitoring process and consult civil society in the implementation of this Convention;
4. Ensure that the media is given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial.

Article 13: Jurisdiction

1. Each state party has jurisdiction over acts of corruption and related offences when:
 - (a) the breach is committed wholly or partially inside its territory;
 - (b) the offence is committed by one of its nationals outside its territory or by a person who resides in its territory; and
 - (c) the alleged criminal is present in its territory and it does not extradite such person to another country.
 - (d) when the offence, although committed outside its jurisdiction, affects, in the view of the state concerned, its vital interests or the deleterious or harmful consequences or effects of such offences impact on the state party.
2. This Convention does not exclude any criminal jurisdiction exercised by a state party in accordance with its domestic law.
3. Notwithstanding the provision of paragraph 1 of this article, a person shall not be tried twice for the same offence.

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 15: Extradition

1. This article shall apply to the offences established by the state parties in accordance with this Convention.
2. Offences falling within the jurisdiction of this Convention shall be deemed to be included in the internal laws of state parties as crimes requiring extradition. State parties shall include such offences as extraditable offences in extradition treaties existing between or among them.
3. If a state party that makes extradition conditional on the existence of a treaty receives a request for extradition from a state party with which it does not have such treaty, it shall consider this Convention as a legal basis for all offences covered by this Convention.
4. A state party that does not make extradition conditional on the existence of a treaty shall recognise offences to which this Convention applies as extraditable offences among themselves.
5. Each state party undertakes to extradite any person charged with or convicted of offences of corruption and related offences, carried out on the

territory of another state party and whose extradition is requested by that state party, in conformity with their domestic law, any applicable extradition treaties, or extradition agreements or arrangements existing between or among the state parties.

6. Where a state party in whose territory any person charged with or convicted of offences is present and has refused to extradite that person on the basis that it has jurisdiction over offences, the requested state party shall be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting state party, and shall report the final outcome to the requesting state party.

7. Subject to the provisions of its domestic law and any applicable extradition treaties, a requested state party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting state party, take into custody a person whose extradition is sought and who is present in its territory, or take other appropriate measures to ensure that the person is present at the extradition proceedings.

Article 16: Confiscation and seizure of the proceeds and instrumentalities of corruption

1. Each state party shall adopt such legislative measures as may be necessary to enable:

(a) its competent authorities to search, identify, trace, administer and freeze or seize the instrumentalities and proceeds of corruption pending a final judgement;

(b) confiscation of proceeds or property, the value of which corresponds to that of such proceeds, derived, from offences established in accordance with this convention;

(c) repatriation of proceeds of corruption.

2. The requested state party shall, in so far as its law permits and at the request of the requesting state party, seize and remit any object:

(a) which may be required as evidence of the offence in question; or

(b) which has been acquired as a result of the offence for which extradition is requested and which, at the time of arrest is found in possession of the persons claimed or is discovered subsequently.

3. The objects referred to in clause 2 of this article may, if the requesting state so requests, be handed over to that state even if the extradition is refused or cannot be carried out due to death, disappearance or escape of the person sought.

4. When the said object is liable for seizure or confiscation in the territory of the requested state party the latter may, in connection with pending or ongoing criminal proceedings, temporarily retain it or hand it over to the requesting state party, on condition that it is returned to the requested state party.

Article 17: Bank secrecy

1. Each state party shall adopt such measures necessary to empower its courts or other competent authorities to order the confiscation or seizure of banking, financial or commercial documents with a view to implementing this Convention.

2. The requesting state shall not use any information received that is protected by bank secrecy for any purpose other than the proceedings for which that information was requested, unless with the consent of the requested state party.

3. State parties shall not invoke banking secrecy to justify their refusal to co-operate with regard to acts of corruption and related offences by virtue of this Convention.
4. State parties commit themselves to enter into bilateral agreements to waive banking secrecy on doubtful accounts and allow competent authorities the right to obtain from banks and financial institutions, under judicial cover, any evidence in their possession.

Article 18: Co-operation and mutual legal assistance

1. In accordance with their domestic laws and applicable treaties, state parties shall provide each other with the greatest possible technical co-operation and assistance in dealing immediately with requests from authorities that are empowered by virtue of their national laws to prevent, detect, investigate and punish acts of corruption and related offences.
2. If two or several state parties have established relations on the basis of uniform legislation or a particular regime, they may have the option to regulate such mutual relations without prejudice to the provisions of this Convention.
3. State parties shall co-operate among themselves in conducting and exchanging studies and researches on how to combat corruption and related offences and to exchange expertise relating to preventing and combating corruption and related offences.
4. State parties shall co-operate among themselves, where possible, in providing any available technical assistance in drawing up programmes, codes of ethics or organising, where necessary and for the benefit of their personnel, joint training courses involving one or several states in the area of combating corruption and related offences.
5. The provisions of this article shall not affect the obligations under any other bilateral or multilateral treaty which governs, in whole or in part, mutual legal assistance in criminal matters.
6. Nothing in this article shall prevent state parties from according one another more favourable forms of mutual legal assistance allowed under their respective domestic law.

Article 19: International co-operation

In the spirit of international co-operation, state parties shall:

1. Collaborate with countries of origin of multi-nationals to criminalise and punish the practice of secret commissions and other forms of corrupt practices during international trade transactions;
2. Foster regional, continental and international co-operation to prevent corrupt practices in international trade transactions;
3. Encourage all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin;
4. Work closely with international, regional and sub regional financial organisations to eradicate corruption in development aid and co-operation programmes by defining strict regulations for eligibility and good governance of candidates within the general framework of their development policy;
5. Co-operate in conformity with relevant international instruments on international co-operation on criminal matters for purposes of investigations and procedures in offences within the jurisdiction of this Convention.

Article 20: National authorities

1. For the purposes of co-operation and mutual legal assistance provided under this Convention, each state party shall communicate to the Chairperson

of the Commission at the time of signing or depositing its instrument of ratification, the designation of a national authority or agency in application of offences established under article 4(1) of this Convention.

2. The national authorities or agencies shall be responsible for making and receiving the requests for assistance and co-operation referred to in this Convention.

3. The national authorities or agencies shall communicate with each other directly for the purposes of this Convention.

4. The national authorities or agencies shall be allowed the necessary independence and autonomy, to be able to carry out their duties effectively.

5. State parties undertake to adopt necessary measures to ensure that national authorities or agencies are specialised in combating corruption and related offences by, among others, ensuring that the staff are trained and motivated to effectively carry out their duties.

Article 21: Relationship with other agreements

Subject to the provisions of article 4 paragraph 2, this Convention shall in respect to those state parties to which it applies, supersede the provisions of any treaty or bilateral agreement governing corruption and related offences between any two or more state 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.

FINAL CLAUSES

Article 23: Signature, ratification, accession and entry into force

1. The present Convention shall be open for signature, ratification or accession by the member states of the African Union.
2. The Convention shall enter into force thirty (30) days after the date of the deposit of the fifteenth instrument of ratification or accession.
3. For each state party ratifying or acceding to the Convention after the date of the deposit of the fifteenth instrument of ratification, the Convention shall enter into force thirty (30) days after the date of the deposit by that state of its instrument of ratification or accession.

Article 24: Reservations

1. Any state party may, at the time of adoption, signature, ratification or accession, make reservation to this Convention provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purposes of this Convention.
2. Any state party which has made any reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Chairperson of the Commission.

Article 25: Amendment

1. This Convention may be amended if any state party makes a written request to the Chairperson of the Commission.
2. The Chairperson of the Commission shall circulate the proposed amendments to all state parties. The proposed amendments shall not be considered by the state parties until a period of six (6) months from the date of circulation of the amendment has elapsed.
3. The amendments shall enter into force when approved by a two-thirds majority of the member states of the AU.

Article 26: Denunciation

1. Any state party may denounce the present Convention by sending notification to the Chairperson of the Commission. This denunciation shall take effect six (6) months following the date of receipt of notification by the Chairperson of the Commission.
2. After denunciation, co-operation shall continue between state parties and the state party that has withdrawn on all requests for assistance or extradition made before the effective date of withdrawal.

Article 27: Depository

1. The Chairperson of the Commission shall be the depository of this Convention and the amendments thereto.
2. The Chairperson of the Commission shall inform all state parties of the signatures, ratifications, accessions, entry into force, requests for amendments submitted by states and approvals thereof and denunciations.
3. Upon entry into force of this Convention, the Chairperson of the Commission shall register it with the Secretary-General of the United Nations in accordance with article 102 of the Charter of the United Nations.

Article 28: Authentic texts

The original of this Convention, of which the Arabic, English, French and Portuguese texts are equally authentic, shall be deposited with the Chairperson of the Commission.

African Union Non-Aggression and Common Defence Pact (2005/2009)

Adopted in Abuja, Nigeria, on 31 January 2005. The Pact entered into force on 18 December 2009. Full text available at www.au.int

Excerpts

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Obligations

Article 3

(a) State parties undertake, pursuant to the provisions of the Constitutive Act, to resolve any differences by peaceful means, in order to avoid endangering peace and security; to refrain from the use of force or threat to use force in their relations with each other and in any manner whatsoever, incompatible with the United Nations Charter. Consequently, no consideration whatsoever, be it political, economic, military, religious or racial shall justify aggression.

(b) State parties undertake to develop and strengthen the friendly and peaceful relations among them in accordance with the fundamental principles of the Union.

(c) State parties undertake to promote such sustainable development policies as are appropriate to enhance the well being of the African people, including the dignity and fundamental rights of every human being in the context of a democratic society as stipulated in the Lomé Declaration. In particular, state parties shall ensure freedom of worship, respect of the cultural identity of peoples and the rights of minorities.

(d) State parties undertake to prohibit and prevent genocide, other forms of mass murder as well as crimes against humanity.

Article 4

(a) State parties undertake to provide mutual assistance towards their common defence and security *vis-à-vis* any aggression or threats of aggression.

(b) State parties undertake, individually and collectively, to respond by all available means to aggression or threats of aggression against any member state.

(c) State parties undertake not to recognise any territorial acquisition or special advantage, resulting from the use of aggression.

(d) As part of the vision of building a strong and united Africa, state parties undertake to establish an African Army at the final stage of the political and economic integration of the Continent. In the meantime, state parties will make best efforts to address the challenges of common defence and security through the effective implementation of the Common African Defence and

Security Policy, including the early establishment and operationalisation of the African Standby Force.

...

Article 6

(a) State parties undertake to extend mutual legal and all other assistance in the event of threats of terrorist attack or other organised international crimes.

(b) State parties undertake to arrest and prosecute any irregular armed group(s), mercenaries or terrorist(s) that pose a threat to any member state.

...

African Centre for the Study and Research on Terrorism

Article 13

(a) The African Centre for the Study and Research on Terrorism (ACSRT) shall serve to centralise, collect and disseminate information, studies and analysis on terrorism and terrorist groups, and shall provide training programs by organising, with the assistance of international partners meetings, and symposia, in order to prevent and combat terrorist acts in Africa.

(b) The Centre shall assist member states develop the expertise and strategies for the prevention and combating of terrorism, particularly with respect to the implementation of the 1999 OAU Convention and its Protocol thereto on the Prevention and Combating of Terrorism, as well as the Plan of Action on the Prevention and Combating of Terrorism in Africa and other relevant decisions adopted by the policy Organs of the Union.

(c) State parties undertake to support fully and take active part in the activities of the Centre.

...

African Youth Charter (2006/2009)

Adopted in Banjul, The Gambia on 2 July 2006. The Charter entered into force on 8 August 2009.
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Preamble

Guided by the Constitutive Act of the African Union, the states parties to the present 'African Youth Charter',

Guided by the vision, hopes and aspirations of the African Union, inclusive of Africa's integration, the inherent dignity and inalienable rights afforded to all members of the human family as set out in the United Nations Universal Declaration of Human Rights (1948), the International Covenant of Civil and Political Rights (1976) and the International Covenant on Economic, Social and Cultural Rights (1976), and articulated for the African peoples through the African Charter on Human and Peoples' Rights (1986);

Recalling the resolution of the Heads of State and government during the 1999 Algiers Summit for the development of the Pan-African Charter;

Fully attached to the virtues and values of African historical tradition and civilization which form the foundation for our concept of people's rights;

Recalling the historic injustices imposed on Africa such as slavery, colonisation, depletion of natural resources and taking into account the firm will of African peoples for self-determination and the economic integration of Africa;

Convinced that Africa's greatest resource is its youthful population and that through their active and full participation, Africans can surmount the difficulties that lie ahead;

Bearing in mind the international Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa (2003) and the progress achieved in eliminating gender discrimination, but ever cognisant of the obstacles that still prevent girls and women from fully participating in African society;

Reaffirming the need to take appropriate measures to promote and protect the rights and welfare of children as outlined in the Convention of the Rights of the Child (1989) and through the African Charter on the Rights and Welfare of the Child (1999),

Acknowledging the commitments already made towards the United Nations Millennium Development Goals (MDGs) and inviting the partners to reaffirm their support to advance the well-being of youth;

Recognising the efforts made by states parties and civil societies to address the economic, social, educational, cultural and spiritual needs of youth;

Noting with concern the situation of African youth, many of whom are marginalised from mainstream society through inequalities in income, wealth and power, unemployment and underemployment, infected and affected by the HIV/AIDS pandemic, living in situations of poverty and hunger, experiencing illiteracy and poor quality educational systems, restricted access to health services and to information, exposure to violence including gender violence, engaging in armed conflicts and experiencing various forms of discrimination;

Recalling the United Nations World Programme of Action for Youth to the Year 2000 and beyond and the ten priority areas identified for youth (education, employment, hunger and poverty, health, environment, drug abuse, juvenile delinquency, leisure-time activities, girls and young women and youth participating in decision-making), and the five additional areas (HIV/AIDS, ICT, intergenerational dialogue, [mixed impact of globalisation and active involvement in armed conflict]) adopted at the 2005 UN General assembly;

Recognising that youth are partners, assets and a prerequisite for sustainable development and for the peace and prosperity of Africa with a unique contribution to make to the present and to future development;

Considering the role that youth have played in the process of decolonisation, the struggle against apartheid and more recently in its efforts to encourage the development and to promote the democratic processes on the African continent;

Reaffirming that the continuous cultural development of Africa rests with its youth and therefore requires their active and enlightened participation as espoused in the Cultural Charter for Africa;

Guided by the New Partnership for Africa's Development Strategic Framework for Youth Programme of 2004 that is working towards youth empowerment and development;

Acknowledging the increasing calls and the enthusiasm of youth to actively participate at local, national, regional and international levels to determine their own development and the advancement of society at large;

Acknowledging also the call in Bamako (2005) by the youth organisations across Africa to empower youth by building their capacity, leadership,

responsibilities and provide access to information such that they can take up their rightful place as active agents in decision-making and governance;
Taking into consideration the inter-relatedness of the challenges facing youth and the need for cross-sectoral policies and programmes that attend to the needs of youth in a holistic manner;
Considering that the promotion and protection of the rights of youth also implies the performance of duties by youth as by all other actors in society;
Taking into consideration the needs and aspirations of young displaced persons, refugees and youth with special needs;

HAVE AGREED as follows:

DEFINITIONS

‘Chairperson’ shall mean the Chairperson of the African Union Commission;
 ‘Charter’ shall mean the African Youth Charter;
 ‘Commission’ shall mean the Commission of African Union
 ‘Diaspora’ shall mean peoples of African descent and heritage living outside the continent, irrespective of their citizenship and who remain committed to contribute to the development of the continent and the building of the African Union (DOC.EX.CL/164(VII))
 ‘Member states’ shall mean member states of the African Union
 ‘Minors’ shall mean young people aged 15 to 17 years subject to each country’s laws
 ‘States parties’ shall mean member states, which have ratified or acceded to the present Charter;
 ‘Union’ shall mean the African Union
 ‘Youth’ For the purposes of this Charter, *youth or young people* shall refer to every person between the ages of 15 and 35 years.

PART 1: RIGHTS AND DUTIES

Article 1: Obligation of state parties

1. States parties of the African Union to the present Charter shall recognise the rights, freedoms and duties enshrined in this Charter.
2. State parties shall undertake the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures that may be necessary to give effect to the provisions of the Charter.

Article 2: Non-discrimination

1. Every young person shall be entitled to the enjoyments of the rights and freedoms recognised and guaranteed in this Charter irrespective of their race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.
2. States parties shall take appropriate measures to ensure that youth are protected against all forms of discrimination on the basis of status, activities, expressed opinions or beliefs.
3. State parties shall recognise the rights of young people from ethnic, religious and linguistic marginalised groups or youth of indigenous origin, to enjoy their own culture, freely practice their own religion or to use their own language in community with other members of their group.

Article 3: Freedom of movement

1. Every young person has the right to leave any country, including his or her own, and to return to his or her country.

Article 4: Freedom of expression

1. Every young person shall be assured the right to express his or her ideas and opinions freely in all matters and to disseminate his or her ideas and opinions subject to the restrictions as are prescribed by laws.
2. Every young person shall have the freedom to seek, receive and disseminate information and ideas of all kinds, either orally, in writing, in print, in the form of art or through any media of the young person's choice subject to the restrictions as are prescribed by laws.

Article 5: Freedom of association

1. Every young person shall have the right to free association and freedom of peaceful assembly in conformity with the law.
2. Young people shall not be compelled to belong to an association.

Article 6: Freedom of thought, conscience and religion

Every young person shall have the right to freedom of thought, conscience and religion.

Article 7: Protection of private life

No young person shall be subject to the arbitrary or unlawful interference with his/her privacy, residence or correspondence, or to attacks upon his/her honour or reputation.

Article 8: Protection of the family

1. The family, as the most basic social institution, shall enjoy the full protection and support of states parties for its establishment and development noting that the structure and form of families varies in different social and cultural contexts.
2. Young men and women of full age who enter into marriage shall do so based on their free consent and shall enjoy equal rights and responsibilities.

Article 9: Property

1. Every young person shall have the right to own and to inherit property.
2. States parties shall ensure that young men and young women enjoy equal rights to own property.
3. States parties shall ensure that youth are not arbitrarily deprived of their property including inherited property.

Article 10: Development

1. Every young person shall have the right to social, economic, political and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind.
2. States parties shall encourage youth organisations to lead youth programmes and to ensure the exercise of the right to development.
3. States parties shall:
 - (a) Encourage the media to disseminate information that will be of economic, political, social and cultural benefit to youth;
 - (b) Promote the development of youth media for the dissemination of information to young people;
 - (c) Encourage international co-operation in the production, exchange and dissemination of information from both national and international sources that are of economic, social and cultural value to youth;
 - (d) Provide access to information and education and training for young people to learn their rights and responsibilities, to be schooled in democratic processes, citizenship, decision-making, governance and leadership such that

they develop the technical skills and confidence to participate in these processes.

Article 11: Youth participation

1. Every young person shall have the right to participate in all spheres of society.

2. States parties shall take the following measures to promote active youth participation in society:

They shall:

- (a) Guarantee the participation of youth in parliament and other decisionmaking bodies in accordance with the prescribed laws;
- (b) Facilitate the creation or strengthening of platforms for youth participation in decision-making at local, national, regional, and continental levels of governance;
- (c) Ensure equal access to young men and young women to participate in decision-making and in fulfilling civic duties;
- (d) Give priority to policies and programmes including youth advocacy and peer-to-peer programmes for marginalised youth, such as out-of-school and out-of-work youth, to offer them the opportunity and motivation to re-integrate into mainstream society;
- (e) Provide access to information such that young people become aware of their rights and of opportunities to participate in decision-making and civic life;
- (f) Institute measures to professionalise youth work and introduce relevant training programmes in higher education and other such training institutions;
- (g) Provide technical and financial support to build the institutional capacity of youth organisations;
- (h) Institute policy and programmes of youth voluntarism at local, national, regional and international levels as an important form of youth participation and as a means of peer-to-peer training.
- (i) Provide access to information and services that will empower youth to become aware of their rights and responsibilities,
- (j) Include youth representatives as part of delegations to ordinary sessions and other relevant meetings to broaden channels of communication and enhance the discussion of youth related issues.

Article 12: National youth policy

1. Every state party shall develop a comprehensive and coherent national youth policy.

- (a) The policy shall be cross-sectoral in nature considering the interrelatedness of the challenges facing young people;
- (b) The development of a national youth policy shall be informed by extensive consultation with young people and cater for their active participation in decision-making at all levels of governance in issues concerning youth and society as a whole;
- (c) A youth perspective shall be integrated and mainstreamed into all planning and decision-making as well as programme development. The appointment of youth focal points in government structures shall enable this process;
- (d) Mechanisms to address these youth challenges shall be framed within the national development framework of the country;
- (e) The policy shall provide guidelines on the definition of youth adopted and specify subgroups that shall be targeted for development;
- (f) The policy shall advocate equal opportunities for young men and for young women;

- (g) A baseline evaluation or situation analysis shall inform the policy on the priority issues for youth development;
- (h) The policy shall be adopted by parliament and enacted into law;
- (i) A national youth coordinating mechanism shall be set up and shall provide a platform as well as serve as a linking agent for youth organisations to participate in youth policy development as well as the implementation, monitoring and evaluation of related programmes;
- (j) National programmes of action shall be developed that are time bound and that are connected to an implementation and evaluation strategy for which indicators shall be outlined;
- (k) Such a programme of action shall be accompanied by adequate and sustained budgetary allocation.

Article 13: Education and skills development

1. Every young person shall have the right to education of good quality.
2. The value of multiple forms of education, including formal, non-formal, informal, distance learning and life-long learning, to meet the diverse needs of young people shall be embraced.
3. The education of young people shall be directed to:
 - (a) The promotion and holistic development of the young person's cognitive and creative and emotional abilities to their full potential;
 - (b) Fostering respect for human rights and fundamental freedoms as set out in the provisions of the various African human and people's rights and international human rights declarations and conventions;
 - (c) Preparing young people for responsible lives in free societies that promote peace, understanding, tolerance, dialogue, mutual respect and friendship among all nations and across all groupings of people;
 - (d) The preservation and strengthening of positive African morals, traditional values and cultures and the development of national and African identity and pride;
 - (e) The development of respect for the environment and natural resources;
 - (f) The development of life skills to function effectively in society and include issues such as HIV/AIDS, reproductive health, substance abuse prevention and cultural practices that are harmful to the health of young girls and women as part of the education curricula;
4. States parties shall take all appropriate measures with a view to achieving full realisation of this right and shall, in particular:
 - (a) Provide free and compulsory basic education and take steps to minimise the indirect costs of education;
 - (b) Make all forms of secondary education more readily available and accessible by all possible means including progressively free;
 - (c) Take steps to encourage regular school attendance and reduce drop-out rates;
 - (d) Strengthen participation in and the quality of training in science and technology;
 - (e) Revitalise vocational education and training relevant to current and prospective employment opportunities and expand access by developing centres in rural and remote areas;
 - (f) Make higher education equally accessible to all including establishing distance learning centres of excellence;
 - (g) Avail multiple access points for education and skills development including opportunities outside of mainstream educational institutions e.g., workplace skills development, distance learning, adult literacy and national youth service programmes;

- (h) Ensure, where applicable, that girls and young women who become pregnant or married before completing their education shall have the opportunity to continue their education;
 - (i) Allocate resources to upgrade the quality of education delivered and ensure that it is relevant to the needs of contemporary society and engenders critical thinking rather than rote learning;
 - (j) Adopt pedagogy that incorporates the benefits of and trains young people in the use of modern information and communication technology such that youth are better prepared for the world of work;
 - (k) Encourage youth participation in community work as part of education to build a sense of civic duty;
 - (l) Introduce scholarship and bursary programmes to encourage entry into post-primary school education and into higher education outstanding youth from disadvantaged communities, especially young girls;
 - (m) Establish and encourage participation of all young men and young women in sport, cultural and recreational activities as part of holistic development;
 - (n) Promote culturally appropriate, age specific sexuality and responsible parenthood education;
 - (o) Promote the equivalence of degrees between African educational institutions to enable the youth to study and work in state parties;
 - (p) Adopt preferential recruitment policies for African youth with specialised skills amongst states parties.
5. Youth are determined to transform the continent in the fields of science and technology. Therefore they are committed to:
- (a) Promoting and using science and technology in Africa;
 - (b) Conducting research towards science and technology.
6. State parties should encourage youth to conduct research. In this regard, an African discoveries day should be established along with mechanism of awarding prizes at the continental level.
7. Enterprises that are located in Africa should establish partnerships with training institutions to contribute to technology transfer for the benefit of African students and researchers.

Article 14: Poverty eradication and socio-economic integration of youth

1. States parties shall: Recognise the right of young people to a standard of living adequate for their holistic development.
2. Recognise the right of young people to be free from hunger and shall take individual or collective measures to:
 - (a) Enhance the attractiveness of rural areas to young people by improving access to services and facilities such as educational and cultural services;
 - (b) Train young people to take up agricultural, mineral, commercial and industrial production using contemporary systems and promote the benefits of modern information and communication technology to gain access to existing and new markets;
 - (c) Provide grants of land to youth and youth organisations for socioeconomic development purposes;
 - (d) Facilitate access to credit to promote youth participation in agricultural and other sustainable livelihood projects;
 - (e) Facilitate the participation of young people in the design, implementation, monitoring and evaluation of national development plans, policies and poverty reduction strategies.
3. Recognise the right of every young person to benefit from social security, including social insurance. In this regard, states parties shall take the necessary measures to achieve the full realisation of these rights in

accordance with their national law especially when the security of food tenure, clothing, housing and other basic needs are compromised.

Article 15: Sustainable livelihoods and youth employment

1. Every young person shall have the right to gainful employment.
2. Every young person shall have the right to be protected from economic exploitation and from performing work that is likely to be hazardous to or interfere with the young person's education, or to be harmful to the young person's health or holistic development.
3. States parties shall address and ensure the availability of accurate data on youth employment, unemployment and underemployment so as to facilitate the prioritisation of the issue in national development programmes complemented by clear programmes to address unemployment;
4. States parties shall take all appropriate measures with a view to achieving full realisation of this right to gainful employment and shall in particular:
 - (a) Ensure equal access to employment and equal pay for equal work or equal value of work and offer protection against discrimination regardless of ethnicity, race, gender, disability, religion, political, social, cultural or economic background;
 - (b) Develop macroeconomic policies that focus on job creation particularly for youth and for young women;
 - (c) Develop measures to regulate the informal economy to prevent unfair labour practices where the majority of youth work;
 - (d) Foster greater linkages between the labour market and the education and training system to ensure that curricula are aligned to the needs of the labour market and that youth are being trained in fields where employment opportunities are available or are growing;
 - (e) Implement appropriately-timed career guidance for youth as part of the schooling and post-schooling education system;
 - (f) Promote youth entrepreneurship by including entrepreneurship training in the school curricula, providing access to credit, business development skills training, mentorship opportunities and better information on market opportunities;
 - (g) Institute incentive schemes for employers to invest in the skills development of employed and unemployed youth;
 - (h) Institute national youth service programmes to engender community participation and skills development for entry into the labour market.

Article 16: Health

1. Every young person shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States parties shall undertake to pursue the full implementation of this right and in particular shall take measures to:
 - (a) Make available equitable and ready access to medical assistance and health care especially in rural and poor urban areas with an emphasis on the development of primary health care;
 - (b) Secure the full involvement of youth in identifying their reproductive and health needs and designing programmes that respond to these needs with special attention to vulnerable and disadvantaged youth;
 - (c) Provide access to youth friendly reproductive health services including contraceptives, antenatal and post natal services;
 - (d) Institute programmes to address health pandemics in Africa such as HIV/AIDS, tuberculosis and malaria;
 - (e) Institute comprehensive programmes to prevent the transmission of sexually transmitted infections and HIV/AIDS by providing education,

information, communication and awareness creation as well as making protective measures and reproductive health services available;

(f) Expand the availability and encourage the uptake of voluntary counselling and confidential testing for HIV/AIDS;

(g) Provide timely access to treatment for young people infected with HIV/AIDS including prevention of mother to child transmission, post rape prophylaxis, and anti-retroviral therapy and creation of health services specific for young people;

(h) Provide food security for people living with HIV/AIDS;

(i) Institute comprehensive programmes including legislative steps to prevent unsafe abortions;

(j) Take legislative steps such as banning advertising and increasing price in addition to instituting comprehensive preventative and curative programmes to control the consumption of tobacco, exposure to environmental tobacco smoke and alcohol abuse;

(k) Raise awareness amongst youth on the dangers of drug abuse through partnerships with youth, youth organisations and the community;

(l) Strengthen local, national, regional and international partnerships to eradicate the demand, supply and trafficking of drugs including using youth to traffic drugs;

(m) Provide rehabilitation for young people abusing drugs such that they can be re-integrated into social and economic life;

(n) Provide technical and financial support to build the institutional capacity of youth organisations to address public health concerns including issues concerning youth with disabilities and young people married at an early age.

Article 17: Peace and security

In view of the important role of youth in promoting peace and non-violence and the lasting physical and psychological scars that result from involvement in violence, armed conflict and war, states parties shall:

(a) Strengthen the capacity of young people and youth organisations in peace building, conflict prevention and conflict resolution through the promotion of intercultural learning, civic education, tolerance, human rights education and democracy, mutual respect for cultural, ethnic and religious diversity, the importance of dialogue and co-operation, responsibility, solidarity and international co-operation;

(b) Institute mechanisms to promote a culture of peace and tolerance amongst young people that discourages their participation in acts of violence, terrorism, xenophobia, racial discrimination, gender-based discrimination, foreign occupation and trafficking in arms and drugs;

(c) Institute education to promote a culture of peace and dialogue in all schools and training centres at all levels;

(d) Condemn armed conflict and prevent the participation, involvement, recruitment and sexual slavery of young people in armed conflict;

(e) Take all feasible measures to protect the civilian population, including youth, who are affected and displaced by armed conflict;

(f) Mobilise youth for the reconstruction of areas devastated by war, bringing help to refugees and war victims and promoting peace, reconciliation and rehabilitation activities;

(g) Take appropriate measures to promote physical and psychological recovery and social reintegration of young victims of armed conflict and war by providing access to education and skills development such as vocational training to resume social and economic life.

Article 18: Law enforcement

1. Every young person accused or found guilty of having infringed the penal law shall have the right to be treated with humanity and with respect for the inherent dignity of the human person.
2. States parties shall in particular:
 - (a) Ensure that youth who are detained or imprisoned or in rehabilitation centres are not subjected to torture, inhumane or degrading treatment or punishment;
 - (b) Ensure that accused minors shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status;
 - (c) Build rehabilitation facilities for accused and imprisoned youth who are still minors and house them separately from adults;
 - (d) Provide induction programmes for imprisoned youth that are based on reformation, social rehabilitation and re-integration into family life;
 - (e) Make provisions for the continued education and skills development of imprisoned young people as part of the restorative justice process.
 - (f) Ensure that accused and convicted young people are entitled to a lawyer.

Article 19: Sustainable development and protection of the environment

1. States parties shall ensure the use of sustainable methods to improve the lives of young people such that measures instituted do not jeopardise opportunities for future generations.
2. States parties shall recognise the vested interest of young people in protecting the natural environment as the inheritors of the environment. In this regard, they shall:
 - (a) Encourage the media, youth organisations, in partnership with national and international organisations, to produce, exchange and disseminate information on environmental preservation and best practices to protect the environment;
 - (b) Train youth in the use of technologies that protect and conserve the environment;
 - (c) Support youth organisations in instituting programmes that encourage environmental preservation such as waste reduction, recycling and tree planting programmes;
 - (d) Facilitate youth participation in the design, implementation and evaluation of environmental policies including the conservation of African natural resources at local, national, regional and international levels;
 - (e) Develop realistic and flexible strategies for the regeneration of forests;
 - (f) Initiate intensive actions to prevent the expansion of deserts.

Article 20: Youth and culture

1. States parties shall take the following steps to promote and protect the morals and traditional values recognised by the community:
 - (a) Eliminate all traditional practices that undermine the physical integrity and dignity of women;
 - (b) Recognise and value beliefs and traditional practices that contribute to development;
 - (c) Establish institutions and programmes for the development, documentation, preservation and dissemination of culture;
 - (d) Work with educational institutions, youth organisations, the media and other partners to raise awareness of and teach and inform young people about African culture, values and indigenous knowledge;
 - (e) Harness the creativity of youth to promote local cultural values and traditions by representing them in a format acceptable to youth and in a language and in forms to which youth are able to relate;

(f) Introduce and intensify teaching in African languages in all forms of education as a means to accelerate economic, social, political and cultural development;

(g) Promote inter-cultural awareness by organising exchange programmes between young people and youth organisations within and across states parties.

2. States parties recognise that the shift towards a knowledge-based economy is dependent on information and communication technology which in turn has contributed towards a dynamic youth culture and global consciousness. In this regard, they shall:

(a) Promote widespread access to information and communication technology as a means for education, employment creation, interacting effectively with the world and building understanding, tolerance and appreciation of other youth cultures;

(b) Encourage the local production of and access to information and communication technology content;

(c) Engage young people and youth organisations to understand the nexus between contemporary youth culture and traditional African culture, and enable them to express this fusion through drama, art, writing, music and other cultural and artistic forms;

(d) Help young people to use positive elements of globalisation such as science and technology and information and communication technology to promote new cultural forms that link the past to the future.

Article 21: Youth in the diaspora

States parties shall recognise the right of young people to live anywhere in the world. In this regard, they shall:

(a) Promote the equivalence of degrees between African educational institutions to enable the youth to study and work in state parties;

(b) Promote the recruitment of African youth with specialised skills, in the spirit of African solutions for African problems, according to national policies and priorities;

(c) Facilitate youth organisations to liaise and collaborate with the African youth diaspora;

(d) Establish structures that encourage and assist the youth in the diaspora to return to and fully re-integrate into the social and economic life in Africa;

(e) Promote and protect the rights of young people living in the diaspora;

(f) Encourage young people in the diaspora to engage themselves in development activities in their country of origin.

Article 22: Leisure, recreation, sportive and cultural activities

1. Young people shall have the right to rest and leisure and to engage in play and recreational activities that are part of a health lifestyle as well as to participate freely in sport, physical education drama, the arts, music and other forms of cultural life. In this regard, states parties shall:

(a) Make provision for equal access for young men and young women to sport, physical education, cultural, artistic, recreational and leisure activities;

(b) Put in place adequate infrastructure and services in rural and urban areas for youth to participate in sport, physical education, cultural, artistic, recreational and leisure activities.

Article 23: Girls and young women

1. States parties acknowledge the need to eliminate discrimination against girls and young women according to obligations stipulated in various international, regional and national human rights conventions and

instruments designed to protect and promote women's rights. In this regard, they shall:

- (a) Introduce legislative measures that eliminate all forms of discrimination against girls and young women and ensure their human rights and fundamental freedoms;
- (b) Ensure that girls and young women are able to participate actively, equally and effectively with boys at all levels of social, educational, economic, political, cultural, civic life and leadership as well as scientific endeavours;
- (c) Institute programmes to make girls and young women aware of their rights and of opportunities to participate as equal members of society;
- (d) Guarantee universal and equal access to and completion of a minimum of nine years of formal education;
- (e) Guarantee equal access to and completion of vocational, secondary and higher education in order to effectively address the existing imbalance between young men and women in certain professions;
- (f) Ensure that education material and teaching practices are gender sensitive and encourage girls and young women to undertake studies in the sciences;
- (g) Provide educational systems that do not impede girls and young women, including married and/or pregnant young women, from attending;
- (h) Take steps to provide equal access to health care services and nutrition for girls and young women;
- (i) Protect girls and young women from economic exploitation and from performing work that is hazardous, takes them away from education or that is harmful to their mental or physical health;
- (j) Offer equal access to young women to employment and promote their participation in all sectors of employment;
- (k) Introduce special legislation and programmes of action that make available opportunities to girls and young women including access to education as a prerequisite and a priority for rapid social and economic development;
- (l) Enact and enforce legislation that protect girls and young women from all forms of violence, genital mutilation, incest, rape, sexual abuse, sexual exploitation, trafficking, prostitution and pornography;
- (m) Develop programmes of action that provide legal, physical and psychological support to girls and young women who have been subjected to violence and abuse such that they can fully re-integrate into social and economic life;
- (n) Secure the right for young women to maternity leave.

Article 24: Mentally and physically challenged youth

1. States parties recognise the right of mentally and physically challenged youth to special care and shall ensure that they have equal and effective access to education, training, health care services, employment, sport, physical education and cultural and recreational activities.
2. State parties shall work towards eliminating any obstacles that may have negative implications for the full integration of mentally and physically challenged youth into society including the provision of appropriate infrastructure and services to facilitate easy mobility.

Article 25: Elimination of harmful social and cultural practices

State parties shall take all appropriate steps to eliminate harmful social and cultural practices that affect the welfare and dignity of youth, in particular;

- (a) Customs and practices that harm the health, life or dignity of the youth;

- (b) Customs and practices discriminatory to youth on the basis of gender, age or other status.

Article 26: Responsibilities of youth

Every young person shall have responsibilities towards his family and society, the state, and the international community. Youth shall have the duty to:

- (a) Become the custodians of their own development;
- (b) Protect and work for family life and cohesion;
- (c) Have full respect for parents and elders and assist them anytime in cases of need in the context of positive African values;
- (d) Partake fully in citizenship duties including voting, decision making and governance;
- (e) Engage in peer-to-peer education to promote youth development in areas such as literacy, use of information and communication technology, HIV/AIDS prevention, violence prevention and peace building;
- (f) Contribute to the promotion of the economic development of states parties and Africa by placing their physical and intellectual abilities at its service;
- (g) Espouse an honest work ethic and reject and expose corruption;
- (h) Work towards a society free from substance abuse, violence, coercion, crime, degradation, exploitation and intimidation;
- (i) Promote tolerance, understanding, dialogue, consultation and respect for others regardless of age, race, ethnicity, colour, gender, ability, religion, status or political affiliation;
- (j) Defend democracy, the rule of law and all human rights and fundamental freedoms;
- (k) Encourage a culture of voluntarism and human rights protection as well as participation in civil society activities;
- (l) Promote patriotism towards and unity and cohesion of Africa;
- (m) Promote, preserve and respect African traditions and cultural heritage and pass on this legacy to future generations;
- (n) Become the vanguard of re-presenting cultural heritage in languages and in forms to which youth are able to relate;
- (o) Protect the environment and conserve nature.

Article 27: Popularisation of the Charter

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

Article 28: Duties of the African Union Commission

The African Union Commission shall ensure that states parties respect the commitments made and fulfil the duties outlined in the present Charter by:

- (a) Collaborating with governmental, non-governmental institutions and developmental partners to identify best practices on youth policy formulation and implementation and encouraging the adaptation of principles and experiences among states parties;
- (b) Inviting states parties to include youth representatives as part of their delegations to the ordinary sessions of the African Union and other relevant meetings of the policy organs to broaden the channels of communication and enhance the discussion of youth-related issues;
- (c) Instituting measures to create awareness of its activities and make information on its activities more readily available and accessible to youth;

(d) Facilitating exchange and co-operation between youth organisations across national borders in order to develop regional youth solidarity, political consciousness and democratic participation in collaboration with development partners.

PART 2: FINAL PROVISIONS

Article 29: Savings clause

Nothing in this Charter shall be taken as minimising higher standards and values contained in other relevant human rights instruments ratified by states concerned or national law or policies.

Article 30: Signature, ratification or adherence

1. The present Charter shall be open to signature by all the member states. The present Charter shall be subject to ratification or accession by member states. The instrument of ratification or accession to the present Charter shall be deposited with the Chairperson of the Commission.

2. The present Charter shall come into force thirty (30) days after the deposit with the Chairperson of the Commission of the instruments of ratification of fifteen (15) member states.

Article 31: Amendment and revision of the Charter

1. The present Charter may be amended or revised if any member state makes a written request to that effect to the Chairperson of the Commission, provided that the proposed amendment is not submitted to the Assembly of the Union for consideration until all member states have been duly notified of it.

2. An amendment shall be approved by a simple majority of the member states. Such amendment shall come into force for each member states that has ratified or acceded to it on the date of the deposit of its instrument of ratification.

African Charter on Democracy, Elections and Governance (2007/2012)

Adopted in Addis Ababa, Ethiopia, on 30 January 2007 and entered into force on 15 February 2012.
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Preamble

We, the member states of the African Union (AU);

Inspired by the objectives and principles enshrined in the Constitutive Act of the African Union, particularly articles 3 and 4, which emphasise the significance of good governance, popular participation, the rule of law and human rights;

Recognising the contributions of the African Union and Regional Economic Communities to the promotion, nurturing, strengthening and consolidation of democracy and governance;

Reaffirming our collective will to work relentlessly to deepen and consolidate the rule of law, peace, security and development in our countries;
Guided by our common mission to strengthen and consolidate institutions for good governance, continental unity and solidarity;
Committed to promote the universal values and principles of democracy, good governance, human rights and the right to development;
Cognizant of the historical and cultural conditions in Africa;
Seeking to entrench in the continent a political culture of change of power based on the holding of regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies;
Concerned about the unconstitutional changes of governments that are one of the essential causes of insecurity, instability and violent conflict in Africa;
Determined to promote and strengthen good governance through the institutionalisation of transparency, accountability and participatory democracy;
Convinced of the need to enhance the election observation missions in the role they play, particularly as they are an important contributory factor to ensuring the regularity, transparency and credibility of elections;
Desirous to enhance the relevant declarations and decisions of the OAU/AU (including the 1990 Declaration on the political and socio-economic situation in Africa and the fundamental changes taking place in the world, the 1995 Cairo Agenda for the Re-launch of Africa's Economic and Social Development, the 1999 Algiers Declaration on Unconstitutional Changes of Government, the 2000 Lomé Declaration for an OAU Response to Unconstitutional Changes of Government, the 2002 OAU/AU Declaration on Principles Governing Democratic Elections in Africa, the 2003 Protocol Relating to the Establishment of the Peace and Security Council of the African Union);
Committed to implementing Decision EX.CL/Dec.31(III) adopted in Maputo, Mozambique, in July 2003 and Decision EX.CL/124(V) adopted in Addis Ababa, Ethiopia, in May 2004 respectively, by the adoption of an African Charter on Democracy, Elections and Governance;

HAVE AGREED as follows:

CHAPTER 1: Definitions

Article 1

In this Charter, unless otherwise stated, the following expressions shall have the following meaning:

'AU' means the African Union;

'African Human Rights Commission' means the African Commission on Human and Peoples' Rights;

'African Peer Review Mechanism' APRM means the African Peer Review Mechanism;

'Assembly' means the Assembly of Heads of State and Government of the African Union;

'Commission' means the Commission of the Union;

'Constitutive Act' means the Constitutive Act of the Union;

'Charter' means the African Charter on Democracy, Elections and Governance;

'Member states' means the member states of the African Union;

'National Electoral Body' means a competent authority, established by the relevant legal instruments of a state party, responsible for organising and supervising elections;

'NEPAD' means the New Partnership for Africa's Development;

‘Peace and Security Council’ means the Peace and Security Council of the African Union;

‘Regional Economic Communities’ means the regional integration blocs of the African Union;

‘State party’ means any member state of the African Union which has ratified or acceded to this Charter and deposited the instruments for ratification or accession with the Chairperson of the African Union Commission;

‘Union’ means the African Union.

CHAPTER 2: Objectives

Article 2

The objectives of this Charter are to:

1. Promote adherence, by each state party, to the universal values and principles of democracy and respect for human rights;
2. Promote and enhance adherence to the principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutional order in the political arrangements of the state parties;
3. Promote the holding of regular free and fair elections to institutionalise legitimate authority of representative government as well as democratic change of governments;
4. Prohibit, reject and condemn unconstitutional change of government in any member state as a serious threat to stability, peace, security and development;
5. Promote and protect the independence of the judiciary;
6. Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance;
7. Encourage effective coordination and harmonisation of governance policies amongst state parties with the aim of promoting regional and continental integration;
8. Promote state parties’ sustainable development and human security;
9. Promote the fight against corruption in conformity with the provisions of the AU Convention on Preventing and Combating Corruption adopted in Maputo, Mozambique in July 2003;
10. Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;
11. Promote gender balance and equality in the governance and development processes;
12. Enhance co-operation between the Union, Regional Economic Communities and the International Community on democracy, elections and governance; and
13. Promote best practices in the management of elections for purposes of political stability and good governance.

CHAPTER 3: Principles

Article 3

State parties shall implement this Charter in accordance with the following principles:

1. Respect for human rights and democratic principles;
2. Access to and exercise of state power in accordance with the constitution of the state party and the principle of the rule of law;
3. Promotion of a system of government that is representative;
4. Holding of regular, transparent, free and fair elections;

5. Separation of powers;
6. Promotion of gender equality in public and private institutions;
7. Effective participation of citizens in democratic and development processes and in governance of public affairs;
8. Transparency and fairness in the management of public affairs;
9. Condemnation and rejection of acts of corruption, related offenses and impunity;
10. Condemnation and total rejection of unconstitutional changes of government;
11. Strengthening political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.

CHAPTER 4: Democracy, Rule of Law and Human Rights

Article 4

1. State parties shall commit themselves to promote democracy, the principle of the rule of law and human rights.
2. State parties shall recognise popular participation through universal suffrage as the inalienable right of the people.

Article 5

State parties shall take all appropriate measures to ensure constitutional rule, particularly constitutional transfer of power.

Article 6

State parties shall ensure that citizens enjoy fundamental freedoms and human rights taking into account their universality, interdependence and indivisibility.

Article 7

State parties shall take all necessary measures to strengthen the organs of the Union that are mandated to promote and protect human rights and to fight impunity and endow them with the necessary resources.

Article 8

1. State parties shall eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance.
2. State parties shall adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalised and vulnerable social groups.
3. State parties shall respect ethnic, cultural and religious diversity, which contributes to strengthening democracy and citizen participation.

Article 9

State parties undertake to design and implement social and economic policies and programmes that promote sustainable development and human security.

Article 10

1. State parties shall entrench the principle of the supremacy of the constitution in the political organisation of the state.
2. State parties shall ensure that the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum.

3. State parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society.

CHAPTER 5: The Culture of Democracy and Peace

Article 11

The state parties undertake to develop the necessary legislative and policy frameworks to establish and strengthen a culture of democracy and peace.

Article 12

State parties undertake to implement programmes and carry out activities designed to promote democratic principles and practices as well as consolidate a culture of democracy and peace.

To this end, state parties shall:

1. Promote good governance by ensuring transparent and accountable administration.
2. Strengthen political institutions to entrench a culture of democracy and peace.
3. Create conducive conditions for civil society organisations to exist and operate within the law.
4. Integrate civic education in their educational curricula and develop appropriate programmes and activities.

Article 13

State parties shall take measures to ensure and maintain political and social dialogue, as well as public trust and transparency between political leaders and the people, in order to consolidate democracy and peace.

CHAPTER 6: Democratic Institutions

Article 14

1. State parties shall strengthen and institutionalise constitutional civilian control over the armed and security forces to ensure the consolidation of democracy and constitutional order.
2. State parties shall take legislative and regulatory measures to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.
3. State parties shall co-operate with each other to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.

Article 15

1. State parties shall establish public institutions that promote and support democracy and constitutional order.
2. State parties shall ensure that the independence or autonomy of the said institutions is guaranteed by the constitution.
3. State parties shall ensure that these institutions are accountable to competent national organs.
4. State parties shall provide the above-mentioned institutions with resources to perform their assigned missions efficiently and effectively.

Article 16

State parties shall co-operate at regional and continental levels in building and consolidating democracy through exchange of experiences.

CHAPTER 7: Democratic Elections

Article 17

State parties re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa:

To this end, state parties shall:

1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections;
2. Establish and strengthen national mechanisms that redress election-related disputes in a timely manner;
3. Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections;
4. Ensure that there is a binding code of conduct governing legally recognised political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them in through exclusively legal channels.

Article 18

1. State parties may request the Commission, through the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund, to provide advisory services or assistance for strengthening and developing their electoral institutions and processes.
2. The Commission may at any time, in consultation with the state party concerned, send special advisory missions to provide assistance to that state party for strengthening its electoral institutions and processes.

Article 19

1. Each state party shall inform the Commission of scheduled elections and invite it to send an electoral observer mission.
2. Each state party shall guarantee conditions of security, free access to information, non-interference, freedom of movement and full co-operation with the electoral observer mission.

Article 20

The Chairperson of the Commission shall first send an exploratory mission during the period prior to elections. This mission shall obtain any useful information and documentation, and brief the Chairperson, stating whether the necessary conditions have been established and if the environment is conducive to the holding of transparent, free and fair elections in conformity with the principles of the Union governing democratic elections.

Article 21

1. The Commission shall ensure that these missions are independent and shall provide them with the necessary resources for that purpose.
2. Electoral observer missions shall be conducted by appropriate and competent experts in the area of election monitoring, drawn from continental and national institutions such as, but not limited to, the Pan-African Parliament, national electoral bodies, national legislatures and eminent persons taking due cognizance of the principles of regional representation and gender equality.
3. Electoral observer missions shall be conducted in an objective, impartial and transparent manner.

4. All electoral observer missions shall present the report of their activities to the Chairperson of the Commission within a reasonable time.
5. A copy of the report shall be submitted to the state party concerned within a reasonable time.

Article 22

State parties shall create a conducive environment for independent and impartial national monitoring or observation mechanisms.

CHAPTER 8: Sanctions in Cases of Unconstitutional Changes of Government

Article 23

State parties agree that the use of, *inter alia*, the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union:

1. Any *putsch* or *coup d'état* against a democratically elected government;
2. Any intervention by mercenaries to replace a democratically elected government;
3. Any replacement of a democratically elected government by armed dissidents or rebels;
4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections;
5. Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.

Article 24

When a situation arises in a state party that may affect its democratic political institutional arrangements or the legitimate exercise of power, the Peace and Security Council shall exercise its responsibilities in order to maintain the constitutional order in accordance with relevant provisions of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, hereinafter referred to as the Protocol.

Article 25

1. When the Peace and Security Council observes that there has been an unconstitutional change of government in a state party, and that diplomatic initiatives have failed, it shall suspend the said state party from the exercise of its right to participate in the activities of the Union in accordance with the provisions of articles 30 of the Constitutive Act and 7(g) of the Protocol. The suspension shall take effect immediately.
2. However, the suspended state party shall continue to fulfill its obligations to the Union, in particular with regard to those relating to respect of human rights.
3. Notwithstanding the suspension of the state party, the Union shall maintain diplomatic contacts and take any initiatives to restore democracy in that state party.
4. The perpetrators of unconstitutional change of government shall not be allowed to participate in elections held to restore the democratic order or hold any position of responsibility in political institutions of their state.
5. Perpetrators of unconstitutional change of government may also be tried before the competent court of the Union.
6. The Assembly shall impose sanctions on any member state that is proved to have instigated or supported unconstitutional change of government in another state in conformity with article 23 of the Constitutive Act.

7. The Assembly may decide to apply other forms of sanctions on perpetrators of unconstitutional change of government including punitive economic measures.

8. State parties shall not harbour or give sanctuary to perpetrators of unconstitutional changes of government.

9. State parties shall bring to justice the perpetrators of unconstitutional changes of government or take necessary steps to effect their extradition.

10. State parties shall encourage conclusion of bilateral extradition agreements as well as the adoption of legal instruments on extradition and mutual legal assistance.

Article 26

The Peace and Security Council shall lift sanctions once the situation that led to the suspension is resolved.

CHAPTER 9: Political, Economic and Social Governance

Article 27

In order to advance political, economic and social governance, state parties shall commit themselves to:

1. Strengthening the capacity of parliaments and legally recognised political parties to perform their core functions;

2. Fostering popular participation and partnership with civil society organisations;

3. Undertaking regular reforms of the legal and justice systems;

4. Improving public sector management;

5. Improving efficiency and effectiveness of public services and combating corruption;

6. Promoting the development of the private sector through, inter alia, enabling legislative and regulatory framework;

7. Development and utilisation of information and communication technologies;

8. Promoting freedom of expression, in particular freedom of the press and fostering a professional media;

9. Harnessing the democratic values of the traditional institutions; and

10. Preventing the spread and combating the impact of diseases such as malaria, tuberculosis, HIV/AIDS, ebola fever, and avian flu.

Article 28

State parties shall ensure and promote strong partnerships and dialogue between government, civil society and private sector.

Article 29

1. State parties shall recognise the crucial role of women in development and strengthening of democracy.

2. State parties shall create the necessary conditions for full and active participation of women in the decision-making processes and structures at all levels as a fundamental element in the promotion and exercise of a democratic culture.

3. State parties shall take all possible measures to encourage the full and active participation of women in the electoral process and ensure gender parity in representation at all levels, including legislatures.

