

A Guide to Using the  
*Protocol on the Rights of Women in Africa*  
for Legal Action



*This Manual is developed by*



*On Behalf of*

**SOLIDARITY FOR  
AFRICAN WOMEN'S RIGHTS**

A force for freedom



**MOUVEMENT DE SOLIDARITÉ  
POUR LES DROITS  
DES FEMMES AFRICAINES**

Une force pour la liberté

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# List of acronyms

European Convention of Human Rights	European Convention for the Protection of Human Rights and Fundamental Freedoms
EWLA	Ethiopian Women Lawyers Association
FEMNET	African Women’s Development And Communication Network
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IACHR	Inter-American Commission on Human Rights
Inter-American Court	Inter-American Court on Human Rights
NGO	non-governmental organization
OAS	Organization of American States
OAU	Organization of African Unity
SOAWR	Solidarity for African Women’s Rights
Trafficking Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
WiLDAF	Women in Law And Development in Africa
Women’s Rights Protocol	Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa
WRAPA	Women’s Rights Advancement and Protection Alternative
ACJHR	African Court of Justice and Human Rights
ACJHR Protocol	Protocol on the Statute of the African Court of Justice and Human Rights
ACJHR Statute	Statute of the African Court of Justice and Human Rights (Attached as an Annex to the ACJHR Protocol)
African Charter	African Charter on Human and Peoples’ Rights
African Commission	African Commission on Human and Peoples’ Rights
African Court	African Court on Human and Peoples’ Rights
African Court Protocol	Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights
American Convention	American Convention on Human Rights
AU	African Union
Belém do Pará Convention	Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
Children’s Charter	African Charter on the Rights and Welfare of the Child
CRC	Convention on the Rights of the Child
ECHR	European Court of Human Rights
ECOWAS	Economic Community of West African States

# Foreword

**I**n my capacity as Special Rapporteur on the Rights of Women in Africa, I have the privilege and pleasure to write the preface of the “Guide on Using the Protocol on the Rights of Women in Africa for Legal Action” developed by the Solidarity for African Women’s Rights coalition (SOAWR) and Equality Now. Thanks to its practical character and exhaustiveness, the guide constitutes an important tool as well as a legal source for women’s and girls’ rights defenders in Africa.

With the adoption of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Protocol), Africa has demonstrated its will to ensure respect for women’s human rights as well as the development of norms and standards in the domain of protection of women’s and girls’ rights on the African continent. The Protocol is an innovative legal instrument in many respects and its effective implementation will facilitate the realization of significant advances in terms of women’s rights in many spheres of their lives. The guide provides examples of simplified language and of the types of complaints that defenders of human rights can utilize in order to ensure better protection of women’s rights in Africa.

The effective implementation of the Protocol falls first under the responsibility of State parties and demands, on the part of every Member State of the African Union, real efforts in terms of legal reform integrating the innovations contained in the Protocol, the adoption of national action plans for the eradication of gender based violence as well as national gender policies and the provision of sufficient budgetary resources for programs in favor of women’s empowerment and capacity building. The Member States should notably introduce positive actions aimed at realizing rights guaranteed in the Protocol at the national level and should ensure the respect of judicial decisions based on the application of the Protocol’s provisions.

They should equally guarantee respect for decisions rendered by the African Commission on Human and Peoples’ Rights following complaints brought before this organ based on violations of the rights guaranteed by the Protocol.

Civil society organizations have a critical role to play at the local, national and regional levels to make the Protocol an effective lobbying tool to accelerate change in negative socio-cultural models and patterns which curb the development and effectiveness of women’s and girls’ rights in Africa.

This is how organizations such as the SOAWR coalition already use diverse strategies to promote the use of the Protocol. SOAWR has invoked the provisions of the Protocol in many cases brought before national courts as well as the African Commission. The coalition has organized many training sessions for lawyers and other human rights defenders. It continues tirelessly to publicize the level of ratification and domestication of the Protocol by State Parties. It has assisted and supported the African Commission in the development of directives on the drafting of reports by States on the Protocol and assured the training of representatives of Member States on the use of those directives with a view to taking them into account in the drafting of periodic reports presented by virtue of Article 62 of the African Charter. Finally, SOAWR has promoted the multi-sectoral approach recommended by UN Women for the effective implementation of the Protocol.

African governments must accelerate the ratification process of the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples Rights and make the declaration as per article 34(6) of the mentioned Protocol permitting individuals and NGOs to directly seize the African Court.

African women and girls hope that, thanks to the political will of State Parties and to combined strategies of all the other actors, they themselves, their daughters and granddaughters will be able to live in a world of equality with men and boys, a world free from all forms of discrimination, as foreseen in the Protocol. It is our collective responsibility to ensure that these legitimate hopes are satisfied in the best time-frame.

I hope that women and human rights defenders in general will use the Protocol as well as this pertinent guide to understand and assert their rights with the goal of contributing to the prevention of violations of women’s human rights and to the end of discrimination and impunity.

Together, let us make sure that women and girls live in an Africa worthy of women, a peaceful Africa respectful of human and people’s rights.

**Soyata Maïga**  
**Commissioner/Special Rapporteur on the**  
**Rights of Women in Africa**



# Introduction

This manual promotes the use of the groundbreaking human rights instrument, the Protocol on the Rights of Women in Africa (the Women's Rights Protocol), which is a supplementary protocol to the African Charter on Human and Peoples' Rights. The Women's Rights Protocol was adopted by the African Union in July 2003 as a result of intensive advocacy by many organizations from all over Africa and entered into force on 25 November 2005. As of May 2011 it has been ratified by 30 countries.

The Women's Rights Protocol is an important advance in the protection and the promotion of the rights of women in Africa. It is the first international law instrument to call for an end to all forms of violence against women, whether in private or in public, including sexual harassment; prohibit all forms of female genital mutilation; protect women's right to seek abortion under certain conditions; prohibit forced marriages; and specify 18 years as the minimum age of marriage. The Women's Rights Protocol sets forth a broad range of economic and social rights, including rights to equal pay for equal work and to adequate and paid maternity leave in both the public and private sectors. It endorses affirmative action to promote the equal participation of women at all levels of decision-making and calls for equal participation of women in law enforcement and the judiciary. It recognizes the right of women to participate in the promotion and maintenance of peace. The Women's Rights Protocol further provides important protections for adolescent girls, as well as for particularly vulnerable groups of women, including widows, elderly women, disabled women, poor women, women from marginalized population groups, and pregnant or nursing women in detention.

This manual aims to facilitate the exercise of the rights set out in the Women's Rights Protocol by providing step-by-step guidance for using the Protocol at both national and regional levels. It provides information on using the Women's Rights Protocol in cases brought before domestic courts, and explains how to bring complaints of violations of the Protocol to regional mechanisms such as the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. It provides an analysis of certain



violations of the Women's Rights Protocol to assist practitioners in drafting complaints on these issues. The manual summarizes key cases on issues relevant to women's rights decided by the African Commission and other relevant regional or international human rights mechanisms to give practitioners a sense of international and regional jurisprudence on women's rights. It also highlights more general strategies that can be employed for the domestication and popularization of the Women's Rights Protocol.

We hope that you find this manual useful in your work to end violence against women and girls in Africa. Equality Now and SOAWR would like to thank Columbia Law School, former CEDAW Committee Chair Elizabeth Evatt, and South African lawyer Nobuntu Mbelle for assistance in researching and preparing this manual. We also wish to thank The New Field Foundation, The Nepad-Spanish Fund, Oxfam Novib and Oxfam GB for their financial support which made it possible for this manual to be prepared and translated into Arabic, French and Portuguese and published. Last but not least, Equality Now staff Wendy Conn, Claire Dupuy, Yasmeen Hassan, Antonia Kirkland, Brenda Kombo and Caroline Muriithi have tirelessly worked on preparing the manual and their support is deeply appreciated.

**Faiza J. Mohamed**  
**Nairobi Office Director**  
**Equality Now**

# Chapter Synopses

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## **Chapter I - Background**

This chapter provides a brief background of the African Human Rights system, including key instruments relevant to women's rights and regional mechanisms that may be used to enforce such rights. This chapter provides useful background knowledge for practitioners by providing an understanding of how the Women's Rights Protocol came about and how it is positioned within the African Human Rights system.

## **Chapter II - The Protocol on the Rights of Women in Africa**

This chapter summarizes the rights guaranteed to women under the Women's Rights Protocol and highlights similar provisions in other human rights instruments. It also provides an analysis of the application of the Women's Rights Protocol to five key issues (domestic and sexual violence, female genital mutilation, sexual harassment, reproductive rights, inheritance and property rights) with sample language that may be used in legal submissions.

## **Chapter III - Use of the Women's Rights Protocol at the Domestic and Regional Levels**

This chapter explains how the Women's Rights Protocol may be used in litigation at both the domestic and regional levels. It provides a useful checklist for petitioners to consult when citing the Women's Rights Protocol in domestic cases. It also lays out the ways that practitioners can raise an issue or bring a particular case of violation of the Women's Rights Protocol at the regional level.

## **Chapter IV - Submitting Complaints to the African Commission**

This chapter intends to demystify the process and the requirements of bringing cases to the African Commission and lays out step by step the African Commission's procedure for considering cases. A sample complaint and a checklist are also included to aid in preparing submissions.

## **Chapter V - Taking a case to the African Court on Human and Peoples' Rights or the African Court of Justice and Human Rights**

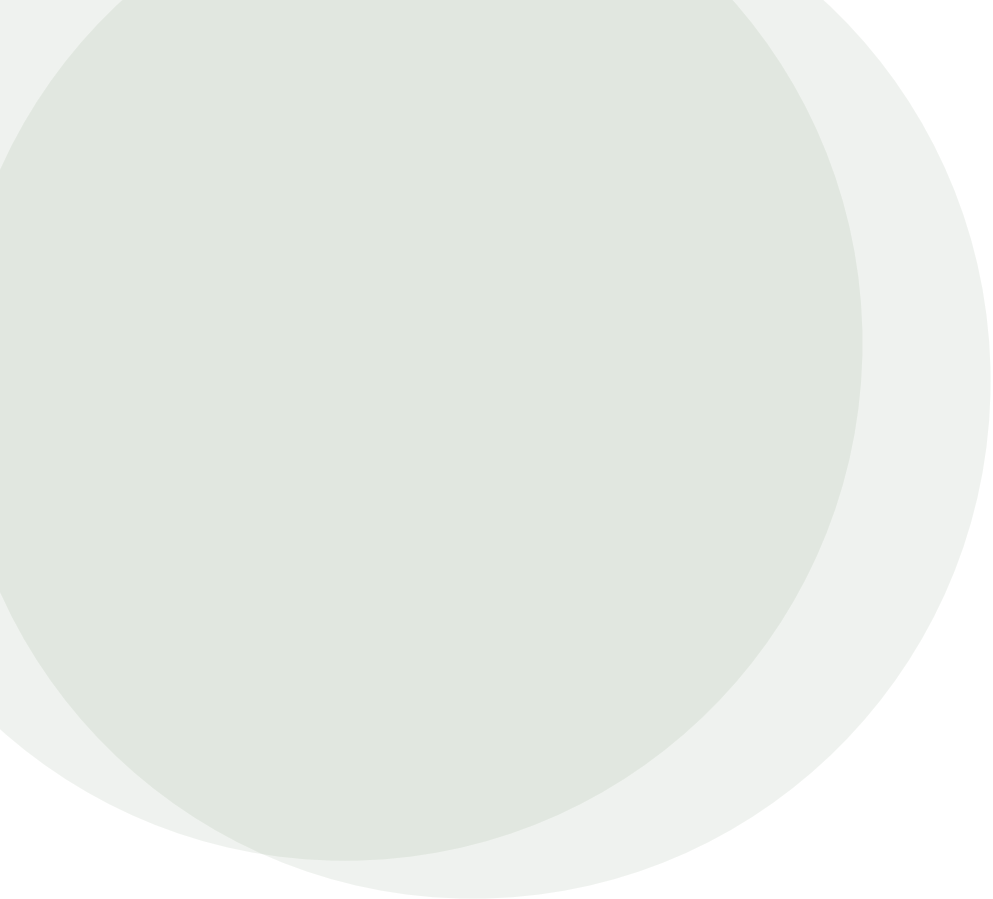
This short chapter discusses the process of taking a case to the African Court on Human and Peoples' Rights or the African Court of Justice and Human Rights, the latter not in operation as of the writing of this manual. It provides practitioners with the applicable jurisdictional rules laid out in the respective protocols of these courts.

## **Chapter VI - Relevant Case Law on Human Rights**

This chapter provides a synopsis of decisions the African Commission on Human and Peoples' Rights issues that may be cited in legal submissions on women's rights. It also provides examples of women's rights cases from other regional human rights systems and from international treaty bodies. These examples can be a useful guide to the interpretation of provisions of the African Charter or the Women's Rights Protocol and helpful in facilitating research in legal cases.

## **Chapter VII - Other Strategies to Promote the Women's Rights Protocol**

This chapter lays out strategies (at both the national and regional levels) for advocacy around the Women's Rights Protocol to achieve ratification, domestication and implementation of the Protocol. It lays out guidelines for advocacy and awareness raising, press and media engagement, training and capacity building, engaging the government to implement recommendations of the African Commission and changing laws and policies.



# I. Background

---

The African Union (AU) is the successor of the Organisation of African Unity (OAU) which was founded in 1963 to provide a forum for independent States emerging from the dismantling of colonial empires. The OAU did not initially develop a strong human rights position or even endorse specific protections for individuals. Instead, its primary focus was on “protection of the state, not the individual.”<sup>1</sup> The concerns of African governments centred on issues relating to colonialism, apartheid, self-determination, and sovereign equality of States.<sup>2</sup>

In the late 1970s and early 1980s, the OAU began to broaden its focus on human rights. It enacted the African Charter on Human and Peoples’ Rights (the African Charter) in 1981, establishing the African Commission on Human and Peoples’ Rights (the African Commission) to oversee the African Charter’s interpretation and application.

In 2002, the OAU and African Economic Community merged to create the AU, which aims to promote economic and political stability across the continent. In working towards this goal, the AU has focused on the development of a common market, democratic governance and the promotion of human rights. Notably, the Constitutive Act that gave rise to the AU included language that promotes respect for human rights<sup>3</sup>, including women’s rights. Since its inception, one goal of the AU has been the promotion of the role of women within the organization and in Member States.<sup>4</sup>

This chapter provides a brief background of the African human rights system, including key instruments relevant to women’s rights and regional mechanisms that may be used to enforce such rights.

## A. African Human Rights Instruments Relevant to Women’s Rights

### 1. The African Charter

The African Charter (*see* Appendix B), ratified by all 53 Member States of the African Union, is the parent treaty of the Protocol on the Rights of Women in Africa (the Women’s Rights Protocol *see* Appendix A). It covers various human rights issues, from general fundamental rights, to those of specific groups, such as women. Article 2 of the African Charter enshrines the principle of non-discrimination including on the grounds of sex and Article 18(3) “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.” Articles 60 and 61 of the African Charter recognize regional and international human rights instruments and African practises consistent with international norms on human and peoples’ rights as being important reference points for the application and interpretation of the African Charter. All rights in the African Charter apply to women and some are of particular relevance, including those on equality and non-discrimination and those dealing with personal liberty, integrity, and dignity.

### Box 1.1. Select provisions of the African Charter relevant to gender equality cases

#### Article 2

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

#### 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 15

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

#### Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

#### Article 17

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

#### Article 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against **women** and also ensure the protection of the rights of the **woman** and the child as stipulated in international declarations and conventions. [emphasis added]
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.

## 2. The Women's Rights Protocol

For many years, non-governmental organizations (NGOs) in Africa advocated for the adoption of the Women's Rights Protocol to strengthen the African Charter's provisions on gender equality. Shortcomings of the African Charter included the failure to explicitly define discrimination against women; lack of guarantees of the right to consent to, and equality in, marriage; and emphasis on traditional values and practices that in many cases impede the advancement of women's rights in Africa.<sup>5</sup>

Before the adoption of the Women's Rights Protocol, an NGO consensus text aimed at strengthening the draft Protocol was agreed upon at a meeting in January 2003 in Addis Ababa. The meeting was convened by the Nairobi office of Equality Now and attended by African women's rights groups, including African Centre For Democracy and Human Rights Studies, Akina Mama Wa Afrika, Equality Now, Ethiopian Women Lawyers

Association, Femmes Africa Solidarite, African Women's Development and Communication Network (FEMNET), Malian Women Lawyers Association, Senegalese Women Lawyers Association, Women in Law And Development in Africa (WiLDAF), and Women's Rights Advancement and Protection Alternative (WRAPA). This consensus text was based on existing international instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), but specifically adapted to the African context. The NGO group then advocated for a strong Women's Rights Protocol with governments.



*SOAWR members celebrating ratification of the Protocol by Uganda*

As a result of these efforts, the Women's Rights Protocol was adopted on 11 July 2003 by Member States of the African Union and came into force on 25 November 2005. As of May 2011, 30 countries have ratified it (*See* Box 1.4).

### **Box 1.2. The Women's Rights Protocol advances rights of women beyond existing international instruments**

The principles enshrined in the Women's Rights Protocol are in some instances based on existing international human rights standards, but in many others significantly advance international human rights standards and specifically enhance the protection and promotion of women's rights in Africa. In particular, the Women's Rights Protocol makes explicit the protection of women's rights in areas which are not expressly covered by existing treaties by:

- providing specific legal protection against violence against women, both in the public and private sphere (Articles 1(j), 3(4), and 4);
- requiring States to prohibit, through legislative measures backed by sanctions, all forms of female genital mutilation (Article 5);
- providing protections to adolescent girls, including the right to be free from abuse and sexual harassment in schools (Article 12(1)(c));
- specifically articulating widows' rights to equality (Article 20);
- prohibiting forced marriages and specifying 18 years as the minimum age of marriage (Article 6(a) and (b));
- articulating a women's right to retain her maiden name and to participate equally in decisions regarding the parties matrimonial regime and residence (Article 6(e) and (f));
- expressly articulating a women's right to abortion in specified circumstances (Article 14(c)); and
- specifically addressing women's rights and states obligations in relation to HIV/AIDS (Article 14(d) and (f)).

## **3. The Children's Charter**

The rights of girls under 18 years are also covered by the African Charter on the Rights and Welfare of the Child (the Children's Charter), which came into force in November 1999 (*see* Appendix I). As of May 2011, 46 countries have ratified this Charter (*see* Box 1.4). The Children's Charter makes specific mention of the right of the girl child to have access to education, and for a pregnant girl to be afforded an opportunity to complete her education. It guarantees the right of girls to not be exposed to harmful social practices, which could include female genital mutilation. The Children's Charter also addresses sexual exploitation, and the sale, trafficking and abduction of children, all of which primarily affect the girl child. The African Committee of Experts on the Rights and Welfare of the Child was established in 2001 pursuant to Articles 32 through 46 of the Children's Charter. This Committee under Article 44 considers communications received about violations of children's rights.<sup>6</sup>



*Kamulanga High School Safe Space for Girls in Zambia*

### Box 1.3. Select provisions of the Children's Charter relevant to gender equality cases

#### Article 1: Obligation of States Parties

....  
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 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 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.

