

The African Human Rights System: A Guide for Indigenous Peoples



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Forest Peoples
Programme

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I Introduction

This guide provides an overview of the African system for the promotion and protection of human and peoples' rights, as developed under the umbrella of the African Union (AU). Established in 2001, the AU is an inter-governmental organisation of which all African countries except Morocco are members. It replaced the former Organisation of African Unity (OAU). In addition to its broad mandate on economic issues, socio-political development, and peace and security, the AU has as one of its objectives "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".¹

While still in its infancy in terms of the promotion and protection of indigenous peoples' rights,² the African system is comprised of a number of legal norms and mechanisms that may be of use to indigenous peoples and organisations in Africa.

This guide is intended to be used as a reference tool by indigenous peoples and organisations working to defend the rights of indigenous peoples in Africa, but should not be considered as a complete explanation of the relevant law or processes.



¹ See 'Objectives of the AU' on the African Union website (<http://www.africa-union.org>), at http://www.africa-union.org/root/au/AboutAu/au_in_a_nutshell_en.htm

² The notion of 'indigenous peoples' remains contentious in many parts of Africa. While certain peoples in Africa self-identify as indigenous and align themselves with the global indigenous movement, and the African Commission on Human and Peoples' Rights has recognized the existence of such peoples in Africa (see Section IV), many States take the position that all Africans are indigenous. A full discussion of this debate is outside the scope of the present document, and for our purposes the term indigenous peoples is meant to refer to those communities who self-identify as indigenous and who suffer similar forms of discrimination and marginalisation as other indigenous peoples the world over. In light of the protection of the rights of 'peoples' in the African Charter on Human and Peoples' Rights, it is likely that the same rights and arguments apply regardless of the use of the term 'indigenous'.

II Principal Human Rights Treaties of the African Union

In this guide, we will be looking primarily at the four principal human rights treaties of the African Union:

- The African Charter on Human and Peoples' Rights;
- The African Charter on the Rights and Welfare of the Child;
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- The Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights.

We will also consider the African Convention on the Conservation of Nature and Natural Resources, the recently revised version of which contains interesting provisions for indigenous peoples struggling against the impact of environmental conservation that is carried out without due consideration of human and peoples' rights. The substantive norms of the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on the Rights of Women in Africa and the African Convention on the Conservation of Nature and Natural Resources are discussed in this Section. The procedural mechanism established in the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights is discussed in Section V. The full text of each of these treaties can be found in Annexes I to VI.

States voluntarily elect to become bound by treaties of the African system by 'ratifying' or 'acceding to' them and depositing their document of ratification or accession with the AU. States that have ratified or acceded to a particular treaty are referred to as 'States parties' to that treaty. A treaty 'enters into force', or becomes binding (only for those countries that have ratified or acceded to it) within a certain period of time (*e.g.* 30 days or 3 months) after a stated minimum number of ratifications are deposited with the AU, as set out



in the treaty itself. For States that ratify a treaty after it has come into force, the treaty comes into force within a certain period of time after that State deposits its instrument of ratification or accession. Thus, different States become bound by treaties at different times, and it is important to ensure that your country has ratified any given treaty before relying on its provisions.³ If your country has not ratified a human rights treaty of interest to your cause, you can lobby your government to do so.

³ When a treaty becomes binding according to the *domestic* law of the country depends on the domestic legal system of that country. A description of the legal questions that arise in this respect is outside the scope of this Guide, but suffice it to say that proper legal advice should be obtained before relying on an international treaty in court proceedings.

A The African Charter on Human and Peoples' Rights

i History & creation

In 1981, the OAU adopted the African Charter on Human and Peoples' Rights (the 'Charter'), also known as the 'Banjul Charter', to stand as the primary human rights instrument for the African continent. Upon receiving the required number of ratifications by OAU member States, the Charter came into force on 21 October 1986. The Charter is an international treaty that is legally binding on those States that have ratified it and is intended to set international standards that African States are required to observe. The full text of the Charter can be found in Annex I.



ii States parties

To date, 53 African States have ratified the Charter.⁴ A full list of ratifications, including the dates of ratification, can be found in Annex VII.

iii Key provisions

The Charter contains two primary categories of rights and freedoms in Part I, Chapter I, as well as some general provisions applicable to both categories. The first category is **individual rights**, which apply to each human being as an individual. The individual rights guaranteed by the Charter are found in Articles 3-18. The second category is **peoples' rights** or collective rights, which apply to peoples as a collectivity. These rights are found in Articles 19-24. The general provisions of Chapter I which apply to all rights are found in Articles 1, 2 and 26.

Part I, Chapter II of the Charter discusses 'duties' that individuals owe to each other and to society in general. These provisions are expressions of the importance that Africans place on harmonious relations within the family and in the broader society. It is important to note that these duties do not affect the rights and freedoms contained in Chapter I of the Charter, that is, the State cannot rely upon an alleged failure of a person to live up to a duty in Chapter II as a defence to the State's violation of a right or freedom in Chapter I.

⁴ All African States except for Morocco, which is not a member of the AU, have ratified the Charter.

Within both the individual and collective rights categories under Part I, Chapter I of the Charter are different types of rights that are often differentiated as either **civil and political rights** or **economic, social and cultural rights**. These are not airtight categories and there is crossover between some of them, but generally speaking civil and political rights are those rights which relate to life, liberty, personal security, judicial processes and participation in the affairs of one's country and community. Economic, social and cultural rights relate to basic human needs such as food, housing, work, health care, education and the expression and preservation of culture. Both types of rights are important for indigenous peoples. Typically poor and marginalized, such peoples often have less access to socio-economic support and development than other members of



society, for instance access to education (both in terms of attendance within the regular school system and suitability of that system to their particular needs), access to health care and services (including proper conditions for good health such as food, water and housing), and access to fair and equitable conditions of work. Without having these basic needs met, indigenous peoples can give little attention to civil and political matters such as voting, obtaining identity cards, or participating in

national decision-making bodies. On the other hand, without being politically empowered on an equal footing with other members of society through obtaining the necessary national documentation (which is often required for movement within the country and for accessing government services), voting in local and national elections, and participating in the national legislature and other governing bodies, the socio-economic issues facing indigenous peoples will not get the attention they deserve as the voices of these communities will not be heard. Further, these communities will not be able to participate in decisions which affect them, such as land and resource use planning, social policy development and the elaboration of poverty reduction strategies.

Unlike the United Nations system which treats civil and political rights differently from economic, social and cultural rights by placing them in different treaties with different degrees and methods of enforcement, in Africa all of these rights are guaranteed in the same instrument (the Charter) and placed on the same footing. Thus, whereas the UN system is still struggling over whether economic, social and cultural rights can be made 'justiciable' (i.e. capable of being the subject of a legal complaint), in Africa it is believed that

... 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.⁵

Examples of **individual civil and political rights** contained within Articles 3–18 of the Charter are the rights to:

- equality before the law and equal protection of the law (Article 3)
- life, liberty and freedom from torture, cruel, inhuman and degrading treatment, slavery and other forms of exploitation (Article 5)
- a fair trial (Article 7)
- freedom of conscience and religion (Article 8)
- freedom of assembly and association with others (Arts. 10 and 11)
- freedom of movement and residence (Article 12)
- participate in government (Article 13)
- non-discrimination against women (Article 18(3))

Thus, in a situation where an indigenous person does not have the same access to legal processes in her country as other members of society or does not enjoy equal protection of the police, for instance, there is a violation of the right to equality before the law and equal protection of the law. Where an indigenous person is held in a position of slavery by another person and the State does not take appropriate measures to prevent and protect against such slavery, there is a violation of his right to freedom from slavery. Where indigenous persons do not have the same rights and access as others to vote or participate in local and national government and decision-making bodies, there is a violation of the right to participate in government.

Another key right for indigenous peoples, particularly in respect of their struggle for recognition and protection of their rights to their traditional lands and territories, is the right to property. Article 14 of the 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.

As we will see later, this right – read in conjunction with several of the collective rights provisions of the Charter – provides the legal foundation for any analysis of human rights violations relating to indigenous lands and territories.

Examples of **individual economic, social and cultural rights** under the Charter include the rights to:

- work under equitable and satisfactory conditions (Article 15)
- health and medical attention (Article 16)
- education (Article 17(1))
- participate in cultural life (Article 17(2))

⁵ African Commission on Human and Peoples' Rights, Communication 155/96, 15th Annual Activity Report (2001-02), para. 68.

Indigenous peoples in Africa are often subject to inequitable conditions of work including unfair pay for their labour. The State has a duty to protect against such treatment whether by private or public employers, in accordance with Article 15. Similarly, where indigenous peoples are not given the same access to health services or to education as other communities, taking into account their specific needs, it can be considered as a violation of Articles 16 and 17(1).

Box 1: The Concept of 'Peoples' in the Charter

There is no definition of 'peoples' in the Charter, nor indeed in any other international instrument that uses the term. While some have argued that 'peoples' rights' refers only to the rights held by all the people of a given State, the monitoring body for the Charter – the African Commission on Human and Peoples' Rights⁶ – has clearly interpreted this term to mean the rights of different peoples within the State. For instance, the Commission has acknowledged that distinct groups within a State can be recognized as peoples, thus possessing a right of self-determination.⁷ The Commission also interpreted Article 19 of the Charter (relating to the equality of all peoples) as meaning that discrimination in Mauritania against black Mauritians was a prohibited domination by one group over another. It went on to say that Article 23(1), which provides that all peoples have the right to national and international peace and security, could be used to protect the villages of black Mauritians against attack.⁸ In another context, it referred to the rights of 'all the Peoples of Rwanda.'⁹

The Commission has also recognized the existence of 'indigenous peoples' in Africa. In the ground-breaking report of the Commission's Working Group on Indigenous Populations/Communities, which was adopted by the Commission in 2003, the concept of indigenous peoples is explored in great detail.¹⁰

The **peoples' rights** or collective rights in Articles 19-24 of the Charter include:

- the right to equality and to be free from domination by other peoples (Article 19)
- the right to exist and to self-determination (Article 20)
- the right to freely dispose of natural wealth (Article 21)
- the right to economic, social and cultural development (Article 22)
- the right to a satisfactory environment favourable to their development (Article 24)

⁶ Discussed in Sections III and VIII.

⁷ *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Communication 155/96, Fifteenth Activity Report, 2001-02, ACHPR/RPT.15.

⁸ *Collectif des Venues et Ayants-droits, Association Mauritanienne des Droits de l'homme v Mauritanie*, Thirteenth Activity Report, 1999-2000, ACHPR/RTP/13th, Annex V.

⁹ Resolution on the Situation in Rwanda, *Seventh Annual Activity Report of the African Commission on Human and Peoples' Rights, 1993-94*, ACHPR/APT/7th, Annex XII, at para. 2.

¹⁰ See Section IVC.

The African Commission has stated that peoples' rights as contained in the Charter may not be exercised in violation of the principle of territorial integrity of existing, independent States.¹¹ What this means is that the right to self-determination may not be used to justify secession from independent States and must be exercised within existing State boundaries.¹²

In the context of indigenous peoples, it can be argued that the collective rights in Part I, Chapter I of the Charter as well as the right to property in Article 14 – taken separately and as a whole – signal an obligation on States parties to respect and protect their right to the ownership, control, use and enjoyment of their ancestral lands, territories and resources. Indeed, the African Commission has noted that “the protection of rights to land and natural resources is fundamental for the survival of indigenous communities in Africa and such protection relates both (sic) to Articles 20, 21, 22 and 24 of the African Charter.”¹³ This is consistent with the decisions and commentary of a variety of UN human rights bodies on indigenous rights to their ancestral lands.

Despite some early concerns that the collective rights in the Charter might not be justiciable (capable of being the subject of a legal complaint), the Commission has been willing to consider complaints regarding alleged violations of peoples' rights.¹⁴ This again is consistent with the Charter's unique construction which places all rights on an equal footing with each other.

While the Charter's provisions on collective rights, as they relate to indigenous peoples, have yet to be substantively developed by the Commission, there have been some helpful decisions, particularly coming out of a recent case involving the Ogoni people of Nigeria.¹⁵

¹¹ See note 52 below, p. 77.

¹² This is essentially the position taken by the UN Working Group on Indigenous Populations when it drafted the UN Declaration on the Rights of Indigenous Peoples.

¹³ See note 52 below, p. 21.

¹⁴ E.g. *Katangese Peoples' Congress v. Zaire*, Communication 75/92, *Eighth Annual Activity Report 1994-95*, ACHPR/RPT/8th, Annex VI; See also notes 7 and 8.

¹⁵ Above note 7.

Box 2: The Ogoni Case

The government of Nigeria was involved in oil production in Ogoniland, part of the oil-rich Niger Delta region. Local Ogoni communities were not involved in the decisions affecting development of their region, and production activities were carried out without regard for their health or environment. A number of oil spills contaminated the water and soil, causing short- and long-term health consequences for the Ogoni people, due in part to a lack of proper safety measures. When the Ogoni people protested, State military forces carried out violent and often fatal attacks against them.

In a communication brought under the Charter, the African Commission considered the impact of the oil exploration on the Ogoni people and through an analysis of both the individual economic and social rights and the collective rights in the Charter, found a violation of the right of peoples to a general satisfactory environment in Article 24, linking it with a violation of the individual right to health (Article 16). Moreover, the Commission found a violation of the Article 21 right of peoples to freely dispose of their wealth and natural resources since the government failed to involve Ogoni communities in the decision-making regarding the oil exploration. The Commission noted that Nigeria had “given the green light to private actors and the oil companies in particular to devastatingly affect the well-being of the Ogonis” in violation of Article 21.¹⁶

The most direct legal case under the African system involving indigenous peoples' collective land rights was heard by the Commission in November 2006. The decision of the Commission has not yet been issued, but it is hoped that it will favourably advance the recognition and protection of indigenous rights on the African continent.

¹⁶ Id para 58.

Box 3: The Endorois Case

In the case of *CEMIRIDE (on behalf of the Endorois Community) v. Kenya*,¹⁷ the pastoralist Endorois community, who self-identify as indigenous, asserted multiple violations of their collective rights to land, natural resources and development, among other things. The communication alleges that the traditional lands of the Endorois in the Lake Bogoria region of Kenya were declared a nature reserve by the government in the 1970s, and the Endorois were forced to relocate. Compensation arrangements in the form of land, money and benefit sharing were not fully implemented. The Endorois' eviction resulted in the death of over half of their cattle due to the unsuitability of their new environs, and the community was no longer able to practice its culture or religion including worshipping its ancestors whose spirits were believed to inhabit Lake Bogoria. Community members who tried to access their traditional lands were beaten and arrested by Kenyan authorities. The case came before the High Court of Kenya, which dismissed the Endorois claim.

After the dismissal of their case in the national courts, the Endorois brought their complaint to the African Commission on Human and Peoples' Rights. The case alleges violations by the government of Kenya of the Endorois' rights to property (Article 14), to freely dispose of their wealth and natural resources (Article 21), to freely practice their religion (Article 8), to culture (Arts. 17(2) and (3)), and to development (Article 22). It seeks restitution (return) of the Endorois land including demarcation and legal titling and compensation for the losses suffered by the community as a result of the violations.

The **general provisions** of Part I, Chapter I of the Charter are found in Articles 1, 2 and 26. Both individual and peoples' rights are subject to these general provisions which provide, respectively, that:

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them. (Article 1)

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. (Article 2)

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter. (Art 26)

Articles 1 and 2 oblige all States parties to implement and give effect to the rights found in the Charter, without discrimination, in their domestic laws and to ensure that individuals and peoples may enforce those rights through domestic courts and administrative

¹⁷ Communication 276/2003.

procedures. Article 26 continues in the same vein requiring that States parties ensure that domestic courts are independent and that governmental and non-governmental human rights institutions may operate and promote and protect the rights found in the Charter.

While the Charter contains a number of positive elements when viewed in the context of international human rights law in general, many of the rights are weakened by qualifications or exceptions, for example the right of States to encroach upon the Article 14 right to property in certain circumstances as provided for in the second sentence of Article 14.

iv Monitoring

The Charter is promoted and monitored through the African Commission on Human and Peoples' Rights, which is discussed in Section III.

B The African Charter on the Rights and Welfare of the Child

i History & creation

The African Charter on the Rights and Welfare of the Child (the 'Children's Charter') was adopted by the OAU in 1990 and came into force on 29 November 1999. It is legally binding on all States that have ratified it. The full text of the Children's Charter can be found in Annex II.

ii States parties

To date, 41 African States have ratified the Children's Charter, as outlined in Annex VII.

iii Key provisions

While children enjoy the same human rights as adults through the Charter, the Children's Charter was adopted with the aim of ensuring that African States recognize the unique problems that confront children in Africa. Its Preamble expresses 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/she needs special safeguards and care'.¹⁸

The Children's Charter is similar in many ways to the UN Convention on the Rights of the Child (CRC). It guarantees children such rights as the right to life; to a name and nationality; to freedom of expression, association and religion; to education and health; to protection from all forms of abuse and exploitation; to a fair trial; and to freedom from torture and inhuman or degrading treatment or punishment. Both instruments affirm that parents share equal responsibilities in respect of their children.

The Children's Charter also differs from the CRC in several ways, some examples of which are highlighted in Box 4.



¹⁸ Children's Charter, third paragraph of Preamble.

Box 4: Some differences between the CRC and the Children's Charter		
	CRC	Children's Charter
Definition of a child	Under 18 years old 'unless under the law applicable to the child, majority is attained earlier' (Article 1)	Under 18 years old (Article 2)
Prohibited grounds of discrimination	Race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (Article 2(1))	Race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status (Article 3)
Traditional or cultural practices	States must take measures towards 'abolishing traditional practices prejudicial to the health of children' (Article 24(3))	Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the Children's Charter shall to the extent of such inconsistency be discouraged (Article 1(3)) States must take measures towards eliminating 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 (Article 21(1))
Child marriage	No provisions	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 18 years and make registration of all marriages in an official registry compulsory (Article 21(2))
Armed conflict	Children from age 15 can be recruited into armed forces and take direct part in hostilities	No child shall be recruited or take direct part in hostilities

Box 4: Some differences between the CRC and the Children's Charter		
	CRC	Children's Charter
Indigenous and minority children	In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his/her group, to enjoy his/her own culture, to profess and practise his/her own religion, or to use his/her own language (Article 30)	No provisions
Duties on child	No provisions	Responsibilities towards family and society, the State and other legally recognized communities and the international community. Subject to their age and ability, children have a duty to: (a) work for the cohesion of the family, respect parents, superiors and elders at all times and to assist them in case of need; (b) serve national community by placing her/his physical and intellectual abilities at its service; (c) preserve and strengthen social and national solidarity; (d) preserve and strengthen African cultural values in 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) preserve and strengthen the independence and the integrity of her/his country; (f) contribute to the best of her/his abilities, at all times and at all levels, to the promotion and achievement of African Unity (Article 31) ¹⁹

¹⁹ As under the Charter, the failure of a child to live up to her/his 'duties' as set out in the Children's Charter cannot be used to defend a violation of any of that child's rights.

Under both the CRC (Article 4) and the Children's Charter (Article 1(1)), States agree to undertake all appropriate legislative and other measures to implement the guaranteed rights; however the CRC qualifies this by making the implementation of economic, social and cultural rights subject to a State's available resources.²⁰ The Children's Charter does not contain this qualification. Thus, as we saw with the Charter earlier, the African system is again unique in placing civil and political rights on the same footing as economic, social and cultural rights.

Despite the absence of any provisions specifically on indigenous children, the Children's Charter is an important treaty for the promotion and protection of indigenous children's rights. Clearly, all rights and freedoms relate equally to indigenous and non-indigenous children. Indeed, the Children's Charter prohibits discrimination based on race or ethnicity (Articles 3 and 26). It also contains provisions which protect the cultural identity of the child (for example, Articles 9, 11(2), 12, 13, 17(2)(c)(ii), and 25(3)).

iv Monitoring

Article 32 of the Children's Charter establishes an African Committee of Experts on the Rights and Welfare of the Child (the 'Children's Committee') to "promote and protect the rights and welfare of the child." The Committee is composed of 11 members who serve in their individual capacity. Members are elected by the Assembly of Heads of State and Government of the AU. They serve for a term of five years and, unlike the African Commission, may not be re-elected. The Committee's first 11 members were elected in July 2001. Its members as of January 2007 are listed in Annex IX. Although the Committee is still fairly new and its procedures are still being developed, several administrative steps have been taken. For instance, the Committee has developed Rules of Procedure which govern the conduct of its affairs.²¹ It has also established a Secretariat based within the Department of Social Affairs of the Commission of the African Union in Addis Ababa.

The Children's Committee's mandate as set out in Article 42 is:

- (a) *To promote and protect the rights enshrined in [the Children's] 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, organize 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;*

²⁰ Article 4 CRC provides "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

²¹ African Committee of Experts on the Rights and Welfare of the Child, *Rules of Procedure*, Cmtee/ACRWC/II. Rev 2, available at http://www.africa-union.org/child/Rules%20of%20procedure%20of%20the%20Committee_English.pdf.

- (iii) *cooperate with other African, international and regional Institutions and organizations 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 recognized by the Organization of African Unity, or any State Party.*
- (d) *Perform such other task 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.*

The Children's Committee thus has both a promotional and protective mandate. Its **promotional function** is set out in Article 42(a) above. Promotional activities of the Committee to date have included country visits to Burundi, Madagascar, Namibia and Sudan in order to lobby for the ratification and implementation of the Children's Charter and build links with relevant stakeholders on the ground in the respective countries. Additional visits to Tunisia, Sao Tome & Principe, DRC, Gabon, Liberia, Zambia and Sudan (Darfur) were agreed at the Committee's 7th meeting in November 2006.²²

Its **protective function**, established by Article 42(b) above, is primarily achieved through a State reporting process and a communications procedure. Pursuant to Article 43, each State party to the Children's Charter must report to the Committee on measures adopted and progress made in implementing the Children's Charter. A State party must submit an initial report within two years of the entry into force of the Children's Charter and then every three years. As with the State reporting process under the Charter, most States parties are already behind in their reporting obligations under the Children's Charter. It is only as of 2007 that the Committee has begun reviewing the handful of State reports that have been submitted.

The Children's Committee has developed Guidelines for States in the preparation of their initial reports, which set out categories of information that States should provide in accordance with the Children's Charter.²³ These Guidelines make no specific mention of indigenous children but do require States to provide information on children belonging to minority groups.²⁴ Although there is no express rule in the Rules of Procedure relating to the submission of supplementary reports by civil society, it is generally well accepted that as with other human rights monitoring bodies, the Committee can receive such reports. This procedure is discussed in more detail in Section VIII B below.

²² African Committee of Experts on the Rights and Welfare of the Child, *Report*, 8th meeting, 27 November to 1 December, 2006, paras. 44 and 45, available at <http://www.africa-union.org/root/AU/Conferences/Past/2006/November/SA/child/REPORT.doc>.

²³ African Committee of Experts on the Rights and Welfare of the Child, *Guidelines for Initial Reports of States Parties*, Cmttee/ACRWC/2 II. Rev2, available at http://www.africa-union.org/child/Guidelines%20for%20Initial%20reports%20_%20English.pdf.

²⁴ *Id.*, para. 21(f).

Under Article 44, the Children's Charter also authorizes the Children's Committee to receive complaints against State parties concerning any issue covered by the instrument from any individual, group or non-governmental organisation recognised by the AU, a Member State or the UN. It is also authorized to conduct investigations on matters falling within the ambit of the Children's Charter; request information from States parties on their implementation of the treaty; and investigate the measures a State has adopted for implementing it (Article 45). However, the Committee has yet to finalize its complaints and investigations procedures, so it remains to be seen how these mechanisms will be used. Draft guidelines on communications and investigations were adopted by the Committee in November 2006, which should be finalized and published shortly.

The Committee is mandated to meet twice a year, although this schedule has not always been properly maintained.²⁵ According to the Rules of Procedure,

*Civil society organizations may apply to the Committee to participate as observers in the public sessions of the Committee and of its subsidiary bodies. The NGOs and CSOs on the list as established by the Committee may send observers to these sessions where issues falling within their area of activity are being considered.*²⁶

And further,

*Upon recommendation of the Chairperson of the [AU] Commission²⁷ and at the request of the Committee, organizations on the list referred to [above] may also be heard by the Committee.*²⁸

The Committee can also consult with NGOs either at its own request or on the request of an NGO.²⁹

Currently, NGOs who request and receive permission to participate as observers and to make statements at the public sessions of the Committee do so as 'Partners' of the Committee. In November 2006, the Committee adopted draft criteria for the granting of Observer Status to NGOs working on children's issues, and this more formal procedure is expected to be published and operational shortly.³⁰

Indigenous organisations are encouraged to stay up to date with and use these existing and forthcoming opportunities to participate in the mechanisms of the Children's Committee and to submit information to the Committee on the human rights situation of indigenous children in their country. This will help ensure that indigenous issues are brought to the forefront of the Committee's work and that standards relating to the rights of indigenous children are properly developed. Provided that proper and detailed information is supplied to it by civil society, the Committee can act as one additional

²⁵ For example, no meeting took place during the first semester of 2006.

²⁶ Above note 21, Rule 81.

²⁷ The AU Commission is the Secretariat of the AU, not to be confused with the African Commission on Human and Peoples' Rights.

²⁸ Id, Rule 82(2).

²⁹ Id, Rule 82(1).

³⁰ See Section VIIIAi for a description of Observer Status at the African Commission on Human and Peoples' Rights.

source of constructive dialogue with States that have yet to fully recognize and protect these rights.

C The Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa



i History & creation

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the 'Women's Protocol') was created as part of the work of the African Commission's Special Rapporteur on the Rights of Women in Africa. It was adopted by the AU in July 2003 and came into force on 25 November 2005. The full text can be found in Annex III. It is legally binding on all States that have ratified it.

ii States parties

To date, 21 African States have ratified the Women's Protocol. See Annex VII for a full list of ratifications.

iii Key provisions

While it is clear in international law that both women and men are entitled to enjoy the same human rights without distinction, and as such women's human rights are arguably fully addressed through proper interpretations of general human rights instruments such as the Charter, the Women's Protocol was created in recognition of the fact 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."³¹ Thus, the Women's Protocol addresses many of the same human rights as the Charter, though from the particular perspective of the lived experience of women and girls, which often tends to differ from that of men and boys. For example, the Protocol addresses the principles of equality and non-discrimination (Article 2); human dignity (Article 3); right to life and security of the person (Article 4); equal protection of the law (Article 8); right to participate in political affairs (Article 9); right to peace and

³¹ Women's Protocol, twelfth paragraph of Preamble.

security (Article 10); right to education (Article 12); right to equitable conditions of work (Article 13); right to health (Article 14); and right to participate in cultural life (Article 17). Some of the collective rights in the Charter are elaborated in the Women's Protocol as individual rights, again with a gender perspective, including the right to a healthy environment (Article 18) and the right to development (Article 19).