Article 30

State parties shall promote citizen participation in the development process through appropriate structures.

Article 31

1. State parties shall promote participation of social groups with special needs, including the youth and people with disabilities, in the governance process.
2. State parties shall ensure systematic and comprehensive civic education in order to encourage full participation of social groups with special needs in democracy and development processes.

Article 32

State parties shall strive to institutionalise good political governance through:

1. Accountable, efficient and effective public administration;
2. Strengthening the functioning and effectiveness of parliaments;
3. An independent judiciary;
4. Relevant reforms of public institutions including the security sector;
5. Harmonious relationships in society including civil-military relations;
6. Consolidating sustainable multiparty political systems;
7. Organising regular, free and fair elections; and
8. Entrenching and respecting the principle of the rule of law.

Article 33

State parties shall institutionalise good economic and corporate governance through, *inter alia*:

1. Effective and efficient public sector management;
2. Promoting transparency in public finance management;
3. Preventing and combating corruption and related offences;
4. Efficient management of public debt;
5. Prudent and sustainable utilisation of public resources;
6. Equitable allocation of the nation's wealth and natural resources;
7. Poverty alleviation;
8. Enabling legislative and regulatory framework for private sector development;
9. Providing a conducive environment for foreign capital inflows;
10. Developing tax policies that encourage investment;
11. Preventing and combating crime;
12. Elaborating and implementing economic development strategies including private-public sector partnerships;
13. An efficient and effective tax system premised upon transparency and accountability.

Article 34

State parties shall decentralise power to democratically elected local authorities as provided in national laws.

Article 35

Given the enduring and vital role of traditional authorities, particularly in rural communities, the state parties shall strive to find appropriate ways and means to increase their integration and effectiveness within the larger democratic system.

Article 36

State parties shall promote and deepen democratic governance by implementing the principles and core values of the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance and, where applicable, the African Peer Review Mechanism (APRM).

Article 37

State parties shall pursue sustainable development and human security through achievement of NEPAD objectives and the United Nations Millennium Development Goals (MDGs).

Article 38

1. State parties shall promote peace, security and stability in their respective countries, regions and in the continent by fostering participatory political systems with well-functioning and, if need be, inclusive institutions;
2. State parties shall promote solidarity amongst member states and support the conflict prevention and resolution initiatives that the Union may undertake in conformity with the Protocol establishing the Peace and Security Council.

Article 39

State parties shall promote a culture of respect, compromise, consensus and tolerance as a means to mitigate conflicts, promote political stability and security, and to harness the creative energies of the African peoples.

Article 40

State parties shall adopt and implement policies, strategies and programmes required to generate productive employment, mitigate the impact of diseases and alleviate poverty and eradicate extreme poverty and illiteracy.

Article 41

State parties shall undertake to provide and enable access to basic social services to the people.

Article 42

State parties shall implement policies and strategies to protect the environment to achieve sustainable development for the benefit of the present and future generations. In this regard, state parties are encouraged to accede to the relevant treaties and other international legal instruments.

Article 43

1. State parties shall endeavour to provide free and compulsory basic education to all, especially girls, rural inhabitants, minorities, people with disabilities and other marginalised social groups.
2. In addition, state parties shall ensure the literacy of citizens above compulsory school age, particularly women, rural inhabitants, minorities, people with disabilities, and other marginalised social groups.

CHAPTER 10: Mechanisms for Application

Article 44

To give effect to the commitments contained in this Charter:

1. Individual state party level:
State parties commit themselves to implement the objectives, apply the principles and respect the commitments enshrined in this Charter as follows:
 - (a) State parties shall initiate appropriate measures including legislative, executive and administrative actions to bring state parties' national laws and regulations into conformity with this Charter;
 - (b) State parties shall take all necessary measures in accordance with constitutional provisions and procedures to ensure the wider dissemination of

the Charter and all relevant legislation as may be necessary for the implementation of its fundamental principles;

(c) State parties shall promote political will as a necessary condition for the attainment of the goals set forth in this Charter;

(d) State parties shall incorporate the commitments and principles of the Charter in their national policies and strategies.

2. Commission Level:

A. At Continental Level

(a) The Commission shall develop benchmarks for implementation of the commitments and principles of this Charter and evaluate compliance by state parties;

(b) The Commission shall promote the creation of favourable conditions for democratic governance in the African continent, in particular by facilitating the harmonisation of policies and laws of state parties;

(c) The Commission shall take the necessary measures to ensure that the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund provide the needed assistance and resources to state parties in support of electoral processes;

(d) The Commission shall ensure that effect is given to the decisions of the Union in regard to unconstitutional change of government on the Continent.

B. At Regional Level

The Commission shall establish a framework for co-operation with Regional Economic Communities on the implementation of the principles of the Charter. In this regard, it shall commit the Regional Economic Communities (RECs) to:

(a) Encourage member states to ratify or adhere to this Charter;

(b) Designate focal points for coordination, evaluation and monitoring of the implementation of the commitments and principles enshrined in this Charter in order to ensure massive participation of stakeholders, particularly civil society organisations, in the process.

Article 45

The Commission shall:

(a) Act as the central coordinating structure for the implementation of this Charter;

(b) Assist state parties in implementing the Charter;

(c) Coordinate evaluation on implementation of the Charter with other key organs of the Union including the Pan-African Parliament, the Peace and Security Council, the African Human Rights Commission, the African Court of Justice and Human Rights, the Economic, Social and Cultural Council, the Regional Economic Communities and appropriate national-level structures.

CHAPTER 11: Final Clauses

Article 46

In conformity with applicable provisions of the Constitutive Act and the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, the Assembly and the Peace and Security Council shall determine the appropriate measures to be imposed on any state party that violates this Charter.

Article 47

1. This Charter shall be open for signature, ratification and accession by member states of the Union in accordance with their respective constitutional procedures.

2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission.

Article 48

This Charter shall enter into force thirty (30) days after the deposit of fifteen (15) instruments of ratification.

Article 49

1. State parties shall submit every two years, from the date the Charter comes into force, a report to the Commission on the legislative or other relevant measures taken with a view to giving effect to the principles and commitments of the Charter;

2. A copy of the report shall be submitted to the relevant organs of the Union for appropriate action within their respective mandates;

3. The Commission shall prepare and submit to the Assembly, through the Executive Council, a synthesised report on the implementation of the Charter;

4. The Assembly shall take appropriate measures aimed at addressing issues raised in the report.

Article 50

1. Any state party may submit proposals for the amendment or revision of this Charter;

2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit same to state parties within thirty (30) days of receipt thereof;

3. The Assembly, upon the advice of the Executive Council, shall examine these proposals at its session following notification, provided all state parties have been notified at least three (3) months before the beginning of the session;

4. The Assembly shall adopt amendments or revisions by consensus or failing which, by two-thirds majority;

5. The amendments or revisions shall enter into force when approved by two-thirds majority of state parties.

Article 51

1. The Chairperson of the Commission shall be the depository of this Charter;

2. The Chairperson of the Commission shall inform all member states of the signature, ratification, accession, entry into force, reservations, requests for amendments and approvals thereof;

3. Upon entry into force of this Charter, the Chairperson of the Commission shall register it with the Secretary General of the United Nations in accordance with article 102 of the Charter of the United Nations.

Article 52

None of the provisions of the present Charter shall affect more favourable provisions relating to democracy, elections and governance contained in the national legislation of state parties or in any other regional, continental or international conventions or agreements applicable in these state parties.

Article 53

This Charter, drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit certified copies of same to all member states and the United Nations General Secretariat.

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009/2012)

Adopted by a special summit of the African Union in Kampala, Uganda on 23 October 2009. The Convention is the first international treaty on internally displaced persons. The Convention entered into force on 6 December 2012.

Preamble

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

Conscious of the gravity of the situation of internally displaced persons as a source of continuing instability and tension for African states;

Also conscious of the suffering and specific vulnerability of internally displaced persons;

Reiterating the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities;

Committed to sharing our common vision of providing durable solutions to situations of internally displaced persons by establishing an appropriate legal framework for their protection and assistance;

Determined to adopt measures aimed at preventing and putting an end to the phenomenon of internal displacement by eradicating the root causes, especially persistent and recurrent conflicts as well as addressing displacement caused by natural disasters, which have a devastating impact on human life, peace, stability, security, and development;

Considering the 2000 Constitutive Act of the African Union and the 1945 Charter of the United Nations;

Reaffirming the principle of the respect of the sovereign equality of states parties, their territorial integrity and political independence as stipulated in the Constitutive Act of the African Union and the United Nations Charter;

Recalling the 1948 Universal Declaration of Human Rights, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Conventions and the 1977 Additional Protocols to the Geneva Conventions, the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1981 African Charter on Human and Peoples' Rights and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 1990 African Charter on the Rights and Welfare of the Child, the 1994 Addis Ababa Document on Refugees and Forced Population Displacement in Africa, and other relevant United Nations and African Union human rights instruments, and relevant Security Council resolutions;

Mindful that member states of the African Union have adopted democratic practices and adhere to the principles of non-discrimination, equality and equal protection of the law under the 1981 African Charter on Human and Peoples' Rights, as well as under other regional and international human rights law instruments;

Recognising the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set

out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognised as an important international framework for the protection of internally displaced persons;

Affirming our primary responsibility and commitment to respect, protect and fulfil the rights to which internally displaced persons are entitled, without discrimination of any kind;

Noting the specific roles of international organisations and agencies within the framework of the United Nations inter-agency collaborative approach to internally displaced persons, especially the protection expertise of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the invitation extended to it by the Executive Council of the African Union in Decision EX/CL.413 (XIII) of July 2008 at Sharm El Sheikh, Egypt, to continue and reinforce its role in the protection of and assistance to internally displaced persons, within the United Nations coordination mechanism; and noting also the mandate of the International Committee of the Red Cross to protect and assist persons affected by armed conflict and other situations of violence, as well as the work of civil society organisations, in conformity with the laws of the country in which they exercise such roles and mandates;

Recalling the lack of a binding African and international legal and institutional framework specifically, for the prevention of internal displacement and the protection of and assistance to internally displaced persons;

Reaffirming the historical commitment of the AU member states to the protection of and assistance to refugees and displaced persons and, in particular, the implementation of Executive Council decisions EX.CL/Dec.129 (V) and EX.CL/127 (V) of July 2004 in Addis Ababa, to the effect that that the specific needs of internally displaced persons (IDPs) such as protection and assistance should be addressed through a separate legal instrument, and to collaborate with relevant cooperating partners and other stakeholders to ensure that internally displaced persons are provided with an appropriate legal framework to ensure their adequate protection and assistance as well as with durable solutions, respectively;

Convinced that the present Convention for the Protection and Assistance of Internally Displaced Persons presents such a legal framework;

HAVE AGREED AS FOLLOWS:

Article 1: Definitions

For the purpose of the present Convention:

- (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) 'African Court of Justice and Human Rights' means the African Court of Justice and Human Rights;
- (d) 'Arbitrary displacement' means arbitrary displacement as referred to in article 4(4)(a) to (h);
- (e) 'Armed groups' means dissident armed forces or other organised armed groups that are distinct from the armed forces of the state;
- (f) 'AU' means the African Union;
- (g) 'AU Commission' means the Secretariat of the African Union, which is the depository of the regional instruments;
- (h) 'Child' means every human being below the age of 18 years;
- (i) 'Constitutive Act' means the Constitutive Act of the African Union;
- (j) 'Harmful practices' means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not

limited to their right to life, health, dignity, education, mental and physical integrity and education;

(k) 'Internally displaced persons' means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border;

(l) 'Internal displacement' means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised state borders;

(m) 'Member state' means a member state of the African Union;

(n) 'Non-state actors' means private actors who are not public officials of the state, including other armed groups not referred to in article 1(e) above, and whose acts cannot be officially attributed to the state;

(o) 'OAU' means the Organization of African Unity;

(p) 'Women' mean persons of the female gender, including girls;

(q) 'Sphere standards' mean standards for monitoring and evaluating the effectiveness and impact of humanitarian assistance; and

(r) 'States parties' means African states which have ratified or acceded to this Convention.

Article 2: Objectives

The objectives of this Convention are to:

(a) Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;

(b) Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa;

(c) Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the states parties in order to combat displacement and address its consequences;

(d) Provide for the obligations and responsibilities of states parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons;

(e) Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organisations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons.

Article 3: General obligations relating to states parties

1. States parties undertake to respect and ensure respect for the present Convention. In particular, states parties shall:

(a) Refrain from, prohibit and prevent arbitrary displacement of populations;

(b) Prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion;

(c) Respect and ensure respect for the principles of humanity and human dignity of internally displaced persons;

(d) Respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law;

(e) Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons;

- (f) Respect and ensure respect for the humanitarian and civilian character of the protection of and assistance to internally displaced persons, including ensuring that such persons do not engage in subversive activities;
- (g) Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law;
- (h) Ensure the accountability of non-state actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;
- (i) Ensure the accountability of non-state actors involved in the exploration and exploitation of economic and natural resources leading to displacement;
- (j) Ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organisations and personnel;
- (k) Promote self-reliance and sustainable livelihoods amongst internally displaced persons, provided that such measures shall not be used as a basis for neglecting the protection of and assistance to internally displaced persons, without prejudice to other means of assistance;

2. States parties shall:

- (a) Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law;
- (b) Designate an authority or body, where needed, responsible for coordinating activities aimed at protecting and assisting internally displaced persons and assign responsibilities to appropriate organs for protection and assistance, and for cooperating with relevant international organisations or agencies, and civil society organisations, where no such authority or body exists;
- (c) Adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, taking into account the needs of host communities;
- (d) Provide, to the extent possible, the necessary funds for protection and assistance without prejudice to receiving international support;
- (e) Endeavour to incorporate the relevant principles contained in this Convention into peace negotiations and agreements for the purpose of finding sustainable solutions to the problem of internal displacement.

Article 4: Obligations of states parties relating to protection from internal displacement

- 1. States parties shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons;
- 2. States parties shall devise early warning systems, in the context of the continental early warning system, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures and, where necessary, provide immediate protection and assistance to internally displaced persons;
- 3. States parties may seek the cooperation of international organisations or humanitarian agencies, civil society organisations and other relevant actors;
- 4. All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but are not limited to:

- (a) Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;
 - (b) Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
 - (c) Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
 - (d) Displacement caused by generalised violence or violations of human rights;
 - (e) Displacement as a result of harmful practices;
 - (f) Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
 - (g) Displacement used as a collective punishment;
 - (h) Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.
5. States parties shall endeavour to protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests;
6. States parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.

Article 5: Obligations of states parties relating to protection and assistance

1. States parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind.
2. States parties shall cooperate with each other upon the request of the concerned state party or the conference of state parties in protecting and assisting internally displaced persons.
3. States parties shall respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organisations in providing protection and assistance to internally displaced persons, in accordance with international law.
4. States parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.
5. States parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities, in cooperation with international organisations or agencies.
6. States parties shall provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organisations and humanitarian agencies, civil society organisations and other relevant actors. Such organisations may offer their services to all those in need.
7. States parties shall take necessary steps to effectively organise relief action that is humanitarian and impartial in character, and guarantee security. States parties shall allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons. States parties shall also enable and facilitate the role of local and

international organisations and humanitarian agencies, civil society organisations and other relevant actors, to provide protection and assistance to internally displaced persons. States parties shall have the right to prescribe the technical arrangements under which such passage is permitted.

8. States parties shall uphold and ensure respect for the humanitarian principles of humanity, neutrality, impartiality and independence of humanitarian actors.

9. States parties shall respect the right of internally displaced persons to peacefully request or seek protection and assistance, in accordance with relevant national and international laws, a right for which they shall not be persecuted, prosecuted or punished.

10. States parties shall respect, protect and not attack or otherwise harm humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons.

11. States parties shall take measures aimed at ensuring that armed groups act in conformity with their obligations under article 7.

12. Nothing in this article shall prejudice the principles of sovereignty and territorial integrity of states.

Article 6: Obligations relating to international organisations and humanitarian agencies

1. International organisations and humanitarian agencies shall discharge their obligations under this Convention in conformity with international law and the laws of the country in which they operate.

2. In providing protection and assistance to internally displaced persons, international organisations and humanitarian agencies shall respect the rights of such persons in accordance with international law.

3. International organisations and humanitarian agencies shall be bound by the principles of humanity, neutrality, impartiality and independence of humanitarian actors, and ensure respect for relevant international standards and codes of conduct.

Article 7: Protection and assistance to internally displaced persons in situations of armed conflict

1. The provisions of this article shall not, in any way whatsoever, be construed as affording legal status or legitimising or recognising armed groups and are without prejudice to the individual criminal responsibility of the members of such groups under domestic or international criminal law.

2. Nothing in this Convention shall be invoked for the purpose of affecting the sovereignty of a state or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the state or to defend the national unity and territorial integrity of the state.

3. The protection and assistance to internally displaced persons under this article shall be governed by international law and in particular international humanitarian law.

4. Members of armed groups shall be held criminally responsible for their acts which violate the rights of internally displaced persons under international law and national law.

5. Members of armed groups shall be prohibited from:

- (a) Carrying out arbitrary displacement;
- (b) Hampering the provision of protection and assistance to internally displaced persons under any circumstances;
- (c) Denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family;

- (d) Restricting the freedom of movement of internally displaced persons within and outside their areas of residence;
- (e) Recruiting children or requiring or permitting them to take part in hostilities under any circumstances;
- (f) Forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children;
- (g) Impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons;
- (h) Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons and shall not destroy, confiscate or divert such materials; and
- (i) Violating the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such places.

Article 8: Obligations relating to the African Union

1. The African Union shall have the right to intervene in a member state pursuant to a decision of the Assembly in accordance with article 4(h) of the Constitutive Act in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity;
2. The African Union shall respect the right of states parties to request intervention from the Union in order to restore peace and security in accordance with article 4(j) of the Constitutive Act and thus contribute to the creation of favourable conditions for finding durable solutions to the problem of internal displacement;
3. The African Union shall support the efforts of the states parties to protect and assist internally displaced persons under this Convention. In particular, the Union shall:
 - (a) Strengthen the institutional framework and capacity of the African Union with respect to protection and assistance to internally displaced persons;
 - (b) Coordinate the mobilisation of resources for protection and assistance to internally displaced persons;
 - (c) Collaborate with international organisations and humanitarian agencies, civil society organisations and other relevant actors in accordance with their mandates, to support measures taken by states parties to protect and assist internally displaced persons;
 - (d) Cooperate directly with African states and international organisations and humanitarian agencies, civil society organisations and other relevant actors, with respect to appropriate measures to be taken in relation to the protection of and assistance to internally displaced persons;
 - (e) Share information with the African Commission on Human and Peoples' Rights on the situation of displacement, and the protection and assistance accorded to internally displaced persons in Africa; and
 - (f) Cooperate with the Special Rapporteur of the African Commission on Human and Peoples' Rights for Refugees, Returnees, IDPs and Asylum Seekers in addressing issues of internally displaced persons.

Article 9: Obligations of states parties relating to protection and assistance during internal displacement

1. States parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others:
 - (a) Discrimination against such persons in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons;

- (b) Genocide, crimes against humanity, war crimes and other violations of international humanitarian law against internally displaced persons;
- (c) Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance or torture and other forms of cruel, inhuman or degrading treatment or punishment;
- (d) Sexual and gender based violence in all its forms, notably rape, enforced prostitution, sexual exploitation and harmful practices, slavery, recruitment of children and their use in hostilities, forced labour and human trafficking and smuggling; and
- (e) Starvation.

2. States parties shall:

- (a) Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security;
- (b) Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities;
- (c) Provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases;
- (d) Take special measures to protect and provide for the reproductive and sexual health of internally displaced women as well as appropriate psychosocial support for victims of sexual and other related abuses;
- (e) Respect and ensure the right to seek safety in another part of the state and to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk;
- (f) Guarantee the freedom of movement and choice of residence of internally displaced persons, except where restrictions on such movement and residence are necessary, justified and proportionate to the requirements of ensuring security for internally displaced persons or maintaining public security, public order and public health;
- (g) Respect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons;
- (h) Take necessary measures, including the establishment of specialised mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties;
- (i) Take necessary measures to protect individual, collective and cultural property left behind by displaced persons as well as in areas where internally displaced persons are located, either within the jurisdiction of the state parties, or in areas under their effective control;
- (j) Take necessary measures to safeguard against environmental degradation in areas where internally displaced persons are located, either within the jurisdiction of the state parties, or in areas under their effective control;
- (k) States parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance;
- (l) Take necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, the right to vote and to be elected to public office; and

(m) Put in place measures for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to internally displaced persons in accordance with relevant practice, including the Sphere Standards.

3. States parties shall discharge these obligations, where appropriate, with assistance from international organisations and humanitarian agencies, civil society organisations, and other relevant actors.

Article 10: Displacement induced by projects

1. States parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors;

2. States parties shall ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects;

3. States parties shall carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.

Article 11: Obligations of states parties relating to sustainable return, local integration or relocation

1. States parties shall seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity.

2. States parties shall enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions.

3. States parties shall cooperate, where appropriate, with the African Union and international organisations or humanitarian agencies and civil society organisations, in providing protection and assistance in the course of finding and implementing solutions for sustainable return, local integration or relocation and long-term reconstruction.

4. States parties shall establish appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons.

5. States parties shall take all appropriate measures, whenever possible, to restore the lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration, and reinsertion.

Article 12: Compensation

1. States parties shall provide persons affected by displacement with effective remedies.

2. States parties shall establish an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards.

3. A state party shall be liable to make reparation to internally displaced persons for damage when such a state party refrains from protecting and assisting internally displaced persons in the event of natural disasters.

Article 13: Registration and personal documentation

1. States parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control. In doing so, states parties may collaborate with international organisations or humanitarian agencies or civil society organisations.

2. States parties shall ensure that internally displaced persons shall be issued with relevant documents necessary for the enjoyment and exercise of their rights, such as passports, personal identification documents, civil certificates, birth certificates and marriage certificates.

3. States parties shall facilitate the issuance of new documents or the replacement of documents lost or destroyed in the course of displacement, without imposing unreasonable conditions, such as requiring return to one's area of habitual residence in order to obtain these or other required documents. The failure to issue internally displaced persons with such documents shall not in any way impair the exercise or enjoyment of their human rights.

4. Women and men as well as separated and unaccompanied children shall have equal rights to obtain such necessary identity documents and shall have the right to have such documentation issued in their own names.

Article 14: Monitoring compliance

1. States parties agree to establish a Conference of states parties to this Convention to monitor and review the implementation of the objectives of this Convention.

2. States parties shall enhance their capacity for cooperation and mutual support under the auspices of the Conference of the states parties.

3. States parties agree that the Conference of the states parties shall be convened regularly and facilitated by the African Union.

4. States parties shall, when presenting their reports under article 62 of the African Charter on Human and Peoples' Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention.

FINAL PROVISIONS

Article 15: Application

1. States parties agree that except where expressly stated in this Convention, its provisions apply to all situations of internal displacement regardless of its causes.

2. States parties agree that nothing in this Convention shall be construed as affording legal status or legitimising or recognising armed groups and that its provisions are without prejudice to the individual criminal responsibility of their members under domestic or international criminal law.

Article 16: Signature, ratification and membership

1. This Convention shall be open to signature, ratification or accession by member states of the AU in accordance with their respective constitutional procedures.

2. The instruments of ratification or accession shall be deposited with the Chairperson of the African Union Commission.

Article 17: Entry into force

1. This Convention shall enter into force thirty (30) days after the deposit of the instruments of ratification or accession by fifteen (15) member states.

2. The Chairperson of the AU Commission shall notify member states of the coming into force of this Convention.

Article 18: Amendment and revision

1. States parties may submit proposals for the amendment or revision of this Convention.

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 Conference of states parties, upon advice of the Executive Council, 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 Conference of states parties by a simple majority of the states parties present and voting.
5. Amendments shall come into force thirty (30) days following the depositing of the fifteenth (15) instrument of ratification by the states parties with the Chairperson of the AU Commission.

Article 19: Denunciation

1. A state party may denounce this Convention by sending a written notification addressed to the Chairperson of the AU Commission, while indicating the reasons for such a denunciation.
2. The denunciation shall take effect one (1) year from the date when the notification was received by the Chairperson of the AU Commission, unless a subsequent date has been specified.

Article 20: Saving clause

1. No provision in this Convention shall be interpreted as affecting or undermining the right of internally displaced persons to seek and be granted asylum within the framework of the African Charter on Human and Peoples' Rights, and to seek protection, as a refugee, within the purview of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa or the 1951 UN Convention Relating to the Status of Refugees as well as the 1967 Protocol Relating to the Status of Refugees.
2. This Convention shall be without prejudice to the human rights of internally displaced persons under the African Charter on Human and Peoples' Rights and other applicable instruments of international human rights law or international humanitarian law. Similarly, it shall in no way be understood, construed or interpreted as restricting, modifying or impeding existing protection under any of the instruments mentioned herein.
3. The right of internally displaced persons to lodge a complaint with the African Commission on Human and Peoples' Rights or the African Court of Justice and Human Rights, or any other competent international body shall in no way be affected by this Convention.
4. The provisions of this Convention shall be without prejudice to the individual criminal responsibility of internally displaced persons, within the framework of national or international criminal law and their duties by virtue of the African Charter on Human and Peoples' Rights.

Article 21: Reservations

States parties shall not make or enter reservations to this Convention that are incompatible with the object and purpose of this Convention.

Article 22: Settlement of disputes

1. Any dispute or differences arising between the states parties with regard to the interpretation or application of this Convention shall be settled amicably through direct consultations between the states parties concerned. In the event of failure to settle the dispute or differences, either state may refer the dispute to the African Court of Justice and Human Rights.
2. Until such time as and when the latter shall have been established, the dispute or differences shall be submitted to the Conference of the states

parties, which will decide by consensus or, failing which, by a two-third (2/3) majority of the states parties present and voting.

Article 23: Depository

1. This Convention shall be deposited with the Chairperson of the AU Commission, who shall transmit a certified true copy of the Convention to the government of each signatory state.
2. The Chairperson of the AU Commission shall register this Convention with the United-Nations Secretary-General as soon as it comes into force.
3. This Convention is drawn up in four (4) original texts; in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic.

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 perpetrated 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 form 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 states 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.

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, Lomé, 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), Lomé, 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 evaluations.
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 state 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.au.int

Excerpts

...

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.

...

Banjul Declaration on the 25th Anniversary of the African Charter on Human and Peoples' Rights (2006)

We the Heads of State and Government of the African Union meeting in the 7th ordinary session of the Assembly, held in Banjul, The Gambia from 1 - 2 July 2006;

Noting the fact that this year marks the twenty-fifth anniversary of the adoption of the African Charter on Human and Peoples' Rights (the African Charter) by the eighteenth Assembly of Heads of State and Government, in June 1981 in Nairobi, Kenya, and the twentieth year since it entered into force in 1986.

Recalling the firm conviction of the member states of the Organization of African Unity in their duty to protect human rights and freedoms and taking into account the importance traditionally attached to these rights and freedoms in Africa, against the backdrop of their efforts to achieve the total liberation of Africa, the peoples of which were still struggling for their dignity and genuine independence, undertaking to eliminate colonialism, neo-colonialism, apartheid, Zionism and to dismantle aggressive foreign military bases and all forms of discrimination on basis namely of race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Considering the contribution of the adoption of the African Charter to the promotion and protection of human and people's rights in Africa.

Bearing in mind that today the wisdom of having taken this decision continues to demonstrate itself in view of the fact that the African Charter has provided a legal framework for the promotion and protection of human and peoples' rights on our continent and development of the jurisprudence of the African Commission on Human and People's Rights (ACHPR) attests to this achievement.

Also recalling the decisions of the African Union whereby we expressed the need for the ACHPR to be provided with adequate human, material and financial resources to enable it effectively fulfil its mandate under the Charter.

Further recalling the decisions at our Assembly to review the operation and composition of the ACHPR with a view to strengthening its independence and operational integrity and ensuring appropriate gender representation.

Noting that the African Charter has contributed to the development of human rights norms on the continent, including the adoption of supplementary instruments such as the African Charter on the Rights and Welfare of the Child and the Protocols on the establishment of the African Court on Human and Peoples' Rights and on the Rights of Women.

Recognising that all member states have ratified the African Charter which makes us all parties to the African Charter.

Expressing our appreciation to the ACHPR, which also commemorates its twentieth anniversary this year, for the laudable role it has played, in collaboration with its partners, particularly civil society organisations and national human rights institutions; in ensuring the promotion and protection of human and peoples' rights in Africa, in accordance with the African Charter.

Cognisant of the fact that poverty and human rights violations are among the root causes of conflicts on our continent, and wishing to seize the opportunity of the occasion of this anniversary of the African Charter to re-dedicate ourselves to the promotion and protection of human and peoples' rights on the Continent:

1. *Express* great satisfaction at the positive contributions made by the African Charter towards the promotion and protection of human rights in Africa.
2. Reiterate our unflinching determination to promote and protect human and people's rights and all basic freedoms in Africa as well as our full support to the work of the ACHPR and all human rights treaty bodies established on the continent.
3. Commit ourselves to undertake the necessary measures to respect and guarantee the independence of the ACHPR, as well as to provide it with the necessary human and financial resources, in order to enable it effectively discharge its functions.
4. Urge member states to take the necessary steps to fulfil their obligations under the African Charter and other human rights instruments to which they are parties, in particular, the implementation of decisions and recommendations of human rights treaty-bodies.
5. Welcome and express our full support to the newly established African Court on Human and Peoples' Rights whose role is to complement ACHPR in its human rights protective mandate and commit ourselves to provide the necessary human and financial resources to allow the new Court to discharge its functions effectively and efficiently as well as to fully cooperate with and render all the necessary assistance to the Court.
6. Take note of the recent developments of the ongoing process of the merger of the Court of Justice of the African Union and the African Court on Human and Peoples' Rights in order to rationalise our institutions, ensure cost effectiveness and avoid unnecessary duplications.
7. Rededicate ourselves to ensuring respect for human and peoples' rights as a pre-requisite for the attainment of our common vision of a united and prosperous Africa, and reaffirm our confidence in the ACHPR.

Declaration by the Assembly on the theme of year 2016

We, the Heads of State and Government of the African Union (AU), meeting at the 27th Ordinary Session of the Assembly of the Union in Kigali, Rwanda, from 17 to 18 July 2016, and after having debated the theme of the year, namely, 'The African Year of Human Rights with Particular Focus on the Rights of Women';

...

Now, hereby:

1. AFFIRM that Human Rights and the rights of women in particular are a Collective Responsibility of all in Africa;
2. COMMIT ourselves to enhancing efforts aimed at entrenching and reinforcing deeper understanding of the culture of human and peoples' rights, in particular the rights of women, and their promotion and popularization amongst the African peoples by declaring the next ten years as "the Human and Peoples' Rights Decade in Africa" and its [sic] Action Plan;
3. RE-COMMIT ourselves to expedite the ratification, domestication and implementation of all human and peoples' rights instruments, in particular the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in African (Maputo Protocol), and call upon the African Union Commission (AUC) to put in place measures and modalities to support Member States to establish the required capacities and processes for monitoring and review of the domestication efforts;
4. REITERATE our unflinching determination to promote and protect human and people's rights and all basic freedoms in Africa and the need for the consolidation and the full implementation of human and peoples' rights instruments and relevant national laws and policies as well as decisions and recommendations made by the AU Organs with a human rights mandate;
5. UPHOLD firmly the principles of universality, objectivity and non-selectivity in the consideration of human rights and elimination of double standards and politicisation;
6. ALSO UPHOLD our common position that the promotion and protection of human rights should be based on the principle of cooperation and genuine dialogue aimed at strengthening the capacity of Member States to comply with their human rights obligations;
7. CALL UPON the Commission to ensure the independence and integrity of AU organs with human rights mandate by providing adequate financing and shielding them from undue external influence;
8. ALSO REITERATE our commitment to eliminate violence and all forms of every discrimination against women and to ensure the protection of the rights of women as stipulated in the Maputo Protocol and the international declarations and conventions as well as empowering women by granting their full rights;
9. FURTHER REITERATE our commitment to promote the right to development (including the right to water and sanitation, health, shelter and education) as an inalienable human and peoples' right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized;
10. EXPRESS great satisfaction at the positive contributions made by the AUC and AU Organs with a human rights mandate and REQUEST them to ensure greater synergy between the African Governance Architecture and the African Peace and Security Architecture in order to ensure that the developments in

the terrain of human rights feature prominently on the agenda of the Peace and Security Council;

11. ENCOURAGE the Commission and AU Organs with a human rights mandate to strengthen the African system for the promotion and protection of human and peoples' rights through wider communication and information sharing, coupled with direct support of Member States, by ensuring the strengthening of human rights institutions and putting in place all the necessary measures so that success is documented and challenges noted to ensure that there is on-going review of progress in the implementation of adopted human rights instruments;

12. CALL UPON the RECs to work closely with the Commission and other AU Organs with a human rights mandate in harmonizing their instruments and further urge them to collectively promote and protect human and peoples' rights on the Continent;

13. ALSO CALL ON the Commission and AU Organs with a human rights mandate to identify modalities for the participation of African Research Institutes, Universities, Civil Society and the Media in promoting the culture of human rights in Africa including the protection and promotion of the rights of women;

14. FURTHER CALL ON the Commission and AU Organs with a human rights mandate to identify the obstacles that have hindered implementation of human and peoples' rights instruments and our previous commitments relating to human rights with special focus on the rights of women and to propose modalities for addressing them;

15. NOTE WITH APPRECIATION the support provided by our bilateral and multilateral partners and call on them to continue working closely with us to build and enhance the capacity of the AU and its Member States to promote and protect human and peoples' rights;

16. REQUEST the Commission and AU organs with a human rights mandate to take necessary steps to establish the Pan-African Human Rights Institute (PAHRI) and to encourage Member States to commit to host it;

17. ALSO REQUEST the Commission to report regularly on the implementation of this Declaration.

**AFRICAN
COMMISSION ON
HUMAN AND
PEOPLES' RIGHTS**

Rules of Procedure of the African Commission on Human and Peoples' Rights (2010)

The African Commission on Human and Peoples' Rights was established under the African Charter on Human and Peoples' Rights 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. The Rules of Procedure reprinted here were adopted in 2010 and include provisions on the relationship with the African Court. The Commission's earlier Rules of Procedure, dated 1995, were reprinted in earlier editions of this *Compendium*.

PRELIMINARY PROVISIONS

Rule 1: Objective

1. These rules regulate the organisation and establish the procedure of the African Commission on Human and Peoples' Rights in accordance with article 42(2) of the African Charter on Human and Peoples' Rights.
2. In the absence of a provision in these rules or in case of doubt as to their interpretation, the Commission shall decide.

Rule 2: Definitions

For the purpose of these rules:

- 'African Charter' refers to the African Charter on Human and Peoples' Rights.
- 'African Children's Charter' refers to the African Charter on the Rights and Welfare of the Child.
- 'African Commission' or 'Commission' refers to the African Commission on Human and Peoples' Rights.
- 'African Court Protocol' refers to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
- 'African Court' refers to the African Court on Human and Peoples' Rights.
- 'Amendment to a proposed motion' is an addition to, deletion from or revision of part of that motion.
- 'Assembly' refers to the Assembly of Heads of State and Government of the African Union.
- 'Bureau' refers to the Chairperson and Vice Chairperson.
- 'Chairperson' refers to the Chairperson of the African Commission on Human and Peoples' Rights.
- 'Child Rights Committee' refers to the African Committee of Experts on the Rights and Welfare of the Child.
- 'Commissioner' refers to a member of the African Commission on Human and Peoples' Rights.
- 'Day' shall be understood to be a natural day.
- 'Executive Council' refers to the Executive Council of the African Union.
- 'Member state' refers to a member state of the African Union.
- 'Secretary' refers to the Secretary to the African Commission on Human and Peoples' Rights.
- 'Serious or massive violations' refers to grave human rights violations as distinguished by their scale and importance.
- 'Session' refers to the statutory meetings of the Commission. This includes ordinary and extraordinary sessions.

‘Specialised organs’ refers to specialised organs put in place by the United Nations and African Union.

‘State party’ refers to African states that have ratified the African Charter on Human and Peoples’ Rights.

‘Subsidiary mechanism’ refers to any mechanism established in accordance with rule 23 of these rules.

‘Third party’ refers to any other party than the complaining or defending parties.

‘Union’ refers to the African Union.

‘Vice-Chairperson’ refers to the Vice-Chairperson of the African Commission on Human and Peoples’ Rights.

‘Working language’ refers to the working languages of the African Union.

PART 1: GENERAL RULES

CHAPTER I: Status and composition

Rule 3: Status

The African Commission is an autonomous treaty body working within the framework of the African Union to promote human and peoples’ rights and ensure their protection in Africa.

Rule 4: Composition

1. In conformity with article 31 of the African Charter, the Commission shall consist of eleven (11) 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.

CHAPTER II: Membership

Rule 5: Term of office

1. Members of the Commission are elected for six years and shall be eligible for re-election.
2. If a member of the Commission 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 African Charter, the member of the Commission elected to replace a member whose term has not expired, shall complete the term of his or her predecessor. However, if the remaining term of office is less than six months, there shall be no replacement.

Rule 6: Order of precedence

1. In the discharge of their duties, members of the Commission shall follow the Chairperson and the Vice-Chairperson according to their seniority in office. When there are two or more members of the Commission with equal seniority, precedence shall be given to the oldest.
2. A member of the Commission who is re-elected to a new term of office which is continuous with his/her previous term shall retain his/her precedence.

Rule 7: Incompatibility

1. The position of member of the Commission is incompatible with any activity that might interfere with the independence or impartiality of such a

member or demands of the office such as a member of government, a Minister or under-secretary of State, a diplomatic representative, a director of a ministry, or one of his subordinates, or the legal adviser to a foreign office or any other political binding function or participate in any activity of the nature that will compromise the independence and impartiality.

2. The Bureau of the Commission shall ensure that the requirements in rule 7(1) above are enforced in accordance with articles 31(1 & 2) and 39(2) of the African Charter.

3. In the case of incompatibility, the Chairperson of the Commission shall inform the Chairperson of the African Union Commission, who shall declare the seat vacant.

Rule 8: Cessation of function

1. If in the unanimous opinion of the other members of the Commission, a member has stopped discharging his or her duty for any reason other than temporary absence, the Chairperson of the Commission shall inform the Chairperson of the African Union Commission, who shall declare the seat vacant.

2. A member of the Commission may resign from his or her position at any time. He or she shall do so through a written notification addressed to the Chairperson of the Commission who shall transmit it to the Chairperson of the African Union Commission.

3. The resignation shall take effect three months from the date of submission of the letter of resignation.

4. The Chairperson of the African Union Commission shall upon receipt of the notification, declare the seat vacant. The vacancy shall be effective from the date the resignation takes effect.

5. In the case of death of a member of the Commission, the Chairperson shall immediately inform the Chairperson of the African Union Commission who shall declare the seat vacant from the date of the death.

6. Every seat declared vacant in conformity with the present rule shall be filled in accordance with paragraph 3 of article 39 of the African Charter.

Rule 9: Solemn declaration

In conformity with article 38 of the African Charter, before assuming office, every member of the Commission shall make the following solemn declaration at a public sitting of the Commission: *'I solemnly undertake to carry out my duties well and faithfully in all impartiality.'*

CHAPTER III: Bureau of the Commission

Rule 10: Composition of the Bureau

The Bureau of the Commission shall be composed of a Chairperson and a Vice-Chairperson who shall perform the functions set forth in the African Charter and in these Rules of Procedure.

Rule 11: Election of the Bureau

1. The Commission shall elect from among its members a Chairperson and a Vice-Chairperson.

2. Election shall be held by secret ballot. Only members present shall vote. A member who obtains a simple majority of the votes of the members of the Commission present and voting shall be elected.

Rule 12: Duration of the term of the members of the Bureau

The members of the Bureau of the Commission shall be elected for a period of two years. They shall be eligible for re-election only once. None of them

may, however, exercise his or her functions if he or she ceases to be a member of the Commission.

Rule 13: Powers and functions of the Bureau

1. The Bureau shall coordinate the promotion and protection activities of the members of the Commission.
2. The Bureau shall supervise the work of the Secretary, including the preparation and approval of the work-plan of the Commission.
3. The Bureau shall annually assess the performance of the Secretary. It shall submit its assessment to the Commission for its consideration and decision.

Rule 14: Powers and functions of the Chairperson

1. The Chairperson shall carry out the functions assigned to him or her by the Charter, the Rules of Procedure and the decisions of the Commission and the Assembly. In the exercise of his or her functions the Chairperson shall be under the authority of the Commission.
2. The Chairperson shall:
 - (a) Represent and direct the work of the Commission;
 - (b) Preside over the meetings of the Commission;
 - (c) Submit the assessment report referred to in rule 13(3) to the competent organs of the African Union Commission;
 - (d) Supervise the preparation of the budget by the Secretariat and its adoption by the Commission;
 - (e) Present and defend the budget before the relevant African Union bodies;
 - (f) Present a report to the Assembly and to the Commission on the activities carried out during the intersession;
 - (g) Perform any other functions that may be conferred upon him or her in the Rules of Procedure or other tasks entrusted to him or her by the Commission or the Assembly; and
 - (h) Delegate, when necessary, to the Vice-Chairperson or, if the Vice-Chairperson is not available, to another commissioner, the abovementioned powers.

Rule 15: Powers and functions of the Vice-Chairperson

1. If the Chairperson is temporarily unable to perform his or her duties, the Vice-Chairperson, shall perform the duties of the Chairperson.
2. The Vice-Chairperson, acting in the capacity of the Chairperson, has the same powers and functions as the Chairperson.
3. The Vice-Chairperson shall perform any other function delegated to him or her by the Commission or the Chairperson of the Commission.
4. If both the Chairperson and the Vice-Chairperson are unable to carry out their duties at the same time, the duties of Chairperson shall be carried out by another commissioner according to the order of precedence laid down in rule 6.

Rule 16: Resignation, vacancy and replacement

If a member of the Bureau of the Commission resigns from his or her position or ceases to be a member of the Commission, the remaining member shall represent the Bureau until the next session, when the Commission shall fill the position for the remainder of the term of office.

CHAPTER IV: Secretariat to the Commission

Rule 17: Composition, structure and status of the Secretariat

1. Without prejudice to article 41 of the African Charter, the Commission shall propose the organisational structure of the Secretariat and shall place it before the African Union for approval.
2. The Secretariat of the Commission is composed of the Secretary and the Commission's professional, technical and administrative staff.
3. The Secretary shall be appointed by the Chairperson of the African Union Commission pursuant to article 41 of the African Charter after consultation with the Chairperson of the African Commission.
4. The Status of the Secretary and the staff is governed by the African Union Staff Rules and Regulations.

Rule 18: Functions of the Secretary to the Commission

The Secretary to the Commission is responsible for the activities of the Secretariat under the supervision of the Chairperson. The Secretary shall specifically:

- (a) Assist the Chairperson, the Bureau of the Commission and other members of the Commission in the exercise of their functions;
- (b) Supervise and co-ordinate the work of the staff of the Secretariat;
- (c) Keep proper records of the Commission, which must be properly organised for easy reference;
- (d) Ensure confidentiality of the Commission's records where appropriate;
- (e) Submit to the Chairperson and the members of the Commission all items that will be considered by the Commission;
- (f) In consultation with the Chairperson, prepare:
 - (i) A draft agenda for each session;
 - (ii) The Commission's strategic plan, annual work plan and annual budget;
 - (iii) Guidelines on missions for adoption by the Commission;
- (g) Present a written report to the Commission at the beginning of each session on the activities of the Secretariat since the preceding session;
- (h) Implement the decisions entrusted to him or her by the Commission or the Bureau;
- (i) Make available to the general public documents which are not confidential, including state reports, by ensuring that they are posted on the website of the Commission;
- (j) Ensure the maintenance and regular updating of the website of the Commission;
- (k) Assess the performance of the staff of the Commission.

Rule 19: Financial responsibility

The expenses of the Commission, emoluments and allowances for commissioners and the budget of the Secretariat, shall be borne by the African Union, in accordance with criteria laid down by the African Union in consultation with the Commission.

Rule 20: Financial rules

The implementation of provisions of articles 41 and 44 of the Charter shall be governed by the African Union's financial rules.

Rule 21: Estimate

When the Commission considers a proposal entailing expenses, the Secretary shall prepare and present to the members of the Commission, as soon as possible, a report outlining the financial implications of the proposal.

Rule 22: Confidentiality of the work of the Commission

The staff of the Secretariat must observe the principle of confidentiality in all matters that the Commission considers confidential as stipulated under the Charter and these rules.

CHAPTER V: Subsidiary mechanisms

Rule 23: Special rapporteurs, committees and working groups

1. The Commission may create subsidiary mechanisms such as special rapporteurs, committees, and working groups.
2. The creation and membership of such subsidiary mechanisms may be determined by consensus, failing which, the decision shall be taken by voting.
3. The Commission shall determine the mandate and the terms of reference of each subsidiary mechanism. Each subsidiary mechanism shall present a report on its work to the Commission at each ordinary session of the Commission.

Rule 24: Applicable rules for subsidiary mechanisms

The Rules of Procedure of the Commission shall apply *mutatis mutandis* to the proceedings of its subsidiary mechanisms.

CHAPTER VI: Sessions

Rule 25: General principles

1. The Commission shall hold ordinary and extraordinary sessions, to enable it to satisfactorily carry out its functions in conformity with the African Charter.
2. Sessions of the Commission shall be held in public unless the Commission decides otherwise or if it appears from the relevant provisions of the Charter that the meeting shall be held in private.

Rule 26: Ordinary sessions

1. The Commission shall hold at least two ordinary sessions per year each lasting for about two weeks, unless the Commission decides otherwise.
2. The ordinary sessions of the Commission shall be convened on a date fixed by the Commission upon the proposal of its Chairperson and in consultation with the Chairperson of the African Union Commission.
3. In exceptional circumstances, the Chairperson of the African Union Commission may change the opening date of a session, in consultation with the Chairperson of the Commission.

Rule 27: Extraordinary sessions

1. The Commission shall also hold extraordinary sessions.
2. The Chairperson of the Commission shall convene extraordinary sessions:
 - (a) At the request of the majority of the members of the Commission; or
 - (b) At the request of the Chairperson of the African Union Commission.
3. Extraordinary sessions shall be convened on a date fixed by the Chairperson of the Commission, in consultation with the Chairperson of the African Union Commission and the other members of the Commission.

Rule 28: Place of meetings

1. The sessions of the Commission shall be held at its headquarters, or in the territory of any other state party which invites the Commission.

2. In the event that a state party invites the Commission to hold a session in its country, that state party shall sign an agreement with the Commission to host the session of the Commission, which agreement shall vest the state party with the responsibility for all additional expenses incurred by the Commission as a result of the session being held outside its headquarters, in conformity with the relevant rules of the African Union.

3. A state party offering to host a session of the Commission shall not be under any suspension of the African Union. Any country wishing to host a session of the Commission should commit itself to respecting the provisions of article 62, and should comply with all the recommendations of the African Commission, where necessary.

4. The Commission may, in consultation with the Chairperson of the African Union Commission, hold a session at the headquarters of the African Union. The sharing of costs for such session shall be as agreed with the African Union Commission.

5. The Commission may hold joint sessions in consultation with the African Court on Human and Peoples' Rights, the Committee of Experts on the Rights and Welfare of the Child, or any other African regional human rights organ.

Rule 29: Notification of the opening date of the sessions

1. The Secretary shall inform members of the Commission of the date and venue of each session. This notice shall be sent, in the case of an ordinary session, at least sixty (60) days before the session unless exceptional circumstances require otherwise.

2. In the case of an extraordinary session, the notice shall be sent as soon as possible before the beginning of the session.

Rule 30: Quorum

Seven members of the Commission shall constitute the quorum, as specified in article 42(3) of the Charter.

Rule 31: Private sessions

1. Private sessions of the Commission shall be held in private and deliberations shall remain confidential.

2. During a private session, the Secretary to the Commission, members of the Secretariat and persons providing technical or secretarial assistance to the Commission shall be present unless the Commission decides otherwise.

3. The Commission shall ensure the confidentiality of all case files, including pleadings. This provision shall not be interpreted to prohibit the prompt sharing of pleadings with the parties to a communication.

4. The Chairperson of the Commission may communicate to the public general information on deliberations in private sessions, subject to the exigencies of article 59 of the Charter and any special directions by the Commission.

CHAPTER VII: Agenda

Rule 32: Provisional agenda

1. The provisional agenda for each ordinary session shall be drawn up by the Secretary in consultation with the Bureau of the Commission and in accordance with the provisions of the Charter and the present Rules of Procedure.

2. The provisional agenda shall include but not be limited to, items on 'communications from states' and 'other communications' in conformity with the provisions of articles 48, 49, and 55 of the Charter.

3. Pursuant to paragraph 1 of this rule, the provisional agenda may also include items proposed by:
 - (a) The Commission at a previous session;
 - (b) The Chairperson of the Commission or a member of the Commission;
 - (c) A state party to the African Charter;
 - (d) Any African Union organ;
 - (e) An organisation recognised by the African Union, a national human rights institution with affiliate status or a non-governmental organisation with observer status;
 - (f) A specialised institution of the United Nations of which the state parties to the African Charter are members.
4. The items to be included in the provisional agenda under subparagraphs d, e and f of paragraph 3 above shall be communicated to the Secretary, accompanied by supporting documents, not later than sixty (60) days before the opening of the session at which these items are to be discussed.
5. The decision to include an item on the provisional agenda is taken by the Bureau of the Commission. If the request is accepted, the Secretary shall include the item on the provisional agenda of the session and inform the requesting party of this decision within one month.
6. The provisional agenda of an extraordinary session of the Commission shall include only the items in the notification issued by the Chairperson.

Rule 33: Transmission and distribution of the provisional agenda

1. The Secretary shall distribute the provisional agenda and the relevant working documents to the members of the Commission at least sixty (60) days before the opening of an ordinary session.
2. The Secretary shall transmit the provisional agenda and the essential documents of the session to state parties, the Chairperson of the African Union Commission, affiliate institutions and observers at least forty-five (45) days before the opening of an ordinary session of the Commission.
3. The Secretary, in consultation with the members of the Commission in exceptional cases, may distribute the provisional agenda and essential documents relating to certain items on the Agenda thirty (30) days prior to the opening of an ordinary session.
4. The Secretary shall transmit by all appropriate means, including posting on the website of the Commission, the provisional agenda of the session to state parties, the Chairperson of the African Union Commission, affiliate institutions and observers at least fifteen (15) days before the opening of an ordinary session of the Commission.

Rule 34: Adoption of the agenda

1. At the beginning of each session, the Commission shall adopt the agenda of the session.
2. Proposals made under rule 32(3) of the present rules shall be included in the agenda of the session if a majority of the members present so decide.

Rule 35: Revision of the agenda

The Commission may, during the session, revise its agenda.

CHAPTER VIII: Language

Rule 36: Working languages

1. The working languages of the Commission and all its subsidiary mechanisms are those of the African Union.
2. The proceedings of the Commission shall be conducted in any of the working languages of the African Union.

3. Any person addressing the Commission in a language other than one of the working languages shall ensure the interpretation into one of the working languages of the Commission. The interpreters of the Commission shall take this interpretation as the source language for their interpretation in the other working languages of the Commission.

CHAPTER IX: Records and reports

Rule 37: Records and reports of sessions

1. The Secretary shall keep recordings of the proceedings of the sessions of the Commission and of the meetings of its subsidiary mechanisms.
2. The Secretary shall prepare a report of the proceedings of each session of the Commission.
3. The report referred to in paragraph 2 of the present rule shall be adopted by the Commission before publication, including posting on the website.

Rule 38: Publication and distribution of session reports

1. The final report of the public session shall be posted on the website unless the Commission decides otherwise.
2. The final report of the private sessions of the Commission shall be distributed to all members of the Commission.

CHAPTER X: Conduct of business

Rule 39: Additional powers of the Chairperson

The Chairperson shall open and close each session, direct the discussions, ensure observance of the present Rules of Procedure, accord the right to speak, put questions to the vote and announce decisions.

Rule 40: Points of order

1. During a debate on any matter a member of the Commission may, at any time, raise a point of order and the Chairperson of the Commission, in accordance with the Rules of Procedure, shall immediately rule on the point of order. If a member of the Commission contests the ruling, it shall immediately be put to a vote. If the majority of the members of the Commission present uphold the Chairperson's ruling, it shall be maintained.
2. A member of the Commission raising a point of order cannot, in his or her comments, deal with the substance of the matter under discussion.