#### 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.

#### Article 11: Education

1. Every child shall have the right to an education.  
....  
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.

#### 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...shall undertake measures:  
(a) to reduce infant and child mortality rate;  
....  
(e) to ensure appropriate health care for expectant and nursing mothers.

#### 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 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 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 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.

## B. Mechanisms for Enforcement of Human Rights in the African System



### 1. African Commission on Human and Peoples' Rights

The African Commission, which began functioning in 1986, was established under the African Charter to protect and promote human and peoples' rights and to monitor State compliance with the African Charter (and its Protocols). The African Commission comprises 11 independent Commissioners who are elected by the Executive Council of the AU to serve for six-year terms

on a part-time basis, with the possibility of a single re-election. The AU appoints the secretary of the African Commission and approves its budget. The secretariat of the African Commission is located in Banjul, the Gambia.

The African Commission meets biannually in April/May and October/November for two-week sessions. During these sessions, the African Commission considers:

- complaints (also referred to as communications) submitted to it by individuals, NGOs, institutions, lawyers and States Parties;
- periodic States Party reports under Article 62 of the African Charter on compliance; and
- reports of human rights violations<sup>7</sup> and promotional activities of the Commissioners.

In accordance with Article 59 of the African Charter, the chairperson of the African Commission delivers its activity report to the AU at AU summits in January and June of every year. The content of the report is then made public.<sup>8</sup> All decisions on complaints (communications), resolutions taken at its sessions and fact-finding mission reports form a substantial part of the activity report.<sup>9</sup> The report also contains information about the promotional activities of the Commissioners such as country missions and participation at seminars.

## 2. Special Rapporteur on the Rights of Women in Africa

The African Commission has special mechanisms such as special rapporteurs and working groups to bolster its activities in the promotion of human and peoples' rights. The Special Rapporteur on the Rights of Women in Africa is one such mechanism established in 1998 who is selected from among the Commissioners.



*Special Rapporteur Soyata Maiga*

The mandate of the Special Rapporteur includes:

- serving as a focal point for the promotion and protection of the rights of women in Africa in the African Commission;
- assisting African governments in the development and implementation of policies for the promotion and protection of the rights of women in Africa, particularly in accordance with the domestication of the Women's Rights Protocol and the harmonization of national legislation to the rights guaranteed in the Women's Rights Protocol;
- undertaking promotional and fact finding missions in Member States of the AU, to disseminate the human rights instruments of the AU and to investigate the situation of women's rights in the countries visited;
- following up on the implementation of the African Charter and the Women's Rights Protocol by States Parties, notably by preparing reports on the situation of women's rights in Africa, and proposing recommendations to be adopted by the African Commission;
- drafting resolutions on the situation of women in the various African countries and proposing them to the Members of the African Commission for adoption;
- conducting a comparative study on the situation of the rights of women in various countries of Africa;
- defining guidelines for State reporting which assist Member States in adequately addressing women's rights issues in their reports submitted to the African Commission; and
- collaborating with relevant actors responsible for the promotion and protection of the rights of women internationally, regionally and nationally.

The current Special Rapporteur is Advocate Soyata Maiga. Previous mandate holders included Ms. Julienne Ondziel-Gnelenga (1998-2001) and Dr. Angela Melo (2001-2007).

## 3. African Court on Human and Peoples' Rights, Protocol of 1998



The African Court on Human and Peoples' Rights (the African Court) was established under the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the African Court Protocol) to strengthen the protective mandate of the African Commission. The African Court Protocol was adopted in Burkina Faso in 1998 and came into force in January 2004 (*see* Appendix G). As of May 2011, 51 States have signed and 26 States have ratified the African Court Protocol (*see* Box 1.4.). Of these States, only Burkina Faso, Ghana, Malawi, Mali and Tanzania have made a declaration allowing individuals and NGOs to access the African Court.



The African Court decided its first case in December 2009. The African Court sits in Arusha, Tanzania. Its 11 inaugural judges were sworn in July 2006.

#### 4. African Court of Justice and Human Rights, Protocol of 2008

In 2003, AU Member States signed a protocol to establish an African Court of Justice to serve as a supreme court for the organization. This court was never established and, in July 2004, the AU Assembly of Heads of State and Government decided to integrate it into a new African Court of Justice and Human Rights (the ACJHR). The Protocol on the Statute of the African Court of Justice and Human Rights (the ACJHR Protocol) was adopted in Egypt in July 2008 (*see* Appendix H) and mandated the merger of the African Court on Human and Peoples' Rights and the African Court of Justice. The ACJHR Protocol will come into force only when 15 countries have ratified it. As of May 2011, 22 States have signed but only 3 States have ratified the ACJHR Protocol. Upon entry into force of the ACJHR Protocol, the African Court Protocol will remain in force for a transitional period not to exceed one year.

**Box 1.4. – Status of ratifications of African human rights instruments and court protocols (as of May 2011)**

Member States of AU X = ratified + = signed but not ratified	African Charter	Women's Rights Protocol	Children's Charter	African Court Protocol	ACJHR Protocol
Algeria	X	+	X	X	+
Angola	X	X	X	+	
Benin	X	X	X	+	+
Botswana	X		X	+	
Burkina Faso	X	X	X	X*	X
Burundi	X	+	X	X	
Cameroon	X	+	X	+	
Central African Republic	X	+	+	+	
Cape Verde	X	X	X		
Chad	X	+	X	+	+
Comoros	X	X	X	X	
Congo	X	+	X	X	+
Cote d'Ivoire	X	+	X	X	+
Democratic Republic of Congo	X	X	+	+	+
Djibouti	X	X	+	+	
Egypt	X		X	+	
Equatorial Guinea	X	+	X	+	
Eritrea	X		X		
Ethiopia	X	+	X	+	
Gabon	X	X	X	X	+
The Gambia	X	X	X	X	+
Ghana	X	X	X	X*	+
Guinea	X	+	X	+	+
Guinea-Bissau	X	X	X	+	
Kenya	X	X	X	X	
Lesotho	X	X	X	X	
Liberia	X	X	X	+	
Libya	X	X	X	X	X
Madagascar	X	+	X	+	
Malawi	X	X	X	X*	
Mali	X	X	X	X*	X
Mauritania	X	X	X	X	
Mauritius	X	+	X	X	
Mozambique	X	X	X	X	

Namibia	X	X	X	+	
Niger	X	+	X	X	+
Nigeria	X	X	X	X	+
Rwanda	X	X	X	X	
Sahrawi Arab Democratic Republic	X	+	+	+	+
Sao Tome & Principe	X	+	+	+	+
Senegal	X	X	X	X	+
Seychelles	X	X	X	+	
Sierra Leone	X	+	X	+	+
Somalia	X	+	+	+	
South Africa	X	X	X	X	
Sudan	X	+	X	+	
Swaziland	X	+	+	+	
Tanzania	X	X	X	X*	+
Togo	X	X	X	X	+
Tunisia	X		+	X	
Uganda	X	X	X	X	
Zambia	X	X	X	+	+
Zimbabwe	X	X	X	+	

<sup>1</sup> Rachel Murray, *Human Rights in Africa: From the OAU to the African Union*. Cambridge: Cambridge University Press, 2004, at 7.

<sup>2</sup> Id.

<sup>3</sup> Id. at 33.

<sup>4</sup> Id. at 136.

<sup>5</sup> Center for Reproductive Rights, *The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights*, Briefing Paper, February 2006, available at <http://reproductiverights.org>.

<sup>6</sup> The African Committee of Experts on the Rights and Welfare of the Child's web site is <http://www.africa-union.org/child/home.htm#>

<sup>7</sup> These can be submitted by NGOs that have observer status with the African Commission, national human rights institutions with affiliate status with the African Commission and States Parties.

<sup>8</sup> These reports can be found at [http://www.achpr.org/english/\\_info/index\\_activity\\_en.html](http://www.achpr.org/english/_info/index_activity_en.html)

<sup>9</sup> These decisions can be found at [http://www.achpr.org/english/\\_info/decisions\\_en.html](http://www.achpr.org/english/_info/decisions_en.html) These decisions can also be found at <http://www1.umn.edu/humanrts/africa/comcases.html>

<sup>10</sup> Terms of reference May 1999, ACHPR/res.38 (XXV) 99.

## II. The Protocol on the Rights of Women in Africa

This chapter summarizes the rights guaranteed to women under the Women's Rights Protocol, linking these to rights guaranteed under other human rights instruments. This chapter also provides an analysis of certain violations of the Women's Rights Protocol, with sample language that may be used in submissions. *Practitioners are encouraged to consult the full text of the Women's Rights Protocol in Appendix A as only common issues are included here.*

### Box 2.1. International and African regional instruments relating to the rights of women

#### African regional human rights instruments

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

#### International human rights instruments

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- Convention on the Rights of the Child (CRC)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol)

#### Relevant General Comments/recommendations of human rights treaty monitoring bodies

Treaty monitoring bodies issue General Comments to aid Member States in interpreting broad provisions of international human rights treaties. The General Comments provide an authoritative analysis of general language in treaties. Those particularly relevant to the rights of women are:

#### Committee on the Elimination of Discrimination Against Women

- General Recommendation No. 13 -- equal remuneration for work of equal value
- General Recommendation No. 14 -- female circumcision
- General Recommendation No. 15 -- women and AIDS
- General Recommendation No. 16 -- unpaid women workers in rural and urban family enterprises
- General Recommendation No. 18 -- disabled women
- General Recommendation No. 19 -- violence against women
- General Recommendation No. 21 -- equality in marriage and family relations
- General Recommendation No. 23 -- women in political and public life
- General Recommendation No. 24 -- women and health
- General Recommendation No. 25 -- temporary special measures
- General Recommendation No. 26 -- women migrant workers

#### Human Rights Committee

- General Comment No. 4 -- equality between the sexes
- General Comment No. 18 -- non-discrimination
- General Comment No. 19 -- protection of the family, right to marriage and equality of the spouses
- General Comment No. 28 -- equality of rights between men and women

#### Committee on Economic, Social and Cultural Rights

- General Comment No. 14 -- the right to the highest attainable standard of health
- General Comment No. 16 -- equal right of men and women to the enjoyment of all economic, social and cultural rights

#### Committee on the Rights of the Child

- General Comment No. 1 -- aims of education
- General Comment No. 4 -- adolescent health and development
- General Comment No. 8 -- the right to protection from corporal punishment and other cruel or degrading forms of punishment

#### Committee on the Elimination of Racial Discrimination

- General Comment No. 25 -- gender related dimensions of racial discrimination

## A. Rights Enshrined in the Women’s Rights Protocol

### Article 1: Definitions

This Article provides definitions of terms including:

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

Relevant provisions of other instruments:

- CEDAW: Definition of “discrimination” in Article 1(f) of the Women’s Rights Protocol is closely based on Article 1 of CEDAW.

### Article 2: Elimination of Discrimination against Women

This Article requires the elimination of all forms of discrimination, as defined in Article 1. States Parties are required to combat all forms of discrimination against women, including through:

- Inclusion and effective enforcement of the principle of equality between men and women in their national constitution and other legislation;
- Enactment and effective implementation of legislative/regulatory measures that curb all forms of discrimination, particularly harmful practices that endanger health and well-being of women;
- Integration of a gender perspective in policy decisions, legislation, development programmes and all other spheres of life;
- Corrective and positive action in areas where discrimination continues to exist; and
- Modification of social and cultural practices with a view to eliminating discriminatory and harmful traditional practices and support for initiatives directed at eradicating all forms of discrimination against women.

Relevant provisions of other instruments:

- African Charter: Article 2 (equal enjoyment of rights and freedoms without distinction on the ground of sex); Article 3 (equality before the law); Article 18(3) (elimination of discrimination against women and children as stipulated in international declarations and conventions).
- ICCPR: Articles 3 (equal rights of men and women to enjoy all rights) and 26 (equality before the law and non-discrimination); *see also* Human Rights Committee, General Comments Nos. 18 (non-discrimination) and 28 (equality of rights between men and women).
- ICESCR: Article 3 (equal rights of men and women to enjoy all rights); *also see* Committee on Economic and Social Rights, General Comment No. 16 (equal right of men and women to the enjoyment of all economic, social and cultural rights).
- CEDAW: Articles 2(1) and 2(2) of the Women’s Rights Protocol are respectively based in part on CEDAW Articles 2 (eliminate discrimination and embody principle of equality between men and women in laws and policies) and 5(a) (eliminate prejudices and customary and other practices based on stereotyped roles for men and women); *see also* Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 (temporary special measures).
- CERD: General Comment No. 25 (gender related dimensions of racial discrimination).

### Article 3: Right to Dignity

This Article guarantees women the right to dignity and the recognition and protection of their human and legal rights. It also guarantees every woman the right to respect as a person and to the free development of

her personality. States Parties are required to adopt and implement measures to:

- Prohibit any exploitation or degradation of women; and
- Protect women from all forms of violence, particularly sexual and verbal violence.

**Relevant provisions of other instruments:**

- African Charter: Articles 4 (respect for life and integrity of person) and 5 (respect for dignity; prohibition of exploitation, degradation, torture, cruel inhuman and degrading treatment, and slavery).
- ICCPR: Articles 7 (prohibition of torture and cruel, inhuman and degrading treatment) and 8 (prohibition of slavery, servitude and forced or compulsory labour).

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

This Article addresses violence against women in both the public and private spheres. States Parties are required to prohibit all forms of exploitation, cruel, inhuman and degrading treatment. In addition, they must, among other things:

- Enact and enforce laws against all forms of violence against women, whether the violence takes place in public or private;
- Adopt administrative, legislative, social and economic measures aimed at prevention of all forms of violence against women;
- Eradicate elements in traditional beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against women;
- Punish perpetrators of violence against women;
- Implement programmes and establish accessible services for the rehabilitation of, and reparation for, victims of violence against women;
- Prevent trafficking, prosecute traffickers and protect women at risk;
- Prohibit non-consensual scientific experimentation on women;
- Provide adequate budget and other resources for implementation and monitoring of actions aimed at preventing and eradicating violence against women; and
- Ensure that women have equal and independent access to refugee protection, including their own identity and other documents.

**Relevant provisions of other instruments:**

- African Charter: Articles 4 (respect for life and integrity of person); 5 (respect for dignity; prohibition of exploitation, degradation, torture, cruel inhuman and degrading treatment, and slavery); 6 (right to liberty and security) and 18(3) (elimination of discrimination against women and children as stipulated in international declarations and conventions).
- Children's Charter: Articles 5 (right to survival); 16 (protection against harmful social and cultural practices); 27 (sexual exploitation); and 29 (trafficking and abduction).
- ICCPR: Articles 3 (equal rights of men and women to enjoy all rights), 7 (prohibition of torture and cruel, inhuman and degrading treatment), 8 (prohibition of slavery, servitude and forced or compulsory labour), 17 (privacy rights) and 26 (equality before the law and non-discrimination); *also see* Human Rights Committee, General Comment No. 28 (equality of rights between men and women).
- CEDAW: Articles 2 (eliminate discrimination and embody principle of equality between men and women in laws and policies) and 5 (eliminate prejudices and customary and other practices based on stereotyped roles for men and women); *see also* Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 (violence against women).
- CRC: Articles 16 (privacy rights), 19 (protection from violence, including sexual abuse), 22 (protection of refugee children), 34 (protection from sexual exploitation and abuse, including prostitution and pornography), 35 (prevent trafficking in children), and 37 (prohibition of torture and cruel, inhuman and degrading treatment).
- Trafficking Protocol: The Trafficking Protocol may be relevant to the application of Article 4(2)(g) of the Women's Rights Protocol.

#### **Article 5: Elimination of Harmful Practices**

Article 5 imposes positive obligations on States Parties to prohibit and condemn all forms of harmful practices, including by laws, policies, and educational measures, which negatively affect the human rights of

women and are contrary to international standards. In particular, States Parties must:

- Prohibit all forms of female genital mutilation through legislative measures backed by sanctions;
- Provide necessary services to victims of harmful practices, such as health services, counselling, legal and judicial support and vocational training;
- Protect women who are at risk of being subjected to such practices; and
- Create awareness of harmful practices through information, education and outreach programmes.

**Relevant provisions in other instruments:**

- African Charter: Though the African Charter does not refer expressly to traditional practices, Articles 4 (respect for life and integrity of person), 5 (right to dignity and prohibition of cruel, inhuman and degrading treatment), and 6 (right to liberty and security) are relevant to this issue. The African Commission has recognized that traditional practices such as female genital mutilation contribute to the violation of human rights of women and the girl child (*see* Concluding Observations on the Periodic Report of the Republic of Sudan, paragraphs 14 and 22, in Box 3.5).
- Children's Charter: Articles 16 (protection against child abuse and torture), and 21 (protection against harmful social and cultural practices).
- CEDAW: Article 5 (eliminate prejudices and customary and other practices based on stereotyped roles for men and women); *see also* Committee on the Elimination of Discrimination against Women, General Recommendation No. 14 (female circumcision).
- CRC: Article 24(3) (abolish traditional practices prejudicial to the health of children).
- ICCPR: Article 7 (protection against torture and cruel inhuman or degrading treatment or punishment); *see also* Human Rights Committee, General Comment No. 28 (equality of rights between men and women).

### Box 2.2. Map showing FGM practicing countries in Africa, ratification of the Women's Rights Protocol and anti-FGM laws

As of May 2011, 30 of the 53 African Union countries have ratified the Women's Rights Protocol, which prohibits FGM. Only 18 of the 28 African countries where FGM is practiced as well as South Africa and Zimbabwe (not generally considered practicing countries) have federal laws prohibiting FGM.

Notably, 6 countries which have ratified the Protocol and where FGM is practiced have not made FGM illegal: Democratic Republic of the Congo, The Gambia, Guinea-Bissau, Liberia, Mali, and Nigeria.



## Article 6: Marriage, and Article 7: Separation, Divorce and Annulment

Articles 6 and 7 provide for equal rights of men and women in marriage as well as equal rights in ending a marriage. Among other things, these Articles require States Parties to enact appropriate legislation to ensure that:

- No marriage takes place without the free and full consent of both parties;
- The minimum age of marriage for women is 18 years;
- 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;
- Marriages are recorded and registered to be legally recognized;
- A woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
- Separation, divorce or annulment of marriage is effected by judicial order;
- Women have the right to retain their nationality and their maiden name after marriage;
- Women have the right to acquire and manage their own property during marriage;
- Women and men have the same rights to seek a separation, divorce or annulment; and
- In case of separation, divorce, or annulment women and men have reciprocal rights and responsibilities towards their children and equitable sharing of joint property deriving from the marriage.

### Relevant provisions of other instruments:

- African Charter: There are no specific rights in the African Charter on marriage and divorce. However several provisions may be used: Articles 2 (equal enjoyments of rights and freedoms without distinction on the ground of sex; 14 (right to property); 18(1) (protection of the family); and 18(3) (eliminate every discrimination against women and children as stipulated in international declarations and conventions).
- CEDAW: Article 16 (equality of rights in marriage and on divorce); *see also* Committee on the Elimination of Discrimination against Women, General Recommendation No. 21 (equality in marriage and family relations).
- ICCPR: Articles 17(1) (privacy rights) and 23 (consent required for marriage and equality of rights in marriage); *also see* Human Rights Committee, General Comment No. 19 (protection of the family, right to marriage and equality of the spouses).
- ICESCR: Article 10 (free consent required for marriage, and rights of mothers before and after childbirth).
- CRC: Articles 8 (rights to identity, including name and family relations), and 9 (right to not be separated from parents).