The Protocol also elaborates certain rights not expressly included in the Charter (though, again, arguably implicitly covered by the Charter if properly read from a gender perspective) but of particular relevance to improving the status of women in Africa, including equal rights in marriage and divorce (Article 6 and 7); the protection of women in armed conflict situations (Article 11); the right to food and adequate housing (Article 15 and 16); widow's rights (Article 20); the right to inheritance (Article 21); and special protection for elderly women (Article 22).

Box 5: Indigenous Women and the Women's Protocol

Indigenous women the world over suffer multiple layers of human rights violations. They are discriminated against as indigenous peoples (i.e. vis-à-vis dominant sectors of society) and as women (i.e. vis-à-vis men, both within and outside their own communities).³²

The only use of the term 'indigenous' in the Women's Protocol is Article 18(2)(c) which provides that "States Parties shall take all appropriate measures to protect and enable the development of women's indigenous knowledge systems". Article 24(a) adds that States must ensure the protection of poor women including women from marginalized population groups.

Clearly, of course, all the rights contained within the Women's Protocol apply equally to indigenous women and non-indigenous women. These rights, as well as those in the Charter, provide ample support for indigenous women and organisations working on their behalf in their struggle against discrimination and marginalisation both as individuals and as part of a larger indigenous community.

The Protocol recognises the need for the elimination of cultural and traditional practices which are harmful to women and girls or which treat them as inferior to male members of society. Article 2(2) states that

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.

This article is a critical acknowledgement that until women and men are seen and treated as equals at all levels of society – from the family and village level to the corridors of

³² For an excellent analysis of indigenous peoples from a gender perspective, see Banda, F. and Chinkin, C., *Gender, Minorities and Indigenous Peoples* (Minority Rights Group, 2004).

national government – women will not enjoy their fundamental human rights. Indigenous and other women can use provisions like this to lobby their government and their communities to take active steps to help eliminate discriminatory attitudes towards women.

Article 5 provides further elaboration on the obligation to eliminate harmful practices. It provides:

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.*

iv Monitoring

Article 26 of the Women's Protocol provides that States parties shall "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". Article 27 states that the African Court on Human and Peoples' Rights³³ shall deal with matters of interpretation arising from the application or implementation of the Women's Protocol, and Article 32 provides that in the intervening period between the coming into force of the Women's Protocol and the establishment of the Court, the African Commission shall be seized with such matters of interpretation. No formal complaints were filed with the African Commission under the Women's Protocol during that intervening period.

³³ See Section V below.

D African Convention on the Conservation of Nature and Natural Resources

While human rights are not the focus of the African Convention on the Conservation of Nature and Natural Resources, it is an instrument of the AU that people working in human rights and indigenous issues should be aware of. Indigenous peoples in Africa are often the traditional occupants of lands and territories that are rich in natural resources and as a result become key target zones for environmental conservation and resource exploitation. Such peoples have frequently been summarily evicted from their traditional lands without their prior consultation or consent and without any or adequate compensation, in order to promote conservation or commercial agendas. While an analysis of internationally recognized indigenous land rights in this context, including the requirement of free and informed consent prior to the taking or using of indigenous lands and territories, is outside the scope of this Guide, it is worth discussing the main AU instrument dealing with natural resources since it may provide indigenous peoples with further ammunition in their struggle against expulsion, domination and marginalisation.



i History & creation

The original African Convention on the Conservation of Nature and Natural Resources was adopted by the OAU in Algiers in July 1968 and entered into force on 16 June 1969 (the 'Algiers Convention'). The full text can be found in Annex V. Although it makes brief reference to the obligation on States to implement its provisions with 'due regard to the best interests of the people',³⁴ the Algiers Convention makes no further substantive reference to social issues or human rights in connection with nature conservation, focusing instead strictly on environmental issues.

As a result of, among other things, significant developments in international environmental law in the years following the adoption of the Algiers Convention, a revised African Convention on the Conservation of Nature and Natural Resources was adopted in Maputo on 11 July 2003 (the 'Maputo Convention'). The full text of this Convention is in Annex VI. Although the Maputo Convention is not yet in force, it contains significant improvements in terms of recognizing the interplay between environmental protection

³⁴ Article II.

and social protection, which may soon help to close the gap between laudable environmental initiatives and fundamental human rights.

More information on the history, development and content of these two instruments can be found in *An introduction to the African convention on the conservation of nature and natural resources*.³⁵

ii States parties

Thirty African States have ratified the Algiers Convention. As of the date of adoption of the Maputo Convention, States can no longer become parties to the Algiers Convention,³⁶ which is testament to the desire of the AU for the Maputo Convention to eventually completely supersede the outdated Algiers Convention. However, the Maputo Convention has yet to receive the minimum number of ratifications to enter into force, with only Burundi, Comoros, Libya, Lesotho, Mali, Niger and Rwanda having ratified it to date. Further details on the ratifications of both instruments are contained in Annex VII.

The Maputo Convention provides that as between States which are parties to it, only its provisions apply, whereas as between parties to the Algiers Convention and parties to the Maputo Convention, the former shall apply.³⁷ This is because States that have not yet ratified the revised instrument cannot be held accountable under its provisions.

iii Key provisions

Although it is not yet in force, the Maputo Convention will be our focus here given its improved provisions on social issues and therefore its greater potential utility to indigenous peoples. The Preamble of the Maputo Convention expressly recalls the African Charter on Human and Peoples' Rights, and among the Convention's express aims is the achievement of 'socially acceptable development policies and programmes'.³⁸ Further, the Convention stipulates that in realizing the Convention's objectives, States should be guided by certain principles including the right to development and the right of all peoples to a satisfactory environment favourable to their development. These principles reflect Articles 22(2) and 24 of the African Charter. They are also to be guided by the principle that it is the duty of States to ensure that 'developmental and environmental needs are met in a sustainable, fair and equitable manner'.³⁹

Local knowledge is to be relied upon in the development of land use plans (Article VI(3)(a)), and States are to develop and implement land tenure policies that are capable of facilitating measures for the prevention of land degradation by, among other things, taking into account the rights of local communities (Article VI(4)). Similarly, States Parties are mandated to adopt management plans for forests and other areas with

³⁵ International Union for the Conservation of Nature and Natural Resources (IUCN), 2006, available in both English and French from the IUCN website at <http://www.iucn.org>.

³⁶ Maputo Convention, Article XXXVIII(4).

³⁷ Article XXXIV.

³⁸ Article II.

³⁹ Article III.

vegetation cover taking into account among other things 'the social and economic needs of the peoples concerned' (Article VIII(1)(a)).

Article XVII of the Maputo Convention provides:

Article XVII. 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 recognizing 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.*

Given that it is not yet in force, it remains to be seen how the Maputo Convention will be used by local communities to assert their rights and how its social provisions will be interpreted legally.

iv Monitoring

The Maputo Convention establishes a Conference of the Parties (COP) as the decision-making body of the Convention, which shall hold its first meeting within one year of the entry into force of the Convention.⁴⁰ The COP will be responsible for reviewing and promoting the effective implementation of the Convention. States Parties will be responsible for submitting reports to the COP (at intervals to be determined by the COP) on measures they are taking to implement the Convention, as well as laws and other information relevant to the Convention.

⁴⁰ Article XXVI.



III The African Commission on Human and Peoples' Rights

A Structure

i History & creation

Article 30 of the African Charter established the African Commission on Human and Peoples' Rights (the 'Commission') "to promote human and peoples' rights and ensure their protection in Africa." The Commission was officially inaugurated on 2 November 1987 in Addis Ababa, Ethiopia, after its members had been elected in July of the same year by the OAU's 23rd Assembly of Heads of State and Government.

ii Headquarters

The Commission did not have a permanent Secretariat after its inauguration and thus, for the first five sessions, its activities were co-ordinated from the OAU General Secretariat in Addis Ababa. The Secretariat of the Commission is now located in Banjul, The Gambia. Its contact details can be found in Annex XVII.

iii Composition

The Commission is composed of 11 human rights experts of high moral standing, chosen from a list of names submitted by African States. They act not as State representatives but in their own individual capacity, and are elected to serve on the Commission for renewable six-year periods. The Commission elects its Chair and Vice-Chair.

B Functions

Article 45 of the Charter describes the functions of the Commission as:

1. *To promote Human and Peoples' Rights and in particular:*
 - (a) *to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.*
 - (b) *to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their 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 OAU or an African Organization recognized by the OAU.*
4. *Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.*

The **promotional function** of the Commission is explained in Article 45 (1) of the Charter (above). The main essence of this function is to sensitise the population and disseminate information on human and peoples' rights in Africa.

The Commission, in collaboration with NGOs and inter-governmental organisations, has been able to establish a documentation centre used for human rights studies and research, and has also organised several seminars, symposia and conferences aimed at promoting human and peoples' rights on the continent. The Commission has also produced and circulated several human rights documents, including a Review of the African Commission, Annual Activity Reports, and the Commission's Rules of Procedure. These documents have gone a long way to disseminate vital information about the Commission, and they can be obtained free of charge from the Secretariat.

The Commission has also been cooperating with other human rights institutions (inter-governmental and non-governmental) in many areas relating to the promotion and protection of human rights, including the European Commission and Court on Human Right and the Inter-American Commission and Court on Human Rights.

The second principal function assigned to the Commission by the Charter is stipulated in Article 45(2) as: 'to ensure the protection of human and peoples' rights under conditions laid down in the present Charter'. This **protective mandate** is achieved in two ways. Firstly, the Charter provides for a State reporting procedure, through which the Commission receives and considers periodic reports submitted by State parties in conformity with Article 62 of the Charter. State parties are required to submit reports to the Commission every two years, reporting on the legislative and other measures they have taken to give effect to the rights and freedoms recognised in the Charter, although very few African states have fulfilled their obligations in this respect. Many have not filed any reports yet, while others are one or more reports behind schedule. The Commission studies the reports during its regular sessions, engages in dialogue with State representatives, and makes recommendations if necessary. NGOs and citizens are permitted to request copies of these reports from the Secretariat of the Commission or to download copies from the Commission's website. They can prepare supplementary reports or recommend to the Commission questions that could be asked to the State representatives during the examination process. This procedure is discussed in Section VIII B.

As part of its protective mandate, the Commission is also entrusted to receive 'communications' or complaints, a procedure through which an individual, NGO or group of individuals who feel that their rights or those of others have been or are being violated can petition (complain) to the Commission about these violations. This system is discussed in subsection C below.

C The Communications Procedure

Article 55 of the Charter authorises individuals, groups and NGOs to file complaints with the Commission if they believe that the rights set out in the Charter have been violated by a State that has ratified it. These complaints are the primary means that indigenous peoples, NGOs and others have of seeking redress for human rights violations within the African human rights system.⁴¹

An overview of the process is set out below. See the African Commission's Rules of Procedure for more information.⁴²

i Who may file a complaint?

Complaints may be filed by individuals, NGOs, groups of individuals and indigenous peoples either on their own behalf or on behalf of others. The author (person submitting the complaint) need not reside in the State against which the complaint is made.

ii Who must the complaint be filed against?

The complaint must be filed against a State that has ratified the Charter. As indicated earlier, all African States except Morocco have ratified this treaty.

iii What may be complained about?

The complaint must allege violations of the rights set out in the Charter and those violations must be attributable to the State against whom the complaint is made. Individuals, indigenous peoples and NGOs may also submit complaints alleging **a series of "serious or massive violations"** of human and peoples' rights by a State party to the Charter (Article 58, Charter). In the case of allegations of a series of serious or massive violations, the requirement that domestic remedies be exhausted (see subsection iv below) may be waived by the Commission.⁴³

iv What must be included in a complaint?

The following information must be included in a complaint filed with the Commission:⁴⁴

- Author(s)' name, address, age and profession. While these identity details are mandatory, the author can request that her/his identity be kept anonymous, for example in situations of fear of reprisal, and this can be stated in the communication to the Commission;
- Name of the State party referred to in the communication;
- Purpose of the communication;
- Provision(s) of the Charter allegedly violated;

⁴¹ If UN instruments have also been ratified that allow indigenous peoples to file complaints with UN human rights bodies, redress can be sought either in the UN or in the African system.

⁴² African Commission on Human and Peoples' Rights, *Rules of Procedure*, adopted 6 October 1995, available at http://www.achpr.org/english/_info/rules_en.html.

⁴³ Communication Nos. 25/89, 47/90, 56/91 and 100/93.

⁴⁴ See, among others, Article 56 of the Charter and Rule 104 of the Rules of Procedure.

- The facts of the claim;
- Information about measures taken by the author to exhaust local remedies, or explanation why local remedies will be futile;
- The extent to which the same issue has been settled by another international investigation or settlement body.

The requirement that **domestic remedies be exhausted** means that prior to filing a complaint with the Commission all available domestic judicial procedures must be used and completed. The only exceptions to this rule are if the remedies are ineffective (for example, even if you win in local courts, it will not fix your problem), the remedies are unreasonably delayed or if remedies do not exist in domestic law. Failure to exhaust domestic remedies or to prove that one of the exceptions noted here will result in the complaint being declared inadmissible and the Commission will not look at its substance or merits (see Article 56(5) under “Admissibility” below).

v What happens next?

Complaints are initially sent to the Secretary of the Commission, who prepares a list of complaints received and submits the list to the Commission for consideration. The Commission will consider a complaint if a simple majority of its members decides to do so (Article 55(2), Charter, Rule 102(1)). The register of complaints received and submitted for consideration by the Commission is available to the public through the Commission’s Secretariat.

a) *Admissibility*

Once the Commission has accepted a complaint for consideration, it will then determine if the complaint is admissible (whether it satisfies the requirements that permit the Commission to review it). Examination of the complaint from this point forward takes place in **private sessions** of the Commission (Rule 106). The Commission⁴⁵ determines if a complaint is admissible according to the requirements set out in Article 56 of the Charter (Rule 116), which provides that:

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*

⁴⁵ The Commission may set up a working group composed of three of its members to review admissibility (Rule 113).

7. *Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.*

Before the Commission can declare a complaint admissible it must give the State in question the opportunity to submit information about the admissibility of the complaint (Rules 117(1) and (2)); or may request additional information from the author. If the State fails to respond in writing within three months of receiving the Commission's request for information, the Commission may declare it admissible (Rule 117(4)).

Upon receiving all relevant information, the Commission may declare the complaint inadmissible, in which case the proceedings terminate (Rule 118), or may declare it admissible, in which case it will inform the State and author of its decision and transmit the full text of its decision and other relevant documents to the State, which has three months to respond in writing explaining "the issue under consideration and indicating, if possible, measures it was able to take to remedy the situation" (Rule 119(2)). If the State fails to respond, the Commission will act upon the information it has before it (119(4)). In practice, however, the Commission often allows the State more than three months to respond.

b) Merits

The next phase of the proceedings is an examination of the substance or 'merits' of the complaint to determine if there has been a violation or violations. To make a decision on this issue, the Commission may establish a working group of up to three of its members (Rule 120(1)), which will set forth its observations after examining all of the written information submitted by the author and the State. These observations will indicate if there has been a violation or violations of the rights recognised in the Charter.

Rule 120(2) does not require that these observations be directly communicated to the author(s) of the complaint, but rather that they remain confidential until such time as the Assembly of Heads of State and Government of the Organisation of African Unity (now AU) permit release to the general public. However, in practice the Commission does send them to the author. The author may also attend and participate in the private sessions of the Commission when the case is heard.

In determining if there has been a violation of human rights the Commission looks in the first instance to those rights found in the Charter. However, when writing a complaint to the Commission it is important to note, particularly in describing the violations and the corresponding State obligations, that the Commission is also authorized to look at other international human rights instruments ratified by the State in question to determine what the correct principles of law may be in a given case (Arts. 60 and 61, Charter). Thus, if the State in question has ratified a UN, ILO or other instrument that recognizes and guarantees rights relevant to the case, the Commission may interpret the rights found in the Charter in light of and in connection with the rights found in those instruments.

The other implication of Articles 60 and 61 is that they highlight the interrelationship between African and other human rights law and reinforce the general principle that nothing in the African Charter may diminish the human rights obligations of States under

other ratified human rights instruments. In other words, States may not use the African Charter to justify non-compliance or diminished compliance with obligations accepted under other international instruments.

vi Provisional Measures

Rule 111 of the Commission's Rules of Procedure provides that before making its decision the Commission may recommend provisional measures to the State concerned, in order to avoid irreparable damage being caused to the victim of the alleged violation. For instance, the Commission may urge a State to suspend implementation of a penal measure until the Commission has had the opportunity to consider the validity of the proposed measure.⁴⁶ [Add Endorois prov measures if there were any.]

This recommendation does not imply a decision either way on the complaint. The implementation of provisional measures is dependent on the will of the State in question, however, and unfortunately few such measures have in fact been implemented by African States.

vii Are the Decisions of the Commission Binding on States?

Technically, the Commission's decisions are not binding on States since the Commission is not a court with judicial powers. They are simply recommendations. In other words, the State is not required to follow the decision of the Commission and there is no enforcement power if decisions are not implemented. In practice most of the States that have been examined by the Commission under the Article 55 complaints procedure have not complied with its decisions.⁴⁷ Nevertheless, the Commission's decisions are authoritative interpretations of the African Charter, and therefore of whether a State is violating its binding obligations under the Charter.

The lack of binding jurisdiction and enforcement powers at the Commission recently led the AU to establish an African Court on Human and Peoples' Rights, the decisions of which will be binding. This new mechanism is discussed in Section V.

viii What can the Commission do?

Once the Commission has reached a decision on the merits of the case, the decision is sent to the Assembly of Heads of State and Government of the AU, which will decide whether to proceed with additional actions (Rule 120(2)). However, except in extraordinary situations, the Assembly may simply request that the Commission conduct an in-depth study of the situation and submit a report along with its recommendations to the Assembly. The result is that it is the political body of the AU that makes all the decisions and has the final say about what will happen with each complaint evaluated and judged by the Commission. Moreover, as noted above, the Commission's observations and all measures taken by the Commission or the Assembly to attempt to address the

⁴⁶ See for example Communication 269/2003, *Interights on behalf of Safia Yakubu Husaini et al v. Nigeria* (2003), paras. 14-16.

⁴⁷ On the issue of State compliance generally, see, *Non-compliance of State Parties to Adopted Recommendations of the African Commission: A Legal Approach*, DOC/OS/50b (XXIV).

violations remain confidential unless the Assembly decides otherwise (Article 59, Charter). This is clearly a very unsatisfactory conclusion to the process.

On the positive side, the Commission does have the potential to influence State behaviour even in the course of a confidential procedure and appears to have done so in the past. Even the fact that a complaint has been filed with and is under review by the Commission may motivate some governments to re-evaluate their behaviour and address the issues at the domestic level. Finally, the impact of resorting to the African Commission's complaints procedure will be most effective if it is done as part of a larger coordinated campaign that seeks to address the perceived violations from a number of different angles and if the complainants are able to and effective in using domestic and international publicity to pressure their government to respect their rights.

Summaries of cases decided by the Commission are contained its Annual Activity Reports, which can be found on the Commission's website (at http://www.achpr.org/english/_info/index_activity_en.html).

D Activities

Some of the main activities of the Commission are described here.

i Ordinary Sessions

The Commission ordinarily meets twice a year – once in approximately April/May and once in October/November. The sessions usually last for two weeks, but this may increase as the workload of the Commission increases. During the ordinary sessions, the Commission discusses the human rights situation in Africa with the participation of State representatives, non-governmental organisations, national human rights institutions and inter-governmental bodies; considers applications for observer and affiliate status to the Commission; reports on its work since the last ordinary session; examines State reports; considers and adopts resolutions and reports; considers complaints/communications; and deals with any administrative matters. Some of these agenda items are dealt with in public sessions while others are held in closed (private) sessions. Ways in which indigenous organisations and NGOs can participate in these activities are described in Section VIII.

ii Country Visits and Missions

Pursuant to its promotional mandate under Article 45(1) of the Charter, the Commission periodically conducts **promotional missions** to African States, which are usually one to two weeks in duration and take place between the Commission's ordinary twice yearly sessions. The Commission must request and receive the approval of the State before such a mission can be carried out. If a mission is approved, the Commissioner responsible for a given country will organise in-country meetings and discussions with various stakeholders working in the field of human rights, including government officials and members of civil society organizations, academic institutions and any other individuals, organizations and international agencies working for the enhancement of a culture of human rights in the country. The objective is to engage these stakeholders in a constructive dialogue on ways of strengthening human rights observance in the country.

Details of upcoming missions are usually posted on the Commission's website. Given that the Commission has a wide range of human rights issues to research and promote, it is important for indigenous peoples and organisations to participate in these missions by requesting a meeting with the Commissioner in charge and giving her/him as much detailed information as possible on the human rights situation of indigenous peoples in the country, to ensure that these issues are properly taken up and discussed during the mission. In recent missions, indigenous issues have been addressed. For example, during the February 2005 mission to Botswana the expulsion of the indigenous Basarwa community from the Central Kalahari Game Reserve was brought to the attention of the Commission's delegation. Since the matter was before the national courts, the delegation considered that it was not appropriate to discuss the details of the case. However, in its report, which was subsequently adopted by the Commission, the delegation recommended that

*The Government should engage the indigenous Basarwa communities in further dialogue and explore ways of communicating with them. Assistance given to them should be accompanied with training and support mechanisms, uplift their social wellbeing without prejudicing their culture and traditions.*⁴⁸

The Commission has also sent missions to several State parties to **investigate allegations of serious human right violations**. As with promotional missions, these missions can only be conducted by the Commission with the approval of the State in question. In the past, the Commission has conducted investigative missions to countries including Nigeria, Mauritania and Sudan.

The Commissioner in charge of a promotional or investigative mission will report on it to the full Commission during its following ordinary session, and the report and any recommendations will be considered for adoption.

iii Special mechanisms

The Commission has created a number of special mechanisms to assist with its human rights promotion and protection activities in Africa. The most common types of special mechanism are Special Rapporteurs and Working Groups, which play a very significant role in researching, gathering and documenting information on certain key areas of human rights. This information can then be used by the Commission to formulate norms, policies and advice to African States.

At present, the Commission has Special Rapporteurs covering the following human rights issues:

- Prisons and condition of detention in Africa
- Human Rights of Women in Africa
- Freedom of Expression in Africa
- Situation of Human Rights Defenders
- Refugees, Asylum Seekers and Internally Displaced Persons in Africa

⁴⁸ African Commission on Human and Peoples' Rights, *Mission Report to the Republic of Botswana*, 14 – 18 February 2005, available at http://www.achpr.org/english/Mission_reports/mission%20report_Botswana.pdf

The Commission's current Working Groups, which comprise members of the Commission as well as independent experts in particular human rights issues, are:

- Working Group of Experts on Indigenous Populations/Communities in Africa
- Working Group on Economic, Social and Cultural Rights in Africa
- Working Group on the Death Penalty
- Working Group on the Implementation of the Robben Island Guidelines (relating to the prevention of torture)
- Working Group on Specific Issues Relevant to the Work of the African Commission

The Commission's Working Group of Experts on Indigenous Populations/Communities is discussed in Section IV.

IV The Working Group of Experts of the African Commission on Indigenous Populations/Communities in Africa



A History & creation

The African Commission has been debating the human rights situation of indigenous populations/communities since 1999. On 6 November 2000, during its 28th Session, the Commission resolved to establish a Working Group of Experts on the Rights of Indigenous Populations/Communities in Africa (the 'Working Group'), with a mandate to:

- Examine the concept of indigenous people and communities in Africa;
- Study the implications of the African Charter on Human and Peoples' Rights and well-being of indigenous communities especially with regard to:
 - the right to equality (Articles 2 and 3)
 - the right to dignity (Article 5)
 - protection against domination (Article 19)
 - on self-determination (Article 20) and
 - the promotion of cultural development and identity (Article 22)
- Consider appropriate recommendations for the monitoring and protection of the rights of indigenous communities.

The Working Group was officially established at the Commission's 29th Session in May 2001. At its 34th session in 2003 the Commission renewed and extended the mandate of the Working Group, and at its 38th Session in November 2005 it again renewed the Working Group's mandate for a further two years. In November 2007, the mandate of the Working Group was again renewed for two years.

The Working Group is an important development for indigenous peoples, as its creation represents the first time that the African Commission has addressed the issue of indigenous peoples in Africa and the rights that may apply to them under the Charter. Second, the mandate of the Working Group is to look at peoples' rights as well as individual rights. Third, the Working Group includes African indigenous persons among its members.

B Composition

The Working Group is normally composed of six members, including three members of the African Commission and four experts on indigenous issues. The current members are:

- Commissioner Soyata Maiga, Mali (Chairperson)
- Commissioner Musa Ngary Bitaye, Gambia
- Commissioner Mumba Malila, Zambia⁴⁹
- Naomi Kipuri, Kenya
- Mohamed Khattali, Mali
- Zephyrin Kalimba, Rwanda
- Marianne Jensen, Denmark

C Report⁵⁰

In consultation with human rights experts and representatives of indigenous communities, the Working Group researched and wrote a comprehensive document entitled “*Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities*”, in order to examine the concept of indigenous peoples in Africa and to report on their human rights situation. This report was adopted by the Commission in November 2003, and published as a book in both English and French in 2005.⁵¹

The report is the African Commission’s official conceptualisation of, and framework for, the issue of indigenous peoples’ rights in Africa, and as such it is a highly important instrument for the advancement of indigenous peoples’ human rights. The report debates the criteria for identifying indigenous peoples in Africa, documents violations of indigenous peoples’ human rights, analyses the African Charter with respect to indigenous peoples’ rights, and makes recommendations to the African Commission on how to improve the protection of indigenous peoples’ human rights. This report is to serve as a platform for the Commission’s activities on promoting and protecting the human rights of indigenous peoples, and will help facilitate constructive dialogue between the Commission/AU and their member States.

The report points out that while there is no single definition of indigenous peoples, there are internationally accepted indicators which can help to identify who the indigenous peoples of Africa are. The Commission notes the important distinction that must be made

⁴⁹ Commissioner Malila was appointed in November 2006 to replace outgoing Commissioner Rezag Bara.

⁵⁰ Sections C and E have been adapted from information on the International Work Group for Indigenous Affairs (IWGIA) website, available at <http://www.iwgia.org/>. A staff member of IWGIA, Marianne Jensen, is one of the expert members of the Working Group.