Rule 41: Adjournment of debates

During the discussion on any matter, a member of the Commission may move for the adjournment of the debate. In addition to the proposer of the motion, one member of the Commission may speak in favour of and one against the motion after which the motion shall be immediately put to a vote.

Rule 42: Time limit accorded to speakers

The Chairperson of the Commission may limit the time accorded to each speaker on any matter. When a speaker exceeds his or her allotted time, the Chairperson of the Commission shall call him or her to order.

Rule 43: Closing the list of speakers

1. The Chairperson of the Commission may, before the beginning of a debate, read out the list of speakers and with the consent of the Commission, declare the list closed.

2. The Chairperson of the Commission may, however, accord the right of reply to any speaker if a speech delivered after the list has been closed makes this desirable.

Rule 44: Closure of debate

1. A member of the Commission may, at any time during a debate, move for the closure of the debate on the item under discussion, even if the other members of the Commission or representatives have 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 for and against the closure, after which the motion shall immediately be put to a vote.

2. When the debate on an item is concluded, the Chairperson of the Commission shall declare the debate closed.

Rule 45: Adjournment or closure of session

During the discussion on any matter, a member of the Commission may move for the adjournment or closure of the sessions. No discussion on any such motion shall be permitted and it shall be immediately put to a vote.

Rule 46: Order of the motions

The following motions shall have precedence in the following order over all the other proposals or motions before the Commission:

- (a) Competence of the Commission;
- (b) Point of order;
- (c) Recusal of a member of the Commission;
- (d) Adjournment of the session;
- (e) Adjournment of debate on the item under discussion;
- (f) Closure of debate on the item under discussion.

Rule 47: Submission of motion and amendment of substance

Unless the Commission decides otherwise, the motions or amendments to motions on substantive matters made by members of the Commission shall be submitted in writing to the Secretary with supporting documents.

Rule 48: Withdrawal and re-submission of a motion

The sponsor of a motion may withdraw it before it is put to vote, provided that it has not been amended. Another member of the Commission may re-submit a motion thus withdrawn. When a member of the Commission moves for the re-submission of a motion, only one member of the Commission may speak in favour of and one against the motion, after which it shall immediately be put to a vote.

Rule 49: Oral interventions

1. No one may take the floor at a meeting of the Commission without the authorisation of the Chairperson of the Commission. The Chairperson of the Commission shall grant the floor to speakers in the order in which it has been requested.

2. Oral intervention shall deal solely with the matter under discussion by the Commission and the Chairperson of the Commission shall call to order any speaker whose remarks are irrelevant.

3. The Chairperson of the Commission may limit the time accorded to speakers as well as the number of interventions in accordance with the present Rules of Procedure. The time limit for each speaker shall be determined by the Chairperson.

Rule 50: Right of reply

1. A right of reply may be granted by the Chairperson of the Commission to any member of the Commission or representative of a state party who requests it.
2. A member of the Commission or representative of a state party must, while exercising this right, respect the time limit fixed by the Chairperson for reply and take the floor preferably at the end of the sitting at which this right has been requested.
3. The right of reply shall be limited to one reply per party and all parties shall have the same length of time to reply.

CHAPTER XI: Voting

Rule 51: Right to vote

1. Decisions of the Commission may be taken by consensus, failing which the decision shall be taken by voting.
2. However, at the request of a member, any proposal or motion shall be put to a vote.
3. Each member of the Commission shall have one vote. In the case of a tie in votes, the Chairperson of the Commission shall have a casting vote.

Rule 52: Required majority

1. Except as otherwise provided by the African Charter or 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 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.

Rule 53: Method of voting

1. Subject to the provisions of rule 56 of the present rules, the Commission, unless it otherwise decides, shall vote by show of hands, but any member may request a roll-call vote, which shall be taken in alphabetical order.
2. In all the votes by roll-call each member shall reply 'yes' or 'no' or 'abstention'. The vote of each member participating in the ballot shall be recorded in the minutes.
3. The Commission may decide to hold a secret ballot.

Rule 54: Explanation of vote

Members may make brief statements only for the purpose of explaining their vote, before the beginning of the vote or once the vote has been taken.

Rule 55: Rules to be observed while voting

A vote shall not be interrupted except if a member raises a point of order related to the manner in which the voting is being done.

Rule 56: 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: Motions and proposals

Rule 57: Division of proposals

Proposals in a motion may be separated if a member so requests. The parts of proposals or amendments that have been adopted shall later be put to a vote as a whole. If all the operative parts of a motion have been rejected, the motion shall be considered to have been rejected as a whole.

Rule 58: Order of voting on 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 a vote.
3. However, motions which are not on the substance of a proposal shall be voted upon before the said proposals.

CHAPTER XIII: Reports of the Commission

Rule 59: Activity Reports

1. The Commission shall submit an Activity Report of its promotion, protection and other activities to each ordinary session of the Assembly.
2. The content of the Activity Report of the Commission to be presented to the Assembly by its Chairperson or his/her representative shall be determined by the Commission.
3. Once the Activity Report is considered by the Assembly, the Secretary shall publish it, including posting on the website, and shall transmit it to state parties, African Union organs, national human rights institutions and civil society organisations.

Rule 60: Mission reports

1. Upon completion of a mission, the Secretary shall, within thirty (30) days, draft the Mission Report in conformity with the Commission's Guidelines on Mission Reports.
2. The Secretary shall send the draft Mission Report to all the members of the Commission's delegation who shall submit their comments within thirty (30) days.
3. In the case of a mission for promotion activities, the Secretary shall, after the Mission Report has been commented upon by the members of the delegation referred to in paragraph 2 of the present rules, submit the report incorporating the observations of the members to the Commission for consideration and adoption at its next session.
4. The adopted Mission Report shall be sent to the state party concerned for its comments, to be given within sixty (60) days from the day of receipt of the report. After sixty days, the report shall be published with the comments of the state party, if any.
5. In the case of a mission for protection activities, the Mission Report shall be sent to the members of the delegation referred to in paragraph 2 of this rules, as well as to other concerned parties, including any party to a communication that was a subject of the mission. The Commission shall consider the comments of these parties when finalising the report, especially with regard to any proposal for amicable settlement.
6. The report of any protection mission as well as the comments from the state party concerned and other concerned parties, where applicable, shall be annexed to the Activity Report of the Commission.

Rule 61: Distribution of reports and other official documents

1. Reports, decisions, session documents and all other official documents of the Commission and its subsidiary mechanisms shall be documents for general distribution unless the Commission decides otherwise. Upon their adoption by the Commission, reports shall be published in accordance with article 59(2) of the Charter.
2. Reports and additional information submitted by states parties under article 62 of the African Charter shall be documents for general distribution in the working languages of the African Union and shall be posted on the Commission's website as soon as they are received at the Secretariat of the Commission;
3. The Secretary shall ensure the publication of the Commission's Activity Report and post it on the website of the Commission after consideration by the Assembly.

CHAPTER XIV: Relationships with state parties, intergovernmental institutions, national human rights institutions, non-governmental organisations, and other partners

Rule 62: General principle

The Commission may invite any state party, institution, organisation or person capable of enlightening it to participate in its sessions without voting rights.

Rules 63: Discussions on human rights situations

1. In conformity with rule 32(3) of the present Rules of Procedure, any state party, African Union organ, specialised agency or body of the United Nations or other organisation recognised by the African Union, national human rights institution with affiliate status, or non-governmental organisation with observer status, may request that the African Commission include in its agenda for an ordinary session a discussion on any human rights issue. Such a request shall be made sixty (60) days in advance of the session at which the discussion is to take place.
2. Where the discussion requires the presence of other partners and parties, the requesting party shall so indicate in the documents that it presents to the Commission pursuant to rule 34(2) of the present rules. If the Bureau of the Commission decides that the participation of additional partners and parties is necessary, it shall invite them to attend and transmit to them all relevant documentation and information on the proposed discussion from the requesting party.

Rule 64: Participation of states parties

1. The Commission or its subsidiary mechanisms may invite any state party 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 a vote at the request of any member of the Commission or of the subsidiary mechanism concerned.

Rule 65: Participation of specialised agencies, intergovernmental organisations and United Nations bodies

1. Specialised agencies, intergovernmental organisations and United Nations bodies may take part in the public sessions of the Commission.
2. The Commission may permit representatives of these bodies to make oral or submit written statements during its session.

3. Pursuant to articles 45(1) and 46 of the African Charter, the Commission may invite these bodies to submit reports on the implementation of the African Charter in areas of common concern.

4. The Commission may take part in the activities of specialised agencies, intergovernmental organisations and United Nations bodies and agree through a Memorandum of Understanding on areas of common concern.

Rule 66: Donors

1. Subject to article 41 of the Charter, the Commission may negotiate financial agreements with donors. These financial agreements shall be signed by the Secretary after approval by the Bureau. Original copies of such agreements shall be kept at the Secretariat of the Commission.

2. The Commission shall inform the African Union Commission of any proposal to accept funds from any donor including details of the amount of money to be provided, the project or projects for which the funds are sought and any condition of receipt of such funding.

3. Such agreements shall specify expected outcomes, monitoring and evaluation of the project funded by the donor.

4. The Secretary shall prepare and submit reports on the implementation of the agreement to the Commission at each ordinary session.

5. Donors may be invited to attend sessions of the Commission.

Rule 67: National Human Rights Institutions

1. National Human Rights Institutions established by states parties and functioning according to internationally and regionally recognised norms and standards may be granted affiliate status with the Commission.

2. National Human Rights Institutions having affiliate status with the Commission shall enjoy the rights and perform the duties stipulated in the Resolution on the Granting of Affiliate Status to National Human Rights Institutions in Africa.

3. The African Commission shall grant affiliate status to only one National Human Rights Institution in each state party.

4. The African Commission may invite other National Human Rights Institutions that do not meet the criteria provided in paragraphs 1 and 2 of the present rules to attend its sessions as observers.

Rule 68: Non-governmental organisations

1. Non-governmental organisations working in the field of human rights in Africa may be granted observer status with the Commission.

2. Non-governmental organisations having observer status with the Commission shall enjoy the rights and perform the duties stipulated in the Resolution on the Granting of Observer Status.

3. Non-governmental organisations with observer status with the Commission shall fulfil their obligations stipulated under the Resolution referred to in paragraph 2 of the present rules.

PART 2: PROMOTION ACTIVITIES

CHAPTER I: General provisions

Rule 69: Program of promotion activities

The Commission shall adopt and carry out a program of promotion activities to give effect to its mandate under the African Charter, in accordance with article 45(1).

Rule 70: Promotion missions

1. The Commission shall carry out promotion missions, to states parties.

2. Promotion missions shall be governed by the Commission's Guidelines for missions as well as the Format for Pre-mission Reports.
3. For each promotion mission, the Commission shall develop terms of reference bearing in mind the human rights situation in the country.

Rule 71: Other promotion activities

1. The Commission shall undertake promotion activities other than promotion missions, including seminars, conferences, symposia etc.
2. These activities shall be undertaken either on its own or in collaboration with partners.
3. Where the Commission receives an invitation to participate in any promotion activity, the Secretary shall inform the Bureau immediately, and the latter shall decide on the course of action.

Rule 72: Activity reports of commissioners

At each ordinary session, each member of the Commission shall submit a written report of his or her promotion activities undertaken during the inter-session.

CHAPTER II: The state reporting procedure under article 62 of the Charter

Rule 73: Contents of state reports

1. Pursuant to article 62 of the African Charter and other relevant legal instruments which supplement them, including the Protocol to the African Charter on the Rights of Women in Africa in its article 26, states parties shall submit reports in accordance with the guidelines of the Commission, on the measures they have taken to give effect to the provisions of the African Charter and on the progress they have made. Reports shall indicate the challenges, if any, affecting the implementation of the African Charter and its relevant protocols.
2. The Secretary to the Commission shall send to states parties the Guidelines on state reports.

Rule 74: Transmission of state reports

1. Upon receipt of a state report, the Secretary shall upload the report on the Commission's website and indicate when the report will be examined by the Commission.
2. Institutions, organisations or any interested party wishing to contribute to the examination of the report and the human rights situation in the country concerned, shall send their contributions, including shadow reports, to the Secretary at least 60 days prior to the examination of the report.
3. The Secretary may also invite specific institutions to submit information relating to the state report within a time limit that he/she may specify.

Rule 75: Consideration of reports

1. The Chairperson of the Commission shall, through the Secretary inform states parties of the opening date and venue of the session at which their respective reports shall be considered.
2. States parties shall be represented in the sessions of the Commission at which their reports are to be considered.
3. Representatives of states parties shall respond to the questions prepared by the Commission, and questions of the members of the Commission and provide when necessary, any other information requested during or after the session.

4. If a state party fails to send a representative to the session of the Commission at which its report is to be examined, consideration of the report shall be rescheduled for the next session. If, at the said session, the concerned state party, after due notification, fails to send a representative, the Commission shall consider the state report .

5. During the consideration of the state report submitted by a state party in accordance with article 62 of the Charter, the Commission shall explore all the pertinent information relating to the human rights situation in the State concerned, including statements and shadow reports from National Human Rights Institutions and NGOs.

Rule 76: Non-submission of reports

1. The Commission shall, at the beginning of each year, inform the states parties which are not up to date with their obligations under article 62 of the deadlines of their submission of their reports and the date at which they are expected to comply.

2. At the beginning of each ordinary session, the Secretary shall inform the Commission of all cases of non-submission of reports or of additional information requested by the Commission. In such cases, the Chairperson of the Commission may send a reminder, through the Secretary, to the state party concerned;

3. The Activity Report of the Commission shall point out the status of initial and Periodic Report of states parties.

Rule 77: Concluding observations

1. The Commission shall, after consideration of the report of a state party, formulate concluding observations.

2. The concluding observations of the Commission shall comply with the Guidelines of the Commission on Concluding Observations.

3. The concluding observations shall be transmitted to the state party concerned within thirty (30) days after the session at which the Observations were adopted. They shall form part of the Commission's activity report and be posted on the website of the Commission after the adoption of the Activity Report.

Rule 78: Follow-up of implementation of concluding observations of state reports

1. In the concluding observations, the Commission shall specify, if necessary, the issues that require urgent attention on the part of the state party. The date of the presentation of the next periodic report by the state party shall be included in the concluding observations.

2. The members of the Commission shall ensure the follow-up on the implementation of the recommendations from the concluding observations within the framework of their promotion activities to the states parties concerned.

3. The Commission shall also transmit to the Assembly the observations mentioned in rule 77(1), with copies of the reports it has received from the states parties as well as the comments supplied by the latter, if any.

PART 3: PROTECTION ACTIVITIES

CHAPTER I: Matters of emergency

Rule 79: Decision on matters of emergency

1. The Commission shall treat a situation as a matter of emergency under article 58(3) of the African Charter, when:

(a) It is one of serious or massive human rights violations;

- (b) It presents the danger of irreparable harm or requires urgent action to avoid irreparable damage;
- 2. When a situation of emergency arises during a session of the Commission, the decision to treat it as such shall be taken by the Commission.
- 3. When a situation arises during the Commission's inter-session period, the decision to treat it as a matter of emergency shall be taken by the Bureau of the Commission, which shall keep other members of the Commission informed and present a report on the situation at the next session of the Commission.

Rule 80: Action on matters of emergency

- 1. When the Commission has decided to treat a situation as one of emergency, it shall:
 - (a) Draw the attention of the Chairperson of the Assembly of Heads of State and Government of the African Union to the matter in accordance with article 58(3) of the Charter;
 - (b) Draw the attention of the Peace and Security Council to the matter in accordance with article 19 of the Protocol on Peace and Security Council;
 - (c) Inform the Executive Council;
 - (d) Inform the Chairperson of the African Union Commission of the matter.
- 2. The Commission as well as its subsidiary mechanisms under the Charter and present rules, shall also take any appropriate action, including urgent appeals.

CHAPTER II: Protection missions

Rule 81: General provisions

- 1. If it deems it necessary and advisable, the Commission may carry out a protection mission to a state party.
- 2. States parties shall provide the Commission with an open invitation for protection missions and respond promptly to any request by the Commission for authorisation to undertake a protection mission.
- 3. Any protection mission agreed upon between the Commission and a state party shall be conducted in accordance with the Commission's Guidelines for missions.
- 4. The expenses incurred by a mission undertaken at the request of any AU organ shall be borne by such organ.

Rule 82: State party's obligations

During a protection mission of the Commission the state party concerned shall:

- (a) Commit itself not to take any kind of reprisal against any persons or entities who provide the mission with information, testimony or evidence;
- (b) Guarantee the free movement of the members of the mission throughout the territory of the country, in this regard, provide corresponding facilities, including any necessary internal authorisation;
- (c) Provide the mission of the Commission with any document that the latter may consider necessary for the preparation of its reports;
- (d) Take necessary security measures to protect members of the delegation and also to guarantee the smooth running of the mission.

CHAPTER III: Consideration of communications

SECTION 1: General provisions

Rule 83: Records of communications under articles 47, 48, 49 and 55 of the Charter

1. The Commission shall receive or note as the case may be, communications or notifications under articles 47, 48, 49 and 55 of the Charter.
2. The Secretary shall maintain a record of each communication, with a reference number, the names of the parties, the date of registration or notification, and the date of decision or closure of each communication.

Rule 84: Situation of serious or massive violation of human rights

1. When the Commission considers that one or more communications relate to a series of serious or massive human rights violations, it shall bring the matter to the attention of the Assembly of Heads of State and Government of the African Union and the Peace and Security Council of the African Union.
2. The Commission may also, in conformity with article 5 of the African Court Protocol and rule 118(3) of the present Rules of Procedure, refer the matter to the African Court.

Rule 85: Other interventions

The Commission may decide to solicit or accept interventions by parties other than the complainant and the respondent state that it considers could provide it with information relevant to making a decision on a communication.

SECTION 2: Consideration of communications received in conformity with article 47 of the Charter: Communications-negotiations of states parties

Rule 86: Submission of a communication

1. A communication under article 47 of the Charter shall be submitted to the Chairperson, through the Secretary of the Commission.
2. The communication referred to above shall be in writing and shall contain a comprehensive statement of the facts as well as the provisions of the African Charter alleged to have been violated.
3. Notification of the communication to the state party concerned, the Chairperson of the African Union Commission and the Chairperson of the Commission shall be done through the most practical and reliable means.
4. The Secretary to the Commission shall, on behalf of the Chairperson, acknowledge receipt, by *note verbale*, receipt of the communication and request the parties to keep the Commission informed of developments which could arise within the framework of ongoing negotiations.

SECTION 3: Consideration of communications received under articles 48 and 49 of the Charter: Communications-complaints of states parties

Rule 87: Seizure of the Commission

1. Any communication under articles 48 and 49 of the Charter may be submitted to the Chairperson of the Commission through the Secretary by an interested state party.

2. The communication shall contain information on the following or be accompanied particularly by:

- (a) Measures taken to resolve the issue pursuant to article 47 of the African Charter including the text of the initial communication and any subsequent written explanation from the interested states parties relating to the issue;
- (b) Measures taken to exhaust regional or international procedures of settlement or good offices;
- (c) Any other procedure of international investigation or international settlement to which the interested states parties have resorted.

Rule 88: Consideration of the communication

1. Where, pursuant to articles 48 and 49 of the African Charter, a communication is brought before the Commission by a state party, the Chairperson of the Commission, through the Secretary, shall give notice of such communication to the state party against which the complaint is made and shall invite it to submit to the Commission its observations in writing on the admissibility of the communication within ninety (90) days. The observations so obtained in writing shall be immediately communicated to the complaining state party, which shall respond within ninety (90) days of receipt of the observations.

2. The Commission shall designate one or more of its members as rapporteur for the communication.

3. Rapporteurs, through the Secretary, may:

- (a) Request relevant information on matters connected with the communication from the states parties concerned. Such information shall be provided by both parties within ninety (90) days of receipt of such request;
- (b) Transmit any information obtained from one party to the other for comments. The parties shall be given ninety (90) days to respond to the observations made by the other party.

4. Prior to the session at which the communication is to be considered, the rapporteurs shall prepare a report on the admissibility of the communication. Such report shall contain:

- (a) The relevant facts, including any information or comments obtained under paragraph 3 of this rule;
- (b) The provision(s) of the African Charter alleged to have been violated in the communication;
- (c) A recommendation on admissibility and on any other action to be taken, as the case may require.

5. Before deciding upon the admissibility of the communication, the Commission may invite the parties to submit further observations in writing and shall fix a time limit of ninety (90) days for the submission of these observations. The written observations or information shall be transmitted to the opposing party.

6. The Commission may also allow the parties to make additional observations orally.

Rule 89: Decision on admissibility

1. The Commission shall consider the report of the rapporteurs, decide on the admissibility of the communication, and shall inform the parties accordingly.

2. The Commission shall give reasons for its decision on admissibility.

Rule 90: Amicable settlement

1. When the Commission declares that a communication is admissible, it shall place its good offices at the disposal of the interested states parties with

the objective of reaching an amicable settlement under the terms of the African Charter.

2. For the purpose of the Commission's good offices, the Bureau of the Commission shall establish contact with the relevant authorities of the states parties.

3. The Bureau shall report its findings and recommendations to the Commission at the Commission's next session.

4. The Commission shall thereafter decide on the appropriate action to take, which may include the following:

(a) Appointing a rapporteur;

(b) Convening, in consultation with the states parties concerned, meetings with the aim of achieving an amicable settlement of the dispute;

(c) Facilitating the drafting of a Memorandum of Understanding, when the parties accept the principle of an amicable settlement, containing the terms of settlement being proposed having regard to the progress made.

5. In the case of acceptance of the draft Memorandum of Understanding, the states parties concerned shall sign the agreement under the auspices of the Commission.

6. The rapporteur shall then prepare a draft report, which shall be submitted to the Commission for adoption at its next session.

7. When adopted, the report shall be sent to the states parties concerned and communicated to the Assembly.

8. The Commission, through the rapporteur shall then follow-up on monitoring the implementation of the terms of the agreement and report on the said implementation to each subsequent ordinary session of the Commission until the settlement is concluded. Such a report shall form part of the Activity Report of the Commission to the Assembly

Rule 91: Failure to settle the dispute amicably

1. If the amicable settlement of the dispute fails, the Commission shall request the states parties concerned to provide, within a period of thirty (30) days, their written submissions.

2. The Commission shall communicate any information obtained from one party to the other for comments. The states parties concerned shall be given thirty (30) days to respond.

3. The rapporteur shall prepare a report containing the facts, findings and recommendations for consideration by the Commission.

4. Before adopting the report of the rapporteur, the Commission may convene a hearing at which it may allow the parties to make additional oral observations.

Rule 92: Decision of the Commission

1. Within twelve months of receipt of a communication, the Commission shall adopt a decision, prepare a report and make recommendations, pursuant to article 53 of the African Charter following the notification referred to in article 48 of the African Charter and the present Rules of Procedure.

2. The report of the Commission on the communication shall be communicated to the states parties concerned through the Secretary.

3. The report of the Commission on the communication shall be submitted as part of the Commission's Activity Report to the Assembly.

SECTION 4: Consideration of communications received in conformity with article 55 of the African Charter: Other communications

SUB-SECTION 1: General provisions

Rule 93: Seizure of the Commission

1. A communication submitted under article 55 of the African Charter may be addressed to the Chairperson of the Commission through the Secretary by any natural or legal person.
2. The Secretary shall ensure that communications addressed to the Commission contain the following information:
 - (a) The name, nationality and signature of the person or persons filing it; or in cases where the complainant is a non-governmental entity, the name and signature of its legal representative(s);
 - (b) Whether the complainant wishes that his or her identity be withheld from the State;
 - (c) The address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and email address;
 - (d) An account of the act or situation complained of, specifying the place, date and nature of the alleged violations;
 - (e) The name of the victim, in a case where he or she is not the complainant;
 - (f) Any public authority that has taken cognisance of the fact or situation alleged;
 - (g) The name of the State(s) alleged to be responsible for the violation of the African Charter, even if no specific reference is made to the article(s) alleged to have been violated;
 - (h) Compliance with the period prescribed in the African Charter for submission of the communication;
 - (i) Any steps taken to exhaust domestic remedies, or if the applicant alleges the impossibility or unavailability of domestic remedies, the grounds in support of such allegation; and
 - (j) An indication that the complaint has not been submitted to another international settlement proceeding as provided in article 56(7) of the African Charter.
3. In cases where the victim has not asked for anonymity and is represented by an NGO or other agent, the victim shall be the complainant of record and the fact of representation or agency shall be recognised.
4. Where a communication does not contain some of the documents and information listed in paragraph 2 of the present rule, the Secretary shall request the complainant to furnish the same.
5. When the Secretary is satisfied that all necessary information has been furnished, it shall transmit the file to the Commission which shall make a decision on seizure on the communication.

Rule 94: Representation

1. States parties shall be represented before the Commission by their representatives.
2. Natural or legal persons may either appear in person or be represented by their appointed representative before the Commission.

Rule 95: Order of consideration of communications

Unless otherwise decided, the Commission shall consider communications in the order in which they have been received by the Secretary.

Rule 96: Joinder and disjoinder of communications

1. If two or more communications against the same state party address similar facts, or reveal the same pattern of violation of rights, the Commission may join them and consider them together as a single communication.
2. Notwithstanding paragraph 1 of the present rule, the Commission may decide not to join the communications if it is of the opinion that the joinder will not serve the interest of justice.
3. Where in accordance with paragraph 1 of the present rule, the Commission decides to join two or more communications, it may subsequently, where it deems appropriate, decide to disjoin the communications.

Rule 97: Working groups and rapporteurs on communications

1. The Commission shall appoint a rapporteur for each communication from among its members.
2. The Commission may also establish one or more working groups to consider questions of seizure, admissibility and the merits of any communication(s) and to make recommendations to the Commission.
3. The Commission shall consider the recommendations of the rapporteur(s) and/or the working group(s) and make a decision.

Rule 98: Provisional measures

1. At any time after the receipt of a communication and before a determination on the merits, the Commission may, on its initiative or at the request of a party to the communication, request that the State concerned adopt provisional measures to prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands.
2. If the Commission is not in session at the time that a request for provisional measures is received, the Chairperson, or in his or her absence, the Vice-Chairperson, shall take the decision on the Commission's behalf and shall so inform members of the Commission;
3. After the request for provisional measures has been transmitted to the state party, the Commission shall send a copy of the letter requesting provisional measures to the victim, the Assembly, the Peace and Security Council, and the African Union Commission.
4. The Commission shall request the state party concerned to report back on the implementation of the provisional measures requested. Such information shall be submitted within fifteen (15) days of the receipt of the request for provisional measures;
5. The granting of such measures and their adoption by the state party concerned shall not constitute a prejudgment on the merits of a communication.

Rule 99: Procedure for hearings on communications

1. At the initiative of the Commission or at the request of one of the parties, a hearing may be held on a communication.
2. During hearings, the Commission shall permit oral presentations by the parties on new or additional facts or arguments or in answer to any questions that it may have concerning all issues relating to the communication.
3. During a hearing on a communication or at any stage prior to the conclusion of the matter, the following may be considered:
 - (a) The verification of the facts;
 - (b) Initiation of a friendly settlement;
 - (c) Consideration on the merits; or
 - (d) Any other matter pertinent to the communication.

4. A party requesting a hearing, shall do so at least ninety (90) days before the beginning of the session in which the communication is going to be considered.
5. The rapporteur of the communication, in consultation with the Bureau of the Commission, shall decide upon the request.
6. The Secretary shall inform both parties of the decision on the granting of a hearing within 15 days of the decision referred to under paragraph 5 of the present rule.
7. If the request for a hearing is accepted, the notification of the hearing shall include the dates and venue of the session, and period of the session during which the hearing is likely to take place.
8. Hearings on communications before the Commission shall be held *in camera*. Unless the Commission decides otherwise, no person shall be admitted, other than:
 - (a) The parties to the communication or the representatives duly mandated;
 - (b) Any person being heard by the Commission as a witness or as an expert;
 - (c) The persons referred to in rule 33(2) or any person whom the Commission may decide to invite under article 46 of the African Charter.
9. When it considers it in the interest of the proper conduct of a hearing, the Commission may limit the number of parties' representatives or advisers who may appear.
10. The parties shall inform the Commission at least ten days before the date of the opening of the hearing of the names and functions of the persons who will appear on their behalf at the hearing.
11. The Chairperson or his or her representative shall preside over the hearing, and shall verify the identity of any persons before he/she is heard.
12. Any member of the Commission may put questions to the parties or to the persons heard with the permission of the Chairperson.
13. Parties to the communication or their representatives may, with the permission of the Chairperson, put questions to any person heard.
14. The Secretary is responsible for the production of verbatim records of hearings before the Commission. Such records are internal working documents of the Commission. If a party to the communication so requests, the Commission shall provide a copy of such records unless, in the view of the Commission, doing so could create a danger to persons heard.
15. The state party to the communication shall make an undertaking not to victimise or to take any reprisals against the complainant and/or any person representing them or their family members, or witnesses because of their statements before the Commission.
16. The Commission may receive *amicus curiae* brief on communication. During the hearing of a communication in which *amicus curiae* brief has been filed, the Commission, where necessary shall permit the author of the brief or the representative to address the Commission.

Rule 100: Witnesses and experts

1. The Commission shall determine, at its own initiative, or at the request of one of the parties, when to call independent experts and witnesses of the parties to the communication whom it considers necessary to hear in a given case. A request to call a witness by one of the parties shall not be rejected unless the Commission has good reasons to believe that such a request constitutes an abuse of process. The invitation to the hearing shall indicate:
 - (a) The parties to the communication;
 - (b) A summary of the facts or issues in relation to which the Commission desires to hear the witness or expert.

2. Any such person may, if they do not have sufficient knowledge of the working languages of the Commission, be authorised by the Chairperson to speak in any other language to be interpreted in one of the working languages of the Commission.
3. After establishing the identity of the witnesses or experts the Chairperson of the Commission shall request them to take the following oath:
 - (a) For witnesses '*I swear/affirm that I will speak the truth, the whole truth and nothing but the truth.*'
 - (b) For the experts '*I swear/affirm that my statement will be in accordance with my knowledge, findings and sincere belief.*'
4. The state party to the communication shall give an undertaking not to victimise or persecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission.

Rule 101: Inability of a member of the Commission to take part in the examination of a communication

1. A member of the Commission shall not be present and take part in the consideration of a communication if he or she:
 - (a) Is a national of the state party concerned;
 - (b) Has any personal interest in the case;
 - (c) Is engaged in any political or administrative activity or any professional activity that is incompatible with his or her independence or impartiality;
 - (d) Has participated in any capacity in any decision at the national level in relation to the communication; or
 - (e) Has expressed publicly opinions that might be interpreted as reflecting lack of impartiality with respect to the communication.
2. Any question that may arise under paragraph 1 above shall be decided by the Commission without the participation of the member concerned.

Rule 102: Withdrawal of a member

If, for any reason, a member of the Commission 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 Chairperson of his or her decision to withdraw.

Rule 103: Preliminary objection

1. A party who intends to raise a preliminary objection at the stage of admissibility or before the Commission takes a decision on the merits of the communication, shall do so not later than thirty (30) days after receiving notification to submit on admissibility or on the merits. The Commission shall communicate the objection to the other party within fifteen (15) days.
2. A party who intends to respond to a preliminary objection raised by the other party shall submit a written response not later than thirty (30) days after the Secretary to the Commission has transmitted the objection to that party.
3. If no response to a preliminary objection is received within the stipulated period, the Commission shall proceed with the consideration of the preliminary objection on the basis of the available information.
4. When the Commission receives a preliminary objection, it shall first of all determine this objection before any other question relating to the communication.

Rule 104: Legal aid

1. The Commission may, either at the request of the author of the communication or at its own initiative, facilitate access to free legal aid to the author in connection with the representation of the case;
2. Free legal aid shall only be facilitated where the Commission is convinced:
 - (a) That it is essential for the proper discharge of the Commission's duties, and to ensure equality of the parties before it; and
 - (b) The author of the communication has no sufficient means to meet all or part of the costs involved;
3. In case of urgency or when the Commission is not in session, its Chairperson may exercise the powers conferred on the Commission by this rule. As soon as the Commission is in session, any action that has been taken under this paragraph shall be brought to its attention for confirmation.

SUB-SECTION 2: Procedure on admissibility

Rule 105: Submissions of observations

1. When the Commission has decided to be seized of a communication pursuant to the present rules, it shall promptly transmit a copy of the complaint to the respondent state. It shall simultaneously inform the complainant of the decision on seizure, and request the complainant to present evidence and arguments on admissibility within two months.
2. Upon receipt of the complainant's observations on admissibility, the Secretary shall transmit a copy to the respondent state and request the latter to make a written submission, containing its arguments and evidence on admissibility, within two months of its receipt of the Commission's request. The Secretariat shall, within a week of receipt of the state's submission, provide the complainant with a copy.
3. Upon receiving the observations of the respondent state on Admissibility, the complainant may comment on the observations within one month of receipt.
4. In conformity with rule 88(6), the Commission, while determining Admissibility may ask the parties to present supplementary observations in an oral hearing.

Rule 106: Admissibility of communications

The communication shall comply with the requirements of Admissibility under article 56 of the Charter which are cumulative.

Rule 107: Decision on admissibility

1. Once it has considered the positions of the parties, the Commission shall make a decision on the admissibility of the communication and the Secretary shall inform the parties accordingly.
2. Once a communication has been declared admissible, the Commission shall inform the parties and defer the communication to the next session for consideration on the merits.
3. The Commission's decisions on the inadmissibility of communications shall be notified to the parties and attached to its Activity Report.
4. If the Commission has declared a communication inadmissible this decision may be reviewed at a later date, upon the submission of new evidence, contained in a written request to the Commission by the author.

SUB-SECTION 3: Procedure for the consideration of communications on the merits

Rule 108: Proceedings

1. Once a communication has been declared admissible, the Commission shall set a period of sixty (60) days for the complainant to submit observations on the merits. These observations shall be transmitted to the state party concerned for the submission of its observations within sixty (60) days;
2. Any written statements submitted by the state party concerned shall be communicated, through the Secretary, to the complainant, who may submit any additional written information or observations within thirty (30) days. This time limit cannot be extended.

Rule 109: Amicable settlement

1. At any stage of the examination of a communication, the Commission, on its own initiative or at the request of any of the parties concerned, may offer its good offices for an amicable settlement between the parties.
2. The amicable settlement procedure shall be initiated, and may only continue, with the consent of the parties.
3. If it deems it necessary, the Commission may entrust to one or more of its members the task of facilitating negotiations between the parties.
4. The Commission may terminate its intervention in the amicable settlement procedure at the request of one or both parties, within a period of six months, renewable once, when an amicable settlement is not reached.
5. When the Commission receives information from parties that an amicable settlement has been reached, the Commission shall ensure that such amicable settlement:
 - (a) Complies with or respects the human rights and fundamental freedoms enshrined in the African Charter and other applicable instruments;
 - (b) Indicates that the victim of the alleged human rights violation or, his/her successors, as the case may be, have consented to the terms of the settlement and are satisfied with the conditions;
 - (c) Includes an undertaking by the parties to implement the terms of the settlement.
6. When the Commission is satisfied that the requirements of paragraph 5 have been complied with, it shall prepare a report which shall contain:
 - (a) A brief statement of the facts;
 - (b) An explanation of the settlement reached;
 - (c) Recommendations by the Commission for steps to be taken by the parties to ensure the maintenance of the settlement;
 - (d) Steps to be taken by the Commission to monitor the parties' compliance with the terms of the settlement.
7. If the terms of the amicable settlement are not implemented within six months, or when the terms do not comply with the requirements under paragraph 5 of the present rule the Commission shall at the request of the complainant continue to process the communication in accordance with the relevant provisions of the Charter and the relevant rules in the present rules.

Rule 110: Decision on the merits

1. The Commission, after deliberation on the submissions of both parties, shall adopt a decision on the merits of the communication.
2. The Commission shall deliberate on communications in private, and all aspects of the discussions shall be confidential.
3. The decision of the Commission shall be signed by the Chairperson and the Secretary, shall remain confidential and shall not be transmitted to the parties until its publication is authorised by the Assembly.

4. The decision of the Commission shall be posted on the Commission's website after its publication is authorised by the Assembly.

Rule 111: Review of the decision of the Commission on the merits

1. Once the Commission has taken a decision on the merits, it may, on its own initiative or upon the written request of one of the parties, review the decision.

2. In determining whether to review its decision on the merits, the Commission shall satisfy itself of the following:

(a) That the request is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was not known to the Commission and the party requesting the review, provided that such ignorance was not due to negligence;

(b) That the application for review is made within six months of the discovery of the new fact;

(c) Any other compelling reason or situation that the Commission may deem appropriate or relevant to justify review of a communication, with a view to ensure fairness, justice and respect for human and peoples' rights.

3. No application for review may be made after three years from the date of the decision.

Rule 112: Follow-up on the recommendations of the Commission

1. After the consideration of the Commission's Activity Report by the Assembly, the Secretary shall notify the parties within thirty (30) days that they may disseminate the decision.

2. In the event of a decision against a state party, the parties shall inform the Commission in writing, within one hundred and eighty (180) days of being informed of the decision in accordance with paragraph one, of all measures, if any, taken or being taken by the state party to implement the decision of the Commission.

3. Within ninety (90) days of receipt of the State's written response, the Commission may invite the State concerned to submit further information on the measures it has taken in response to its decision.

4. If no response is received from the State, the Commission may send a reminder to the state party concerned to submit its information within ninety (90) days from the date of the reminder.

5. The rapporteur for the communication, or any other member of the Commission designated for this purpose, shall monitor the measures taken by the state party to give effect to the Commission's recommendations on each communication.

6. The rapporteur may make such contacts and take such action as may be appropriate to fulfill his/her assignment including recommendations for further action by the Commission as may be necessary.

7. At each ordinary session, the rapporteur shall present the report during the public session on the implementation of the Commission's recommendations.

8. The Commission shall draw the attention of the Sub-Committee of the Permanent Representatives Committee and the Executive Council on the Implementation of the Decisions of the African Union, to any situations of non-compliance with the Commission's decisions.

9. The Commission shall include information on any follow-up activities in its Activity Report.

Rule 113: Extension of time

1. Subject to the provisions of rule 111, when a deadline is fixed for a particular submission, either party may apply to the Commission for extension of the period stipulated.
2. The Commission may grant an extension which shall not exceed one (1) month, and shall not grant more than one extension per party for any given submission.

PART 4: RELATIONSHIP WITH THE AFRICAN COURT
CHAPTER I: General provisions

Rule 114: Complementarity with the African Court

1. Pursuant to article 2 of the Protocol, the Court shall complement the protective mandate of the Commission as provided for in articles 30 and 45 (2) of the African Charter.
2. The complementarity relationship between the Commission and the Court is set out and organised by articles 5, 6(1), 6(3), 8 and 33 of the Protocol.

Rule 115: Consultations with the Court

1. In pursuance of article 2 of the Protocol, the Commission shall meet with the Court at least once a year and whenever necessary to ensure good working relationship between the two institutions.
2. The Bureau of the Commission may meet the Bureau of the Court as often as necessary to undertake any functions assigned to them by the two institutions.
3. The conclusions of the meetings of the Bureaus shall be considered and if adopted by the Commission, shall be included in the Activity Report.
4. The Commission shall consult with the Court before the modification of any of its rules relating to their relationship.

Rule 116: Interpretation of the Charter by the Commission

1. If the Commission is requested to interpret the Charter under article 45(3), it shall immediately inform the President of the Court.
2. A copy of the interpretation of the Charter by the Commission shall be sent to the President of the Court as soon as it is adopted.

Rule 117: Advisory Opinion

The Commission may request to be heard by the Court upon being notified by the Court of a request for an Advisory Opinion pursuant to article 4(1) of the Protocol.

Rule 118: Seizure of the Court

1. If the Commission has taken a decision with respect to a communication submitted under articles 48, 49 or 55 of the Charter and the Commission considers that the state has not complied or is unwilling to comply with its recommendations in respect of the communication within the period stated in rule 112(2), the Commission may submit the case to the Court pursuant to article 5(1)(a) of the Protocol and inform the parties accordingly.
2. If the Commission has made a request for provisional measures against a state party in accordance with rule 98, and considers that the State has not complied with the provisional measures requested, the Commission may pursuant to article 5(1)(a) of the Protocol, refer the case to the Court and inform the complainant and the state concerned.

3. The Commission may, pursuant to rule 84(2) submit a case before the Court against a state party if a situation that, in its view, constitutes one of serious or massive violations of human rights as provided for under article 58 of the African Charter, has come to its attention.

4. The Commission may seize the Court at any stage of the examination of a communication if it deems necessary.

Rule 119: Admissibility under article 6 of the Protocol

1. Where, pursuant to article 6 of the Protocol, the Commission is requested to give its opinion, on the admissibility of a case pending before the Court or where the Court has transferred a case to the Commission, it shall consider the admissibility of this matter in accordance with article 56 of the Charter and rules 105, 106 and 107 of the present rules.

2. Upon conclusion of the examination of the admissibility of the case referred to it under article 6 of the Protocol, the Commission shall immediately transmit its opinion or its decision on the admissibility to the Court.

Rule 120: Representation of the Commission before the Court

When the Commission decides to submit a case to the Court, pursuant to article 5(1)(a) of the Protocol and rule 118, it may appoint one or more commissioners to represent it before the Court. The commissioner(s) so designated shall be assisted by one or more legal officer(s) of the Commission's Secretariat

Rule 121: Content of the application and file to the Court

1. When, in pursuance of article 5(1)(a) of the Protocol and rule 120 of the present rules, the Commission decides to bring a case before the Court, it shall submit an application seizing the Court in accordance with the Court rules, accompanied by a summary of the case and the case file.

2. The summary shall include the names of the representatives of the Commission, the facts of the case and all the relevant provisions of the African Charter which have been violated.

3. Where necessary, the summary shall include

(a) The date on which the Commission adopted its decision, or adopted and sent the request for provisional measures;

(b) The facts which reveal serious or massive violations;

(c) The date on which the decision of the Commission was transmitted to the state party concerned;

(d) Information relating to the deadline stipulated under rule 113 of the present rules; and

(e) The parties to the proceedings before the Commission, if applicable.

4. The case file along with the summary to be transmitted to the Court shall contain all the evidence, documents or information concerning the communication including documents relating to any attempts to secure a friendly settlement, and the Commission's decision.

Rule 122: Transmission of cases to the Court and notification of the parties

1. The Secretary of the Commission shall transmit to the Court the application signed by the Chairperson, the certified copy of the case file and the summary referred to in rule 121 of the present rules in conformity with the Rules of Procedure of the Court. At the request of the Court, the Commission shall transmit the original of the case file.

2. The Secretary shall also immediately notify the parties who were before the Commission about the referral of the case to the Court and shall transmit copies of the case file and the summary thereof.

Rule 123: *Lis pendens*

The Commission shall not consider any communication relating to a case still pending before the Court, unless the case has been formally withdrawn.

**PART 5: RELATIONSHIP WITH OTHER AFRICAN UNION ORGANS,
INSTITUTIONS, AND PROGRAMMES**

Rule 124: General rule

1. The Commission, in fulfilling its mandate, shall establish formal relations of cooperation, including meetings as necessary, with all African Union organs, and institutions and programmes that have a human rights element in their mandate.
2. The Bureau of the Commission may, in addition, meet with the bureaux of these organs, institutions and programmes as often as may be required to ensure their good working relationship.

Rule 125: Relationship with the policy organs of the African Union

1. When submitting its Activity Report in accordance with article 54 of the African Charter, the Commission may request the Assembly to take necessary measures to implement its decisions.
2. The Commission shall bring all its recommendations to the attention of the Sub-Committee on the Implementation of the Decisions of the African Union of the Permanent Representatives Committee.

Rule 126: Cooperation with the African Union Commission

1. Prior to the appointment of the Secretary or any staff member of the Commission's Secretariat, the African Union Commission shall consult with the Bureau of the Commission.
2. After transmitting the report on the evaluation of the performance of the Secretary in accordance with rule 13(3) and 14(2)(c) of the present Rule of Procedure, the Chairperson of the African Union Commission may invite the Bureau of the African Commission for discussion.

PART 6: FINAL PROVISIONS

Rule 127: Interpretation

In conformity with article 45(3) of the Charter, the Commission shall interpret the Charter.

Rule 128: Amendment of the Rules of Procedure

The present Rules of Procedure may be amended by the Commission.

Rule 129: Transitional provisions

Upon the entry into force of the Protocol on the Statute of the African Court of Justice and Human Rights, all references in the present rules to provisions of the African Court Protocol or the African Court shall be deemed, where applicable, to refer to the relevant provisions of the Protocol on the Statute of the African Court of Justice and Human Rights or to the African Court of Justice and Human Rights, respectively.

Rule 130: Non-retroactivity

The present Rules of Procedure shall not have any retrospective effect.

Rule 131: 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.

Rule 132: Entry into force of the Rules of Procedure

The present Rules of Procedure shall enter into force three months after their adoption by a simple majority of members of the Commission present and voting at a session where the rules are scheduled to be adopted.

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. The Commission has also adopted guidelines on reports on socio-economic rights. These guidelines are available at www.achpr.org

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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.

Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2010)

These guidelines developed by a gender experts meeting in Pretoria, South Africa in August 2009, were adopted by the Commission in May 2010.

Pursuant to article 26 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Protocol), read together with article 62 of the African Charter on Human and Peoples' Rights (the African Charter), each state party to the Protocol has agreed to submit every two years, from the day the Protocol comes into force, a report on the legislative, judicial, administrative and other measures taken with a view to ensure full realisation of the rights and freedoms contained in the Protocol. A state party to the African Charter and the Protocol must submit its report in two parts: Part A, dealing with the rights in the African Charter, and Part B, dealing with the rights in the Protocol. A state's first report under Part B must, preferably, not exceed 50 pages and subsequent reports should not exceed 30 pages. In the preparation of Part B, state parties should follow the following guidelines:

Initial reports

When states report for the first time under the Protocol, they must provide the following:

i. Process of preparation

To what extent was civil society, in particular individuals and organisations working on gender issues, involved in the preparation of the report?

ii. Background information

- A brief description of the state's overall legal framework as it relates to women's rights (such as the Constitution, other laws, policies and programmes).
- An explanation as to whether the Protocol is directly applicable before national courts or if it has to be incorporated into domestic law. Information on whether in practice the provisions of the Protocol have been invoked before national courts and tribunals (with some examples of the most important cases).
- If the State has entered any reservations to the Protocol, it should provide an explanation indicating the effect of the reservations (if any) on the enjoyment of the rights protected by the Protocol. The State should indicate how much time is needed before it can lift its reservations or give an estimate of the time.
- A brief description of state institutions, if any, relevant to the Protocol and information on their budgetary allocation.
 - General information on gender budgeting.
 - Information on gender mainstreaming, including any policy and capacity-building efforts.
 - Information on any gender audit of laws or legal reform efforts undertaken from a gender perspective (attach relevant documents).

iii. Specific provisions of the Protocol

In respect of each of the provisions of the Protocol (which have been thematically structured below), states should explain the measures of implementation that they have undertaken with regard to the following:

- (a) Legislation (What legislative measures has the state taken to give effect to the particular rights guaranteed in the Protocol?)
- (b) Administrative measures (What administrative measures, including budgetary allocations, has the state taken to give effect to the particular rights guaranteed in the Protocol?)
- (c) Institutions (What institutional mechanisms are in place to ensure that the particular rights guaranteed in the Protocol are given effect?)
- (d) Policies and programmes (What policies and programmes has the state adopted in order to give effect to the rights in question?)
- (e) Public education (What public education and awareness-raising activities has the state undertaken with respect to the rights in question?)
- (f) Any other measures (What other general measures, which are not covered in the points above, has state adopted to ensure the protection of the particular rights in question?)
- (g) Remedies (judicial and administrative (extra-judicial)) (What are the available avenues for redress in the event of a breach of the particular rights provided in the Protocol? Have any cases been decided in respect to each of the rights; and if so, have these decisions been implemented?)
- (h) Challenges experienced (What are the challenges that the state has faced in the implementation of the particular rights, and what steps have been taken to overcome these challenges?)
- (i) Accessibility (Are the particular rights accessible to all women, especially rural/impooverished women?)
- (j) Disaggregated statistics (Where relevant, the state should provide relevant data and statistics disaggregated by gender in so far as the right in question is concerned.)

iv. With reference to the measures of implementation above, states must report on all the provisions of the Protocol, preferably as grouped under the following eight (8) themes:

1. Equality/Non-discrimination
 - 1.1 Elimination of discrimination (article 2)
 - 1.2 Access to justice, including legal aid and the training of law enforcement officials (article 8)
 - 1.3 Political participation and decision-making (article 9)
 - 1.4 Education (article 12)
2. Protection of women from violence
 - 2.1 Bodily integrity and dignity, including sexual violence, trafficking of women and medical and scientific experimentation (article 3 & 4)
 - 2.2 Practices harmful to women, including female genital mutilation (article 5).
 - 2.3 Female stereotypes (article 4(2)(c))
 - 2.4 Sexual harassment
 - 2.5 Domestic violence (article 4(2)(a))
 - 2.6 Support to victims of violence, including health services and psychological counselling (article 5(c))
3. Rights relating to marriage (articles 6-7)
 - 3.1 Marriage and its effect on property relations, nationality, name (article 6(e) to (j))
 - 3.2 Minimum age of marriage (article 6(b))
 - 3.3 Registration of marriages (article 6(d))
 - 3.4 Protection of women in polygamous marriages (article 6(c))

- 3.5 Protection of women during separation, divorce or annulment of marriage (article 7)
- 3.6 Protection of children in the family (article 6(i) & (j))
4. Health and reproductive rights
 - 4.1 Access to health services (article 14(2)(a))
 - 4.2 Reproductive health services, including the reduction of maternal mortality (article 14(1)(a) & (b))
 - 4.3 Provision for abortion (article 14(2)(c))
 - 4.4 HIV/AIDS (article 14(1)(d))
 - 4.5 Sex education (article 14(1)(g))
5. Economic, social and cultural rights
 - 5.1 Economic and welfare rights (article 13)
 - 5.2 Right to food security (article 15)
 - 5.3 Right to adequate housing (article 16)
 - 5.4 Right to positive cultural context (article 17)
 - 5.5 Right to a healthy and sustainable environment (article 18)
 - 5.6 Right to sustainable development, including the right to property; access to land and credit (article 19)
6. Right to peace (article 10)
 - 6.1 Women's participation in peace and conflict prevention and management (article 10(1)) and in all aspects of post-conflict reconstruction and rehabilitation (article 10(2)(e))
 - 6.2 Reduction of military expenditures in favour of social spending (article 10(3))
7. Protection of women in armed conflicts (article 11)
 - 7.1 Indicate measures of protection for asylum seekers, refugees, internally displaced women and ensure the punishment of all violators of such protection (article 11(1) - (3)).
 - 7.2 Protection that no child especially girls take a direct part in hostilities and no child is recruited as a soldier (article 11(4))
8. Rights of specially protected women's groups
 - 8.1 Widows, including their inheritance rights (articles 20 & 21)
 - 8.2 Elderly women (article 22)
 - 8.3 Women with disabilities (article 23)
 - 8.4 Women in distress (article 24)

Periodic reports

Subsequent reports should cover the following:

- Measures taken to implement recommendations in the concluding observations of the Commission emanating from the examination of the previous report.
- Measures taken to publicise and disseminate the concluding observations adopted after the examination of the previous report.
- Progress made in the implementation of the Protocol since the last report.
- The challenges faced in the implementation of the Protocol since the last report, and steps taken to address these challenges.
- Future plans in regard to the implementation of the Protocol.
- Include measures that have been taken to implement recommendations made during country visits by the Special mechanism on women's rights.

Concluding Observations and Recommendations on the Initial Periodic Report of the Republic of Botswana (2009)

The concluding observations reprinted here were adopted by the African Commission after consideration of the initial state report submitted by Botswana under article 62 of the African Charter. These concluding observations were adopted in November 2009. Source: Secretariat of the African Commission

Part I: Introduction

1. The Republic of Botswana is a state party to the African Charter on Human and Peoples' Rights (the African Charter) having ratified the Charter on 17 July 1986.
2. The periodic report was the first ever since the Republic of Botswana ratified the African Charter.
3. The present concluding observations follow the presentation and examination of the initial periodic reports of Botswana at the 46th ordinary session of the African Commission. The report covers human rights development in the country since independence (1966).
4. The report was presented to the African Commission by the Minister for Defence, Justice and Security, Honourable Dikgagamatso Seretse. It highlights the developments that have taken place in the areas of human and peoples' rights and measures put in place with a view to implement the country's obligations under the African Charter.
5. The present concluding observations give an account of the constructive and positive aspects, and concerns identified in the report. The comments, remarks and observations during the examination of the report, enhanced the recommendations formulated after the dialogue.