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

This Article enumerates the way States Parties must uphold the principle that women and men are equal before the law and have the right to equal protection and benefit of the law. In this regard, States Parties must:

- Ensure women effective access to the courts and to legal services, including legal aid;
- Support initiatives directed at providing women access to legal services;
- Equip law enforcement to effectively interpret and enforce gender equality laws;
- Ensure equal representation of women in law enforcement and the judiciary; and
- Reform discriminatory laws and practices to promote women's rights.

### Relevant provisions of other instruments:

- African Charter: Articles 2 (equal enjoyment of rights and freedoms); 3 (equality before the law and equal protection of the law); 7 (access to justice); and 18(3) (eliminate every discrimination against women and children as stipulated in international declarations and conventions).
- CEDAW: Articles 1 (definition of discrimination); 2 (eliminate discrimination and embody principle of equality between men and women in laws and policies) and 15 (equality before the law).
- ICCPR: Articles 2(1) (enjoyment of rights without distinction, including on basis of sex); 3 (equal rights of men and women to enjoy all civil and political rights); 14 (equality before the law and due process rights) and 26 (equal protection of the law, without discrimination including on the basis of sex).



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

This Article requires States Parties to ensure increased and effective representation of women at all levels of decision-making. States Parties are required to take affirmative action to promote equal participation of women in political life, including through measures to ensure that women:

- Participate without any discrimination in all elections;
- Are represented equally with men at all levels in all electoral processes; and
- Participate equally with men in the development and implementation of State policies and development programmes

**Relevant provisions of other instruments:**

- African Charter: Articles 2 (equality before the law and non-discrimination) and 13 (right to participate in government and to have equal access to public service).
- CEDAW: Articles 7 (eliminate discrimination against women in political and public life) and 8 (provide women opportunities to represent governments at the international level and work in international organizations); *also see* Committee on the Elimination of Discrimination against Women, General Recommendation No. 23 (women in political and public life).
- ICCPR: Articles 3 (equal rights of men and women to enjoy all rights) and 25 (right to participate in public and political life).

## Article 10: Right to Peace

This Article gives women the right to a peaceful existence and the right to participate in the promotion and maintenance of peace. States Parties are required to:

- Ensure increased participation of women in:
  - peace programmes
  - structures and processes for conflict prevention, management and resolution at all levels
  - management of camps and settlements for, and all levels of decision-making structures relating to, asylum seekers, refugees, returnees and displaced persons, and
  - all aspects of post conflict reconstruction and rehabilitation;
- Take measures to reduce military expenditure significantly in favour of spending on social development in general, and promotion of women in particular.

**Relevant provisions of other instruments:**

- African Charter: Article 23 (right to national and international peace and security).
- Security Council Resolution 1325 on women, peace and security, 31 October 2000, (S/RES/1325).

## Article 11: Right to Protection in Armed Conflicts

Under this Article, States Parties are required to observe international humanitarian law applicable during armed conflict, and in this regard, they must undertake to:

- Protect civilians in situations of armed conflict against all forms of violence, rape and other forms of sexual exploitation;
- Ensure that such acts are considered war crimes, genocide and/or crimes against humanity and perpetrators are brought to justice; and
- Ensure that no child, especially girls under 18 years of age, is recruited as a soldier or takes direct part in hostilities.

**Relevant provisions of other instruments:**

- CRC: Article 38(2) (ensure that persons under 15 do not take part in hostilities).
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

## Article 12: Right to Education and Training

Under this Article, States Parties are required to guarantee women equal opportunity and access to education and training. In particular, States Parties are required to take measures to:

- Eliminate stereotypes in textbooks, syllabi and media that perpetuate discrimination against women;
- Integrate gender sensitization and human rights education at all levels of education curricula, including teacher training;
- Protect women, especially the girl child, from all forms of abuse, including sexual harassment, in schools and other educational institutions; provide for sanctions against perpetrators of such practices; and provide access to counselling and rehabilitation services for victims; and
- Take specific positive action to promote literacy and education and training for women at all levels and in all disciplines, especially in the fields of science and technology, and promote the enrolment and retention of girls in educational institutions.

#### Relevant provisions of other instruments:

- African Charter: Articles 2 (equality provision); 17 (right to education and culture); 18(3) (elimination of discrimination against women as stipulated in international conventions and declarations).
- Children's Charter: Article 11 (right to education including opportunities for pregnant girls to continue education).
- CEDAW: Article 10 (give women equal rights with men in the field of education).
- ICESCR: Articles 13 (right to education) and 14 (compulsory primary education).
- CRC: Articles 28 and 29 (right to education).
- ICCPR: Article 24 (protection of children).

### Article 13: Economic and Social Welfare Rights

Under this Article, States Parties are required to adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement. States Parties must, among other things:

- Promote equal access to employment, equal pay for jobs of equal value and equal application of tax laws;
- Ensure transparency in recruitment, promotion and dismissal of women;
- Combat and punish sexual harassment in the workplace;
- Guarantee women the freedom to choose their occupation;
- Prevent exploitation and abuse of women in advertising and pornography;
- Protect women from exploitation from employers; prohibit child labour, and punish all forms of exploitation of children, particularly the girl child;
- Support economic activities of women, particularly in the informal sector and establish a system of social insurance for workers in this sector;
- Guarantee paid maternity leave in public and private sectors;
- Ensure that salaried women are entitled to same allowances as those granted to salaried men for their families; and
- Recognize that both parents bear primary responsibility for upbringing and development of children.

#### Relevant provisions of other instruments:

- African Charter: Articles 2 (equal enjoyment of rights and freedoms without distinction on the basis of sex); 3 (equality before the law); 15 (right to work and with equal pay); and 18(3) (eliminate discrimination against women as stipulated in international declarations and conventions).
- CEDAW: Articles 5 (eliminate prejudices and customary and other practices based on stereotyped roles for men and women); 11 (eliminate discrimination against women in employment); 13 (equality in rights to family benefits, credit and participation in all aspects of cultural life) and 14 (rights of rural women); *see also* Committee on the Elimination of Discrimination against Women, General Recommendation Nos. 13 (equal remuneration for work of equal value) and 16 (unpaid women workers in rural and urban family enterprises).
- ICCPR: Articles 3 (equal rights of men and women) and 26 (equality before the law and non-discrimination).
- ICESCR: Articles 6 (right to work); 7 (right to just and favourable conditions of work); 9 (right to social security); and 10(2) (maternity leave and benefits for working mothers).
- CRC: Articles 26 (right to social security); 27 (children have the right to an adequate standard of living and parents have primary responsibility for the child's development); 32 (protection of children from economic exploitation and hazardous and harmful work); and 34 (protection of children from sexual exploitation, including prostitution and pornography).

## Article 14: Health and Reproductive Rights

This Article spells out a woman's right to health. It covers sexual and reproductive health, which includes her right to: control her fertility; decide whether to have children, her number of children and the spacing; choose any contraceptive methods; self-protect and be protected against sexually transmitted infections; be informed of her and her partner's health status; and have family planning education. In this regard, States Parties are required to:

- Provide adequate, affordable and accessible health services, including pre-natal, delivery and post-natal health and nutrition services for women during their pregnancy and while they are breast feeding;
- Provide family planning information and services, including to women in rural areas; and
- Authorize medical abortion in cases of sexual assault, rape, incest and where continued pregnancy endangers the health or life of the mother or the foetus.

### Relevant provisions of other instruments:

- African Charter: Article 16 (right to health). Though there are no specific provisions dealing with reproductive rights, Articles 4, 5 and 6 (dealing with personal integrity, dignity, and security) may be relied on in appropriate cases. Article 18(3) brings into play other relevant instruments.
- CEDAW: Articles 10(h) (right to access to information on family planning); 12 (equality of men and women in access to health care, including family planning, and right of women to appropriate pregnancy related services); 14(2)(b) (access of rural women to health care facilities and family planning services); and 16(1)(e) (right to decide on number and spacing of children); *see also* Committee on the Elimination of Discrimination against Women, General Recommendation Nos. 15 (women and AIDS) and 24 (women and health).
- ICCPR: Articles 2 (non-discrimination); 3 (equality of rights); 7 (prohibition against cruel, inhuman or degrading treatment); 17 (privacy rights); and 26 (equality before the law and non-discrimination); *also see* Human Rights Committee, General Comment No. 28, (equality of rights between men and women).
- ICESCR: Article 12 (right to highest attainable standard of health); *see also* Committee on Economic, Social and Cultural Rights, General Comment No. 14 (the right to the highest attainable standard of health).
- CRC: Articles 24 (enjoyment of the highest attainable standard of health) and 25 (periodic review of treatment provided to children placed by competent authorities for care, protection or treatment); *see also* Committee on the Rights of the Child, General Comment No. 4 (adolescent health and development).

## Articles 15, 16, 17, 18 and 19: Rights to Food Security, Adequate Housing, Positive Cultural Context, Healthy and Sustainable Environment, and Sustainable Development

These Articles require States Parties to take measures to, among other things:

- Provide women access to clean drinking water, means of producing nutritious food, and adequate housing, regardless of their marital status;
- Ensure participation of women in determination of cultural policies; in preservation of the environment and sustainable use of natural resources; and in conceptualization, implementation and evaluation of development policies and programmes;
- Introduce the gender perspective in national development planning procedures;
- Promote women's access to, and control over, productive resources and access to credit, training and skills development; and
- Minimize the negative impact of globalization and trade and economic policies on women.

### Relevant provisions of other instruments:

- African Charter: Articles 22 (economic, social and cultural development rights) and 24 (right to a general satisfactory environment favourable to their development). Note that although not explicitly enumerated in the African Charter, the African Commission determined that individuals have a right to housing or shelter, as a corollary of the provisions protecting the right to physical and mental health, property, and protection accorded to the family. It also recognized a right to food, finding that such a right was "inseparably linked" to the dignity of human beings, and that the right to food was essential to enjoy and fulfil other rights, such as health, education, work, and political participation.<sup>11</sup>
- CEDAW: Articles 13 (equal rights to family benefits and financial credit) and 14 (rural women's rights to credit and participation in agrarian reform).

- CRC: Article 24 (right to adequate nutrition and water).
- ICESCR: Articles 11 (right to an adequate standard of living, including food, clothing, and housing); 12 (right to highest attainable standard of health, including improvement of environmental and industrial hygiene and the prevention, treatment, and control of diseases); *see also* Committee on Economic, Social and Cultural Rights, General Comment No. 14 (the right to the highest attainable standard of health).

### Article 20: Widow's Rights, and Article 21: Right to Inheritance

These Articles require States Parties to take measures to:

- Ensure that a widow:
  - is not subjected to inhuman, humiliating or degrading treatment
  - automatically becomes the guardian of her children after the death of her husband (unless this is contrary to the interests of the children)
  - has the right to remarry a person of her choice
  - has the right to inherit an equitable share of the property of her husband and to continue to live in the marital home;
- Ensure that women and men have the right to inherit their parents' properties in equitable shares.

Relevant provisions of other instruments:

- CEDAW: Article 16 (eliminate discrimination against women in matters relating to marriage and family relations); *see also* Committee on the Elimination of Discrimination against Women, General Recommendation No. 21 (equality in marriage and family relations), esp. paragraphs 34 and 35.
- ICCPR: Articles 2 (non-discrimination); 3 (equality of rights); and 26 (equality before the law and non-discrimination).
- Economic and Social Council resolution 884D (XXXIV): This resolution recommends that States ensure that men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession.

### Articles 22, 23 and 24: Special Protection of Elderly Women, Women with Disabilities and Women in Distress

Under these Articles, States Parties must pay special attention to the needs and special circumstances of certain groups of women. In particular, States Parties are required to:

- Ensure protection of elderly women, women with disabilities, poor women and women heads of families and take specific measures commensurate with their needs to facilitate their access to employment;
- Ensure the right of elderly women and disabled women to freedom from violence and discrimination; and
- Provide pregnant or nursing women in detention with a suitable environment and the right to be treated with dignity.

Relevant provisions of other instruments:

- African Charter: Article 18(4) (rights of aged and disabled to special measures of protection).
- CEDAW: Committee on the Elimination of Discrimination against Women, General Recommendation No. 18 (disabled women).
- CRC: Committee on the Rights of the Child, General Comment No. 9 (rights of children with disabilities).

### Article 25: Remedies

Under this Article, States Parties must:

- Provide for appropriate remedies to any woman whose rights or freedoms recognized under the Protocol have been violated; and
- Ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the law.

Relevant provisions of other instruments:

- ICCPR: Article 2(3) (ensure an effective remedy in case of violations of rights or freedoms).

## B. Sample Language on Select Issues that Constitute Violations of the Women's Rights Protocol

The following is an analysis of select violations of the Women's Rights Protocol, including the type of State action or inaction that constitutes a breach of the Women's Rights Protocol and the types of remedies that can be sought. Sample template language is provided for each issue which can be used in legal submissions.

### 1. Domestic violence, rape and sexual violence

#### State Party's obligations

The Women's Rights Protocol requires States Parties to take measures to address all forms of violence against women, including domestic violence, rape and sexual violence. In particular, States Parties are required to:

- Enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex and whether the violence takes place in private or public (Article 4(a));
- Adopt other legislative, administrative, social and economic measures as may be necessary to ensure the protection, punishment and eradication of all forms of violence against women (Article 4(b));
- Identify the causes of violence against women and take appropriate measures to prevent and eliminate such violence (Article 4(c));
- 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 (Article 4(d));
- Punish perpetrators of violence against women and implement programmes for the rehabilitation of women victims (Article 4(e));
- Establish mechanisms and accessible services for effective information, rehabilitation and reparation of victims of violence against women (Article 4(f));
- Adopt and implement appropriate measures to ensure the protection of women from all forms of violence, particularly sexual and verbal violence (Article 3(4));
- Reform existing discriminatory laws and practices in order to promote and protect the rights of women (Article 8(f));
- Ensure that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights (Article 8(d)); and
- Ensure women effective access to courts and legal services, including legal aid (Article 8(a)).

#### Violations

A State Party violates the Women's Rights Protocol when it fails to, among other things:

- Enact legislation prohibiting all forms of violence against women, including domestic violence and sexual violence;
- Effectively implement legislation on violence against women, including through inaction by the police, prosecutors, judges or other responsible governmental agencies in addressing cases of violence against women and punishing perpetrators;
- Provide appropriate sanctions for perpetrators of violence against women;
- Design and widely implement educational programmes and communication strategies aimed at eradicating beliefs, practices and stereotypes that legitimize and exacerbate tolerance of violence against women;
- Provide accessible support services, including information, health, legal and counselling services, for victims of violence against women; and
- Reform discriminatory laws that perpetuate the inequality of women and make them vulnerable to violence.

#### Remedies

Possible remedies that can be sought under the Women's Rights Protocol in cases of violence against women include, without limitation:

- Enactment of a law against all forms of violence against women if no such law exists, or amendment of existing laws to make them comprehensive;
- Enactment or reform of laws against domestic violence and/or sexual violence. Such reform must be aimed at ensuring that laws are comprehensive, sensitive to the special needs of victims of such violence

- and provide both criminal penalties and civil remedies;
- Adoption of other legislative, administrative, social and economic measures as may be necessary to ensure the protection, punishment and eradication of all forms of violence against women;
  - Prosecution and penalties for perpetrators involved in the particular case;
  - Financial compensation for the victim;
  - Provision of adequate medical, maternal, and psychiatric health care for the victim;
  - Acceleration of judicial process;
  - Commencement of a new trial;
  - Establishment of an independent inquiry into the matter;
  - Abolishment of criminal penalty for the victim;
  - Establishment of mechanisms or procedures to ensure effective enforcement of the law, such as:
    - training of the police, prosecutors, judges and other responsible government workers on laws on violence against women and gender sensitivity
    - creation of specialized police units and courts dealing with cases of violence against women
    - establishment of a dedicated and accessible complaint and follow-up mechanism for cases of violence against women;
  - Provision of support services for victims of violence against women, including information, legal services, health services and counselling;
  - Establishment of mechanisms or procedures for the protection of women, such as shelters, complaint mechanisms, reporting through educational, health or other institutions, etc.;
  - Development and wide implementation of awareness raising educational and communication strategies aimed at the eradication of beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against women;
  - Reform of discriminatory laws.

### Box 2.3. Sample language for cases involving violence against women

The Women's Rights Protocol prohibits all forms of violence against women, including domestic violence, rape and sexual violence and requires States Parties to take measures to address such violence, whether committed in public or private. See Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (rights to life, integrity and security), 5 (elimination of harmful practices) and 12 (protection from sexual harassment in schools). In particular, Article 4 of the Women's Rights Protocol requires States Parties to take comprehensive measures, including legislative measures, to address all forms of violence against women.

The failure of a State Party to enact and effectively implement laws and regulations prohibiting all forms of violence against women, including domestic violence, rape and sexual violence, violates Articles 3, 4 and 8 (access to justice and equal protection of the laws) of the Women's Rights Protocol. Such failures also violate Articles 3 (equality provision), 4 (respect for life and integrity of the person), 5 (prohibiting all forms of exploitation and degradation of the person), 15 (right to health), 18(3) (non-discrimination provision) and 19 (non-domination provision) of the African Charter.

In its General Recommendation No. 19 on violence against women, the Committee on the Elimination of Discrimination against Women noted that gender-based violence is a form of discrimination and constitutes a violation of equality rights set out in CEDAW. The Committee recommended that States ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to women and respect their integrity and dignity and that States provide appropriate protective and support services for victims. The CRC also addresses violence and sexual abuse against, and exploitation of, children, including girls, in Articles 19 and 34, and requires States to take comprehensive measures to protect children from such violence and abuse. The Human Rights Committee, in its General Comment No. 28 on equality of men and women, has interpreted compliance with Article 7 of the ICCPR (torture, cruel, inhuman or degrading punishment or treatment) to require States to have laws on "domestic and other types of violence against women, including rape."



*Djibouti women and girls discuss ending violence against women*

## 2. Female genital mutilation

### State Party's obligations

The Women's Rights Protocol prohibits all forms of female genital mutilation and requires States Parties to take various measures to eliminate this practice, including through:

- Enacting and effectively implementing legislation, backed by sanctions, that prohibits all forms of female genital mutilation (Articles 2(b), 5(b));
- Changing social and cultural patterns of conduct and creating public awareness of the harms of female genital mutilation with a view to eradicating this practice (Articles 2(2), 5(a));
- Providing necessary support to victims, including health and counselling services (Article 5(c)); and
- Protecting women and girls who are at-risk of being subjected to female genital mutilation (Article 5(d)).

### Violations

A State Party violates the Women's Rights Protocol when it fails to, among other things:

- Enact legislation or regulations prohibiting all forms of female genital mutilation;
- Provide appropriate sanctions for perpetrators;
- Effectively implement legislation on female genital mutilation, including through inaction by the police, prosecutors, judges or other responsible governmental agencies in addressing violations and punishing perpetrators;
- Design and widely implement educational programmes and communication strategies on the harms of female genital mutilation;
- Amend or abolish policies that explicitly or implicitly condone or promote female genital mutilation;
- Provide support services, including health, legal and counselling services, for victims of female genital mutilation; and
- Protect women who are at risk of being subjected to female genital mutilation.