⁵¹ African Commission on Human and Peoples’ Rights, *Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities*, adopted by the African Commission at its 34th Ordinary Session, November 2003. The full report is available in English through the Commission’s website at http://www.achpr.org/english/_info/wgip_others.htm or at <http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Books/AfricanCommissionbookEnglish.pdf>.

between people who are indigenous or aboriginal to Africa in a general sense and peoples who are indigenous in the modern analytical sense contemplated by international law. A proper analysis of indigenouness for purposes of international human rights law and protection thus focuses:

*... on **self-definition** as indigenous and distinctly different from other groups within a state; on a **special attachment to and use of their traditional land** whereby their ancestral land and territory has fundamental importance for their collective physical and cultural survival as peoples; [and] on an experience of **subjugation, marginalization, dispossession, exclusion or discrimination** because these peoples have different cultures, ways of life or modes of production than the national hegemonic and dominant model.” (emphasis in original)⁵²*

Those groups in Africa who identify themselves as indigenous peoples are noted as being “first and foremost (but not exclusively) different groups of hunter-gatherers or former hunter-gatherers and certain groups of pastoralists.⁵³ They include such hunter-gatherer groups as the ‘Pygmies’ of central Africa, the San of southern Africa, the Hadzabe of Tanzania and the Ogiek, Sengwer and Yakuu of Kenya, as well as pastoralist groups including the Maasai of Kenya and Tanzania, the Karamojong of Uganda, the Himba of Namibia and the Tuareg, Fulani and Toubou of Mali, Burkina Faso and Niger. These and other groups identify as indigenous and have cultures and ways of life considerably different than the dominant society. Their cultures are in many cases under threat, and they suffer from widespread discrimination, often being viewed as inferior. These groups share a strong connection to and dependence on their traditional lands and territories, which have in many cases been taken from them for environmental conservation or resource exploitation purposes. They typically suffer unequal access to social services including healthcare, education and employment, and they are under-represented in government and decision-making bodies.

The report analyses the provisions of the Charter in the context of indigenous peoples, under both the individual and collective rights categories. In respect of the latter, as noted earlier, it concludes that “the protection of rights to land and natural resources is fundamental for the survival of indigenous communities in Africa and such protection relates both to Articles 20, 21, 22 and 24 of the African Charter.”⁵⁴ It also finds that “by not protecting individual members of indigenous communities against discrimination, the member states of the African Union violate Articles 2 and 3 of the African Charter” and further that such States “have an obligation to protect individual members of indigenous people against inhuman and degrading treatment”, citing numerous examples of situations whereby indigenous people are treated as less than human and are denied equal rights to basic human dignity.⁵⁵

The report concludes with the following series of recommendations to the African Commission:⁵⁶

⁵² Id, p. 92-93.

⁵³ Ibid, p. 89.

⁵⁴ At p. 21.

⁵⁵ At p. 77.

⁵⁶ At p. 114-115.

1. *That the African Commission on Human and Peoples' Rights should establish a focal point on indigenous issues within the African Commission. The focal point could be in the form of a Special Rapporteur once the African Commission finalises its review of the Special Rapporteur mechanism;*
2. *That the African Commission on Human and Peoples' Rights should establish a forum which brings together indigenous participants, experts and other human rights activists to meet regularly in the context of the sessions of the African Commission to consider developments in the field of the rights of indigenous populations/communities in Africa, give expression to the voices of indigenous people and formulate advisory opinions for consideration by the African Commission. Rule 29 allows for the establishment of a sub-commission;*
3. *That the African Commission on Human and Peoples' Rights, in partnership with IWGIA, should publish the final report of the Working Group in French and English for wide distribution among African governments and policy makers in international development;*
4. *That the work on elaborating the concept of 'peoples' in the light of the collective rights of indigenous populations should continue;*
5. *That as the African Commission reviews its Rules of Procedure, that specific inquiries on indigenous populations in Africa be inserted for the purposes of Article 62 reports, the work of all Special Rapporteurs and in the mission reports of Members of the African Commission;*
6. *That the African Commission on Human and Peoples' Rights should remain seized on the matter of "The Rights of Indigenous Populations in Africa", which should remain an Agenda item at all Ordinary Sessions of the African Commission;*
7. *That until such time as a final decision is taken as to paragraphs 1 and 2 above, the Working Group should continue to serve as the focal point for deliberations on this matter.*

Indigenous peoples and organisations working on their behalf in Africa are strongly encouraged to read this report in full. It provides an invaluable tool for lobbying, advocacy and legal work.

D Current Mandate and Activities

The Working Group's current mandate⁵⁷ is to:

- With the support and cooperation from interested donors, institutions and NGOs, raise funds for the Working Group's activities relating to the promotion and protection of the rights of indigenous populations/communities in Africa;
- Gather information from all relevant sources (including governments, civil society, indigenous populations and their communities) on violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Undertake country visits to study the human rights situation of indigenous populations/communities;
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Submit an activity report at every ordinary session of the African Commission;
- Cooperate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.

Based on this mandate, the Working Group has developed a comprehensive work programme which includes country visits, sensitisation seminars, information activities and research.

The Working Group's 2003 Report on indigenous peoples has been published in English and French and is being distributed to a wide range of actors, including African governments, human rights institutions, African and international NGOs as well as academics. This report is expected to be published in Arabic, and will subsequently be distributed to relevant countries. The Working Group has also published a summary version of the 2003 Report called 'Indigenous Peoples in Africa'. It is currently available in English and French, and will soon be published in Portuguese.

Like the Commission, the Working Group has also conducted country missions in a number of member States to gather information and to carry out fact-finding specifically on indigenous issues. The country visits seek to engage all interested parties (States, national human rights institutions, civil society, international agencies and indigenous communities) in a debate on indigenous peoples' rights and how these rights can be strengthened. The country visits are one of the key activities for establishing dialogue between the African Commission, African governments and other stakeholders. As with the Commission's country missions, the Working Group must obtain the consent of the State in question before an official country visit is conducted.⁵⁸ To date, the Working Group has undertaken official country visits to Botswana, Namibia and Niger, with

⁵⁷ African Commission on Human and Peoples' Rights, *Resolution on the Adoption of the 'Report of the African Commission's Working Group on Indigenous Populations/Communities'*, 20 November 2003, available at

http://www.achpr.org/english/_doc_target/documentation.html?../resolutions/resolution70_en.html.

⁵⁸ The Working Group also carries out 'Research and Information visits', which are less formal and for which the State's approval is not required.

additional informal 'research and information visits' to Burundi, the Republic of Congo, Libya, Uganda and Gabon. Further country visits are being planned for Tanzania, Kenya, Algeria, Ethiopia and Rwanda.

The Working Group's delegation carrying out a country visit prepares a report outlining the results of its research and making recommendations to the Commission and to the government in question, as well as to civil society and the international community. The mission reports are then presented to the full Commission for adoption and, once adopted, are published.⁵⁹

Indigenous organisations wishing to better understand the Working Group's processes or the situation of indigenous peoples in the countries in which visits have been conducted are encouraged to review the reports from these missions.

A sensitisation seminar for the Central Africa region, organized by the Working Group, took place in Cameroon in September 2006. The aim of this seminar was to inform member States and affiliated national human rights institutions about the African Commission's work and policy on indigenous peoples' rights. Participants representing eight Central African countries (Burundi, Cameroon, Central African Republic, Chad, DRC, Gabon, Republic of Congo and Rwanda) discussed issues such as indigenous peoples' land rights, poverty amongst indigenous communities and their access to health and education. The seminar successfully established dialogue between the African Commission and its members, and some positive results were seen. For instance, the African Commission received invitations for undertaking country visits as member States were interested in continuing the dialogue on indigenous peoples' rights. Sensitisation seminars for the other African regions are also planned.

⁵⁹ See IWGIA's website at <http://www.iwgia.org/sw8768.asp>.

Box 6: Examples of the Working Group's country mission recommendations adopted by the Commission

Burundi⁶⁰

- That the government of Burundi ensure that Batwa will be represented in the Land Commission which is soon to be established (Note: this was eventually done, with one Mutwa appointed as a Member of the Land Commission in 2006);
- That the government of Burundi extend Batwa representation to other national and local governmental structures, building on the positive steps already taken to ensure Batwa representation in the Parliament and Senate;
- That the Commission undertake a thorough study into the practice of bondage still affecting countless Batwa in Burundi;

Republic of Congo⁶¹

- That the government of the Republic of Congo bring the draft bill on 'Pygmies' to a successful conclusion, bearing in mind the deep concerns of the communities in question;
- That the government of the Republic of Congo put national sectoral policies in place that will enable the 'Pygmies' to enjoy all rights and fundamental freedoms on a par with other Congolese citizens;
- That the Commission write to the European Union, the World Bank, the different bilateral partners and COMIFAC (Forestry Commission in Central Africa) with a view to including the issue of indigenous peoples in the different processes related to forestry management in the Congo basin, such as AFLEG (Africa Forest Law Enforcement and Governance), the Convergence Plan, etc.

A comparative study of the legislation of African countries and the extent to which they protect the rights of indigenous peoples is also currently underway. This three-year research project was commissioned by the Working Group in close cooperation with the International Labour Organisation, and is being carried out by the Centre for Human Rights at the University of Pretoria.

Other ongoing or planned activities of the Working Group include the creation of a comprehensive **database** of organisations working with indigenous issues in Africa, the purpose of which is to enable improved communication between the African Commission and organisations working on indigenous issues on matters of mutual interest.

⁶⁰ Available at http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Reports/CuntryVisitBurundiReportFINAL_ENG.pdf

⁶¹ Available at http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Reports/CountryVisitCongoReportFINAL_%20ENG.pdf

V The African Court on Human and Peoples' Rights

A History & creation

In 1994, the OAU decided to establish a working group of governmental experts to look at ways to strengthen the African human rights system and to consider creating an African Court of Human Rights. After a number of failed attempts to approve a draft instrument establishing a court, in 1998 the OAU approved and adopted a Protocol to the African Charter establishing an African Court of



Human Rights (the 'Court Protocol'). The full text of the Court Protocol can be found in Annex IV. It is legally binding on all States that have ratified it.

The Court Protocol came into force in January 2004. In January 2006, the judges were elected by the AU. The Court was officially installed in July 2006 with headquarters in Arusha, Tanzania. Various technical and administrative matters are still being worked out, and it remains uncertain when the Court will begin hearing cases.

B States parties

To date, 23 States have ratified the Court Protocol. See Annex VII for a list of ratifications.

C Composition

The Court is composed of eleven jurists of "high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights" (Article 11). Due consideration must be given to adequate gender representation. Apart from the first set of judges (who are elected for either two or four years), all judges thereafter are elected for a period of six years, renewable once. The Court is chaired by a president and a vice president elected for a period of two years, also renewable once.

A list of the current members of the Court can be found in Annex X.

D Mandate

The purpose of the Court is to complement the protective mandate of the Commission (see Section IIIB). It has a broad jurisdiction covering “all cases and disputes submitted to it concerning the interpretation and application of the Charter, [the Court] Protocol and any other relevant Human Rights instrument ratified by the States concerned” (Article 3). It is directed to enforce the rights guaranteed in the Charter and “any other relevant human rights instruments ratified by the States concerned” (Article 7). Only the Commission, States parties to a communication before the Commission, and African inter-governmental organisations have automatic standing to bring a case before the Court. However, NGOs with observer status before the Commission and individuals can bring a case if the State being complained about has made a specific declaration in accordance with Article 34(6) of the Court Protocol accepting adjudication of such complaints. To date, only two of the ratifying States, Burkina Faso and Mali, have made this declaration.

Importantly for civil society, and unlike the procedure at the Commission, cases before the Court are heard in public except in circumstances specified in the Court’s Rules of Procedure (Article 10). The Court has the power to issue orders to remedy human rights violations, including the payment of compensation to the victim (Article 27).

The establishment of the Court is an important step forward for the protection of human rights in Africa, especially given the restrictions placed on the African Commission by the Charter. However, it remains to be seen how many States will make the declaration required for individuals and NGOs to seek enforcement of rights therein.

E Procedure⁶²

The Court’s procedures are still being developed, however the basic process can be described as follows. The following bodies can submit a human rights complaint to the Court:

- African Commission on Human and Peoples’ Rights;
- States parties to a communication before the Commission;
- African inter-governmental organisations;
- NGOs with observer status before the Commission and individuals (but only if the State being complained about has made the required Article 34 declaration),.

Where the State in question has not made the Article 34 declaration, NGOs and individuals wishing to have a case heard by the Court will have to request the Commission to submit it. The modalities of this process have not yet been determined.

Once seized of an individual complaint, the Court will examine its admissibility in the same way the Commission examines admissibility, namely by analysing whether it meets the requirements of Article 56 of the Charter (Article 6(2), Court Protocol). As stated earlier, Article 56 requires, among other things, that any complainant must have

⁶² The authors are grateful to Minority Rights Group International for sharing their research on this topic, which has been used in the preparation of this section of the Guide.

exhausted domestic remedies. Again, there is an exception to this requirement where domestic remedies are ineffective.⁶³ If the complaint is deemed admissible, the Court will proceed to consider the case on its merits. The complainants and the State can submit both written and oral evidence in support of their arguments (Article 26(2)). Free legal representation can be provided to the complainant when the interests of justice demand (Article 10(2)). The Court can, if need be, carry out field investigations and States are compelled to provide the required facilities in such cases (Article 26(1)).

The Court must issue its decision within 90 days of the end of the hearing (Article 28(1)). This measure was likely intended to prevent the types of delays in the decision-making process that have occasionally been seen at the Commission, where the parties have waited up to eight years for a decision to be issued.⁶⁴

The Court's judgment is binding and final without further right of appeal (Article 28(2)). If the Court acknowledges the existence of a violation, it will order appropriate remedial measures, including payment of compensation (Article 27(1)). The Court's decision will be communicated to the parties, the AU member States, the Commission and the Council of Ministers which will monitor the execution of the ruling (Article 29).

⁶³ See Section IIIC.

⁶⁴ For example, Communication 73/92, *Diakite vs. Gabon*.



VI NEPAD Peer Review Mechanism

The New Partnership for Africa's Development (NEPAD) is an AU programme, led by the Heads of State and Government Implementation Committee. It is meant to develop values and monitor their implementation within the framework of the AU, with the overarching goals of promoting accelerated growth and sustainable development, eradicating widespread and severe poverty, halting the marginalisation of Africa in the globalization process, and accelerating the empowerment of women. NEPAD was adopted at the 37th session of the Assembly of Heads of State and Government in July 2001 in Lusaka, Zambia, and is governed by the Assembly of the Union.

One of the means developed within NEPAD to hold each partner State morally accountable for improving performance in governance and socio-economic development is the **African Peer Review Mechanism (APRM)**. The APRM, established in 2003, is a mutually agreed mechanism for self-monitoring by the participating member governments. Its mandate is to ensure that the policies and practices of participating States conform to agreed political, economic and corporate governance values, codes and standards.

Participation in the APRM is voluntary and open to all AU member States. The current members of the APRM are listed in Annex XI. Membership entails an undertaking to submit to periodic peer reviews, as well as to facilitate such reviews, and be guided by agreed parameters for good political governance and good economic and corporate governance.

The APRM is intended to be a participatory and transparent process. States must establish a Focal Point for the process, who must be a senior-ranking official. A roadmap for participation in the process, including by civil society organisations, must be established and widely publicized within the country, and measures must be taken to ensure participation by relevant stakeholders in the implementation of the Programme of Action. The Guidelines state that:

Community and other non-governmental organizations can provide important information about the local circumstances, and can assist in creating national ownership and commitment in the implementation of the National Programme of Action, ensuring that governance issues at all levels are addressed and that there is local accountability.⁶⁵

⁶⁵ Ibid, para. 39.

Box 7: The APR Process⁶⁶

The APR process involves a questionnaire being delivered to the country under review, covering the mechanism's four areas of inquiry: Democracy and Political Governance, Economic Governance and Management, Corporate Governance, and Socio-Economic Development. On the basis of the questionnaire, the government will develop a self-assessment and formulate a preliminary Programme of Action, the purpose of which is to guide and mobilise the country's efforts in implementing the necessary changes to improve its state of governance and socio-economic development. These documents are then submitted to the APR Secretariat which reviews them against its own background research on the country. An Issues Paper is developed by the Secretariat to guide the country review process and, where necessary, preliminary in-depth assessments are carried out. Once these are completed, a Country Review Team (CRT) – comprised at a minimum of members of the APR Panel and Secretariat, various experts, and two technical observers from two other participating countries – visits the country to carry out a wide range of consultations with government officials, political parties, parliamentarians and representatives of civil society organisations including the media, academia, trade unions, business and professional bodies. The main objective of the visit is “to learn about the perspectives of the different stakeholders on governance in the country and to clarify the issues identified in the Issues Paper that are not taken into account in the preliminary Programme of Action of the country, and to build consensus on how these could be addressed.”⁶⁷ A report is prepared and discussed with the government, which will then finalize its Programme of Action taking into account the conclusions and recommendations of the report. This document and the CRT's report are submitted to the APR Forum of participating Heads of State and Government for consideration and formulation of actions deemed necessary. According to the APRM Guidelines:

If the Government of the country in question shows a demonstrable will to rectify the identified shortcomings, then it will be incumbent upon participating Governments to provide what assistance they can, as well as to urge donor governments and agencies to also come to the assistance of the country reviewed. However, if the necessary political will is not forthcoming from the Government, the participating states should first do everything practicable to engage it in constructive dialogue, offering in the process technical and other appropriate assistance. If dialogue proves unavailing, the participating Heads of State and Government may wish to put the Government on notice of their collective intention to proceed with appropriate measures within a given timeframe. Such measures should always be utilised as a last resort...⁶⁸

The estimated timeframe for each of these steps is six to nine months, although this can vary considerably depending on the circumstances. The in-country costs of the APR process for a particular country must be borne by the country itself, although the NEPAD Secretariat will help to mobilise resources for participating countries from its external partners if necessary.⁶⁹

Finally, six months after the report has been considered by the Heads of State and Government of the participating member countries, it will be formally and publicly tabled in key regional and sub-regional structures such as the Regional Economic Commission to which the country belongs, the Pan-African Parliament, the African Commission on Human and Peoples' Rights, and the Economic, Social and Cultural Council (ECOSOCC) of the AU.

⁶⁶ For further information, see: NEPAD, *Guidelines for Countries to Prepare for and to Participate in the African Peer Review Mechanism (APRM)*, NEPAD/APRM/Panel3/guidelines/11-2003/Doc8 (October 2003)

Rwanda was one of the first AU member States to submit itself to a peer review. A Country Review Team visited in April 2005 and held meetings with a number of different State and non-State actors, including President Paul Kagame, government officials, parliamentarians, civil society and the private sector. The Country Review team also met with the Director of the national Batwa organisation, Communauté des Autochtones Rwandais (CAURWA), who was appointed by the President to the national NEPAD Commission. The final Country Review Report was published in June 2006, and is notable for its observations on the situation of the Batwa in Rwanda, as well as its recommendations to the Government.⁷⁰

For example, the Report states that: “With respect to the Batwa minority, the approach adopted by the authorities was based on a policy of assimilation. There appears to be a desire to obliterate distinctive identities and to integrate all into some mainstream socio-economic fabric of the country.”⁷¹ The recommendation was that: “The Government initiates an in-depth dialogue with the Batwa”.⁷² The Government’s response is logged in the report as: “The Batwa community continues to have a disproportionate number of vulnerable members, and seem not to benefit sufficiently from the ongoing social economic integration of all Rwandans. Their integration into the Rwandan social economic mainstream continues to be a voluntary but inevitable process necessitated by changing times. It’s important to mention that the government has never had a policy of assimilation, since that is comparable to socio-cultural genocide. As a community however, it is clear that a targeted response to their specific problems is recommended and government has already initiated programmes to do so.”⁷³

Most recently, the APR process was carried out in Uganda in July 2007. Indigenous organisations participated and provided input. The Uganda APRM report is expected to be released shortly.

Although the effectiveness of the APR process has yet to be seen given its relative infancy, it provides indigenous peoples with another mechanism for having their issues and concerns raised at the regional level. Indigenous peoples’ organisations are thus encouraged to actively participate if it is carried out in their country, or to lobby their government to become a member of the APRM if it has not already.

⁶⁷ Ibid, para. 22.

⁶⁸ Ibid, para. 26.

⁶⁹ Ibid, paras. 28 and 31.

⁷⁰ New Partnership for African Development, African Peer Review Mechanism, 2006: *Country Review Report of the Republic of Rwanda*, June 2006 (available at http://www.afrimap.org/english/images/documents/APRM_COUNTRY_REPORT_RWANDA.pdf).

⁷¹ Above note 70, p.51.

⁷² Above note 70, p.51.

⁷³ Above note 70, p. 137.

VII Human Rights and the African Regional Economic Communities

Regional Economic Communities (RECs) are intergovernmental bodies created to foster links and harmonisation between their member States. This Section contains a brief overview of some African RECs that by their nature could serve as additional frameworks for the protection of human rights in the region. RECs are usually created by treaties that are legally binding on member States and which may contain some provisions relating to human rights. Some RECs have also adopted additional laws containing human rights provisions, and several have established mechanisms to monitor the application of these laws by member States.

As yet the African RECs have not made many developments in the field of human rights however they could be very useful in the future: for example, several give individuals and NGOs the opportunity to lodge complaints against member States. It could therefore be possible to use them to further the protection of indigenous peoples' rights in the region.

A Economic Community of West African States (ECOWAS)

i History and creation

The Economic Community of West African States (ECOWAS) was created by the 1975 ECOWAS Treaty, which was further revised in 1993. ECOWAS's aim as set out in Article 3(1) is: "co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress and development of the African Continent". Its basic principles include, amongst others, the respect, promotion and protection of human rights; the promotion and consolidation of democracy; and accountability, economic and social justice and popular participation in development (Article 4).

For more information about ECOWAS go to <http://www.ecowas.int>.

ii Member States

ECOWAS has fifteen member States: Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. Its headquarters are in Abuja, Nigeria.

iii Key provisions

All member States are legally bound by the ECOWAS Treaty. Article 4(g) also indicates that member States are bound by the African Charter, which acts as the principle regional human rights treaty:

The High Contracting Parties, in pursuit of the objectives stated in Article 3 of this Treaty, solemnly affirm and declare their adherence to the following principles:...recognition promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights

Article 56 continues:

The signatory States to the ... African Charter on Human and Peoples' rights agree to cooperate for the purpose of realising the objectives of [this] instrument.

The ECOWAS Treaty also contains other provisions relating to human rights, including:

- non-discrimination (Article 59(2));
- gender (Article 63);
- education (Article 60);
- culture (Article 62);
- environment (Article 29);
- freedom of information and media communication (Articles 65 and 66);
- freedom of movement (Article 55(1)(ii));
- entry, residence and establishment (Article 59(1));

In 2001 ECOWAS adopted the binding Protocol A/SP1/12/01 on Democracy and Good Governance: Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security ('ECOWAS Protocol'). It reiterates that member States are bound by the African Charter (Article 1(h)), and also contains provisions relating to the following:

- freedom of religion (Article 1(f));
- non-discrimination (Article 1(g));
- equality before the law and equal protection of the law (Article 1(h));
- freedom of association (Article 1(j));
- freedom of the press (Article 1(k));
- equal rights of women and men to vote, participate in government and other policy-making and decision-making bodies (Article 2(3));
- basic human needs and the fair distribution of resources and income (Article 27);
- to form and join trade unions (Article 28);
- education, including equal education rights for women (Article 30);
- culture (Article 31);
- non-discrimination against women (Article 40);
- children's rights (Article 41)

iv Monitoring

Article 15 of the ECOWAS Treaty created a Community Court of Justice (CCJ) that was established by 1991 Protocol A/P1/7/91 on the Community Court of Justice ('the CCJ Protocol') and which entered into force in 1996. The CCJ became operational in 2002 and heard its first case in 2004.

All ECOWAS member States are subject to the CCJ's jurisdiction, which is comprised of seven independent judges elected by ECOWAS members for a five year renewable term. The CCJ sits in Nigeria, and its mandate is to resolve disputes relating to the interpretation and application of the provisions of the ECOWAS Treaty, Protocols and Conventions.

Under the 1991 CCJ Protocol, only member States were allowed to bring a case before the CCJ. However, in 2005 ECOWAS adopted Supplementary Protocol A/SP.1/01/05 of the Community Court of Justice ('Supplementary CCJ Protocol'). This allows individuals to bring cases against member States, and increased the Court's jurisdiction to include reviews of human rights violations in all member States.

Applications by individuals cannot be either anonymous or submitted while the same case is pending before another international court. Article 19 of the CCJ Protocol makes the decisions of the Court final and immediately enforceable, and the member State is supposed to inform the CCJ which national body will be responsible for enforcing its ruling. Individuals do not have to exhaust all domestic remedies before taking a case to the CCJ.

Since the adoption of the 2005 Supplementary CCJ Protocol, the CCJ has received several cases from individuals. Apparently, the CCJ President has noted that the accessibility and cost of bringing cases to it continue to be a barrier to its success, as well as its inadequate human, financial and material resources. For more information about the CCJ see <http://www.aict-ctia.org>.



B East African Community (EAC)

i History and creation

The East African Community (EAC) was originally founded in 1967, but collapsed in 1977. It was resurrected by the 1999 Treaty for the Establishment of the East African Community ('the EAC Treaty') that came into force in 2000. The EAC was formally (re)launched in 2001. Article 5(1) of the EAC Treaty sets out its objectives, which are: "to develop policies and programmes aimed at widening and deepening cooperation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit." Article 6(d) states that one of the EAC fundamental principles is:

good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples' Rights

The "equal distribution of benefits" (Article 6(e)) is another fundamental principle. Article 7(2) confirms that:

The Partner States undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.

For more information about the EAC see <http://www.eac.int>.

ii Member States

The members of the EAC are: Kenya, Tanzania, Uganda, Burundi, and Rwanda. All are legally bound by the EAC Treaty.

iii Key provisions

The EAC Treaty contains several provisions relating to human rights, including:

- freedom of movement and the right of establishment (Article 76(1));
- intellectual property (Article 103(1)(i));
- health (Article 118);
- culture (Article 119);
- social welfare and adult education (Article 120);
- enhancing the equality and equal participation of women, particularly in socio-economic development and business (Articles 121-122)
- property (Article 127(2)(a));
- civil society participation and consultation (Articles 127(3) and (4)).

iv Monitoring

Article 9(1)(e) of the EAC Treaty establishes the East African Court of Justice (EACJ) as its judicial arm. The EACJ sits temporarily in Arusha, Tanzania and became operational in 2001, although it did not hear its first case until 2005. The EACJ is composed of six independent judges appointed by member States for a seven year term. The EAC Treaty establishes the right of EAC residents to bring a case before the EACJ if they believe there has been an unlawful infringement of the EAC Treaty (Article 30).

Article 27(2) of the EAC Treaty states that:

The Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date. To this end, the Partner States shall conclude a protocol to operationalise the extended jurisdiction.

Thus, the Treaty envisages that the EACJ will have jurisdiction over human rights cases in the future and there have been increasing calls in recent years for this measures to be operationalized.

For more information about the EACJ go to <http://www.eac.int/court>.