Part II: The positive factors

The African Commission:

6. Welcomes the presentation of the initial periodic report of Botswana in accordance with article 62 of the African Charter and the fact that both the format and presentation of the report are in conformity with the African Commission's Guidelines on state reporting.
7. Appreciates the quality and candidness of the report and the constructive dialogue the Commission had with the delegation of Botswana. The Commission welcomes the positive reactions to the suggestions and recommendations made during the discussion.
8. Welcomes the additional information and answers to the questions provided by the delegation of Botswana during the examination of the report, and further welcomes the undertaking made by the delegation to provide as soon as possible to the African Commission, answers to questions and additional information which were not immediately available, as well as to include such information in its next periodic report to the African Commission.
9. Commends Botswana for the successive and consistent high economic growth rate it has achieved through the years and for becoming one of the few middle income countries in Africa.
10. Welcomes the establishment of the Office of the Ombudsman and also appreciates the work done by it in fighting maladministration and injustice in the public sector.

11. Commends Botswana for having a dynamic and independent judiciary which is playing an important role in the protection of human rights and fundamental freedoms.

12. Notes that since its independence in 1966 the Republic of Botswana had conducted successive elections which have been deemed to be free and fair, making the country a model for a functioning multiparty democracy, whose foundations are based on the promotion and protection of human rights.

13. Particularly congratulates Botswana for conducting peaceful elections in October 2009 which were declared free and fair by national and international observers.

14. Commends Botswana for ratifying major international and regional human rights instruments.

15. Welcomes the establishment of an Inter-Ministerial Committee on Treaties, Conventions and Protocols in 2002 to ensure the existence of laws and effective mechanisms for the enforcement and assertions of human rights.

16. Commends Botswana for making education free up to the tertiary level and for having a special scheme that ensures that children in need attend school.

17. Commends Botswana for its social security programs for older people and World War II veterans.

18. Commends Botswana for amending and enacting the following legislations which contribute to the economic, social and political empowerment of women:

- The amendment of the Deeds Registry Act of 1996 which among others enable women to execute deeds and other required documents and to be registered in the deeds registry without their husbands' consent and allow for immovable property to be transferred or ceded to a woman married in a community of property and allow the woman to have her own separate estate.
- The amendment of the Abolition of Marital Power Act in 2004 which provides for equality between men and women in marriage in community of property.
- The amendment of the Criminal Procedure and Evidence Act to provide for the mandatory hearing of rape and related offences in closed proceedings.
- The amendment of Sections 141 and 142 of the Penal Code which brought about gender neutrality in relation to rape by moving it away from being phallus-specific.
- The amendment of Public Service Act to recognise sexual harassment as misconduct.
- The enactment of the Domestic Violence Act in 2007 which provides for the protection of survivors of domestic violence and for matters related therewith.
- The amendment of the Citizenship Act in 1995 following court ruling in the *Unity Dow* case.

19. Further commends Botswana for acceding to the Convention for the Elimination of All Forms of Discrimination against Women and for ratifying the Optional Protocol to the Convention.

20. Notes the extensive consultations made with the people and various stakeholders that eventually led to the enactment of the Bogosi Act to amend sections 77, 78 and 79 of the Constitution to make them tribally neutral.

21. Appreciates the social safety net programs put in place like the Destitute Program, the Orphan Care Program, the Community Home Based Care Program and Remote Area Development Program for vulnerable members of the society.

22. Commends the efforts made by Botswana to contain the spread of HIV/ AIDS by making Anti-Retroviral Treatment and Prevention of Mother to Child

Transmission Programs widely available for people living with HIV/AIDS and through HIV/AIDS awareness campaigns.

23. Notes and appreciates the National Strategy for Poverty Reduction programme that tries to foster sustainable livelihoods, expand employment opportunities and improve access to social investment.

24. Commends Botswana for the progress made in ensuring the availability, accessibility and affordability of health care programs and facilities to the population.

25. Notes the human rights program introduced by the Botswana Police College.

PART III: Areas of concerns

26. While recognising the efforts of Botswana to promote and protect human rights and to promote awareness of the principles and provisions of the African Charter, the African Commission remains concerned that:

27. Non-governmental organisations working in the field of human rights like the Botswana Centre for Human Rights (Ditshwanelo) did not have an input into the preparation of the report.

28. The report does not address environmental issues and concerns.

29. Nothing has been mentioned in the report about the measures taken by the state as to how it is fulfilling its obligations laid out in articles 27 to 29 of the African Charter.

30. Corporal punishment is still allowed in schools and prisons as one form of punishment. The African Commission regards such forms of punishment as cruel, inhuman and degrading.

31. There is no organ that is mandated to look into human rights violations that are perpetrated by non-state actors.

32. The Constitution does not give recognition to economic, social, cultural and environmental rights.

33. Despite all the efforts that Botswana has made to avail its citizens economic, social and cultural Botswana has not yet ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).

34. The reservations made by Botswana on CAT and the definition of torture provided under the Constitution of the Republic of Botswana undermine the protection and guarantees that torture, cruel, inhuman and degrading treatment or punishment will not be carried out by law enforcement officials.

35. Botswana still retains the death penalty and that it does not have plans to abolish it soon. The African Commission is especially concerned that the Republic of Botswana is one of the few African Countries that carries out the death penalty regularly.

36. The President has a very vast and unchecked power in expelling non-nationals out of the country and in branding an individual as dangerous to peace and order.

37. The participation of women in parliament and in other organs of the government is very nominal.

38. There is no clear provision that criminalises torture.

39. Female prisoners do not have their own separate prison.

40. Convicted prisoners are only allowed visits by friends and relatives for twenty minutes each month, which in the opinion of the African Commission is insufficient.

41. Free legal assistance by the state is restricted only to persons charged with capital offence.

42. The government is not giving the necessary attention to the rights and concerns of the Basawara people who were evicted from the Central Kalahari Game Reserve.

43. The language requirement for the election of the National Assembly discriminates against the poor/illiterate and minority groups who do not speak English.

44. There is no provision for free legal aid.

44. There is undue delay in the disposal of cases, especially pre-trial detention, leading to a backlog of cases and ultimately overcrowding in prisons and detention centres.

45. There is no legislation that makes basic education compulsory.

46. The fact that minors are required to be accompanied by their parents for HIV testing may be contributing to the spreading of AIDS.

PART IV: Factor(s) restricting the enjoyment of the rights prescribed by the African Charter

47. The report acknowledges that resource constraints have largely been responsible for Botswana not being able to meet all of its human rights obligations. It also indicates that the high rate of HIV infection has obliged the government to shift resources to fight the AIDS pandemic.

48. The report further recognises the deep rooted beliefs in otherwise human rights unfriendly practices like corporal punishment and the death penalty.

49. The report also reveals that the official definition of settlements for purposes of planned development in many instances do not match the population and geographical distribution of human settlement.

PART V: Recommendations to the Government of the Republic of Botswana

50. The African Commission recommends that the Government of Botswana:

(i) Should ensure that it involves all relevant NGOs in the preparation of its next periodic report, including the Botswana Centre for Human Rights (Ditshwanelo);

(ii) The next periodic report should include environmental issues, and should enumerate how the government is fulfilling its obligations under articles 27 - 29 of the African Charter.

(iii) Should take urgent and concrete measures to abolish laws that allow corporal punishment in schools and prisons.

(iv) Take steps towards establishing a National Human Rights Commission or elevate the Office of the Ombudsman to look into cases of violations of human rights by non-state actors.

(v) Expedite the implementation of the Judicial Case Management System to address the problems of backlog of cases;

(vi) Take the necessary steps to amend the Constitution to incorporate economic, social, cultural and environmental rights.

(vii) Ratify the International Covenant on Economic, Social and Cultural Rights.

(viii) Should undertake to make a declaration accepting the competence of the African Court under article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights.

(ix) Should consider withdrawing the reservations made by it on CAT and remove the qualifying provisions in the Constitution on the definition of torture.

(x) Should legislate laws that criminalise torture.

(xi) Take the necessary steps to institute a moratorium on the death penalty and to this effect the Commission recommends that the government of Botswana works closely with the Commission's Working Group on the Death Penalty;

- (xii) Take legislative measures to limit and check the President's powers in expelling non-nationals out of the country and in branding an individual as dangerous to peace and order.
- (xiii) Should put in place mechanisms to encourage and promote women's participation in the social, economic and political affairs of the state.
- (xiv) Make the necessary arrangements to build a separate prison for female prisoners with the necessary facilities.
- (xv) Conduct consultations with all the relevant stakeholders involved in the administration of justice, including families of detainees with a view to increase the frequency and time duration of visit by friends and relatives of convicted prisoners.
- (xvi) Take the necessary legislative measures and material preparations to extend free legal assistance to all crimes where the accused person cannot afford to pay legal representation fees. Such assistance could be means tested.
- (xvii) Should start implementing the 2006 decisions of the High Court in relation with the Basawara people of the Kalahari. In this regard, it should focus on the cultural rights and socio-economic needs of the Basawara people.
- (xviii) Consult and or work closely with the African Commission's 'Working Group on Indigenous Populations/Communities in Africa' in finding practical ways of implementing the decisions of the Court.
- (xix) Should take the necessary steps to amend the provision of the Constitution which makes the English language a requirement for election to the National Assembly.
- (xx) Should promote civil societies and NGOs that provide free legal aid and should also enact laws that regulate legal aid.
- (xxi) Take the necessary measures to legislate laws that ensure basic compulsory education for all.
- (xxii) Look into ways of amending the law that requires minors to be accompanied by their parents for HIV testing.
- (xxiii) Should include standards like the Robben Island Guidelines in the human rights program of the Botswana Police College and the training of prison officers.
- (xxiv) Finally, the African Commission requests that the Republic of Botswana in its next periodic report inform the African Commission of the steps it has taken to address the areas of concern as well as how it has implemented the recommendations in these concluding observations.

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.africancases.up.ac.za and the African Case Law Analyser caselaw.ihrrda.org. 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 communication number is cited. The cases are sorted in alphabetical order following a list of decisions by article of the African Charter discussed. Footnotes omitted.

Reprinted decisions by article of the African Charter discussed

Article 1	<i>Commission Nationale des Droits de l'Homme et des Libertés v Chad</i> <i>Institute for Human Rights and Development in Africa v Angola</i> <i>International Pen and Others (on behalf of Saro-Wiwa) v Nigeria</i> <i>Jawara v The Gambia</i> <i>Lawyers for Human Rights v Swaziland</i> <i>Zimbabwe Human Rights NGO Forum v Zimbabwe</i> <i>Egyptian Initiative for Personal rights and Interights v Egypt</i>
Article 2	<i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i> <i>Jawara v The Gambia</i> <i>Purohit and Another v The Gambia</i> <i>Egyptian Initiative for Personal rights and Interights v Egypt</i> <i>The Nubian Community in Kenya v Kenya</i>
Article 3	<i>Bissangou v Republic of Congo</i> <i>Purohit and Another v The Gambia</i> <i>Egyptian Initiative for Personal rights and Interights v Egypt</i> <i>The Nubian Community in Kenya v Kenya</i>
Article 4	<i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i> <i>Forum of Conscience v Sierra Leone</i> <i>International Pen and Others (on behalf of Saro-Wiwa) v Nigeria</i> <i>Social and Economic Rights Action Centre (SERAC) and Another v Nigeria</i>
Article 5	<i>Achuthan and Another (on behalf of Banda and Others) v Malawi</i> <i>Amnesty International and Others v Sudan</i> <i>Article 19 v Eritrea</i> <i>Doebbler v Sudan</i> <i>Egyptian Initiative for Personal rights and Interights v Egypt</i> <i>Huri-Laws v Nigeria</i> <i>Institute for Human Rights and Development in Africa v Angola</i> <i>International Pen and Others (on behalf of Saro-Wiwa) v Nigeria</i> <i>Interights & Ditshwanelo v Botswana</i> <i>Malawi African Association and Others v Mauritania</i> <i>The Nubian Community in Kenya v Kenya</i> <i>Ouko v Kenya</i> <i>Purohit and Another v The Gambia</i> <i>Zegveld and Another v Eritrea</i>
Article 6	<i>Constitutional Rights Project and Another v Nigeria</i> <i>Institute for Human Rights and Development in Africa v Angola</i> <i>Jawara v The Gambia</i> <i>Media Rights Agenda and Others v Nigeria</i> <i>Purohit and Another v The Gambia</i> <i>Sudan Human Rights Organisation and Another v Sudan</i>

Article 7	<i>Bissangou v Republic of Congo</i> <i>Constitutional Rights Project and Another v Nigeria</i> <i>Huri-Laws v Nigeria</i> <i>Lawyers for Human Rights v Swaziland</i> <i>Media Rights Agenda and Others v Nigeria</i> <i>Zimbabwe Human Rights NGO Forum v Zimbabwe</i> <i>Sudan Human Rights Organisation and Another v Sudan</i>
Article 7(1)(a)	<i>Constitutional Rights Project (in respect of Akamu and Others) v Nigeria</i> <i>Institute for Human Rights and Development in Africa v Angola</i> <i>Purohit and Another v The Gambia</i> <i>Tembani and Freeth v Angola and Thirteen Others</i>
Article 7(1)(b)	<i>Law Office of Ghazi Suleiman v Sudan (I)</i>
Article 7(1)(c)	<i>Achuthan and Another (on behalf of Banda and Others) v Malawi</i> <i>Avocats Sans Frontières (on behalf of Bwampamye) v Burundi</i> <i>International Pen and Others (on behalf of Saro-Wiwa) v Nigeria</i> <i>Law Office of Ghazi Suleiman v Sudan (I)</i> <i>Purohit and Another v The Gambia</i>
Article 7(1)(d)	<i>Amnesty International and Others v Sudan</i> <i>Article 19 v Eritrea</i> <i>Constitutional Rights Project (in respect of Akamu and Others) v Nigeria</i> <i>Jawara v The Gambia</i> <i>Law Office of Ghazi Suleiman v Sudan (II)</i> <i>Pagnoulle (on behalf of Mazou) v Cameroon</i>
Article 7(2)	<i>Jawara v The Gambia</i>
Article 8	<i>Amnesty International and Others v Sudan</i> <i>Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya</i> <i>Prince v South Africa</i>
Article 9	<i>Amnesty International and Others v Sudan</i> <i>Article 19 v Eritrea</i> <i>Constitutional Rights Project and Another v Nigeria</i> <i>Constitutional Rights Project and Others v Nigeria</i> <i>Jawara v The Gambia</i> <i>Law Office of Ghazi Suleiman v Sudan (II)</i> <i>Media Rights Agenda and Others v Nigeria</i> <i>Ouko v Kenya</i> <i>Zimbabwe Lawyers for Human Rights and Another (on behalf of Meldrum) v Zimbabwe</i> <i>Egyptian Initiative for Personal rights and Interights v Egypt</i>
Article 10	<i>Civil Liberties Organisation (in respect of Bar Association) v Nigeria</i> <i>Huri-Laws v Nigeria</i> <i>Jawara v The Gambia</i> <i>Law Office of Ghazi Suleiman v Sudan (II)</i> <i>Lawyers for Human Rights v Swaziland</i>
Article 11	<i>Jawara v The Gambia</i> <i>Law Office of Ghazi Suleiman v Sudan (II)</i> <i>Lawyers for Human Rights v Swaziland</i>
Article 12(1)	<i>Huri-Laws v Nigeria</i> <i>Jawara v The Gambia</i> <i>Law Office of Ghazi Suleiman v Sudan (II)</i> <i>The Nubian Community in Kenya v Kenya</i> <i>Sudan Human Rights Organisation and Another v Sudan</i>
Article 12(4)	<i>Institute for Human Rights and Development in Africa v Angola</i>
Article 12(5)	<i>African Institute for Human Rights and Development (on behalf of Sierra Leonean Refugees in Guinea) v Guinea</i> <i>Institute for Human Rights and Development in Africa v Angola</i>
Article 13	<i>Constitutional Rights Project and Another v Nigeria</i> <i>Jawara v The Gambia</i> <i>Lawyers for Human Rights v Swaziland</i> <i>The Nubian Community in Kenya v Kenya</i> <i>Purohit and Another v The Gambia</i>

Article 14	<i>Bissangou v Republic of Congo</i> <i>Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya</i> <i>Constitutional Rights Project and Others v Nigeria</i> <i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i> <i>Huri-Laws v Nigeria</i> <i>Institute for Human Rights and Development in Africa v Angola</i> <i>Media Rights Agenda and Others v Nigeria</i> <i>The Nubian Community in Kenya v Kenya</i> <i>Social and Economic Rights Action Centre (SERAC) and Another v Nigeria</i> <i>Sudan Human Rights Organisation and Another v Sudan</i>
Article 15	<i>Institute for Human Rights and Development in Africa v Angola</i> <i>The Nubian Community in Kenya v Kenya</i> <i>Prince v South Africa</i>
Article 16	<i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i> <i>International Pen and Others (on behalf of Saro-Wiwa) v Nigeria</i> <i>Purohit and Another v The Gambia</i> <i>Social and Economic Rights Action Centre (SERAC) and Another v Nigeria</i> <i>Sudan Human Rights Organisation and Another v Sudan</i>
Article 16(1)	<i>Egyptian Initiative for Personal rights and Interights v Egypt</i> <i>The Nubian Community in Kenya v Kenya</i>
Article 17	<i>Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya</i> <i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i> <i>Malawi African Association and Others v Mauritania</i> <i>The Nubian Community in Kenya v Kenya</i> <i>Prince v South Africa</i>
Article 18(1)	<i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i> <i>Social and Economic Rights Action Centre (SERAC) and Another v Nigeria</i> <i>Sudan Human Rights Organisation and Another v Sudan</i>
Article 18(3)	<i>Egyptian Initiative for Personal rights and Interights v Egypt</i>
Article 18(4)	<i>Purohit and Another v The Gambia</i>
Article 19	<i>Malawi African Association and Others v Mauritania</i> <i>Gunme and Others v Cameroon</i>
Article 20	<i>Constitutional Rights Project and Another v Nigeria</i> <i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i> <i>Gunme and Others v Cameroon</i> <i>Jawara v The Gambia</i> <i>Katangese Peoples' Congress v Zaire</i>
Article 21	<i>Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya</i> <i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i> <i>Social and Economic Rights Action Centre (SERAC) and Another v Nigeria</i>
Article 22	<i>Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya</i> <i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i> <i>Sudan Human Rights Organisation and Another v Sudan</i>
Article 23	<i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i> <i>Malawi African Association and Others v Mauritania</i>
Article 24	<i>Social and Economic Rights Action Centre (SERAC) and Another v Nigeria</i>
Article 26	<i>Amnesty International and Others v Sudan</i> <i>Constitutional Rights Project and Another v Nigeria</i> <i>Huri-Laws v Nigeria</i> <i>Jawara v The Gambia</i> <i>Lawyers for Human Rights v Swaziland</i> <i>Tembani and Freeth v Angola and Thirteen Others</i> <i>Zimbabwe Lawyers for Human Rights and Another (on behalf of Meldrum) v Zimbabwe</i>
Article 27(2)	<i>Constitutional Rights Project and Others v Nigeria</i> <i>Interights and Others v Mauritania</i> <i>Media Rights Agenda and Others v Nigeria</i>

Article 47	<i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i>
Article 48	<i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i>
Article 49	<i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i>
Article 56(3)	<i>Ligue Camerounaise des Droits de l'Homme v Cameroon</i>
Article 56(4)	<i>Jawara v The Gambia</i>
Article 56(5)	<i>African Institute for Human Rights and Development (on behalf of Sierra Leonean Refugees in Guinea) v Guinea</i> <i>Article 19 v Eritrea</i> <i>Bissangou v Republic of Congo</i> <i>Human Rights Council and Others v Ethiopia</i> <i>Jawara v The Gambia</i> <i>Media Rights Agenda and Others v Nigeria</i> <i>Purohit and Another v The Gambia</i> <i>Social and Economic Rights Action Centre (SERAC) and Another v Nigeria</i> <i>Zimbabwe Human Rights NGO Forum v Zimbabwe</i>
Article 56(6)	<i>Majuru v Zimbabwe</i> <i>Shumba v Zimbabwe</i>
Article 56(7)	<i>Sudan Human Rights Organisation and Another v Sudan</i>
Article 61	<i>Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya</i> <i>Democratic Republic of the Congo v Burundi, Rwanda and Uganda</i> <i>Social and Economic Rights Action Centre (SERAC) and Another v Nigeria</i>

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.

...

**African Institute for Human Rights and Development (on behalf of
Sierra Leonean Refugees in Guinea) v Guinea
(2004) AHRLR 57 (ACHPR 2004)**

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 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 *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 *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* [(2000) AHRLR 321 (ACHPR 1996)], 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. For these reasons, the communication is declared admissible.

Merits

...

67. 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.

68. 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.

69. In *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* [(2000) AHRLR 321 (ACHPR 1996)], the African Commission pointed out that 'the drafters of the Charter believed that mass expulsion presented 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.

70. 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.

71. 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.

72. 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.

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.

...

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).

Article 19 v Eritrea (2007) AHRLR 73 (ACHPR 2007)

This communication deals with freedom of expression and arbitrary detention in Eritrea.

...

82. In the absence of any concrete steps on the part of the state to bring the victims to court, or to allow them access to their legal representatives three years after their arrest and detention, and more than one year after being seized of the matter, the African Commission is persuaded to conclude that domestic remedies, even if available, are not effective and/or sufficient.

For this reason, the African Commission declares the communication admissible.

...

Decision on the merits

86. The African Commission will not deal with any issue already decided upon in communication 250/2002.

...

98. Eritrea contends that the delay in bringing these particular detainees to trial is due to the complexity and gravity of the offences committed, and to the 'precarious war situation' existing within the state. However, as already stated, it must be borne in mind that states parties cannot derogate from the Charter in times of war or any other emergency situation. Even if it is assumed that the restriction placed by the Charter on the ability to derogate goes against international principles, there are certain rights such as the right to life, the right to a fair trial, and the right to freedom from torture and cruel, inhuman and degrading treatment, that cannot be derogated from for any reason, in whatever circumstances.

99. The existence of war in Eritrea cannot therefore be used to justify excessive delay in bringing the detainees to trial. Furthermore, a backlog of cases awaiting trial cannot excuse unreasonable delays, as the European Court of Human Rights has held. Further, in the case of *Albert Mukong*, referred to above, the Human Rights Committee stated that states parties to the ICCPR must observe certain minimum standards as regards the condition

of detention, regardless of their state of development. The Commission considers that the same principle applies to the length of detention before trial, and that states parties to the Charter cannot rely on the political situation existing within their territory or a large number of cases pending before the courts to justify excessive delay.

100. Moreover, the detainees are being held *incommunicado*, and have never been brought before a judge to face charges. In these circumstances, the Commission finds that Eritrea has breached the requirement of trial within a reasonable time set out in article 7(1)(d). This is consonant with its previous decisions, such as communication 102/93 [*Constitutional Rights Project and Another v Nigeria* (2000) AHRLR 199 (ACHPR 1998)], in which three years detention was found to be unacceptable, and communication 103/93 [*Abubakar v Ghana* (2000) AHRLR 124 (ACHPR 1996)], in which the Commission stated that seven years detention without trial, 'clearly violates the "reasonable time" standard stipulated in the Charter'.

101. The fact that the detainees are being held *incommunicado* also merits further consideration in terms of international human rights law. The United Nations Human Rights Committee has directed that states should make provisions against *incommunicado* detention, which can amount to a violation of article 7 (torture and cruel treatment and punishment) of the International Covenant of Civil and Political Rights, to which Eritrea has acceded. Furthermore, the Commission itself has stated [*Amnesty International and Others v Sudan* [(2000) AHRLR 297 (ACHPR 1999) para 54] that

holding an individual without permitting him or her to have contact with his or her family, and refusing to inform the family if and where the individual is being held, is inhuman treatment of both the detainee and the family concerned.

102. Eritrea has not denied the complainant's contention that the detainees are being held *incommunicado*, with no access to legal representation or contact with their families, and as the Commission has enunciated in many of its previous decisions, where allegations are not disputed by the state involved, the Commission may take the facts as provided by the complainant as a given. Nor does the political situation described by Eritrea excuse its actions, as article 5 permits no restrictions or limitations on the right to be free from torture and cruel, inhuman or degrading punishment or treatment. The Commission thus finds that Eritrea has violated article 5, by holding the journalists and political dissidents *incommunicado* without allowing them access to their families.

103. In keeping with its earlier decisions on similar cases, the Commission also finds that such treatment amounts to a breach of article 18, as it constitutes violation of the rights of both the detainees and their families to protection of family life. Finally, the Commission holds that there has been a violation of article 7(1)(c), since the detainees have been allowed no access to legal representation, contrary to the right to be defended by counsel which is protected by that provision of the Charter.

104. The Commission turns its attention now to the question of whether there has been a violation of the detainees' rights to express and disseminate their opinions, as alleged by the complainant. The events which give rise to this allegation are the ban by the Eritrean government of the private press, and the arrest and detention of the 18 journalists. The respondent state argues that these actions were justified by the activities of the journalists and the newspapers in question, which it considered were aimed at overthrowing the government. Further, the Eritrean government claims that its actions did not constitute a breach of the Charter, as article 9 only protects the expression and dissemination of opinions within the law.

105. As explained above, permitting states parties to construe Charter provisions so that they could be limited or even negated by domestic laws

would render the Charter meaningless. Any law enacted by the Eritrean government which permits a wholesale ban on the press and the imprisonment of those whose views contradict those of the government's is contrary to both the spirit and the purpose of article 9. The Commission reiterates its own statement in communications 105/93, 128/94, 130/94 and 152/96 [*Media Rights Agenda and Others v Nigeria* (2000) AHRLR 200 (ACHPR 1998)]. 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 precedence 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.

106. By applying norms of international human rights law, the Commission has previously found, and finds in this case, that the imprisonment of journalists '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 a breach of the provisions of article 9 of the Charter' [*Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000), para 65].

107. Moreover, banning the entire private press on the grounds that it constitutes a threat to the incumbent government is a violation of the right to freedom of expression, and is the type of action that article 9 is intended to proscribe. A free press is one of the tenets of a democratic society, and a valuable check on potential excesses by government.

108. No political situation justifies the wholesale violation of human rights; indeed general restrictions on rights such as the right to free expression and to freedom from arbitrary arrest and detention serve only to undermine public confidence in the rule of law and will often increase, rather than prevent, agitation within a state. The Commission draws on the findings of the UN Human Rights Committee:

The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights.

For the reasons given above the Commission:

- Holds a violation of articles 1, 5, 6, 7(1), 9 and 18 by the state of Eritrea;
- Urges the government of Eritrea to release or to bring to a speedy and fair trial the 18 journalists detained since September 2001, and to lift the ban on the press;
- Recommends that the detainees be granted immediate access to their families and legal representatives; and
- Recommends that the government of Eritrea takes appropriate measures to ensure payment of compensation to the detainees.

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.

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.

Bissangou v Republic of Congo (2006) AHRLR 80 (ACHPR 2006)

Refusal by the state to pay damages in execution of a judgment of a domestic court is held to be a violation of the right to equality before the law, fair trial and the right to property.

...

Admissibility

...

58. The Commission notes that no strict legal provision grants the minister responsible for the budget any authority to refuse to pay damages which are legally granted. The execution of the judgments made against the respondent state therefore appears to be subject to the regular procedure provided for in the Administrative Procedure Code (article 293 and the following ones).

59. Under these circumstances, the question which arises is whether the complainant should have initiated the procedures of forced execution against the respondent state as provided for by the Administrative Procedure Code. The Commission considers that it is unreasonable to require from a citizen who has won the case of a payable debt against the state at the end of a legal proceedings to institute procedures of seizure against it (assuming that it is possible to resort to this means of imposition against the public authorities). As it happened, the complainant, having duly notified his judgment to the competent authorities in accordance with the relevant articles of the Administrative Procedure Code, he had a right to expect the immediate execution of his judgment.

60. The Commission is of the view that the minister had not right to hinder or delay the execution of a final judgment without legitimate reason. The Commission observes that the decision of the minister was unjustified and that the respondent state did not, at any time try to clarify to the Commission the reasons for the refusal by its officer. In this context, the Commission supports the position of the European Court according to which even the inability of the respondent state to pay could not justify the refusal by the minister to execute a final judgment.

61. Furthermore, the Commission considers that the appeal provided for in article 402 of the Administrative Procedure Code does not constitute a legal remedy which can be used by the complainant. The Commission reiterates that local remedies, if any, should be legal, effective and not subject to the discretionary powers of the public authorities. Concerning the appeal for annulment provided for in article 410 of the Administrative Procedure Code, the Commission is not convinced that it would have allowed the complainant to gain satisfaction. Even a ruling by the Supreme Court setting aside the unjustified decision of the minister would have given the complainant the power to demand the execution of his judgment without however providing him with any means to enforce this ruling. Under these circumstances, the Commission considers this remedy as ineffective.

62. In conclusion, even assuming that the above-mentioned appeals had enabled the complainant to recover his debt, the Commission observes that the complainant had not been informed of the reasons underlying the decision of the minister, a decision about which, moreover, he does not appear to have been notified.

63. For these reasons and considering the fact that the complainant had duly exhausted all local remedies, the African Commission declares the communication admissible.

The Merits

...

72. In this context the Commission observes that the complainant was unjustifiably refused the implementation of a legal ruling which had the character of *res judicata*. The Minister of the Economy, Finances and the Budget rejected his request for execution as well as that of two other individuals for no apparent reason. In its claims before the African Commission, the respondent state did not put forward any argument to explain the decision of the minister in rejecting the complainant's claim. Moreover, in its submissions dated 30 March 2004 in reaction to the complainant's arguments, the state has quoted victims of the same violent events who have been compensated. The minister thereby transformed the right of the complainant to an effective remedy before the courts into an illusion and denied him the right to fair legal compensation. Under these circumstances, the Commission is of the view that the decision of the minister

arbitrarily deprived the complainant of the protection of the law accorded to other citizens in accordance with the provisions of article 3 of the Charter.

73. Furthermore, although the complainant does not specifically mention this article of the Charter, the examination of the facts shows a violation of article 7 of the Charter concerning the right to fair trial. The effective exercise of this right by individuals requires that:

All state institutions against which an appeal has been lodged or a legal ruling has been pronounced conform fully with this ruling or this appeal.

74. The Commission notes that in similar instances, the European Court of Human Rights declared that the right to access to a court guaranteed by article 6(1) of the European Human Rights Convention would be illusory if the domestic laws of a state allowed a final and binding legal ruling to remain ineffective to the detriment of one party. The Court therefore ruled that the execution of a judgment, no matter from what jurisdiction, should be considered as being an integral part of the 'proceedings' in accordance with article 6. The Court further recognised that the effective protection of the person to be tried and the re-establishment of legality constituted an obligation for the state to comply with a judgment or ruling pronounced by the highest court in the land. In consequence, by virtue of this article, the execution of a legal ruling can neither be unduly prevented, nullified nor delayed.

75. The Commission is also of the view that the right to be heard guaranteed by article 7 of the African Charter includes the right to the execution of a judgment. It would therefore be inconceivable for this article to grant the right for an individual to bring an appeal before all the national courts in relation to any act violating the fundamental rights without guaranteeing the execution of judicial rulings. To interpret article 14 any other way would lead to situations which are incompatible with the rule of law. As a result, the execution of a final judgment passed by a tribunal or legal court should be considered as an integral part of 'the right to be heard' which is protected by article 7.

76. Furthermore, the Commission considers that the refusal by the minister to honour the judgment passed in favour of the complainant also constitutes a violation of article 14 of the Charter. Although the complainant only alluded to this article at the moment of his argument, the Commission considers that his initial claims sufficiently supported a claim of violation of the right to property. Drawing inspiration from the jurisprudence of the European Court under article 1 of Protocol 1 of the European Convention, the Commission considers that a monetary compensation granted by judgment having acquired the authority of *res judicata* should be considered as an asset. Therefore, the unjustified refusal of the respondent state to honour the final judgment passed in favour of the complainant hindered the enjoyment of his assets.

...

84. The Commission, although admitting that the complainant suffered some loss due to the delay in the payment of the sum granted by Congolese courts, does not consider itself in a position to put a figure to the loss. This is the reason why, relying on its jurisprudence, especially its decision on communication 59/91, the Commission recommends that the amount of the compensation be determined according to Congolese legislation.

For these reasons, the African Commission:

1. Observes that the Republic of Congo is in violation of article 3, 7 and 14 of the African Charter;
2. Says that there was no violation of articles 2 and 21(2) of the African Charter;

3. Urges the Republic of Congo to harmonise its legislation with that of the African Charter;
4. Requests the Republic of Congo to compensate the complainant as required by paying him the amount fixed by the High Court of Brazzaville, namely the global amount of 195,037,000 FCFA equivalent to 297,333 Euros;
5. Further requests the Republic of Congo to pay compensation for the loss suffered by the complainant, the amount of which shall be determined in accordance with Congolese legislation.

**Centre for Minority Rights Development (Kenya) and Minority
Rights Group International on behalf of Endorois Welfare Council v
Kenya**
(2009) AHRLR 75 (ACHPR 2009)

In this groundbreaking decision, the African Commission held the government of Kenya accountable for violations of the rights of an indigenous group linked to the denial of access to their traditional land. The decision is notable as the first time that the African Commission elaborates on the meaning of the right to development in article 22 of the African Charter, the only international treaty to recognise this right.

1. The complainants allege that the government of Kenya in violation of the African Charter on Human and Peoples' Rights (hereinafter the African Charter), the Constitution of Kenya and international law, forcibly removed the Endorois from their ancestral lands around the Lake Bogoria area of the Baringo and Koibatek Administrative Districts, as well as in the Nakuru and Laikipia Administrative Districts within the Rift Valley Province in Kenya, without proper prior consultations, adequate and effective compensation.

2. The complainants state that the Endorois are a community of approximately 60 000 people who, for centuries, have lived in the Lake Bogoria area. They claim that prior to the dispossession of Endorois land through the creation of the Lake Hannington Game Reserve in 1973, and a subsequent re-gazetting of the Lake Bogoria Game Reserve in 1978 by the government of Kenya, the Endorois had established, and, for centuries, practised a sustainable way of life which was inextricably linked to their ancestral land. The complainants allege that since 1978 the Endorois have been denied access to their land.

...

Decision on merits

144. The present communication alleges that the respondent state has violated the human rights of the Endorois community, an indigenous people, by forcibly removing them from their ancestral land, the failure to adequately compensate them for the loss of their property, the disruption of the community's pastoral enterprise and violations of the right to practice their religion and culture, as well as the overall process of development of the Endorois people.

145. Before addressing the articles alleged to have been violated, the respondent state has requested the African Commission to determine whether the Endorois can be recognised as a 'community'/sub-tribe or clan on their own. The respondent state disputes that the Endorois are a distinct

community in need of special protection. The respondent state argues that the complainants need to prove this distinction from the Tugen sub-tribe or indeed the larger Kalenjin tribe. The immediate questions that the African Commission needs to address itself to are:

146. Are the Endorois a distinct community? Are they indigenous peoples and thereby needing special protection? If they are a distinct community, what makes them different from the Tugen sub-tribe or indeed the larger Kalenjin tribe?

147. Before responding to the above questions, the African Commission notes that the concepts of 'peoples' and 'indigenous peoples/communities' are contested terms. As far as 'indigenous peoples' are concerned, there is no universal and unambiguous definition of the concept, since no single accepted definition captures the diversity of indigenous cultures, histories and current circumstances. The relationships between indigenous peoples and dominant or mainstream groups in society vary from country to country. The same is true of the concept of 'peoples'. The African Commission is thus aware of the political connotation that these concepts carry. Those controversies led the drafters of the African Charter to deliberately refrain from proposing any definitions for the notion of 'people(s)'. In its Report of the Working Group of Experts on Indigenous Populations/Communities, the African Commission describes its dilemma of defining the concept of 'peoples' in the following terms:

Despite its mandate to interpret all provisions of the African Charter as per article 45(3), the African Commission initially shied away from interpreting the concept of 'peoples'. The African Charter itself does not define the concept. Initially the African Commission did not feel at ease in developing rights where there was little concrete international jurisprudence. The ICCPR and the ICESR do not define 'peoples'. It is evident that the drafters of the African Charter intended to distinguish between the traditional individual rights where the sections preceding article 17 make reference to 'every individual'. Article 18 serves as a break by referring to the family. Articles 19 to 24 make specific reference to 'all peoples'.

148. The African Commission, nevertheless, notes that while the terms 'peoples' and 'indigenous community' arouse emotive debates, some marginalised and vulnerable groups in Africa are suffering from particular problems. It is aware that many of these groups have not been accommodated by dominating development paradigms and in many cases they are being victimised by mainstream development policies and thinking and their basic human rights violated. The African Commission is also aware that indigenous peoples have, due to past and ongoing processes, become marginalised in their own country and they need recognition and protection of their basic human rights and fundamental freedoms.

149. The African Commission also notes that normatively, the African Charter is an innovative and unique human rights document compared to other regional human rights instruments, in placing special emphasis on the rights of 'peoples'. It substantially departs from the narrow formulations of other regional and universal human rights instruments by weaving a tapestry which includes the three 'generations' of rights: civil and political rights; economic, social, and cultural rights; and group and peoples' rights. In that regard, the African Commission notes its own observation that the term 'indigenous' is also not intended to create a special class of citizens, but rather to address historical and present-day injustices and inequalities. This is the sense in which the term has been applied in the African context by the Working Group on Indigenous Populations/Communities of the African Commission. In the context of the African Charter, the Working Group notes that the notion of 'peoples' is closely related to collective rights.

150. The African Commission also notes that the African Charter, in articles 20 through 24, provides for peoples to retain rights as peoples, that is, as collectives. The African Commission through its Working Group of Experts on

Indigenous Populations/Communities has set out four criteria for identifying indigenous peoples. These are: the occupation and use of a specific territory; the voluntary perpetuation of cultural distinctiveness; self-identification as a distinct collectivity, as well as recognition by other groups; an experience of subjugation, marginalisation, dispossession, exclusion or discrimination. The Working Group also demarcated some of the shared characteristics of African indigenous groups:

... first and foremost (but not exclusively) different groups of hunter-gatherers or former hunter-gatherers and certain groups of pastoralists ...

... A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional land and the natural resources thereon.

151. The African Commission is thus aware that there is an emerging consensus on some objective features that a collective of individuals should manifest to be considered as 'peoples', viz: a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life or other bonds, identities and affinities they collectively enjoy – especially rights enumerated under articles 19 to 24 of the African Charter – or suffer collectively from the deprivation of such rights. What is clear is that all attempts to define the concept of indigenous peoples recognise the linkages between peoples, their land, and culture and that such a group expresses its desire to be identified as a people or have the consciousness that they are a people.

152. As far as the present matter is concerned, the African Commission is also enjoined under article 61 of the African Charter to be inspired by other subsidiary sources of international law or general principles in determining rights under the African Charter. It takes note of the working definition proposed by the UN Working Group on Indigenous Populations:

... that indigenous peoples are ... those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

153. But this working definition should be read in conjunction with the 2003 Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, which is the basis of its 'definition' of indigenous populations. Similarly it notes that the International Labour Organisation has proffered a definition of indigenous peoples in Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries:

Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

154. The African Commission is also aware that though some indigenous populations might be first inhabitants, validation of rights is not automatically afforded to such pre-invasion and pre-colonial claims. In terms of ILO Convention 169, even though many African countries have not signed and ratified the said Convention, and like the UN Working Groups' conceptualisation of the term, the African Commission notes that there is a common thread that runs through all the various criteria that attempts to describe indigenous peoples – that indigenous peoples have an unambiguous relationship to a distinct territory and that all attempts to define the concept

recognise the linkages between people, their land, and culture. In that regard, the African Commission notes the observation of the UN Special Rapporteur, where he states that in Kenya indigenous populations/communities include pastoralist communities such as the *Endorois*, Borana, Gabra, Maasai, Pokot, Samburu, Turkana, and Somali, and hunter-gatherer communities whose livelihoods remain connected to the forest, such as the Awer (Boni), Ogiek, Sengwer, or Yaaku. The UN Special Rapporteur further observed that the Endorois community have lived for centuries in their traditional territory around Lake Bogoria, which was declared a wildlife sanctuary in 1973.

155. In the present communication the African Commission wishes to emphasise that the Charter recognises the rights of peoples. The complainants argue that the Endorois are a people, a status that entitles them to benefit from provisions of the African Charter that protect collective rights. The respondent state disagrees. The African Commission notes that the Constitution of Kenya, though incorporating the principle of non-discrimination and guaranteeing civil and political rights, does not recognise economic, social and cultural rights as such, as well as group rights. It further notes that the rights of indigenous pastoralist and hunter-gatherer communities are not recognised as such in Kenya's constitutional and legal framework, and no policies or governmental institutions deal directly with indigenous issues. It also notes that while Kenya has ratified most international human rights treaties and conventions, it has not ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries, and it has withheld its approval of the United Nations Declaration on the Rights of Indigenous Peoples of the General Assembly.

156. After studying all the submissions of the complainants and the respondent state, the African Commission is of the view that Endorois culture, religion, and traditional way of life are intimately intertwined with their ancestral lands – Lake Bogoria and the surrounding area. It agrees that Lake Bogoria and the Monchongoi Forest are central to the Endorois' way of life and without access to their ancestral land, the Endorois are unable to fully exercise their cultural and religious rights, and feel disconnected from their land and ancestors.

157. In addition to a sacred relationship to their land, self-identification is another important criterion for determining indigenous peoples. The UN Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous People also supports self-identification as a key criterion for determining who is indeed indigenous. The African Commission is aware that today many indigenous peoples are still excluded from society and often even deprived of their rights as equal citizens of a state. Nevertheless, many of these communities are determined to preserve, develop and transmit to future generations their ancestral territories and their ethnic identity. It accepts the arguments that the continued existence of indigenous communities as 'peoples' is closely connected to the possibility of them influencing their own fate and to living in accordance with their own cultural patterns, social institutions and religious systems. The African Commission further notes that the Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities (WGIP) emphasises that peoples' self-identification is an important ingredient to the concept of peoples' rights as laid out in the Charter. It agrees that the alleged violations of the African Charter by the respondent state are those that go to the heart of indigenous rights – the right to preserve one's identity through identification with ancestral lands, cultural patterns, social institutions and religious systems. The African Commission, therefore, accepts that self-identification for

Endorois as indigenous individuals and acceptance as such by the group is an essential component of their sense of identity.

...

Alleged violation of article 8

...

166. This Commission is aware that religion is often linked to land, cultural beliefs and practices, and that freedom to worship and engage in such ceremonial acts is at the centre of the freedom of religion. The Endorois' cultural and religious practices are centred around Lake Bogoria and are of prime significance to all Endorois. During oral testimony, and indeed in the complainants' written submission, this Commission's attention was drawn to the fact that religious sites are situated around Lake Bogoria, where the Endorois pray and where religious ceremonies regularly take place. It takes into cognisance that Endorois' ancestors are buried near the lake ... Lake Bogoria is considered the spiritual home of all Endorois, living and dead.

167. It further notes that one of the beliefs of the Endorois is that their Great Ancestor, *Dorios*, came from the Heavens and settled in the Mochongoi Forest. It notes the complainants' arguments, which have not been contested by the respondent state, that the Endorois believe that each season the water of the lake turns red and the hot springs emit a strong odour, signalling a time that the community performs traditional ceremonies to appease the ancestors who drowned with the formation of the lake.

168. From the above analysis, the African Commission is of the view that the Endorois spiritual beliefs and ceremonial practices constitute a religion under the African Charter.

169. The African Commission will now determine whether the respondent state by its actions or inactions have interfered with the Endorois' right to religious freedom.

170. The respondent state has not denied that the Endorois have been removed from their ancestral land they call home. The respondent state has merely advanced reasons why the Endorois can no longer stay within the Lake Bogoria area. The complainants argue that the Endorois' inability to practice their religion is a direct result of their expulsion from their land and that since their eviction the Endorois have not been able to freely practice their religion, as access for religious rituals has been denied the community.

171. It is worth noting that in *Amnesty International v Sudan*, the African Commission recognised the centrality of practice to religious freedom. The African Commission noted that the state party violated the authors' right to practice their religion, because non-Muslims did not have the right to preach or build their churches and were subjected to harassment, arbitrary arrest, and expulsion. The African Commission also notes the case of *Loren Laroye Riebe Star* from the IACmHR, which determined that expulsion from lands central to the practice of religion constitutes a violation of religious freedoms. It notes that the Court held that the expulsion of priests from the Chiapas area was a violation of the right to associate freely for religious purposes.

172. The African Commission agrees that in some situations it may be necessary to place some form of limited restrictions on a right protected by the African Charter. But such a restriction must be established by law and must not be applied in a manner that would completely vitiate the right. It notes the recommendation of the HRC that limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. The *raison d'être* for a particularly harsh limitation on the right to practice religion, such as that experienced by the Endorois, must be based on exceptionally good reasons, and it is for the respondent state to prove that

such interference is not only proportionate to the specific need on which they are predicated, but is also reasonable. In the case of *Amnesty International v Sudan*, the African Commission stated that a wide-ranging ban on Christian associations was 'disproportionate to the measures required by the government to maintain public order, security, and safety'. The African Commission further went on to state that any restrictions placed on the rights to practice one's religion should be negligible. In the above mentioned case, the African Commission decided that complete and total expulsion from the land for religious ceremonies is not minimal.

173. The African Commission is of the view that denying the Endorois access to the lake is a restriction on their freedom to practice their religion, a restriction not necessitated by any significant public security interest or other justification. The African Commission is also not convinced that removing the Endorois from their ancestral land was a lawful action in pursuit of economic development or ecological protection. The African Commission is of the view that allowing the Endorois to use the land to practice their religion would not detract from the goal of conservation or developing the area for economic reasons.

...

Alleged violation of article 14

...

187. The complainants argue that both international and domestic courts have recognised that indigenous groups have a specific form of land tenure that creates a particular set of problems. Common problems faced by indigenous groups include the lack of 'formal' title recognition of their historic territories, the failure of domestic legal systems to acknowledge communal property rights, and the claiming of formal legal title to indigenous land by the colonial authorities. This, they argue, has led to many cases of displacement from a people's historic territory, both by colonial authorities and post-colonial states relying on the legal title they inherited from the colonial authorities. The African Commission notes that its Working Group on Indigenous Populations/Communities has recognised that some African minorities do face dispossession of their lands and that special measures are necessary in order to ensure their survival in accordance with their traditions and customs. The African Commission is of the view that the first step in the protection of traditional African communities is the acknowledgement that the rights, interests and benefits of such communities in their traditional lands constitute 'property' under the Charter and that special measures may have to be taken to secure such 'property rights'.

...

199. The African Commission is of the view that even though the Constitution of Kenya provides that Trust Land may be alienated and that the Trust Land Act provides comprehensive procedure for the assessment of compensation, the Endorois property rights have been encroached upon, in particular by the expropriation and the effective denial of ownership of their land. It agrees with the complainants that the Endorois were never given the full title to the land they had in practice before the British colonial administration. Their land was instead made subject to a trust, which gave them beneficial title, but denied them actual title. The African Commission further agrees that though for a decade they were able to exercise their traditional rights without restriction, the trust land system has proved inadequate to protect their rights.

...

204. The African Commission notes that the UN Declaration on the Rights of Indigenous Peoples, officially sanctioned by the African Commission through its 2007 Advisory Opinion, deals extensively with land rights. The

jurisprudence under international law bestows the right of ownership rather than mere access. The African Commission notes that if international law were to grant access only, indigenous peoples would remain vulnerable to further violations/dispossession by the state or third parties. Ownership ensures that indigenous peoples can engage with the state and third parties as active stakeholders rather than as passive beneficiaries.

205. The Inter-American Court jurisprudence also makes it clear that mere access or *de facto* ownership of land is not compatible with principles of international law. Only *de jure* ownership can guarantee indigenous peoples' effective protection.

206. In the *Saramaka* case, the Court held that the state's legal framework merely grants the members of the Saramaka people a privilege to use land, which does not guarantee the right to effectively control their territory without outside interference. The Court held that, rather than a privilege to use the land, which can be taken away by the state or trumped by real property rights of third parties, members of indigenous and tribal peoples must obtain title to their territory in order to guarantee its permanent use and enjoyment. This title must be recognised and respected not only in practice but also in law in order to ensure its legal certainty. In order to obtain such title, the territory traditionally used and occupied by the members of the Saramaka people must first be delimited and demarcated, in consultation with such people and other neighbouring peoples. The situation of the Endorois is not different. The respondent state simply wants to grant them privileges such as restricted access to ceremonial sites. This, in the opinion of the Commission, falls below internationally recognised norms. The respondent state must grant title to their territory in order to guarantee its permanent use and enjoyment.

207. The African Commission notes that articles 26 and 27 of the UN Declaration on Indigenous Peoples use the term 'occupied or otherwise used'. This is to stress that indigenous peoples have a recognised claim to ownership to ancestral land under international law, even in the absence of official title deeds. This was made clear in the judgment of *Awes Tingni v Nicaragua*. In the current leading international case on this issue, *The Mayagna (Sumo) Awes Tingni v Nicaragua*, the IActHR recognised that the American Convention protected property rights 'in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property'. It stated that *possession* of the land should suffice for indigenous communities lacking real title to obtain official recognition of that property.

208. The African Commission also notes that in the case of *Sawhoyamaya v Paraguay*, the IActHR, acting within the scope of its adjudicatory jurisdiction, decided on indigenous land possession in three different situations, viz: in the *Case of the Mayagna (Sumo) Awes Tingni Community*, the Court pointed out that possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration; in the *Case of the Moiwana Community*, the Court considered that the members of the N'djuka people were the 'legitimate owners of their traditional lands', although they did not have possession thereof, because they left them as a result of the acts of violence perpetrated against them, though in this case, the traditional lands were not occupied by third parties. Finally, in the *Case of the Indigenous Community Yakye Axa*, the Court considered that the members of the community were empowered, even under domestic law, to file claims for traditional lands and ordered the State, as measure of reparation, to individualise those lands and transfer them on a no consideration basis.

209. In the view of the African Commission, the following conclusions could be drawn: (1) traditional possession of land by indigenous people has the equivalent effect as that of a state-granted full property title; (2) traditional possession entitles indigenous people to demand official recognition and registration of property title; (3) the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, maintain property rights thereto, even though they lack legal title, unless the lands have been lawfully transferred to third parties in good faith; and (4) the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal extension and quality. Consequently, possession is not a requisite condition for the existence of indigenous land restitution rights. The instant case of the Endorois is categorised under this last conclusion. The African Commission thus agrees that the land of the Endorois has been encroached upon.

210. That such encroachment has taken place could be seen by the Endorois' inability, after being evicted from their ancestral land, to have free access to religious sites and their traditional land to graze their cattle. The African Commission is aware that access roads, gates, game lodges and a hotel have all been built on the ancestral land of the Endorois community around Lake Bogoria and imminent mining operations also threatens to cause irreparable damage to the land. The African Commission has also been notified that the respondent state is engaged in the demarcation and sale of parts of Endorois historic lands to third parties.

211. The African Commission is aware that encroachment in itself is not a violation of article 14 of the Charter, as long as it is done in accordance with the law. Article 14 of the African Charter indicates a two-pronged test, where that encroachment can only be conducted – 'in the interest of public need or in the general interest of the community' and 'in accordance with appropriate laws'. The African Commission will now assess whether an encroachment 'in the interest of public need' is indeed proportionate to the point of overriding the rights of indigenous peoples to their ancestral lands. The African Commission agrees with the complainants that the test laid out in article 14 of the Charter is *conjunctive*, that is, in order for an encroachment not to be in violation of article 14, it must be proven that the encroachment was in the interest of the public need/general interest of the community *and* was carried out in accordance with appropriate laws.

212. The 'public interest' test is met with a much higher threshold in the case of encroachment of indigenous land rather than individual private property. In this sense, the test is much more stringent when applied to ancestral land rights of indigenous peoples. In 2005, this point was stressed by the Special Rapporteur of the United Nations Sub-Commission for the Promotion and Protection of Human Rights who published the following statement:

Limitations, if any, on the right to indigenous peoples to their natural resources must flow only from the most urgent and compelling interest of the state. Few, if any, limitations on indigenous resource rights are appropriate, because the indigenous ownership of the resources is associated with the most important and fundamental human rights, including the right to life, food, the right to self-determination, to shelter, and the right to exist as a people.