### Remedies

Possible remedies that can be sought under the Women's Rights Protocol in cases of female genital mutilation include, among others:

- Enactment of a law against all forms of female genital mutilation, if no law exists, or amendment of an existing law to make it comprehensive;
- Penalties for perpetrators involved in the particular case;
- Establishment of mechanisms or procedures to ensure effective enforcement of the law, such as:
  - training of the police, prosecutors, judges and other responsible government workers on laws relating to female genital mutilation and gender sensitivity
  - establishment of a dedicated complaint and follow-up mechanism for cases of female genital mutilation;
- Provision of support services for victims of female genital mutilation, including health services and counselling;
- Establishment of mechanisms or procedures for the protection of at-risk women, such as shelters, complaint mechanisms, reporting through educational, health or other institutions;
- Provision of accelerated access to justice;
- Establishment of independent inquiry process; and
- Creation and wide implementation of awareness-raising educational and communication strategies on the harms of female genital mutilation.

### Box 2.4. Sample language for cases involving female genital mutilation

The Women's Rights Protocol clearly prohibits all forms of female genital mutilation. See Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (rights to life, integrity and security) and 5 (elimination of harmful practices). In particular, Article 5 of the Women's Rights Protocol requires States to take comprehensive measures to eliminate all forms of female genital mutilation and provide support to victims.

The failure of a State Party to enact and effectively implement laws and regulations prohibiting all forms of female genital mutilation violates Articles 2(b) and 5(b) of the Women's Rights Protocol. In addition, the State Party's failure to protect women and girls who are at risk of being subjected to female genital mutilation and to provide support to victims of the practice violates Articles 5(d) and 5(c) of the Women's Rights Protocol, respectively. Such failures also violate Article 21 (eliminate harmful social and cultural practices prejudicial to the health of children) of the Children's Charter and Articles 3 (equality provision), 4 (respect for life and integrity of the person), 5 (prohibiting all forms of exploitation and degradation of the person), 15 (right to health) and 18(3) (non-discrimination provision) of the African Charter.

Failure to take comprehensive measures to eliminate female genital mutilation also violates Articles 2(f) (modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women) and 5 (eliminate customary practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women) of CEDAW; as well as Article 24(3) (abolish traditional practices prejudicial to the health of children) of CRC. The Human Rights Committee, in its General Comment No. 28 on equality of rights between men and women, interpreted compliance with Articles 7 (torture, cruel, inhuman or degrading treatment or punishment) and 24 (special protection for children) to require States to take measures to eliminate female genital mutilation.



*School girls in Galkacyo, Somalia campaigning against FGM*

## 3. Child or forced marriage

### State Party's obligations

The Women's Rights Protocol addresses child or forced marriage in various Articles and requires States Parties to take various measures to ensure that women and girls are not subjected to such forms of violence. Among other things, the Women's Rights Protocol requires States Parties to:

- Enact appropriate legislative measures to guarantee that no marriage takes place without the full and free consent of both parties (Article 6(a));
- Enact appropriate legislative measures to guarantee that the minimum age of marriage for women shall be 18 years (Article 6(b));
- Enact appropriate legislative measures to guarantee that every marriage shall be recorded in writing and registered in accordance with national law, in order to be legally recognized (Article 6(d));
- Take appropriate and effective measures to enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex (which may occur in child or forced marriages) and whether the violence takes place in private or public (Article 4(a));
- Enact and effectively implement appropriate legislative or regulatory measures prohibiting and curbing all forms of discrimination, particularly those harmful practices which endanger the health and general well-being of women (including child or forced marriage) (Article 2(b));
- Prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards (including child or forced marriage) (Article 5); and
- Adopt and implement appropriate measures to ensure the protection of women from all forms of violence, particularly sexual and verbal violence (Article 3(4)).

### Violations

A State Party violates the Women's Rights Protocol when it fails to, among other things:

- Establish and enforce the minimum marriage age of 18 years for women;
- Take measures to guarantee that no marriage takes place without the full and free consent of both parties, including through requiring registration of marriages;



- Penalize adult perpetrators of child or forced marriage; and
- Provide remedies to victims of child or forced marriage, including annulment of marriage and protection against violence.

### **Remedies**

Possible remedies that can be sought under the Women's Rights Protocol in cases of child or forced marriage include, without limitation:

- Enactment of legislation against child or forced marriage, that
  - Makes illegal any marriage that takes place without the full and free consent of the parties
  - establishes a minimum age of marriage of 18 years for women
  - provides penalties for perpetrators of child or forced marriages
  - is sensitive to the victim of the child or forced marriage and provides her with options to annul the marriage and seek reparation;
- Penalties for the perpetrators involved in the particular case;
- Establishment of mechanisms or procedures to ensure effective enforcement of the law, such as:
  - Training of the police, prosecutors, judges and other responsible government workers on laws relating to child or forced marriage and on gender-sensitivity
  - creation of specialized government units dealing with cases of child or forced marriage
  - establishment of a dedicated complaint and follow-up mechanism for cases of child or forced marriage;
- Provision of support services for victims of child or forced marriage, including legal services, health services, counselling and shelter;
- Acceleration of the judicial process;
- Provision of financial and other support to victim;
- Establishment of independent inquiries into matters of child or forced marriage;
- Establishment of mechanisms or procedures for the protection of at-risk girls, such as shelters, complaint mechanisms, or reporting through educational and other institutions; and
- Creation and wide implementation of educational and communication strategies to raise awareness on the harms of early and/or forced marriage.

### Box 2.5. Sample language for cases involving child or forced marriage

The Women's Rights Protocol prohibits child or forced marriage. See Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (rights to life, integrity and security), 5 (elimination of harmful practices) and 6 (marriage). In particular, Article 6 of the Women's Rights Protocol requires States to take appropriate legislative measures to guarantee that no marriage takes place without the full and free consent of both parties and establish the minimum age of marriage for women at 18 years.

The failure of a State Party to enact and effectively implement laws and regulations to guarantee that marriage takes place with the free and full consent of both parties and establish and enforce the minimum age of marriage for women at 18 years violates Article 6 of the Women's Rights Protocol. In addition, the State Party's failure to protect women and girls from child/or forced marriage, including by enacting and enforcing laws on violence against women, providing penalties to the perpetrators and support to victims violates Articles 2(b), 3, 4 (a)-(c), (e) and (f), and 5 of the Women's Rights Protocol. Such failures also violate Article 21(2) of the African Charter on the Rights and Welfare of the Child (specifying 18 years as the minimum age of marriage) and Articles 3 (equality provision), 4 (respect for life and integrity of the person), 16 (right to health), 17(1) (right to education) and 18(3) (non-discrimination provision) of the African Charter on Human and Peoples' Rights.

In addition, the practice of child or forced marriages violates Article 16 (equality in marriage and no legal effect of a child marriage) of CEDAW; Article 23(3) (full and free consent of spouses required) of ICCPR; and Articles 24(3) (abolish traditional practices prejudicial to the health of children) and 34 (protect the child from all forms of sexual exploitation and sexual abuse) of CRC.

In its General Recommendation No. 19 on violence against women, the Committee on the Elimination of Discrimination against Women specifically mentioned forced marriage and rape stating that "The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms." The Human Rights Committee, in its General Comment No. 28 on equality of rights between men and women, identified women's right to free and informed consent in marriage as an element of women's right to equality. The Committee on the Rights of the Child, in its General Recommendation No. 4 on adolescent health and development, found that early marriage was a harmful traditional practice that negatively affects girls' sexual and reproductive health.



*School girl in Somalia*

## 4. Reproductive rights

### State Party's obligations

The Women's Rights Protocol requires States Parties to ensure that women's right to health, including sexual and reproductive health, is promoted and respected. In particular, the Women's Rights Protocol requires States Parties to, among other things:

- Ensure that women have the right to:
  - Control their fertility (Article 14(1)(a))
  - decide whether to have children and the number and spacing of children (Article 14(1)(b))
  - choose any method of contraception (Article 14(1)(c))
  - protect themselves and be protected against sexually transmitted infections, including HIV/AIDS (Article 14(1)(d))
  - be informed of their health status and that of their partner, in accordance with internationally recognized standards (Article 14(1)(e))
  - have family planning education (Article 14(1)(f));
- Provide adequate, affordable and accessible health services, including information, education and communication programmes to women (Article 14(2)(a));
- Establish and strengthen existing pre-natal, delivery and post-natal and nutritional services for women during pregnancy and while they are breast-feeding (Article 14(2)(b));
- Protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault,

rape, incest and where continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus (Article 14(2)(c)); and

- Prohibit all medical or scientific experimentation on women without their informed consent (Article 4(k)).

### Violations

A State Party violates the Women's Rights Protocol when it, among other things:

- Fails to provide women with easily accessible information on contraception, family planning and how to protect themselves from sexually transmitted diseases such as HIV/AIDS;
- Has family planning policies that do not respect the right of women to choose the number or spacing of their children, such as sterilization policies that do not ensure informed consent of the woman; and
- Prohibits abortion in cases of sexual assault, rape, incest and where continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

### Remedies

Possible remedies that can be sought under the Women's Rights Protocol in cases of denial of reproductive rights include, without limitation:

- Provision of easily accessible information about and access to contraceptive methods; Provision of easily accessible information about sexually transmitted diseases, including HIV/AIDS, and methods of protection;
- Enactment of a law legalizing abortions, at least in cases of sexual assault, rape, incest and where continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus;
- Timely access to medical abortions where applicable;
- Abolishment of criminal penalties, as appropriate; and
- Requirement of informed consent of women in cases of sterilization.

### Box 2.6. Sample language for cases involving reproductive rights

The Women's Rights Protocol requires States Parties to ensure that women's right to health, including sexual and reproductive health, is promoted and respected, including through the provision of legal abortion in certain circumstances. See Article 14 (health and reproductive rights).

The failure of a State Party to provide women access to health care, including information on contraception and family planning, and access to legal abortion, at least in cases of sexual assault, rape, incest and where continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus, violates Article 14 as well as Articles 2 (elimination of discrimination), 3 (right to dignity), and 4 (rights to life, integrity and security) of the Women's Rights Protocol. Such failures may also violate Articles 3 (equality provision), 16 (right to health), 17(1) (right to education) and 18(3) (non-discrimination provision) of the African Charter and Article 12 (access to health care) of CEDAW.

The Human Rights Committee, in its General Comment No. 3 on equality of rights between men and women, has interpreted compliance with Article 7 (torture or cruel, inhuman and degrading treatment) of the ICCPR as requiring the State to give "access to safe abortion to women who have become pregnant as a result of rape" and "prevent forced abortion and forced sterilization." The Committee went on to state that policies such as those requiring a husband's authorization to make a decision regarding sterilization; mandating sterilization after a certain age or a certain number of children; or "States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion" violate a women's right to privacy under Article 17 of the ICCPR, and may also violate her rights to life under Article 6 and against being subjected to torture or cruel, inhuman and degrading treatment under Article 7 of the ICCPR. The Committee on the Elimination of Discrimination against Women has, in its General Recommendation No. 24 on women and health, identified "laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures" as a barrier to women's right to health.



*Kenyan Women in Narok , Photo by Des Willie*

## 5. Inheritance and property rights

### State Party obligations

The Women's Rights Protocol requires States Parties to ensure that women have rights to inherit and to own property. In particular, the Women's Rights Protocol requires States Parties to ensure that:

- Ensure women and men have the right to inherit an equitable share of their parents' properties (Article 21(2));
- Ensure a widow shall have the right to inherit an equitable share of the property of her husband's (Article 21(1));
- Ensure a widow shall have the right to continue to live in the matrimonial home; in case of remarriage, she shall retain this right if the house belongs to her or she has inherited it (Article 21(1));
- Enact legislation to guarantee that during her marriage, a woman has the right to acquire her own property, and to administer and manage it freely (Article 6 (j));
- Ensure that in case of separation, divorce or annulment of marriage, women and men have the right to an equitable sharing of the joint property deriving from the marriage (Article 7(d));
- Take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist (Article 2(d)); and
- Take appropriate measures to ensure reform of existing discriminatory laws and practices are reformed in order to promote and protect the rights of women (Article 8(f)).

### Violations

A State Party violates the Women's Rights Protocol when it fails to, among other things, enact and enforce legislation and/or policies to give:

- Women rights to inherit from their parents and husbands;
- Widows the right to remain in the matrimonial home;
- Married women rights to own, administer and manage their property; and
- Separated or divorced women the right to equitable sharing of joint property deriving from the marriage.

### Remedies

Possible remedies that can be sought under the Women's Rights Protocol in cases of violation of property and inheritance rights include:

- Enactment of legislation and/or policies giving:
  - Women rights to inherit from their parents and their husbands
  - widows the right to remain in the matrimonial home
  - married women rights to own, administer and manage their property
  - separated or divorced women the right to equitable sharing of joint property deriving from the marriage;
- Creation of mechanisms to enforce women's rights to property and inheritance, including accessible means of filing complaints of violations of property/inheritance rights;
- Allocation of property and inheritance to the individual woman in the case;
- Reform of discriminatory laws relating to property and inheritance rights; and
- Positive and corrective action in favour of women's property rights, such as establishment of fixed percentages on division of property or inheritance.

### Box 2.7. Sample language for cases involving inheritance and property rights

The Women's Rights Protocol requires States Parties to ensure that women have rights to inherit and own property. See Articles 2 (elimination of discrimination), 6 (marriage), 7 (separation, divorce and annulment of marriage), and 21 (right to inheritance).

The failure of a State Party to enact and enforce laws and policies to ensure that women have rights to inheritance and property violates Articles 2, 6, 7 and 21 of the Women's Rights Protocol. Such failure also violates Articles 3, 19 (equality provisions) and 18(3) (non-discrimination) of the African Charter; Articles 2 (non-discrimination) and 16(h) (equal rights of spouses to property) of CEDAW; and Article 3 of ICCPR.

The Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 21 (equality in marriage and family relations), stated that "any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person." The Human Rights Committee, in its General Comment No. 28 on equality of rights between men and women, has emphasized that to fulfill their obligations under Article 23 (marriage) of ICCPR, States Parties must ensure "equal rights and obligations of both spouses with regard to . . . the ownership or administration of property"; equality in regard to dissolution of marriage including in property distribution; and equal inheritance rights when dissolution is caused by the death of one of the spouses.

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<sup>11</sup> The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, African Commission on Human and Peoples' Rights (Comm. No. 155/96 (2001)) at 65.

# III. Use of the Women’s Rights Protocol at the Domestic and Regional Levels

This chapter aims to equip practitioners with tools to use the Women’s Rights Protocol both at the domestic and regional levels. At the domestic level, practitioners are encouraged to use and cite provisions of the Women’s Rights Protocol in their complaints and arguments before domestic courts. After domestic remedies have been exhausted, practitioners can bring cases to the African Commission or the African Court, if applicable. *See* Chapters IV - V.

## A. Using the Women’s Rights Protocol at the Domestic Level

The use of the Women’s Rights Protocol in domestic litigation and in advocating for policy change is critical for the domestication of the Women’s Rights Protocol and, correspondingly, for the realization of the rights incorporated in the Women’s Rights Protocol at the national and local levels.

### 1. Incorporation of the Women’s Rights Protocol into domestic law

Upon ratifying the Women’s Rights Protocol, a State becomes bound to refrain from acts which negate or are incompatible with the object or purpose of the Women’s Rights Protocol.<sup>12</sup> Article 26 of the Women’s Rights Protocol requires all States Parties to “ensure the implementation of [the] Protocol at the national level.” However, the extent to which the Women’s Rights Protocol can be used in domestic courts depends on the system of law that applies in the country.

In most common-law systems, international and regional law are not automatically applicable as domestic law. The government must enact enabling legislation to incorporate international instruments into domestic law, thereby making them directly applicable in domestic courts. This is called legislative incorporation.

In most civil law systems, no distinction is made between international, regional and domestic law; all are binding and can be cited and used in national courts. However, even in such systems, treaty provisions that are “non-self-executing” require legislative incorporation. An example of this would be a treaty provision requiring local prosecution by a State Party for a particular crime.

Before using the Women’s Rights Protocol in domestic litigation, practitioners should confirm its domestic legal status in the relevant State. Those unsure can consult the periodic reports submitted by their State to the African Commission on its implementation of the African Charter and the Women’s Rights Protocol (*see* chapter III B), which often describe the status of the Women’s Rights Protocol at the domestic level.

### 2. Using the Women’s Rights Protocol in domestic courts

Using the Women’s Rights Protocol before national courts is critical in ensuring the domestication of the Women’s Rights Protocol. The following points should be kept in mind:

- *If the Women’s Rights Protocol is directly applicable in a State or if it has been incorporated through enabling legislation*, practitioners should directly cite the provisions of the Women’s Rights Protocol and the enabling legislation in their arguments. Practitioners should ensure that the violation that is the subject of the legal action occurred after the State ratified the Women’s Rights Protocol and, in case of States requiring legislative incorporation, enacted enabling legislation.
- *If the Women’s Rights Protocol has been ratified by the State but not duly incorporated into national law*, practitioners should call on courts to take judicial notice of the State’s obligations under the Women’s Rights Protocol and make their arguments based on provisions of national law, the African Charter (assuming that the African Charter has been duly incorporated into national law, where required) and the Women’s Rights Protocol. It can be argued that where the law is uncertain or ambiguous, the State’s obligations under the Women’s Rights Protocol should be taken into account. Courts should be encouraged to cite such

ratified instruments when interpreting the law where this would advance the case for women's rights. For example, in a 2008 case in Zambia (*see* Box 3.1.), the High Court of Zambia seated in Lusaka noted the obligations of the Zambian government under the Women's Rights Protocol even though the Women's Rights Protocol had not been formally incorporated into domestic law. While judicial notice does not make the international instrument enforceable as law, it does mean that the decision can be cited as precedent in subsequent legal arguments. At the same time as calling on courts to take judicial notice of such instruments, activists should also push to incorporate the Women's Rights Protocol into national legislation (*see* Chapter VII A.5 on strategies to promote the Women's Rights Protocol).

- *If the Women's Rights Protocol has not been ratified by the State, or if the violation of rights occurred before the ratification of the Women's Rights Protocol, practitioners should base their arguments on national law and the gender equality provisions of the African Charter, including Articles 2, 3 and 18(3) (assuming that the African Charter has been duly incorporated into national law where required) and use provisions of the Women's Rights Protocol to interpret the provisions of the African Charter. (See Articles 60 and 61 of the African Charter).*

In each case, practitioners should also cite provisions of other relevant international instruments that have been ratified by the State. Examples are provided in Chapter II B.

### Box 3.1. Women's Right Protocol cited in a case of teacher rape in Zambia

Zambia ratified the Women's Rights Protocol in 2006. In February 2006, R.M., a 13 year old schoolgirl, was raped by her teacher. When R.M.'s aunt/guardian went to the headmaster to file a complaint, he indicated this was not the first such incident involving the teacher. The teacher was only briefly detained by the police and had not been charged with a criminal offence.