C Southern African Development Community (SADC)

i History and creation

The Southern African Development Community ('SADC') was created in 1993 with the entry into force of the Declaration and Treaty Establishing the Southern African Development Community ('SADC Treaty'). The SADC Treaty was amended in 2001 by the Amended Declaration and Treaty of the Southern African Development Community ('SADC Amended Treaty'). Article 5 of the SADC Amended Treaty sets out its objectives, which include, amongst others, the mainstreaming of gender and the promotion of "sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration" (Article 5(a)). Article 4 indicates that the SADC principles include human rights, democracy and the rule of law.



For more information about the SADC see <http://www.sadc.int>.

ii Member States

The SADC member States are: Angola, Botswana, DRC, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. The SADC headquarters are in Gaborone, Botswana. All SADC member States are legally bound by the SADC Treaty and SADC Amended Treaty.

iii Key provisions

The SADC Amended Treaty does not refer to the African Charter on Human and Peoples' Rights, and contains few provisions relating to human rights. Article 6(2) states that:

SADC and Member States shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture, ill health, disability, or such other ground as may be determined by the Summit.

Article 23 guarantees participation and consultation by key stakeholders, including civil society, NGOs, and workers' organisations, to achieve the SADC objectives.

In addition to the SADC Treaty, however, there are a number of other SADC laws that contain provisions relating to human rights, and a brief overview of these appears below. SADC Protocols are legally binding on member States that have acceded to them (Article 22, SADC Amended Treaty), so before relying on any of the provisions outlined here indigenous peoples and NGOs should check whether their State has done so.

- (a) The **SADC Protocol on Culture, Information and Sport** (2000) contains provisions relating to gender equality (Article 9); the "promotion of an attitude which takes culture into account in regional development programmes" (Article 11); the preservation of cultural heritage (Article 13); language (Article 11); freedom of information and the press (Articles 17-20); and the equal participation of women, children and people with disabilities in sport (Article 24).
- (b) Article 3(f) of the **SADC Protocol on Education and Training** (1997) states that one of its objectives is "to work towards the reduction and eventual elimination of constraints to better and freer access, by citizens of Member States, to good quality education and training opportunities within the Region". This Protocol contains provisions relating to primary, secondary and tertiary education and adult learning. Member States shall "strive to provide universal basic education providing for at least nine years of schooling" (Article 5(3)), and that "where necessary and appropriate ... socially disadvantaged groups shall be given special support in admission to basic education" (Article 5(4)). Member States also commit to "improve access to education and training and to reduce inequalities in the acquisition of education and training" and to "work towards achieving universal literacy and numeracy" (Article 9(B)(1)(i)).
- (c) Article 3(g) of the **SADC Protocol on Health** (1999) states that one of its objectives is "to develop common strategies to address the health needs of women, children and other vulnerable groups." This law also contains provisions relating to, amongst others, health education (Article 8); HIV/AIDs and STDs (Article 10); malaria control (Article 11); TB control (Article 12); reproductive health (Article 16); childhood health (Article 17); cooperation with traditional health practitioners (Article 20); prevention and treatment of trauma (Article 21); mental health (Article 22), environmental health (Article 23), and the production, procurement and distribution of affordable essential drugs (Article 29(b)).

- (d) The **SADC Protocol on Wildlife Conservation and Law Enforcement** (1999) deals with the conservation and sustainable use of wildlife, excluding forestry and fishery resources (Article 2). Amongst others, it is based on the principle of cooperation and collaboration with NGOs to “achieve the objectives of international agreements which are applicable to the conservation and sustainable use of wildlife” (Article 2). One of its objectives is the facilitation of “community-based natural resources management practices for management of wildlife resources” (Article 4(g)), while Article 7(8) states that:

States Parties shall in recognition of the important role played by rural communities in the conservation and sustainable use of wildlife, promote community-based conservation and management of wildlife resources.

- (e) The **SADC Protocol on Forestry** (2002) applies to “all activities relating to development, conservation, sustainable management and utilisation of all types of forests and trees, and trade in forest products” in the region (Article 2). Article 3(1) states that its three main objectives are to:
- a. *promote the development, conservation, sustainable management and utilisation of all types of forests and trees;*
 - b. *promote trade in forest products throughout the Region in order to alleviate poverty and generate economic opportunities for the peoples of the Region; and*
 - c. *achieve effective protection of the environment, and safeguard the interests of both the present and future generations.*

Article 3(2)(g) indicates that Member States will achieve these objectives by:

promoting respect for the rights of communities and facilitating their participation in forest policy development, planning, and management with particular attention to the need to protect traditional forest-related knowledge and to develop adequate mechanisms to ensure the equitable sharing of benefits derived from forest resources and traditional forest-related knowledge without prejudice to property rights.

Guiding Principles 9 and 10 indicate that States should facilitate public participation in decision-making regarding the sustainable management of forests and the use of forest resources and recognise that communities are entitled to effective involvement in the sustainable management of forests and forest resources on which they depend and to share equitably in the benefits arising from their use (Article 4).

States are obliged to ensure security of tenure and to clearly delineate ownership and occupancy rights (Article 5); ensure consultation with affected communities in national procedures and processes for developing and revising national forest plans (Article 8), and introduce national laws to protect this right (Article 11); refer to the socio-economic benefits for communities in forest management plans (Article (8)); take affirmative action to ensure the participation of women in sustainable forest management (Article 13).

Community-based forest management is important to indigenous forest peoples as it is often one pragmatic means by which they may secure use and access rights over their traditional lands, territories and resources. Article 12 states that:

State Parties shall:

- a. adopt national policies and mechanisms to enable local people and communities to benefit collectively from the use of forest resources and to ensure their effective participation in forest management activities, including affirmative steps to seek and encourage such participation;*
- b. develop regional guidelines and share information and expertise related to community-based forest management; and*
- c. encourage local people and communities to grow and conserve trees and to integrate them into existing farming systems.*

Another issue of extreme importance to indigenous peoples is traditional forest-related knowledge. Article 16 states that:

- 1. State Parties shall recognise, respect and protect the rights of individuals and communities over their traditional forest-related knowledge and their right to benefit from the utilisation of this knowledge.*
- 2. State Parties, in consultation with local people and communities:*
 - a. may record, preserve and protect traditional forest-related knowledge, provide for the equitable sharing of any benefits arising from the utilisation of this knowledge among those who hold it;*
 - b. shall, where appropriate, develop standards, guidelines and other mechanisms in this regard.*

(f) Article 3(1) of the Charter of Fundamental Social Rights in SADC (sic) (2003) states that:

This Charter embodies the recognition by governments, employers and workers in the Region of the universality and indivisibility of basic human rights proclaimed in instruments such as the United Nations Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the Constitution of the ILO, the Philadelphia Declaration and other relevant international instruments.

Article 2 sets out the objectives of the Charter, which are related to industrial relations; the "creation of productive employment opportunities and generation of incomes"; policies, practices and measures to facilitate labour mobility, remove distortions in markets and increase productivity; social security schemes; health and safety at work; and the promotion of vocational and technical skills.

In addition to these themes, it contains the following provisions relating to human rights:

- freedom of association, the right to organise and collective bargaining (Article 4);
- right to strike (Article 4);
- equal treatment for men and women (Article 6);

- protection of children, young people, the elderly and people with disabilities (Articles 7-9);
- equitable basic working and living conditions (Article 11);
- weekly rest period and annual paid leave for every worker (Article 11);
- the right to health and safety at work (Article 12)
- the right to a healthy and safe environment that sustains human development (Article 12);
- access to adequate shelter (Article 12);
- industrial and workplace democracy (Article 13);
- workers' rights to information and consultation (Article 13);
- fair opportunities to receive wages, which provide for a decent standard of living (Article 14);
- workers' right to paid study leave (Article 15);

Article 10 guarantees the right of all SADC citizens to social protection, further stating that "persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance."

Furthermore, under the Charter States are obliged to ratify and implement ILO Conventions on the abolition of forced labour (Nos. 29 and 105); freedom of association and collective bargaining (Nos. 87 and 98); the elimination of discrimination in employment (Nos. 100 and 111); the minimum age of entry into employment (No. 138) and other relevant ILO instruments (Article 5).

iv Monitoring

Article 16 of the SADC Treaty creates the SADC Tribunal, which was given effect by the 2000 SADC Protocol on Tribunal and the Rules of Procedure Thereof ('Tribunal Protocol'). The Amended SADC Treaty made the Tribunal Protocol an integral part of the SADC Treaty and therefore automatically operational in 2001. It sits in Windhoek, Namibia and is composed of five permanent members appointed by member States. There are also five alternate members who replace any indisposed permanent members. The members were appointed in 2005, and the Tribunal became ready to receive cases in April 2007.

The SADC Tribunal has jurisdiction over all disputes and all applications referred to it that relate to the interpretation and application of the SADC Treaty, Protocols, subsidiary SADC instruments, and acts of the institutions of the Community (Article 14, Tribunal Protocol). The Tribunal can hear cases brought by individuals, who must have exhausted all domestic remedies beforehand (Article 15). Article 21 indicates that the Tribunal will "develop its own Community jurisprudence having regard to applicable treaties, general principles and rules of public international law and any rules and principles of the law of States", thus giving it a mandate to refer to international human rights law in its future deliberations. Tribunal decisions are final and binding (Article 24).

For more information about the SADC Tribunal go to <http://www.sadc.int/tribunal/index.php>.

D Common Market for Eastern and Southern Africa (COMESA)



i History and creation

The Common Market for Eastern and Southern Africa (COMESA) was created in 1994 by the COMESA Treaty. It developed out of the OAU's 1981 Preferential Trade Area for Eastern and Southern Africa (PTA) and is part of the long term strategy to establish the African Economic Community in the region. COMESA member States aim to develop natural and human resources and improve peace and security in the region for the good of their citizens (Article 3). Although its focus is primarily on improving regional economic cooperation and trade (Article 4), the COMESA Treaty clearly indicates that member States adhere to the principle of "recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights" (Article 6(e)), and "accountability, economic justice and popular participation in development" (Article 6(f)).

For more information about COMESA go to <http://www.comesa.int>.

ii Member States

The 19 COMESA member States are: Burundi, Comoros, DRC, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe. Its Secretariat is based in Lusaka, Zambia.

iii Key provisions

In addition to the general human rights provisions referred to in Section i above, the COMESA Treaty, which is legally binding on all member States, contains only a few, mainly oblique references to other rights, including:

- the development of human resources including training and the development of indigenous entrepreneurs and industrialists for sustained industrial growth (Article 100(i));
- environmental measures to protect human health (Article 122 (5));
- conservation of natural resources, including forestry (Article 123);
- adopt measures to address poor social conditions to mitigate their negative effects on the environment and development (Article 124);
- food security (Article 129);
- access to water (Article 136(b));
- improved health services (Article 136(c));
- improved nutrition (Article 136 (e));
- education (Article 136(g));
- adult literacy (Article 143(1)(c));
- right of association and collective bargaining (Article 143(1)(g));
- cultural development (Article 143(1)(h))
- non-discrimination against women and their equal participation in development and business (Articles 154-155) (NB: COMESA has a cross-cutting gender policy. See: <http://www.comesa.int/publications/gender%20policy/view>);
- freedom of movement, right of establishment and residence (Article 164);

Article 143(2) indicates that member States will also adopt a social charter to further develop provisions relating to issues including employment and working conditions, education, and culture.

iv Monitoring

The COMESA Court of Justice ('COMESA CJ') was established by Article 7 of the COMESA Treaty and became operational in 1998. Its official seat is in Khartoum, Sudan. In 2004 the COMESA Treaty was amended to expand the Court into two Divisions: the lower Division (Court of First Instance) is composed of seven judges; and the upper (Appellate) Division is composed of five judges. All twelve took office in 2005.

The role of the COMESA CJ is to ensure the adherence to law in the interpretation and application of the COMESA Treaty (Article 19), Protocols and other legislative acts. The COMESA CJ has a wide-ranging jurisdiction when it comes to hearing cases from individuals. Article 26 states that:

Any person who is resident in a Member State may refer for determination by the Court the legality of any act, regulation, directive, or decision of the Council or of a Member State on the grounds that such act, directive, decision or regulation is unlawful or an infringement of the provisions of this Treaty:

Provided that where the matter for determination relates to any act, regulation, directive or decision by a Member State, such person shall not refer the matter for determination under this Article unless he has first exhausted local remedies in the national courts or tribunals of the Member State.

Although the COMESA Treaty does not specify if the COMESA Court has jurisdiction over human rights issues, it may decide to refer to international (human rights) law in its deliberations. Its decisions on the interpretation of Treaty have precedence over decisions of national courts and are binding on all member States.

For more information about the COMESA CJ go to
http://www.comesa.int/institutions/court_of_justice/.



E Intergovernmental Authority on Development (IGAD)

i History and creation

The Intergovernmental Authority on Development (IGAD) was created in 1996 to supersede the Intergovernmental Authority on Drought and Development (IGADD) which was founded in 1986 as a regional approach to the recurring and severe droughts and other natural disasters between 1974 and 1984 that caused widespread famine, ecological degradation and economic hardship in the Eastern Africa region. In 1995 member States adopted the Agreement Establishing the Intergovernmental Authority on Development ('Agreement Establishing IGAD'), which expanded the areas of cooperation and introduced a new organisational structure.

IGADs vision is to be “the premier regional organization for achieving peace, prosperity and regional integration in the ... region”. Its three-fold mission is to achieve food security and environmental protection; peace, security and humanitarian affairs; and economic cooperation and integration. Its objectives, set out in Article 7 of the Agreement Establishing IGAD' include promoting freedom of movement of people; improving trade; achieving regional food security and sustainable natural resource management; environmental protection; joint promoting development strategies; and realising COMESA's objectives. For more information about IGAD go to <http://www.igad.org>.

ii Member States

The seven IGAD member States include: Djibouti; Eritrea; Ethiopia; Kenya; Somalia; Sudan; and Uganda. Its headquarters are in Djibouti.

iii Key provisions

Article 6A of the Agreement Establishing IGAD, which is legally binding on its members, states that:

The Member States solemnly reaffirm their commitment to the following principles ... Recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and People's Rights

Furthermore, Article 13A(q) states that members undertake to “respect the fundamental and basic rights of the peoples of the region to benefit from emergency and other forms of humanitarian assistance”.

The IGAD Strategy was adopted by member States in 2003 and provides a framework for achieving its goals and objectives. Section 2.6 indicates that IGADs strategic approach will include an:

increase [in] its involvement in the issues of good governance and human rights in the IGAD region and considering their linkages to peace, security and sustainable

development. It will focus on developing a regional consensus on the issues and putting in place mechanisms for implementation

Section IV of the Strategy sets out IGAD's programmes under its three mission sectors: agriculture and environment, political and humanitarian affairs and economic cooperation. There are some areas that could be of specific interest to indigenous peoples and NGOs in the region. For example, the IGAD natural resource programme includes a component on strengthening the "rational utilisation of trans-boundary natural resources (Section 4.4.1(b), p.13). IGADs conflict prevention programmes will include "Taking lead in drafting protocol that grants status to pastoral communities and establishment of pastoralists forum" (Section 4.1.2(a), p.15). There is also a commitment to promote policies and programmes that support initiatives aimed at promoting women's land rights and gender mainstreaming (Section 4.2.1, p.18).

The Strategy is not legally binding; however Section V underlines that its successful implementation can only be realized through the concerted collaborative effort of the member States, the Secretariat and IGAD Partners Forum.

iv Monitoring

The Secretariat helps member states formulate projects in the priority areas, facilitates the coordination and harmonisation of development policies, mobilises resources to implement regional projects and programmes approved by the Council and reinforces national infrastructures necessary for implementing regional projects and policies. The Secretariat is led by an Executive Secretary who is assisted by four Directors heading the divisions of Economic Cooperation & Social Development; Agriculture and Environment; Peace and Security; and Administration and Finance. IGAD employs about twenty regional professional staff and various short-term project and technical assistance staff.

Indigenous peoples and NGOs may wish to participate in the IGAD NGO and Civil Society Forum, a mechanism designed to provide a link between the IGAD Secretariat and civil society. IGAD has described civil society and nongovernmental organisations as "valuable and cost-effective intermediaries between central agencies and community groups" and recognises that their efforts "to improve the situation of the people, promote their interests and defend their rights, are a vital element in the Region's economic and social progress."



F West African Economic Monetary Union (WAEMU)

i History and creation

The West African Economic Monetary Union (WAEMU) was created in 1994 with the adoption of the WAEMU Treaty. A Revised WAEMU Treaty was adopted in 2003. WAEMU was established to enable a coherent monetary and economic policy amongst Central African Franc (CFA) zone States when the CFA was devalued. Its objectives include the creation of a common market between members and to coordinate national sectoral policies in areas such as agriculture, energy, transport and human resources. There are plans to integrate WAEMU with COMESA.

For more information about WAEMU go to:

<http://www.uemoa.int/index.htm>;

http://www.aict-ctia.org/courts_subreg/waemu/waemu_docs.html

ii Member States

The eight member States are: Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal, and Togo. The WAEMU headquarters are in Ouagadougou, Burkina Faso. WAEMU members are also ECOWAS members and subject to its jurisdiction.

iii Key provisions

There are few provisions relating to human rights in the WAEMU Treaty and WAEMU Revised Treat, however Article 3 of both treaties state that: "In its actions the Union respects the fundamental rights enounced in the 1948 Universal Declaration of Human Rights and the 1981 African Charter on Human and Peoples' Rights." Article 4(c) states that one of the WAEMU objectives is to "create a common market between Member States based on the free movement of people..." Article 91(1) of the Revised Treaty also states that:

Without reservation to limits justified by public order, public security and public health, the nationals of a member State benefit from freedom of circulation and residence in the territory of the Union which implies:

the abolition between nationals of member States of all discrimination based on nationality concerning the search and exercise of employment, with the exception of employment in the Civil Service;

the right to move and stay in the territory of all the member States;

the right to continue to reside in a member State after having been employed there.

iv Monitoring

The WAEMU Court of Justice (WAEMUCJ) was created by the WAEMU Treaty and its Additional Protocol No.1, and, with the Court of Auditors, functions as the judicial arm of WAEMU. It became operational in 1995 and is composed of eight independent judges nominated by member States for a six year renewable term. The WAEMUCJ sits in Burkina Faso. Legal and natural persons can bring a case before the WAEMUCJ regarding the legality of WAEMU legislation and its organs.

For more information about the WAEMUCJ go to:
http://www.uemoa.int/organes/organes_controle.htm.

G Central African Economic and Monetary Union (CEMAC)

i History and creation

The Central African Economic and Monetary Union (CEMAC), created in 1999, continues and supersedes the Customs and Economic Union of Central Africa (UDEAC). It was created by the 1994 Treaty Instituting the Central African Economic and Monetary Union (CEMAC Treaty). CEMAC consists of two unions: the Economic Unions of Central Africa (UEAC) and the Monetary Union of Central Africa (UMAC). Article 1 states that the essential mission of CEMAC is to promote harmonious development of member States within the framework of the two unions, within which the member States will transit from a stage of cooperation to full economic and monetary integration. Annexed to the CEMAC Treaty is the Convention Governing the UEAC (UEAC Convention). CEMAC has indicated that it wants civil society to participate in the definition and execution of its strategies, and cultural and sporting activities are envisaged to further member States' adhesion to common values.

For more information about CEMAC go to: <http://www.cemac.cf>.

ii Member States

The six members include: Cameroon; Central African Republic; Chad; Gabon; Equatorial Guinea; and, Republic of Congo. Its headquarters are in the Central African Republic.

iii Key provisions

The CEMAC Treaty contains few provisions relating to human rights, however its Preamble reaffirms member States' attachment to the principles of liberty, democracy, rule of law and human rights. Workers' rights to freedom of movement, entry, and residence are protected in Article 27 of the UEAC Convention.

iv Monitoring

The CEMAC Community Court of Justice (CEMAC CCJ) is the overarching judicial arm of CEMAC, created by the 1996 Convention Governing the CEMAC Court of Justice ('CEMAC CCJ Convention'). It is composed of two chambers: the Judicial Chamber and the Chamber of Auditors. The Judicial Chamber, which is also governed by the 2000 Statute on the Judiciary Chamber (JC Statute) is charged with interpreting the application of the CEMAC Treaty and subsequent conventions. It is composed of six independent judges nominated by member States for a six year term renewable once, and sits in Chad. Any legal person can bring a case before the Judicial Chamber.

For more information about the CEMAC CCJ go to:

http://www.aict-ctia.org/courts_subreg/cemac/cemac_home.html;

<http://www.cemac.cf/institutionsCEMAC.htm#institution4>.

VIII How Indigenous Peoples and NGOs can use the African System

Detailed information on using certain mechanisms of the African human rights system is contained in the preceding sections. For instance, the communications procedure of the African Commission is described in Section IIIC, the case procedure of the African Court is described in Section V, the promotional processes of the Children's Committee are described in Section IIB, and NEPAD's APRM process is described in Section VI.

Below is a summary of additional ways in which indigenous peoples can raise issues of concern under the principal AU human rights mechanisms.

A Participating at the African Commission Sessions

i Observer and Affiliate Status at the Commission

Since 1988, in a bid to strengthen cooperation, the Commission has been granting Observer Status to NGOs. By its 22nd ordinary session (the 10th Anniversary of the Commission), over 200 NGOs had received such status, and today the register of NGOs with Observer Status is over 370.⁷⁴ The Commission also grants Affiliate Status to National Human Rights Institutions which the Commission sees as invaluable partners in the promotion of human and peoples' rights.

The Commission's resolution on and criteria for for obtaining Observer Status are reproduced in Annexes XII and XIII. Both national and international NGOs can obtain Observer Status. However, the Commission's current policy is that organisations requesting Observer Status must have been active in the field of human rights in Africa for at least two years. Applications must be received at least three months before the session at which the application will be considered. If approved, the organisation will be required to submit an activity report to the Commission every two years.

Observer Status allows the NGO to attend the twice yearly public sessions of the Commission. It also allows them to receive official Commission documents on a regular basis (Rule 75). This status will enable NGOs to become more familiar with the members of the Commission, which in turn may help with raising issues of concern. NGOs with Observer Status can propose specific items to be included in the session agendas (see Section VIIIAiv). Importantly, this status also allows NGOs to make oral interventions during the Commission sessions (see Section VIIIAiii) and, in some cases, to reply to questions raised by participants during public sessions. Finally, when the Commission organises a promotional visit to a country, it will put NGOs with observer status on the list of organisations it requests to visit. This can be an important way for indigenous organisations to lend their voice to the promotional and protective work of the Commission whenever its members are visiting their country.

⁷⁴ However only a fraction of these regularly and actively participate in and support the Commission's work.

ii Participating in sessions of the Commission and the pre-session NGO Forum

As mentioned above, NGOs with Observer Status can attend and participate in the public sessions of the Commission's twice yearly ordinary sessions. This not only allows these organisations to stay abreast of developments at the Commission, but also permits critical networking with other NGOs, indigenous organisations, Commissioners and government representatives. A sample agenda for the 2006 ordinary session is attached as Annex XIV.

During the three days immediately prior to each session, a pre-session NGO Forum is organized by the African Centre for Democracy and Human Rights Studies (ACDHRS), a non-governmental human rights organisation based in The Gambia. This 3-day forum is an opportunity for members of civil society from across Africa and internationally to come together to discuss human rights issues on the continent as well as strategies for tackling human rights abuses. Presentations are given by various experts on a range of human rights topics, and break-out groups discuss thematic issues and develop draft resolutions for presentation to the Commission. The Forum is a good opportunity for indigenous peoples to stay abreast of a range of human rights issues from a civil society perspective and for networking with like-minded groups from across Africa.

iii Oral interventions

At the Commission's ordinary sessions, representatives of NGOs with Observer Status may request the opportunity to make brief oral presentations to the Commission on the human rights situation in a particular country or countries. One such oral intervention per NGO can be made during the session entitled 'Human Rights Situation in Africa, Statements by NGOs' and during one or more of the thematic topics under the session entitled 'Promotion Activities'.⁷⁵ Oral interventions by NGOs are limited to five minutes. They must be delivered in one of the official languages of the Commission and should ideally be written out, with a copy given to both the on-site Secretariat and to the interpreters.

A guide on how to prepare and present an oral intervention to the African Commission is found in Annex XV.

iv Including an item on the agenda of the Commission

Rule 6(3)(f) of the Commission's Rules of Procedure allows an NGO to make proposals for the inclusion of items in the Provisional Agenda for the following session of the Commission. These proposals must be submitted in writing to the Secretary at least ten weeks prior to the opening of the Commission's session (Rule 6(5)(a)) and must be approved by two thirds of the Commission members voting and present (Rule (6)(5)(b)).

In practice, NGOs discuss proposals with one or more Commissioners in advance of submitting them, and only submit proposals that are likely to be approved.

⁷⁵ See Items 4 and 7 on the sample agenda in Annex XIV.

B Country Reporting Processes

Indigenous peoples and organisations may submit information to the Commission and, for issues specifically relating to indigenous children's human rights, to the Children's Committee, in response and supplemental to the periodic reports required from States parties to these instruments.⁷⁶ It is often through supplementary reporting by NGOs that the existence and issues of indigenous peoples in a State are brought to the attention of treaty monitoring bodies, thereby allowing them to use their protective mandate to further the cause of human and peoples' rights.

In the case of the Charter, State reports are normally published on the Commission's website⁷⁷ a few months before the session at which the Commission will examine the State in question, so it is important to regularly check this website to see if your country has submitted a report.

As soon as your government has submitted its State report you should begin preparing your supplementary report. The submission by NGOs or indigenous organisations of a written 'supplementary report' – containing responses to the State report and further information on the situation of indigenous people or indigenous children in the country – will give the Commission or the Children's Committee a fuller understanding of the human rights situation in that State, and can trigger these bodies to ask targeted questions of the State during the examination of its periodic State report. For instance, during the examination by the Commission of Namibia's periodic State report in 2001, one Commissioner noted that:

*There are people in Namibia who would call themselves indigenous. There is reference to the "San" people for example, and reference has been made ... to the Herero people and the delegate himself yesterday [made] a statement about ethnic antagonism. It would be helpful to know what is the situation relative to land rights, natural resources – I did not see any reference in the report to that and wondered if the delegate could have a response to that.*⁷⁸



⁷⁶ See Sections IIA and IIC.

⁷⁷ See Annex XVI.

⁷⁸ Periodic Report of Namibia at 29th Session of the African Commission on Human and Peoples' Rights, 23 April – 7 May 2001, reported on in Murray, R., *Groups and the African Charter on Human and Peoples' Rights*, Human Rights Quarterly 25 (2003) 213 at 232, footnote 129.