213. Limitations on rights, such as the limitation allowed in article 14, must be reviewed under the principle of proportionality. The Commission notes its own conclusions that '... the justification of limitations must be strictly proportionate with and absolutely necessary for the advantages which follow.' [*Constitutional Rights Project and Others v Nigeria* (2000) AHRLR 227 (ACHPR 1999)]. The African Commission also notes the decisive case of *Handyside v United Kingdom*, where the ECHR stated that any condition or

restriction imposed upon a right must be 'proportionate to the legitimate aim pursued'.

214. The African Commission is of the view that any limitations on rights must be proportionate to a legitimate need, and should be the least restrictive measures possible. In the present communication, the African Commission holds the view that in the pursuit of creating a game reserve, the respondent state has unlawfully evicted the Endorois from their ancestral land and destroyed their possessions. It is of the view that the upheaval and displacement of the Endorois from the land they call home and the denial of their property rights over their ancestral land is disproportionate to any public need served by the game reserve.

215. It is also of the view that even if the game reserve was a legitimate aim and served a public need, it could have been accomplished by alternative means proportionate to the need. From the evidence submitted both orally and in writing, it is clear that the community was willing to work with the government in a way that respected their property rights, even if a game reserve was being created. In that regard, the African Commission notes its own conclusion in the *Constitutional Rights Project* case, where it says that 'a limitation may not erode a right such that the right itself becomes illusory.' At the point where such a right becomes illusory, the limitation cannot be considered proportionate – the limitation becomes a violation of the right. The African Commission agrees that the respondent state has not only denied the Endorois community all legal rights in their ancestral land, rendering their property rights essentially illusory, but in the name of creating a game reserve and the subsequent eviction of the Endorois community from their own land, the respondent state has violated the very essence of the right itself, and cannot justify such an interference with reference to 'the general interest of the community' or a 'public need'.

216. The African Commission notes that the link to the right to life, in paragraph 219 above, is particularly notable, as it is a non-derogable right under international law. Incorporating the right to life into the threshold of the 'public interest test' is further confirmed by jurisprudence of the IActHR. In *Yakye Axa v Paraguay* the Court found that the fallout from forcibly dispossessing indigenous peoples from their ancestral land could amount to an article 4 violation (right to life) if the living conditions of the community are incompatible with the principles of human dignity.

217. The IActHR held that one of the obligations that the state must inescapably undertake as guarantor to protect and ensure the right to life is that of generating minimum living conditions that are compatible with the dignity of the human person and of not creating conditions that hinder or impede it. In this regard, the state has the duty to take positive, concrete measures geared towards fulfilment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority.

218. The African Commission also notes that the 'disproportionate' nature of an encroachment on indigenous lands – therefore falling short of the test set out by the provisions of article 14 of the African Charter – is to be considered an even greater violation of article 14, when the displacement at hand was undertaken by force. Forced evictions, by their very definition, cannot be deemed to satisfy article 14 of the Charter's test of being done 'in accordance with the law'. This provision must mean, at the minimum, that both Kenyan law and the relevant provisions of international law were respected. The grave nature of forced evictions could amount to a gross violation of human rights. Indeed, the United Nations Commission on Human Rights, in resolutions 1993/77 and 2004/28, has reaffirmed that forced evictions amount to a gross violations of human rights and in particular the right to

adequate housing. Where such removal was forced, this would in itself suggest that the 'proportionality' test has not been satisfied.

...

225. Two further elements of the 'in accordance with the law' test relate to the requirements of consultation and compensation.

226. In terms of consultation, the threshold is especially stringent in favour of indigenous peoples, as it also requires that consent be accorded. Failure to observe the obligations to consult and to seek consent – or to compensate – ultimately results in a violation of the right to property.

227. In the *Saramaka* case, in order to guarantee that restrictions to the property rights of the members of the Saramaka people by the issuance of concessions within their territory do not amount to a denial of their survival as a tribal people, the Court stated that the state must abide by the following three safeguards: first, ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan within Saramaka territory; second, guarantee that the Saramakas will receive a reasonable benefit from any such plan within their territory; third, ensure that no concession will be issued within Saramaka territory unless and until independent and technically capable entities, with the State's supervision, perform a prior environmental and social impact assessment. These safeguards are intended to preserve, protect and guarantee the special relationship that the members of the Saramaka community have with their territory, which in turn ensures their survival as a tribal people.

228. In the instant case, the African Commission is of the view that no effective participation was allowed for the Endorois, nor has there been any reasonable benefit enjoyed by the community. Moreover, a *prior* environment and social impact assessment was not carried out. The absence of these three elements of the 'test' is tantamount to a violation of article 14, the right to property, under the Charter. The failure to guarantee effective participation and to guarantee a reasonable share in the profits of the game reserve (or other adequate forms of compensation) also extends to a violation of the right to development.

229. On the issue of compensation, the respondent state in rebutting the complainants' allegations that inadequate compensation was paid, argues that the complainants do not contest that a form of compensation was done, but that they have only pleaded that about 170 families were compensated. It further argues that, if at all the compensations paid was not adequate, the Trust Land Act provides for a procedure for appeal, for the amount and the people who feel that they are denied compensation over their interest.

230. The respondent state does not deny the complainants' allegations that in 1986, of the 170 families evicted in late 1973, from their homes within the Lake Bogoria Game Reserve, each receiving around 3 150 Kshs (at the time, this was equivalent to approximately £30). Such payment was made some 13 years after the first eviction. It does not also deny the allegation that £30 did not represent the market value of the land gazetted as Lake Bogoria Game Reserve. It also does not deny that the Kenyan authorities have themselves recognised that the payment of 3,150 Kshs per family amounted only to 'relocation assistance', and does not constitute full compensation for loss of land.

231. The African Commission is of the view that the respondent state did not pay the prompt, full compensation as required by the Constitution. It is of the view that Kenyan law has not been complied with and that though some members of the Endorois community accepted limited monetary compensation that did not mean that they accepted it as full compensation, or indeed that they accepted the loss of their land.

...

Alleged violation of article 17(2) and (3)

...

246. The African Commission is of the view that in its interpretation of the African Charter, it has recognised the duty of the state to tolerate diversity and to introduce measures that protect identity groups different from those of the majority/dominant group. It has thus interpreted article 17(2) as requiring governments to take measures 'aimed at the conservation, development and diffusion of culture', such as promoting 'cultural identity as a factor of mutual appreciation among individuals, groups, nations and regions; ... promoting awareness and enjoyment of cultural heritage of national ethnic groups and minorities and of indigenous sectors of the population.'

...

248. The African Commission is of the opinion that the respondent state has a higher duty in terms of taking positive steps to protect groups and communities like the Endorois, but also to promote cultural rights including the creation of opportunities, policies, institutions, or other mechanisms that allow for different cultures and ways of life to exist, develop in view of the challenges facing indigenous communities. These challenges include exclusion, exploitation, discrimination and extreme poverty; displacement from their traditional territories and deprivation of their means of subsistence; lack of participation in decisions affecting the lives of the communities; forced assimilation and negative social statistics among other issues and, at times, indigenous communities suffer from direct violence and persecution, while some even face the danger of extinction.

249. In its analysis of article 17 of the African Charter, the African Commission is aware that unlike articles 8 and 14, article 17 has no claw-back clause. The absence of a claw-back clause is an indication that the drafters of the Charter envisaged few, if any, circumstances in which it would be appropriate to limit a people's right to culture. It further notes that even if the respondent state were to put some limitation on the exercise of such a right, the restriction must be proportionate to a legitimate aim that does not interfere adversely on the exercise of a community's cultural rights. Thus, even if the creation of the game reserve constitutes a legitimate aim, the respondent state's failure to secure access, as of right, for the celebration of the cultural festival and rituals cannot be deemed proportionate to that aim. The Commission is of the view that the cultural activities of the Endorois community pose no harm to the ecosystem of the game reserve and the restriction of cultural rights could not be justified, especially as no suitable alternative was given to the community.

250. It is the opinion of the African Commission that the respondent state has overlooked that the universal appeal of great culture lies in its particulars and that imposing burdensome laws or rules on culture undermines its enduring aspects. The respondent state has not taken into consideration the fact that by restricting access to Lake Bogoria, it has denied the community access to an integrated system of beliefs, values, norms, mores, traditions and artifacts closely linked to access to the lake.

251. By forcing the community to live on semi-arid lands without access to medicinal salt licks and other vital resources for the health of their livestock, the respondent state have created a major threat to the Endorois pastoralist way of life. It is of the view that the very essence of the Endorois' right to culture has been denied, rendering the right, to all intents and purposes, illusory. Accordingly, the respondent state is found to have violated article 17(2) and (3) of the Charter.

Alleged violation of article 21

...

255. The African Commission notes that in the *Ogoni* case the right to natural resources contained within their traditional lands is also vested in the indigenous people, making it clear that a people inhabiting a specific region within a state could also claim under article 21 of the African Charter. The respondent state does not give enough evidence to substantiate the claim that the complainants have immensely benefited from the tourism and mineral prospecting activities.

256. The African Commission notes that proceeds from the game reserve have been used to finance a lot of useful projects, 'a fact' that the complainants do not contest. The African Commission, however, refers to cases in the Inter-American Human Rights system to understand this area of the law. The American Convention does not have an equivalent of the African Charter's article 21 on the right to natural resources. It therefore reads the right to natural resources into the right to property (article 21 of the American Convention), and in turn applies similar limitation rights on the issue of natural resources as it does on limitations of the right to property. The 'test' in both cases makes for a much higher threshold when potential spoliation or development of the land is affecting indigenous land.

...

267. In the instant case of the Endorois, the respondent state has a duty to evaluate whether a restriction of these private property rights is necessary to preserve the survival of the Endorois community. The African Commission is aware that the Endorois do not have an attachment to ruby. Nevertheless, it is instructive to note that the African Commission decided in the *Ogoni* case that the right to natural resources contained within their traditional lands vested in the indigenous people. This decision made clear that a people inhabiting a specific region within a state can claim the protection of article 21. Article 14 of the African Charter indicates that the two-pronged test of 'in the interest of public need or in the general interest of the community' and 'in accordance with appropriate laws' should be satisfied.

268. As far as the African Commission is aware, that has not been done by the respondent state. The African Commission is of the view the Endorois have the right to freely dispose of their wealth and natural resources in consultation with the respondent state. Article 21(2) also concerns the obligations of a state party to the African Charter in cases of a violation by spoliation, through provision for restitution and compensation. The Endorois have never received adequate compensation or restitution of their land. Accordingly, the respondent state is found to have violated article 21 of the Charter.

Alleged violation of article 22

269. The complainants allege that the Endorois' right to development have been violated as a result of the respondent state's creation of a game reserve and the respondent state's failure to adequately involve the Endorois in the development process.

...

277. The African Commission is of the view that the right to development is a two-pronged test, that it is both constitutive and instrumental, or useful as both a means and an end. A violation of either the procedural or substantive element constitutes a violation of the right to development. Fulfilling only one of the two prongs will not satisfy the right to development. The African Commission notes the complainants' arguments that recognising the right to development requires fulfilling five main criteria: it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, over-arching themes in the right to development.

278. In that regard it takes note of the report of the UN Independent Expert who said that development is not simply the state providing, for example, housing for particular individuals or peoples; development is instead about providing people with the ability to choose where to live. He states '... the state or any other authority cannot decide arbitrarily where an individual should live just because the supplies of such housing are made available'. Freedom of choice must be present as a part of the right to development.

279. The Endorois believe that they had no choice but to leave the lake and when some of them tried to reoccupy their former land and houses they were met with violence and forced relocations. The complainants argue this lack of choice directly contradicts the guarantees of the right to development. The African Commission also notes a report produced for the UN Working Group on Indigenous Populations requiring that 'indigenous peoples are not coerced, pressured or intimidated in their choices of development.' Had the respondent state allowed conditions to facilitate the right to development as in the African Charter, the development of the game reserve would have increased the capabilities of the Endorois, as they would have had a possibility to benefit from the game reserve. However, the forced evictions eliminated any choice as to where they would live.

...

281. The African Commission notes that its own standards state that a government must consult with respect to indigenous peoples especially when dealing with sensitive issues as land. The African Commission agrees with the complainants that the consultations that the respondent state did undertake with the community were inadequate and cannot be considered effective participation. The conditions of the consultation failed to fulfil the African Commission's standard of consultations in a form appropriate to the circumstances. It is convinced that community members were informed of the impending project as a *fait accompli*, and not given an opportunity to shape the policies or their role in the game reserve.

282. Furthermore, the community representatives were in an unequal bargaining position, an accusation not denied or argued by the respondent state, being both illiterate and having a far different understanding of property use and ownership than that of the Kenyan authorities. The African Commission agrees that it was incumbent upon the respondent state to conduct the consultation process in such a manner that allowed the representatives to be fully informed of the agreement, and participate in developing parts crucial to the life of the community. It also agrees with the complainants that the inadequacy of the consultation undertaken by the respondent state is underscored by Endorois' actions after the creation of the game reserve. The Endorois believed, and continued to believe even after their eviction, that the game reserve and their pastoralist way of life would not be mutually exclusive and that they would have a right of re-entry on to their land. In failing to understand their permanent eviction, many families did not leave the location until 1986.

...

288. In the instant communication in front of the African Commission, video evidence from the complainants shows that access to clean drinking water was severely undermined as a result of loss of their ancestral land (Lake Bogoria) which has ample fresh water sources. Similarly, their traditional means of subsistence – through grazing their animals – has been curtailed due to lack of access to the green pastures of their traditional land. Elders commonly cite having lost more than half of their cattle since the displacement. The African Commission is of the view that the respondent state has done very little to provide necessary assistance in these respects.

...

290. In the instant communication, even though the respondent state says that it has consulted with the Endorois community, the African Commission is of the view that this consultation was not sufficient. It is convinced that the respondent state did not obtain the prior, informed consent of all the Endorois before designating their land as a game reserve and commencing their eviction. The respondent state did not impress upon the Endorois any understanding that they would be denied all rights of return to their land, including unfettered access to grazing land and the medicinal salt licks for their cattle. The African Commission agrees that the complainants had a legitimate expectation that even after their initial eviction, they would be allowed access to their land for religious ceremonies and medicinal purposes – the reason, in fact why they are in front of the African Commission.

291. Additionally, the African Commission is of the view that any development or investment projects that would have a major impact within the Endorois territory, the state has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions.

...

297. The African Commission is convinced that the inadequacy of the consultations left the Endorois feeling disenfranchised from a process of utmost importance to their life as a people. Resentment of the unfairness with which they had been treated inspired some members of the community to try to reclaim the Mochongoi Forest in 1974 and 1984, meet with the President to discuss the matter in 1994 and 1995, and protest the actions in peaceful demonstrations. The African Commission agrees that if consultations had been conducted in a manner that effectively involved the Endorois, there would have been no ensuing confusion as to their rights or resentment that their consent had been wrongfully gained. It is also convinced that they have faced substantive losses – the actual loss in well-being and the denial of benefits accruing from the game reserve. Furthermore, the Endorois have faced a significant loss in choice since their eviction from the land. It agrees that the Endorois, as beneficiaries of the development process, were entitled to an equitable distribution of the benefits derived from the game reserve.

298. The African Commission is of the view that the respondent state bears the burden for creating conditions favourable to a people's development. It is certainly not the responsibility of the Endorois themselves to find alternate places to graze their cattle or partake in religious ceremonies. The respondent state, instead, is obligated to ensure that the Endorois are not left out of the development process or benefits. The African Commission agrees that the failure to provide adequate compensation and benefits, or provide suitable land for grazing indicates that the respondent state did not adequately provide for the Endorois in the development process. It finds against the respondent state that the Endorois community has suffered a violation of article 22 of the Charter.

Recommendations

In view of the above, the African Commission finds that the respondent state is in violation of articles 1, 8, 14, 17, 21 and 22 of the African Charter. The African Commission recommends that the respondent state:

- (a) Recognise rights of ownership to the Endorois and reconstitute Endorois ancestral land.
- (b) Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle.
- (c) Pay adequate compensation to the community for all the loss suffered.

- (d) Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve.
 - (e) Grant registration to the Endorois Welfare Committee.
 - (f) Engage in dialogue with the complainants for the effective implementation of these recommendations.
 - (g) Report on the implementation of these recommendations within three months from the date of notification.
2. The African Commission avails its good offices to assist the parties in the implementation of these recommendations.

**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.
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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.

**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 Bisso Mamadou, who was attacked by armed individuals. The minister responsible was warned of the danger to Mr Bisso, 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].

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.

...
Merits

...
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.

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.

...

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.

...

**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.

...

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.

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.

...

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.

Democratic Republic of the Congo v Burundi, Rwanda and Uganda (2004) AHRLR 19 (ACHPR 2003)

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

...

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 corroborated 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 one's 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 matter.

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 Congo. 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.

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.

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.

Doebbler 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.

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 *Tyrer v United Kingdom*, 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 offences 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.

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.

Egyptian Initiative for Personal Rights and Interights v Egypt
(2011) AHRLR 90 (ACHPR 2011)

This is the first Commission decision to discuss gender specific violence in detail.

...

3. The complainants submit that on 25 May 2005, the Egyptian Movement for Change (Kefaya) organised a demonstration in front of Saad Zaghloul Mausoleum with respect to the referendum aimed at amending article 76 of the Egyptian Constitution, allowing multi-candidate presidential elections. They submit that riot police surrounded the small number of protesters (around fifty) and several journalists reporting the events, and at about 12:00 noon, while public buses were transporting young supporters of President Mubarak and his party called the National Democratic Party (NDP), violence broke out as NDP supporters attacked the supporters of Kefaya. The complainants allege that riot police reportedly did not intervene.

4. According to the complainants, the protesters and the journalists covering the demonstration reconvened in front of the Press Syndicate at around 2:00 PM where they were met by a large group of riot police and NDP

supporters. They allege that further incidents of insults, violence, intimidation and sexual harassment occurred in the presence of high ranking officers of the Ministry of Interior (Mol) and the riot police.

...

121. The Women's Protocol defines discrimination against women as '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 [...] of human rights and fundamental freedoms in all spheres of life.' The same Protocol defines violence against women as 'All acts perpetuated 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 ...'.

...

137. Three clear conclusions are obvious from the submissions of the statements made by the victims;

- (a) The victims were exclusively women;
- (b) The victims were not protected from the perpetrators and other unidentified actors during the demonstrations; and
- (c) The violations were perpetrated on the victims because of their gender.

...

140. In claiming a violation of article 18(3) of the African Charter, the complainants submit that the sexual abuse that the victims endured were gender-specific, amounting to discrimination on the grounds of sex.

...

142. In order for the African Commission to establish that article 18(3) has been violated by the respondent state, it is going to analyse 'some of the elements' of the testimonies provided by the complainants (discussed in paragraphs 131 to 136) above to establish whether the allegations were indeed gender-specific, and discriminatory on the primary basis of gender. This is because the characteristics of violence commonly committed against women and men differ, and it is only by analysing the nature of the violence that the African Commission can effectively draw its conclusions.

143. Firstly, when looking at the verbal assaults used against the victims, such as 'sluts' and 'whores,' it is the opinion of the African Commission that these words are not usually used against persons of the male gender, and are generally meant to degrade and rip off the integrity of women who refuse to abide by traditional religious, and even social norms.

144. Secondly, the physical assaults described above are gender-specific in the sense that the victims were subjected to acts of sexual harassment and physical violence that can only be directed to women. For instance, breasts fondling and touching or attempting to touch 'private and sensitive parts'. There is no doubt that the victims were targeted in this manner due to their gender.

145. Thirdly, the alleged threats against some of the victims who were accused of practising prostitution when they refused to withdraw their complaints can also be classified as being gender-specific.

...

152. It is clear that the incidents alleged took place in a form of systematic sexual violence targeted at the women participating or present in the scene of the demonstration. Furthermore, perpetrators of the assaults seemed to be aware of the context of the Egyptian society; an Arab Muslim society where a woman's virtue is measured by keeping herself physically and sexually unexposed except to her husband. The perpetrators were aware of the

consequences of such acts on the victims; both to themselves and their families, but still perpetrated the acts as a means of punishing and silencing them from expressing their political opinions.

...

166. To sum up, it is clear that the sexual assaults against the victims which occurred on 25 May 2005 were acts of gender-based violence, perpetrated by state actors, and non-state actors under the control of state actors, that went unpunished. The violations were designed to silence women who were participating in the demonstration and deter their activism in the political affairs of the respondent state which in turn, failed in its inescapable responsibility to take action against the perpetrators.

...

265. In the present communication, the facts demonstrate that the victims were physically and emotionally traumatised as a result of sexual violence and assaults on their person. The trauma and injuries sustained has affected their physical, psychological and mental health clearly in violation of article 16(1) of the African Charter.

...

275. From the above reasoning, the African Commission

- (i) Observes that the respondent state is in violation of articles 1, 2, 3, 5, 9(2), 16(1), 18(3) and 26 of the African Charter;
- (ii) That there was no violation of articles 7(1)(a) and 16(2) of the African Charter by the respondent state;
- (iii) Request an amendment of laws in the respondent state, to bring them in line with the African Charter;
- (iv) Request compensation to each of the victims in the amount of EP 57, 000, as requested by the complainant, for the physical and emotional damages/traumas they suffered;
- (v) Urges the respondent state to investigate the violations, and bring the perpetrators to justice;
- (vi) Urges the respondent state to ratify the Women's Protocol; and
- (vii) Urges the respondent state to report on the steps it has taken to implement these decisions in accordance with rule 122(2) of its Rule of Procedure, within one-hundred and eighty (180) days.

Forum of Conscience v Sierra Leone
(2000) AHRLR 293 (ACHPR 2000)

The excerpt below deal with fair trial in the context of the death penalty and the right to life.

...

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.

Gunme and Others v Cameroon
(2009) AHRLR 9 (ACHPR 2009)

This case deals with the right to self-determination and the definition of a 'people'.

...

129. The complainants submit that the accused were tried in a language they did not understand, without the help of interpreters. The respondent state did not contradict that allegation. The Commission states that it is a prerequisite of the right to a fair trial, for a person to be tried in a language he understands, otherwise the right to defence is clearly hampered. A person put in such a situation cannot adequately prepare his defence, since he would not understand what he is being accused of, nor would he apprehend the legal arguments mounted against him.

...

130. The Commission recognises that the respondent state is a bilingual country. Its institutions including the judiciary can use either French or English ... However since not all the citizens are fluent in both languages, it is the state's duty to make sure that, when a trial is conducted in a language that the accused does not speak, he/she is provided with the assistance of an interpreter. Failing to do that amounts to a violation of the right to a fair trial.

...

Alleged violation of article 19

...

160. The respondent state did not however respond specifically to the allegations concerning the relocation of major economic projects and enterprises from Southern Cameroon. It explained the reason for relocating the seaport to Douala from Limbe, otherwise known as Victoria. It argues that, Douala being the gateway into Cameroon, the government needed to monitor the movement of persons and goods for evident security reasons and efficient customs control.

161. Every state has an obligation under international law to preserve the integrity of its entire territory. The maintenance of security and movements of persons and goods on the territory is part of that obligation. The argument by the respondent state that it could not guarantee the security of persons and goods at Limbe, unless it moved the port, is tantamount to acknowledging that it had no control of Limbe. The Commission believes that the security and customs authorities could have effectively monitored the movement of persons and goods, even if the seaport had continued to be at Limbe.

162. The Commission states that the relocation of business enterprises and location of economic projects to Francophone Cameroon, which generated negative effects on the economic life of Southern Cameroon constituted violation of article 19 of the Charter.

Alleged violation of article 20

163. The complainants state that the 'alleged unlawful and forced annexation and colonial occupation' of Southern Cameroon by the respondent state constituted a violation of article 20 of the Charter. They claim that Southern Cameroonians are entitled to exercise the rights to self determination under article 20 of the Charter as a separate and distinct people from the people of 'La Republique du Cameroon' ...

169. The Commission shall clarify its understanding of 'peoples' rights', under the African Charter. The Commission is aware of the controversial nature of the issue, due to the political connotation that it carries. That controversy is as old as the Charter. The drafters of the Charter refrained deliberately from defining it. To date, the concept has not been defined under international law. However, there is recognition that certain objective features attributable to a collective of individuals, may warrant them to be considered as 'people'.

170. A group of international law experts commissioned by UNESCO to reflect on the concept of 'people' concluded that where a group of people manifest some of the following characteristics; a common historical tradition, a racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life, it may be considered to be a 'people'. Such a group may also identify itself as a people, by virtue of their consciousness that they are a people. This characterisation does not bind the Commission but can only be used as a guide.

171. In the context of the African Charter, the notion of 'people' is closely related to collective rights. Collective rights enumerated under articles 19 to 24 of the Charter can be exercised by a people, bound together by their historical, traditional, racial, ethnic, cultural, linguistic, religious, ideological, geographical, economic identities and affinities, or other bonds.

172. The drafters of the Charter provided for the protection of 'peoples' rights' under the Charter. In his book, entitled *The Law of the African (Banjul) Charter on Human and Peoples' Rights*, Justice Hassan B Jallow, an eminent African jurist, who participated in the drafting the African Charter, sheds light on this issue. He says that:

[t]he concept of peoples' rights, to which a whole chapter had been devoted in the draft did not mean there was any grading of rights. There were economic, social and cultural rights which have particular importance to developing countries and which together with civil rights and political rights in one complementary whole should henceforth be give an important place.

173. Justice Jallow cites the late President Leopold Sedar Senghor, the first president of Senegal and an eminent African statesman, who told the inaugural meeting of African legal experts to draft the Charter, the following:

People will perhaps expatiate for a long time upon the 'people rights' we were very keen on referring to. We simply meant, by so doing, to show our attachment to economic, social, and cultural rights, to collective rights in general, rights which have a particular importance in our situation of a developing country. We are certainly not drawing lines of demarcation between the different categories of rights. We want to show essentially that beside civil and political rights, economic, social and cultural rights should henceforth be given the important place they deserve. We wanted to lay emphasis on the right to development and the other rights which need the solidarity of our states to be fully met; the right to peace and security, the right to a healthy environment, right to participate in the equitable share of the common heritage of mankind, the right to enjoy a fair international economic order and, finally the right to natural wealth and resources.

174. The African Commission has itself dealt with the issues of peoples' rights without defining the term 'people' or 'peoples' right'. In its acclaimed Report of the Working Group of Experts on Indigenous Populations/Communities, the

African Commission described its dilemma of defining the concepts in the following terms:

Despite its mandate to interpret all provisions of the African Charter as per article 45(3), the African Commission initially shied away from interpreting the concept of 'peoples'. The African Charter itself does not define the concept. Initially the African Commission did not feel at ease in developing rights where there was little concrete international jurisprudence. The ICCPR and the ICESR do not define 'peoples'. It is evident that the drafters of the African Charter intended to distinguish between the traditional individual rights where the sections preceding article 17 make reference to 'every individual'. Article 18 serves as a break by referring to the family. Article 19-24 make specific reference to 'all peoples'

175. It continues:

Given such specificity, it is surprising that the African Charter fails to define 'peoples' unless it was trusted that its meaning could be discerned from the prevailing international instruments and norms. Two conclusions can be drawn from this. One, that the African Charter seeks to make provision for a group or collective rights, that is, that set of rights that can conceivably be enjoyed only in a collective manner like the right to self determination or independence or sovereignty ...

176. The Commission deduces from the foregoing discourse that peoples' rights are equally important as are individual rights. They deserve, and must be given protection. The minimum that can be said of peoples' rights is that, each member of the group carries with him/her the individual rights into the group, on top of what the group enjoys in its collectivity, ie common rights which benefit the community such as the right to development, peace, security, a healthy environment, self determination, and the right to equitable share of their resources.

177. It is in the light of the above that the Commission shall examine the allegations against the respondent state, concerning the violations of the collective rights cited herein above.

178. The Commission states that after thorough analysis of the arguments and literature, it finds that the people of Southern Cameroon can legitimately claim to be a 'people'. Besides the individual rights due to Southern Cameroon, they have a distinct identity which attracts certain collective rights. The UNESCO group of Experts report referred to herein above, states that for a collective of individuals to constitute a 'people' they need to manifest some, or all the identified attributes. The Commission agrees with the respondent state that a 'people' may manifest ethno-anthropological attributes. Ethno- anthropological attributes may be added to the characteristics of a 'people'. Such attributes are necessary only when determining indigenology of a 'people', but cannot be used as the only determinant factor to accord or deny the enjoyment or protection of peoples' rights. Was it the intention of the state parties to rely on ethno anthropological roots only to determine 'peoples' rights', they would have said so in the African Charter? As it is, the African Charter guarantees equal protection to people on the continent, including other racial groups whose ethno anthropological roots are not African.

179. Based on that reasoning, the Commission finds that 'the people of Southern Cameroon' qualify to be referred to as a 'people' because they manifest numerous characteristics and affinities, which include a common history, linguistic tradition, territorial connection, and political outlook. More importantly they identify themselves as a people with a separate and distinct identity. Identity is an innate characteristic within a people. It is up to other external people to recognise such existence, but not to deny it.

180. The respondent state might not recognise such innate characteristics. That shall not resolve the question of self identification of Southern Cameroonians. It might actually postpone the solution to the problems in Southern Cameroon, including those already highlighted herein above. The

respondent state acknowledges that there have been problems created regularly by the secessionist SCNC and SCAPO, in that part of its territory, which calls itself the 'Southern Cameroon'.

181. The Commission is aware that post colonial Africa has witnessed numerous cases of domination of one group of people over others, either on the basis of race, religion, or ethnicity, without such domination constituting colonialism in the classical sense. Civil wars and internal conflicts on the continent are testimony to that fact. It is incumbent on state parties, therefore, whenever faced with allegations of the nature contained in the present communication, to address them rather than ignore them under the guise of sovereignty and territorial integrity. Mechanisms such as the African Commission were established to resolve disputes in an amicable and peaceful manner. If such mechanisms are utilised in good faith, they can spare the continent valuable human and material resources, otherwise lost due to conflicts fighting against ethnic, religious domination or economic marginalisation.

182. The Commission shall address the question, whether the people of Southern Cameroon are entitled to the right to self determination. In so doing it shall contextualise the question by dealing, not with the 1961 UN plebiscite, or the 1972 unification, but rather the events of 1993 and 1994 on the constitutional demands vis-à-vis the claim for the right to self determination of the Southern Cameroonian people.

183. The complainants allege that the 1993 Buea and 1994 Bamenda Anglophone conferences submitted constitutional proposals, which were ignored by the respondent state. This forced the complainants to conduct a signature referendum of Southern Cameroonians in 1995, which endorsed separation.

184. The complainants argued that the people of Southern Cameroon through the 1993, 1994 conferences, and the 1995 signature referendum, raised issues of constitutional, political and economic marginalisation. They allege further that the Constitution adopted by the respondent state in December 1995 did not address their appeals for autonomy. The Commission is of the view that these complaints merit its determination.

185. The complainants submit that the respondent state's refusal or failure to address their grievances amounted to a violation of article 20. They claim therefore that they are entitled to exercise their right to self determination under the Charter. The respondent state responds that these grievances constitute a secessionist agenda by SCNC and SCAPO. It denies that the complainants are entitled to exercise the right to self determination under article 20.

186. The respondent state submitted that the Buea Declaration of 3 April 1993 recognised that the Southern Cameroonians had freely joined *La République du Cameroun* in 1961, and further that the transition to a unitary state in 1972 was approved by both Francophones and Anglophones who voted 98.26% and 97.9% respectively through a national referendum. It states further that the so called referendum of September 1995 by SCNC does not invalidate the 1972 data. The respondent state doubts the accuracy of the referendum. It states that:

Since 1996, the state of Cameroon is a unitary decentralised state, adopted by members of parliament, including those from the Anglophone part of the country. Legal instruments relating to putting in place of the decentralised regional and local authorities were enacted in July 2004

187. The respondent state argues further that:

The self determination of the 'people' of Southern Cameroon, following the logic of the Commission (cf per the Katanga case) would be understandable where there are tangible evidence of massive violations of human rights, and where there is evidence ascertaining the refusal of the nationals of Southern Cameroon, the right

to take part in the management of public affairs of the state of Cameroon. There is no such proof ...

190. The Commission notes that the Republic of Cameroon is a party to the Constitutive Act (and was a state party to the OAU Charter). It is a party to the African Charter on Human and Peoples' Rights as well. The Commission is obliged to uphold the territorial integrity of the respondent state. As a consequence, the Commission cannot envisage, condone or encourage secession, as a form of self-determination for the Southern Cameroons. That will jeopardise the territorial integrity of the Republic of Cameroon.

191. The Commission states that secession is not the sole avenue open to Southern Cameroonians to exercise the right to self determination. The African Charter cannot be invoked by a complainant to threaten the sovereignty and territorial integrity of a state party. The Commission has however accepted that autonomy within a sovereign state, in the context of self government, confederacy, or federation, while preserving territorial integrity of a state party, can be exercised under the Charter. In their submission, the respondent state implicitly accepted that self determination may be exercisable by the complainants on condition that they establish cases of massive violations of human rights, or denial of participation in public affairs.

192. The complainants have submitted that the people of the Southern Cameroon are marginalised, oppressed, and discriminated against to such an extent that they demand to exert their right to self-determination.

193. The respondent state submitted that the 1996 Constitution was adopted by the National Assembly, which included representatives of the people of Southern Cameroon. The respondent state argues that, within the framework of the 1996 Constitution, three laws on decentralisation, which 'will enable Cameroon to resume the development of local potentials', were adopted by the Parliament. The respondent state submits further that since 2004 measures are being taken to give more autonomy to regions. Whether the laws shall be applied to address the concerns of South Cameroonians will depend on the goodwill of both sides.

194. The Commission has so far found that the respondent has violated articles 2, 4, 5, 6, 7, 11, and 19 of the Charter. It is the view of the Commission, however that, in order for such violations to constitute the basis for the exercise of the right to self determination under the African Charter, they must meet the test set out in the *Katanga* case [*Katangese Peoples' Congress v Zaire* (2000) AHRLR 72 (ACHPR 1995)], that is, there must be

concrete evidence of violations of human rights to the point that the territorial integrity of the state party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by article 13(1).

195. The Commission has already made a finding that article 13 was not violated. The Commission saw ample evidence that the people of Southern Cameroon are represented in the National Assembly, at least through an opposition party, the SDF. Information on the record suggests that there has been some form of representation of the people of Southern Cameroon in the national institutions prior to, and after 18 December 1989. The complainants may not recognise the representatives elected to the national institutions under the current constitutional arrangement. The respondent state on the other hand may not share the same views or even recognise the SCNC and SCAPO as representing a section of the people of Southern Cameroon.

196. The complainants' main complaint is that the people of Southern Cameroon are denied equal status in the determination of national issues. They allege that their constitutional demands have been ignored by the respondent state. In other words they assert their right to exist and hence the

right to determine their own political, and social economic affairs under article 20(1).

197. The Commission is not convinced that the respondent state violated article 20 of the Charter. The Commission holds the view that when a complainant seeks to invoke article 20 of the African Charter, it must satisfy the Commission that the two conditions under article 20(2), namely oppression and domination have been met.

198. The complainants have not demonstrated if these conditions have been met to warrant invoking the right to self determination. The basic demands of the SCNC and SCAPO as well as the two Anglophone conferences, is the holding of constitutional negotiations to address economic marginalisation, unequal representation and access to economic benefits. Secession was the last option after the demands of Buea and Bamenda conferences were ignored by the respondent state.

199. Going by the *Katanga* decision, the right to self determination cannot be exercised, in the absence of proof of massive violation of human rights under the Charter. The respondent state holds the same view. The Commission states that the various forms of governance or self determination such as federalism, local government, unitarism, confederacy, and self government can be exercised only subject to conformity with state sovereignty and territorial integrity of a state party. It must take into account the popular will of the entire population, exercised through democratic means, such as by way of a referendum, or other means of creating national consensus. Such forms of governance cannot be imposed on a state party or a people by the African Commission.

200. The African Commission finds that the people of Southern Cameroon cannot engage in secession, except within the terms expressed herein above, since secession is not recognised as a variant of the right to self determination within the context of the African Charter.

201. The Commission, however, finds also that the respondent state violated various rights protected by the African Charter in respect of Southern Cameroonians. It urges the respondent state to address the grievances expressed by the Southern Cameroonians through its democratic institutions. The 1993 Buea and 1994 Bamenda Anglophone conferences raised constitutional and human rights issues which have been a matter of concern to a sizable section of the Southern Cameroonian population for quite a long time. The demand for these rights has lead to civil unrest, demonstrations, arrests, detention, and the deaths of various people, which culminated in the demand for secession.

202. The respondent state implicitly acknowledges the existence of this unwelcome state of affairs. It is evident that the 1995 Constitution did not address the Southern Cameroonians' demands, particularly since it did not accommodate the concerns expressed through the 1993 Buea Declaration and 1994 Bamenda Proclamation.

203. The Commission believes that the Southern Cameroonians' grievances cannot be resolved through secession but through a comprehensive national dialogue.

...

Recommendations

215. The African Commission therefore recommends as follows:

1. That the respondent state:
 - (i) Abolishes all discriminatory practices against people of Northwest and Southwest Cameroon, including equal usage of the English language in business transactions;
 - (ii) Stops the transfer of accused persons from the Anglophone provinces for trial in the Francophone provinces;

(iii) Ensures that every person facing criminal charges be tried under the language he/she understands. In the alternative, the respondent state must ensure that interpreters are employed in courts to avoid jeopardising the rights of accused persons;

(iv) Locates national projects, equitably throughout the country, including Northwest and Southwest Cameroon, in accordance with economic viability as well as regional balance;

(v) Pays compensation to companies in Northwest and Southwest Cameroon, which suffered as a result of discriminatory treatment by banks;

(vi) Enters into constructive dialogue with the complainants, and in particular, SCNC and SCAPO to resolve the constitutional issues, as well as grievances which could threaten national unity; and

(vii) Reforms the Higher Judicial Council, by ensuring that it is composed of personalities other than the President of the Republic, the Minister for Justice and other members of the executive branch.

2. To the complainants, and SCNC and SCAPO in particular:

(i) To transform into political parties,

(ii) To abandon secessionism and engage in constructive dialogue with the respondent state on the constitutional issues and grievances.

3. The African Commission places its good offices at the disposal of the parties to mediate an amicable solution and to ensure the effective implementation of the above recommendations.

4. The African Commission requests the parties to report on the implementation of the aforesaid recommendations within 180 days of the adoption of this decision by the AU Assembly.

Human Rights Council and Others v Ethiopia [Communication 445/13 (2015)]

In this case the Commission discusses the admissibility requirement of exhaustion of local remedies.

57. ... the Commission cannot accept that challenging the constitutionality of the measures adopted against the first complainant and certain parts of the CSO Proclamation was not relevant at domestic level when that is precisely the nature of the claim now pleaded before the Commission. The complainants are content to have the complaint examined under the lenses of fundamental rights guaranteed under the Charter as a proper means of redressing the grievance. Inexplicably, they deemed a similar procedure irrelevant at domestic level. Subject to certain factors to be considered below, the complainants' inexplicable estimation that a constitutional review was not relevant cannot in and of itself absolve the complainants from the duty to utilise that procedure. Similarly, the fact that domestic courts did not refer the constitutionality of the relevant parts of the CSO Proclamation to the CCI, when they could have done so *sua sponte*, cannot be pleaded in support of the case that such a referral was irrelevant. It must be recalled that the duty to exhaust local remedies where they are available lies on the complainant and whether this duty has been satisfied is determined by reference to the steps taken by the complainant at domestic level.

58. By pleading the complaint without invoking any fundamental rights in the domestic proceedings, the complainant denied the respondent state the very opportunity article 56(5) is designed to afford a state to deal with alleged violations using its domestic mechanisms. Accordingly, the Commission is not persuaded by the argument that a constitutional review was not necessary on the facts of this case.

...

59. ... Article 56(5) of the Charter does not in itself also hint at the types of local remedies that ought to be exhausted. It is thus necessary to clarify that the essential characteristic of the remedy that ought to be exhausted for purposes of article 56(5) of the Charter is its demonstrable effectiveness in redressing a particular violation. In this regard, the remedy must primarily conform to and operate in accordance with certain fundamental legal principles. It must operate in strict observance of the procedural guarantees of a fair hearing by a competent, independent and impartial organ. It must be based on enforceable law from which the relief it offers earns its mandatory or coercive force, as opposed to being merely discretionary.

...

68. From the foregoing, it is apparent that despite being a second chamber of a state organ called 'parliament', the House of Federation is a *sui generis* dispute settlement body on constitutional issues. Notably, it does not take part in the law making process, which is the preserve of the House of Peoples' Representatives. The House of Federation's dispute settlement competence specifically includes cases where federal or state law or government decisions are contested as unconstitutional through the procedure of constitutional review. This jurisdiction is exclusive to the House of Federation. Unlike in other jurisdictions, regular courts do not have such competence. The fact that the House of Federation is not a court of law does not obviate its suitability to handle constitutional review as a remedy. Moreover in all the other cases in which the Commission insisted on judicial remedies before courts of law, it was the case, or at least assumed that such domestic courts have the jurisdiction to deal with the complaints in question. This is clearly not the case for constitutional review as a remedy in the respondent state's legal system.

Huri-Laws v Nigeria (2000) AHRLR 273 (ACHPR 2000)

One of the many cases 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.

...

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.

Institute for Human Rights and Development in Africa v Angola (2008) AHRLR 43 (ACHPR 2008)

<p>This case deals with human rights violations in connection with the mass expulsion of foreigners.</p>
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Admissibility

40. Time and again, in communication 71/1992, *Recontre Africaine pour la Défense des Droits de l'Homme v Zambia* [(2000) AHRLR 321 (ACHPR 1996)], the African Commission held that the mass expulsions, particularly following arrest and subsequent detentions, deny victims the opportunity to establish the legality of these actions in the courts. In the present case, there is no indication as to whether the deportees were accorded the opportunity to contact their families, much less attorneys, thereby making the requirement of exhausting local remedies impracticable.

...

Decision on the merits

...

Alleged violation of article 5

...

51. In further corroborating the failure of the respondent state, the complaint alleges that guards frequently beat the Gambians and extorted money from them. Food was not regularly provided and medical attention was not readily available, despite repeated requests. Complainants were transported between detention centres in overcrowded cargo planes and lorries. The detention centre in Saurimo had no roof or walls and complainants were exposed to the elements of weather for five consecutive days. At the Cafunfu detention centre, bathroom facilities consisted solely of two buckets for over 500 detainees, and these were located in the same one room where all detainees were compelled to eat and sleep. This, for the African Commission, is clearly a violation of article 5 of the African Charter since such treatment cannot be called anything but degrading and inhuman.

...

Alleged violation of article 6

...

55. In the present case, there is nothing from the respondent state to indicate that the manner of victims' arrests and subsequent expulsion was not arbitrary as alleged by the complainant. As the complainant puts it, at no point were any of the victims shown a warrant or any other document relating to the charges under which the arrests were being carried out. The African Commission thus finds the respondent state to have violated article 6 of the African Charter.

Alleged violation of article 7(1)(a)

...

58. ... The abrupt manner in which they were arrested, detained and deported denied them of the opportunity to engage a lawyer to take their case to court to challenge the regularity and legality of their arrest, detention and deportation. The African Commission has ruled that every individual has the right to appeal to competent national organs for violations of his/her fundamental rights, and as such, if one is detained without charge or trial and there exists no legal remedy to challenge the detention, it is a clear violation of article 7(1)(a).

...

Violation of article 12(4) of the African Charter on due process before expulsion

...

64. The African Charter's requirement of due process as outlined above is also shared by similar systems elsewhere. The Human Rights Committee under the International Covenant on Civil and Political Rights, for instance, had expressed a similar concern over the treatment of aliens being deported from Switzerland when it held the latter liable for degrading treatment and use of excessive force resulting on some occasions in the death of the deportee during deportation of aliens. The Committee recommended that Switzerland should 'ensure that all cases of forcible deportation are carried out in a manner which is compatible with articles 6 and 7 of the Covenant' and that 'restraint methods do not affect the life and physical integrity of the persons concerned'.

65. The African Commission notes that the import of this provision under the African Charter is to ensure that due process is followed before legally admitted non-nationals are expelled from a member state. Very clearly, the situation as presented by the complainant did not afford those expelled due

process of law for protection of the rights that have been alleged to be violated by the respondent state and that they were not allowed access to the remedies under domestic law to at least challenge, if not reverse, their expulsion. The African Commission thus holds the respondent state in violation of the provisions of article 12(4) of the African Charter.

Alleged violation of article 12(5)

...

69. ... the fact that the deportees as a group were arrested over a period of several months at different places and may have been served with deportation orders on different dates does not qualify, for purposes of the African Commission, to be sufficient to negate the *en masse* element of the expulsions. The African Commission underscores that any expulsions or deportations must comply with the human rights obligations found in the African Charter. Accordingly, the African Commission finds the respondent state in violation of article 12(5) of the African Charter.

...

Alleged violation of article 14

...

72. The complainant alleges that in the course of the arrest, victims' property was confiscated by Angolan authorities, including television sets, shoes, wrist watches and clothing. It further claims that the abruptness of their arrest forced them to leave behind all property in Angola giving them no opportunity to make arrangements regarding the transport or disposal of their belongings.

...

73. ... While the right to property under the African Charter is not absolute, the respondent state has not provided evidence to prove that its actions were necessitated either by public need or community interest. Without such a justification and the provision of adequate compensation determined by an impartial tribunal of competent jurisdiction, the African Commission finds the respondent state's actions in violation of the right to property under article 14 of the African Charter.

Alleged violation of article 15

...

75. The complainant alleges that the victims were in possession of official documents, including passports, visas, work and residence permits, allowing them to stay and work legally in Angola. The victims were required on a monthly basis to pay for their work permits that enabled them to continue working in the mines. Nevertheless, they were arrested on the grounds that foreigners were not permitted to engage in mining activities in Angola.

76. As indicated above, the respondent state has regrettably not forwarded any arguments to refute any of the allegations made in this communications including the alleged violation under article 15 of the African Charter. The facts indicate and the African Commission agrees that the abrupt expulsion without any possibility of due process or recourse to national courts to challenge the respondent state's actions severely compromised the victims' right to continue working in Angola under equitable and satisfactory conditions. Accordingly, the African Commission holds that the respondent state's actions of arbitrary arrest, detention and subsequent deportation resulted in persons who were lawfully working in Angola losing their jobs in a manner that is in violation of article 15 of the African Charter.

...

Alleged violation of article 1

...

84. The African Commission wishes to emphasise that there is nothing in the African Charter that requires member states of the African Union to guarantee for non-nationals an absolute right to enter and/or reside in their territories. This, however, does not in any way mean that the African Charter gives member states the free hand to unnecessarily and without due process deal with non-nationals to such an extent that they are denied the basic guarantees enshrined under the African Charter for the benefit of everyone. Member states may deny entry to or withdraw residence permits from non-nationals for various reasons including national security, public policy or public health. Even in such extreme circumstances as expulsion, however, the affected individuals should be allowed to challenge the order/decision to expel them before competent authorities, or have their cases reviewed, and have access to legal counsel, among others. Such procedural safeguards aim at making sure that non-nationals enjoy the equal protection of the law in their country of residence, ensure that their daily lives are not arbitrarily interfered with, and that they are not sent back/deported/expelled to countries or places they are likely to suffer from torture, inhuman or degrading treatment, or death, among others. ...

87. The African Commission notes that the present communication is not the first in which it found similar violations of the human rights of non-nationals in the context of mass expulsions/deportations by the Republic of Angola. It, therefore, recommends that the Republic of Angola should:

- Ensure that its immigration policies, measures and legislations do not have the effect of discriminating against persons on the basis of race, colour, descent, national, ethnic origin, or any other status, and particularly take into account the vulnerability of women, children and asylum seekers;
- Take measures to ensure that all persons in detention are provided with proper medical examination and medical treatment and care;
- Ensure regular supervision or monitoring of places of detention by qualified and/or experienced persons or organisations;
- Put in place mechanisms allowing all detained persons access to effective complaint procedures regarding their treatment with a view to curb, in particular, cases of physical and/or psychological abuse;
- Put in place procedural safeguards or clear procedures/policies that guarantee for all persons deprived of their liberty (nationals and non-nationals alike) effective access to competent authorities such as administrative tribunals and courts responsible for prison/detention oversight and/or review;
- Establish a Commission of inquiry to investigate the circumstances under which the victims were expelled and ensure the payment of adequate compensation of all those whose rights were violated in the process;
- Institute safeguards to ensure that individuals are not deported/expelled to countries where they might face torture or their lives could be at risk;
- Allow representatives of the African Commission, relevant international organisations, ICRC, NGOs, concerned consulates and others access to detainees and places of detention, including to those where non-nationals are held;
- Institute human rights training programmes for law enforcement agencies and relevant civil servants dealing with matters involving non-nationals on non-discrimination, due process, and the rights of detainees, among others;
- The African Commission further requests that the Republic of Angola report back to it, at a later stage, measures it has taken to implement the recommendations made in this communication.

Interights & Ditshwanelo v Botswana
[Communication 319/06 (2015)]

In this decision the Commission goes further than in its previous jurisprudence and holds that hanging as a method of execution constitutes cruel, inhuman or degrading punishment

84. On hanging, the Commission takes cognizance of the current position of international human rights law on the execution of the death penalty which is that, where a death sentence has been imposed, it must be carried out in such a way as to cause the least possible physical and mental suffering. In its own jurisprudence the Commission has reiterated that executions may amount to cruel, inhuman and degrading treatment or punishment 'if the suffering caused in execution is excessive and goes beyond that is strictly necessary.'

85. In the present case, the prisoner was executed via hanging. The issue therefore is whether hanging as a method of execution violates article 5 of the Charter. Currently, no method of execution has been found to be acceptable under international law. This complicates the current inquiry since it seems that no method of execution is appropriate under international law.

86. In the present case, the victim's execution was done in secrecy and therefore no specific details have been provided. Nevertheless, the Commission will rely on the following account provided by the Tanzanian High Court in order to appreciate the nature of executions by hanging as a matter of principle:

The prisoner is dropped through a trapdoor, to eight and a half feet with a rope around his neck. The intention is to break his neck so that he dies quickly. The length of the drop is determined on the basis of such factors as body weight and muscularity or fatness of the prisoner's neck. If the hangman gets it wrong and the prisoner is dropped too far, the prisoner's head can be decapitated or his face can be torn away. If the drop is too short then the neck will not be broken but instead the prisoner will die of strangulation. There are many documented cases of botched hangings in various countries including Tanzania. There are a few cases in which hangings have been messed up and the prison have had to pull on the prisoner's leg to speed up his death or use hammer to hit his head. The shock to the system causes the prisoner to lose control over his bowels and he will soil himself. In short the whole process is sordid and debasing. Not only is the process generally sordid and debasing, but also it is generally brutalizing. ... It is my finding that the petitioners have managed to prove on a balance of probabilities that hanging in carrying out the death penalty is a cruel, inhuman and degrading punishment.

87. The above description, to say the least, is inhuman and degrading. The above case explains a general reality that happens during hangings. The conclusion by the sitting judge that the whole process is 'sordid and debasing' and that it is 'generally brutalizing' is telling. The Commission therefore finds that in line with the description of the Tanzanian High Court about hanging as a method of execution in Africa that hanging causes excessive suffering and is not strictly necessary; therefore, it constitutes a violation of article 5 of the African Charter. ...

96. ... the Commission holds that the failure by the prison authorities of the respondent state to inform the family and the lawyers of Mr Ping, of the date, the hour, the place of the execution as well as the exact place of the burial, violates article 5 of the African Charter, and by their conduct, have failed to respect the human dignity of both the family and the prisoner, which further violates article 5.

Interights and Others v Mauritania (2004) AHRLR 87 (ACHPR 2004)

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. In the specific case of the freedom of expression that the African Commission considers as a 'fundamental human right, essential to an individual's personal development, political consciousness and participation in the public affairs of his country,' a recent decision 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'. And even in this case the restrictions should 'be founded in a legitimate state interest and the evils of limitations of rights must be strictly proportional with and absolutely necessary for the advantages which are to be obtained'.

79. Furthermore, the African Commission requires that for a restriction imposed by the legislators to conform to the provisions of the African Charter, it should be done 'with due regard to the rights of others, collective security, morality and common interest', that it should be based on a legitimate public interest and should be 'strictly proportionate with and absolutely necessary' to the sought after objective. And more over, the law in question should be in conformity with the obligations to which the state has subscribed in ratifying the African Charter and should not render the right itself an illusion.

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 observes 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 Mauritians 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.

**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.

...

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.

Jawara v The Gambia (2000) AHRLR 107 (ACHPR 2000)

Democratic rule in The Gambia came to an end in 1994 when 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.

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 independence 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 Zaireoise 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.