R.M. brought a civil suit against the teacher, the school, the Zambian Ministry of Education and the Zambian Attorney General. R.M. claimed damages from the teacher for personal injury and emotional distress. She demanded that the school be held accountable for negligence since the headmaster knew that the teacher had a history of sexually abusing his students and yet had not taken steps to prevent further incidents. Her lawsuit also called upon the Ministry of Education to issue preventative guidelines. Equality Now's Adolescent Girls Legal Defence Fund (AGLDF) supported R.M.'s case.

In her submission to the court, R.M. cited Articles 4 and 12 of the Women's Rights Protocol, which oblige States Parties to enact and enforce laws to prohibit all forms of violence against women and take measures to protect 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. She also made reference to Zambia's obligations under CEDAW and CRC.

On 30 June 2008, the High Court in Lusaka rendered a landmark decision\* awarding R.M. significant damages for pain and suffering and mental torture, as well as aggravated damages and medical expenses. The judge also directed the Ministry of Education to put regulations in place to protect students in school; and referred the case to the Director of Public Prosecutions to initiate a criminal case against the teacher, calling the failure to prosecute "a dereliction of duty." Significantly, the judgment cited the full text of Article 4 of the Women's Rights Protocol.

\*Judgement on file at Equality Now ([equalitynownairobi@equalitynow.org](mailto:equalitynownairobi@equalitynow.org))



*Equality Now and local activists on ending sexual violence in Zambian schools*

## 3. Remedies

Article 25 of the Women's Rights Protocol requires States Parties to provide "appropriate" remedies to any woman whose rights or freedoms protected under the Women's Rights Protocol have been violated, and to ensure that such remedies are determined by a competent judicial, administrative, legislative or other authority provided for by law. Organizations and counsel have an opportunity to not only pursue remedies for the woman whose rights or freedoms have been violated under the Protocol, but also advocate for changes on a large scale through legislation, policy reform and education. Suggested remedies or recourse should be part of the complaint brought to the designated authority. Chapter II B provides some examples of remedies that could be sought under the Women's Rights Protocol on select issues.

### Box 3.2. Checklist for use of the Women’s Rights Protocol at the domestic level

In bringing a complaint of violation of rights under the Women’s Rights Protocol complainants may like to refer to the following checklist to ensure that the Women’s Rights Protocol is applicable and enforceable:

- Has the State Party ratified the Women’s Rights Protocol and deposited the instrument of ratification with the African Union?
- If yes, did the violation occur after the Women’s Rights Protocol was ratified by the State Party?
- If yes, does the State Party’s legal system require enabling legislation to make the Women’s Rights Protocol enforceable (generally in common law systems) or is the Women’s Rights Protocol automatically enforceable upon ratification (generally in civil law systems)?
- If enabling legislation is required, has such legislation been enacted and did the violation occur after such legislation was enacted?
- If enabling legislation has not been enacted, have domestic courts ever taken judicial notice of the Women’s Rights Protocol?
- If the Women’s Rights Protocol is enforceable, has the State Party designated a competent authority (judicial or administrative) to provide remedies for violations of the Women’s Rights Protocol?
- If the State has not ratified the Women’s Rights Protocol, is there a violation of the African Charter (assuming that the African Charter is enforceable) where the Women’s Rights Protocol may be used as an interpretive tool?
- Has the State ratified other international instruments such as CEDAW or CRC that may also be cited?

## B. Using the Women’s Rights Protocol at the Regional Level

The African Commission can address violations of the Women’s Rights Protocol (and the African Charter generally) and provide recommendations and/or remedies either through the reporting process, or through the complaint mechanisms. In general, the African Commission can impact a particular issue or provide relief on a particular case through recommendations issued after its consideration of a State Party’s periodic report or its consideration of a complaint/ communication (as explained in detail in Chapters IV and V), or through other measures such as fact-finding missions.



### Box 3.3. NGOs gaining observer status at the African Commission

In order for NGOs to participate in the activities of the African Commission, they must attain observer status. In addition, only NGOs with observer status will be allowed to bring cases before the African Court (see Articles 5(3) and 34(6) of the African Court Protocol). NGOs that engage in advocacy at the regional level should seek such status.

#### Requirements:

The 1999 resolution of the African Commission on granting of observer status to NGOs (see Appendix F) outlines that to attain observer status an NGO must fulfil the following requirements:

- The objectives of the NGO should be in line with the principles in the African Union's Constitutive Act and the African Charter; and
- The NGO must be working in the area of human rights.

#### Procedure:

To apply for observer status, the NGO must make a request in writing to the Secretariat of the African Commission. The application will be considered at the next ordinary session provided it is received at least three months beforehand.

The application must include:

- Documentation on the legal status of the NGO, such as the constitution or articles of association of the NGO;
- A statement on how the objectives of the NGO reflect the fundamental principles of the African Commission;
- The NGO's work in human rights; and
- Recent financial statements of the NGO, sources of funding and activity reports.

On receiving the application for observer status, the Secretariat of the African Commission will assign a Commissioner to examine the application. The Commissioner will consider the application in the public session of the African Commission. Where information is missing from the file, this will be communicated to the NGO concerned and the consideration of the application will be postponed to the next ordinary session. Where the NGO satisfies the criteria for granting of observer status, the Commissioner will declare that observer status is granted during the open session. From that moment on, the NGO concerned can participate in the public sessions.

#### Entitlements:

An NGO with observer status (see ACHPR /Res.30(XXIV)98) is entitled to:

- Participate in the proceedings of the African Commission, in written or oral form;
- Receive all documents such as final communiqués of the session and other relevant documents of the African Commission from its Secretariat;
- Receive at least 4 weeks advance information about the agenda of the upcoming African Commission session from the Commission's Secretariat; and
- Submit shadow reports on the human rights situation in its country.

An NGO with observer status may also:

- Be invited to attend closed sessions of the African Commission;
- Be invited to provide specialized information to the African Commission;
- Participate in the NGO forum, which generally precedes each ordinary session of the African Commission;
- Propose items of interest for the agenda of the African Commission;
- Make statements on issues of concern at sessions of the African Commission; and
- Engage with, and support the activities of, the various mechanisms of the African Commission such as the Special Rapporteur on the Rights of Women, including by:
  - o organizing conferences and seminars on women's rights in partnership with the African Commission
  - o assisting the Special Rapporteur in elaborating principles that will guide the African Commission's handling on specific women's rights issues.

#### Obligations:

In turn, NGOs with observer status are required to submit activity reports to the African Commission's Secretariat every two years. The reports should include lists of the NGO's members, its constituent organs, its sources of funding, and its last financial statement.

See Appendix F for *Annex for Criteria for the Granting of and for Maintaining Observer Status with the African Commission on Human and Peoples' Rights*

## 1. African Commission's consideration of reports

Under Article 26 of the Women's Rights Protocol, States Parties must, in their biennial reports to the African Commission required under the African Charter, provide details of the legislative and other measures they have taken to effectively implement the Women's Rights Protocol.

To aid the African Commission in its consideration of States Parties' reports, NGOs with observer status may submit what are called "shadow" reports supplementing and/or contradicting information provided by the State Party in its periodic report. Such shadow reports may alert the African Commission to issues not identified

in the report of the State Party. They may also include suggested questions that the African Commission could direct to the reporting State Party or suggested recommendations that may be issued by the African Commission on particular issues. While not posted on the African Commission's website, some of these reports can be accessed on the websites of the NGOs submitting them.

**Box 3.4. Excerpt from NGO Shadow Report to South Africa's First Periodic State Report to the African Commission,<sup>33</sup> 18 November 2005**

**Sexual violence against women in South Africa**

"Sexual violence against women and girls is a problem of epidemic proportions in South Africa. According to the crime statistics for 2004/2005 released by the South African Police Service there were 55,114 reported rapes during that period. In the majority of cases the perpetrators reportedly go unpunished. These unacceptably high statistics are an alarming indication that South Africa is failing to meet its national, regional and international obligations.

For example rape is a violation of the constitutionally enshrined rights to safety, privacy, dignity, bodily and psychological integrity, health and in many instances life, particularly in light of the prevalence of HIV/AIDS in South Africa. Also, as a signatory to the SADC Declaration on Prevention and Eradication of Violence Against Women, South Africa has committed itself to eradicate violence against women and children. South Africa has also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and accordingly has undertaken to "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."

Whereas sexual violence against women and girls in South Africa is an issue of the utmost priority, South Africa lacks an effective national strategy to deal with this problem. This is obviously a very serious problem but the South African country report to the African Commission on Human and Peoples' Rights does not address it. What steps is South Africa taking to deal with this problem of sexual violence against women and girls – especially given that it is a state party to the Protocol on the Rights of Women in Africa, which will very soon enter into force?"

The African Commission, after engaging in dialogue with the State Party on its report and on issues raised in shadow reports, will issue concluding observations to the State Party which include recommendations for action on various issues (*see e.g.* Box 3.5). The State Party will have to report on steps taken to implement these recommendations in its next report under the African Charter.

**Box 3.5. Excerpts from Concluding Observations of the African Commission  
on the Periodic Report of the Republic of Sudan  
35<sup>th</sup> ordinary session, 21 May – 4 June 2004**

**PART II - FACTORS CURTAILING THE ENJOYMENT OF THE RIGHTS PRESCRIBED BY THE AFRICAN CHARTER**

....

14. Some harmful traditional practices such as female circumcision are still practised in Sudan and contribute to the violation of human rights of women and the girl child, though the fight by the State and other actors of civil society against these practices has started to yield the expected results.

**PART III – CONCERNS IDENTIFIED FROM THE REPORT:**

....

21. The rights of women and the child are not adequately protected, and vulnerable or destitute individuals and groups are not given adequate legal assistance.

22. The report recognizes the persistence of some harmful traditional practices against women and the girl child in Sudan, but it does not mention any remedial measures taken by the Authorities.

**PART IV – RECOMMENDATIONS OF THE COMMISSION TO THE GOVERNMENT FOLLOWING THE PRESENTATION OF THE REPORT**

27. Following the presentation of the periodic report, ACHPR recommends to the Government of Sudan as follows:

....

- It should intensify efforts for effective implementation of the African Charter on Human and Peoples' Rights, ensuring particularly that the gender dimension is integrated in all the relevant programmes, structures and activities;
- It should diligently carry out appropriate investigations with a view to prosecuting, before independent and impartial courts, the perpetrators of human rights violations in Sudan;

....

- It should take, implement and monitor adequately measures to fight against the violation of specific rights of women and the child in Sudan;
- It should involve more civil society actors and other partners in the process of implementing regional and international instruments to which Sudan is party, particularly the African Charter on Human and Peoples' Rights;
- It should adopt and implement positive measures for the integration of vulnerable and minority groups living in Sudan;
- It should ensure, without prejudice to the quota policy introduced in favour of women, that women take a more significant part in the running of government in Sudan;
- It should make necessary arrangements for the prompt ratification of regional and international instruments relating to human rights, particularly the Protocol establishing the African Court on Human and Peoples' Rights and the Protocol relating to the Rights of Women in Africa.

## 2. African Commission's consideration of complaints/communications

The African Commission has the authority to consider complaints for violations of the African Charter submitted to it by individuals, NGOs, institutions, lawyers and States Parties (*see* Articles 47-59 of the African Charter). Although the Women's Rights Protocol does not have a built-in complaint mechanism, Article 32 of Women's Rights Protocol states that the African Commission may hear "matters of interpretation arising from the application and implementation of this Protocol." This provision read in conjunction with the complaint system provided for under the African Charter, allows States Parties, individuals and NGOs to bring complaints for violations of the Women's Rights Protocol to the African Commission.

Article 27 of the Women's Rights Protocol designates the African Court for Human and Peoples' Rights (the African Court) as the authority which "shall be seized with matters of interpretation arising from application of implementation of this Protocol." However, if the State Party does not accept the jurisdiction of the African Court or the ACJHR, then the African Commission will continue to take complaints in accordance with Article 32 of the Women's Rights Protocol.

Guidelines for submitting complaints to the African Commission and the African Commission's process of considering the complaints are described in Chapters IV.

### 3. Additional measures that can be taken by the African Commission

The African Commission, on receiving information of human rights violations or non-compliance of its recommendations, can do the following:

- Conduct fact-finding missions to investigate massive human rights violations;
- Appeal to the state concerned to implement its recommendations;
- Pass resolutions condemning state action or inaction amounting to a human rights violation;
- Use its special mechanisms, such as working groups or special rapporteurs, to engage further on a specific human rights issue requiring attention; and
- Formulate principles to address a particular issue (e.g. the Declaration on the Freedom of Expression in Africa develops Article 9 of the African Charter).

### 4. Complaints to the African Court and the ACJHR

Complaints for violations of rights under the Women's Rights Protocol may be brought by individuals or approved NGOs (those with African Commission observer status in the case of the African Court and those with accreditation to the AU in the case of the ACJHR) directly to the relevant court as well, subject to provisions in the relevant court's protocol (*see* Chapter V).

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<sup>12</sup> Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, Article 18.

<sup>13</sup> Prepared by the Centre for Human Rights, University of Pretoria; Socio-economic rights project, Community Law Centre, University of the Western Cape, the Human Rights Institute of South Africa, Lawyers for Human Rights, Central and Gauteng Mental Health Society, Gauteng Children's Rights Committee, Community Law and Rural Development Centre.

## IV. Submitting Complaints to the African Commission

This chapter provides guidance for advocates preparing submissions (“complaints” or “communications”) to the African Commission. A sample complaint is provided in Box 4.2.

### A. Requirements for Admissibility of Communications

All complaints must meet the African Commission’s admissibility criteria to be considered on the merits. Although these requirements may seem merely technical, the African Commission has enforced them rigorously and has found the majority of communications filed by individuals to be inadmissible. To support the development of admissible submissions, this chapter identifies and discusses these admissibility rules, which are set out in Article 56 of the African Charter and elaborated in the African Commission’s cases and its Rules of Procedure (see Appendix C). You should also consult the African Commission’s guidelines and information sheets on communications procedures which are referenced herein (see Appendices D and E) and available on the African Commission’s website, [www.achpr.org](http://www.achpr.org).

The African Charter provides that communications submitted to the African Commission will be considered only if they:

1. Indicate their authors even if [they] request anonymity;
2. Are compatible with the Charter of the OAU or with the African Charter;
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the OAU;
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 African 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 United Nations Charter, or the Charter of the OAU or the provisions of the African Charter.<sup>14</sup>

Each of these requirements will be discussed in turn based on the African Commission’s Rules of Procedure and relevant case law from the African Commission.

#### 1. The Authors

The author of the complaint may be any “natural or legal person”<sup>15</sup>, including the victim, the victim’s legal representative, or an NGO. Communications must include the name, nationality, and signature, of the person(s) filing the complaint, or where the complainant is an NGO, the name and signature of its legal representative(s).<sup>16</sup> They must also include the address for receiving correspondence from the African Commission and, if available, the telephone number, fax number, and email address of the complainant.<sup>17</sup> The name of the victim must also be included, where she is not the complainant.<sup>18</sup> An NGO, however, may file a communication on behalf of numerous unnamed victims if the complaint alleges serious or massive violations.<sup>19</sup>

Some points to keep in mind:

- If *the author is the victim*, she should state whether she wishes that her identity be withheld from the State.<sup>20</sup> The African Commission does not ask the complainant to explain why she wishes to proceed anonymously. The complainant’s name will then be substituted with a letter of the alphabet, such as A. The communication will then be referred to as “*A v. State Party*.”
- If *the author is a person acting on behalf of a victim*, he/she need not be a citizen of a State Party to the African Charter/Women’s Rights Protocol.<sup>21</sup>
- If *the author is an NGO acting on behalf of a victim*, the complaint must include the name and contact information of one of the NGO’s representatives. At the admissibility stage, the African Commission will not consider the “neutrality, credibility and integrity of the NGO submitting the communication.”<sup>22</sup>

## 2. Compatibility with the African Charter

To be compatible with the African Charter, a communication must allege that a right has been violated by a State Party and must be based on events that occurred within the territory controlled by the State Party after the African Charter (or the Women's Rights Protocol, as applicable) came into force in that particular state. Specifically, the communication must:

- *Allege facts that provide evidence of a rights violation* under the African Charter (or the Women's Rights Protocol, as applicable), “even if no specific reference is made to the Article(s) alleged to have been violated”.<sup>23</sup> However, reference to the specific Article alleged to have been violated should be made whenever possible. Both the quality and quantity of information included are important because without sufficient details of the facts on which the violation is based, the African Commission will not know what issues are at stake, or whether the complaint is admissible.<sup>24</sup> It is important to be precise about dates, times, places, and names of victims or description of the groups affected.
- Be *directed against a State Party*, even if individuals caused the harm.<sup>25</sup> A State Party may be held responsible for violations by individuals if it was complicit in the abuses, had sufficient control over the perpetrator, failed to take appropriate action to prevent violations or to investigate violations<sup>26</sup> and the communication must clearly identify the responsible government authorities.<sup>27</sup> Note that communications can be submitted against new governments for violations perpetrated by the previous government.<sup>28</sup>
- Relate to violations that occurred in *territories under the control of the State Party*. A State is only responsible for actions in territories under its control. Where a State has *de facto* control over an extra-territorial incident, the State can be held liable for it.<sup>29</sup>
- Relate to *violations that occurred since the African Charter (or the Women's Rights Protocol, as applicable) came into force*. The African Commission can only examine communications that allege violations occurring after the African Charter (or the Women's Rights Protocol, as applicable) came into force for that particular State, which is three months after the State deposited its instrument of adherence.<sup>30</sup> However, the African Commission may permit communications based on violations that took place before the State ratified the African Charter (or the Women's Rights Protocol, as applicable), if the abuses or their effects continue after the State signed onto the African Charter (or the Women's Rights Protocol, as applicable).<sup>31</sup>

## 3. Language used in the communication

Communications cannot contain “disparaging or insulting language” directed at the State Party or its institutions.<sup>32</sup> The African Commission has expressed its concern that disparaging language in a complaint would bring it “to disrepute,” noting that it must “strike a balance” between allowing complainants to express themselves freely and respecting the States Parties’ institutions.<sup>33</sup> Not only must the specific words and phrases not be insulting, but the allegations must not be drafted in such a way as to injure the reputation of the State Party.<sup>34</sup>

## 4. Reliance on media information

Communications cannot be considered if they are based exclusively on news disseminated through the mass media.<sup>35</sup> The African Commission’s concern is the potential for inaccuracy of information presented in news reports.<sup>36</sup> A communication can however include information from the media as support for its allegations. The African Commission has acknowledged that “[w]hile it would be dangerous to rely exclusively on news disseminated from the mass media, it would be . . . damaging if the Commission were to reject a communication because some aspects of it are based on news disseminated through the mass media.”<sup>37</sup> If news reports are central to the allegations, the communication should set out how it has verified the information.

## 5. Exhaustion of local remedies

Before submitting a communication to the African Commission, the complainant must exhaust local domestic legal remedies. This requirement is based on the principle that a State Party should have notice of a human rights violation and the opportunity to remedy it before being called to an international or regional court. The complainant must demonstrate that all legal action that may resolve the complaint at the national level has

been taken, and all possible appeals have been exhausted.