Similarly, in 2004, as a result of the submission of a supplementary report by Forest Peoples Programme to Rwanda's State report under the Charter,⁷⁹ four Commissioners asked questions pertaining to the situation of the indigenous Batwa in Rwanda. One Commissioner pointed out to the Rwanda State representatives that the UN Committee on the Elimination of Racial Discrimination has urged Rwanda to recognize the Batwa as indigenous peoples and to respect their rights as provided for under the UN Convention on the Elimination of Racial Discrimination. He also pointed out that the African Commission has recognized the Batwa as an indigenous minority that suffers marginalization and discrimination, and wanted to know what the government had done to improve their situation. He asked the State representatives to confirm whether the rejection by the State of the national Batwa organisation CAURWA's application for legal registration as an NGO had anything to do with the use of the word "indigenous" in its incorporating statutes (a word perceived as divisive in Rwanda) pointing out that self-identification has been accepted as the basis for indigenous peoples and for their own cultural identification.⁸⁰ While Rwanda continues to assert that all Rwandans are indigenous and to deny the national Batwa organisation the right to refer to the ethnicity of its Batwa beneficiaries, this use of the supplementary reporting process brought the issue of indigenous rights directly into the regional and international spotlight.

It is critical that supplementary reports be well researched and written, or the report and the submitting organisations risk losing vital credibility. A guide on how to prepare a supplementary report is attached as Annex XVI. Supplementary reports should be submitted to the Commissioner (in the case of the Commission) or Member (in the case of the Children's Committee) in charge of the country in question (inquire with the appropriate Secretariat) and to the monitoring body's Secretariat. Optionally, copies may also be sent to the relevant national authorities, such as the Ministries of Justice, Human Rights, Land, Women's Affairs, Children's Affairs and/or Foreign Affairs, the diplomatic representative of the State party at the AU in Addis Ababa, and local and national media in order to increase the exposure of the issues at the national level. This is a strategic question that will depend on your organisation's other campaigns and activities and on whether there are any safety or security risks in publicizing your report and your organisation's work to your government. The State report (and any supplementary reports) will be examined by the monitoring body during its ordinary sessions, and after examination the monitoring body will prepare written observations, including recommendations. This information is transmitted to the State authorities and later becomes public.

Submitting organisations should also monitor the implementation of the monitoring body's recommendations and inform them about any concrete measures, or the lack thereof, taken by the State in question to implement them. Local organisations should also follow up with the appropriate government offices on the steps they are taking to implement the recommendations.

NGOs can also participate in the country reporting process by contributing to the deliberations of the government committee in charge of drafting the State report. This can

⁷⁹ Forest Peoples Programme, *Rapport indépendant soumis à la 36ième session de la Commission Africaine des droits de l'homme et des peuples sur les droits des peuples autochtones Batwa du Rwanda*, 2006. See : http://www.forestpeoples.org/documents/law_hr/rwanda_rep_afcom_nov04_fr.pdf.

⁸⁰ Information obtained from IWGIA's attendance at this session of the African Commission.

be achieved either by providing observations to the committee on a particular human rights situation or, where possible, by directly participating in the report drafting process. Information on the status of the government's preparation of its State reports can usually be obtained from the Ministry of Foreign Affairs.

C Contributing to promotional activities

NGOs can have an impact on the promotional activities of the Commission and the Children's Committee by informing them about the human rights situation in a particular State (in a well researched and written report), contributing to promotional visits to States as well as conferences or research projects organised by these bodies; and assisting any special mechanisms⁸¹ working in the State or on a thematic issue of relevance in the State.

D Requesting a mission of enquiry

Through communications with the Commission backed by well researched and written reports, NGOs can request that the Commission send a mission to a country in which it is alleged that serious violations of human and peoples' rights are taking place (see Section IIIDii). While the decision to request an investigative mission is at the discretion of the Commission, information supplied by civil society organisations in respect of serious human rights abuses can provide the factual platform from which such a request will be made.

E National level advocacy on the Commission and its Working Group⁸²

Indigenous organisations and NGOs can use the work of the Commission (Section III) and its Working Group (Section IV) to advance the cause of indigenous peoples in Africa. For instance, in 2005 the Working Group's report was used as an important lobbying instrument by a coalition of Kenyan indigenous organisations. Three advertisements – two in English and one in Swahili – were published in three major Kenyan newspapers, highlighting the recently adopted report and constructively drawing the general public's attention to indigenous peoples' rights. The advertisements have contributed to a process of awareness-raising with regard to indigenous issues and human rights in Kenya. In 2006, the Kenyan National Human Rights Commission expressed its interest in hosting a seminar on indigenous issue, encouraged by the process at the African Commission.

Indigenous organisations in Cameroon have also actively used the process at the African Commission as well as the Working Group's report to advocate for their rights. The media in Cameroon were mobilised during, before and after the Working Group's regional sensitisation seminar in September 2006, with some 15 different radio and television stations and newspapers publishing news on the Commission's work on indigenous

⁸¹ See Section IIIDiii.

⁸² The information in this Section was obtained from the website of the International Work Group for Indigenous Affairs (IWGIA), available at www.iwgia.org.

peoples' rights. Other lobbying projects at the national level have been carried out in Burundi, Niger and the DRC.

The Working Group has an extensive mandate, which presents a major window of opportunity for promoting indigenous peoples' rights. The Working Group was established to work with State parties, national human rights institutions, civil society organisations, international institutions and other bodies that can inform it and cooperate with it on the problems faced by indigenous populations on the African continent. It is therefore strategically wise for NGOs and indigenous organisations to establish fruitful and constructive dialogue with the Working Group and to contribute to its agenda and its work.

VIX Further Information

A list of useful links and contacts can be found in Annex XVII.

Annex I African Charter on Human and Peoples' Rights

PREAMBLE

The African States members of the Organisation 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 Organisation 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 coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

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

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

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

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

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

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organisation 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 and 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 Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the 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 any status.

ARTICLE 3

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

ARTICLE 4

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

ARTICLE 5

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

ARTICLE 6

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

ARTICLE 7

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

- c. The right to defence, including the right to be defended by counsel of his choice;
 - d. The right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

ARTICLE 8

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

ARTICLE 9

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

ARTICLE 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.

ARTICLE 11

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

ARTICLE 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country.
3. 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.
4. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.
5. 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.
6. 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 the 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 recognized by the community shall be the duty of the State.

ARTICLE 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women 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 the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the 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 cooperation 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 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 Organisation 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 strengthened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to his 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 Organisation 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 Organisation 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 Organisation of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections;

ARTICLE 36

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

ARTICLE 37

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organisation 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 Organisation 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 Organisation 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 Organisation of African Unity shall appoint the Secretary of the Commission. He shall provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organisation of African Unity shall bear cost of the staff and services.

ARTICLE 42

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

ARTICLE 43

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

**CHAPTER II
MANDATE OF THE COMMISSION**

ARTICLE 45

The functions of the Commission shall be:

1. To promote human and peoples' rights and in particular:
 - a. to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, 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 legislation.
 - c. cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State Party, an institution of the OAU or an African Organisation recognised by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

**CHAPTER III
PROCEDURE OF THE COMMISSION**

ARTICLE 46

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

COMMUNICATION FROM STATES

ARTICLE 47

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

ARTICLE 48

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

ARTICLE 49

Notwithstanding the provisions of Article 47, if a State Party to the present Charter considers that another State Party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organisation 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 State concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

ARTICLE 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of human and peoples' rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report to the States concerned and communicated to the Assembly of Heads of State and Government.

ARTICLE 53

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

ARTICLE 54

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

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 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 requests anonymity,
2. Are compatible with the Charter of the Organisation 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 Organisation of African Unity,
4. Are not based exclusively on news disseminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter, and
7. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter.

ARTICLE 57

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

ARTICLE 58

1. When it appears after deliberations of the Commission that one or more Communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its finding and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

ARTICLE 59

1. All measures taken within the provisions of the present Chapter shall remain confidential until the Assembly of Heads of State and Government shall otherwise decide.
2. However the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.
3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

**CHAPTER IV
APPLICABLE PRINCIPLES**

ARTICLE 60

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

ARTICLE 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognised by Member States of the Organisation 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 Organisation of African Unity.
2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organisation 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 Organisation 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 Organisation of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organisation 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 the 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 Organisation of African Unity shall inform members of the Organisation 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 Organisation 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.

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

Annex II African Charter on the Rights and Welfare of the Child

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 recognizes the paramountcy of Human Rights and the African Charter on Human and People's Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized 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 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, recognized the need to take 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/she needs special safeguards and care,

Recognizing that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding,

Recognizing 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 civilization which should inspire and characterize 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 declaration, conventions and other instruments of the Organization of African Unity and in 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 States Parties

1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to 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 realization 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 tile 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 recognized 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.

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/her own views, and 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. States 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. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall 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.

Article 7: Freedom of Expression

Every child who is capable of communicating his or her own views shall be assured the rights 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. States 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 the 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 an 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 achievements 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. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization 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 the 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. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.
 5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools 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. States Parties to the present Charter shall have 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 I 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, Recreation and Cultural Activities

1. States Parties recognize 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. States 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. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of 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 States 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 highway 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. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
 - a. to reduce 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 organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children;
 - j. to support through technical and financial means, the mobilization 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. States Parties to the present Charter 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, States Parties shall in particular:
 - a. provide through legislation, minimum wages 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. States 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 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. States Parties to the present Charter shall in particular:
 - a. ensure that no child who is detained or imprisoned or otherwise deprived of his/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 in infringing the penal law:
 - i. shall be presumed innocent until duly recognized 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. States 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 even of its dissolution. In case of the 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: Parent 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. States 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 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 of the upbringing and development 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. States Parties to the present Charter shall in accordance with their means and national conditions the 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. States 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 18 years and make registration of all marriages in an official registry compulsory.

Article 22: Armed Conflicts

1. States 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. States 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. States 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. States 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, receive 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. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or 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

States Parties which recognize 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. recognize 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 a 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 reason shall be entitled to special protection and assistance;
2. States 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. States 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 destabilization by the Apartheid regime.
2. States 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 destabilization.
3. States 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. States 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

States 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

States Parties to the present Charter shall take appropriate measures to prevent:

- a. the abduction, the sale of, or traffic of 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

1. States 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 to the family and social rehabilitation.

Article 31: Responsibility of the Child

Every child shall have responsibilities towards his family and society, the State and other legally recognized 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

CHAPTER TWO: ESTABLISHMENT AND ORGANIZATION 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 States 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 States 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

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

Article 37: Term of Office

1. The members of the Committee shall be elected for a term of five years and may not be re-elected, however. the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years.
2. Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to determine the names of those members referred to in sub-paragraph 1 of this Article.
3. The Secretary-General of the Organization of African Unity shall convene the first meeting of Committee at the Headquarters of the Organization 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 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, organize 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. cooperate with other African, international and regional Institutions and organizations 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 recognized by the Organization of African Unity, or any State Party.
- d. Perform such other task 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 two years of the entry into force of the Charter for the State Party concerned: and
 - b. and thereafter, every three 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 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 I (a) of this Article, repeat the basic information previously provided.

Article 44: Communications

1. The Committee may receive communication, from any person, group or nongovernmental organization recognized 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 Committee

1. The Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures the 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. States Parties shall make the Committee's reports 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 on 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 States 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 States Parties.

Annex III

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

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 on in, 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 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 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 mental 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. AU 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 climate 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 legitimize 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 administrate 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 the 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 international recognised standards and best practices;
 - g) 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 breastfeeding;
 - 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 unborn child.

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;
 - c) regulate the management, processing, storage and disposal of domestic waste;
 - d) 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 a 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) 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) a widow shall have the right to remarry, and in that event, to marry a 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 marginalized population groups and provide the 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 (15) 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.

Annex IV
Protocol to the African Charter
on Human and Peoples' Rights on the Establishment of
an African Court on Human and Peoples' Rights

The Member States of the Organization of African Unity hereinafter referred to as the OAU, States Parties to the African Charter on Human and Peoples' Rights:

Considering that the Charter of the Organization of African Unity recognizes 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 organizations;

Recognizing 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;

Recognizing 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 organization, 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 organization recognized 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 decision.

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 human rights violation;
 - e. African Intergovernmental Organizations.
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 Organizations (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 recognized 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. States 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 States 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 States 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 cases 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 States 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.

Annex V

The African Convention on the Conservation of Nature and Natural Resources (The 'Algiers Convention')

PREAMBLE

We the Heads of State and Government of Independent African States,

FULLY CONSCIOUS that soil, water, flora and faunal resources constitute a capital of vital importance to mankind;

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

FULLY CONSCIOUS of the ever-growing importance of natural resources from an economic, nutritional, scientific, educational, cultural and aesthetic point of view;

CONSCIOUS of the dangers which threaten some of these irreplaceable assets;

ACCEPTING that the utilization of the natural resources must aim at satisfying the needs of man according to the carrying capacity of the environment;

DESIROUS of undertaking individual and joint action for the conservation, utilization and development of these assets by establishing and maintaining their rational utilization for the present and future welfare of mankind;

CONVINCED that one of the most appropriate means of achieving this end is to bring into force a convention;

HAVE AGREED AS FOLLOWS:

Article I

The contracting States hereby establish an AFRICAN CONVENTION ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES.

Article II **Fundamental Principle**

The contracting States shall undertake to adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and faunal resources in accordance with scientific principles and with due regard to the best interests of the people.

Article III Definitions

For the purposes of the present Convention, the meaning of the following expressions shall be as defined below:

- (a) "Natural Resources" means renewable resources, that is soil, water, flora and fauna;
 - (b) "Specimen" means an individual example of a species of wild animal or wild plant or part of a wild plant;
 - (c) "Trophy" means any dead animal specimen or part thereof whether included in a manufactured or processed object or otherwise dealt with, unless it has lost its original identity; also nests, eggs and eggshells;
 - (d) "Conservation area" means any protected natural resource area, whether it be a strict natural reserve, a national park or a special reserve.
- (1) "Strict nature reserve" means an area:
- (i) under State control and the boundaries of which may not be altered nor any portion alienated except by the competent legislative authority;
 - (ii) throughout which any form of hunting or fishing, any undertaking connected with forestry, agriculture or mining, any grazing, any excavation or prospecting, drilling, leveling of the ground or construction, any work tending to alter the configuration of the soil or the character of the vegetation, any water pollution and, generally, any act likely to harm or disturb the fauna of fora, including introduction of zoological or botanical species, whether indigenous or imported, wild or domesticated, are strictly forbidden;
 - (iii) where it shall be forbidden to reside, enter, traverse or camp, and where it shall be forbidden to fly over at low altitude, without a special written permit from the competent authority, and in which scientific investigations (including removal of animals and plants in order to maintain an ecosystem) may only be undertaken by permission of the competent authority.
- (2) "national park" means an area:
- (i) under State control and the boundaries of which may not be altered or any portion alienated except by the competent legislative authority;
 - (ii) exclusively set aside for the propagation, protection, conservation and management of vegetation and wild animals as well as for the protection of sites, land-spaces or geological formations of particular scientific or aesthetic value, for the benefit and enjoyment of the general public; and
 - (iii) in which the killing, hunting and capture of animals and the destruction or collection of plants are prohibited except for scientific and management purposes and on the condition that such measures are taken under the direction or control of the competent authority;
 - (iv) covering any aquatic environment to which all of the provisions of section (b) (1-3) above are applicable.

The activities prohibited in strict nature reserve under the provisions of section (a) (2) of paragraph (4) of this article are equally prohibited in national parks except in so far as they are necessary to enable the park authorities to implement the provisions of section (2) of this paragraph, by applying, for example, appropriate management practices, and to enable the public to visit these parks; however, sport fishing may be practiced with the authorization and under the control of the competent authority;

- (3) "special reserve" means other protected areas such as:
- (i) "game reserve" which shall denote an area (a) set aside for the conservation, management and propagation of wild animal life and the protection and management of its habitat; (b) within which the hunting, killing or capture of fauna shall be prohibited except by or under the direction or control of the reserve authorities; (c) where settlement and other human activities shall be controlled or prohibited.
 - (ii) "partial reserve" or "sanctuary" which shall denote an area (a) set aside to protect characteristic wildlife and especially bird communities, or to protect particularly threatened animal or plant species and especially those listed in the Annex to this Convention, together with the biotopes essential for their survival; (b) in which all other interests and activities shall be subordinated to this end.
 - (iii) "soil" "water" or "forest" reserve shall denote areas set aside to protect such resources.

Article IV Soil

The contracting States shall take effective measures for conservation and improvement of the soil and shall in particular combat erosion and misuse of the soil. To this end:

- (a) they shall establish land-use plans based on scientific investigations (ecological, pedological, economic, and sociological) and, in particular, classification of land-use capability;
- (b) they shall, when implementing agricultural practices and agrarian reforms,
 - (1) improve soil conservation and introduce improved farming methods, which ensure long-term productivity of the land;
 - (2) control erosion caused by various forms of land-use which may lead to loss of vegetation cover.

Article V Water

1. The contracting States shall establish policies for conservation, utilization and development of underground and surface water, and shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water, taking appropriate measures with due regard to –
 - (a) the study of water cycles and the investigation of each catchment area;
 - (b) the co-ordination and planning of water resources development projects;
 - (c) the administration and control of all water utilization; and
 - (d) prevention and control of water pollution.
2. Where surface or underground water resources are shared by two or more of the contracting States, the latter shall act in consultation, and if the need arises, set up inter-State Commissions to study and resolve problems arising from the joint use of these resources, and for the joint development and conservation thereof.

Article VI Flora

1. The contracting States shall take all necessary measures for the protection of flora and to ensure its best utilization and development. To this end the Contracting States shall:
 - (a) adopt scientifically-based conservation, utilization and management plans of forests and rangeland, taking into account the social and economic needs of the States concerned, the importance of the vegetation cover for the maintenance of the water balance of an area, the productivity of soils and the habitat requirements of the fauna;
 - (b) observe section (a) above by paying particular attention to controlling bush fires, forest exploitation, land clearing for cultivation, and over-grazing by domestic and wild animals;
 - (c) set aside areas for forest reserve and carry out afforestation programmes where necessary;
 - (d) limitation of forest grazing to season and intensities that will not prevent forest regeneration; and
 - (e) establish botanical gardens to perpetuate plant species of particular interest.

2. The Contracting States also shall undertake the conservation of plant species or communities, which are threatened and/or of special scientific or aesthetic value by ensuring that they are included in conservation areas.

Article VII Faunal Resources

1. The Contracting States shall ensure conservation, wise use and development of faunal resources and their environment, within the framework of land-use planning and of economic and social development. Management shall be carried out in accordance with plans based on scientific principles, and to that end the Contracting States shall:
 - (a) manage wildlife populations inside designated areas according to the objectives of such areas and also manage exploitable wildlife populations outside such areas for an optimum sustained yield, compatible with and complementary to other land uses; and
 - (b) manage aquatic environments, whether in fresh, brackish or coastal water, with a view to minimise deleterious effects of any water and land use practice which might adversely affect aquatic habitats.

2. The Contracting States shall adopt adequate legislation on hunting, capture and fishing, under which:
 - (a) the issue of permits is properly regulated;
 - (b) unauthorized methods are prohibited;
 - (c) the following methods of hunting, capture and fishing are prohibited:
 - (1) any method liable to cause a mass destruction of wild animals;
 - (2) the use of drugs; poisons, poisoned weapons or poisoned baits;
 - (3) the use of explosives;
 - (4) the following methods of hunting and capture are particularly prohibited:
 - (i) the use of mechanically propelled vehicles;
 - (ii) the use of fire;

- (iii) the use of fire arms capable of firing more than one round at each pull of the trigger;
- (iv) hunting or capture at night;
- (v) the use of missiles containing detonators.
- (d) the following methods of hunting or capture are as far as possible prohibited:
 - (1) the use of nets and stockades;
 - (2) the use of concealed traps, pits, snares, set-gun traps, deadfalls, and hunting from a blind or hide.
- (e) with a view to as rational use as possible of game meat the abandonment by hunters of carcasses of animals, which represent a food resource, is prohibited.

Capture of animals with the aid of drugs or mechanically-propelled vehicles, or hunting or capture by night if carried out by, or under the control of, the competent authority shall nevertheless be exempted from the prohibitions under (c) above.

Article VIII Protected Species

1. The Contracting States recognize that it is important and urgent to accord a special protection to those animal and plant species that are threatened with extinction, or which may become so, and to the habitat necessary to their survival. Where such a species is represented only in the territory of one Contracting State, that State has a particular responsibility for its protection. These species which are, or may be listed, according to the degree of protection that shall be given to them are placed in Class A or B of the Annex to this Convention, and shall be protected by Contracting States as follows:
 - (a) species in Class A shall be totally protected throughout the entire territory of the Contracting States; the hunting, killing, capture or collection of specimens shall be permitted only on the authorization in each case of the highest competent authority and only if required in the national interest or for scientific purposes; and
 - (b) species in Class B shall be totally protected, but may be hunted, killed, captured or collected under special authorization granted by the competent authority.
2. The competent authority of each Contracting State shall examine the necessity of applying the provisions of this article to species not listed in the annex, in order to conserve the indigenous flora and fauna of their respective countries. Such additional species shall be placed in Class A or B by the State concerned, according to its specific requirements.

Article IX Traffic in Specimens and Trophies

1. In the case of animal species to which Article VIII does not apply the Contracting States shall:
 - (a) regulate trade in and transport of specimens and trophies;
 - (b) control the application of these regulations in such a way as to prevent trade in specimens and trophies which have been illegally captured or killed or obtained.
2. In the case of plant and animal species to which Article VIII paragraph (1) applies, the Contracting States shall:
 - (a) take all measures similar to those in paragraph (1)
 - (b) make the export of such specimens and trophies subject to an authorization:
 - (1) additional to that required for their capture, killing or collecting by Article VIII;

- (2) which indicates their destination;
 - (3) which shall not be given unless the specimens or trophies have been obtained legally;
 - (4) which shall be examined prior to exportation;
 - (5) which shall be on a standard form, as may be arranged under Article XVI.
- (c) make the import and transit of such specimens and trophies subject to the presentation of the authorization required under section (b) above, with due provision for the confiscation of specimens and trophies exported illegally, without prejudice to the application of other penalties.

Article X Conservation Areas

1. The Contracting States shall maintain and extend where appropriate, within their territory and where applicable in their territorial waters, the Conservation areas existing at the time of entry into force of the present convention and, preferably within the framework of land use planning programmes, assess the necessity of establishing additional conservation areas in order to:
- (a) protect those ecosystems which are most representative of and particularly those which are in any respect peculiar to their territories;
 - (b) ensure conservation of all species and more particularly of those listed or may be listed in the annex to this convention.

Article XV Organization of National Conservation Services

Each Contracting State shall establish, if it has not already done so, a single agency empowered to deal with all matters covered by this Convention, but, where this is not possible a co-ordinating machinery shall be established for this purpose.

Article XVI* **Inter-State Co-operation**

1. The Contracting States shall co-operate:
 - (a) whenever such co-operation is necessary to give effect to the provisions of this convention, and
 - (b) whenever any national measure is likely to affect the natural resources of any other State.

2. The Contracting States shall supply the Organization of African Unity with:
 - (a) the text of laws, decrees, regulations and instructions in force in their territories, which are intended to ensure the implementation of this Convention;
 - (b) reports on the results achieved in applying the provisions of this Convention; and
 - (c) all the information necessary for the complete documentation of matters dealt with by this Convention if requested.

3. If so requested by Contracting States, the Organization of African Unity shall organize any meeting which may be necessary to dispose of any matters covered by this Convention. Requests for such meetings must be made by at least three of the Contracting States and be approved by two thirds of the States which it is proposed should participate in such meetings.

4. Any expenditure arising from this Convention, which devolves upon the Organization of African Unity shall be included in its regular budget, unless shared by the Contracting States or otherwise defrayed.

Article XVII **Provision for Exceptions**

1. The provisions of this Convention shall not affect the responsibilities of Contracting States concerning:
 - (a) the paramount interest of the State;
 - (b) "force majeure";
 - (c) defence of human life.

2. The provisions of this Convention shall not prevent Contracting States:
 - (a) in time of famine;
 - (b) for the protection of public health;
 - (c) in defence of property;

to enact measures contrary to the provisions of the Convention, provided their application is precisely defined in respect of aim, time and place.

* Note - The French version of this Article does not contain clauses 2 a) b) c), 3 and 4. Instead, clause 2 reads:

Ils adresseront à l'Organisation de l'Unité Africaine, de mesures législatives dérogatoires aux dispositions de la présente Convention, pourvu qu'elles soient délimitées quant à leur objet, leurs temps et leur lieu d'application.

Article XVIII Settlement of Disputes

Any dispute between the Contracting States relating to the interpretation or application of this Convention which cannot be settled by negotiation, shall at the request of any party be submitted to the Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity.

Article XIX Signature and Ratification

1. This Convention shall be open for signature immediately after being approved by the Assembly of Heads of State and Government of the Organization of African Unity.
2. This Convention shall be ratified by each of the Contracting States. The instruments of ratification shall be deposited with the Administrative Secretary General of the Organization of African Unity.

Article XX Reservations

1. At the time of signature, ratification or accession, any State may declare its acceptance of this Convention in part only, provided that such reservation may not apply to the provisions of Articles II – XI.
2. Reservations made in conformity with the preceding paragraph shall be deposited together with the instruments of ratification or accession.
3. Any Contracting State which has formulated a reservation in conformity with the preceding paragraph may at any time withdraw it by notifying the Administrative Secretary General of the Organization of African Unity.

Article XXI Entry into force

1. This Convention shall come into force on the thirtieth day following the date of deposit of the fourth instrument of ratification or accession with the Administrative Secretary General of the Organization of African Unity, who shall inform participating States accordingly.
2. In the case of a State ratifying or acceding to the Convention after the depositing of the fourth instrument of ratification or accession, the Convention shall come into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.
3. The London Convention of 1933 or any other Convention on the conservation of flora and fauna in their natural state shall cease to have effect in States in which this Convention has come into force.

Article XXII Accession

1. After the date of approval specified in Article XIX paragraph (1), this Convention shall be open to accession by any independent and sovereign African State.

2. The instruments of accession shall be deposited with the Administrative Secretary General of the Organization of African Unity.

Article XXIII Denunciation

1. Any Contracting State may denounce this Convention by notification in writing addressed to the Administrative Secretary General of the Organization of African Unity.
2. Such denunciation shall take effect, for such a State, one year after the date of receipt of its notification by the Administrative Secretary General of the Organization of African Unity.
3. No denunciation shall, however, be made before the expiry of a period of five years from the date at which for the State concerned this Convention comes into force.