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.

...

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'.

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). 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.

(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 ...'.

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.

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'. 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'.

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.

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.

Lawyers for Human Rights v Swaziland
(2005) AHRLR 66 (ACHPR 2005)

In 1973, the Swazi King repealed the 1968 Constitution and Bill of Rights. Although Swaziland only ratified the Charter in 1995, the repeal of the Constitution in the view of the Commission constituted an ongoing violation, and as a result the Commission had jurisdiction. The Commission found 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 Offences 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 no where 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 *ratione 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 [*Huri-Laws v Nigeria* (2000) AHRLR 273 (ACHPR 2000)] 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 [*Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000)] 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 149/96 [*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.

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.

...

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.

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.

...

Majuru v Zimbabwe
(2008) AHRLR 146 (ACHPR 2008)

Requirement of submission of communications to the Commission within reasonable time.

...

104. Article 56(6) of the Charter provides that 'communications received by the Commission will be considered if they are submitted within a reasonable period from the time local remedies are exhausted, or from the date the Commission is seized with the matter ...'. The respondent state contends that the present communication was not submitted on time by the complainant, as required by the African Charter.

...

108. The Charter does not provide for what constitutes 'reasonable period'. However, the Commission has the mandate to interpret the provisions of the Charter and in doing so, it take cognisance of its duty to protect human and people's rights as stipulated in the Charter. The provisions of other international/regional instruments like the European Convention on Human Rights and Fundamental Freedoms and the Inter-American Convention on Human Rights, are almost similar and state that they '... may only deal with the matter ... within a period of six months from the date on which the final decision was taken', after this period has elapsed the Court/Commission will no longer entertain the communication.

109. The Commission is urged in articles 60 and 61 of the Charter to consider as subsidiary measures to determine the applicable principles of law 'other general or special international instruments, laying down rules expressly recognised by member states of the African Union ...'. Going by the practice of similar regional human rights instruments, such as the Inter-American Commission and Court and the European Court, six months seem to be the usual standard. This notwithstanding, each case must be treated on its own merit. Where there is good and compelling reason why a complainant could not submit his/her complaint for consideration on time, the Commission may examine the complaint to ensure fairness and justice.

110. ... Even if the Commission accepts that he fled the country and needed time to settle, or that he was concerned for the safety of his relatives, 22 months after fleeing the country is clearly beyond a reasonable man's understanding of reasonable period of time. The African Commission thus holds that the submission of the communication was unduly delayed and thus does not comply with the requirements under article 56(6) of the Charter.

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 Mauritians 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.

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 Igiebor, 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 hold 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* (2000) AHRLR 186 (ACHPR 1995), 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.

The Nubian Community in Kenya v Kenya
[Communication 317/06 (2015)]

This case deals with discriminatory practices against the Nubian community in Kenya. See also the decision of the African Committee on the Rights and Welfare of the Child on children of Nubian descent in Kenya.

134. ... Kenyan Nubians are unfairly discriminated against in the acquisition of identity documents solely on account of their ethnic and religious affiliations, which assails their dignity as human beings who are inherently equal in dignity. This position is further supported by the findings of the Kenyan government's own human rights institution, the Kenya National Commission on Human Rights, which in a study found that:

There is a strong institutionalised link between citizenship and ethnicity in the issuance of identity cards. The Study found that the registration system applied different and stricter rules with respect to Nubians, Kenyan Somalis and Kenyan Arabs as opposed to other Kenyan ethnic groups. This approach offends the tenets of equal treatment and has no place in a pluralistic and democratic society. Denying specific ethnic groups Identity Cards is not only discriminatory; it also enhances opportunities for rent seeking and further marginalizes these communities.

135. In view of the above the Commission considers that the rights of Kenyan Nubians under article 2 and 3 of the Charter have been violated.

...

150. The state's discriminatory practices results in many Nubians who face enormous challenges to obtain or replace their ID cards when they are lost. Some are left altogether without an identity card (legal document required to proof citizenship) which excludes them from the state's juridical system. As a result, they cannot benefit from the advantages associated with Kenyan citizenship and are unable to enjoy a range of rights and freedoms already outlined above.

151. By failing to take measures to prevent members of the Nubian Community from becoming stateless and by failing to put in place fair processes, devoid of discrimination and arbitrariness for the acquisition of identity documents, the Commission considers that Kenya has failed to recognize the legal status of Nubians, in violation of article 5 of the Charter.

...

165. In the present Communication, it has been submitted that Nubians have severally been evicted from Kibera with no provision made for alternative housing; no compensation provided to the displaced and no notice of such evictions given to the occupants. The respondent state has not refuted any of these allegations. It has not also shown the public interest that necessitated these evictions nor has the legal framework within which the evictions were carried out been advanced. It therefore appears to the Commission that evictions were carried out without due process of law and in total disregard of the respondent state's international human rights obligations.

166. For the above reasons, the Commission considers that the property rights of the Nubians in Kibera have been encroached on, in violation of article 14 of the Charter.

...

168. The Commission has already concluded in its assessment of articles 2, 3 and 5 above that Nubians are discriminated against in acquisition of identity documents which effectively hampers their ability to enjoy a range of rights guaranteed in the Charter. As a result, the Commission will therefore not examine in detail the violations consequent on this discriminatory treatment.

It suffices to note that it is common knowledge that in Kenya, those without national identity cards cannot vote or contest for public office, cannot be employed in the public service, and may not have access to public services such as healthcare and education. They may also not be able to register their marriages, may not be able to enter public buildings or open bank accounts, and may not be able to move freely within the country and undertake a host of other transactions that are necessary for a dignified life. All these affect the ability of Nubians to enjoy the rights guaranteed in articles 12, 13, 15, 16 and 17 (1) of the Charter.

Ouko v Kenya
(2000) AHRLR 135 (ACHPR 2000)

Here the Commission focuses on the requirements posed by the Charter in respect of conditions of detention.

...

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.

...

Pagnouille (on behalf of Mazou) v Cameroon
(2000) AHRLR 57 (ACHPR 1997)

<p>This case deals with article 7(1)(d) of the Charter which protects the right to be tried within a reasonable time.</p>

...

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.

...

Prince v South Africa
(2004) AHRLR 105 (ACHPR 2004)

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 states 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.

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, 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, 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'.

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

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) 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.

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* 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*, 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.

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 Health 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. 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.

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. 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. 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.

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'.

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 norms, 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. 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 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. 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.

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.

Shumba v Zimbabwe
[Communication 288/2004 (2012)]

In this case the Commission finds that the complainant who alleged that he had been tortured in Zimbabwe and therefore fled the country did not have to return to Zimbabwe to exhaust local remedies.

...

39. Article 56(6) of the African Charter provides that 'communications ... received by the Commission shall be considered if they: are submitted within a reasonable period from the time local remedies are exhausted, or from the date the Commission is seized with the matter.'

...

44. Indeed, as the respondent state has noted, the African Commission has not specified what a reasonable period is but it is apparent from its practice that it has tended to be flexible and as such, determines this question on a case-by-case basis. For instance, in several communications, the African Commission has admitted communications that have been brought before the African Commission more than 16 months after the violation is reported to have taken place or domestic remedies were exhausted. Consequently, the African Commission believes that the complainant in the present communication having filed the communication 16 months after the violation took place, met the conditions laid down in article 56(6) of the African Charter.

...

56. The African Commission has held in several of its decisions that the rationale of the rule to exhaust local remedies is to allow the state concerned an opportunity to remedy a grievance through its own domestic legal system. However, the African Commission has gone ahead to state that it will not hold this requirement to apply literally in cases where it is impracticable or undesirable for the complainant to seize the domestic courts. Accordingly, the African Commission in *Jawara v The Gambia* stated that for a complainant to be able to exhaust local remedies, such remedies must meet three basic criteria – they must be available, effective and sufficient. The African Commission went on to state with respect to that case that, if the availability of a remedy is not evident it ‘cannot be invoked by the State to the detriment of the complainant’.

...

64. The African Commission was informed by the respondent state (a claim the complainant has not denied or challenged) that the complainant left Zimbabwe on or about 17 January 2003. He returned to Zimbabwe on 4 February 2003. He made a court appearance on 5 February 2003 and subsequently left Zimbabwe on the same day and never returned ...

77. ... there can be particular circumstances which justify the application of the constructive exhaustion of domestic remedies rule to an individual, where it is established that the remedies are neither adequate, effective nor available. In this particular case, in spite of the complainant’s two day presence in Zimbabwe, and in view of the allegation of torture, it is abundantly clear that bearing the experience by the said Mark Chavunduka and Ray Choto, the remedies available to the complainant are inadequate, ineffective, unavailable and would not be accessed without a lot of impediments, including the possible incarceration of the complainant for the criminal charges which in all fairness would have taken precedence over his personal claim against torture. Had he remained in Zimbabwe, there was no guarantee that he would not have been arrested, nor would he be subjected to the same treatment he had been subjected to the previous time, thus fleeing after the two days brought him within the constructive exhaustion rule.

...

159. The African Commission agrees that the complainant has submitted more than adequate evidence to support the victim’s allegations of torture and ill-treatment, which at least should have prompted an official investigation. The African Commission also agrees with the complainant that in seeking to refute the allegations, it is not sufficient for the respondent state to simply argue that they are unsubstantiated when they are supported by range of documentation. Rather, the respondent state must provide evidence to the contrary.

**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. In such 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.

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. 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. 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.

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).

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 affects the quality of life and safety of the individual. 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.

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, obligate 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.

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 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, 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)]). 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*. 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*. 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-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. 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. 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 communities from the homes and/or which they occupy, without the provision of, and access to, appropriate forms of legal or other protection'. 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. 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 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.

Sudan Human Rights Organisation and Another v Sudan
(2009) AHRLR 153 (ACHPR 2009)

This case deals with massive human rights violations in the Darfur region of Sudan.

...

103. The respondent state argued that the violations have been settled by other international mechanisms and cites article 56(7) of the Charter.

104. The African Commission wishes to state that a matter shall be considered settled within the context of article 56(7) of the African Charter, if it was settled by any of the UN human rights treaty bodies or any other international adjudication mechanism, with a human rights mandate. The respondent state must demonstrate to the Commission the nature of remedies or relief granted by the international mechanism, such as to render the complaints *res judicata*, and the African Commission's intervention unnecessary.

105. The African Commission, while recognising the important role played by the United Nations Security Council, the Human Rights Council, (and its predecessor, the Commission on Human Rights,) and other UN organs and agencies on the Darfur crisis, is of the firm view that these organs are not the mechanisms envisaged under article 56(7). The mechanisms envisaged under article 56(7) of the Charter must be capable of granting declaratory or compensatory relief to victims, not mere political resolutions and declarations.

...

116. The communication recalls the decision of the Commission in the case of *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v Nigeria* (the SERAC Case) where the Commission found, *inter alia*, that forced evictions by government forces and private security forces is an infringement of article 14 and the right to an adequate housing which is implicitly guaranteed by articles 14, 16 and 18(1) of the Charter.

...

158. In *Media Rights Agenda v Nigeria*, the Commission stated that the term 'cruel, inhuman and degrading punishment or treatment' is to be interpreted so as to extend the widest possible protection against abuse, whether physical or mental. In *John Modise v Botswana*, the Commission elaborated further and noted that 'exposing victims to personal sufferings and indignity violates the right to human dignity'. It went on to state that 'personal suffering and indignity can take many forms, and will depend on the particular circumstances of each communication brought before the African Commission'.

159. Based on the above reasoning, the African Commission agrees with the UN Committee Against Torture in *Hijrizi v Yugoslavia* that forced evictions and destruction of housing carried out by non-state actors amounts to cruel, inhuman and degrading treatment or punishment, if the state fails to protect the victims from such a violation of their human rights ...

164. In the present communication, the respondent state and its agents, the Janjaweed militia, actively participated in the forced eviction of the civilian population from their homes and villages. It failed to protect the victims against the said violations. The respondent state, while fighting the armed groups, targeted the civilian population, as part of its counter insurgency strategy. In the opinion of the Commission this kind of treatment was cruel and inhuman and threatened the very essence of human dignity.

...

179. In the present communication, the respondent state, in spite all the information regarding the physical abuse the victims were enduring, has not demonstrated that it took appropriate measures to protect the physical integrity of its citizens from abuse either by official authorities or other citizens/third parties. By failing to take steps to protect the victims, the respondent state violated article 6 of the African Charter.

...

185. In the present communication, the forced evictions, burning of houses, bombardments and violence perpetrated against the victims made access to competent national organs illusory and impractical. To this extent, the respondent state is found to have violated article 7 of the African Charter.

...

190. The complainant submitted that thousands of civilian were forcibly evicted from their homes to make-shift camps for internally displaced persons or fled to neighbouring countries as refugees. People in the Darfur region cannot move freely for fear of being killed by gunmen allegedly supported by the respondent state. The respondent state failed to prevent forced evictions or to take urgent steps to ensure displaced persons return to their homes. The Commission therefore finds that the respondent state has violated article 12(1) of the African Charter.

...

201. The victims in the present communication, have been forced out of their normal places of residence by government military forces and militia forces believed to be supported by the respondent state. Their homes and other possessions destroyed. The African Commission recognises that the Darfur Region has been engulfed in armed conflict and there has been widespread violence resulting in serious human rights violations. It is the primary duty and responsibility of the respondent state to establish conditions, as well as provide the means, to ensure the protection of both life and property, during peace time and in times of disturbances and armed conflicts. The respondent state also has the responsibility to ensure that persons who are in harm's way, as it seems the victims were, are resettled in safety and with dignity in another part of the country.

...

205. In the present communication, the respondent state has failed to show that it refrained from the eviction, or demolition of victims' houses and other property. It did not take steps to protect the victims from the constant attacks and bombings, and the rampaging attacks by the Janjaweed militia. It doesn't matter whether they had legal titles to the land, the fact that the victims cannot derive their livelihood from what they possessed for generations means they have been deprived of the use of their property under conditions which are not permitted by article 14. The Commission therefore finds the respondent state in violation of article 14.

...

210. Violations of the right to health can occur through the direct action of states or other entities insufficiently regulated by states. According to General Comment 14 'states should also refrain from unlawfully polluting air, water and soil, ... during armed conflicts in violation of international humanitarian law ... States should also ensure that third parties do not limit people's access to health-related information and services, and the failure to enact or enforce laws to prevent the pollution of water ... [violates the right to health]'.

211. In its decision on *Free Legal Assistance Group and Others v Zaire* the Commission held that the failure of the government to provide basic services such as safe drinking water and electricity and the shortage of medicine ... constitutes a violation of article 16.

212. In the present communication, the destruction of homes, livestock and farms as well as the poisoning of water sources, such as wells exposed the victims to serious health risks and amounts to a violation of article 16 of the Charter.

...

216. The respondent state and its agents, the Janjaweed militia forcefully evicted the victims from their homes, some family members were killed, others fled to different places, inside and outside the territory of the respondent state. This kind of scenario threatens the very foundation of the family and renders the enjoyment of the right to family life difficult. By not ensuring protection to the victims, thus allowing its forces or third parties to infringe on the rights of the victims, the respondent state is held to have violated article 18(1) of the African Charter.

...

224. The complainant alleged that the violations were committed by government forces, and by an Arab militia, the Janjaweed, against victims of black African tribes. The attacks and forced displacement of Darfurian people denied them the opportunity to engage in economic, social and cultural activities. The displacement interfered with the right to education for their children and pursuit of other activities. Instead of deploying its resources to address the marginalisation in the Darfur, which was the main cause of the conflict, the respondent state instead unleashed a punitive military campaign which constituted a massive violation of not only the economic social and cultural rights, but other individual rights of the Darfurian people. Based on the analysis hereinabove, concerning the nature and magnitude of the violations, the Commission finds that the respondent state is in violation of article 22 of the Africa Charter.

...

229. The African Commission recommends that the respondent state should take all necessary and urgent measures to ensure protection of victims of human rights violations in the Darfur Region, including to:

- (1) conduct effective official investigations into the abuses, committed by members of military forces, ie ground and air forces, armed groups and the Janjaweed militia for their role in the Darfur;
- (2) undertake major reforms of its legislative and judicial framework in order to handle cases of serious and massive human rights violations;
- (3) take steps to prosecute those responsible for the human rights violations, including murder, rape, arson and destruction of property;
- (4) take measures to ensure that the victims of human rights abuses are given effective remedies, including restitution and compensation;
- (5) rehabilitate economic and social infrastructure, such as education, health, water, and agricultural services, in the Darfur provinces in order to provide conditions for return in safety and dignity for the IDPs and Refugees;
- (6) establish a National Reconciliation Forum to address the long-term sources of conflict, equitable allocation of national resources to the various provinces, including affirmative action for Darfur, resolve issues of land, grazing and water rights, including destocking of livestock;
- (7) desist from adopting amnesty laws for perpetrators of human rights abuses; and
- (8) consolidate and finalise pending Peace Agreements.

Tembani and Freeth v Angola and Thirteen Others
[Communication 409/12 (2013)]

This case was submitted by two Zimbabwean citizens who had obtained judgments in their favour by the SADC Tribunal. Subsequent to these judgments the Tribunal was suspended by the SADC Summit. Mr Tembani and Mr Freeth submitted a communication to the African Commission challenging the decision to suspend the Tribunal.

138. The language of article 7(1)(a) of the Charter itself is a clear indication that the provision envisages the right of individuals to access court at the national level. Accordingly, the Commission understands article 7(1)(a) of the Charter to embrace both a right of access to court and a right to an effective remedy at the domestic level in the event of a violation of the rights guaranteed in the Charter. A denial of the right of access to a national judicial forum will amount to a definite and inexcusable violation of article 7(1)(a) of the Charter. In this regard, the Commission notes its established jurisprudence as cited by the Complainant that in appropriate cases the ouster of the jurisdiction of the courts constitutes a restriction of access to court and therefore amounts to a violation of article 7(1)(a) of the Charter. However, as is clearly laid out in the Charter itself, the access envisaged in article 7(1)(a) of the Charter is access to national courts within the domestic legal system of the state parties to the Charter.

...

144. The Commission agrees with the complainant that article 26 of the Charter should be read together with article 7 of the Charter. In that regard, the Commission takes the view that reference to ‘the Courts’ in article 26 of the Charter cannot be reference to an international court but is akin and related to the national judicial organs mentioned in article 7 of the Charter. The Commission notes that its established jurisprudence on the meaning and

implications of article 26 of the Charter apply to the national courts which exercise compulsory jurisdiction over individuals who have no possibility of opting out of the coverage of the judicial authority of those courts. Accordingly, the Commission does not find any Charter obligation on the respondent states to guarantee the independence, competence and institutional integrity of the SADC Tribunal.

145. Having failed to find the existence of an obligation to ensure access to the SADC Tribunal in the separate analysis of articles 7 and 26 of the Charter, the Commission is of the opinion that even a combined reading of the two provisions does not create an obligation to ensure access to the SADC Tribunal.

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 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.

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 Trial and elaborated upon in its Guidelines on the Right to Fair Trial and Legal Assistance in Africa.

...

Zimbabwe Human Rights NGO Forum v Zimbabwe (2005) AHRLR 128 (ACHPR 2005)

This decision was adopted by the Commission in May 2006, but only published in January 2007 after Zimbabwe objected to it being published without its comments being attached. At issue in the communication was whether an amnesty for perpetrators of human rights violations is in violation of the Charter and whether the state was responsible for the activities of non-state actors.

African Commission's decision on admissibility

63. The complainant in this communication states that during the period in question, the criminal acts that were committed ranged from assault, arson, theft, torture, kidnap, torture, murder etc and these acts were directed towards persons perceived to be or known as supporters of the opposition and as such were politically motivated.

64. The African Commission holds the view that by pardoning 'every person liable for any politically motivated crime ...' the Clemency Order had effectively foreclosed the complainant or any other person from bringing criminal action against persons who could have committed the acts of violence during the period in question and upon which this communication is based. By so doing, the complainant had been denied access to local remedies by virtue of the Clemency Order.

65. Exhaustion of local remedies does not mean that the complainants are required to exhaust any local remedy, which may be impractical or even unrealistic. Ability to choose which course of action to pursue when wronged is essential and clearly in the instant communication the one course of action that was practical and therefore realistic for the victims to pursue – that of criminal action was foreclosed as a result of the Clemency Order.

66. The respondent state also submitted that the complainant failed to exhaust domestic remedies when they did not challenge the legality of the President's prerogative to issue a Clemency Order.

67. The African Commission is of the view that asking the complainant to challenge the legality of the Clemency Order in the Constitutional Court of Zimbabwe would require the complainant to engage in an exercise that would not bring immediate relief to the victims of the violations. The African Commission is aware that the situation prevailing in Zimbabwe at the time in question was perilous and therefore required the state machinery to act fast and firmly in cases such as this in order to restore the rule of law. To therefore ask victims in this matter to bring a constitutional matter before being able to approach the domestic courts to obtain relief for criminal acts committed against them would certainly result into going through an unduly prolonged procedure in order to obtain a remedy, an exception that falls within the meaning of article 56(5) of the African Charter.

68. It is argued by the respondent state that before bringing this matter to the African Commission, the complainant could have utilised the available domestic remedies by requesting the Attorney General to invoke his powers under article 76(4)(a) or undertaken private prosecution of the persons alleged to have committed the said criminal acts under article 76(4).

69. The African Commission believes that the primary responsibility for the protection of human rights in a country lies with the government of that country. In the instant case, the international community in general and the African Commission paid particular attention to the events that took place in the run up to the referendum in Zimbabwe in February 2000 right up to the end of and after the Parliamentary elections of June 2002. The respondent state was sufficiently informed and aware of the worrying human rights situation prevailing at the time.

70. The responsibility of maintaining law and order in any country lies with the state specifically with the police force of that state. As such, it is the duty of the state to ensure through its police force that where there is a breakdown of law and order, the perpetrators are arrested and brought before the domestic courts of that country. Therefore any criminal processes that flow from this action, including undertaking investigations to make the case for the prosecution are the responsibility of the state concerned and the state cannot abdicate that duty. To expect victims of violations to undertake private prosecutions where the state has not instituted criminal action against perpetrators of crimes or even follow up with the Attorney General what course of action has been taken by the state as the respondent state seems to suggest in this matter would be tantamount to the state relinquishing its duty to the very citizens it is supposed to protect. Thus, even if the victims of the criminal acts did not institute any domestic judicial action, as the guardians of law and order and protectors of human rights in the country, the respondent state is presumed to be sufficiently aware of the situation prevailing in its own territory and therefore holds the ultimate responsibility of harnessing the situation and correcting the wrongs complained of.

71. It is apparent to the African Commission that the human rights situation prevailing at the time this communication was brought was grave and the numbers of victims involved were numerous. Indeed the respondent state concedes that its criminal justice system could not have been expected to investigate and prosecute all the cases reported and ensure that remedies are given. This admission on part of the respondent state points to the fact that domestic remedies may have been available in theory but as a matter of practicality were not capable of yielding any prospect of success to the victims of the criminal assaults.

72. Thus, for the reasons outlined above, the African Commission declares this communication admissible and in coming to this conclusion, would like to reiterate that the conditions laid down in article 56(5) are not meant to constitute an unjustified impediment to access international remedies. As such, the African Commission interprets this provision in light of its duty to protect human and peoples' rights and therefore does not hold the requirement of exhaustion of local remedies to apply literally in cases where it is believed that this exercise would be impractical or futile.

...

Merits

Issues for determination and decision of the African Commission on the merits

134. The present communication raises several issues that must be addressed by the African Commission to determine whether the respondent state has or has not violated the rights of the victims as alleged by the complainant. The African Commission is called upon to determine:

- What non-state actors are and whether the Zimbabwe African National Union-Patriotic Front – ZANU (PF) and the Zimbabwe Liberation War Veterans Association (war veterans) can be termed non-state actors;
- The extent of a state's responsibility for human rights violations or acts committed by non-state actors; and
- Whether the Clemency Order 1 of 2000 resulted to a violation of the respondent state's obligations under article 1 of the Charter.

...

139. Given what this Commission will call the 'mixed membership', it would appear that there is a very thin line to be drawn between the government and the ZANU (PF), the government and war veterans and between the ZANU (PF) and the war veterans. There are members of government who are members of the party and members of the party who are war veterans. However thin the line of distinction may seem, it is not the view of the African Commission that the ZANU (PF) and the Zimbabwe Liberation War Veterans Association are structures of the government or organs of the state. The complainant did not supply the African Commission with documentary evidence to prove this relationship. Even if President Mugabe is patron of the war veterans and exercises control over the group, this does not make the war veteran association part of government or state machinery.

...

Issue three: Extent of a state's responsibility for acts of non-state actors

142. Article 1 of the African Charter is essential in determining whether a violation of the human rights recognised by the Charter can be imputed to a state party or not. That article charges the states parties with the fundamental duty to 'recognise the rights ... and undertake to adopt legislative or other measures to give effect to them'. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the state, which assumes responsibility in the terms provided by the African Charter.

143. Human rights standards do not contain merely limitations on state's authority or organs of state. They also impose positive obligations on states to prevent and sanction private violations of human rights. Indeed, human rights law imposes obligations on states to protect citizens or individuals under their jurisdiction from the harmful acts of others. Thus, an act by a private individual and therefore not directly imputable to a state can generate responsibility of the state, not because of the act itself, but because of the lack of *due diligence* to prevent the violation or for not taking the necessary steps to provide the victims with reparation.

144. The Inter-American Court of Human Rights has issued a judgment in the case of *Velásquez Rodríguez v Honduras* which articulates one of the most significant assertions of state responsibility for acts by private individuals. The Court stated that a state 'has failed to comply with [its] duty ... when the state allows "private persons or groups to act freely and with impunity to the detriment of the rights recognised by the Convention"'. In the same case, the Inter American Court reaffirmed that states are 'obliged to investigate every situation involving a violation of the rights protected by [international law]'. Moreover, the Court required governments to: 'take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.' This represents an authoritative interpretation of an international standard on state duty. The opinion of the Court could also be applied, by extension, to article 1 of the African Charter of Human and Peoples' Rights, which requires states parties to 'recognise the rights, duties and freedoms enshrined in the Charter and ... undertake to adopt legislative and other measures to give effect to them'. Thus, what would otherwise be wholly private conduct is transformed into a constructive act of state, 'because of the lack of due diligence to prevent the violation or respond to it as required by the [African Charter]'.
...

159. The due diligence requirement encompasses the obligation both to provide and enforce sufficient remedies to survivors of private violence. In general terms, the Human Rights Committee has held, for example, that the existence of legal rules does not suffice to fulfil a condition of reasonable measures. The rules must also be implemented and applied (entailing for instance, investigations and judicial proceedings) and victims must have effective remedy. Thus, the existence of a legal system criminalising and providing sanctions for assault and violence would not in itself be sufficient; the government would have to perform its functions to 'effectively ensure' that such incidents of violence are actually investigated and punished. For example, actions by state employees, the police, justice, health and welfare departments, or the existence of government programmes to prevent and protect victims of violence are all concrete indications for measuring due diligence. Individual cases of policy failure or sporadic incidents of non-punishment would not meet the standard to warrant international action.

160. It follows from the above that, by definition, a state can be held complicit where it fails systematically to provide protection of violations from private actors who deprive any person of his/her human rights. However, unlike for direct state action, the standard for establishing state responsibility in violations committed by private actors is more relative. Responsibility must be demonstrated by establishing that the state condones a pattern of abuse through pervasive non-action. Where states do not actively engage in acts of violence or routinely disregard evidence of murder, rape or assault, states generally fail to take the minimum steps necessary to protect their citizens' rights to physical integrity and, in extreme cases, to life. This sends a message that such attacks are justified and will not be punished. To avoid such complicity, states must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses.

161. In the present communication, the state indicated measures that it took to deal with the alleged human rights violations, including amendment of legislation, arrest and prosecution of alleged perpetrators, payment of compensation to some victims and ensuring that it investigated most of the allegations brought to its attention. The complainant did not dispute these

actions claimed to have been taken by the respondent state but contends instead that the actions were not sufficient and were not taken early enough to be diligent.

162. The question to be asked is whether these measures taken by the state were sufficient for the Commission to come to the conclusion that the state had discharged its duty?

163. The complainant did not dispute these actions claimed to have been taken by the respondent state but contended instead that the actions were not sufficient and were not taken early enough to be diligent. The complainant also did not demonstrate collusion by the state to either aid or abet the non-state actors in committing the violence, and equally failed to show that the state remained indifferent to the violence that took place. This view is supported by the conclusion of the report of this Commission's fact-finding mission to the respondent state which noted that

there were allegations that the human rights violations that occurred were in many instances at the hands of ZANU PF party activists. The mission [was] however not able to find definitively that this was part of an orchestrated policy of the government of the Republic of Zimbabwe. There were enough assurances from the head of state, cabinet ministers and the leadership of the ruling party that there has never been any plan or policy of violence, disruption or any form of human rights violations, orchestrated by the state.

164. Given the above, the African Commission cannot find that with regards to the violence perpetrated by the non-state actors, the respondent state failed to comply with its duty under article 1 of the African Charter to '... adopt other measures to give effect to [the rights]' and to that extent cannot find the state to have violated article 1 of the African Charter.

...

169. Together with equality before the law and equal protection of the law, the principle of non-discrimination provided under article 2 of the Charter provides the foundation for the enjoyment of all human rights. As Shestack has observed, equality and non-discrimination 'are central to the human rights movement'. The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation. The African Commission has held in communication 211/98 [*Legal Resources Foundation v Zambia* (2001) AHRLR 84 (ACHPR 2001)] that the right protected in article 2 is an important entitlement as the availability or lack thereof affects the capacity of one to enjoy many other rights.

...

210. In the present communication, the African Commission has established that most of the atrocities, including human rights violations, were perpetrated by non-state actors, that the state exercised due diligence in its response to the violence – investigated the allegations, amended some of its laws, and in some cases, paid compensation to victims. The fact that all the allegations could not be investigated does not make the state liable for the human rights violations alleged to have been committed by non-state actors. It suffices for the state to demonstrate that the measures taken were proportionate to deal with the situation, which in the present communication, the state seemed to have shown.

211. However, this Commission is of the opinion that by passing the Clemency Order 1 of 2000, prohibiting prosecution and setting free perpetrators of 'politically motivated crimes', including alleged offences such as abductions, forced imprisonment, arson, destruction of property, kidnappings and other human rights violations, the state did not only encourage impunity but effectively foreclosed any available avenue for the alleged abuses to be investigated, and prevented victims of crimes and alleged human rights violations from seeking effective remedy and compensation.

212. This act of the state constituted a violation of the victims' right to judicial protection and to have their cause heard under article 7(1) of the African Charter.

213. The protection afforded by article 7 is not limited to the protection of the rights of arrested and detained persons but encompasses the right of every individual to access the relevant judicial bodies competent to have their causes heard and be granted adequate relief. If there appears to be any possibility of an alleged victim succeeding at a hearing, the applicant should be given the benefit of the doubt and allowed to have their matter heard. Adopting laws such as the Clemency Order 1 of 2000, that have the effect of eroding this opportunity, renders the victims helpless and deprives them of justice.

...

215. In light of the above, the African Commission holds that by enacting Decree 1 of 2000 which foreclosed access to any remedy that might be available to the victims to vindicate their rights, and without putting in place alternative adequate legislative or institutional mechanisms to ensure that perpetrators of the alleged atrocities were punished, and victims of the violations duly compensated or given other avenues to seek effective remedy, the respondent state did not only prevent the victims from seeking redress, but also encouraged impunity, and thus reneged on its obligation in violation of articles 1 and 7(1) of the African Charter. The granting of amnesty to absolve perpetrators of human rights violations from accountability violates the right of victims to an effective remedy.

For these reasons, the African Commission:

- Holds that the Republic of Zimbabwe is in violation of articles 1 and 7(1) of the African Charter;
- Calls on the Republic of Zimbabwe to establish a Commission of Inquiry to investigate the causes of the violence which took place from February - June 2000 and bring those responsible for the violence to justice, and identify victims of the violence in order to provide them with just and adequate compensation.
- Request the Republic of Zimbabwe to report to the African Commission on the implementation of this recommendation during the presentation of its next periodic report.

**Zimbabwe Lawyers for Human Rights and Another (on behalf of
Meldrum) v Zimbabwe**
(2009) AHRLR 268 (ACHPR 2009)

This case deals with the lack of implementation of domestic court orders in Zimbabwe and the violation of the freedom of expression through the deportation of a journalist.

...

2. ... Mr Andrew Barclay Meldrum, an American citizen, was legally admitted into Zimbabwe in October 1980 and settled permanently until 2003 when he was deported ...

3. ... the complainants claim Mr Meldrum was charged with 'publishing falsehood' under section 80(1)(b) of the Access to Information and Protection of Privacy Act (AIPPA). Mr Meldrum was found not guilty on 15 July 2002. ...

4. It is further alleged that immediately after his acquittal, Mr Meldrum was requested to report to the Immigrations Department Investigations Unit and was served with a deportation order issued in terms of section 14 (i)g of the Immigrations Act. Mr Meldrum appealed the deportation order within 24 hours to the Ministry of Home Affairs as required by the Immigrations Act. Meanwhile, an application challenging the deportation order was filed by his lawyers in the High Court. On 17 July 2002, the High Court ordered that Mr Meldrum should be allowed to stay in the country until the Supreme Court had dealt with all the constitutional matters raised in the matter.

5. The complainants allege further that on 16 May 2003, Mr Meldrum was summoned to the Immigration Department where he was informed that he could no longer work as a journalist. He was informed that he had not been accredited in terms of the Access to Information and Protection of Privacy Act. Mr Meldrum informed the immigration authorities that he had filed an application to the Supreme Court and pending the outcome he should be allowed to practice journalism as provided by the Act. The Immigration authorities then informed him that they had a deportation order issued by the Ministry of Home Affairs which empowered them to deport him forthwith without disclosing the reason for the deportation. Mr Meldrum was then forced into a car and taken to the airport.

6. They claim that an urgent appeal was filed in the High Court to interdict the deportation order and to compel the state to bring Mr Meldrum before the High Court by 15:30hrs that same day. But at 15:30hrs, the state counsel appeared in court without Mr Meldrum. The High Court gave another order prohibiting the state from deporting Mr Meldrum. At about 20:00hrs, the state counsel informed the Court that Mr Meldrum could not be located. The High Court issued another order for the release of Mr Meldrum and this order was served on the immigration authorities by Mr Meldrum's lawyer who had to drive to the airport for that purpose. In spite all these efforts and court orders, the state defiantly deported Mr Meldrum.

...

54. The deportation of the victim in the case under consideration had been effected in the face of several High Court orders, the Commission finds that to require the victim to pursue further judicial remedies, when all efforts at seeking judicial remedies had been frustrated and ignored by the respondent state, would have amounted to a 'senseless formality' in the true meaning of the words. The remedy which would have granted protection to Mr Meldrum, namely the application pending in the Supreme Court, was considered by the respondents state's immigration officials, as 'trivial' and of no legal consequence. The respondent state had notice of the pending application in the Supreme Court, and yet effected the deportation. It actively participated in impeding the victim from accessing the remedy.

...

112. It should be recalled that the victim's deportation arose from the publication of an article that the respondent state did not appreciate. The respondent state resorted to deportation in order to silence him, in spite a court order that he can stay in the country. Admittedly, he is not prevented from expressing himself where ever he was deported to, but vis-à-vis his status in the respondent state, which is a state party to the African Charter, his ability to express himself as guaranteed under article 9 was violated.

...

Alleged violation of article 26

...

119. It is a vital requirement in a state governed by law that court decisions be respected by the state, as well as individuals. The courts need the trust of the people in order to maintain their authority and legitimacy. The credibility of the courts must not be weakened by the perception that courts can be influenced by any external pressure.

120. Thus, by refusing to comply with the High Court orders, staying the deportation of Mr Meldrum and requiring the respondent state to produce him before the Court, the respondent state undermined the independence of the Courts. This was a violation of article 26 of the African Charter.

...

The African Commission recommends that the respondent state should:

- (a) Take urgent steps to ensure court decisions are respected and implemented;
- (b) Rescind the deportation orders against Mr Andrew Meldrum, so that he can return to Zimbabwe, if he so wishes, being a person who had permanent residence status prior to his deportation. The *status quo ante* to be restored;
- (c) Ensure that the Supreme Court finalises the determination of the application by Mr Meldrum, on the denial of accreditation;
- (d) In the alternative, taking into account that the AIPPA has undergone considerable amendments, grant accreditation to Mr Andrew Meldrum, so that he can resume his right to practice journalism; and
- (e) Report to the African Commission within six months on the implementation of these recommendations.

Resolutions, guidelines and general comments 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.

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 20 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 20 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. All the Commission's resolutions are available at http://www.achpr.org/search/?t=841&sort=_date

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.

Declaration of Principles on Freedom of Expression in Africa (2002)

This declaration forms the basis for the work of the Special Rapporteur on Freedom of Expression and Access to Information. The Commission has further developed on access to information through a model law adopted by the Commission in 2013 see www.chr.up.ac.za.

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 Access to Health and Needed Medicines in Africa (2008)

Reaffirming that article 16 of the African Charter on Human and Peoples' Rights guarantees the right to enjoy the best attainable state of physical and mental health and that States must ensure that everyone has access to medical care;

Alarmed that essential medicine, were available in only 38% of all public and private health care facilities in Africa between 2001 and 2007;

Stressing that the right to health is not confined to a right to health care but embraces all underlying aspects of health;

Recognising that access to needed medicines for treatment, prevention and palliative care is a necessary condition for leading a healthy and dignified life;

Recognising that access to needed medicines is a fundamental component of the right to health and that states parties to the African Charter have an obligation to provide where appropriate needed medicines, or facilitate access to them;

Recognising further that the United Nations Special Rapporteur on the Right to Health has explained that 'access to medicines forms an indispensable part of the right to the highest attainable standard of health' and that, therefore, the right to health mandates that states promote 'the realisation of the right to medicines for all';

Urges states to guarantee the full scope of access to needed medicines, including:

- The *availability* in sufficient quantities of needed medicines, including existing medicines and the development of new medicines needed for the highest attainable level of health;
- The *accessibility* of needed medicines to everyone without discrimination, including
 - Physical accessibility of needed medicines to all;
 - Economic accessibility (affordability) of needed medicines to all;
 - Information accessibility about the availability and efficacy of medicines;
- The *acceptability* of medicine supplies, being respectful of cultural norms and medical ethics;
- The *quality* of medicine supplies, ensuring that available medicines are safe, effective and medically appropriate;

Calling on states to fulfil their duties with respect to access to medicines, in particular:

- To promote access to medicines by *refraining* from measures that negatively affect access, such as:
 - Denying or limiting equal access to medicines for marginalised individuals or communities;
 - Prohibiting or impeding the use of traditional medicines and healing practices that are scientifically sound and medically appropriate;
 - Interfering with the provision of humanitarian aid that facilitates the supply of necessary medicines;
 - Implementing intellectual property policies that do not take full advantage of all flexibilities in the WTO Agreement on Trade Related Aspects of Intellectual Property that promote access to affordable medicines, including entering 'TRIPS Plus' free trade agreements;
- To protect access to needed medicines from actions by third parties through regulatory systems that:
 - Ensure that only medicines that have met scientifically appropriate standards for quality, safety and efficacy are available;
 - Promote the rational use of medicines, through treatment guidelines based on the best available evidence;
 - Prevent unreasonably high prices for needed medicines in both the public and private sectors, through promotion of equity pricing in which the poor are not required to pay a disproportionate amount of their income for access;
 - Ensure that medical practitioners and patients have ready access to reliable, complete and unbiased information on the safety and efficacy of medicines;
 - Stimulate and promote competition, intellectual property, consumer protection and other laws to promote access to medicines;
- To fulfil access to medicines by adopting all necessary and appropriate *positive measures* to the maximum of its available resources to promote, provide and facilitate access to needed medicines, including:
 - Immediately meeting the minimum core obligations of ensuring availability and affordability to all of essential medicines as defined by the country's essential medicines list and the WHO Action Programme on Essential Drugs;

- Immediately creating a national medicine strategy monitoring systems to ensure compliance with human rights obligations;
- Promoting meaningful participation by affected individuals and groups in decisions that affect access to medicines, including regulatory, pricing and patent decisions;
- Creating systems in which patent information and registration status for medicines is readily and publicly accessible;
- Expediting the regulatory review and registration of needed medicines and creating incentives for companies to register needed medicines expeditiously;
- Individually and together with other states and non-governmental entities, developing and implementing need-based research and development programmes to address currently neglected diseases and conditions.

Mandates the Working Group on Economic, Social and Cultural Rights to further define state obligations related to access to medicines and to develop model monitoring and assessment guidelines.

General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)

Adopted during the 57th Ordinary Session of the African Commission on Human and Peoples' Rights held from 4 to 18 November 2015 in Banjul, The Gambia.

Introduction

(1) The African Commission on Human and Peoples' Rights (the Commission) has described the right to life as the fulcrum of all other rights. It is non-derogable, and applies to all persons at all times. In General Comment No. 3, the Commission clarifies the nature of the right to life as recognised in article 4 of the African Charter on Human and Peoples' Rights (the Charter) and the extent of the obligation it imposes upon States Parties. It is designed to guide the interpretation and application of the right to life under the Charter and to ensure its coherent application to a range of situations, including its implementation at the domestic level. The General Comment does not put in place new standards or highlight best practices but rather sets out the Commission's perspective on dimensions of this universally recognised right.

(2) The Charter imposes on States a responsibility to prevent arbitrary deprivations of life caused by its own agents, and to protect individuals and groups from such deprivations at the hands of others. It also imposes a responsibility to investigate any killings that take place, and to hold the perpetrators accountable. This intersects with the general duty, recognised in the Charter, of all individuals to exercise their rights and freedoms with due regard to the rights of others. Organised crime and terrorism can pose significant threats to the enjoyment of the right to life and require a robust State response, but one that at all times takes into account the requirements of international human rights law.

(3) The General Comment proceeds from an understanding that the Charter envisages the protection not only of life in a narrow sense, but of dignified life. This requires a broad interpretation of States' responsibilities to protect life. Such actions extend to preventive steps to preserve and

protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies. The State also has a responsibility to address more chronic yet pervasive threats to life, for example with respect to preventable maternal mortality, by establishing functioning health systems. Such an approach reflects the Charter's ambition to ensure a better life for all the people and peoples of Africa through its recognition of a wide range of rights, including the right to dignity, economic, social and cultural rights, and peoples' rights such as the right to existence and the right to peace. It is also rooted in widely shared communal values of the continent, according to which the value of one person's life is tied to the value of the lives of others.

(4) Article 4 of the Charter enshrines the right to life as follows: '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.' Other African legal instruments protecting the right to life include: Article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; and articles 5 and 30 of the African Charter on the Rights and Welfare of the Child.

A. The nature of the right and of the obligations of the State in respect of the right to life

(5) The right to life is universally recognised as a foundational human right. It is guaranteed by article 4 of the African Charter and all of the other main global and regional human rights instruments. The right not to be arbitrarily deprived of one's life is recognised as part of customary international law and the general principles of law, and is also recognised as a *jus cogens* norm, universally binding at all times. The right to life is contained in the constitutions and other legal provisions of the vast majority of African and other States. All national legal systems criminalise murder, and arbitrary killings committed or tolerated by the State are a matter of the utmost gravity.

(6) The right to life should not be interpreted narrowly. In order to secure a dignified life for all, the right to life requires the realisation of all human rights recognised in the Charter, including civil, political, economic, social and cultural rights and peoples' rights, particularly the right to peace.

(7) States have a responsibility under the Charter to develop and implement a legal and practical framework to respect, protect, promote and fulfil the right to life. States must take steps both to prevent arbitrary deprivations of life and to conduct prompt, impartial, thorough and transparent investigations into any such deprivations that may have occurred, holding those responsible to account and providing for an effective remedy and reparation for the victim or victims, including, where appropriate, their immediate family and dependents. States are responsible for violations of this right by all their organs (executive, legislative and judicial), and other public or governmental authorities, at all levels (national, regional or local). Derogation from the right to life is not permissible in a time of emergency, including a situation of armed conflict, or in response to threats such as terrorism.

(8) Where a State or its agent has attempted unlawfully to kill a person, but that person survives, where it has unlawfully threatened the life of a person, or where it has forcibly caused a person to disappear and that person's fate remains unknown, in addition to the violation of other rights, a violation of the right to life has occurred.

(9) A State can be held responsible for killings by non-State actors if it approves, supports or acquiesces in those acts or if it fails to exercise due

diligence to prevent such killings or to ensure proper investigation and accountability.

(10) Building blocks of a proper State system for the protection of the right to life will include the enactment of appropriate domestic laws that protect the right to life and define any limitations on the right in accordance with international standards, a law enforcement system with the necessary equipment and training, and a competent, independent and impartial judiciary and legal profession based on the rule of law. States should continuously update their laws and practices to comply with international standards. States should take steps to raise awareness of the human rights implications of the applicable legal framework through professional training and other measures.

(11) As part of their broader duty to secure the conditions for dignified life, States have a particular responsibility to protect the human rights, including the right to life, of individuals or groups who are frequently targeted or particularly at risk, including on the grounds listed in article 2 of the Charter and those highlighted in resolutions of the Commission.

B. The scope of the prohibition on the ‘arbitrary’ deprivation of life

(12) A deprivation of life is arbitrary if it is impermissible under international law, or under more protective domestic law provisions. Arbitrariness should be interpreted with reference to considerations such as appropriateness, justice, predictability, reasonableness, necessity and proportionality. Any deprivation of life resulting from a violation of the procedural or substantive safeguards in the African Charter, including on the basis of discriminatory grounds or practices, is arbitrary and as a result unlawful.

(13) The right to life continues to apply during armed conflict. During the conduct of hostilities, the right to life needs to be interpreted with reference to the rules of international humanitarian law. In all other situations the intentional deprivation of life is prohibited unless strictly unavoidable to protect another life or other lives.

(14) A State shall respect the right to life of individuals outside its territory. A State also has certain obligations to protect the right to life of such individuals. The nature of these obligations depends for instance on the extent that the State has jurisdiction or otherwise exercises effective authority, power, or control over either the perpetrator or the victim (or the victim’s rights), or exercises effective control over the territory on which the victim’s rights are affected, or whether the State engages in conduct which could reasonably be foreseen to result in an unlawful deprivation of life. In any event, customary international law prohibits, without territorial limitation, arbitrary deprivation of life.

C. The requirement of accountability

(15) The failure of the State transparently to take all necessary measures to investigate suspicious deaths and all killings by State agents and to identify and hold accountable individuals or groups responsible for violations of the right to life constitutes in itself a violation by the State of that right. This is even more the case where there is tolerance of a culture of impunity. All investigations must be prompt, impartial, thorough and transparent.

(16) Effective systems and legal processes of police investigation (including capacity to collect and analyse forensic evidence) and accountability (including independent oversight mechanisms) should be established where they are not in place.

(17) Accountability, in this sense, requires investigation and, where appropriate criminal prosecution. In certain circumstances, independent, impartial and properly constituted commissions of inquiry or truth commissions can play a role, as long as they do not grant or result in impunity for international crimes. Accountability also encompasses measures such as reparation, ensuring non-repetition, disciplinary action, making the truth known, institutional review and, where applicable, reform. States must ensure that victims have access to effective remedies for such violations. States should cooperate with international mechanisms so as to ensure accountability.

(18) States must hold to account private individuals and corporations, including private military and security companies, that are responsible for causing or contributing to arbitrary deprivations of life in the State's territory or jurisdiction. Home States also should ensure accountability for any extraterritorial violations of the right to life, including those committed or contributed to by their nationals or by businesses domiciled in their territory or jurisdiction.

(19) Reparation should be proportional to the gravity of the violations and the harm suffered. Victims should be treated with respect and appropriate measures should be taken to ensure their safety. Those who have suffered violence or trauma should benefit from consideration to avoid re-traumatisation. Full and effective reparation to address the harm suffered by victims, including by their family and dependents, should include the implementation of guarantees of non-repetition.

(20) Although States may face particular practical challenges in achieving accountability in situations of armed conflict, they must undertake all feasible measures of accountability to ensure respect for the right to life. Appeals to national security or State secrecy can never be a valid basis for failing to meet the obligation to hold those responsible for arbitrary deprivations of life to account, including during armed conflict or counter-terrorism operations.

(21) Transparency is a necessary part of accountability. Transparency about laws, policies, practices and the circumstances of any limitations of the right to life as well as about the process and outcomes of investigations is a necessary element in fulfilling the right to life.

D. The abolition of the death penalty

(22) The African Charter does not include any provision recognising the death penalty, even in limited circumstances, and the Commission has on several occasions passed resolutions calling on States to abolish the death penalty, or to establish a moratorium in line with the continental and global trend. The vast majority of African States have now abolished the death penalty in law or in practice. International law requires those States that have not yet abolished the death penalty to take steps towards its abolition in order to secure the rights to life and to dignity, in addition to other rights such as the right to be free from torture, and cruel, inhuman or degrading treatment.

(23) Those States which have abolished the death penalty in law shall not reintroduce it, nor facilitate executions in retentionist States through *refoulement*, extradition, deportation, or other means including the provision of support or assistance that could lead to a death sentence. Those States with moratoria on the death penalty must take steps to formalise abolition in law, allowing no further executions. Beyond the cessation of executions, a comprehensive moratorium on the death penalty would also encompass sentencing, whereby prosecutors would refrain from seeking the death penalty or judges would choose not to impose it.

(24) In those States which have not yet abolished the death penalty it is vital that it is used for only the most serious crimes -understood to be crimes involving intentional killing. If, for any reason, the criminal justice system of a State does not, at the time of trial or conviction, meet the criteria of article 7 of the African Charter or if the particular proceedings in which the penalty is imposed have not stringently met the highest standards of fairness, then the subsequent application of the death penalty will be considered a violation of the right to life. Those sentenced to death have the right to seek clemency, pardon or commutation through a transparent process with due process of law. Mass trials resulting in the death penalty without due consideration to fair trial standards are illegal and should not take place. In no circumstances shall the imposition of the death penalty be mandatory for an offence. The death penalty shall not be imposed for crimes committed by children, and the burden of proof rests upon the State to prove the age of the defendant. Military courts shall not have the power to impose the death penalty.

(25) Whatever the offense or the circumstances of the trial, the execution of pregnant or nursing women, children, elderly persons or persons with psycho-social or intellectual disabilities, will always amount to a violation of the right to life.

(26) Where the death penalty has not yet been abolished, it shall be used in a completely transparent manner, with States giving reasonable advance notice of the timing, manner, and number of executions to those involved, including those under sentence of death, their families and lawyers, and to the public at large. States shall not conduct executions in public, nor use methods that cause unnecessary physical or mental suffering. After an execution, the body should be treated with respect, and, where requested, be returned to the family for burial or other funeral rites, or information about the burial or cremation should be provided.

E. The use of force in law enforcement

(27) The primary duty of law enforcement officials - meaning any actor officially tasked with exercising a law enforcement function, including police, gendarmerie, military or private security personnel - is to protect the safety of the public. The State must take all reasonable precautionary steps to protect life and prevent excessive use of force by its agents, including but not limited to the provision of appropriate equipment and training as well as, wherever possible, careful planning of individual operations. States must adopt a clear legislative framework for the use of force by law-enforcement and other actors that complies with international standards, including the principles of necessity and proportionality. Force may be used in law enforcement only in order to stop an imminent threat. The intentional lethal use of force by law enforcement officials and others is prohibited unless it is strictly unavoidable in order to protect life (making it proportionate) and all other means are insufficient to achieve that objective (making it necessary).

(28) The right to assemble and to demonstrate is integral to democracy and human rights. Even if acts of violence occur during such events participants retain their rights to bodily integrity and other rights and force may not be used except in accordance with the principles of necessity and proportionality. Firearms may never be used simply to disperse an assembly.

(29) Members of the armed forces can only be used for law enforcement in exceptional circumstances and where strictly necessary. Where this takes place all such personnel must receive appropriate instructions, equipment and thorough training on the human rights legal framework that applies in such circumstances.

(30) Particular attention should be paid to ensuring the availability and use of weapons less likely to cause death or serious injury than are firearms.

However such weapons should not be abused – they can also cause death or serious injury. Special training concerning the use of such weapons should be provided.

(31) Where advanced technology is employed, law enforcement officials must remain personally in control of the actual delivery or release of force, in a manner capable of ensuring respect for the rights of any particular individual, as well as the general public.

F. The use of force in armed conflict

(32) In armed conflict, what constitutes an 'arbitrary' deprivation of life during the conduct of hostilities is to be determined by reference to international humanitarian law. This law does not prohibit the use of force in hostilities against lawful targets (for example combatants or civilians directly participating in hostilities) if necessary from a military perspective, provided that, in all circumstances, the rules of distinction, proportionality and precaution in attack are observed. Any violation of international humanitarian law resulting in death, including war crimes, will be an arbitrary deprivation of life.