However, the exhaustion of local remedies is not required when:

- *No remedy exists*, such as when the State has ousted the jurisdiction of its courts,<sup>38</sup> or if there is no opportunity to challenge a decision in court, such as when the complainant is denied access to a judicial body.<sup>39</sup>
- *The remedy available is ineffective*, or where there is no prospect of succeeding on the merits.<sup>40</sup> The African Commission has stated, however that a complainant cannot refuse to seek an avenue of redress simply because she perceives it as futile.<sup>41</sup> A remedy may be effective generally, but ineffective in a particular circumstance.<sup>42</sup>
- *The remedies are “unduly prolonged.”*<sup>43</sup> The African Commission has not yet defined what constitutes unduly prolonged procedures.<sup>44</sup>
- The communication alleges *serious and massive human rights violations*.<sup>45</sup>
- *The victim is deceased*, as “it is evident that no domestic remedy can now give the complainants the satisfaction they seek.”<sup>46</sup>
- *The victim fears for her safety or liberty* in returning to the State to exhaust local remedies.<sup>47</sup>
- *The victim is unable to access legal representation.*<sup>48</sup> However, if it is possible to obtain free legal representation, the complainant must attempt to do so.<sup>49</sup>

The complainant must provide facts in the communication to support a finding that local remedies have been exhausted, or that the remedies available are impossible or unavailable,<sup>50</sup> or have been “unduly prolonged.”<sup>51</sup> If no information is provided, the African Commission may request information on this issue.<sup>52</sup> As a practical matter, it is useful to include copies of decisions made in the case by national courts with the communication, as this may shorten the admissibility determination process.

## 6. Submission within a reasonable time

There is no specific time limit for the submission of communications. Communications must be submitted within a “reasonable time” after local remedies have been exhausted<sup>53</sup>, while the African Commission has yet to define what this means, it is advisable to submit a claim as soon as practical.

## 7. Not settled by other international or regional mechanisms

A communication cannot be brought if another international or regional mechanism has made a determination on its merits or is in the process of considering the complaint.<sup>54</sup> This requirement prevents mechanisms making contrary decisions on the same case and prevents complainants from forum shopping.

## 8. Other considerations

*Language of the submission:* In addition to these admissibility requirements, a communication must be in one of the working languages of the African Union. These are Arabic, English, French and Portuguese. However, as a practical matter, since few of the staff members at the Secretariat speak Arabic or Portuguese, Arabic and Portuguese communications should be submitted with English or French translations.

*Requesting recommendations:* Although communications need not request particular types of relief, there is no prohibition against seeking specific recommendations. In considering what recommendations would be useful to remedy the injuries presented in a specific case, it is important to take into consideration the harm to the victim as well as ways of addressing the issue more broadly. Public education and outreach, State sanctions against perpetrators, and assistance for future victims may all be useful to eradicate the problem. It is necessary to request remedies that will address the issue on a comprehensive scale, and not just compensate the individual who has suffered from it.

#### Box 4.1. Checklist for submitting a communication to the African Commission

- Have you indicated the author of the communication (and victim, if different) and provided contact information?
- Is the victim's life, personal integrity or health in imminent danger? If so, have you asked for temporary provisional measures?
- Have you requested anonymity for the victim, if the victim so desires?
- Is the State against which the communication is brought a party to the instrument it is claimed has been violated?
- Does the communication clearly and specifically set out the alleged violation(s) of the rights of the victim under the African Charter and/or the Women's Rights Protocol by something the State has done or failed to do?
- Have you clearly described the facts of the case?
- Does the communication indicate which government authority is responsible for the violation?
- Is the communication based on events that took place within the jurisdiction of the State Party?
- Is the communication based on events that occurred since the African Charter or Women's Rights Protocol (as applicable) came into force, or events that have continued to occur or whose effects continue past the coming into force of the African Charter or the Women's Rights Protocol (as applicable)?
- Have you ensured that the communication does not contain disparaging or insulting language?
- Have you ensured that the communication is not exclusively based on news disseminated by the media?
- Have you indicated that all local remedies have been exhausted, or specified an exception to the exhaustion of remedies rule that is applicable to your case?
- In the case of exhaustion of domestic remedies, have you described the legal process at the national level and attached all relevant documents to show that the matter has been concluded at the national level?
- Are you submitting the communication within a reasonable time after the exhaustion of local remedies?
- Have you ensured that no other international or regional mechanism has made a decision on the merits of the case or is in the process of considering the complaint?
- Have you included all evidence supporting the complaint?
- Is the communication being submitted in English or French?
- Have you indicated specific types of remedies that you are seeking?

See Appendix D—African Commission Guidelines for the Submission of Communications

## B. The African Commission's Procedure for Considering Communications

This chapter details the procedure that the African Commission follows once it receives a “non-State party” or an “individual” communication.<sup>55</sup>

### 1. General rules

#### a. Initial seizure of the communication

The process of consideration of a communication begins once the communication is submitted to the Chairperson of the African Commission through the Secretary.<sup>56</sup> The Secretariat registers the complaint with a reference number and sends a letter acknowledging receipt to the author. The Secretariat then distributes the file to the members of the African Commission.<sup>57</sup> In the event that not all the information requested by the Secretary is received, the Secretary will contact the complainant to provide the missing information.<sup>58</sup>

The Commission will usually consider communications in the order in which they have been received by the Secretariat.<sup>59</sup>



## **b. Joinder**

If two or more communications against the same State Party address similar facts or the same pattern of violation of rights, the African Commission may join them and consider them together if it decides such joinder will serve the interest of justice.<sup>60</sup>

## **c. Rapporteurs, Working Groups**

The African Commission will appoint a Rapporteur from among its members for each communication.<sup>61</sup> In so doing, the Secretariat considers language familiarity and areas of expertise of the designated Commissioner. The African Commission may also establish one or more working groups to review the admissibility and merits of any communication and make recommendations to the Commission.<sup>62</sup>

Commissioners who are nationals of the State Party concerned, have a personal interest in the case, have engaged in political or administrative activity incompatible with impartiality, have participated in any decision at the national level in relation to the communication, or have publicly expressed opinions that could be interpreted as reflecting a lack of impartiality cannot participate in the consideration of a communication.<sup>63</sup> A commissioner may also withdraw for any reason.<sup>64</sup>

## **d. Provisional Measures**

In a situation of urgency, the African Commission can grant interim relief or provisional measures to avoid irreparable harm to the victim, either on its own initiative or at the request of a party to the communication. In such an instance, the African Commission may intervene by communicating with the State Party concerned to take appropriate action.<sup>65</sup> If this situation arises from a complaint which has been submitted to the African Commission between sessions,<sup>66</sup> the African Commission will not wait until its next session to decide on a provisional matter. Any such ruling is designed purely to prevent immediate harm and does not signify that the Commission will consider the case admissible or successful on the merits.<sup>67</sup> Moreover, such provisional measures will not be taken if it is obvious that the case is inadmissible.

The State is asked to report back to the African Commission on the provisional measures requested within 15 days of its receipt of the request for provisional measures.<sup>68</sup>

## **e. Hearings**

Hearings on a communication can occur at any stage prior to the conclusion of the matter at the initiative of the African Commission, or at the request of one of the parties,<sup>69</sup> and can be called for the African Commission to consider the verification of facts, initiation of a friendly settlement, consideration on the merits, or any other matter pertinent to the communication.<sup>70</sup> During hearings, the parties can make oral presentations to present new or additional facts or arguments or answer any questions asked by the African Commission.<sup>71</sup>

A party requesting a hearing must do so at least 90 days before the beginning of the session in which the communication will be considered.<sup>72</sup> The Rapporteur for the communication, in consultation with the Secretary of the African Commission, will decide whether or not to grant the request for the hearing.<sup>73</sup> Additionally, if the complainant does not have legal representation, the African Commission may facilitate free legal aid to provide representation at the hearing when it finds that it would be essential for the proper discharge of the Commission's duties, and the author of the communication does not have sufficient means to meet the costs involved.<sup>74</sup>

The hearings take place in a private session (closed to the public).<sup>75</sup> The Rapporteur Commissioner for the communication introduces the communication to the African Commission as a whole. Each party is then given the opportunity to make a statement. The complainant usually has between 15 - 20 minutes, while the State Party receives a little more time, though not more than an hour. The complainant may then respond to the State Party's presentation. The African Commission makes the decision about when to call witnesses and experts at the request of one of the parties or on its own initiative.<sup>76</sup>

The Secretary produces verbatim records of the hearings. A party to the communication may ask for and receive a copy of such records, unless doing so would "create a danger to persons heard" at the hearing.<sup>77</sup>

## 2. Determination of admissibility

Once the African Commission has decided to be seized of a communication, it notifies the respondent State and the complainant of its decision. The complainant must then present evidence and arguments on the admissibility of the complaint within two months.<sup>78</sup> Once the respondent State receives a copy of the complainant's observations on admissibility from the Secretariat, it then has two months to submit arguments and evidence on admissibility.<sup>79</sup> The complainant will then have one month to make further comments on the respondent State's observations.<sup>80</sup> The African Commission may also ask the parties to present observations at an oral hearing.<sup>81</sup>

Note that a party may make a preliminary objection at the stage of admissibility, or before the African Commission takes a decision on the merits, within 30 days after receiving notification to submit on admissibility or on the merits.<sup>82</sup> The African Commission will then communicate the objection to the other party within 15 days, who must then submit a written response to preliminary objection within 30 days of learning of the objection.<sup>83</sup>

Because States Parties have often delayed in responding to communications, the African Commission will generally declare the communication admissible if it does not receive a response by the State.<sup>84</sup> How long the African Commission will wait before doing so, however, varies. If the African Commission makes a decision finding a communication admissible in default of a response by a State and new facts later emerge that alter the basis for the decision, the African Commission is usually willing to review its determination.

Under the rules, the African Commission should pronounce on admissibility as soon as possible. However, this depends largely on whether information is forthcoming from the parties. In one instance, the African Commission took five years to decide on admissibility.<sup>85</sup> Yet in another case, the African Commission took a month to make a determination on admissibility.<sup>86</sup>

Once the admissibility determination is made, the African Commission will inform the parties of its determination.<sup>87</sup> If the communication is admissible, the African Commission will ask the parties to submit any further information on the merits within 60 days.<sup>88</sup> If the communication is inadmissible, this decision may be reviewed at a later date upon a written request to the African Commission and the submission of new evidence.<sup>89</sup>

The African Commission must notify the parties of its decisions on the inadmissibility of communications and attach them to its activity report.<sup>90</sup>

## 3. Consideration on the merits

### a. Proceedings

After the African Commission has found a communication admissible and any attempts to come to a friendly settlement have ended, it will ask the parties to submit further information on the merits of the case. It is likely that all or most of the information on the merits was submitted as part of the original application. Nevertheless, the complainant should ensure it sends a response to the African Commission which covers all the points at issue. In particular, note that parties may submit evidence to the African Commission for consideration. Evidence can include "relevant laws, court judgements, post-mortem reports, photocopied newspaper clippings describing the judgements, transcripts of judgements, affidavits, expert opinion, opinion from NGOs, and "scholarly" articles."<sup>91</sup> Copies of any responses will be given to the other party. While the parties will be given deadlines for submitting responses, the African Commission often extends these limits.<sup>92</sup>

If the State Party does not provide a response or replies with a blanket denial of responsibility, the African Commission will typically accept the complainant's facts "as given."<sup>93</sup> However, the African Commission may also undertake an independent investigation, which it has the power to do under Article 46 of the African Charter.<sup>94</sup> One such method it has used is to send fact finding missions to the State Party. The African Commission has sent missions to Mauritania, Nigeria, Senegal, the Sudan, and Togo. It is not clear on what basis it decides to make these visits, although to date it has been in cases of particularly serious and widespread human rights violations. The African Commission's report on the mission is published independently of all other documents.

## b. Burden of proof

When a State disputes the allegations, the complainant has the burden of proving the case. The African Commission has not yet articulated a clear standard of proof. It has, however, indicated that the complainant should provide “concrete”<sup>95</sup> and “convincing”<sup>96</sup> evidence of “elements likely to reasonably lead to such a conclusion.”<sup>97</sup> The information should “clearly establish” the claims so that the African Commission may have “a clear and precise understanding of the case brought before it.”<sup>98</sup>

In cases where a national judicial court has ruled on the facts, the African Commission will accept those findings.<sup>99</sup> It will then apply the standards of the international human rights agreements to the case to determine whether there has been a violation of the African Charter<sup>100</sup> or the Women’s Rights Protocol, as applicable.

## c. Amicable settlement

At any stage of the examination of a communication, the African Commission may on its own initiative, or at the request of any of the parties, facilitate an amicable settlement between the parties.<sup>101</sup> In order for the friendly settlement procedure to occur, the parties must consent to it.<sup>102</sup> The African Commission may entrust to one or more of its members the task of facilitating negotiations.<sup>103</sup> If a settlement is reached, which complies with the African Charter, indicates consent of the victim and includes an undertaking to implement the terms of the settlement<sup>104</sup>, a report describing the terms of the settlement is presented to the African Commission.<sup>105</sup> This typically ends the African Commission’s consideration of the case. However, if the terms of amicable settlement are not implemented within 6 months, the African Commission will continue to process the communication according to normal procedures.<sup>106</sup> The African Commission may, at the request of one or both parties, terminate its intervention in the amicable settlement if the parties do not come to an agreement within six months (a period which is renewable once).<sup>107</sup>

## d. Decisions and recommendations

The African Commission deliberates on the matter in closed session and the discussions are kept confidential.<sup>108</sup> As part of its determination on the merits, the African Commission will draft recommendations that the State Party should follow to remedy the human rights violations. It produces a written decision, which is eventually made public in the African Commission’s yearly report.<sup>109</sup> This decision is confidential and is not transmitted to the parties until the A.U.’s Assembly authorizes its publication; it will be posted on the Commission’s website.<sup>110</sup> Following the Assembly’s consideration of the Commission’s activity report, the parties may disseminate the decision.<sup>111</sup>

If a decision against a State Party is taken, the parties will inform the African Commission of all measures being taken by the State Party to implement the decision within 180 days of being informed of the decision.<sup>112</sup> The Commission may ask the State to submit further information within 90 days of receiving the State’s response.<sup>113</sup> The African Commission and the Rapporteur can follow up with the State Party and make further recommendations.<sup>114</sup> Furthermore, the African Commission must notify the Sub-Committee of the Permanent Representatives Committee and the Executive Council to any incidents of non compliance with the Commission’s decisions.<sup>115</sup>

The African Commission has made a variety of recommendations to remedy human rights violations. These remedies range in specificity, and include urging the government to:

- order the release of detainees<sup>116</sup>
- annul decrees/repeal statutes<sup>117</sup>
- provide compensation to the victims<sup>118</sup>
- engage with members of civil society in making decisions<sup>119</sup>
- recognize the complainant’s citizenship<sup>120</sup>
- accelerate the judicial process<sup>121</sup>
- establish independent inquiries into violations<sup>122</sup>
- prosecute the offenders<sup>123</sup>
- abolish certain criminal penalties<sup>124</sup>
- ensure citizens’ return to the State<sup>125</sup>

- undertake environmental cleanup<sup>126</sup>
- provide information on health and environmental risks<sup>127</sup>
- permit accused persons new trials<sup>128</sup>
- improve the conditions of detention<sup>129</sup>
- provide adequate medical and material care for the victims<sup>130</sup>
- create an expert body to review cases<sup>131</sup>

## **e. Review of the decision**

The African Commission may review a decision on its own initiative or upon the written request of one of the parties. Before reviewing the decision, the Commission must first determine that the request is based upon the discovery of a fact that could be decisive, which was not known to the Commission or the party requesting the review at the time of the decision, provided that such ignorance was not due to negligence and that the application for review is made within six months of the discovery of the new fact.<sup>132</sup>

The African Commission may also decide to review a decision for any other compelling reason or situation justifying review, “with a view to ensure fairness, justice and respect for human and peoples’ rights.”<sup>133</sup> However, no application for review can be made more than three years from the date of the decision.<sup>134</sup>

### **Box 4.2 Sample Complaint\***

**TO THE HONOURABLE MEMBERS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS:**

**COMMUNICATION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS OF SARA NEFER BY SOUTH AFRICA WITH A REQUEST FOR A DETERMINATION ON THE MERITS AND TO PAY COMPENSATION TO THE VICTIM**

By the undersigned appearing as counsel for the complainant on behalf of Sara Nefer, a South African citizen:

Julie Bloggs  
Women's Rights Action Centre  
121 Tall Street  
Granger Bay 8001  
Cape Town  
South Africa

Submitted: April 20, 2007

**\*Note that this sample complaint is fictitious**

## Box 4.2 Sample Complaint (cont.)

### PRELIMINARY STATEMENT

The complainant is a sixteen year old South African schoolgirl who was raped by her teacher while in the vicinity of her school. Although the assault was reported, the State police did not investigate the allegations, or question the complainant, her teacher and other students. When she returned to the school to pursue her education, the girl was raped for a second time by the same teacher. This incident may have been preventable with prior police intervention.

The complainant requests that the African Commission grant her a determination on the merits. She also seeks monetary compensation from the State of South Africa for its negligence and inaction in investigating her case, causing her suffering and trauma in violation of Articles 2, 3, 4 and 12 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Rights Protocol). The complainant further asks that South Africa be required to investigate and prosecute the teacher; to strengthen and effectively enforce its legislation on rape; and to institute measures and mechanisms to prevent sexual violence in schools.

### JURISDICTION AND VENUE

The Commission has jurisdiction over this action as it concerns a human rights abuse by a state agency of South Africa which is a party to both the African Charter on Human and Peoples' Rights (the African Charter) and the Women's Rights Protocol.

### INTRODUCTION

1. Sara Nefer is a 16 year old girl who attended the Hermanus Secondary School near Cape Town, South Africa during the time of the described incident. During her lunch break on 11 November 2005, George Frayha, a teacher at Hermanus Secondary School approached Sara Nefer in an abandoned classroom where he attempted to make sexual advances towards her. When she refused him, Mr. Frayha sexually assaulted and raped Ms. Nefer.
2. Ms. Nefer reported the assault to her parents who subsequently approached the police. As a result, Hermanus Secondary School suspended teacher Mr. Frayha for a period of two weeks but took no further disciplinary action against him.
3. Ms. Nefer was once again placed as a student under his tutelage and despite complaints that Mr. Frayha was continuing to sexually harass her, the police failed to deal with the matter. The school did not attempt to investigate Ms. Nefer's allegations or to take action against Mr. Frayha. The school also failed to take any precautionary measures such as moving Ms. Nefer to a different class or otherwise providing Ms. Nefer with any form of protection to ensure the assault was not repeated. The school also failed to investigate whether other pupils were being similarly threatened and violated.
4. On 16 December 2005, Ms. Nefer was instructed by George Frayha to stay behind after class. In an empty classroom, Mr. Frayha threatened Ms. Nefer by telling her that she would receive bad grades if she did not accept his sexual advances. When Ms. Nefer refused, Mr. Frayha raped her for the second time.

## Box 4.2 Sample Complaint (cont.)

### LEGAL ARGUMENT

#### 1. **MISS NEFER'S PETITION IS ADMISSABLE UNDER THE COMMISSION'S RULES OF PROCEDURE**

##### **A. This Communication properly identifies its author and victim**

This communication is submitted by Julie Bloggs on behalf of Sara Nefer. Julie Bloggs is a practicing attorney working at the Women's Rights Action Centre.