Article XXIV Revision

1. After the expiry of a period of five years from the date of entry into force of this Convention, any Contracting State may at any time make a request for the revision of part or the whole of this Convention by notification in writing addressed to the Administrative Secretary General of the Organization of African Unity.
2. In the event of such a request the appropriate organ of the Organization of African Unity shall deal with the matter in accordance with the provision of sections 3 and 4 of Article XVI of this Convention.
3. (i) At the request of one or more Contracting States and notwithstanding the provisions of paragraphs (1) and (2) of this Article, the annex to the Convention may be revised or added to by the appropriate organ of the Organization of African Unity.
(ii) Such revision or addition shall come into force three months after the approval by the appropriate organ of the Organization of African Unity.

Article XXV Final provisions

The original of this Convention of which both the English and the French texts are authentic, shall be deposited with the Administrative Secretary General of the Organization of African Unity.

IN WITNESS WHEREOF, WE, the Heads of State and Government of independent African States, assembled at Algiers, Algeria on 15th September 1968 have signed this Convention.

- | | |
|---|---|
| 1. ALGERIA (Signed) | 21. MALAWI (Signed) |
| 2. BOTSWANA (Signed) | 22. MALI (Signed) |
| 3. BURUNDI (Signed) | 23. MAURITANIA (Signed) |
| 4. CAMEROON (Signed) | 24. MAURITIUS (Signed) |
| 5. CENTRAL AFRICAN REPUBLIC (Signed) | 25. MOROCCO (Signed) |
| 6. CHAD (Signed) | 26. NIGER (Signed) |
| 7. CONGO (BRAZZAVILLE) (Signed) | 27. NIGERIA (Signed) |
| 8. DEMOCRATIC REPUBLIC OF CONGO
(Signed) | 28. RWANDA (Signed) |
| 9. DAHOMEY (Signed) | 29. SENEGAL (Signed) |
| 10. ETHIOPIA (Signed) | 30. SIERRA LEONE (Signed) |
| 11. GABON (Signed) | 31. SOMALIA (Signed) |
| 12. GAMBIA (Signed) | 32. SUDAN (Signed) |
| 13. GHANA (Signed) | 33. SWAZILAND (Signed) |
| 14. GUINEA (Signed) | 34. TOGO (Signed) |
| 15. IVORY COAST (Signed) | 35. TUNISIA (Signed) |
| 16. KENYA (Signed) | 36. UGANDA (Signed) |
| 17. LESOTHO (Signed) | 37. UNTIED ARAB REPUBLIC (Signed) |
| 18. LIBERIA (Signed) | 38. UNITED REPUBLIC OF TANZANIA
(Signed) |
| 19. LIBYA (Signed) | 39. UPPER VOLTA (Signed) |
| 20. MADAGASCAR (Signed) | 40. ZAMBIA (Signed) |

LIST OF PROTECTED SPECIES
Class A

<u>Mammalia</u>	<u>Mammals</u>
<i>Primates</i>	Primates
<i>Lemuroidea</i>	All Malagasy lemuroids
<i>Macaca sylvana</i>	Barbary ape
<i>Theropithecus gelada</i>	Gelada baboon
<i>Cercocebus galeritus galeritus</i>	Tana River mangabey
<i>Cercopithecus diana</i>	Diana monkey
<i>Colobus badius kirkii</i>	Zanzibar red colobus
<i>Colobus badius rufomitratu</i>	Tana River red colobus
<i>Colobus badius gordonorum</i>	Uhehe red colobus
<i>Colobus verus</i>	Green colobus
<i>Pan troglodytes</i>	Chimpanzee
<i>Pan paniscus</i>	Pygmy chimpanzee
<i>Gorilla gorilla</i>	Gorilla
<u>Rodentia</u>	<u>Rodentia</u>
<i>Epixerus spp.</i>	African palm squirrels
<u>Carnivora</u>	<u>Carnivora</u>
<i>Canis simensis</i>	Simenian jackal
<i>Osbornictis piscivora</i>	Water civet
<i>Fossa fossa</i>	Malagasy civet
<i>Eupleres spp.</i>	<i>Falanouc</i>
<i>Felis nigripes</i>	Black-footed cat
<i>Felis aurata</i>	African golden cat
<i>Acinonyx jubatus</i>	Cheetah
<u>Pinnipedia</u>	<u>Pennipedia</u>
<i>Monachus monachus</i>	Mediterranean monk seal
<u>Sirenia</u>	<u>Sirenia</u>
<i>Dugong dugon</i>	Dugong
<i>Trichechus senegalensis</i>	West African manatee
<u>Perissodactyla</u>	<u>Perissodactyla</u>
<i>Equus asinus</i>	Wild ass
<i>Equus zebra zebra</i>	Cape mountain zebra
<i>Ceratotherium simum</i>	Square-lipped rhinoceros
<u>Artiodactyla</u>	<u>Artiodactyla</u>
<i>Choeropsis liberiensis</i>	Pygmy hippopotamus
<i>Cervus elaphus barbarus</i>	Barbary stag
<i>Okapia johnstoni</i>	Okapi
<i>Taurotragus derbianus derbianus</i>	Western giant eland
<i>Cephalophus jentinki</i>	Jentink's duiker
<i>Hippotragus niger variani</i>	Giant sable antelope
<i>Alcelaphus buselaphus tora</i>	Tora Hartebeest
<i>Alcelaphus buselaphus swaynoi</i>	Swayne's hartebeest
<i>Nesotragus moschatus moschatus</i>	Zanzibar suni
<i>Dorcatragus megalotis</i>	Beira antelope
<i>Gazella dorcas neglecta</i>	Algerian dorcas gazelle
<i>Gazella dorcas massaesyala</i>	Moroccan dorcas gazelle
<i>Gazella gazella cuvieri</i>	Cuvier's gazelle
<i>Gazella leptocerus leptocerus</i>	Slender-horned gazelle

Annex V: The African Convention on the Conservation of Nature and Natural Resources
(the 'Algiers Convention')

<i>Gazella pelzelni</i>	Pelseln's gazelle
<i>Gazella spekei</i>	Speke's gazelle
<i>Gazella dama mhorh</i>	Mhorh gazelle
<i>Gazella dama lazonoi</i>	Rio de Oro dama gazelle
<i>Capra walie</i>	Walia ibex
<u>Aves</u>	<u>Birds</u>
<i>Pelecanidae</i>	All pelicans
<i>Ciconiidae, Scopidae et Ardeidae</i>	All storks, hammerkops, ibises, spoonbills, herons, egrets and bitterns
<i>Phoenicopteridae</i>	All Flamingos
<i>Sagittarius serpentarius</i>	Secretary bird
<i>Aegyptius, Gyps, Pseudogyps, Torgos</i>	All vultures
<i>Trigonoceps, Neophron et Necrosyrtes</i>	Lammergeyer
<i>Gypaetus barbatus</i>	Crowned hawk-eagle
<i>Stephanoaetus coronatus</i>	Teita falcon
<i>Falco fasciinucha</i>	White-headed guineafowl
<i>Agelastes meleagrides</i>	Congo peacock
<i>Afropavo congensis</i>	All cranes
<i>Gruidae</i>	All ground hornbills
<i>Bucorvus spp.</i>	White-necked rockfowl
<i>Picarthartes oreas</i>	Grey-necked rockfowl
<i>Warsanglia johannis</i>	
<u>Reptilia</u>	<u>Reptiles</u>
<i>Cheloniidae, Dermochelyidae</i>	All marine turtles
<i>Testudo gigantea</i>	Giant tortoise
<i>Testudo yniphora</i>	Angulated tortoise
<i>Testudo radiata</i>	Testudo radiata
<i>Macroscincus coctei</i>	Cape Verde skink
<i>Gecko uroplates</i>	Leaf-tailed gecko
<i>Casarea dussumieri</i>	Plate Island boa
<i>Bolioria multicarinata</i>	Ronde Island boa
<i>Acrantophis madagascariensi</i>	Acrantophis madagascariensi
<i>Acrantophis dumerili</i>	Acrantophis dumerili
<i>Amphibia</i>	<i>Amphibians</i>
<i>Bufo supereiliaris</i>	Cameroon toad
<i>Nectophrynoides occidentalis</i>	Viviparous toad
<u>Pisces</u>	<u>Fishes</u>
<i>Caecobarbus, Cacomastacembelus</i>	Blind fishes
<i>Eilichtys, Typhleotris</i>	" "
<i>Phreatichthys, Uegitglanis</i>	" "
<u>Plantes</u>	<u>Plants</u>
<i>Welwitschia bainesii</i>	Welwitschia
<i>Encephalartos laurentanus</i>	Encephalartos
<i>Encephalartos septentrionalis</i>	Encephalartos

Class B

Mammalia

Insectivora

Primates

Lorisidae

Primates

Pholidota

Manis gigantea

Manis temmincki

Manis tricuspis

Manis longicaudata

Carnivora

Lutrinae

Proteles cristatus

Hyaena brunnea

Hyaena hyaena barbara

Felis caracal

Felis serval

Felis leo

Panthera pardus

Tenrecidae

Cryptoprocta ferox

Galidiinae

Tubul identata

Olycteropus afer

Proboscidea

Loxodonta africana

Perissodactyla

Equus zebra bartmannae

Equus burchelli

Equus grevyi

Diceros bicornis

Hylochoerus meinertzhageni

Hippopotamus amphibius

Hyemoschus aquaticus

Giraffa camelopardalis

Tragelaphus angasi

Tragelaphus buxtoni

Tragelaphus spekei

Tragelaphus imberbis

Tragelaphus strepsiceros

Taurotragus oryx

Taurotragus derbianus

Boocercus eurycerus

Syncerus caffer

Mammals

Insectivora

All other shrews of the family Potamogalidae

Primates

All prosimians of the family Lorisidae

All monkeys except common baboons

Pholidota

Giant pangolin

Cape pangolin

Tree pangolin

Long-tailed tree pangolin

Carnivora

All others of the sub-family Lutrinae

Aardwolf

Brown hyaena

Barbary hyaena

Caracal lynx

Serval

Lion

Leopard

Madagascar Tenrecs (all species) Fossa

Foassa

All Malagasy mongooses of the sub-family

Galidiinae

Tubul identata

Aarwark

Proboscidea

Elephant

Perissodactyla

Hartmann's mountain zebra

Burchell's zebra

Grevy's zebra

Black rhinoceros

Giant forest hog

Artiodactyla

Hippopotamus

Water chevrotain

Giraffe

Nyala

Mountain nyala

Situtunga

Lesser Kudu

Greater Kudu

Eland

Giant eland

Bongo

Buffalo

<i>Cephalophus adorsi</i>	Zanzibar duiker
<i>Cephalophus ogilbyi</i>	Ogilby's duiker
<i>Cephalophus silvicultor</i>	Yellow-backed duiker
<i>Cephalophus spadix</i>	Abbott's duiker
<i>Cephalophus zebra</i>	Banded duiker
<i>Kobus ellipsiprymnus</i>	Waterbuck
<i>Kobus defassa</i>	Defassa waterbuck
<i>Kobus leche</i>	Lechwe
<i>Kobus megaceros</i>	Nile lechwe
<i>Adenota kob</i>	Kob
<i>Redunca arundinum</i>	Reedbuck
<i>Redunca fulvorufula</i>	Mountain reedbuck
<i>Redunca equinus</i>	Bohor reedbuck
<i>Hippotragus equinus</i>	Roan antelope
<i>Hippotragus niger</i>	Sable antelope
<i>Oryx gazella</i>	Oryx
<i>Oryx tao</i>	Scimitar-horned oryx
<i>Adax nasomaculatus</i>	Addax
<i>Damaliscus lunatus</i>	Tsessebe (Sassaby)
<i>Damaliscus korrigum</i>	Topi
<i>Damaliscus dorcas dorcas</i>	Bontebok
<i>Damaliscus dorcas phillipsi</i>	Blesbok
<i>Damaliscus hunteri</i>	Hunter's hartebeest
<i>Alcelaphus buselaphus</i>	Hartebeest
<i>Alcelaphus lichtensteini</i>	Lichtenstein's hartebeest
<i>Connochaetes gnou</i>	Black wildebeest
<i>Connochaetes taurinus</i>	Wildebeest
<i>Oreotragus oreotragus</i>	Klipspringer
<i>Ourebia spp.</i>	Oribis (All species)
<i>Neotragus pygmaeus</i>	Royal antelope
<i>Neotragus batesi</i>	Dwarf antelope
<i>Madoqua kirki</i>	Damara dikdik
<i>Aepyceros melampus</i>	Impala
<i>Ammolorcas clarkei</i>	Dibatag
<i>Litodranus walleri</i>	Gerenuk
<i>Gazella dorcas</i>	Dorcas gazelle
<i>Gazella rufifrons</i>	Korin gazelle
<i>Gazella tilonura</i>	Houglin's gazelle
<i>Gazella dama</i>	Dama gazelle
<i>Gazella scommerringi</i>	Doemmering's gazelle
<i>Capra ibex nubiana</i>	Nubian ibex
<i>Ammotragus lervia</i>	Barbary sheep (Aoudad)
<u>Aves</u>	<u>Birds</u>
<i>Struthio camelus</i>	Ostrich
<i>Falconiformes et Strigiformes</i>	All birds of prey and all owls not in Class A
<i>Otididae</i>	All bustards
<u>Reptilia</u>	<u>Reptiles</u>
<i>Crocodylia</i>	All crocodiles

Annex VI

The Revised African Convention on the Conservation of Nature and Natural Resources (The ‘Maputo Convention’)

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 spheres of human endeavour”;

Conscious of the ever-growing importance of natural resources from economic, social, cultural and environmental points of view;

Affirming that the conservation of the global environment is a common concern of human kind as a whole, and the conservation of the African environment a primary concern of all Africans;

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;

Conscious of the dangers which threaten some of these irreplaceable assets;

Desirous of undertaking individual and joint action for the conservation, utilization 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;

Conscious of the need to continue furthering the principles of the Stockholm Declaration, to contribute to the implementation of the Rio Declaration and of Agenda 21, and to work closely together towards the implementation of global and regional instruments supporting their goals;

Considering the principles and objectives stated in the Treaty Establishing the African Economic Community and the Constitutive Act of the African Union;

Convinced that the above objectives would be better achieved by amending the 1968 Algiers Convention on the Conservation of Nature and Natural Resources by expanding elements related to sustainable development;

Have agreed as follows:

Article I. SCOPE

This Convention shall apply

1. to all areas which are within the limits of national jurisdiction of any Party; and
2. to the activities carried out under the jurisdiction or control of any Party within the area of its national jurisdiction or beyond the limits of its national jurisdiction.

Article II. 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 harmonize and coordinate policies in these fields with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes.

Article III. 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 IV. 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 V. USE OF TERMS

For purposes of this Convention:

1. “Natural Resources” means renewable resources, tangible and non tangible, including soil, water, flora and fauna and non renewable resources. Whenever the text of the Convention refers to non renewable resources this will be specified.
2. “Specimen” means any animal or plant or micro organism, alive or dead.
3. “Product” means any part or derivative of a specimen.
4. “Species” means any species, sub species, or geographically separate population thereof.
5. “Threatened Species” means any species of fauna or flora which is considered critically endangered, endangered, or vulnerable, for which definitions are contained in Annex 1 to this Convention, and for which criteria may be adopted and from time to time reviewed by the Conference of the Parties, taking into consideration the work of competent international organisations in this field.
6. “Conservation area” means
 - a) any protected area designated and managed mainly or wholly for one of the following purposes:
 - i) science or wilderness protection (Strict Nature Reserve/Wilderness Areas);
 - ii) ecosystem protection and recreation (National Parks);
 - iii) conservation of specific natural features (National Monuments);
 - iv) conservation through management interventions (Habitat/Species Management Areas);
 - v) landscape/seascape conservation and recreation (Protected Landscapes/Seascapes);
 - vi) the sustainable use of natural ecosystems (Managed Resource Protected Areas).
for which definitions and management objectives are contained in Annex 2 to this Convention, as well as
 - b) other areas designated and/or managed primarily for the conservation and sustainable use of natural resources, for which criteria may be adopted and from time to time reviewed by the Conference of the Parties.
7. “Biological Diversity” means the variability among living organisms from all sources including, inter alia, terrestrial, marine, or other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.
8. “Original Convention” means the African Convention on the Conservation of Nature and Natural Resources, adopted in 1968 in Algiers.

Whenever a specific term not defined in this Convention has been defined in global conventions it can be construed as defined in those conventions. Where an African regional or sub regional convention exists that defines such terms, these definitions shall prevail.

Article VI. 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.

2. They shall in particular adopt measures for the conservation and improvement of the soil, to, inter alia, combat its erosion and misuse as well as the deterioration of its physical, chemical and biological or economic properties.
3. To this end:
 - a) they shall establish land-use plans based on scientific investigations as well as local knowledge and experience and, in particular, classification and land-use capability;
 - b) they shall, when implementing agricultural practices and agrarian reforms,
 - i) improve soil conservation and introduce sustainable farming and forestry practices, which ensure long-term productivity of the land,
 - ii) control erosion caused by land misuse and mismanagement which may lead to longterm loss of surface soils and vegetation cover,
 - iii) control pollution caused by agricultural activities, including aquaculture and animal husbandry;
 - c) they shall ensure that non-agricultural forms of land use, including but not limited to public works, mining and the disposal of wastes, do not result in erosion, pollution, or any other form of land degradation;
 - d) they shall, in areas affected by land degradation, plan and implement mitigation and rehabilitation measures.
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 VII. 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.
2. The Parties shall establish and implement policies for the planning, conservation, management, utilization and development of underground and surface water, as well as the harvesting and use of rain water, and shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water, taking appropriate measures with due regard to:
 - a) the study of water cycles and the investigation of each catchment area,
 - b) the integrated management of water resources,
 - c) the conservation of forested and other catchment areas and the co-ordination and planning of water resources development projects,
 - d) the inventory and management of all water resources, including the administration and control of all water utilization, and
 - e) the prevention and control of water pollution through, inter alia, the establishment of effluent and water quality standards.
3. Where surface or underground water resources and related ecosystems, including wetlands, are transboundary to two or more of the Parties, the latter shall act in consultation, and if the need arises, set up inter-State Commissions for their rational management and equitable utilization

and to resolve disputes arising from the use of these resources, and for the cooperative development, management and conservation thereof.

4. The Parties undertake, individually or within sub-regional arrangements, to cooperate in rational water husbandry and conservation in irrigated agriculture for improved food security and sustainable agro-based industrialization.

Article VIII. VEGETATION COVER

1. The Parties shall take all necessary measures for the protection, conservation, sustainable use and rehabilitation of vegetation cover. To this end they shall:
 - a) adopt scientifically-based and sound traditional conservation, utilization and management plans for forests, woodlands, rangelands, wetlands and other areas with vegetation cover, taking into account the social and economic needs of the peoples concerned, the importance of the vegetation cover for the maintenance of the water balance of an area, the productivity of soils and the habitat requirements of species;
 - b) take concrete steps or measures to control fires, forest exploitation, land clearing for cultivation, grazing by domestic and wild animals, and invasive species;
 - c) establish forest reserves and carry out afforestation programmes where necessary;
 - d) limit forest grazing to season and intensities that will not prevent forest regeneration.

Article IX. 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. Management of species and their habitats shall be based on the results of continued scientific research and Parties shall:
 - a) manage plant and animal populations inside conservation areas according to the objectives of such areas;
 - b) manage harvestable populations outside such areas in a sustainable manner, compatible with and complementary to other sustainable land uses;
 - c) establish and/or strengthen existing facilities for ex situ conservation to perpetuate animal or plant species of particular interest;
 - d) manage and protect aquatic environments, whether in fresh, brackish or marine water, with a view to minimising deleterious effects of any water and land use practice which might adversely affect aquatic habitats;
 - e) undertake inventories of species of fauna and flora and prepare maps of their distribution and abundance, and conduct regular reviews to facilitate the monitoring of the status of such species and their habitats with a view to:
 - i) providing the appropriate scientific basis for decisions pertaining to their conservation and use,
 - ii) identifying species that are threatened or may become so, and providing them accordingly with appropriate protection, and
 - iii) identifying species that are migratory or congregatory and therefore confined to specific areas at particular seasons, and providing them with appropriate protection;
 - f) identify areas of critical importance for the survival of species of fauna and flora which are threatened;
 - g) preserve as many varieties as possible of domestic or cultivated species and their wild relatives, as well as of other economically valuable species, including forest trees and micro-organisms;
 - h) strictly control the intentional and, in as far as possible, accidental introduction, in any area, of species which are not native to that area, including modified organisms, and endeavour to eradicate those already introduced where the consequences are detrimental to native species or to the environment in general;
 - i) take appropriate measures to control pests and eradicate animal and plant diseases;
 - j) provide for fair and equitable access to genetic resources, on terms mutually agreed between the providers and users of such resources; and
 - k) provide for the fair and equitable sharing of benefits arising out of biotechnologies based upon genetic resources and related traditional knowledge with the providers of such resources.
3. Parties shall adopt legislation regulating all forms of taking, including hunting, capture and fishing and collection of whole or parts of plants under which:
 - a) the conditions and procedures for issue of permits are appropriately regulated;
 - b) taking is regulated with a view to ensuring that the use of any population is sustainable.

Measures to that effect shall include:

- i) closed seasons,
 - ii) temporary or local prohibitions of exploitation, as needed to restore satisfactory population levels,
 - iii) the prohibition of the use of all indiscriminate means of taking and of the use of all means capable of causing mass destructions, as well as local disappearance of, or serious disturbance to, populations of a species, in particular the means specified in Annex 3;
- c) with a view to as rational use as possible, the products of hunting and fishing, the use and abandonment of such products, and plant collection are regulated;
 - d) operations carried out by, or under the control of, the competent authority for management purposes may nevertheless be exempted from specific restrictions.

Article X. PROTECTED SPECIES

1. The Parties undertake to identify the factors that are causing the depletion of animal and plant species which are threatened or which may become so, with a view to their elimination, and to accord a special protection to such species, whether terrestrial, freshwater or marine, and to the habitat necessary for their survival. Where a species is represented only in areas under the jurisdiction of one Party, that Party has a particular responsibility for its protection.
2. The Parties shall adopt legislation on the protection of species referred to in paragraph 1 above, taking into particular account the need to develop or maintain throughout the African continent concerted protection measures for such species. One or several Annexes to this Convention may be adopted by the Conference of the Parties to that effect.

Article XI. TRADE IN SPECIMENS AND PRODUCTS THEREOF

1. The Parties shall:
 - a) regulate the domestic trade in, as well as the transport and possession of specimens and products to ensure that such specimens and products have been taken or obtained in conformity with domestic law and international obligations related to trade in species;
 - b) in the measures referred to under a) above, provide for appropriate penal sanctions, including confiscation measures.
2. The Parties shall, where appropriate, cooperate through bilateral or sub-regional agreements with a view to reducing and ultimately eliminating illegal trade in wild fauna and flora or their specimens or products.

Article XII. CONSERVATION AREAS

1. The Parties shall establish, maintain and extend, as appropriate, conservation areas. They shall, preferably within the framework of environmental and natural resources policies, legislation and programmes, also assess the potential impacts and necessity of establishing additional conservation areas and wherever possible designate such areas, in order to ensure the long term conservation of biological diversity, in particular to:
 - a) conserve those ecosystems which are most representative of and peculiar to areas under their jurisdiction, or are characterized by a high degree of biological diversity;
 - b) ensure the conservation of all species and particularly of those which are:
 - i) only represented in areas under their jurisdiction;
 - ii) threatened, or of special scientific or aesthetic value; and of the habitats that are critical for the survival of such species.
2. The Parties shall seek to identify areas critically important to the goals referred to in sub paragraph 1 (a) and 1(b) above which are not yet included in conservation areas, taking into consideration the work of competent international organisations in this field.
3. The Parties shall promote the establishment by local communities of areas managed by them primarily for the conservation and sustainable use of natural resources.
4. The Parties shall, where necessary and if possible, control activities outside conservation areas which are detrimental to the achievement of the purpose for which the conservation areas were created, and establish for that purpose buffer zones around their borders.

Article XIII. PROCESSES AND ACTIVITIES AFFECTING THE ENVIRONMENT AND NATURAL RESOURCES

1. The Parties shall, individually or jointly, and in collaboration with the competent international organizations concerned, take all appropriate measures to prevent, mitigate and eliminate to the maximum extent possible, detrimental effects on the environment, in particular from radioactive, toxic, and other hazardous substances and wastes. For this purpose, they shall use the best practicable means and shall endeavour to harmonize their policies, in particular within the framework of relevant conventions to which they are Parties.
2. To that effect, Parties shall
 - a) establish, strengthen and implement specific national standards, including for ambient environmental quality, emission and discharge limits as well as process and production methods and product quality;
 - b) provide for economic incentives and disincentives, with a view to preventing or abating harm to the environment, restoring or enhancing environmental quality, and implementing international obligations in these regards; and
 - c) adopt measures necessary to ensure that raw materials, non-renewable resources, and energy, are conserved and used as efficiently as possible, and that used materials are reused and recycled to the maximum extent possible while nondegradable materials are disposed of in the most effective and safe way.

Article XIV. 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.
2. To this end, the Parties shall:
 - a) to the maximum extent possible, take all necessary measures to ensure that development activities and projects are based on sound environmental policies and do not have adverse effects on natural resources and the environment in general;
 - b) ensure that policies, plans, programmes, strategies, projects and activities likely to affect natural resources, ecosystems and the environment in general are the subject of adequate impact assessment at the earliest possible stage and that regular environmental monitoring and audit are conducted;
 - c) monitor the state of their natural resources as well as the impact of development activities and projects upon such resources.

Article XV. MILITARY AND HOSTILE ACTIVITIES

1. The Parties shall:
 - a) take every practical measure, during periods of armed conflict, to protect the environment against harm;
 - b) refrain from employing or threatening to employ methods or means of combat which are intended or may be expected to cause widespread, long-term, or severe harm to the environment and ensure that such means and methods of warfare are not developed, produced, tested or transferred;
 - c) refrain from using the destruction or modification of the environment as a means of combat or reprisal;
 - d) undertake to restore and rehabilitate areas damaged in the course of armed conflicts.
2. The Parties shall cooperate to establish and further develop and implement rules and measures to protect the environment during armed conflicts.

Article XVI. 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.
2. Each Party from which a transboundary environmental harm originates shall ensure that any person in another Party affected by such harm has a right of access to administrative and judicial procedures equal to that afforded to nationals or residents of the Party of origin in cases of domestic environmental harm.

Article XVII. 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 recognizing 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.

Article XVIII. RESEARCH

1. The Parties shall strengthen their capabilities to carry out scientific and technological research in conservation, sustainable utilization and management of natural resources paying particular attention to ecological and socio-economic factors as well as their integration, and shall ensure the application of research results to the development and implementation of their environmental conservation policies.
2. The Parties shall promote cooperation in scientific and technological research, as well as in economic and marketing systems, between themselves and with third parties in the field of environmental conservation and sustainable use of natural resources. To that end, they shall in particular:
 - a) coordinate their research programmes with a view to achieving maximum synergy and complementarity;
 - b) promote the exchange of research results; and
 - c) promote the development of joint research activities and programmes in the fields covered by this Convention.