(33) International humanitarian law on the conduct of hostilities must only be applied during an armed conflict and where the use of force is part of the armed conflict. In all other situations of violence, including internal disturbances, tensions or riots, international human rights rules governing law enforcement operations apply.

(34) Where military necessity does not require parties to an armed conflict to use lethal force in achieving a legitimate military objective against otherwise lawful targets, but allows the target for example to be captured rather than killed, the respect for the right to life can be best ensured by pursuing this option.

(35) The use during hostilities of new weapons technologies such as remote controlled aircraft should only be envisaged if they strengthen the protection of the right to life of those affected. Any machine autonomy in the selection of human targets or the use of force should be subject to meaningful human control. The use of such new technologies should follow the established rules of international law.

G. State obligations with respect to persons held in custody

(36) When the State deprives an individual of liberty, its control of the situation yields a heightened level of responsibility to protect that individual's rights. This includes a positive obligation to protect all detained persons from violence or from emergencies that threaten their lives, as well as to provide the necessary conditions of a dignified life, including food, water, adequate ventilation, an environment free from disease, and the provision of adequate healthcare (including maternal healthcare and the provision of antiretroviral drugs). The State should provide necessary information on places of detention, the identity and age of those detained, as well as the authorities responsible.

(37) Where a person dies in State custody, there is a presumption of State responsibility and the burden of proof rests upon the State to prove otherwise through a prompt, impartial, thorough and transparent investigation carried out by an independent body. This heightened responsibility extends to persons detained in prisons, in other places of detention (official and otherwise), and to persons in other facilities where the State exercises heightened control over their lives.

H. Responsibility for violations by non-State actors

(38) The State also has an obligation to protect individuals from violations or threats at the hands of other private individuals or entities, including corporations. The State should ensure that all individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, non-discrimination, and mutual respect. Moreover, the State has a responsibility for those deaths where authorities knew or ought to have known of an immediate threat and failed to take measures that might have been expected to avoid those deaths. States shall take appropriate measures to investigate cases of enforced disappearances committed by persons or groups acting without the authorisation, support or acquiescence of the State, and to bring those responsible to justice.

(39) The State is responsible for killings by private individuals which are not adequately prevented, investigated or prosecuted by the authorities. These responsibilities are heightened when an observable pattern has been overlooked or ignored, such as is often the case with respect to mob-justice, gender-based violence, femicide, or harmful practices. States must take all appropriate measures effectively to respond to, prevent and eliminate such patterns or practices.

(40) The right to life cannot be enjoyed fully by individuals whose lives are threatened. In the case of death threats this implies that the State must investigate and take all reasonable steps to protect the threatened individuals. Similarly, States should not violate the principle of *non-refoulement*, through extradition or other mechanisms, by transferring or returning individuals to circumstances where their lives might be endangered.

I. Interpreting the right to life broadly

(41) The right to life should be interpreted broadly. The State has a positive duty to protect individuals and groups from real and immediate risks to their lives caused either by actions or inactions of third parties. In cases where the risk has not arisen from malicious or other intent then the State's actions may not always be related to criminal justice. Such actions include, *inter alia*, preventive steps to preserve and protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies.

(42) Attention is also required to address more chronic yet pervasive threats to life, for example with respect to preventable maternal mortality, by establishing functioning health systems and eliminating discriminatory laws and practices which impact on individuals' and groups' ability to seek healthcare.

(43) Given the role of the State in the enjoyment of a number of other rights which might, collectively, be constitutive of the condition of life, especially a dignified life, its progressive realisation of various economic, social and cultural rights will contribute to securing a full and dignified life. Violations of such rights may in certain circumstances therefore also entail violations of the right to life.

**AFRICAN
COMMITTEE ON
THE RIGHTS AND
WELFARE OF THE
CHILD**

Recommendations and observations sent to the government of the Republic of Uganda by the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the African Charter of the Rights and Welfare of the Child (2010)

The African Committee of Experts on the Rights and Welfare of the Child extends its greetings to the government of the Republic of Uganda and wishes to express its acknowledgement for submitting its initial report on the implementation status of the African Charter on the Rights and Welfare of the Child.

The Committee congratulates the state party for being represented by an important high level inter ministerial delegation led by the Minister of State for Youth and Children Affairs to discuss the report during its fifteenth session held from 15-19 March 2010, in Addis Ababa Ethiopia.

At the conclusion of the review of the report, the Committee is honoured to send to the government of the Republic of Uganda the following observations and recommendations:

Article 1: Obligation of states parties

The Committee congratulates the state party for adopting the legal texts and other measures for protecting and promoting the rights of the child, however efforts remain to be made in the sector of popularisation of the Charter.

Article 2: Definition of child

The Committee observes that even though the law on the child recognises the child as any person under 18 years of age, in the employment sector, the age of work on the other hand varies from 14 to 16 years according to the type of work and with regard to the law, the age of penal responsibility is set at 12 years. Concerning marriage, the Committee notes that the Constitution sets the age of marriage at 18 years, but there are laws on customary marriage, African marriage and the law on the marriage of Moslems which sets the age of marriage at 16 years or below.

For a better protection of the child, the Committee recommends to the state party the harmonisation of these texts with the definition of the child as stated in the African Charter on the Rights and Welfare of the Child.

Article 3: Non-discrimination

The Committee points out discriminations against handicapped children but also certain discriminations based on gender with practices which lead girls to stay at home to look after their little sisters and brothers or the denial of pregnant girls or girl mothers to continue their schooling compromising their right to education.

The Committee recommends the state party to raise the awareness of the population about giving up socio cultural practices or other behaviours which are harmful to the rights and welfare of the child.

The Committee also recommends the multiplication of day-care centres for early childhood (mentioned in the report) in zones where girls are forced to stay at home to look after the younger children.

Article 4: Best interests of the child

The Committee notes with satisfaction the recognition of the right to participation of children, in particular, in the field of juvenile justice, by the government of the Republic of Uganda. However, it regrets that this right is not clearly recognised in the national legal instruments. This poses some problems when taking into account the best interests of the child and for the children to become more engaged on issues affecting their survival and development.

The Committee recommends the state party to pursue the activities of GEM clubs and the Sara Initiative; it encourages the promotion of the manual designed in synergy by the government, UNICEF, the civil society, in favour of children, on the participation of children, with the establishment of a child representative leadership.

...

Article 6: Name and nationality

Even though article 18 of the Ugandan Constitution provides for the registration of births, the Committee finds that the rate of births and deaths declarations is low.

The Committee recommends the state party to ensure that registration of children at birth is mandatory and free. The Committee also urges the government to raise the awareness of local authorities and populations about the future consequences of the non registration of children on the civil status registry.

The Committee further urges the government to include the registration of births and deaths, if it has not already done so, in the Investment Plan, the budgets of the Justice and Law Enforcement Sectors, as wished for by the recommendations of the review of the justice sector.

Article 7: Freedom of expression

The right to participation requires the actual presence and hearing of the children. The committee notes significant progress made by the government in the area of the right to expression, which could have been otherwise presented in section 4-2 of the report, through weekly columns specially reserved for children and children programs by children.

The Committee encourages the 'Young Talk' (young people talk) and recommends the continuation of the facilities granted to children in terms of access to media freedom of speech, right of access to information, which are rights provided in the constitution and which allow children to express their points of view, outside the family boundaries.

...

Article 11: Education

The Committee congratulates the Ugandan Government for the efforts made in the education sector, notably:

- the construction programs of classrooms for primary schools;
- the provision of education material for students;
- the prohibition of corporal punishment;
- the establishment of primary universal education;
- the introduction of free tuition at the kindergarten level.

The Committee observes with satisfaction the notable rate of enrolment of girls, in fact of a total of 7,377,292 children enrolled in primary school in 2004, 3,644,364 are girls; that is 49,39%. With a total of 141,461 primary teachers.

Despite encouraging results at the primary level, the Committee observes that:

- the number of students enrolled at secondary level is very low (697,507 enrolled for 37,313 teachers);
- the net rates of enrolment and admission at the secondary level are 14,55% and 6,06% whereas the rates of gross enrolment at the primary school are 129,88% and 125,05% (2003) respectively for boys and girls;
- a high proportion of young people of the age to attend the secondary are outside of the education system.

The Committee notes that the efforts made at the primary level risk not bringing the desired effects at the secondary level and that the enrolment capacity of the public secondary level may not be able to take in the acceptable proportion of 7 million children registered in the primary and that the present number of teachers may not be sufficient for the future number of students in the secondary.

The Committee urges the Ugandan Government to:

- continue the school enrolment policies of girls;
- continue universal primary education (UPE);
- liberalise the education sector so as to increase the proportion of private institutions which can compensate the shortage of public institutions.

The Committee further recommends to the Ugandan Government:

- to invest more resources in the secondary so as to anticipate the massive influx of children from the primary to the secondary;
- to emphasise the training of teachers, the increase of their number and to ensure their equitable distribution across the country
- to create motivation conditions of teachers;
- to create conditions of completion of the primary cycle to increase the rates of enrolment in the secondary;
- to put in place a subsidy policy in favour of private schools so as to be able to take in students of the public schools to solve the problem of shortage of public institutions;
- to give greater attention to children from disadvantaged zones;
- to emphasise measures for fighting against poverty.

...

Article 13: Handicapped children

The Committee notes with satisfaction that disability issue is the focus of concerns by the Ugandan Government with notably:

- the existence of the Uganda National Council of Disabled Persons;
- the representation of disabled persons in the Parliament for the consideration of the concerns of disabled persons at the legislative level;
- the existence of a Uganda National Institute for Special Needs in Education (UNISE);
- the support given by the state to schools with the provision of wheelchairs and Braille material.

However the Committee observes that there is some need of specialised teachers and suggests to the government to kindly take the necessary measures to cover the needs for teachers.

The Committee recommends to the Ugandan Government to put in place a policy of integration of disabled persons with degree in the administration and to build the capacity of specialised institutions and associations which strive for the wellbeing of disabled children.

Article 14: Health and health services

The Committee congratulates the government for its efforts in health matters and the care for people infected and affected by HIV/AIDS, in particular orphans and vulnerable children.

However the Committee regrets the absence of data which could enable it to evaluate the health status in the state party, among others:

- data on the numbers of doctors, of midwives and nurses per inhabitant;
- the number of public, private and community health centres by district;
- the situation of prenatal and infant mortality;
- the vaccination coverage;
- the accessibility of health care and health centres.

The Committee recommends to the state party to kindly include these data in the next reports.

Article 15: Child labour

The Committee observes that the minimum age required to take a job in Uganda is 14 years and that in addition the children are exploited by their employers. Also children are used in activities such as babysitting, agriculture, fishing, animal herding, protection of crops against birds and other household chores which deny them any possibility of going to school.

The Committee recommends to the state party to carry out a campaign of awareness raising taking into account employers, trade unions, NGOs, parents and other stakeholders on detrimental effects of child labour.

The Committee further recommends the state party to use the media for information and awareness raising campaigns and to bring its support to institutions and organisations fighting against the phenomenon of child labour.

Article 16: Protection against child abuse and torture

The Committee observes that the report doesn't provide any data pertaining to cases of child rape or sexual abuse and recommends that these data be included in the next reports.

Article 17: Administration of juvenile justice

The Committee congratulates the state party for efforts made under the framework of taking in charge of children in conflict with the law notably with:

- the setting up of Family and Juvenile Courts (FCC) in each constituency placed under the jurisdiction of a lawyer who will consider cases involving children;
- the establishment of reform centres for children at district level;
- the establishment of a National Rehabilitation Center;
- the possibility provided to amicably solve cases concerning children in conflict with the law.

These measures show that the fundamental goal of the judiciary procedure against a child is his amendment and his reintegration in the family and the society.

However the Committee notes that:

- several districts do not always have provisional detention centres for children and the number of functional re-education centres is limited;
- in some cases, children are held with adults in police detention centres.

The Committee urges the government to make additional efforts to extend the reform centres for children at districts which do not have them and recommends the training of lawyers and judges on the rights of the child.

...

Article 21: Protection against harmful social and cultural practices

Despite the denunciation of negative cultural practices, some cultures violating the provisions of the Charter persist in communities among which:

- the practice of female genital mutilation especially among the Sabinu ethnic groups in the Kapchorwa and Bukwa districts in the North/East of Uganda;

- the growing threat of child sacrifices;
- child trafficking;
- discrimination against girls in the field of education;
- early marriage which not only affects the health of the girl but also drives her to abandoning her education. There is a need to observe that the law heightens this phenomenon by authorising marriage under 16 years of age.
- the fact of parents forcing their pregnant daughters to marry the perpetrator of the sexual abuse.

The Committee observes that the government in collaboration with Partners such as UNFPA has intensified its efforts to make the general public aware of the risks linked to these practices. Studies have been undertaken on human sacrifices and child trafficking. The liberalisation of the media space has helped to reveal these practices and customs which hamper the rights and welfare of children. The media have also been used by the government and the other actors to raise the awareness of the masses on issues related to children's rights.

The Committee congratulates the state party for its actions, requests it to redouble its efforts in the fight against these practices and recommends it to take urgent measures to:

- prohibit harmful practices;
- severely suppress the perpetrators;
- train police officers and judges on the issue;
- raise the awareness of the population for a change of mentality which can lead to the renunciation of these practices.

The Committee further recommends to the state party the adoption of a family code to standardise marriage practices, applicable to all Ugandans and which should take into account the rights and welfare of the child.

Article 22: Armed conflicts

The Committee observes that the report doesn't provide enough data on the status of child soldiers in Uganda, it recommends consequently that more information should be mentioned in the next reports.

...

Article 28: Drug abuse

The Committee observes that the report doesn't consider the appropriate measures taken to protect children against the illegal use of drugs and recommends that the situation of abuse of illicit substances and drugs by children as well as the data and arrangements taken to block this scourge be mentioned in the next reports.

Article 29: Sale, trafficking and abduction

The Committee notes with satisfaction the efforts made by the government of the Republic of Uganda to find the children abducted by the LRA and ADF rebels, by ensuring their return, rehabilitation and reintegration within their families.

The Committee urges the state party to continue with the implementation of the measures taken for the settlement of the issue of the abduction of children and recommends it to persevere in its efforts to put a final end to this phenomenon.

Article 30: Children of imprisoned mothers

The Committee observes that the report doesn't provide information pertaining to the treatments given to incarcerated pregnant mothers and incarcerated mothers of babies and young children and recommends that this information be included in the next reports.

Article 31: Responsibility of child

The Committee observes the non existence of a children's Parliament for the expression of their rights of participation and recommends therefore its establishment. It suggests further that substantial resources be put at its disposal so as to enable it to exercise its mandate.

General observations and comments:

The African Committee of Experts on the Rights and Welfare of the Child congratulates the Republic of Uganda for all the efforts made towards the protection of the rights of the child. However the Committee observes that the Charter is not very well known by the population in particular the authorities in charge of implementing these laws, teachers, health personnel, social workers and those in charge of children.

To this end, the Committee recommends the state party to take all necessary arrangements to popularise the Charter across the whole country and if possible translating the Charter in national languages and to undertake the training of stakeholders regarding the Provisions of the Charter at a national level.

The Committee observes that each year, the Human Rights Commission of Uganda publishes an Annual Report on the status of rights with a specific section on the violations of the rights and welfare of children. The Committee suggests that the data contained in this specific section be mentioned in the next reports.

Finally the Committee recommends to the state party to grant a sufficient budget to the different programs and sectors related to the implementation of the rights and welfare of the child.

The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the government of the Republic of Uganda the assurance of its highest esteem.

**IHRDA and Open Society Justice Initiative (OSJI) (on behalf of
children of Nubian descent in Kenya) v Kenya
(2011) AHRLR 181 (ACERWC 2011)**

This is the first decision of the African Children's Rights Committee on a communication. See also the decision of the African Commission in *The Numbian Community in Kenya v Kenya* (extracts reprinted above).

Excerpts

...

3. The complainants allege that the British colonial authorities allocated land for the Nubians, including in the settlement known as *Kibera*, but did not grant them British citizenship. At Kenyan independence (1963), the complainants argue, the citizenship status of the Nubians was not directly addressed, and for a long period of time they were consistently treated by the government of Kenya as 'aliens' since they, according to the government, did not have any ancestral homeland within Kenya, and as a result could not be granted Kenyan nationality. The complainants allege that the refusal by the Kenyan government to recognise the Nubians' claim to land is closely linked with the government's denial of Nubians to Kenyan citizenship.

4. A major difficulty in making the right to nationality effective for Nubian children is the fact that many Nubian descents in Kenya who are parents have difficulty in registering the birth of their children. For instance, the fact that many of these parents lack valid identity documents further complicates their efforts to register their children's births. It is further alleged birth registration certificate in Kenya explicitly indicates that it is not proof of citizenship, thereby leaving registered children in an ambiguous situation contrary to article 6 of the African Children's Charter.

5. In connection to this, the communication further alleges that while children in Kenya have no proof of their nationality, they have legitimate expectation that they will be recognised as nationals when they reach the age of 18. However, for children of Nubian descent in Kenya, since many persons of Nubian descent are not granted the ID cards that are essential to prove nationality, or only get them after a long delay, this uncertainty means that the future prospects of children of Nubian descent are severely limited and often leaves them stateless. The complainants further allege that a vetting process that is applicable to children of Nubian decent is extremely arduous, unreasonable, and *de facto* discriminatory.

6. The complainants allege and attempt to substantiate that the facts submitted by them are supported by reports from the United Nations bodies, non-governmental organisations, independent researchers, academicians, and adults and children of Nubian descent living in Kenya.

...

29. In a clear distinction from other cases declared inadmissible by the African Commission, the complainants did not operate on the basis of anticipating the effectiveness or otherwise of local remedies in theory and argued an exception to the rule. Rather, they in fact engaged the judicial system in Kenya, but with no success so far to have the case heard on its merits. Furthermore, there are unconfirmed indications that the case in the High Court is still pending as a result of some procedural technicalities that may need to be fulfilled under Kenyan law. Even then, it cannot be in these children's best interests (a principle domesticated by the Children's Act of 2001) to leave them in a legal limbo for such a long period of time in order to

fulfil formalistic legal procedures. As an upper guardian of children, the state and its institutions should have proactively taken the necessary legislative, administrative and other appropriate measures in order to bring to an end the current situation children of Nubian descent in Kenya find themselves in.

...

38. It is rightly said that birth registration is the state's first official acknowledgment of a child's existence, and a child who is not registered at birth is in danger of being shut out of society – denied the right to an official identity, a recognised name and a nationality. The complainants allege that the treatment of children of Nubian descent violates their right to be registered at the time of their birth, because some parents have difficulty having their children registered especially since many public hospital officials refuse to issue birth certificates to children of Nubian descent. Such a limitation is confirmed by the Kenya National Commission on Human Rights (KNHCR) that identified and recorded practices indicating discrimination against certain population groups, including persons of Nubian descent, in the grant of birth registration and identity documents.

...

41. The complainants have further alleged that even when birth certificates are issued, they do not confer a nationality. They allege that children of Nubian descent are often left to wait until they turn 18 to apply to acquire a nationality.

42. In this respect, the African Committee is of the view that there is a strong and direct link between birth registration and nationality. This link is further reinforced by the fact that both rights are provided for in the same article under the African Children's Charter (as well as the UN Convention on the Rights of the Child). The African Committee notes that article 6(3) does not explicitly read, unlike the right to a name in article 6(1), that 'every child has the right *from his birth* to acquire a nationality'. It only says that 'every child has the right to acquire a nationality'. Nonetheless, a purposive reading and interpretation of the relevant provision strongly suggests that, as much as possible, children should have a nationality beginning from birth. This interpretation is also in tandem with article 4 of the African Children's Charter that requires that 'in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration'. Moreover, this interpretation is further supported by the UN Human Rights Committee that indicated: 'States are required to adopt every appropriate measure, both internally and in cooperation with other states, *to ensure that every child has a nationality when he is born*' (African Committee's emphasis). Moreover, by definition, a child is a person *below* the age of 18 (article 2 of the African Children's Charter), and the practice of making children wait until they turn 18 years of age to apply to acquire a nationality cannot be seen as an effort on the part of the state party to comply with its children's rights obligations. Therefore, the seemingly routine practice (which is applied more of as rule than in highly exceptional instances) of the state party that leaves children of Nubian descent without acquiring a nationality for a very long period of 18 years is neither in line with the spirit and purpose of article 6, nor promotes children's best interests, and therefore constitutes a violation of the African Children's Charter.

43. The complainants allege that birth registration certificate in Kenya explicitly indicates that it is not proof of nationality thereby leaving even registered children stateless. Furthermore, the communication further alleges that while children in Kenya have no proof of their nationality, they have legitimate expectation that they will be recognised as nationals when they reach the age of 18. However, for children of Nubian descent in Kenya, since many persons of Nubian descent are not granted the ID cards that are

essential to prove nationality, or only get them after a long delay, this uncertainty means that the future prospects of children of Nubian descent are severely limited, and often leaves them stateless. The complainants further allege that a vetting process that is applicable to children of Nubian descent is extremely arduous, unreasonable, and *de facto* discriminatory.

44. Therefore, central to the present communication is the issue of statelessness. One of the main purposes of article 6, in particular article 6(4) of the African Children's Charter, is to prevent and/or reduce statelessness. A 'stateless person', according to the 1954 UN Convention relating to the Status of Stateless Persons, <http://www2.ohchr.org/english/law/stateless.htm> means 'a person who is not considered as a national by any state under the operation of its law'. There is evidence that this universal definition of a 'stateless person' is accepted as part of customary international law. Therefore, a 'stateless child' is a child who is not considered as a national by any state under the operation of its laws.

45. While complex issues of parentage, race, ethnicity, place of birth, and politics all play a role in determining an individual's nationality, the root causes of statelessness are complex and multifaceted including state succession, decolonisation, conflicting laws between states, domestic changes to nationality laws, and discrimination.

46. Whatever the root cause(s), the African Committee cannot overemphasise the overall negative impact of statelessness on children. While it is always no fault of their own, stateless children often inherit an uncertain future. For instance, they might fail to benefit from protections and constitutional rights granted by the state. These include difficulty to travel freely, difficulty in accessing justice procedures when necessary, as well as the challenge of finding oneself in a legal limbo vulnerable to expulsion from their home country. Statelessness is particularly devastating to children in the realisation of their socio-economic rights such as access to health care, and access to education. In sum, being stateless as a child is generally antithesis to the best interests of children.

47. At the global level, a range of instruments recognise the right to acquire a nationality, albeit with varying formulations. Here, it is worth mentioning that, as Doek rightly explains, international human rights law has shifted from the position that 'the child shall be entitled from his birth ... to a nationality', to one mandating that the child 'shall acquire a nationality' (article 7(1) of CRC, article 24(3) of ICCPR). The same wording and position is transparent under article 6 of the African Children's Charter. The reason for such a shift is because it is felt that 'a state could not accept an unqualified obligation to accord its nationality to every child born on its territory regardless the circumstances'.

48. Therefore, under general international law, states set the rules for acquisition, change and loss of nationality as part of their sovereign power. However, although states maintain the sovereign right to regulate nationality, in the African Committee's view, state discretion must be and is indeed limited by international human rights standards, in this particular case the African Children's Charter, as well as customary international law and general principles of law that protect individuals against arbitrary state actions. In particular, states are limited in their discretion to grant nationality by their obligations to guarantee equal protection and to prevent, avoid, and reduce statelessness.

49. This as a backdrop, the government of Kenya has adopted its rules that provide for conditions by which a person can become a Kenyan citizen. Pursuant to Chapter IV of the former Constitution of Kenya and the Kenya Citizenship Act, Cap 170 of the Laws of Kenya, the four ways through which a person may acquire Kenyan citizenship are birth, descent, registration, and

naturalisation. The African Committee has found sufficient evidence that indeed some persons (including children) of Nubian descent in Kenya have acquired Kenyan nationality through one of these four ways. Therefore, neither the communication alleges nor the African Committee believes that all children of Nubian descent in Kenya have been left stateless. However, the crux and truth of the matter is that, even with the application of these (fairly restrictive) four ways through which a person can become a Kenyan national, a significant number of children of Nubian descent in Kenya have been left stateless.

50. As a result, the duty in article 6(4) of the African Children's Charter to ensure that a child 'acquire the nationality of the state in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other state in accordance with its laws' is squarely applicable to the present communication as an obligation of the government of Kenya. This, by no means, is an attempt by the African Committee to be prescriptive about the choice states make in providing for laws pertaining to the acquisition of nationality. Therefore, while the African Committee is not suggesting that states parties to the Charter should introduce the *jus soli* approach, in line with the best interests of the child principle, it is explaining the intent of article 6(4) of the African Children's Charter that if a child is born on the territory of a state party and is not granted nationality by another state, the state in whose territory the child is born, in this particular case Kenya, should allow the child to acquire its nationality.

51. It may have been further argued (by the government of Kenya), perhaps rather loosely, that the children of Nubian descent in Kenya may be entitled to the nationality of the Sudan, and, as a result, the government does not have to provide them with Kenyan nationality. However, such a line of argument would be remiss of the fact that, implied in article 6(4) is the obligation to implement the provision proactively in cooperation with other states, particularly when the child may be entitled to the nationality of another state. In the communication at hand, nothing has transpired that indicates that the government, if it holds such view, has undertaken any meaningful efforts to ensure that these children acquire the nationality of any other state.

52. In this regard, it is apposite to further highlight the nature of the state party obligation that article 6(4) of the Charter provides, which is 'undertake to ensure'. As such, the obligation that states parties including Kenya have under article 6(4) of the Charter is not an obligation of conduct but an obligation of result. States parties need to make sure that all necessary measures are taken to prevent the child from having no nationality.

53. The African Committee notes and commends the new constitutional dispensation introduced in 2010 in Kenya which ushers a number of advancements in promoting and protecting children's rights, including their right to acquire a nationality. In particular, article 14(4) of the 2010 Constitution entrenches that a child less than eight years of age whose parents are not known is presumed to be a citizen by birth. While the African Committee lauds the effort of the state party in providing for this provision in its Constitution, it would like to draw the attention of the state party that this provision is still not a sufficient guarantee against statelessness, let alone address the crux of the present communication, namely, children born in Kenya of stateless parent(s) or who would otherwise be stateless, to acquire a nationality by birth.

54. As a result of the above, the African Committee finds violations of articles 6(2), 6(3) and 6(4) of the African Children's Charter by the government of Kenya.

Alleged violation of article 3

55. The complainants allege that children of Nubian descent in Kenya are treated differently from other children in Kenya, for which there is no legitimate justification, amounting to unlawful discrimination and a violation of article 3 of the African Children's Charter. They further allege that the fact that children of Nubian descent are expected to go through a lengthy and arduous process of vetting (including requiring them to demonstrate the nationality of their grandparents, as well as the need to seek and gain the approval of Nubian elders and governmental officials, etc) is discriminatory, and depriving them of any legitimate expectation of nationality, and leaving them effectively stateless.

56. Racial and ethnic discrimination are prohibited as binding *jus cogens* norm of international law. The African Children's Charter is no exception. Article 3 provides in full that:

[e]very 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/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

The current facts in relation to children of Nubian descent in Kenya indicate a *prima facie* case of discrimination and violation of article 3 of the Charter. As a result, the burden shifts to the state to justify the difference in treatment indicating how such a treatment falls within the notion of fair discrimination. The failure of the state to be present for a consideration of this communication makes such an engagement impossible. However, the African Committee weighed whether the treatment of the children of Nubian descent in Kenya can be considered to be a fair discrimination, but found otherwise. For instance, in a very similar case involving children of Haitian descent in Dominican Republic, it was held that the refusal and placing of unfair obstacles by local officials to deny birth certificate and recognition of the nationality of Dominicans of Haitian descent as part of a deliberate policy which effectively made the children stateless constituted racial discrimination. Moreover, after a thorough investigation of the situation of children of Nubian descent in Kenya, the Kenya National Commission on Human Rights has concluded that 'the process of vetting ... Nubians ... is discriminatory and violates the principle of equal treatment. Such a practice has no place in a democratic and pluralistic society'.

57. The current practice applied to children of Nubian descent in Kenya, and in particular its subsequent effects, is a violation of the recognition of the children's juridical personality, and is an affront to their dignity and best interests. For a discriminatory treatment to be justified, the African Commission has rightly warned that 'the reasons for possible limitations must be founded in a legitimate state interest and ... limitations of rights must be strictly proportionate (sic) with and absolutely necessary for the advantages which are to be obtained'. The African Committee is not convinced, especially in relation to a practice that has led children to be stateless for such a long period of time, that the current discriminatory treatment of the government of Kenya in relation to children of Nubian descent is 'strictly proportional with' and equally importantly 'absolutely necessary' for the legitimate state interest to be obtained. The Committee is of the view that measures should be taken to facilitate procedures for the acquisition of a nationality for children who would otherwise be stateless, and not the other way round. As a result of all the above, the African Committee finds a violation of article 3 of the African Children's Charter.

Consequential violations

58. The indivisibility of rights in the African Children's Charter is underscored by the consequential impact of the denial of nationality to children of Nubian descent by the government of Kenya. All Charter rights generate obligations to respect, protect, promote and fulfil. This is no less so in respect of the rights implicated when nationality and identity rights are violated. The complaint in the instant communication has primarily resulted in an infringement of article 3 which fundamentally proscribes discrimination against the child so as to limit the enjoyment by the child of the rights and freedoms recognised and guaranteed in the Charter. In the instant case, the discriminatory treatment of the children affected by the conduct of the government of Kenya based on their and their parents' and legal guardians' social origin has had long standing and far reaching effects on the enjoyment of other Charter rights. And, as the African Commission on Human and Peoples' rights has confirmed, in the African context, collective rights and economic and social rights are essential elements of human rights in Africa.

Alleged violation of article 14

59. In the first place, a case had been made out that the affected children have suffered denial and unwarranted limitation of their rights to health. The Charter provides in article 14 for the children to enjoy the right to the highest attainable standard of health. Minimal access to health facilities, a lower level of contact with health promoting measures and medical assistance, and a lack of provision of primary and therapeutic health resources and programmes is inconsistent with respect for the child's right to the highest attainable standard of health. African jurisprudence places a premium on both the right to health care and the right to the underlying conditions of health. In the *Purohit* case, the African Commission held that the right to health in the African Charter on Human and Peoples' Rights includes the right to health facilities, access to goods and services to be guaranteed to all without discrimination of any kind. It has been confirmed that the underlying conditions for achieving a healthy life are protected by the right to health. Thus lack of electricity, drinking water and medicines amount to a violation of the right to health. The *Zaire* case [*Free Legal Assistance Group and Others v Zaire* (2000) AHRLR 74 (ACHPR 1995)], concerning article 16 of the African Charter on Human and Peoples' Rights, confirmed that the failure of the government of Zaire to provide the mentioned basic services amounted to an infringement of the right to health.

60. In the communication regarding the children affected by the denial of their nationality and Kenyan identity, a case was made out that the state party had violated in particular the right enshrined in article 14(2)(b) (the duty to ensure the provision of necessary medical assistance and health care to all children with the emphasis on the development of primary health care) and article 14(2)(c) (the duty to ensure the provision of adequate nutrition and safe drinking water). These provisions being similar in content to the equivalent provisions in the African Charter on Human and Peoples' Rights, it can be deduced that the findings of the African Commission bear significant relevance.

61. It is incumbent upon states parties to the African Children's Charter to ensure that article 14(2)(g) is given full implementation, within available resources. Integrated health service programmes must be fully incorporated national development programmes, including those pertaining to the most vulnerable who lived in overcrowded and underserved slum areas or camps. Where the underlying conditions, such as conditions in informal settlement and slum areas, present a heightened risk to the child's enjoyment of her right to health, the duty bearer must accept that there is a correspondingly

more urgent responsibility to plan and provide for basic health service programmes under article 14(2)(g). The states parties to the African Children's Charter are encouraged in giving effect to their article 14(2)(g) obligations, to ensure that national development plans reflect the need to prioritise health services and to intensify such planning for services to otherwise disadvantaged communities where child beneficiaries live.

62. The affected children had less access to health services than comparable communities who were not comprised of children of Nubian descent. There is *de facto* inequality in their access to available health care resources, and this can be attributed in practice to their lack of confirmed status as nationals of the Republic of Kenya. Their communities have been provided with fewer facilities and a disproportionately lower share of available resources as their claims to permanence in the country have resulted in health care services in the communities in which they live being systematically overlooked over an extended period of time. Their health needs have not been effectively recognised and adequately provided for, even in the context of the resources available for the fulfilment of this right.

Alleged violation of article 11(3)

63. The Committee notes that the violation includes an infringement of the rights enshrined especially in article 11(3) of the African Children's Charter, which provides for the right to education. Ratifying states parties undertake to take all appropriate measures, with a view to achieving full realisation of this right. Article 11(3)(a) requires in particular the provision of free and compulsory basic education, which necessitate the provision of schools, qualified teachers, equipment and the well-recognised corollaries of the fulfilment of this right.

64. The African Commission on Human and Peoples' Rights has emphasised that the failure to provide access to institutions of learning would amount to a violation of the right to education under the African Charter on Human and Peoples' Rights.

65. The affected children had less access to educational facilities for the fulfilment of their right to free and compulsory primary education than comparable communities who were not comprised of children of Nubian descent. There is *de facto* inequality in their access to available educational services and resources, and this can be attributed in practice to their lack of confirmed status as nationals of the Republic of Kenya. Their communities have been provided with fewer schools and a disproportionately lower share of available resources in the sphere of education, as the *de facto* discriminatory system of resource distribution in education has resulted in their educational needs being systematically overlooked over an extended period of time. Their right to education has not been effectively recognised and adequately provided for, even in the context of the resources available for this fulfilment of this right.

...

**The Centre for Human Rights (University of Pretoria) and
Another v Senegal**
[Communication 1/2012 (2014)]

This case deals with the situation of children (*talibés*) forced into begging in Senegal.

...

23. The Committee also finds the avenue to petition the Chief Prosecutor to bring a claim to court on behalf of the *talibes* victims of violations of their rights by marabouts in the *daaras* to be ineffective because the Chief Prosecutor's decision is made discretionary and in consultation with the Minister responsible for justice, which does not amount to a remedy that is judicial in nature. Another avenue that the Complainants also have indicated to be in place in the Respondent State is the requirement that only the victim *talibes* or someone directly affected by the alleged violations can bring cases in domestic courts. In practice, this would entail each of the estimated 100,000 *talibes* would bring their own claim in courts. The Committee concurs with Complainants' submission that this avenue is so impractical as to be virtually impossible. Therefore, the Committee is of the view that the Complainants should avail from the exceptions of the requirement of exhaustion of local remedies as there is no effective and sufficient remedy for the *talibes*.

...

37. The respondent state, being a state party to the Charter, accepts the explicit prohibition of child begging under article 29(b) and it has complied with this obligation through its prohibition of child begging as provided for under article 245 to 247(b) of its Penal Code. However, the respondent state has failed to discharge its obligation to enforce these provisions by not taking the necessary administrative measures, including supervision of the *daaras* and bringing to justice the *marabouts* who force *talibés* into begging. The state party has the obligation to protect the rights enshrined in the Charter, which requires measures by the state to ensure that third parties (individuals, institutions, etc.) do not deprive of children's rights. In this regard the Committee refers to the jurisprudence as established by the African commission on Humans and Peoples' Rights. ...

38. In the case at hand, despite the obligation set under the principle of the best Interests of the child, the Committee notes that the Government of Senegal has failed to enforce current national, regional, and international laws and agreements already in place by taking measures, including prosecuting, against perpetrators and abusive religious leaders; and hence the respondent state has failed its responsibility to protect.

39. Therefore, the respondent state is responsible under article 4 of the Charter for not taking necessary administrative and other measures against the *daaras*, *marabouts* as well as parents who send their children to the *daaras*.

...

50. The government must enforce its own laws to protect *talibés* from this abuse and ensure that the education received in *daaras* equips these children with a rounded education, and does not allow forced begging. The Senegalese government enacted legislation in 2005 that criminalized forcing others into begging for personal financial gain. But the authorities have largely failed to take concrete steps to enforce the law and end the exploitation and abuse of

the *talibés*. Therefore, the Government of Senegal has violated the right to education of the *talibés* by failing to ensure the availability, accessibility and acceptability of the education and supervising the *daaras*.

...

82. Because of the foregoing reasons, the Committee finds multiple violations of the African Children's Charter as follows: Article 4 (best interest of the child); article 5 (survival and development); article 11 (the right to education); article 14 (health and health services); article 15 (child labour); article 29 (sale, trafficking and abduction); article 16 (protection against child abuse and torture); and article 21 (protection against harmful social and cultural practices). Therefore, the Committee recommends that the respondent state should, in accordance with its obligations under the African Children's Charter, undertake the necessary measures:

- (a) To ensure that all *talibés* are immediately taken back from the streets to their families;
- (b) Through cooperation with the neighboring countries (from where some of the children are coming), international and national organisations, facilitate the reunion of the *talibés* with their families; [//li]
- (c) To establish functioning and effective institutions and mechanisms to provide the *talibés* with short- and long-term, appropriate psychological, medical and social assistance in order to promote their full recovery;
- (d) To establish minimum norms and standards for all *daaras* relating to health, safety, hygiene, education content and quality, and accommodation;
- (e) To integrate the *daaras* into the formal education system;
- (f) To inspect the *daaras* regularly to ensure that standards set out in the Charter and local legislation are complied with and close all the *daaras* which are not in compliance with the required standards;
- (g) With a view of fighting impunity and preventing forced begging, sale, abduction and trafficking of children, ensure that all the perpetrators are brought to justice and held accountable for their actions with penalties commensurate with the severity of their crimes;
- (h) On the *talibés* right to education: (i) Make sure that education contributes in promoting and developing their personality, talents and their physical and mental abilities to their fullest potential, (ii) The Government's education policy should be reviewed in light of fostering respect for human rights and fundamental freedoms, and (iii) Ensure the provision of free and compulsory basic education.
- (i) To train law enforcement and judicial personnel, social workers, traditional and religious leaders, parents and the community at large on children's rights in general and prohibitions of child begging in particular;
- (j) To conduct joint studies with the concerned neighboring State Parties on the situation of *talibés'* children in Senegal and countries of origin;
- (k) To fully recognize and implement the rights included in the African Children's Charter and in other international instruments;
- (l) While complying with its reporting obligation in accordance with article 43 of the African Children's Charter, the State Party should provide the Committee with sufficient information on the progress of implementation of the current decision
- (m) To cooperate with the African Union, International and National Organisations, the UN Agencies, particularly UNICEF, ILO, World Health organisation (WHO), with a view to fully implement these recommendations and alleviate the challenges of *talibés* in Senegal; and

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Rules of Court (2010)

These rules replaced the Interim Rules reprinted in the 4th edition of this *Compendium*. Also available at www.african-court.org

PREAMBLE

The Court,

In accordance with the African Charter on Human and Peoples' Rights of 27 June 1981 and the Protocol thereof on the Establishment of an African Court on Human and Peoples' Rights dated 9 June 1998,

And in pursuance of article 33 of the Protocol,

Adopts the following Rules of Court which shall be known as the 'Interim Rules of Court'.

Rule 1: Definitions

For the purposes of these rules, unless the context otherwise indicates:

- (a) 'Assembly' means the Assembly of Heads of State and Government of the African Union;
- (b) 'Charter' means the African Charter on Human and Peoples' Rights;
- (c) 'Commission' means the African Commission on Human and Peoples' Rights;
- (d) 'Constitutive Act' means the Constitutive Act of the African Union;
- (e) 'Court' means the African Court on Human and Peoples' Rights;
- (f) 'Executive Council' means the Executive Council of the African Union;
- (g) 'Judge' means a member of the Court;
- (h) 'Member state' means a member state of the African Union;
- (i) 'President' means the President of the Court;
- (j) 'Protocol' means the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
- (k) 'Registrar' means the Registrar of the Court;
- (l) 'Registry' means Registry of the Court;
- (m) 'Rules' mean the present rules;
- (n) 'State party' means a state party to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
- (o) 'Vice President' means the Vice President of the Court.

PART I - THE COURT

CHAPTER I - Members of the Court

Rule 2: Term of office

1. The newly elected judges will assume duty on the first day of the first ordinary session following their election. Before assuming duty, the elected judges shall take an oath of office or make a declaration in accordance with rule 4 of these rules.
2. Notwithstanding the foregoing sub-rule, outgoing members of the Court shall remain in office until such time as they are replaced; after they are replaced, they shall continue to sit until the completion of all stages of any case in which the Court has met for an oral hearing prior to the date of replacement.

Rule 3: Precedence

1. The members of the Court, in the exercise of their functions, are of equal status, irrespective of age, date of election or length of service.
2. Members of the Court shall, except as provided in sub-rule 4 and 5 of this rule, take precedence according to the date on which their terms of office respectively began pursuant to rule 2 of these rules.
3. Members of the Court who assume duty on the same date shall take precedence, in relation to one another, according to seniority of age.
4. A member of the Court who is re-elected to a new term of office which is continuous with his/her previous term shall retain his/her precedence.
5. The President and the Vice-President of the Court, while holding these offices, shall take precedence before all other members of the Court.
6. The member of the Court who is, in accordance with the foregoing sub-rules, next in precedence after the President and the Vice-President, is in these rules designated as 'the Senior Member of the Court'. Whenever that member is unable to act, the member of the Court who is next after him in precedence and able to act shall be considered the Senior Member of the Court.

Rule 4: Oath of office or solemn declaration

1. Pursuant to article 16 of the Protocol, each member of the Court shall make the following oath or solemn declaration: 'I (full names of judge) do swear or solemnly declare that I will perform my duties and exercise my powers as a member of the Court honourably, faithfully, impartially and conscientiously, and that I will preserve the confidentiality of its deliberations even after my term of office has expired'.
2. This oath/declaration shall be taken/made in a public sitting as soon as possible after his/her election, and if necessary, a special public sitting shall be held for this purpose.
3. A member of the Court who is re-elected shall take/make a new oath/declaration only if his/her new term is not continuous with his/her previous one.

Rule 5: Incompatibility

1. In accordance with the terms of article 18 of the Protocol, during their term in office, no members of the Court shall participate in any other activity of a nature that will compromise the independence and impartiality of such a judge or the demands of the office.
2. In particular, the members of the Court may not hold political, diplomatic or administrative positions or function as government legal advisers at the national level.
3. Each member of the Court shall declare any other activities to the Court.

Rule 6: Resignation

1. In the event of the resignation of a member of the Court, the notice of resignation shall be tendered to the President of the Court, who shall notify the Chairperson of the African Union Commission of the same. Upon the latter notification, the seat shall be considered vacant.
2. Where the member of the Court who decides to resign is the President, he/she shall announce his/her decision to the Vice President who shall notify the Chairperson of the African Union Commission and the resignation shall take effect in accordance with the terms of sub-rule 1 of the present rule.

Rule 7: Suspension or removal

1. Where the application of article 19(1) of the Protocol is under consideration, the President or, if the circumstances so require, the Vice-President, shall inform the member of the Court concerned accordingly, in a written statement which shall include the grounds thereof and any relevant evidence. He/she shall, subsequently, at a private session of the Court specially convened for the purpose, be afforded an opportunity of making a statement, of furnishing any information or explanations he/she wishes to give, and of supplying answers, orally or in writing, to any questions put to him/her. At a further private session, at which the member of the Court concerned shall not be present, the matter shall be considered; each member of the Court shall state his/her opinion and, if requested, a vote shall be taken.

2. Any decision to suspend or remove a member of the Court shall be communicated to the Chairperson of the African Union Commission.

Rule 8: Inability to sit, exemption and withdrawal

1. Any member of the Court who is unable to attend a sitting of the Court shall notify the President as early as possible.

2. In accordance with article 22 of the Protocol, any member of the Court who is a national of a state that is party to a case shall abstain from hearing that case.

3. A member of the Court shall also abstain from hearing cases in which the state by virtue of which he/she was elected is a party.

4. No member of the Court shall take part in the consideration of any case if:

(a) he/she has previously acted, in relation to the case, as agent, counsel or advocate for one of the parties, or as a member of a national or international court or a commission of inquiry or in any other capacity;

(b) he/she has a personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship with any of the parties;

(c) he/she has expressed opinions publicly, through the communications media, in writing, through his or her public actions or otherwise, that may, objectively adversely affect his or her impartiality;

(d) for any other reason, his/her independence or impartiality may, legitimately, be called into doubt;

5. If a member intends to withdraw for any of the aforesaid reasons he/she shall, accordingly, notify the President of the Court, who shall exempt such judge from participation in the hearing of the matter.

6. In the event of any doubt as to the existence of any of the grounds for withdrawal listed in this rule, the member concerned shall make his/her disclosures to the Court, and deliberations and voting on the matter shall be carried out in his/her absence.

CHAPTER II - The Office of the President and Vice-President**Rule 9: Term of office**

1. The President and Vice President shall be elected for a period of two (2) years and may be re-elected only once. However, none of them may continue to hold office should they cease to be a member of the Court.

2. The term of office of the President and Vice President shall begin to run on the commencement date of the terms of office of the members of the Court elected in a biennial election, pursuant to rule 2 of these rules.

3. The elections of the President and Vice-President shall be held on the above mentioned date or shortly thereafter. The outgoing President or Vice-

President, if still a member of the Court, shall continue to exercise the functions of his/her office until the election has taken place.

4. If for any reason, the President or the Vice President ceases to be a member of the Court before the expiry of his/her term of office, the Court shall elect a successor for the remainder of the term.

Rule 10: Elections

1. If on the date of the election to the Presidency, the outgoing President is still a member of the Court, he/she shall conduct the election. If he/she has ceased to be a member of the Court, is unable to act, or is himself/herself a candidate, the election shall be conducted by the member of the Court exercising the functions of the Presidency pursuant to rule 12, sub-rule 1 of these rules.

2. The vote shall be taken by secret ballot after the member of the Court acting as President indicates the number of votes required to be elected.

3. The member of the Court obtaining the votes of the absolute majority of all the judges of the Court shall be declared elected.

4. If no member of the Court obtains the absolute majority required during the first ballot, the judge having obtained the least number of votes shall withdraw. If during the second ballot no candidate receives the majority required, a third round shall take place between the two candidates having obtained the greatest number of votes. An additional round or additional rounds shall take place until one candidate has achieved the required majority. In the event of a tied vote, preference shall be given to the judge having precedence under the terms of rule 3 of these rules.

5. The member of the Court who is elected President shall take office immediately.

6. The incoming President shall conduct the election of the Vice President, either at the same or at the following sitting. The provisions of sub-rule 2 to 5 above shall also apply to this election.

Rule 11: Functions

1. The functions of the President are to:

- (a) represent the Court;
- (b) preside at the sittings of the Court;
- (c) direct the work and supervise the administration of the Court;
- (d) promote the activities of the Court;
- (e) present a detailed Annual Report to the Court on the Court's activities and on his/her own activities as President over the year;
- (f) pursuant to article 31 of the Protocol, prepare and present an Annual Report to the Assembly;
- (g) carry out any other duties assigned to him/her by the Protocol or the present rules, or entrusted to him/her by the Court.

2. The Vice-President shall assist the President in performing his/her functions. He/she shall replace him/her in the event of inability to act or of a vacancy in the presidency, or at the request of the President.

Rule 12: Exercise of functions

1. In the event of the office of the President becoming vacant or the President being unable to act, his/her functions shall be performed by the Vice-President and, in default, by the Senior Member of the Court.

2. When the President is precluded from hearing a case under the terms of article 22 of the Protocol and rule 8 hereof, he/she shall continue to act as President for all purposes save in respect of the said case; the same shall apply to the Vice President.

3. The President shall take the necessary measures to ensure the continuous exercise of the functions of the presidency at the seat of the Court. In the event of his/her absence, he/she may, so far as is compatible with the Protocol and the present rules, arrange for these functions to be exercised by the Vice President or in default, by the Senior Member of the Court.

4. If the President decides to resign the Presidency, he/she shall communicate his decision in writing to the Court through the Vice President, or, failing that, through the Senior Member of the Court. If the Vice President decides to resign from his office, he/she shall communicate his/her decision to the President.

Rule 13: Adequate gender representation, main legal traditions and main regions of Africa

In electing to office or making appointments governed by this Chapter and Part II of these rules, the members of the Court shall pursue, to the greatest extent possible, a policy aimed at securing a balanced representation of gender, the principal legal traditions and the main regions of Africa.

CHAPTER III - Internal Functioning of the Court

Rule 14: Ordinary sessions

1. The Court shall hold four ordinary sessions per annum, each of which shall last about fifteen days.

2. The sessions of the Court shall be convened on the dates set by the Court during its previous session. Under exceptional circumstances, the President may, in consultation with the other members of the Court, change the dates of a session.

3. The invitation letter shall indicate the dates, agenda, duration and venue of the session as well as any other relevant information. The letter shall be sent to the members of the Court at least thirty (30) calendar days before the session is held.

Rule 15: Extraordinary sessions

1. Extraordinary sessions may also be convened by the President on his own initiative or at the request of a majority of the members of the Court.

2. The invitation letter shall indicate the dates, agenda, duration and venue of the sessions as well as any other relevant information. The letter shall be sent to the members of the Court at least fifteen (15) calendar days before the session is held.

Rule 16: Venue of meeting

The sessions shall normally take place at the seat of the Court. However, the Court may, pursuant to article 25(1) of the Protocol, decide to sit in the territory of any other member state of the African Union.

Rule 17: Quorum

1. The quorum of seven (7) judges stipulated under article 23 of the Protocol shall apply to all sittings of the Court.

2. If at the commencement of a sitting, the quorum is not met, the President shall adjourn it.

3. If during a sitting, the quorum ceases to exist, the President shall adjourn the sitting.

Rule 18: Official and working languages

1. The official languages of the Court shall be the official languages of the African Union.
2. The working languages of the Court shall be the working languages of the African Union. However, the Court may, whenever the need arises, select one or more of these languages as its working languages.
3. Notwithstanding the provisions of sub-rules 1 and 2 of this rule, the Court may permit any person appearing before it to use a language of his or her choice, if it is shown that he or she does not have sufficient knowledge of any of the official languages of the Court.
4. The terms and conditions for obtaining interpreters for implementation of sub-rule 3 of this rule shall be determined by the Court.

Rule 19: Internal judicial practice and practice directions

Subject to the provisions of the Protocol and these rules, the judicial practice and procedure followed by the Court shall be governed by relevant resolutions or practice directions of the Court.

PART II: THE REGISTRY

Rule 20: Composition and organisation of the Registry

1. The Registry shall comprise the Registrar, the Deputy Registrar, and such other staff as the Court may require for the effective exercise of its functions.
2. The Court shall prescribe the organisation of the Registry.
3. Instructions for the Registry shall be drawn up by the Court.
4. The staff of the Registry shall be subject to Staff Rules and Regulations drawn up by the Court.

Rule 21: Appointment and term of office of the Registrar

1. The Court shall appoint its Registrar.
2. Candidates for the position of Registrar shall be of the highest moral standing and shall possess the necessary legal, administrative and linguistic knowledge and experience for the discharge of the functions linked to the post.
3. The Registrar shall be appointed for a term of five years. He/she may be re-appointed.
4. The process of recruiting the Registrar shall be conducted in accordance with the procedure established by the Court and consistent with the norms of the African Union.
5. The applications shall include all relevant information concerning the applicant, and in particular, information as to age, nationality, sex, current occupation, academic qualifications as well as the knowledge and experience required in sub-rule 2 above.

Rule 22: Appointment and term of office of the Deputy Registrar

1. The Court shall appoint a Deputy Registrar.
2. The provisions of rule 21 of these rules shall apply to the appointment and term of office of the Deputy Registrar.

Rule 23: Oath/solemn declaration

1. Upon assumption of office, the Registrar shall take the following oath/ make the following declaration before the Court: "I ... (full names of Registrar) swear/solemnly declare that I will discharge the duties incumbent upon me as Registrar of the African Court on Human and Peoples' Rights with all loyalty, discretion and good conscience; that I will preserve the

confidentiality of the information to which I have access in the exercise, or due to the exercise of my functions, and that I will faithfully observe all the provisions of the Protocol and of the Rules of the Court.”

2. Upon assumption of office, the Deputy Registrar shall take a similar oath or make a similar declaration before the Court.

3. These oaths/declarations shall be recorded in the minutes of the Court.

Rule 24: Appointment of the other staff of the Registry

1. Other staff members of the Registry shall be appointed by the Court under such terms and conditions as it shall determine in accordance with the norms of the African Union. Appointments to such other positions as the Court shall determine may, however, be made by the Registrar with the approval of the President.