Her address is:

121 Tall Street,  
Granger Bay 8001,  
Cape Town,  
South Africa

Her telephone number is: +27216419883

Her fax number is: +2721641987

Her email address is: juliebloggs@wrac.com

##### **B. This Communication is compatible with the Women's Rights Protocol and the African Charter**

This communication is based on violations of Articles 3, 4 and 12 of the Women's Rights Protocol. It is directed against South Africa, a State Party to both the African Charter and the Women's Rights Protocol. The alleged incidents occurred in November and December of 2005, 19 years after the African Charter entered into force and a year after South Africa ratified the Women's Rights Protocol. The alleged incidents took place in Cape Town, South Africa.

##### **C. This Communication does not contain any disparaging or insulting language**

This communication was not intended to, and to the best of our knowledge, does not contain any disparaging or insulting language directed against South Africa or any of its institutions. The allegations contained herein are not intended to injure South Africa's reputation.

##### **D. This Communication is not based exclusively on information disseminated through the mass media**

This communication is based on information volunteered by Sara Nefer in a series of interviews with the author of this communication. Third parties, including teachers, students, police officers and the parents of Sara Nefer, have also volunteered their knowledge of the incident and thus corroborated this information. Any references to media reports in this communication are used only to support the information already provided.

##### **E. Domestic remedies have been properly exhausted**

Rule 93 of the Rules of Procedure for the African Commission for Human and Peoples' Rights requires the exhaustion of all local remedies, if any, before a communication can become admissible. Ms. Nefer presented her claims to the domestic courts and, on 20 January 2007, the South African Supreme Court rejected those claims. There is no further avenue of domestic appeal.

##### **F. The communication has been filed within a reasonable amount of time**

Ms. Nefer's communication meets the requirements of Article 56 (6) of the African Charter which specifies that communications must be submitted within a reasonable period from the time local remedies are exhausted. Local remedies were exhausted on 20 January 2007, three months prior to the submission of this communication.

##### **G. This case has not been settled by any other international body in accordance with the Charter of the United Nations, the Charter of the OAU or the Charter of the African Union.**

Following the exhaustion of domestic remedies in January 2007 when the South African Supreme Court rejected Sara Nefer's claims, no international body has settled this case or made a determination on the merits.

### Box 4.2 Sample Complaint (cont.)

2. **THE PREVENTABLE RAPE OF SARA NEFER AND THE HARMS SUFFERED BY SARA NEFER ARE IN VIOLATION OF ARTICLES 3, 4 AND 12 OF THE WOMEN'S RIGHTS PROTOCOL, ADOPTED PURSUANT TO ARTICLE 66 OF THE AFRICAN CHARTER**

Sara Nefer was the victim of sexual violence at the hands of an individual who was responsible for providing a safe educational environment. Because acts of sexual violence are usually committed by private persons, the State does not ordinarily incur responsibility for them. However if an individual victim of sexual violence can demonstrate that the State failed to provide for the investigation, prosecution and punishment of the perpetrator, or protection of the victim of sexual violence, responsibility for the violation attaches to the State. In this case, the South African State failed to investigate, prosecute or punish Mr. Frayha, and failed to offer Ms. Nefer any protection from, or compensation for, the harm she suffered.

Ms. Nefer suffered a violation of her human rights as set out in Article 4 of the African Charter which provides that every human being shall have the right to respect for his life and the integrity of his person. The sexual violence inflicted upon Ms. Nefer breached the integrity of her person protected under the African Charter.

The Women's Rights Protocol explicitly protects the rights to dignity, life, integrity and security of the person and the right to education and training. In Articles 3, 4 and 12, the Women's Rights Protocol directly addresses violence against women and girls and requires States Parties to take measures to address such violence. Here, Ms. Nefer's rights to dignity, life, integrity and security of the person and to education and training under were violated by her repeated rapes at the hands of her teacher. South Africa failed to affirmatively protect these rights, and is accordingly liable under Articles 2, 3, 4 and 12 of the Women's Rights Protocol.

**A. SOUTH AFRICA HAS VIOLATED SARA NEFER'S RIGHTS TO DIGNITY AND TO THE INTEGRITY OF HER PERSON EMBODIED IN ARTICLES 3 AND 4 OF THE WOMEN'S RIGHTS PROTOCOL**

As a State Party to the Women's Rights Protocol, South Africa violated its obligations by its failure to address the rapes suffered by Ms. Nefer at the hands of Mr. Frayha. The State police's blatant disregard of Miss Nefer's complaint after the first rape and their failure to investigate Mr. Frayha or to offer Ms. Nefer protection, led to a second assault that may have been preventable.

The failure to take adequate measures to protect Ms. Nefer from rape and sexual violence, even after she reported her rape, violates Article 3 of the Women's Rights Protocol that requires States Parties to protect women from sexual violence. In addition, the continued failure to investigate and take action against Mr. Frayha or to provide any services for Ms. Nefer is in violation of Article 4 of the Women's Rights Protocol which requires States Parties to take measures to enact and enforce laws against violence against women; prevent such violence; punish perpetrators; and implement programs for the rehabilitation of women victims.

**B. SOUTH AFRICA HAS VIOLATED SARA NEFER'S RIGHT TO EDUCATION AND TRAINING EMBODIED IN ARTICLE 12 OF THE WOMEN'S RIGHTS PROTOCOL**

Article 12(c) of the Women's Rights Protocol requires States Parties to take all appropriate measures to protect women, especially the girl child, from all forms of abuse, sexual harassment in schools and other educational institutions and provide sanctions against the perpetrators. South Africa's failure to address the case of Sara Nefer after her parents brought the initial rape allegations to the police violates this right. No effort was made to protect Ms. Nefer after the incident was reported. No investigation took place after the case was reported, no further protection was offered to Ms. Nefer or her fellow schoolmates and, despite the existence of evidence in the form of Ms. Nefer's medical records, no effort was made to pursue or punish her rapist, Mr. Frayha. The inaction of the State police in this matter violated South Africa's duties under Article 12(c) of the Women's Rights Protocol.



### Box 4.2 Sample Complaint (cont.)

Following the initial rape, Sara Nefer was examined by a local doctor whose medical report showed that Ms. Nefer was suffering from trauma, psychological harm and emotional distress, as well as feelings of fear and shame as a result of the rape. Following the first incident, Ms. Nefer became withdrawn and was hesitant about returning to school, an environment that she no longer considered safe. When Ms. Nefer reported the rape to the State police, no effort was made to address the psychological harm that she may have suffered and she was not referred to counseling or rehabilitation services. She was not offered a medical exam to verify her claims. The complete lack of any support services provided or even offered to Sara Nefer violates Article 12(d) of the Women's Rights Protocol which requires States Parties to take all appropriate measures to provide counseling and rehabilitation services to all victims of such violence.

Hermanus Secondary School is a State school. The annual reports of Hermanus School and consultations with both its teachers and pupils demonstrate that no gender sensitized education curricula have been provided at the school. Despite Sara Nefer's reporting of her rapes to the State authorities and despite statements from other students who have reported sexual harassment in the past, no gender based or human rights based curricula or teacher training were introduced to combat the situation. This is a violation of Chapter 12(e) of the Women's Rights Protocol which requires States Parties to take all appropriate measures to provide gender sensitization and human rights education at all levels of educational curricula, including teacher training.

### CONCLUSION

South Africa has violated the rights of Ms. Nefer under Articles 2, 3, 4 and 12 of the Women's Rights Protocol. Ms. Nefer suffered serious harms and trauma as a result of the State police's failure to investigate her rape committed by Mr. Frayha. The State failed to protect Ms. Nefer and her fellow schoolmates from a potentially sexually abusive teacher; prevent a further assault, and provide Ms. Nefer with the protection and support services she needed. The State also failed to prosecute or punish the perpetrator for the rapes he committed, thus creating an atmosphere of impunity for perpetrators of sexual violence that the Women's Rights Protocol seeks to eliminate.

Thus, the complainant asks the Commission to provide the following relief:

1. Declare this communication to be admissible;
2. Investigate the facts alleged in this communication;
3. Declare South Africa to be in violation of Articles 2, 3, 4 and 12 of the Women's Rights Protocol;
4. Recommend such remedies as it considers adequate and effective for the violation of Ms. Nefer's human rights including:
  - a. Monetary compensation for the victim;
  - b. Effective prosecution of Mr. Frayha by the State for the rapes of Ms. Nefer; and
  - c. Adoption by South Africa of measures aimed at eradicating sexual violence in schools, including, without limitation:
    - Reforming domestic legislation providing harsher punishment for teachers who sexually assault or harass pupils;
    - Ensuring effective enforcement of the law, including through specialized police units that address teacher abuse or sexual violence; conducting regular and systematic training for the police on addressing cases of addressing sexual violence in schools; and creating spaces within schools where such cases can be safely and easily reported; and
    - Establishing guidelines for school administration and teachers on how to address cases of sexual violence.

Dated 20 April 2007  
Respectfully Submitted:  
Julie Bloggs  
South African Citizen

14 African Charter, Article 56.

15 African Commission on Human and Peoples' Rights, Rules of Procedure of the African Commission on Human and Peoples' Rights, Rule 93(1).

16 Rule 93(2)(a).

17 Rule 93(2)(c). See *Joana v. Madagascar* (Comm. No. 108/93 (1996)) where the African Commission declared the complaint inadmissible due to the Commission's inability to reach the complainant; *Dioumessi and Others v. Guinea* (Comm. No. 70/92 (1995)) where the African Commission determined that a communication was inadmissible because it did not include the author's address.

18 Rule 93(2)(e).

19 See *Malawi African Association and Others v. Mauritania* (Comm. Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98 (2000)). (*Malawi African Association v. Mauritania* (Comm. No. 54/91 (2000)); *Amnesty International v. Mauritania* (Comm. No. 61/91 (2000)); *Ms. Sarr Diop, Union Inter africaine des Droits de l'Homme and RADDHO v. Mauritania* (Comm. No. 98/93 (2000)); *Collectif des Veuves et Ayants-droit v. Mauritania* (Comm. No. 164/97 à 196/97 (2000)); *Association Mauritanienne des Droits de l'Homme v. Mauritania* (Comm. No. 210/98 (2000)).

20 Rule 93(2)(b); See *Purohit and Moore v. The Gambia* (Comm. No. 241/01 (2003)), where the complaint clearly stated that the victims wished to remain anonymous.

21 See *Baes v. Zaire* (Comm. No. 31/89 (1995)) where the communication was submitted by Maria Baes, a Danish national, on behalf of a colleague at the University of Zaïre.

22 *Interights (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v. Ethiopia*, (Comm. No. 233/99 (2003)).

23 Rule 93(2)(d) & Rule 93(2)(g).

24 In *Centre for the Independence of Judges and Lawyers v. Algeria* (Comm. No. 104/93 (1994)), the African Commission dismissed the communication on the grounds that the "communication provides a general information to the Commission and deals with no specific breaches of the Charter"; See also *Ayele v. Togo* (Comm. No. 35/89 (1994)), where the African Commission found that the allegation in the complaint was vague and hence the complaint inadmissible; *Korvah v. Liberia* (Comm. No. 1/88 (1988)), where the African Commission found that the facts of the case did not constitute human rights violations under the African Charter and therefore the complaint was held inadmissible.

25 Rule 93(2)(g).

26 For example, in *Commission Nationale des Droits de l'Homme et des Libertés v. Chad* (Comm. No. 74/92 (1995), at 20, the African Commission noted that, "[I]f a state neglects to ensure the rights in the African Charter, this can constitute a violation, even if the state or its agents are not the immediate cause of the violation." It thus found Chad in breach of its duties under the African Charter.

27 See *International PEN v. Malawi, Ethiopia, Cameroon, Kenya* (Comm. No. 19/88 (1989)) where the African Commission ruled the complaint inadmissible as the complaint was directed at non-party States.

28 Frans Viljoen, "Admissibility Under the African Charter," in Malcolm D. Evans and Rachel Murray (eds.), *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*, (Cambridge, England: Cambridge University Press, 2002), at 75; see also *Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria* (Comm. No. 218/98 (1998), at 22, "The Commission has always dealt with communications by deciding upon the facts alleged at the time of submission of the communication. Therefore, even if the situation has improved . . . the present government . . . would still be [responsible] for acts of human rights violations which were perpetrated by its predecessors." However, the Commission has also found the State was not responsible for violations when it took steps to address the abuses. In *Jean Yakovi Degli (au non [sic] du Caporal N. Bikagni, Union Inter africaine des Droits de l'Homme, Commission Internationale de Juristes v. Togo* (Comm. Nos. 83/92, 88/93, 91/93 (1994)), at 5, the African Commission noted that it had sent a delegation to Togo and "adduced that these acts were committed under a previous administration. The Commission is satisfied that the present administration has dealt with the issues satisfactorily."

29 Malcom Evans and Rachel Murray (eds.), *The African Charter on Human and Peoples' Rights, Second Edition, The System in Practice, 1986-2006*, (Cambridge, England: Cambridge University Press, 2008), at 107.

30 Note that the African Commission's consideration of the matter does not depend on legislative incorporation of the African Charter or the Women's Rights Protocol in States Parties that require such incorporation.

31 George William Mugwanya, *Human Rights in Africa: Enhancing Human Rights through the African Regional Human Rights System*, (Ardsey, New York: Transnational Publishers, 2003), at 256.

32 African Charter, Article 56(3).

33 *Ilesanmi v. Nigeria* (Comm. No. 268/2003 (2005)) at 40.

34 In *Ilesanmi v. Nigeria*, id., the African Commission determined that the communication was inadmissible because the author alleged that the police and customs officials were corrupt, that they dealt with drug smugglers, that they extorted money from motorists and added that the President of Nigeria himself was corrupt and had been bribed by drug dealers.

35 African Charter, Article 56(4).

36 In *Dawda Jawara v. The Gambia* (Comm. Nos. 147/95 and 149/96 (2000)), at 26, the African Commission noted that the important issue was not "whether the information was gotten from the media, but whether the information is correct." It went on to ask whether the complainant tried to verify the truth of the allegations, and whether it was possible for him to do so, given the circumstances of his case.

37 Id. at 24. "This is borne out of the fact that the African Charter makes use of the word 'exclusively.'"

38 *Civil Liberties Organisation v. Nigeria* (Comm. No. 129/94 (1995)); *Civil Liberties Organisation v. Nigeria* (Comm. No. 151/96 (1999)).

39 *Union Inter Africaine des Droits de l'Homme, Federation Internationale des Ligues des Droits de l'Homme and Others v. Angola* (Comm. No. 159/96 (1997)).

40 *Dawda Jawara v. The Gambia*, supra note 23.

41 Viljoen, supra note 15, at 86.

42 In *Purohit and Moore v. The Gambia*, supra note 7, the African Commission found that domestic remedies existed generally, but were absent for a particular category of persons. The people represented in the communication would not have been able to access the remedies without legal aid services and those services were unavailable. The African Commission therefore found the remedies ineffective with regard to the particular group of persons at issue in the case.

43 African Charter, Article 56(5).

44 In *John K. Modise v. Botswana* (Comm. No. 97/93 (2000)), where the legal proceedings had been pending for sixteen years, the African Commission determined that the national legal procedures had been "wilfully obstructed," and that the complainant had thus effectively exhausted all local remedies, at 69. However, it did not cite the "unduly prolonged" exception specifically in making its determination. Instead, it pointed to the fact that the victim was repeatedly subjected to summary deportations, which caused the case to linger, as one of the reasons for considering that local remedies had been exhausted.

45 In *Amnesty International and Others v. Sudan* (Comm. Nos. 48/90, 50/91, 52/91, 89/93 (1999)), at 38-39, the African Commission stated: "In cases of serious and massive [human rights violations], the Commission reads Article 56(5) in the light of its duty to protect human and peoples' rights as provided for by the Charter. Consequently, the Commission does not hold the requirement of exhaustion of local remedies to apply literally, especially in cases where it is 'impractical or undesirable' for the complainants or victims to seize the domestic courts. The seriousness of the human rights situation in Sudan and the great numbers of people involved render such remedies unavailable in fact, or, in the words of the

Charter, their procedure would probably be ‘unduly prolonged.’”

46 *International PEN and Others v. Nigeria* (Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998)).

47 *Kazeem Aminu v. Nigeria* (Comm. No. 205/97 (2000)), at 13, “[L]ocal remedies would not only be ineffective, but are sure to yield no positive result. Secondly, the Commission noted that the complainant’s client is in hiding and still fears for his life.”; *See also Rights International v. Nigeria* (Comm. No. 215/98 (1999)), at 24, and *Alhassan Abubakar v. Ghana* (Comm. No. 103/93 (1996)), at 6, “In this case the complainant is residing outside the state against which the communication is addressed and thus where the remedies would be available. He escaped to Côte d’Ivoire from prison in Ghana and has not returned there. Considering the nature of the complaint it would not be logical to ask the complainant to go back to Ghana in order to seek a remedy from national legal authorities. Accordingly, the Commission does not consider that local remedies are available for the complainant.”

48 In *Curtis Francis Doebller v. Sudan* (Comm. No. 236/2000 (2003)), at 27, the African Commission in finding a communication admissible stated, “In order to exhaust the local remedies within the spirit of Article 56(5) of the Charter, one needs to have access to those remedies but if victims have no legal representation it would be difficult to access domestic remedies.”

49 *Africa Legal Aid v. The Gambia*, (Comm. No. 207/97 (2001)).

50 Rule 93(2)(i).

51 In *Sana Dumbaya v. The Gambia* (Comm. No. 127/94 (1995)) the author did not reply to the African Commission’s two inquiries regarding the exhaustion of local remedies. As a result, the African Commission declared that the case was inadmissible. In *S.O.S. - Esclaves v. Mauritania* (Comm. No. 198/97 (1999)) at 15-16, the communication stated that internal procedures had been initiated, but did not give information as to the status of the procedures. Since the African Commission could not make a determination regarding the exhaustion of local remedies, it concluded that the communication was inadmissible.

52 Rule 93(4).

53 Rule 93(2)(h) referring to the period prescribed in the African Charter, Article 56(6).

54 Rule 93(2)(j) requires that the complaint indicate whether it has been submitted to another “international settlement proceeding”; *See Amnesty International v. Tunisia* (Comm. No. 69/92 (1994)); *See also Mpaka-Nsusu Andre Alphonse v. Zaire*, (Comm. No. 15/88 (1994)) where the African Commission ruled the complaint inadmissible as it had been referred to the Human Rights Committee established under the ICCPR.

55 *See* Rules, Part Three, Chapter III, Section 4 “Consideration of communications received in conformity with Article 55 of the African Charter: Other Communications”.

56 Rule 93(1).

57 Rule 93(5).

58 Rule 93(4).

59 Rule 95.

60 Rule 96.

61 Rule 97(1).

62 Rule 97(2).

63 Rule 101.

64 Rule 102.

65 Rule 98.

66 Rule 98(2); *See also Open Society Justice Initiative (on behalf of Pius Njawe Noumeni) v. Cameroon* (Comm. No. 290/04 (2006)) at 12.

67 Rule 98(5).

68 Rule 98(4).

69 Rule 99(1).

70 Rule 99(3).

71 Rule 99(2).

72 Rule 99(4).

73 Rule 99(5).

74 Rule 104; *See also* the African Commission’s Information Sheet No. 2 - Guidelines of the Submission of Communications which states that, “the Commission does not offer legal assistance to complainants. Persons in need of such assistance may approach one of the various legal assistance groups which exist in most countries or the National Bar Association.”