Article XIX. DEVELOPMENT AND TRANSFER OF TECHNOLOGY

1. The Parties shall encourage and strengthen cooperation for the development and use, as well as access to and transfer of, environmentally sound technologies on mutually agreed terms, with a view to accelerating the transition to sustainable development, in particular by establishing joint research programmes and ventures.
2. To that effect the Parties shall adopt legislative and regulatory measures which provide for inter alia, economic incentives for the development, importation, transfer and utilization of environmentally sound technologies in the private and public sectors.

In implementing paragraphs 1. and 2. above, attention shall be paid to technologies which can be used locally by individuals, local communities and small/medium enterprises.

Article XX. CAPACITY BUILDING, EDUCATION AND TRAINING

1.
 - a) The Parties shall promote environmental education, training and awareness creation at all levels in order to enhance their peoples' appreciation of their close dependence on natural resources and their understanding of the reasons and rules for the sustainable use of these resources.
 - b) For this purpose they shall ensure that environmental matters:
 - i) are included in educational and training programmes at all levels, and
 - ii) form the object of information campaigns capable of acquainting the public with, and winning it over to, the concepts of conservation and sustainable use of natural resources.
 - c) In order to put into effect paragraphs a) and b) above, the Parties shall make maximum use of the educational and training value of conservation areas and the experience of local communities.
2. Parties shall develop their capacities in the field of education and training relating to environmental and natural resources conservation and use, in particular through the promotion and development of:
 - a) training of trainers programmes;
 - b) appropriate teaching and training materials ;
 - c) available and accessible educational and training opportunities at all levels.
3. In order to facilitate the implementation of paragraphs 1 and 2 above, the Parties shall cooperate among themselves, in particular with a view to strengthening or establishing
 - a) regional or sub-regional training institutions;
 - b) joint training programmes;
 - c) libraries and documentation centres; and
 - d) a continuous exchange of information and experience in the fields covered by this convention.

Article XXI. NATIONAL AUTHORITIES

Each Party shall establish or designate, if it has not already done so, a national authority empowered to deal with all matters covered by this Convention, and/or, where appropriate, establish a co-ordinating machinery between existing national institutions.

Article XXII. CO-OPERATION

1. The Parties shall co-operate between themselves and, where appropriate and possible, with other States:
 - a) to give effect to the provisions of this Convention;
 - b) whenever any national measure is likely to affect the environment or natural resources of any other State or areas beyond national jurisdiction;
 - c) in order to enhance the individual and combined effectiveness of their policies and legislations, as well as measures adopted under this Convention and under other international conventions in the fields of environmental protection and natural resources conservation and use; and
 - d) in order to harmonize their policies and laws at the continental or regional levels, as appropriate.

2. In particular:
 - a) whenever an environmental emergency or natural disaster occurring in a Party is likely to affect the natural resources of another State, the latter shall be provided with all relevant available data by the former as early as practicable;
 - b) when a Party has reasons to believe that a programme, activity or project to be carried out in areas under its jurisdiction may have adverse effects on the natural resources of another State, it shall provide that other State with relevant information on the proposed measures and their possible effects, and shall consult with that State;
 - c) whenever a Party objects to an activity referred to in sub-paragraph b) above, they shall enter into negotiations;
 - d) Parties shall develop disaster preparedness, prevention and management programmes, and as the need arises hold consultations towards mutual assistance initiatives;
 - e) whenever a natural resource or an ecosystem is transboundary, the Parties concerned shall undertake to cooperate in the conservation, development and management of such resource or ecosystem and if the need arises, set up interstate commissions for their conservation and sustainable use;
 - f) the Parties shall, prior to the export of hazardous substances, or of alien or modified organisms, undertake to secure the prior informed consent of the importing, and where appropriate, transit States;
 - g) the Parties shall take concerted action regarding the transboundary movement, management and processing of hazardous wastes, with a view to supporting, individually and jointly, international accords in this field, and to implementing African instruments related thereto;
 - h) the Parties shall exchange information bilaterally or through competent international agencies on activities and events likely to affect the natural resources and the environment of areas beyond national jurisdiction.

Article XXIII. COMPLIANCE

The Conference of the Parties shall, as soon as possible, develop and adopt rules, procedures and institutional mechanisms to promote and enhance compliance with the provisions of this Convention.

Article XXIV. LIABILITY

The Parties shall, as soon as possible, adopt rules and procedures concerning liability and compensation of damage related to matters covered by this Convention.

Article XXV. EXCEPTIONS

1. The provisions of this Convention shall not affect the responsibilities of Parties concerning:
 - a) "force majeure"; and
 - b) defence of human life.
2. The provisions of this Convention shall not prevent Parties:
 - a) in time of declared emergencies arising from disasters; and
 - b) for the protection of public health; from adopting precisely defined measures derogatory to the provisions of the Convention provided their application is limited in respect of aim, duration and place.
3. The Parties who take action in accordance with paragraphs 1 and 2 undertake to inform the Conference of the Parties without delay, through the Secretariat, of the nature and circumstances of these measures.

Article XXVI. CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established at ministerial level, as the decision-making body of this Convention. The first meeting of the Conference of the Parties shall be convened by the Chairperson of the Commission of the African Union not later than one year after the entry into force of the Convention. Thereafter ordinary meetings shall be convened at least once every two years, unless the Conference decides otherwise.
2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.
3. At its first meeting, the Conference of the Parties shall adopt rules of procedure for itself and for any subsidiary body it may establish, as well as determine the rules governing the funding and operation of the Secretariat; Parties shall make every effort to reach these decisions by consensus; if all efforts at consensus have been exhausted, and no agreement reached, the decisions shall as a last resort be adopted by a two-third majority of the Parties present and voting.
4. At each of its ordinary meetings, the Conference of the Parties shall adopt a programme and budget for the financial period until the next ordinary meeting.

5. The Conference of the Parties shall keep under review and promote the effective implementation of this Convention, and, for this purpose, shall:
 - a) make recommendations to the Parties on any matters related to the implementation of this Convention;
 - b) receive and consider information and reports presented by the Secretariat or by any Party and make recommendations thereto;
 - c) establish such subsidiary bodies as are deemed necessary for the implementation of this Convention, in particular to provide scientific and technical advice;
 - d) review reports submitted by any subsidiary body and provide guidance to them;
 - e) promote and facilitate the exchange of information on measures proposed or adopted by the Parties;
 - f) consider and undertake any additional action that may be required for the achievement of the purposes of this Convention;
 - g) consider and adopt, as required, amendments to this Convention;
 - h) consider and adopt, as required, additional Annexes and amendments to the Annexes to this Convention;
 - i) seek, through the Secretariat, the co-operation of, and utilize the services of and information provided by, competent bodies or agencies, whether national or international, governmental or non-governmental, and strengthen the relationship with other relevant conventions; and
 - j) consider any other matter within the scope of this Convention.

6. African Regional Economic Communities, as well as African regional and sub-regional intergovernmental organizations may be represented at meetings of the Conference of the Parties without the right to vote. The United Nations, its specialized agencies and any State Party to the original Convention not party to this Convention, may be represented at meetings of the Conference of the Parties and participate as observers. Any non-governmental organization, whether national, continental, regional or sub-regional, or international, which is qualified in matters covered by the Convention, and which has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The participation of Observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article XXVII. THE SECRETARIAT

1. A Secretariat to this Convention is hereby established.
2. At its first meeting, the Conference of the Parties shall designate an organisation to carry out the Secretariat functions under the Convention or shall appoint its own Secretariat and determine its location.
3. The functions of the Secretariat shall be:
 - a) to arrange for and service meetings of the Conference of the Parties and of its subsidiary bodies;
 - b) to execute the decisions addressed to it by the Conference of the Parties;
 - c) to draw the attention of the Conference of the Parties to matters pertaining to the objectives of this Convention and its implementation;
 - d) to gather and disseminate among the Parties the texts of laws, decrees, regulations and instructions in force which are intended to ensure the implementation of this Convention, as well as reports pertaining to such implementation;
 - e) to administer the budget for the Convention and if established, its conservation fund;
 - f) to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
 - g) to prepare studies and reports on its activities carried out in the implementation of its functions under this Convention and present them to the Conference of Parties;
 - h) to coordinate its activities with the secretariats of other relevant international bodies and conventions;
 - i) to provide information for the general public concerning the Convention and its objectives; and
 - j) to perform such other functions as may be assigned to it by this Convention, or determined by the Conference of the Parties.

Article XXVIII. FINANCIAL RESOURCES

1. Given the central importance of financing to the achievement of the purposes of this Convention, each Party, taking into account its capability, shall make every effort to ensure that adequate financial resources are available for the implementation of this Convention.
2. Financial resources towards the budget of the Convention shall consist of assessed contributions from Parties, annual contributions by the AU, and contributions from other institutions. Contributions of the Parties to the budget of the Convention shall be in accordance with the scale of assessment approved by the Conference of the Parties at its first meeting.
3. The Conference of the Parties may establish a conservation fund constituted from voluntary contributions of Parties or from any other source accepted by the Conference for the purpose of financing projects and activities relating to the conservation of the environment and natural resources. The fund shall function under the authority of, and be accountable to, the Conference of the Parties.
4. The Parties, individually or jointly, shall seek to mobilize further financial resources and to that effect seek full use and continued qualitative improvement of all national, bilateral and multilateral funding resources and mechanisms, using consortia, joint programmes and parallel financing, and shall seek to involve private sector funding resources and mechanisms, including those of non-governmental organizations.

Article XXIX. REPORTS AND INFORMATION

1. The Parties shall present, through the Secretariat, to the Conference of the Parties reports on the measures adopted by them in the implementation of this Convention and the results thereof in applying its provisions in such form and at such intervals as the Conference of the Parties may determine. This presentation shall be accompanied by the comments of the Secretariat, in particular regarding failure to report, adequacy of the report and of the measures described therein.
2. The Parties shall supply the Secretariat with:
 - a) the texts of laws, decrees, regulations and instructions in force which are intended to ensure the implementation of this Convention;
 - b) any other information that may be necessary to provide complete documentation on matters dealt with by this Convention;
 - c) the names of the agencies or coordinating institutions empowered to be focal points in matters under this Convention; and
 - d) information on bilateral or multilateral agreements relating to the environment and natural resources to which they are parties.

Article XXX. SETTLEMENT OF DISPUTES

1. Any dispute between the Parties regarding the interpretation or the application of the provisions of this Convention shall be amicably settled through direct agreement reached by the parties to the dispute directly or through the good offices of a third party. If the parties concerned fail to settle such dispute, either party may, within a period of twelve months, refer the matter to the Court of Justice of the African Union.
2. The decisions of the Court of Justice shall be final and shall not be subject to appeal.

Article XXXI. AMENDMENTS OF THE CONVENTION

1. Any Party may propose amendments to this Convention.
2. The text of any proposed amendment to this Convention shall be communicated to the Parties by the Secretariat at least six months before the meeting of the Conference of the Parties at which it is proposed for approval. The Secretariat shall also communicate proposed amendments to the signatories to this Convention at least three months before the meeting.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-third majority vote of the Parties present and voting.
4. The Depository shall communicate the adoption of the amendment to all Parties and signatories to this Convention.
5. Ratification, acceptance or approval of amendments shall be notified to the Depository in writing. Amendments shall enter into force among Parties having accepted them on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by at least two thirds of the Contracting Parties to this Convention. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendments.
6. For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article XXXII. ADOPTION AND AMENDMENTS OF ANNEXES

1. The annexes to this Convention shall form an integral part of the convention. Such annexes shall be restricted to scientific, technical, financial and administrative matters.
2. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:
 - a) any Party may propose additional annex to this Convention;
 - b) the text of any proposed additional annex to this Convention shall be communicated to the Parties by the Secretariat at least six months before the meeting of the Conference of the Parties at which it is proposed for adoption. The Secretariat shall also communicate

- the text of any proposed additional annex to the signatories to this Convention at least three months before the meeting;
- c) the Parties shall make every effort to reach agreement on any proposed additional annex to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the additional annex shall as a last resort be adopted by a two-third majority vote of the Parties present and voting;
 - d) the Depositary shall communicate the adoption of the Annex to all Parties and signatories to this Convention;
 - e) any Party that is unable to accept an additional annex to this Convention shall notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;
 - f) upon expiration of six months from the date of the circulation of the communication by the Depositary, the annex shall enter into force for all Parties to this Convention, which have not submitted a notification in accordance with the provisions of subparagraph e) above.
3. The proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedure as for the proposal, adoption and entry into force of additional annexes to the Convention.
 4. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention enters into force.

Article XXXIII. RIGHT TO VOTE

Each Party to this Convention shall have one vote.

Article XXXIV. RELATIONSHIP BETWEEN PARTIES TO THE REVISED CONVENTION AND PARTIES BOUND BY THE 1968 ALGIERS CONVENTION

1. Between Parties which are bound by this Convention, only this Convention shall apply.
2. The relationships between Parties to the original Convention and Parties to this Convention shall be governed by the provisions of the original Convention.

Article XXXV. RELATIONSHIP WITH OTHER INTERNATIONAL CONVENTIONS

The provisions of this Convention do not affect the rights and obligations of any Party deriving from existing international treaties, conventions or agreements.

Article XXXVI SIGNATURE AND RATIFICATION

1. This Convention shall be open for signature immediately after being adopted by the Assembly of the African Union.

2. The Convention shall be subject to ratification, acceptance or approval by each of the States referred to in paragraph 1 above. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

Article XXXVII. ACCESSION

1. This Convention shall be open to accession by Member States of the AU from the date on which it is closed for signature.
2. The instruments of accession shall be deposited with the Depositary.

Article XXXVIII. ENTRY INTO FORCE

1. This Convention shall come into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification, acceptance, approval or accession with the Depositary, who shall inform the States referred to in Articles XXXVI and XXXVII accordingly.
2. For each State which ratifies, accepts or approves this Convention or accedes thereto after the depositing of the fifteenth instrument of ratification, acceptance, approval or accession, this Convention shall come into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.
3. Any State that becomes a party to the present Convention that was not a party to the 1968 Algiers Convention shall take necessary steps to withdraw from the London Convention of 1933 on the Conservation of Flora and Fauna in their Natural state.
4. No instrument of accession to the 1968 Algiers Convention may be deposited after the adoption of this Convention.

Article XXXIX. RESERVATIONS

No reservation may be made to this Convention.

Article XL. WITHDRAWAL

1. Any Party may withdraw from this Convention by notification in writing addressed to the Depositary.
2. Such withdrawal shall take effect, for such a Party, one year after the date of receipt of its notification by the Depositary.
3. No withdrawal shall, however, be made before the expiry of a period of five years from the date at which this Convention comes into force for the Party concerned.

Article XLI. SECRETARIAT INTERIM ARRANGEMENTS

The Secretariat functions referred to in Article XVII.3 shall be carried out on an interim basis by the Chairperson of the African Union until the decision of the Conference of the Parties referred to in Article XXVII.2 has been taken.

Article XLII. DEPOSITARY

The Chairperson of the African Union shall be the Depositary of this Convention.

Article XLIII. AUTHENTIC TEXTS

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

ADOPTED BY THE SECOND ORDINARY SESSION OF THE ASSEMBLY OF THE UNION IN
MAPUTO, MOZAMBIQUE, ON ELEVENTH JULY TWO THOUSAND AND THREE.

ANNEX 1 THREATENED SPECIES DEFINITION

A threatened species is a species which is either:

- a) **Critically Endangered:**
A taxon is “critically endangered” when the best available evidence indicates that it is considered to be facing an extremely high risk of extinction in the wild.
- b) **Endangered:**
A taxon is “endangered” when the available evidence indicates that it is considered to be facing a very high risk of extinction in the wild.
- c) **Vulnerable:**
A taxon is “vulnerable” when the best available evidence indicates that it is considered to be facing a high risk of extinction in the wild.

ANNEX 2 CONSERVATION AREAS

Definitions and Management Objectives

Strict Nature Reserve: protected area managed mainly for science

Definition

Area of land and/or sea possessing some outstanding or representative ecosystems, geological or physiological features and/or species, available primarily for scientific research and/or environmental monitoring.

Objectives of Management

- to preserve habitats, ecosystems and species in as undisturbed a state as possible;
- to maintain genetic resources in a dynamic and evolutionary state;
- to maintain established ecological processes;
- to safeguard structural landscape features or rock exposures;
- to secure examples of the natural environment for scientific studies, environmental monitoring and education, including baseline areas from which all avoidable access is excluded;
- to minimise disturbance by careful planning and execution of research and other approved activities; and to limit public access.

Wilderness Area: protected area managed mainly for wilderness protection

Definition

Large area of unmodified or slightly modified land, and/or sea, retaining its natural character and influence, without permanent or significant habitation, which is protected and managed so as to preserve its natural condition.

Objectives of Management

- to ensure that future generations have the opportunity to experience understanding and enjoyment of areas that have been largely undisturbed by human action over a long period of time;
- to maintain the essential natural attributes and qualities of the environment over the long term;
- to provide for public access at levels and of a type which will serve best the physical and spiritual well-being of visitors and maintain the wilderness qualities of the area for present and future generations; and to enable local communities living at low density and in balance with the available resources to maintain their life style.

National Park: protected area managed mainly for ecosystem protection and recreation

Definition

Natural area of land and/or sea, designated to (a) protect the ecological integrity of one or more ecosystems for present and future generations, (b) exclude exploitation or occupation inimical to the purposes of designation of the area and (c) provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally and culturally compatible.

Objectives of Management

- to protect natural and scenic areas of national and international significance for spiritual, scientific, educational, recreational or tourist purposes;
- to perpetuate, in as natural a state as possible, representative examples of physiographic regions, biotic communities, genetic resources, and species, to provide ecological stability and diversity;
- to manage visitor use for inspirational, educational, cultural and recreational purposes at a level which will maintain the area in a natural or near natural state;
- to eliminate and thereafter prevent exploitation or occupation inimical to the purposes of designation;
- to maintain respect for the ecological, geomorphologic, sacred or aesthetic attributes which warranted designation; and
- to take into account the needs of local communities, including subsistence resource use, in so far as these will not adversely affect the other objectives of management.

Natural Monument: protected area managed mainly for conservation of specific natural features

Definition

Area containing one, or more, specific natural or natural/cultural feature which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance.

Objectives of Management

- to protect or preserve in perpetuity specific outstanding natural features because of their natural significance, unique or representational quality, and/or spiritual connotations;
- to an extent consistent with the foregoing objective, to provide opportunities for research, education, interpretation and public appreciation;
- to eliminate and thereafter prevent exploitation or occupation inimical to the purpose of designation; and
- to deliver to any resident population such benefits as are consistent with the other objectives of management.

Habitat/Species Management Area: protected area managed mainly for conservation through management intervention

Definition

Area of land and/or sea subject to active intervention for management purposes so as to ensure the maintenance of habitats and/or to meet the requirements of specific species.

Objectives of Management

- to secure and maintain the habitat conditions necessary to protect significant species, groups of species, biotic communities or physical features of the environment where these require specific human manipulation for optimum management;
- to facilitate scientific research and environmental monitoring as primary activities associated with sustainable resource management;
- to develop limited areas for public education and appreciation of the characteristics of the habitats concerned and of the work of wildlife management;
- to eliminate and thereafter prevent exploitation or occupation inimical to the purposes of designation; and
- to deliver such benefits to people living within the designated area as are consistent with the other objectives of management.

**Protected Landscape/Seascape: protected area managed mainly for
landscape/seascape conservation and recreation**

Definition

Area of land, with coast and sea as appropriate, where the interaction of people and nature over time has produced an area of distinct character with significant aesthetic, ecological and/or cultural value, and often with high biological diversity. Safeguarding the integrity of this traditional interaction is vital to the protection, maintenance and evolution of such an area.

Objectives of Management

- to maintain the harmonious interaction of nature and culture through the protection of landscape and/or seascape and the continuation of traditional land uses, building practices and social and cultural manifestations;
- to support lifestyles and economic activities which are in harmony with nature and the preservation of the social and cultural fabric of the communities concerned;
- to maintain the diversity of landscape and habitat, and of associated species and ecosystems;
- to eliminate where necessary, and thereafter prevent, land uses and activities which are inappropriate in scale and/or character;
- to provide opportunities for public enjoyment through recreation and tourism appropriate in type and scale to the essential qualities of the areas;
- to encourage scientific and educational activities which will contribute to the long term well-being of resident populations and to the development of public support for the environmental protection of such areas; and
- to bring benefits to, and to contribute to the welfare of, the local community through the provision of natural products (such as forest and fisheries products) and services (such as clean water or income derived from sustainable forms of tourism).

Managed Resource Protected Area: protected area managed mainly for the sustainable use of natural ecosystems

Definition

Area containing predominantly unmodified natural systems, managed to ensure long term protection and maintenance of biological diversity, while providing at the same time a sustainable flow of natural products and services to meet community needs.

Objectives of Management

- to protect and maintain the biological diversity and other natural values of the area in the long term;
- to promote sound management practices for sustainable production purposes;
- to protect the natural resource base from being alienated for other land-use purposes that would be detrimental to the area's biological diversity; and to contribute to regional and national development.
- to contribute to regional and national development

ANNEX 3

Prohibited means of taking

- Snares
- Live animals used as decoys which are blind or mutilated
- Tape recorders
- Electrical devices capable of killing and stunning
- Artificial light sources
- Mirrors and other dazzling devices
- Devices for illuminating targets
- Sighting devices for night shooting comprising an electronic image magnifier or image converter
- Explosives
- Fire
- Nets (except as specified by the Conference of the Parties)
- Traps
- Poison and poisoned or anaesthetic bait
- Gassing or smoking out
- Semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition
- Aircraft
- Motor vehicles in motion

Annex VII

Dates of Deposit with the AU of Instruments of Ratification

No.	Country	Charter	Children's Charter	Women's Protocol	Court Protocol	Court Protocol, Article 34	Algiers Convention	Maputo Convention
1	Algeria	01/03/1987	08/07/2003	--	22/04/2003		05/02/1983	
2	Angola	02/03/1990	11/04/1992	--	--			
3	Benin	20/01/1986	17/04/1997	30/09/2005	--			
4	Botswana	17/07/1986	10/07/2001	--	--			
5	Burkina Faso	06/07/1984	08/06/1992	06/09/2006	31/12/1998	TBC	16/08/1969	
6	Burundi	28/07/1989	28/06/2004	--	02/04/2003			14/05/2007
7	Cameroon	20/06/1989	05/09/1997	--	--		18/07/1977	
8	Central African Republic	26/04/1986	--	--	--		16/03/1970	
9	Cape Verde	02/06/1987	20/07/1993	21/06/2005	--			
10	Chad	09/10/1986	30/03/2000	--	--			
11	Cote d'Ivoire	06/01/1992	01/03/2002	--	07/01/2003		15/01/1969	
12	Comoros	01/06/1986	18/03/2004	18/03/2004	23/12/2003		18/03/2004	02/04/2004
13	Congo	09/12/1982	08/09/2006	--	--		04/04/1981	
14	Djibouti	11/11/1991	--	02/02/2005	--		11/04/1978	
15	Democratic Republic of Congo	20/07/1987	--	--	--		29/05/1976	
16	Egypt	20/03/1984	09/05/2001	--	--		06/03/1972	
17	Equatorial Guinea	07/04/1986	20/12/2002	--	--			
18	Eritrea	14/01/1999	22/12/1999	--	--			
19	Ethiopia	15/06/1998	02/10/2002	--	--			
20	Gabon	20/02/1986	18/05/2007	--	14/08/2000		09/05/1988	
21	Gambia	08/06/1983	14/12/2000	25/05/2005	30/06/1999			
22	Ghana	24/01/1989	10/06/2005	--	25/08/2004		17/05/1969	
23	Guinea Bissau	04/12/1985	--	--	--			
24	Guinea	16/02/1982	27/05/1999	--	--			
25	Kenya	23/01/1992	25/07/2000	--	04/02/2004		12/05/1969	
26	Libya	19/07/1986	23/09/2000	23/05/2004	19/11/2003			04/06/2006

Annex VII: Dates of Deposit with the AU of Instruments of Ratification

No.	Country	Charter	Children's Charter	Women's Protocol	Court Protocol	Court Protocol, Article 34	Algiers Convention	Maputo Convention
27	Lesotho	10/02/1992	27/09/1999	26/10/2004	28/10/2003			26/10/2004
28	Liberia	04/08/1982	--	--	--		21/09/1978	
29	Madagascar	09/03/1992	30/03/2005	--	--		02/09/1971	
30	Mali	21/12/1981	03/06/1998	13/01/2005	10/05/2000	TBC	03/06/1974	13/01/2005
31	Malawi	17/11/1989	16/09/1999	20/05/2005	--		06/03/1973	
32	Mozambique	22/02/1989	15/07/1998	09/12/2005	17/07/2004		28/02/1981	
33	Mauritania	14/06/1986	21/09/2005	21/09/2005	19/05/2005			
34	Mauritius	19/06/1992	14/02/1992	--	03/03/2003			
35	Namibia	30/07/1992	23/07/2004	11/08/2004	--			
36	Nigeria	22/06/1983	23/07/2001	16/12/2004	20/05/2004		02/04/1974	
37	Niger	15/07/1986	11/12/1999	--	17/05/2004		10/01/1970	11/10/2006
38	Rwanda	15/07/1983	11/05/2001	25/06/2004	05/05/2003		19/11/1979	25/06/2004
39	South Africa	09/07/1996	07/01/2000	17/12/2004	03/07/2002			
40	Sahrawi Arab Democratic Republic	02/05/1986	--	--	--			
41	Senegal	13/08/1982	29/09/1998	27/12/2004	29/09/1998		03/02/1972	
42	Seychelles	13/04/1992	13/02/1992	09/03/2006	--		31/08/1977	
43	Sierra Leone	21/09/1983	13/05/2002	--	--			
44	Somalia	31/07/1985	--	--	--			
45	Sao Tome and Principe	23/05/1986	--	--	--			
46	Sudan	18/02/1986	--	--	--		09/10/1973	
47	Swaziland	15/09/1995	--	--	--		25/03/1969	
48	Tanzania	18/02/1984	16/03/2003	03/03/2007	07/02/2006		07/09/1974	
49	Togo	05/11/1982	05/05/1998	12/10/2005	23/06/2003		24/10/1979	
50	Tunisia	16/03/1983	--	--	--		21/12/1976	
51	Uganda	10/05/1986	17/08/1994	--	16/02/2001		15/11/1977	
52	Zambia	10/01/1984	--	02/05/2006	--		29/03/1972	
53	Zimbabwe	30/05/1986	19/01/1995	--	--			

Annex VIII
Members of the African Commission on Human and Peoples' Rights
as of 18 September 2007