2. Upon assumption of duty, every staff member shall take the following oath/make the following declaration before the President, in the presence of the Registrar: ‘I (full names of official) swear/solemnly declare that I will discharge the duties incumbent upon me as an official of the Registry of the African Court on Human and Peoples’ Rights with all loyalty, discretion and good conscience; that I will preserve the confidentiality of the information to which I have access in the exercise or due to the exercise of my functions, and that I will faithfully observe all the provisions of the Protocol and of the Rules of the Court.’

Rule 25: Functions of the Registrar

1. The Registrar shall assist the Court in the exercise of its judicial function and shall be in charge of the general administration of the Court’s Registry. He or she shall be responsible for the supervision and coordination of all the operations and activities of the Registry.

2. In the discharge of his/her duties, the Registrar shall:

(a) keep, in such form as may be prescribed by the Court, a General List of all cases, entered and numbered in the order in which the documents instituting proceedings or requesting an advisory opinion are received in the Registry;

(b) be the regular channel of communication to and from the Court, and in particular effect all communications, notifications and transmission of documents required by the Protocol or by these rules and ensure that the date of dispatch and receipt thereof are readily verifiable;

(c) transmit to the parties copies of all pleadings and documents annexed thereto upon receipt thereof in the Registry;

(d) be present, in person or by his/her duly qualified representative, at the sittings of the Court, and be responsible for the preparation of minutes of such sittings;

(e) sign the minutes referred to in subparagraph (d) above;

(f) inspect documentation submitted to the Court to establish authenticity thereof;

(g) have custody of the seal, the official stamp and all the records and archives of the Court;

(h) make arrangements for such provision or verification of translations and interpretations into the Court’s official languages as the Court may require;

(i) be responsible for the printing and publication of the Court’s judgments, advisory opinions and orders, the pleadings and statements, and minutes of public sittings in each case, and of such other documents as the Court may direct to be published;

(j) communicate to the government of the country in which the Court is sitting, and any other governments which may be concerned, the necessary

information as to the persons from time to time entitled, under the Protocol and any relevant agreements, to privileges, immunities, or facilities;

(k) transmit documents to the members of the Court, states party to the Protocol and to the Chairperson of the African Union Commission as well as other organs of the African Union where required;

(l) deal with enquiries concerning the Court and its work;

(m) prepare the draft budget of the Court;

(n) be responsible for the sound management of all accounts and financial administration in accordance with the applicable financial rules of the African Union and the financial regulations of the Court;

(o) assist in maintaining relations between the Court and the departments of the African Union Commission as well as those of the other organs of the African Union;

(p) ensure that information concerning the Court and its activities is made accessible to governments, the highest national courts of justice, professional associations, learned societies, faculties and schools of law, and public information media;

3. The Court may entrust additional duties to the Registrar.

4. In the exercise of his/her functions, the Registrar shall work under the direction and supervision of the President and be answerable to the Court.

PART III: JURISDICTION

Rule 26: Jurisdiction

1. Pursuant to the Protocol, the Court shall have jurisdiction:

(a) to deal with all cases and all disputes submitted to it concerning interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the states concerned;

(b) to render an advisory opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject of the opinion is not related to a matter being examined by the Commission;

(c) to promote amicable settlement in cases pending before it in accordance with the provisions of the Charter;

(d) to interpret a judgment rendered by itself; and

(e) to review its own judgment in light of new evidence in conformity with rule 67 of these rules.

2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

PART IV: CONTENTIOUS PROCEDURE

CHAPTER I: General Provisions

Rule 27: Phases of proceedings

1. The procedure before the Court shall consist of written, and if necessary, oral proceedings.

2. The written procedure shall consist of the communication to the Court, the parties, as well as the Commission, as appropriate, of applications, statements of the case, defences and observations and of replies if any, as well as all papers and documents in support, or of certified copies thereof.

3. The oral proceedings shall consist of a hearing by the Court of representatives of parties, witnesses, experts, or such other persons as the Court may decide to hear.

Rule 28: Representation

Every party to a case shall be entitled to be represented or to be assisted by legal counsel and/or by any other person of the party's choice.

Rule 29: Relations between the Court and the Commission

1(a) In pursuance of article 2 of the Protocol, the Court shall meet with the Commission at least once a year and whenever necessary to ensure a good working relationship between the two institutions.

(b) The Bureau of the Court may meet the Bureau of the Commission as often as necessary.

2. In accordance with article 33 of the Protocol, the Court shall consult the Commission, as appropriate, on any amendment of its rules, and any issues of procedure, governing the relationship between the two institutions.

3(a) In a case brought before the Court by the Commission under article 5(1)(a) of the Protocol, its application shall be accompanied by its report as well as all documents pertaining to the proceedings.

(b) The Court may, if necessary, hear one or more commissioners assisted by such legal officers of the Commission's Secretariat and/ or experts as the Commission shall designate or appoint.

(c) The Court may also, if it deems it necessary, hear, under rule 45 of the rules, the individual or NGO that initiated a communication to the Commission pursuant to article 55 of the Charter.

4. Where, pursuant to article 6(1) of the Protocol, the Court decides to solicit the opinion of the Commission on the admissibility of a case, it shall transmit to the Commission a copy of the pertinent sections of the case file, indicating the time limit within which it wishes to receive the opinion.

5(a) Where the Court decides to transfer a case to the Commission pursuant to article 6(3) of the Protocol, it shall transmit to the Commission a copy of the entire pleadings so far filed in the matter accompanied by a summary report.

At the request of the Commission, the Court may also transmit the original case file.

(b) The Registrar shall immediately notify the parties who were before the Court about the transfer of the case to the Commission.

6. For the purpose of examining an application brought before it, relating to issues in a communication before the Commission, the Court shall ascertain that the said communication has been formally withdrawn.

Rule 30: Legal costs

Unless otherwise decided by the Court, each party shall bear its own costs.

Rule 31: Legal assistance

Pursuant to article 10(2) of the Protocol, the Court may, in the interest of justice and within the limits of the financial resources available, decide to provide free legal representation and/or legal assistance to any party.

Rule 32: Cooperation of the states

1. The states parties to a case have the obligation to cooperate so as to ensure that all notices, communications or summonses addressed to persons residing in their territory or falling under their jurisdiction are duly executed.

2. The same rule shall apply to any proceeding that the Court decides to conduct or order in the territory of a state party to a case.

3. When the performance of any of the measures referred to in the preceding paragraphs requires the cooperation of any other state, the President shall request the government concerned to provide the requisite assistance.

CHAPTER II: Written Proceedings

Rule 33: Access to the Court

1. Pursuant to the provisions of articles 5 and 34(6) of the Protocol, the following are entitled to submit cases to the Court:

- (a) The Commission;
- (b) The state party which has lodged an application to the Commission;
- (c) The state party against which an application has been lodged at the Commission;
- (d) The state party whose citizen is a victim of a human rights violation;
- (e) An African intergovernmental organisation;
- (f) An individual or a non-governmental organisation which has observer status before the Commission provided the requirements of article 34(6) of the Protocol are met.

2. In accordance with article 5(2) of the Protocol, a state party which has an interest in a case may submit a request to the Court to be permitted to join in accordance with the procedure established in rule 53 of these rules.

Rule 34: Commencement of proceedings

1. The applicant shall file in the Court Registry, one (1) copy of the application containing a summary of the facts of the case and of the evidence intended to be adduced.

The said application shall be signed by the applicant or by his/her representative.

The Registrar shall acknowledge receipt of the application.

2. Any application addressed to the Court shall give clear particulars of the applicant and of the party or parties against whom such application has been brought. The application shall also contain the names and addresses of the persons designated as the applicant's representatives.

3. The application shall be written in one of the official languages of the Court, and the original forwarded to the Court Registry.

4. The application shall specify the alleged violation, evidence of exhaustion of local remedies or of the inordinate delay of such local remedies as well as the orders or the injunctions sought. All applications filed by individuals and non-governmental organisations shall meet the other admissibility conditions as set out in article 56 of the Charter and rule 40 of these rules.

5. Any applicant who on his/her own behalf or on behalf of the victim wishes to be granted reparation pursuant to article 27(1) of the Protocol shall include the request for the reparation in the application in accordance with sub-rule 4 above. The amount of the reparation and the evidence relating thereto may be submitted subsequently within the time limit set by the Court.

6. The Registrar shall effect service of the application on the other party by registered post together with a request to acknowledge receipt.

Rule 35: Transmission of applications

1. Upon the receipt of an application filed in accordance with article 5(1) and (3) of the Protocol, the Registrar shall transmit a copy thereof together with any annexes, to the President and other members of the Court.

2. Unless otherwise decided by the Court, the Registrar shall forward copies of the application where applicable to the:

- (a) State party against which the application has been filed, in accordance with rule 34(6) of these rules;
- (b) State party whose citizen is a victim of the alleged violation;
- (c) State party against which an application has been filed at the Commission;

- (d) Commission;
 - (e) Individual or legal entity or the non-governmental organisation that has filed an application at the Commission by virtue of article 55 of the Charter.
3. The Registrar shall also inform the Chairperson of the African Union Commission and through him/her, the Executive Council of the African Union, and all the other states parties to the Protocol, of the filing of the application;
4. In forwarding applications as stipulated in sub-rules 2 and 3 of this rule, the Registrar shall invite:
- (a) the respondent state party to indicate, within thirty (30) days of receipt of the application, the names and addresses of its representatives;
 - (b) any other state party that may wish to intervene in the proceedings under article 5(2) of the Protocol, to inform the Registrar accordingly, within the time stipulated in rule 53;
 - (c) if applicable, the Commission to forward to the Registrar, within thirty (30) days the names and addresses of its representatives;

Rule 36: Registration and transmission of pleadings

- 1. All pleadings received by the Registrar shall be registered and a copy thereof transmitted to the other party.
- 2. The Registrar shall acknowledge receipt of all such pleadings.

Rule 37: Time limit for reply

The state party against which an application has been filed shall respond thereto within sixty (60) days provided that the Court may, if the need arises, grant an extension of time.

Rule 38: Dismissal of application without merit

Whenever the Court finds that there is no merit in an application, it shall dismiss such application giving reasons for its decision, and may not have to summon the parties to the hearing, provided its decision and the reasons thereof are communicated to all the parties.

Rule 39: Preliminary examination of the competence of the Court and of admissibility of applications

- 1. The Court shall conduct preliminary examination of its jurisdiction and the admissibility of the application in accordance with articles 50 and 56 of the Charter, and rule 40 of these rules.
- 2. Pursuant to sub-rule 1 of this rule, the Court may request the parties to submit any factual information, documents or other material considered by the Court to be relevant.

Rule 40: Conditions for admissibility of applications

Pursuant to the provisions of article 56 of the Charter to which article 6(2) of the Protocol refers, applications to the Court shall comply with the following conditions:

- 1. disclose the identity of the applicant notwithstanding the latter's request for anonymity;
- 2. comply with the Constitutive Act of the Union and the Charter;
- 3. not contain any disparaging or insulting language;
- 4. not be based exclusively on news disseminated through the mass media;
- 5. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- 6. be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and

7. not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

Rule 41: Filing of documents

The Court may, before the commencement of or during the course of the proceedings, call upon the parties to file any pertinent document or to provide any relevant explanation. The Court shall formally note any refusal to comply.

CHAPTER III: Oral Proceedings

Rule 42: Fixing of the date of hearing

When the case is ready for hearing, the President shall, after consulting the parties or the representatives of the Commission, if applicable, fix the date of the hearing. The Registrar shall notify them accordingly.

Rule 43: Public hearings

1. Cases shall be heard in open court.
2. However, the Court may, of its own accord or at the request of a party, hold its hearings *in camera* if, in its opinion, it is in the interest of public morality, safety or public order to do so.
3. Whenever the Court orders that any proceedings shall not be conducted in public, the Court shall give one or more of the reasons specified in sub-rule 2 of this rule as the basis of its decision. The parties or their legal representatives shall be permitted to be present and heard *in camera*.

Rule 44: Conduct of hearings

The Presiding Judge shall conduct the hearing. He/she shall prescribe the order in which the representatives of the parties and where applicable, the representatives of the Commission, are to be heard.

Rule 45: Measures for taking evidence

1. The Court may, of its own accord, or at the request of a party, or the representatives of the Commission, where applicable, obtain any evidence which in its opinion may provide clarification of the facts of a case. The Court may, *inter alia*, decide to hear as a witness or expert or in any other capacity any person whose evidence, assertions or statements it deems likely to assist it in carrying out its task.
2. The Court may ask any person or institution of its choice to obtain information, express an opinion or submit a report to it on any specific point.
3. The Court may, at any time during the proceedings, assign one or more of its members to conduct an enquiry, carry out a visit to the scene or take evidence in any other manner.

Rule 46: Witnesses, experts and other persons

1. The Registrar shall issue summons to any witness, expert or other person the Court decides to hear.
2. After verification of his/her identity and before giving evidence, every witness shall take the following oath or make the following solemn declaration:

I swear/solemnly declare upon my honour and conscience that I will tell the truth, the whole truth and nothing but the truth.

The oath or solemn declaration shall be recorded.

3. After verification of his/her identity and before carrying out his/her task, every expert shall take the following oath or make the following solemn declaration:

I swear/solemnly declare that I will discharge my functions as expert on my honour and conscience.

The oath or solemn declaration shall be recorded.

4. The oath or declaration referred to in sub-rules 2 and 3 of this rule shall be taken or made before the Court.

5. The Court shall rule on any challenge arising from an objection to a witness or expert.

Rule 47: Questions put during hearings

1. The Presiding Judge, or any judge, may put questions to the representatives of the parties, and if applicable, the representative of the Commission, the witnesses, experts, and other persons appearing before the Court.

2. The witnesses, experts and other persons who appear before the Court may be examined by the representatives of the parties, and if applicable by the representatives of the Commission. The persons referred to in this paragraph may be subjected to cross-examination, followed by a re-examination.

Rule 48: Verbatim record of hearings

1. The Registrar shall be responsible for making a verbatim record of each hearing. The verbatim record shall include the:

- (a) composition of the Court at the hearing;
- (b) list of the persons appearing before the Court;
- (c) text of statements made, questions put and answers given;
- (d) text of any decision delivered by the Court during the hearing.

2. The representatives of the parties, and the representatives of the Commission, if applicable, shall receive the verbatim record of their arguments, statements or evidence, in order that they may, under the responsibility of the Registrar, make corrections, provided that such corrections do not affect the substance of what was said. The Registrar shall fix the time-limits granted for this purpose.

3. Once corrected, the verbatim record shall be signed by the President and the Registrar; and shall then constitute a true reflection of the proceedings.

Rule 49: Recording of hearings

The proceedings of the hearing shall be recorded and such recordings shall be conserved in the archives of the Court.

Rule 50: New evidence

No party may file additional evidence after the closure of pleadings except by leave of Court.

CHAPTER IV: Specific Procedures

Rule 51: Interim measures

1. Pursuant to article 27(2) of the Protocol, the Court may, at the request of a party, the Commission or on its own accord, prescribes to the parties any interim measure which it deems necessary to adopt in the interest of the parties or of justice.

2. In case of extreme urgency, the President may convene an extraordinary session of the Court to decide on measures to be taken. He/she may, in this

regard, and by all reliable means, enlist the views of the members not present.

3. The Court shall duly notify the parties to the case, the Commission, the Assembly, the Executive Council and the African Union Commission of the aforesaid interim measures.

4. In the Annual Report submitted by the Court to the Assembly pursuant to article 31 of the Protocol, the Court shall disclose the interim measures it ordered during the period under review. In the event of non-compliance with these measures by the state concerned, the Court shall make all such recommendations as it deems appropriate.

5. The Court may invite the parties to provide it with information on any issue relating to implementation of the interim measures adopted by it.

Rule 52: Preliminary objections

1. Any party served with the application may raise preliminary objections to any part or parts thereof.

2. Preliminary objections shall be raised at the latest before the date fixed by the Court for the filing of the first set of pleadings to be submitted by the party who intends to raise the objections.

3. The submission of preliminary objections shall not cause the proceedings on the substantive case to be suspended unless the Court so decides. In any case, the Court shall rule on the objections or incorporate its ruling in its decision on the substantive case.

4. Every preliminary objection shall set out the facts and the law on which the objection is based as well as the submissions and a list of the documents in support, if any; it shall also specify any evidence which the party intends to produce. Certified copies of all supporting documents shall be attached.

5. Where a party raises a preliminary objection, the Court shall invite the other party to submit, its written observations in reply before ruling on the preliminary objection, the Court may decide to invite the parties to submit further observations in writing.

6. Before deciding on the preliminary objection, the Court may, on the request of a party, or of its own accord, decide to hold a hearing if it deems it necessary.

7. The Court shall give reasons for its ruling on the preliminary objection.

Rule 53: Intervention

1. An application for leave to intervene, in accordance with article 5(2) of the Protocol shall be filed as soon as possible, and, in any case, before the closure of the written proceedings.

2. The application shall state the names of the applicant's representatives. It shall specify the case to which it relates, and shall set out:

(a) the legal interest which, in the view of the state applying to intervene, has been affected;

(b) the precise object of the intervention; and

(c) the basis of the jurisdiction which, in the view of the state applying to intervene, exists between it and the parties to the case.

3. The application shall be accompanied by a list of the supporting documents attached thereto and shall be duly reasoned.

4. Certified copies of the application for leave to intervene shall be communicated forthwith to the parties to the case, who shall be entitled to submit their written observations within a time-limit to be fixed by the Court, or by the President if the Court is not in session. The Registrar shall also transmit copies of the application to any other concerned entity mentioned in rule 35 of these rules.

5. If the Court rules that the application is admissible, it shall fix a time limit within which the intervening state shall submit its written observations. Such observations shall be forwarded by the Registrar to the parties to the case, who shall be entitled to file written observations in reply within the timeframe fixed by the Court.

6. The intervening state shall be entitled, in the course of the oral proceedings, if any, to present its submissions in respect of the subject of the intervention.

Rule 54: Joinder of cases and pleadings

The Court may at any stage of the pleadings either on its own volition or in response to an application by any of the parties, order the joinder of interrelated cases and pleadings where it deems it appropriate, both in fact and in law.

Rule 55: Judgments in default

1. Whenever a party does not appear before the Court, or fails to defend its case, the Court may, on the application of the other party, pass judgment in default after it has satisfied itself that the defaulting party has been duly served with the application and all other documents pertinent to the proceedings.

2. Before acceding to the application of the party before it, the Court shall satisfy itself that it has jurisdiction in the case, and that the application is admissible and well founded in fact and in law.

Rule 56: Out-of-Court settlement

1. Parties to a case may settle their dispute amicably at any time before the Court gives its judgment.

2. Any settlement between the parties shall be reported to the Court, which shall render judgment limited to a brief statement on the facts and the solution adopted.

3. However, the Court may, having regard to its discretion under the Protocol, decide to proceed with a case notwithstanding the notice of such amicable settlement.

Rule 57: Amicable settlement under the auspices of the Court

1. Pursuant to article 9 of the Protocol, the Court may promote amicable settlement of cases pending before it. To that end, it may contact the parties and take appropriate measures to facilitate amicable settlement of the dispute, based on respect for human and peoples' rights as recognised by the Charter.

2. Any negotiations entered into with a view to reaching an amicable settlement shall be confidential and without prejudice to the parties' observations in the proceedings before the Court. No written or oral communication and no offer of concession made as part of such negotiations shall be mentioned or referred to in the proceedings before the Court.

3. In the event of an amicable settlement of a case, the Court shall render a judgment, which shall be limited to a brief statement of the facts and of the solution adopted.

4. However, pursuant to its discretion under the Protocol, the Court may decide to proceed with the hearing of the application notwithstanding the notice of amicable settlement.

Rule 58: Discontinuance

Where an applicant notifies the Registrar of its intention not to proceed with the case, the Court shall take due note thereof, and

shall strike the application off the Court's cause list. If at the date of receipt by the Registry of the notice of the intention not to proceed with the case, the respondent state has already taken measures to proceed with the case, its consent shall be required.

CHAPTER V: Judgments of the Court

Rule 59: Decision of the Court

1. Upon the conclusion of the hearing of a case, the Court shall close the proceedings for its deliberations and judgment.
2. The decision of the Court shall be rendered by the Court within ninety (90) days from the date of completion of the deliberations.

Rule 60: Court's deliberations

1. The deliberations of the Court shall be held *in camera* and shall remain confidential.
2. Only judges who were members of the Panel that heard the case shall participate in the deliberations of the Court.
3. The decision of the Court shall be made by a majority of the members of the Panel present.
4. In the event of a tied vote, the Presiding Judge shall have a casting vote.
5. Any member of the Court who heard the case may deliver a separate or dissenting opinion.

Rule 61: Judgment

1. In accordance with article 28(6) of the Protocol, every judgment of the Court shall state the reasons on which it is based.
2. The judgment shall indicate the names of judges who have taken part in the deliberations.
3. The judgment shall be signed by all the judges and certified by the Presiding Judge and the Registrar. It shall be read in open Court, due notice having been given to the parties.
4. Subject to article 28(3) of the Protocol, the judgment of the Court shall be final.
5. The judgment of the Court shall be binding on the parties.

Rule 62: Contents of judgments

A judgment shall contain:

- (a) the date on which it was delivered;
- (b) the names of the parties;
- (c) the names of the representatives of the parties;
- (d) a summary of the proceedings;
- (e) the submissions of the parties, and as may be required, those of the Commission's representatives;
- (f) a statement of the facts of the case;
- (g) the legal grounds;
- (h) the operative provisions of the judgment;
- (i) the decision, if any, on costs;
- (j) the number of judges constituting the majority;
- (k) a statement as to the authentic text of the judgment.

Rule 63: Judgment on reparation

The Court shall rule on the request for the reparation, submitted in accordance with rule 34 (5) of these rules, by the same decision establishing the violation of a human and peoples' right or, if the circumstances so require, by a separate decision.

Rule 64: Notification of judgment

1. In accordance with article 29 of the Protocol, the Court shall duly notify the parties to the case, the Commission, the Assembly, the African Union Commission and any person or institution concerned of the judgment by certified true copies thereof.
2. The Executive Council shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly.
3. The original copy of the judgment, duly signed and sealed, shall be conserved in the archives of the Court.

Rule 65: Publication of judgments

Final judgments of the Court shall be published in accordance with rule 25(2)(i), under the authority of the Registrar.

Rule 66: Application for interpretation of a judgment

1. Pursuant to article 28(4) of the Protocol, any party may, for the purpose of executing a judgment, apply to the Court for interpretation of the judgment within twelve months from the date the judgment was delivered unless the Court, in the interest of justice, decides otherwise.
2. The application shall be filed in the Registry. It shall state clearly the point or points in the operative provisions of the judgment on which interpretation is required.
3. Upon the instruction of the Court, the Registrar shall transmit the application for interpretation to any other parties concerned and shall invite them to submit their written comments, if any, within the time limit established by the President. The President shall also fix the date for the hearing of the application, in the event the Court decides to hold one. The Court's decision shall take the form of a judgment.
4. When considering an application for interpretation, the Court shall be composed of the same judges who delivered judgment on the substantive case. However, where it is not possible for any judge to participate in the proceedings, such judge shall, if necessary, be replaced.
5. An application for interpretation shall not stay the execution of the judgment unless the Court decides otherwise.

Rule 67: Request for review of a judgment

1. Pursuant to article 28(3) of the Protocol, a party may apply to the Court to review its judgment in the event of the discovery of evidence, which was not within the knowledge of the party at the time the judgment was delivered. Such application shall be filed within six (6) months after that party acquired knowledge of the evidence so discovered.
2. The application shall specify the judgment in respect of which revision is requested, contain the information necessary to show that the conditions laid down in sub-rule 1 of this rule have been met, and shall be accompanied by a copy of all relevant supporting documents. The application as well as the supporting documents shall be filed in the Registry.
3. Upon the instructions of the Court, the Registrar shall transmit a copy of the application to any other party/parties concerned and shall invite them to submit written observations, if any, within the time limit set by the President. The President shall also fix the date of the hearing should the Court decide to hold one. The Court shall rule on the admissibility of such application and its decision shall take the form of a judgment.
4. If the application is declared admissible, the Court shall, after consultation with the parties, determine the time limit for all future proceedings on the substance of the application it may deem necessary.

5. An application for review shall not stay the execution of a judgment unless the Court decides otherwise.

PART V: ADVISORY PROCEDURE

Rule 68: Request for advisory opinion

1. Requests for advisory opinions pursuant to article 4 of the Protocol may be filed with the Court by a member state, by the African Union, by any organ of the African Union or by an African organisation recognised by the African Union. The request shall be on legal matters and shall state with precision the specific questions on which the opinion of the Court is being sought.
2. Any request for advisory opinion shall specify the provisions of the Charter or of any other international human rights instrument in respect of which the advisory opinion is being sought, the circumstances giving rise to the request as well as the names and addresses of the representatives of the entities making the request.
3. The subject matter of the request for advisory opinion shall not relate to an application pending before the Commission.

Rule 69: Transmission of request for advisory opinion

Subsequent to the receipt of a request for advisory opinion, the Registrar shall transmit copies thereof to member states, the Commission and to any other interested entity.

Rule 70: Written submissions

1. The Court shall establish the time limit for the filing of written submissions by states parties and by any other interested entity.
2. Any other states parties may submit written submissions on any of the issues raised in the request. Any other interested entity may be authorised by the Court to do the same.

Rule 71: Oral proceedings

After consideration of the written submissions, the Court shall decide whether or not there should be oral proceedings, and if so, shall fix a date for such hearing.

Rule 72: Application of provisions relating to contentious procedure

The Court shall apply, *mutatis mutandis* the provisions of Part IV of these rules to the extent that it deems them to be appropriate and acceptable.

Rule 73: Advisory opinion

1. The delivery of an advisory opinion shall take place in open Court. However, where the circumstances so require, the Court may decide otherwise.
2. Pursuant to article 4(2) of the Protocol, the Court's advisory opinion shall be accompanied by reasons, and any judge who has participated in the hearing of an advisory request shall be entitled to deliver a separate or dissenting opinion.
3. A copy of the advisory opinion will be transmitted to member states, the Commission and any other interested party.

PART VI: MISCELLANEOUS

Rule 74: Amendments

1. These rules may be amended only by the Court.

2. A proposal to amend any rule of the Court shall be submitted in writing to the President who shall, accordingly, direct the Registrar to notify all judges.
3. The proposed amendment shall contain the rule to be amended and its proposed replacement, if any.
4. Members of the Court shall be notified of the date and venue of the meeting at which the proposed amendment shall be discussed, ninety (90) days prior to the date of the said meeting.
5. No amendment of a rule shall be passed unless it is supported by not less than seven judges of the Court

Rules 75: Adoption

These rules shall be adopted by not less than seven judges of the Court and signed by the President.

Rule 76: Entry into Force and Authentic Text

These rules, the texts of which in the working languages of the Court are equally authentic, shall enter into force on 2 June 2010.

Konaté v Burkina Faso, order of provisional measures
[Application 004/2013 (2013)]

The Court can adopt provisional measures in cases where there is a risk of irreparable harm. This order deals with a request for provisional measures in a case dealing with imprisonment for criminal defamation.

...

4. The applicant submits that his sentence to a one-year term of imprisonment and to the payment of a substantial fine as damages and costs are in breach of his right to freedom of expression ...

...

19. The Court observe that consideration of the measure sought here corresponds in substance to one of the reliefs sought in the substantive case namely that the punishment of imprisonment is in essence a violation of the right to freedom of expression, in the opinion of the Court, consideration of this prayer would adversely affect consideration of the substantive case.

20. For this reason, the Court cannot grant the applicant's request for his immediate release within the framework of a provisional measure.

21. The second provisional measure sought by the applicant is that, in the event his immediate release is denied, the respondent be ordered to provide him with adequate medical care. He states that his health had deteriorated since his detention and that he needed medication and adequate medical care.

22. The Court observes, that the respondent, having been duly informed of these allegations, has not raised any objection. In the opinion of the Court, the situation in which the applicant finds himself appears to be a situation that can cause irreparable harm. The Court is therefore of the opinion that the applicant is entitled to access all medical care that his health condition requires.

Konaté v Burkina Faso, judgment on merits
[Application 004/2013 (2014)]

This merits judgment of the Court considers a sentence of imprisonment imposed on a journalist for his writings.

...

163. In essence, the Court notes that, for now, defamation is an offense punishable by imprisonment in the legislation of the respondent state, and that the latter failed to show how a penalty of imprisonment was a necessary limitation to freedom of expression in order to protect the rights and reputation of members of the judiciary.

164. Accordingly, the Court opines that sections 109 and 110 of the Information Code and section 178 of the Penal Code of Burkina Faso on the basis of which the applicant was sentenced to a custodial sentence is contrary to requirements of article 9 of the Charter and article 19 of the Covenant [on Civil and Political Rights]. The applicant having also mentioned article 66(2)(c) of the revised ECOWAS Treaty under which states parties undertake

to 'respect the rights of journalists', the Court finds that the respondent state also failed in its duty in this regard in that the custodial sentence under the above legislation constitutes a disproportionate interference in the exercise of the freedom of expression by journalists in general and especially in the applicant's capacity as a journalist.

165. Apart from serious and very exceptional circumstances for example, incitement to international crimes, public incitement to hatred, discrimination or violence or threats against a person or a group of people, because of specific criteria such as race, colour, religion or nationality, the Court is of the view that the violations of laws on freedom of speech and the press cannot be sanctioned by custodial sentences, without going contrary to the above provisions.

166. The Court further notes that other criminal sanctions, be they (fines), civil or administrative, are subject to the criteria of necessity and proportionality; which therefore implies that if such sanctions are disproportionate, or excessive, they are incompatible with the Charter and other relevant human rights instruments.

Mtikila v Tanzania

[Applications 9/2011 & 11/2011 (2013)]

This is the first judgment of the Court on the merits. The case deals with the right to stand for election and was submitted separately by the aggrieved candidate, after exhaustion of local remedies, and two Tanzanian NGOs.

...

75. As the municipal legal order currently stands in the United Republic of Tanzania, candidates who are not members of or sponsored by a political party cannot run in presidential, parliamentary or local government elections.

...

The Court's ruling on admissibility

82. Lack of exhaustion of local remedies

...

82.3 The term local remedies is understood in human rights jurisprudence to refer primarily to judicial remedies as these are the most effective means of redressing human rights violations. That the second applicant has exhausted local judicial remedies is not in dispute. The respondent, having not joined issue on the first applicants' argument that they need not have instituted an action challenging the prohibition of independent candidates, is deemed to have admitted the position of the first applicants.

In the circumstances, the Court accepts that there was no need for the first applicants to go through the same local judicial process the outcome of which was known. The parliamentary process, which the respondent states should also be exhausted is a political process and is not an available, effective and sufficient remedy because it is not freely accessible to each and every individual; it is discretionary and may be abandoned anytime; moreover, the outcome thereof depends on the will of the majority. No matter how democratic the parliamentary process will be, it cannot be equated to an independent judicial process for the vindication of the rights under the Charter. In conclusion, we find that the applicants have exhausted local

remedies as is envisaged by article 6(2) of the Protocol read together with article 56(5) of the Charter.

83. Alleged delay in filing the applications

The Court agrees with the applicants that there has not been an inordinate delay in filing the applications; because after the judgment of the Court of Appeal, the applicants were entitled to wait for the reaction of Parliament to the judgment. In the circumstances, the period of about 360 days which is about one year from the date of the judgment of the Court of Appeal until the applications were filed was not unreasonably long.

The Court's ruling on the preliminary objection on jurisdiction

Temporal jurisdiction of the Court

84. The only point on which the Court's jurisdiction is challenged is based on the fact that the conduct complained of, namely, the barring of independent candidates, occurred before the Protocol came into operation. This argument cannot be upheld. The rights alleged to be violated are protected by the Charter. By the time of the alleged violation, the respondent had already ratified the Charter and was therefore bound by it, The Charter was operational, and there was therefore already a duty on the respondent as at the time of the alleged violation to protect those rights.

...

The decision of the Court on the merits

The right to participate freely in the government of one's country

...

99. In view of the patently clear terms of article 13(1) of the Charter, which gives to the citizen the option of participating in the governance of her country directly or through representatives, a requirement that a candidate must belong to a political party before she is enabled to participate in the governance of Tanzania surely derogates from the rights enshrined in article 13(1) of the Charter. Although, the exercise of this right must be in accordance with the law.

100. The enjoyment of this right is also restricted by article 27(2) of the Charter which provides that: 'The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.'

Further, the duty set out in article 29(4) of the Charter which requires individuals, 'To preserve and strengthen social and national solidarity, particularly when the latter is threatened'; also limits the enjoyment of this right.

...

106. Jurisprudence

106.1 Jurisprudence regarding the restrictions on the exercise of rights has developed the principle that, the restrictions must be necessary in a democratic society; they must be reasonably proportionate to the legitimate aim pursued. Once the complainant has established that there is a *prima facie* violation of a right, the respondent state may argue that the right has been legitimately restricted by 'law', by providing evidence that the restriction serves one of the purposes set out in article 27(2) of the Charter. In communications 105/93, 128/94, 130/94, 152/96, *Media Rights Agenda and Others v Nigeria* and communication 255/2002, *Prince v South Africa*, the Commission has stated that the 'only legitimate reasons for limitations to the rights and freedoms of the African Charter' are found in article 27(2) of the Charter. After assessing whether the restriction is effected through a 'law of general application', the Commission applies a proportionality test, in terms of which it weighs the impact, nature and extent of the limitation against the legitimate state interest serving a particular goal. The legitimate interest

must be 'proportionate with and absolutely necessary for the advantages which are to be obtained.'

...

The Court's finding

107.1 The Court agrees with the African Commission, that the limitations to the rights and freedoms in the Charter are only those set out in article 27(2) of the Charter and that such limitations must take the form of 'law of general application' and these must be proportionate to the legitimate aim pursued.

...

107.3 The respondent has relied heavily on the *Castañeda Gutman v Mexico* case. In that case, the Inter-American Court found that individuals had other options if they wished to seek public elective office. Thus, apart from having to be a member of and being sponsored by a political party, one could be sponsored by a political party without being a member of that party and also one could form one's own political party particularly since the requirements for doing so were not arduous. In the instant case, Tanzanian citizens can only seek public elective office by being members of and being sponsored by political parties; there is no other option available to them.

107.4 The United Nation's Human Rights Committee's General Comment No 25 on *[T]he right to participate in public affairs, voting rights and the right of equal access to public service (art 25)*, at paragraph 17 thereof, provides that:

The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.

The Court agrees with this General Comment, as it is an authoritative statement of interpretation of article 25 of the ICCPR, which reflects the spirit of article 13 of the Charter and which, in accordance with article 60 of the Charter, is an 'instrument adopted by the United Nations on human and peoples' rights' that the Court can 'draw inspiration from' in its interpretation of the Charter.

...

110. Finally on the issue that the second applicant has now formed his own political party, the Court finds that it does not in any way absolve the respondent from any of its obligations. If the second applicant in his eagerness to participate in politics as a responsible citizen forms his own party to cross the hurdle set up by the respondent, he should not be forced to continue if he finds himself unable to cope with the burden of establishing and maintaining a political party. It cannot be said he has not been prevented from freely participating in the government of his country. He tried it once and if he no longer wishes to go that route, he has the right to seek to insist on the strict observance of his Charter rights. And having chosen not to form his own party, must he be excluded? Certainly not. Indeed, it is even arguable that, even if the applicant has successfully formed a political party, he cannot be stopped from challenging the validity of the laws in question and from asserting that the same amounts to a violation of the Charter. A matter such as this one cannot and must not be dealt with as though it were a personal action, and it would be inappropriate for this Court to do so. If there is violation, it operates to the prejudice of all Tanzanians; and if the applicants' application succeeds, the outcome inures to the benefit of all Tanzanians.

111. The Court therefore finds a violation of the right to participate freely in the government of one's country since for one to participate in presidential, parliamentary or local government elections in Tanzania one must belong to a political party. Tanzanians are thus prevented from freely participating in

the government of their Country directly or through freely chosen representatives.

...

114. The Court therefore finds that by requiring individuals to belong to and to be sponsored by a political party in seeking election in the presidential, parliamentary and local government posts, the respondent has violated the right to freedom of association. This is because individuals are compelled to join or form an association before seeking these elective positions.

...

119. ... To justify the difference in treatment between Tanzanians, the respondent has, as already mentioned, invoked the existence of social needs of the people of Tanzania based, *inter alia*, on the particular structure of the state (union between mainland Tanzania and Tanzania Zanzibar) and the history of the country, all requiring a gradual construction of a pluralist democracy in unity.

The question then arises whether the grounds raised by the respondent state in answer to that difference in treatment enshrined in the above mentioned constitutional amendments are pertinent, in other words reasonable, and legitimate.

As the Court has already indicated, those grounds of justification cannot lend legitimacy to the restrictions introduced by the same constitutional amendments to the right to participate in the government of one's country, and the right not to be compelled to be part of an association (*supra*, paragraphs 107 - 11 and paragraphs 114 -115).

It is the view of the Court that the same grounds of justification do not legitimise the restrictions to not be discriminated against and the right to equality before the law. The Court therefore concludes that there has been violation of articles 2 and 3(2) of the Charter.

...

126. In conclusion:

Having found the applications admissible and that the Court has jurisdiction to consider the applications, the Court by majority finds:

1. In respect of the first applicants the Court holds:
That the respondent has violated articles 2, 3, 10 and 13(1) of the Charter.
2. In respect of the second applicant, the Court holds:
That the respondent has violated articles 2, 3, 10 and 13(1) of the Charter.
3. The respondent is directed to take constitutional, legislative and all other necessary measures within a reasonable time to remedy the violations found by the Court and to inform the Court of the measures taken.
4. In accordance with rule 63 of the Rules of Court, the Court grants leave to the second applicant to file submissions on his request for reparations within 30 days hereof and the respondent to reply thereto within 30 days of the receipt of the second applicant's submissions.
5. In accordance with rule 30 of the Rules of Court, each party shall bear its own costs.

***Zongo v Burkina Faso*, Judgment on reparations**
[Application 013/2011 (2015)]

In the merits judgment in *Zongo v Burkina Faso*, the Court held that Burkina Faso had failed to investigate alleged extrajudicial executions of an investigate journalist and his companions with due diligence. It is the practice of the Court to deliver a separate reparations judgment after the merits judgment when it has found violations.

...
50. In the context and circumstances of the instant case, there is no doubt that many people suffered morally, in varying degrees, from the lack of due diligence on the part of the authorities of the respondent state in apprehending, prosecuting and putting to trial the perpetrators of the quadruple assassination; but one may reasonably consider that those who acted (directly or by representation) on the very front line in this respect and suffered the most from the situation are the spouses, children, fathers and mothers of the deceased. These are therefore the persons who, in the instant case, may claim the status of victim, and therefore lay claim to reparation ...

...
100. Relying on its own jurisprudence ... the Court is of the opinion that as a measure of satisfaction, the respondent state, should within six months from the date of this judgment, publish: (i) the official summary of this judgment drafted by the Registry of the Court in French, once in the official gazette, and once in a widely read national Daily; (ii) the same summary on an official internet website of the respondent state, and maintain the publication for one year.

...
103. On the application for resumption of investigations into the murder of Norbert Zongo and his three companions, the Court notes that this is not really a measure of non-repetition, but rather one of cessation of a violation already established.

104. Be that as it may, the Court is of the opinion that this is indeed a legitimate measure likely to forestall the continued violation of article 7 of the Charter in this case.

...
109. ... the Court grants the applicants' request to order the respondent state to reopen the investigations with a view to prosecute and bring to trial the perpetrators of the murder of Norbert Zongo and his three companions, and thus shed light on this matter and do justice to the families of the victims.

Chart of Ratifications: AU Human Rights Treaties

Source: <http://www.au.int> (accessed 28 August 2016)

	Treaty Establishing the African Economic Community	Constitutive Act of the African Union	Protocol on Amendments to the Constitutive Act of the African Union	Protocol on the Pan-African Parliament	Protocol on the Peace and Security Council	African Charter on Human and Peoples' Rights
COUNTRY	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded
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	12/12/06	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	16/05/08	12/03/04		26/04/86
Chad	26/06/93	16/01/01	19/08/08	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	20/11/12	23/02/04	23/02/04	9/12/82
Côte d'Ivoire	22/02/93	27/02/01			24/08/07	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	19/06/08	8/10/03	1/02/05	20/03/84
Equatorial Guinea	20/12/02	26/12/00	11/05/06	3/02/04	29/01/03	7/04/86
Eritrea		1/03/01			14/10/11	14/01/99
Ethiopia	5/11/92	8/03/01		29/05/03	29/05/03	15/06/98
Gabon	06/11/07	17/05/01	18/05/07	29/12/03	29/12/03	20/02/86
The Gambia	20/04/93	22/02/01	30/04/09	4/07/03	19/11/03	8/06/83
Ghana	25/09/91	11/05/01	28/06/07	15/09/03	4/07/03	24/01/89
Guinea	17/07/92	23/04/02	17/05/11	15/03/04	20/01/12	16/02/82
Guinea-Bissau	24/06/92	14/01/01	21/12/11	9/06/09	23/12/11	4/12/85
Kenya	18/06/93	4/07/01	22/05/07	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

	Treaty Establishing the African Economic Community	Constitutive Act of the African Union	Protocol on Amendments to the Constitutive Act of the African Union	Protocol on the Pan-African Parliament	Protocol on the Peace and Security Council	African Charter on Human and Peoples' Rights
Liberia	23/06/93	26/02/01	17/09/07			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	8/07/08	22/12/03	7/07/08	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	29/05/07	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	27/04/09	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	28/11/13	13/04/92
Sierra Leone	15/03/94	9/02/01		16/06/03	16/06/03	21/09/83
Somalia		26/02/01			23/12/13	31/07/85
South Africa	31/05/01	3/03/01	16/03/04	3/07/02	15/05/03	9/07/96
South Sudan		15/08/11		26/01/14		23/10/13
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	30/12/05	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	10/01/07	3/01/03	23/02/04	5/11/82
Tunisia	3/05/94	13/03/01		1/03/04	25/12/06	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	49	54	28	48	49	54

Morocco withdrew its membership from the OAU in 1984.

	Protocol on the African Human Rights Court*	Protocol on the Rights of Women	OUA Refugee Convention	African Children's Charter	Convention on the Prevention and Combating of Terrorism
COUNTRY	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded
Algeria	22/04/03		24/05/74	8/07/03	16/09/00
Angola		30/08/07	30/04/81	11/04/92	20/08/99
Benin	10/06/14	30/09/05	26/02/73	17/04/97	1/03/04
Botswana			4/05/95	10/07/01	
Burkina Faso	31/12/98	6/09/06	19/03/74	8/06/92	23/06/03
Burundi	2/04/03		31/10/75	28/06/04	4/11/03
Cameroon	09/12/14	13/09/12	7/09/85	5/09/97	
Cape Verde		21/06/05	16/02/89	20/07/93	3/05/02
Central African Republic			23/07/70		
Chad	27/01/16		12/08/81	30/03/00	3/09/07
Comoros	23/12/03	18/03/04	2/04/04	18/03/04	13/09/02
Congo	10/08/10	14/12/11	16/01/71	8/09/06	8/09/06
Côte d'Ivoire	7/01/03	5/10/11	26/02/98	1/03/02	
Democratic Republic of Congo		9/06/08	14/02/73		
Djibouti		2/02/05		3/01/11	16/05/04
Egypt			12/06/80	9/05/01	8/02/01
Equatorial Guinea		27/10/09	8/09/80	20/12/02	20/12/02
Eritrea				22/12/99	22/12/99
Ethiopia			15/10/73	2/10/02	24/02/03
Gabon	14/08/00	10/01/11	21/03/86	18/05/07	25/02/05
The Gambia	30/06/99	25/05/05	12/11/80	14/12/00	30/04/09
Ghana	25/08/04	13/06/07	19/06/75	10/06/05	30/08/02
Guinea		16/04/12	18/10/72	27/05/99	20/06/03
Guinea-Bissau		19/06/08	27/06/89	19/06/08	31/07/08
Kenya	4/02/04	6/10/10	23/06/92	25/07/00	28/11/01
Lesotho	28/10/03	26/10/04	18/11/88	27/09/99	6/03/02
Liberia		14/12/07	1/10/71	1/08/07	
Libya	19/11/03	23/05/04	25/04/81	23/09/00	16/01/02
Madagascar				30/03/05	12/09/03
Malawi	9/09/08	20/05/05	4/11/87	16/09/99	23/06/03
Mali	10/05/00	13/01/05	10/10/81	3/06/98	11/03/02
Mauritania	19/05/05	21/09/05	22/07/72	21/09/05	3/03/04

	Protocol on the African Human Rights Court*	Protocol on the Rights of Women	OAU Refugee Convention	African Children's Charter	Convention on the Prevention and Combating of Terrorism
Mauritius	3/03/03			14/02/92	27/01/03
Mozambique	17/07/04	9/12/05	22/02/89	15/07/98	21/10/02
Namibia		11/08/04		23/07/04	1/10/12
Niger	17/05/04		16/09/71	11/12/99	14/09/04
Nigeria	20/05/04	16/12/04	23/05/86	23/07/01	28/04/02
Rwanda	5/05/03	25/06/04	19/11/79	11/05/01	29/04/02
Sahrawi Arab Democratic Rep.	27/11/13				9/01/02
São Tomé and Príncipe					
Senegal	29/09/98	27/12/04	1/04/71	29/09/98	21/01/02
Seychelles		9/03/06	11/09/80	13/02/92	17/07/03
Sierra Leone		3/07/15	28/12/87	13/05/02	
Somalia					
South Africa	3/07/02	17/12/04	15/12/95	7/01/00	7/11/02
South Sudan			4/12/13		
Sudan			24/12/72		15/04/03
Swaziland		5/10/12	16/01/89	5/10/12	
Tanzania	7/02/06	3/03/07	10/01/75	16/03/03	3/09/03
Togo	23/06/03	12/10/05	10/04/70	5/05/98	3/01/03
Tunisia	21/08/07		17/11/89		13/11/01
Uganda	16/02/01	22/07/10	24/07/87	17/08/94	17/10/03
Zambia		2/05/06	30/07/73		
Zimbabwe		15/04/08	28/09/85	19/01/95	
TOTAL NUMBER OF STATE PARTIES	30	37	46	47	41

* As of August 2016 seven states had made a declaration under article 34(6) allowing direct access to the Court for individuals and NGOs: Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali and Tanzania.

Rwanda withdrew its declaration in March 2016.

	Protocol to the Convention on the Prevention and Combating of Terrorism	African Union Convention on Preventing and Combating Corruption	African Convention on the Conservation of Nature (Revised)	African Union Non-Aggression and Common Defence Pact	African Youth Charter
COUNTRY	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded
Algeria	6/06/07	23/05/06		6/06/07	
Angola			17/02/14		10/06/09
Benin	11/09/12	20/09/07			6/11/14
Botswana		17/05/14			
Burkina Faso		29/11/05		3/09/09	17/09/08
Burundi	16/09/06	18/01/05	14/05/07		
Cameroon					11/01/11
Cape Verde					15/02/11
Central African Republic					
Chad		3/03/15	20/01/15	19/08/08	29/08/12
Comoros		2/04/04	2/04/04	12/07/12	
Congo		31/01/06	8/01/14	28/12/06	14/12/11
Côte d'Ivoire		14/02/12	22/07/13		30/11/09
Democratic Republic of Congo					
Djibouti					28/08/08
Egypt					9/03/15
Equatorial Guinea					
Eritrea					
Ethiopia	5/12/08	18/09/07		14/04/14	13/02/14
Gabon	18/05/07	2/03/09		18/05/07	17/07/07
The Gambia		30/04/09		30/07/09	30/04/09
Ghana		13/06/07	13/06/07	28/06/07	28/10/13
Guinea	17/06/11	5/03/12		17/06/11	17/06/11
Guinea-Bissau	22/06/15	23/12/11		23/12/11	31/07/08
Kenya		3/02/07			23/01/14
Lesotho	27/09/12	26/10/04	26/10/04		31/05/10
Liberia					
Libya	7/03/07	23/05/04	04/06/06	04/06/06	11/08/08
Madagascar		6/10/04			
Malawi		26/11/07			13/08/10
Mali	21/08/07	17/12/04	13/01/05	21/08/07	21/08/07
Mauritania	29/10/14			7/07/08	12/04/12

	Protocol to the Convention on the Prevention and Combating of Terrorism	African Union Convention on Preventing and Combating Corruption	African Convention on the Conservation of Nature (Revised)	African Union Non-Aggression and Common Defence Pact	African Youth Charter
Mauritius					8/02/08
Mozambique	29/07/11	2/08/06		2/09/08	29/07/08
Namibia		5/08/04			17/7/08
Niger	3/03/06	15/02/06	11/10/06	29/05/07	3/06/08
Nigeria		2/09/06			21/04/09
Rwanda	9/07/10	25/06/04	25/06/04	9/07/10	7/08/07
Sahrawi Arab Democratic Rep.	27/11/13	27/11/13		27/04/09	
São Tomé and Príncipe					
Senegal		12/04/07		14/02/06	17/09/09
Seychelles		11/06/08			11/02/11
Sierra Leone		31/12/08			
Somalia					
South Africa	25/03/07	11/11/05	23/04/13		28/05/09
South Sudan					
Sudan					
Swaziland					6/11/12
Tanzania		22/02/05			21/03/13
Togo		14/09/09		29/06/07	28/12/08
Tunisia	18/12/07				6/07/11
Uganda		30/08/04			6/08/08
Zambia		3/3/07			16/09/09
Zimbabwe		17/12/06			16/03/09
TOTAL NUMBER OF STATE PARTIES	17	37	13	20	38

	African Charter on Democracy, Elections and Governance	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	Protocol on the Statute of the African Court of Justice and Human Rights	Charter for African Cultural Renaissance
COUNTRY	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded	Ratified/ Acceded
Algeria				
Angola		14/05/13		
Benin	28/06/12	28/02/12	28/06/12	
Botswana				
Burkina Faso	26/05/10	5/07/12	23/06/10	
Burundi				
Cameroon	24/08/11			
Cape Verde				
Central African Republic		20/12/10		
Chad	11/07/11	11/07/11		2/08/12
Comoros				
Congo		15/11/14	14/12/11	11/06/12
Côte d'Ivoire	16/10/13	20/12/13		
Democratic Republic of Congo				
Djibouti	21/12/12	15/07/15		
Egypt				
Equatorial Guinea				
Eritrea				
Ethiopia	5/12/08			15/10/12
Gabon		26/01/11		
The Gambia		27/04/11		
Ghana	6/09/10			
Guinea	17/06/11			
Guinea-Bissau	23/12/11	23/12/11		
Kenya				
Lesotho	30/06/10	19/01/12	6/05/09	
Liberia				
Libya				
Madagascar				
Malawi	11/10/12	18/04/13	13/08/09	
Mali	13/08/13	7/11/12		

	African Charter on Democracy, Elections and Governance	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	Protocol on the Statute of the African Court of Justice and Human Rights	Charter for African Cultural Renaissance
Mauritania	7/07/08	5/03/15		
Mauritius				
Mozambique				
Namibia				
Niger	4/10/11	10/05/12		
Nigeria	1/12/11	17/04/12		18/10/10
Rwanda	9/07/10	27/12/12		
Sahrawi Arab Democratic Rep.	27/11/13	27/11/13		
São Tomé and Príncipe				
Senegal				13/10/10
Seychelles				
Sierra Leone	17/02/09	15/07/10		
Somalia				
South Africa	24/12/10			
South Sudan	26/01/14			
Sudan	19/06/13			
Swaziland		5/10/12		
Tanzania				
Togo	24/01/12	8/07/11		
Tunisia				
Uganda		29/01/10		
Zambia	31/05/11	14/01/11		
Zimbabwe		22/07/13		
TOTAL NUMBER OF STATE PARTIES	24	25	5	6

Useful websites

African Commission on Human and Peoples' Rights	www.achpr.org
African Committee on the Rights and Welfare of the Child	www.acerwc.org
African Court	www.african-court.org
African Human Rights Case Law Analyser	caselaw.ihrda.org
African Peer Review Mechanism	www.aprm-au.org
African Union	www.au.int
Afrimap	www.afrimap.org
Centre for Human Rights, University of Pretoria	www.chr.up.ac.za
Institute for Security Studies	www.issafrica.org
NEPAD	www.nepad.org
Pan-African Parliament	www.pan-african-parliament.org
University of Minnesota, Human Rights Library	http://www1.umn.edu/humanrts/regional.htm

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