1. Sanji Mmasenono Monageng (Botswana)
Chairperson of the Commission
Chair of the Working Group on the Robben Island Guidelines
2. Angela Melo (Mozambique)
Vice Chairperson of the Commission
Chair of the working Group on Specific Issues
3. Soyata Maiga (Mali)
Special Rapporteur on the rights of Women in Africa.
Member of the Working Group on Indigenous Populations/Communities
4. Zainabu Sylvie Kayitesi (Rwanda)
5. Yeung Kam John Yeung Sik Yuen (Mauritius)
6. Catherine Dupe Atoki (Nigeria)
7. Bahame Tom Mukirya Nyanduga (Tanzania)
Special Rapporteur on Refugees, IDPs and Asylum Seekers.
8. Mumba Malila (Zambia)
Special Rapporteur on Prisons and Conditions of Detention in Africa
Member of the Working Group on Indigenous Populations/Communities
9. Musa Ngary Bitaye (Gambia)
Chair of the Working Group on Indigenous Populations/Communities
10. Reine Alapini-Gansou (Benin)
Special Rapporteur on Human Rights Defenders
11. Faith Pansy Tlakula (South Africa)
Special Rapporteur on Freedom of Expression

Annex IX
Members of the African Committee of Experts on
the Rights and Welfare of the Child
as of January 2007

1. Jean-Baptiste Zoungrana (Burkina Faso)
2. Mamosebi T. Pholo (Lesotho)
3. Marie Chantal Koffi Appoh (Cote d'Ivoire)
4. Martha Koome (Kenya)
5. Moussa Sissoko (Mali)
6. Boipelo Lucia Seithamo (Botswana)
7. Nakpa Polo (Togo)
8. Peter Onyekwere Ebigbo (Nigeria)
9. Assefa Bequele (Ethiopia)
10. Seynabou Ndiaye Diakhate (Senegal)
11. Dawlat Ibrahim Hassan (Egypt)

Annex X
Judges of the African Court on Human and Peoples' Rights
as of 18 September 2007

1. Fatsah Ouguergouz (Algeria)
2. Jean Emile Somda (Burkina Faso)
3. Gerard Niyungeko (Burundi)
4. Sophia A.B. Akuffo (Ghana)
5. Kellelo Justina Masafo-Guni (Lesotho)
6. Hamdi Faraj Fanoush (Lybia)
7. Modibo Tounty Guindo (Mali)
8. Jean Mutsinzi (Rwanda)
9. El Hadji Guisse (Senegal)
10. Bernard Ngoepe (South Africa)
11. George W. Kanyeihamba (Uganda)

Annex XI
Members of NEPAD's African Peer Review Mechanism⁸³

No.	Country	Date of Signature of MOU
1	Algeria	09 March 2003
2	Burkina Faso	09 March 2003
3	Republic of Congo	09 March 2003
4	Ethiopia	09 March 2003
5	Ghana	09 March 2003
6	Kenya	09 March 2003
7	Cameroon	03 April 2003
8	Gabon	14 April 2003
9	Mali	28 May 2003
10	Mauritius	09 March 2004
11	Mozambique	09 March 2004
12	Nigeria	09 March 2004
13	Rwanda	09 March 2004
14	Senegal	09 March 2004
15	South Africa	09 March 2004
16	Uganda	09 March 2004
17	Egypt	09 March 2004
18	Benin	31 March 2004
19	Malawi	08 July 2004
20	Lesotho	08 July 2004
21	Tanzania	08 July 2004
22	Angola	08 July 2004
23	Sierra Leone	08 July 2004

⁸³ Source: NEPAD website, available at <http://www.nepad.org/2005/files/aprmcountries.php>

Annex XII
Resolution on Obtaining Observer Status
at the African Commission on Human and Peoples' Rights

RESOLUTION ON THE CRITERIA FOR GRANTING AND ENJOYING OBSERVER STATUS TO NON-GOVERNMENTAL ORGANISATIONS WORKING IN THE FIELD OF HUMAN RIGHTS WITH THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Established by the African Commission on Human and Peoples' Rights, meeting in its 25th Ordinary Session, in Bujumbura, Burundi, from 26 April - 5 May 1999.

Considering the provisions of article 45 of the African Charter on Human and Peoples' Rights, which establishes the competence and determines the mandate of the Commission;

Considering the Grand Baie (Mauritius) declaration and plan of action, adopted at the 1st African Ministerial Conference on Human Rights (12-16 April 1999), which «recognises the contribution made by African NGOs to the promotion and protection of human rights in Africa ...»;

Considering the provisions of Chapter XIII (Articles 75 and 76) of the Rules of Procedure of the Commission regarding representation of, and consultation with NGOs by the African Commission on Human and Peoples' Rights;

Considering that since its establishment in October 1987, 231 African and international non-governmental organisations have been granted observer status with the African Commission on Human and Peoples' Rights;

Considering the Decision AHG/dec.126 (XXXIV) of the Assembly of Heads of State and Government which requests the African Commission on Human and Peoples' Rights to «undertake a review of the criteria for observer status with the Commission, with a view to enhanced efficiency and co-operation, and to suspend the granting of the said status until the adoption of the new criteria ...»;

*

Convinced of the need to strengthen its co-operation and partnership with NGOs working the field of human rights;

1. *Adopts* the new criteria for granting and enjoying observer status, the text of which is annexed to the present resolution;
2. *Decides* that the new criteria shall immediately enter into force;
3. *Requests* the Secretary to the Commission to report at every Ordinary Session on the implementation of the present resolution.

* The following paragraph appears in the French version of the Resolution, but not in the English: *Considérant* la résolution sur la coopération entre la Commission Africaine des Droits de l'Homme et des Peuples et les ONG ayant le statut d'observateur auprès d'elle adoptée lors de la 24ème Session Ordinaire de la Commission Africaine tenue du 22 au 31 octobre 1998 à Banjul, Gambie;

Annex XIII

Criteria for the Granting of and for Maintaining Observer Status with the African Commission on Human and Peoples' Rights

Chapter I

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.

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

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.
- 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.
- No application for Observer Status shall be put forward for examination by the Commission without having been previously processed by the Secretariat.
- 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

- 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.
- All observers shall have access to the documents of the Commission subject to the condition that such documents:
 1. shall not be of a confidential nature;
 2. 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.

- Observers may be invited specially to be present at closed sessions dealing with issues of particular interest to them.
- 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 to the Commission.
- The Chairman of the Commission may give the floor to observers to respond to questions directed at them by participants.
- 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

- 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.
- NGOs enjoying observer status shall present their activity reports to the Commission every two years.
- Administrative arrangements shall be made, whenever necessary, to determine the modalities of this co-operation.

Chapter IV: FINAL PROVISIONS

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. 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
- Observer status may be suspended or withdrawn from any organisation that does not fulfil the present criteria, after deliberation by the Commission

Bujumbura, 5 May 1999

Annex XIV
Draft Agenda of the 40th Ordinary Session of the African Commission
on Human and Peoples' Rights

(From 15th to 29th November 2006, Banjul, The Gambia)

Item 1: Opening Ceremony (Public Session)

Item 2: Adoption of the Agenda (Private Session)

Item 3: Organisation of Work (Private Session)

Item 4: Human Rights Situation in Africa (Public Session)

- a) Statements by State Delegates and Guests;
- b) Statements by Intergovernmental Organisations;
- c) Statements by National Human Rights Institutions; and
- d) Statements by NGOs.

Item 5: Cooperation and Relationship with National Human Rights Institutions and NGOs (Public Session)

- a) Cooperation between the African Commission on Human and Peoples' Rights and National Human Rights Institutions:
 - i) Relationship with National Human Rights Institutions; and
 - ii) Consideration of applications for affiliate status from National Human Rights Institutions.
- b) Cooperation between the African Commission on Human and Peoples' Rights and NGOs.
 - i) Relationship with NGOs; and
 - ii) Consideration of applications of NGOs for Observer Status.

Item 6: Consideration of State Reports (Public Session):

- a) Status of Submission of State Party Reports
- b) Consideration of -:
 - i] The Initial Report of Zambia;
 - ii] The Periodic Report of Nigeria; and
 - iii] The Periodic Report of Uganda

Item 7: Promotion Activities (Public Session)

- a) Presentation of the Activity Reports of the Chairperson, Vice-Chairperson and Members of the African Commission;
- b) Presentation of the Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa;
- c) Presentation of the Report of the Special Rapporteur on the Rights of Women in Africa;

- d) Presentation of the Report of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa;
- e) Presentation of the Report of the Special Rapporteur on Human Rights Defenders in Africa;
- f) Presentation of the Report of the Special Rapporteur on Freedom of Expression in Africa;
- g) Presentation of the Report of the Chairperson of the Working Group on the Implementation of the Robben Island Guidelines;
- h) Presentation of the Report of the Chairperson of the Working Group on the Indigenous Populations/Communities in Africa;
- i) Presentation of the Report of the Chairperson of the Working Group on Economic, Social and Cultural rights in Africa;
- j) Presentation of the Report of the Working Group on Specific Issues Relevant to the Work of the African Commission;
- k) Report of the Working Group on the Death Penalty; and
- l) Organisation of Conferences and Seminars.

Item 8: Consideration and Adoption of Draft Reports (Private Session)

Consideration and adoption of mission reports of the African Commission:

- a) Draft Reports on the Promotional Missions to the Republics of Burundi, Rwanda, Mali, Uganda, Mauritius and *the* Kingdom of Lesotho;
- b) Draft Report of the Working Group on Indigenous Populations/Communities in Africa to the Republic of Niger;
- c) Draft Report of the Mission of the Special Rapporteur on the Rights of Women in Africa to the Republic of Cape Verde;
- d) Draft Report of the Special Rapporteur on Women on the Studies on Violence Against Women in Africa

Item 9: Consideration of: (Private Session):

- a) Draft Report on the Review of the Communication Procedure;
- b) Draft Position Paper on *Locus standi* before the African Commission;
- c) Draft Internship Policy of the Secretariat of the ACHPR;
- d) Draft Position Paper on the relationship between the African Commission and the African Court;

Item 10: Protection Activities: (Private Session)

- a) Report on the Follow-Up of the cooperation between the African Commission and the International Criminal Tribunal for Rwanda; and
- b) Consideration of Communications.

Item 11: Methods of Work of the African Commission: (Private Session)

- a) Review of the mandate of the Special Rapporteur on Arbitrary Executions and Extra-Judicial Killings in Africa;
- b) Appointment of Experts Members of the Working Group on the Death Penalty;
- c) Consideration of the proposal to create Web-pages for the activities of the Special Mechanisms of the African Commission; and
- d) Presentation of the Strategic Plan of African Commission (2007-10).

Item 12: Administrative and Financial Matters: (Private Session):

- a) Report of the Secretary on the administrative and financial situation of the African Commission and its Secretariat; and
- b) Construction of the Headquarters of the African Commission.

Item 13: Consideration and Adoption of Recommendations, Decisions, and Resolutions including: (Private Session):

- a) Recommendations from the NGO Forum; and
- b) Resolutions of the ACHPR
- c) Concluding Observations on the initial report of Zambia and the periodic reports of Nigeria and Uganda.

Item 14: Follow-up on decisions (Private Session):

- a) ACHPR decisions taken at the 39th Ordinary Session; and
- b) Implementation of the decisions of the AU Executive Council/Assembly

Item 15: Dates and Venue of the 41st Ordinary Session of the African Commission (Private Session):

Item 16: Any Other Business (Private Session)

Item 17: Adoption of the 39th Session Report, the report of the 40th Ordinary Session, the 21st Activity Report of the African Commission and Final Communiqué of the 40th Ordinary Session (Private Session)

Item 18: Reading of the Final Communiqué and Closing Ceremony (Public Session)

Item 19: Press Conference (Public Session)

Annex XV How to Do an Oral Intervention at the African Commission on Human and Peoples' Rights

A How to write an Oral Intervention

There are many ways to write an intervention, but the format best suited for the African Commission is one that is informative and factual with a central theme, and which gives concrete examples. The Commissioners prefer interventions to be relatively impartial, using professional language, rather than overtly emotional and political. The best interventions are ones that use controlled emotional language, and relate to the specific agenda item under which they are given.

Interventions should mention the relevant provisions of the African Charter on Human and Peoples' Rights and any other national or international law. Interventions should include a conclusion in which you make recommendations to the African Commission, the government and/or the international community.

Outlined below are the 'basics' that your intervention should cover:

1. It must be written and delivered in one of the official African Commission languages (these include English and French).
2. It must be five minutes long or less, so you should practice reading it out loud several times before delivering it.
3. It must be written in clear, logical language, not emotional or politically charged language.
4. State your name, NGO & where you are from.
5. State the topic/issue that you wish to address in your intervention.
6. Describe the human rights situation you wish to address, stating which articles of the African Charter the topic/issue relates to.
7. State any other human rights law or documents the topic/issue relates to (if applicable), for example UN human rights treaties.
8. State which domestic/national law or good practice the topic/issue relates to, if any.
9. Clearly state what recommendations/suggestions or requirements you are making to:
 - (a) the African Commission;
 - (b) the government;
 - (c) the international community.

B How to deliver an Oral Intervention to the African Commission

1. In the room, put the name of your NGO on the speakers' list (each agenda item has a separate list which is kept by a Secretariat member sitting at the front of the room). An NGO must have observer status in order to be able to register and speak.
2. Give the Secretariat member 3 copies of your intervention. These are for the translators and the Secretariat (to help if it is included in the report). You may also wish to ensure that your government representative is given a copy in advance.
3. The Chairperson calls out names in order from the speakers' list. It is important to continuously be in the room as the various agenda items are often shifted without prior notification to participants.
4. Once your name is called, you must raise your hand and make sure to find a seat with a microphone. If you are not in the room when your name is called the meeting will continue without you and you will have lost your chance to speak under that agenda item; therefore you should nominate someone else to give your intervention for you if you have to leave the room.
5. Read your intervention slowly and clearly, making sure that you stay well within the time limit of five minutes. Avoid the temptation to speak quickly so you can say more – remember how difficult it is to concentrate during a long meeting, and if you speak too fast many people will not be able to focus on your intervention and the translators will not be able to keep up with you.
6. Once you have given your intervention, you may be approached by other people in the room and asked for a copy. Make sure you bring at least 20 copies to hand out.
7. After your intervention, the Chairperson will thank you and may also make some additional remarks, before moving onto the next speaker. Government representatives may want to make a comment relating to your intervention, and will be permitted to speak by the Chairperson even if they are not on the speakers' list. Other Commissioners may also comment on your intervention.

Annex XVI

How to Write a Supplementary Report to International and Regional Human Rights Mechanisms

Why write a supplementary report?

If NGOs or indigenous organisations write a supplementary report – which contains responses to the State Party report and more information on the situation of indigenous peoples in the country concerned – this gives the international or regional mechanism a better understanding of the human rights in that State, and can encourage the members of the mechanism to ask the State representatives key questions during the examination of its periodic report.

It is often through supplementary reports written by NGOs and indigenous organisations that the mechanism's attention is drawn to the existence and issues of indigenous peoples in a country, which allows it to use its protective mandate to advance their cause.

How to elaborate a supplementary report

1. It is important to closely monitor the international and regional mechanism to verify when the State Party report for the relevant country is going to be examined. How? Look at the mechanisms' website; as the mechanism Secretariat by email or telephone; as the State (normally, but not always, the Foreign Affairs Ministry).
2. Get a copy of the State Party report as soon as possible (NB: sometimes a mechanism will examine a country situation even in the absence of a State party report). How? See below.
3. You need to decide if your organisation is going to write a supplementary report alone, or in collaboration with others. If you are going to do it in a coalition, you will need to be very clear about the roles and responsibilities of each participant to avoid duplicating your work or overlooking important information. Look at the reports submitted to CERD that were written by a coalition of FPP, CAMV, ARAP, CPAKI, APDMAC, SIPA and UEFA.
4. Draw up a work plan and calendar of essential activities. NB: the time devoted to each activity will vary if you are working alone or in a coalition of organisations. Normally the process can take about 4 months (16 weeks).

PROPOSED WORK PLAN AND CALENDAR FOR DRAFTING A SUPPLEMENTARY REPORT	
Time	Activity
(Ideally) 8 weeks before the State Party report will be examined by the mechanism. If your report cannot be submitted this early (often because the State Party report itself isn't ready in time), try to submit your supplementary report as soon as possible before the meeting during which the mechanism will examine the State Party report.	Submit your report to the mechanism, via its Secretariat.
9 weeks before the State Party report will be examined	Third and final draft of the supplementary report, and finishing it off
10 weeks before the State Party report will be examined	Revisions to the supplementary report (1-2 weeks)
11 weeks before the State Party report will be examined	Second draft of the supplementary report
12 weeks before the State Party report will be examined	Revisions (1-2 weeks)
13-15 weeks before the State Party report will be examined	First draft of report (2 weeks)
16 weeks before the State Party report will be examined	Plan the structure of your supplementary report and assign different parts to the members of your coalition (if you have one).
As soon as possible	Gather the information necessary for your supplementary report from the different sources (see below) and carefully read / examine each one.
As soon as possible	Get a copy of the State Party report and read it carefully several times.

How to write a supplementary report

A supplementary report can be submitted in whatever format, but it will always be useful to prepare a report that contains comments on each article of the relevant instrument (convention, treaty, etc) that is dealt with in the State Party report. For indigenous peoples it is often naturally the case that the supplementary report will concentrate on the articles in the instrument that particularly concern them, for example Articles 1, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR) if preparing a report for the UN's Human Rights Committee. The supplementary report should include annexes containing examples of laws and other pertinent documents relating to the contents of the report. It could also be useful to refer to the guidelines produced by each mechanism for State Party reports.⁸⁴

⁸⁴ See: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.66.GUI.Rev.2.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.66.GUI.Rev.2.En?Opendocument) (Human Rights Committee); [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.70.Rev.5.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.70.Rev.5.En?Opendocument) (Committee on the Elimination of Racial Discrimination)

The following list contains some suggestions on how to write a supplementary report and the information that it should contain:

1. Write the report in English or French. ***Neither the UN nor the African Union translate documents submitted by NGOs.***
2. The cover page should clearly state that it is a “supplementary report” to the mechanism, on the periodic State Party report (and mention which one, for example, the Initial, Second, etc.) The cover page should also indicate the date of submission of the supplementary report (month and year). Also put the names and logos of all submitting organisations on the cover page also.
3. Give a brief description of your people or organisations, including your contact details (mechanisms don’t give this information out to States).
4. Write an Executive Summary at the beginning of your report. Because they are extremely busy, it is highly likely that many members of the mechanism will only have time to read a few pages of your supplementary report. The best solution to this problem is to write an Executive Summary that contains: (a) a summary of the parts of the report that indicate where the State Party has not complied with the instrument. The summary should refer to the numbered pages and paragraphs in order to give the reader quick access to the arguments and statistics in your report during its meeting with the State Party representatives; and (b) your recommendations. Here you can write suggested questions that you respectfully suggest the mechanism members ask the State Party representatives during their meeting. You can include specifically worded questions for mechanism members to repeat. NB: The Executive Summary could be the most important part of your supplementary report.
5. Be brief and concise: as a general rule your supplementary report shouldn’t exceed 20 pages (excluding annexes).
6. Avoid using language that is aggressive or too general.
7. A detailed Contents table is essential: this will members of the mechanism quick access to information in your report during their meeting with the State Party representatives.
8. Use titles for each section and sub-sections of your report and clearly divide it into several chapters. Number the paragraphs for easy reading and reference.
9. Start with a general introduction that contains your general observations of the human rights situation in your country and your general opinions on the State Party report (its accuracy, the omission of some information, etc.) You should also mention when the State ratified the relevant instrument under examination, and when the mechanism will examine the State Party report.
10. Follow this with a commentary article by article of the State Party report, noting any inaccuracies or clarifying the information provided by the State and underlining your concerns about the enjoyment of the rights contained within each specific article by indigenous peoples in your country.
11. When referring to a part of the State Party report, indicate the specific paragraph number and not just the page number as the paragraph number will be the same in each language version (but the page number can change).
12. It is most often neither necessary nor desirable to deal with every article of the instrument covered by the State Party report in your supplementary report.
13. The parts of your report that deal with each substantive issue should include, at a minimum: (a) a summary of the rights to be considered; (b) an explanation of the facts that describe the non-enjoyment of these rights; (c) the State’s conduct that demonstrates its responsibility; (d) a list of questions that you recommend the members of the mechanism ask the State Party.
14. Your report’s Conclusion should contain a very brief resume of the rights that are violated in your country and the State’s obligations. The conclusion should be kept very short and shouldn’t repeat at length the information already found elsewhere in the supplementary report.

15. Include in your Annexes examples of laws, decrees, orders or other measures (such as decisions by legal bodies, administrative rules, etc.) that are incompatible with the rights recognised in the instrument.

Golden Rules

1. The best supplementary report is one that demonstrates two things: (a) the facts that show the non-enjoyment of a right; and (b) the nature of the State's obligations to execute the right. For example, it is not enough to show that young indigenous people have a very high school abandon rate, or that indigenous people have been dispossessed of their lands, territories and resources without consultation, consent, reparations or compensation. It is also essential that your report shows that the Government should have exercised its responsibility, and that it is obliged to act in a specific way as foreseen by the instrument. The main goal of your supplementary report is to show this.
2. You must never make allegations without solid proof. For example, while it can be enough in journalism to say that "sources have said" something, this is not enough for a supplementary report. All the information and facts in a supplementary report must be precise, true and verifiable.

Useful information sources for supplementary reports

It is very important to cite the author of all facts and information sources contained in a supplementary report. You can do this with footnotes, endnotes, or in parenthesis. You can use the following information sources:

1. Government statistics.
2. Rules and statutes (particularly those that are in your Annexes).
3. Decisions / rulings by courts and tribunals in your country (if appropriate).
4. Reports by the National (Human Rights) Commission in your country, and other Government publications.
5. Reports by UN and other inter-governmental agencies, e.g. ILO, UNDP, UNICEF, WHO, NEPAD APRM, etc.)
6. Local and international surveys (if you use these, you should include a very brief description of the methodology that was used and include it in the Annexes).
7. Other documents relating to the mechanism or other international / regional human rights mechanisms (including Committees, Rapporteurs, etc.), including State Party reports, Concluding Observations, State Party responses, List of Issues, General Recommendations, etc.
8. Media reports.
9. Academic journals.
10. NGO reports, and
11. Interviews.

Annex XVII Useful Contacts and URLs

African System

African Union (AU)

P.O. Box 3243
Addis Ababa
Ethiopia
Tel: +251 11 551 77 00
Fax: +251 11 551 78 44
<http://www.africa-union.org>

Treaties of the African Union

<http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>

African Commission on Human & Peoples' Rights (ACHPR)

Kairaba Avenue
P.O. Box 673
Banjul
The Gambia
Tel: +220 4392 962
Fax: +220 4390 764
Email achpr@achpr.org
http://www.achpr.org/english/_info/news_en.html

African Committee of Experts on the Rights and Welfare of the Child

The Director
Department of Social Affairs
Commission of the African Union
African Union Headquarters
P.O.Box 3243
Roosvelt Street (Old Airport Area)
W21K19 Addis Ababa
Ethiopia
Tel.: + 251 1 51 35 22 (Direct) or + 251 1 51 77 00 Ext. 300
Fax: + 251 1 53 57 16
E-mail: dsocial@africa-union.org
<http://www.africa-union.org/child/home.htm>

United Nations System

United Nations High Commissioner for Human Rights (UNHCHR)

Office of the United Nations
High Commissioner for Human Rights
UNOG-OHCHR
1211 Geneva 10
Switzerland
Tel: +41 22 917 9000
<http://www.unhchr.ch>

United Nations Treaty Bodies

<http://www.ohchr.org/english/bodies/treaty/index.htm>

UN Human Rights Committee (HRC)

To contact the HRC Secretariat email Mr Patrice Gillibert: pgillibert@ohchr.org
<http://www.ohchr.org/english/bodies/hrc/index.htm>

UN Committee on the Elimination of Racial Discrimination (CERD)

To contact the CERD Secretariat email Ms Natalie Provez: nprouvez@ohchr.org
<http://www.ohchr.org/english/bodies/cerd/index.htm>

UN Committee on Economic, Social & Cultural Rights (CESCR)

To contact the Secretariat of the ESC Committee, email Ms Wan-Hea Lee wlee@ohchr.org
<http://www.ohchr.org/english/bodies/cescr/index.htm>

UN Committee on the Rights of the Child (CRC)

To contact the NGO Group on the Rights of the Child, which coordinates NGOs' submissions to the CRC, email Laura Theytaz: ltheytaz@pingnet.ch
<http://www.ohchr.org/english/bodies/crc/index.htm>

UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)

To contact the CEDAW Secretariat email Ms Christine Ainetter Brautigam: brautigamc@un.org
<http://www.un.org/womenwatch/daw/cedaw/>

UN Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People

Contact Person: Luis Rodriguez-Pinero, Human Rights Officer
Tel: +41 22 917 91 34
Email: indigenous@ohchr.org
<http://www.ohchr.org/english/issues/indigenous/rapporteur/>

International Labour Organisation

<http://www.ilo.org>

ILO Work on Indigenous and Tribal Peoples

<http://www.ilo.org/public/english/indigenous/>

United Nations Permanent Forum on Indigenous Issues

United Nations, 2 UN Plaza
Room DC2-1772
New York, NY, 10017
Tel: 1 917 367 5100
Fax: 1 917 367 5102
Email: indigenoupermanentforum@un.org
<http://www.un.org/esa/socdev/unpfii/>

NGOs and Academic Institutions

Forest Peoples Project/Forest Peoples Programme (FPP)

1c Fosseyway Business Centre
Stratford Road, Moreton-in-Marsh
GL56 9NQ
UK
Tel: +44 (0)1608 652893
Fax: +44 (0)1608 652878
Email: info@forestpeoples.org
<http://www.forestpeoples.org>

International Work Group for Indigenous Affairs (IWGIA)

Classensgade 11 E
DK 2100 Copenhagen
Denmark
Tel: +45 35 27 05 00
Fax: +45 35 27 05 07
Email: iwgia@iwgia.org
<http://www.iwgia.org>

Minority Rights Group International (MRG)

54 Commercial Street
London E1 6LT UK
Tel: +44 (0)20 7422 4200
Fax: +44 (0)20 7422 4201
Email: minority.rights@mrgmail.org
<http://www.minorityrights.org/>

African Centre for Democracy and Human Rights Studies (ACDHRS)

Zoe Tembo Building, Kerr Sereign
P. O. Box 2728, Serekunda
The Gambia
Tel.: (220) 446 2340
Fax: (220) 446 2338
Email: legal@acdhrs.org
<http://www.acdhrs.org>

The Institute for Human Rights and Democratic Development in Africa

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