75 Rule 99(8).

76 Rule 100(1).

77 Rule 99(14).

78 Rule 105(1).

79 Rule 105(2).

80 Rule 105(3).

81 Rule 105(4).

82 Rule 103(1).

83 Rule 103(2).

84 Vincent O. Orlu Nmeielle, *The African Human Rights System: Its Laws, Practice, and Institutions*, (Hague: Martinus Nijhoff Publishers, 2001), at 213.

85 Frans Viljoen, *supra* note 15, at 65; *See also Peoples’ Democratic Organisation for Independence and Socialism v. The Gambia* (Comm. No. 44/90 (1996)).

86 *Amnesty International v. Zambia* (Comm. No. 212/98 (1999)).

87 Rule 107(1).

88 Rule 108(1).

89 Rule 107(4).

90 Rule 107(3).

91 Rachel Murray, “Evidence and Fact-Finding by the African Commission,” in Malcolm D Evans and Rachel Murray (eds.), *supra* note 15 at 102-3.

92 Under Rule 113, this is explicitly permitted, as long as the extension is not longer than one month, and each party is not granted more than one extension per submission.

93 *See Commission Nationale des Droits de l’Homme et des Libertés v. Chad* (Comm. No. 74/92 (1995)), at 25, (“where allegations of human rights abuse go uncontested by the Government concerned, Commission must decide on the facts provided by the complainant and treat those facts as given”); Information Sheet No. 3, *supra* note 44 (“Likewise, a rejection of the allegations by a State is not enough. The State Party must submit specific responses and evidence refuting the allegations.”); *Amnesty International and Others v. Sudan*, *supra* note 32 at 52, (“According to the Commission’s long-standing practice, in cases of human rights violations, the burden of proof rests on the government) (*See*, ACHPR/59/91, ACHPR/60/91, ACHPR/64/91, ACHPR/87/93 ACHPR/101/93). If the government provides no evidence contradict an allegation of human rights violation made against it, the Commission will take it as proven, or at the least probable or plausible.”).

94 Information Sheet No. 2, *supra* note 61.

- 95 *Katangese Peoples' Congress v. Zaire*, (Comm. No. 75/92 (1995)) at 6; *Dawda Jawara v. The Gambia*, *supra* note 23 at 53.
- 96 *Africa Legal Aid v. The Gambia* (Comm. No. 207/97 (2001)) at 33(iv).
- 97 *Courson v. Equatorial Guinea* (Comm. No. 144/95 (1997)) at 18.
- 98 *Id.* at 23.
- 99 *Bob Ngozi Njoku v. Egypt* (Comm. No. 40/90 (1997)).
- 100 Information Sheet No. 3, *supra* note 44 ('Decision on the merits is an application of the international human rights law and an interpretation of the Charter vis-à-vis the allegations alleged by the victim. It is an examination of these allegations and all the arguments submitted by the parties within the context of the African Charter in particular, and international human rights law in general.').
- 101 Rule 109(1).
- 102 Rule 109(2).
- 103 Rule 109(3).
- 104 Rule 109(5).
- 105 Rule 109(6).
- 106 Rule 109(7).
- 107 Rule 109(4).
- 108 Rule 110(2), (3).
- 109 Rule 110(3).
- 110 Rule 110(3), (4).
- 111 Rule 112(1).
- 112 Rule 112(2).
- 113 Rule 112(3).
- 114 Rule 112 (6).
- 115 Rule 112(8).
- 116 *Centre For Free Speech v. Nigeria* (Comm. No. 206/97 (2004)); *Liesbeth Zegveld and Mussie Ephrem v. Eritrea* (Comm. No. 250/2002 (2003)).
- 117 *Civil Liberties Organisation v. Nigeria* (Comm. No. 101/93 (1995)); *See also Purohit and Moore v. The Gambia*, *supra* note 7.
- 118 *Odjouriby Cossi Paul v. Benin* (Comm. No. 199/97 (2004)); *Curtis Francis Doebbler v. Sudan*, *supra* note 35; *Liesbeth Zegveld and Mussie Ephrem v. Eritrea*, *supra* note 103; *Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso* (Comm. No. 204/97 (2001)); *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria* (Comm. No. 155/96 (2001)); *Malawi African Association and Others v. Mauritania*, *supra* note 6; *John K. Modise v. Botswana* (Comm. No. 97/93 (2000)); *Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria* (Comm. No. 218/98 (1998)).
- 119 *Lawyers for Human Rights v. Swaziland* (Comm. No. 251/2002 (2005)).
- 120 *John K. Modise v. Botswana*, *supra* note 31.
- 121 *Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*, *supra* note 105.
- 122 *The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria*, *supra* note 105; *Malawi African Association and Others v. Mauritania*, *supra* note 6.
- 123 *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, *supra* note 105.
- 124 *Curtis Francis Doebbler v. Sudan*, *supra* note 35.
- 125 *Malawi African Association and Others v. Mauritania*, *supra* note 6.
- 126 *The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria*, *supra* note 105.
- 127 *Id.*
- 128 *Civil Liberties Organisation v. Nigeria*, (Comm. No. 151/96 (1999)).
- 129 *Id.*
- 130 *Purohit and Moore v. The Gambia*, *supra* note 7.
- 131 *Id.*
- 132 Rule 111(1), (2).
- 133 Rule 111(2)(c).
- 134 Rule 111(3).

# V. Taking a case to the African Court on Human and Peoples' Rights or the African Court of Justice and Human Rights

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## A. The African Court on Human and Peoples' Rights

The African Court has jurisdiction over matters arising out of the interpretation of the African Charter, the African Court Protocol, and human rights instruments ratified by States that are party to a case. The African Court considers disputes and gives advisory opinions. The African Court may hear complaints of violations of the Women's Rights Protocol.

### 1. Eligibility to bring a case to the African Court

Under Article 5 of the African Court Protocol (*see* Appendix G) disputes may be brought by States Parties against other States Parties. Individuals and NGOs with observer status before the African Commission can submit communications/complaints to the African Court only when the State Party has made a declaration under Article 34(6) of the African Court Protocol accepting the competence of the Court to receive cases under Article 5(3). (*See* Box 3.3 for a discussion on NGOs gaining observer status). However, given that as of May 2011, only five States had made this declaration, it is likely that cases of violations of the Women's Rights Protocol will continue to be brought before the African Commission. The African Commission can also bring cases before the African Court.

### 2. Admissibility

Where an NGO takes a case to the African Court, the Court may consult the African Commission to decide on the question of admissibility. The grounds for admissibility are similar to those described in Chapter IV A. in relation to the African Commission, including the requirement that domestic remedies be exhausted before the case is brought to the Court, unless such remedies are unavailable. Article 6 of the African Court Protocol states that the Court will rule on admissibility in matters brought by the African Commission. Arguably, the communications deemed admissible by the African Commission will be viewed as admissible by the African Court.

### 3. Procedures

The procedures governing the African Court will be elaborated in the rules of procedure of the African Court.<sup>135</sup> In April 2010, the African Court and the African Commission harmonized their respective Internal Rules of Procedure.

### 4. Sources of Law

The African Court will apply the provisions of the African Charter and any other relevant human rights instruments ratified by the States concerned.

### 5. Advisory Opinions

The African Court may provide an opinion on any legal matter relating to the African Charter or other relevant human rights instruments at the request of a Member State of the AU, the AU, or any organization recognized by the AU.

### 6. Hearings

All the proceedings of the African Court are to be conducted in public, although provision is made in Article 10(1) of the African Court Protocol for hearings to be conducted in a closed court. To ensure impartiality, Article 22 of the African Court Protocol provides that a judge who is a national of a State Party to a matter before the African Court cannot hear that case.

## 7. Judgment

A judgment shall be delivered within 90 days of the African Court having completed deliberations. The judgment is final and not subject to appeal, as stipulated in Article 28 of the African Court Protocol. Article 30 of the African Court Protocol states that States Parties to this Protocol will undertake to comply with the judgment within the time stipulated by the Court and guarantee its execution. Article 31 requires the African Court to submit a report about its work during the previous year to the Assembly of Heads of State and Government, and the report must specify when a State has not complied with the African Court's judgment.

## B. The African Court of Justice and Human Rights

### 1. Establishment and functioning of the ACJHR

When established, the ACJHR will take over cases pending before the African Court.<sup>136</sup> The ACJHR Protocol (*see* Appendix H) contains as an annex the Statute of the African Court of Justice and Human Rights (ACJHR Statute), which lays out the specifics of the ACJHR, including its organization, jurisdiction, and procedures. Under Article 28(c) of the ACJHR Statute, (*see* Appendix H), the ACJHR will have jurisdiction over all cases and legal disputes submitted to it relating to any legal instrument relating to human rights that has been ratified by the States Parties concerned, including the African Charter, the Women's Rights Protocol, and the Children's Charter.

### 2. Eligibility to bring cases to the ACJHR

Under Article 30(f) of the ACJHR Statute, individuals and NGOs accredited to the AU or its organs may submit cases to the ACJHR, subject to the State Party having signed a declaration under Article 8 of the ACJHR Protocol (*see* Appendix H) accepting the competence of the ACJHR to receive such cases. These individuals and NGOs accredited to the AU may be represented by a person of their choice.<sup>137</sup> It should be noted that the requirement of getting accredited to the AU is much more onerous than that of having observer status before the African Commission (required under the African Court Protocol). Consequently, it will be harder for NGOs to bring cases before the ACJHR than before the African Court.<sup>138</sup>

### 3. Applicable Law

The ACJHR may give regard to any relevant law to determining the case, including international treaties ratified by contesting States, international custom, general principles of law recognized universally or by African States, and judicial decisions and writings of the most highly qualified publicists of various nations.<sup>139</sup>

### 4. Advisory Opinion

The ACJHR may give an advisory opinion on any legal question at the request of the Assembly of Heads of State and Government, the Parliament, the Executive Council, the Peace and Security Council, the Economic, Social and Cultural Council, the Financial Institutions or any other organ of the AU as may be authorized by the Assembly of Heads of State and Government.<sup>140</sup>

### 5. Judgment and Report

Decisions of the ACJHR are decided by a majority of the judges present and are rendered within 90 days of the ACJHR having completed deliberations.<sup>141</sup> In its annual activity report to the Assembly, the ACJHR will specify the cases in which a party has not complied with the judgment of the court.<sup>142</sup>

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134 <http://www.african-court.org>

135 ACJHR Protocol, Article 5.

136 ACJHR Statute, Article 36(5).

137 For an explanation of the different processes for obtaining either accreditation or observer status before the AU, *See* "Criteria for Granting Observer Status and for a System of Accreditation within the AU," Executive Council, 7<sup>th</sup> Ordinary Session, July 2005, available at <http://www.africa-union.org/Summit/JULY%202005/Observer%20Status%20Criteria%20as%20adopted%20-%20July%202005.doc>

138 ACJHR Statute, Article 31.

139 ACJHR Statute, Article 53.

140 ACJHR Statute, Articles 42 and 43.

141 ACJHR Statute, Article 57.

# VI. Relevant Case Law on Human Rights

## A. Relevant Human Rights Cases from the African Human Rights System

### 1. African Commission

The African Commission has yet to issue any decisions that directly address women's rights. However, it has made several determinations under the African Charter that are relevant to women's rights claims. These may be useful to draw upon in making arguments for women's rights. The following is a brief synopsis of these cases.

#### Freedom from torture and cruel, inhuman, or degrading punishment

##### ■ ***Doebbler v. Sudan*** <sup>143</sup>

The complaint stated that eight students were arrested and convicted for acts that violated the “public order.” The students were sentenced to pay fines and receive between twenty-five and forty lashes. The communication argued that the punishment was humiliating for the female students involved because it required them to submit to baring their backs in public. The African Commission stated that Article 5 of the African Charter prohibits not only cruel but also inhuman and degrading treatment which includes actions which “humiliate or force the individual against his will or conscience.”<sup>144</sup> The African Commission concluded that “ultimately whether an act constitutes inhuman degrading treatment or punishment depends on the circumstances of the case” but emphasized that the prohibition “is to be interpreted as widely as possible to encompass the widest possible array of physical and mental abuses.”<sup>145</sup>

The issues in this case could fall under Articles 4(1) (respect for life, integrity and security of person; prohibition of cruel, inhuman or degrading punishment and treatment) and 3 (right to dignity) of the Women's Rights Protocol.

##### ■ ***Organisation Mondiale Contre La Torture v. Rwanda*** <sup>146</sup>

The communication alleged that thousands of people throughout Rwanda were detained by Rwandan security forces and held in deplorable conditions. The complainants alleged a violation of Article 5 of the African Charter which guarantees individuals the right to the respect inherent in a human being, and prohibits torture, cruel, inhuman, or degrading punishment and treatment. In reaching a conclusion, the African Commission took particular note of the conditions under which children, women, and the aged were held. It found that those conditions “violate[d] their physical and psychological integrity,” and found the State Party in breach of Article 5.<sup>147</sup>

The issues in this case could fall under Articles 4(1) (respect for life, integrity and security of person; prohibition of cruel, inhuman or degrading punishment and treatment), 3 (right to dignity) and 22 (special protection of elderly women) of the Women's Rights Protocol.

##### ■ ***Media Rights Agenda v. Nigeria*** <sup>148</sup>

The African Commission noted that the term ‘cruel, inhuman or degrading treatment or punishment’ must be interpreted “so as to extend to the widest possible protection against abuses, whether physical or mental.”<sup>149</sup>

These comments would apply to Article 4(1) (respect for life, integrity and security of person; prohibition of cruel, inhuman or degrading punishment and treatment) of the Women's Rights Protocol.

##### ■ ***D.R. Congo v. Burundi, Rwanda, and Uganda*** <sup>150</sup>

Armed forces of the Republics of Burundi, Rwanda, and Uganda were present, under pretext of safeguarding their interests, in the provinces of the Democratic Republic of Congo where there had been rebel activities. These forces raped and killed Congolese women, in addition to committing many other human rights violations. The Rwandan and Ugandan forces specifically aimed at spreading AIDS through the rape of Congolese women and girls in order to decimate the local population. The

African Commission found these particular acts to violate the first Protocol Additional to the Geneva Conventions and the Convention on the Elimination of All Forms of Discrimination against Women, and by extension the African Charter. The respondents also were found to be in violation of Articles 2, 4, 5, 12(1) and (2), 14, 16, 17, 18(1) and (3), 19, 20, 21, 22, and 23 of the African Charter.

The issues in this case could fall under Articles 3 (right to dignity), 4 (right to life, integrity and security of the person), and 11 (protection of women in armed conflicts) of the Women's Rights Protocol.

### **Right to political participation**

#### ■ ***Purohit and Moore v. The Gambia*** <sup>151</sup>

This case involved a challenge to Gambia's Lunatics Detention Act on the basis of the disenfranchisement of individuals detained because of mental disability. The African Commission determined that denying citizens the right to participate freely in the government of their country can only be justified by reason of legal incapacity and that in declaring an individual legally incapacitated the State must conform to internationally accepted norms and standards. It ultimately concluded that there were no objective bases within the State's legal system to exclude mentally disabled persons from political participation.

The issues in this case could fall under Articles 9 (right to participation in the political and decision-making process) and 23 (special protection of women with disabilities) of the Women's Rights Protocol if applied to women.

### **Family protection and inheritance**

#### ■ ***Amnesty International v. Zambia*** <sup>152</sup>

The case concerned human rights issues arising from the forcible expulsion of two prominent political men from Zambia. The African Commission determined *inter alia* that Zambia failed in its duties to protect and assist the family. It reasoned that the Zambian government had forcibly broken up the complainants' family units, thereby violating Article 5 of the African Charter, which guarantees the right to the respect of the dignity inherent in a human being.<sup>153</sup>

The issues in this case could fall under Article 3 (right to dignity) of the Women's Rights Protocol.

#### ■ ***Bah Ould Rabah v. Mauritania*** <sup>154</sup>

The complainant was dispossessed of part of his inheritance as a result of his mother's "donation" to her former slave owner. The African Commission found that this constituted a violation of Article 14 of the African Charter, which guarantees the right to property.

The issues in this case could fall under Article 21 (right to inheritance) of the Women's Rights Protocol.

### **Discrimination based on religious affiliation**

#### ■ ***Amnesty International and Others v. Sudan*** <sup>155</sup>

This case concerned the persecution of non-Muslims, including denial of the right to practice their religion and freedom of expression, subjection to arbitrary arrests and expulsions and denial of access to work and food aid. In making its determination, the African Commission remarked upon the application of Shari'a law, stating: "When Sudanese tribunals apply Shari'a, they must do so in accordance with the other obligations undertaken by the State of Sudan. Trials must always accord with international fair-trial standards . . . and everyone should have the right to be tried by a secular court if they wish."<sup>156</sup>

The issues in this case could fall under Article 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.



## Non-enumerated rights

### ■ ***The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*** <sup>157</sup>

In this case, the African Commission was willing to recognize a right that was not explicitly enumerated in the African Charter. In determining that individuals had a right to housing or shelter, it found that such a right was the corollary of the provisions protecting the right to physical and mental health, property, and protection accorded to the family.<sup>158</sup> It also recognized a right to food, finding that such a right was “inseparably linked” to the dignity of human beings and that the right to food was essential to enjoy and fulfil other rights, such as health, education, work, and political participation.<sup>159</sup>

The issues in this case could fall under Articles 15 (right to food security) and 16 (right to adequate housing) of the Women’s Rights Protocol.

## **2. Economic Community of West African States Community Court of Justice**

The Economic Community of West African States (ECOWAS) was created in 1975 to replace the Customs Union of West African States. The Community Court of Justice was established in 1993. In January 2005, ECOWAS adopted a protocol to permit persons to bring suits against Member States. At the same time, the jurisdiction of the Community Court was revised to include review of violations of human rights in all Member States.

### ■ ***Mani v. Niger*** <sup>160</sup>

Ms. Mani was sold into sexual slavery and worked for over 10 years, doing unpaid household chores and agricultural labour. She was also used as a sex slave and eventually bore three of her master’s children. The West African Regional Court of Justice convicted Niger for failing to protect the 12 year old girl from being sold into slavery where she was physically and sexually abused.

The issues in this case could fall under Articles 2(2) (commitment to modify social and cultural patterns of conduct), 3 (right to dignity) and 4 (right to life, integrity and security of the person) of the Women’s Rights Protocol.

## **B. Relevant Case Law from other Human Rights Systems**

Article 60 of the African Charter states that the African Commission may “draw inspiration” from international law on human and peoples’ rights. This provision allows the African Commission to reference other international human rights treaties and regional conventions to aid its interpretation of the African Charter. Moreover, Article 18(3) of the African Charter requires the State to ensure elimination of discrimination against women and protection of their rights “as stipulated in international declarations and conventions.” In making decisions, the African Commission has acknowledged the case law of other international commissions and courts as persuasive authority. Judicial reasoning from other human rights systems has also been adopted in its decisions.

## **1. Regional Human Rights Systems**

The African Commission has cited cases from the European Court of Human Rights (the ECHR) as well as the European Commission on Human Rights (which was abolished in 1998) and the Inter-American Commission on Human Rights. The following chapters identify cases from these regional human rights systems that might be useful support for women’s rights claims brought before the Commission. They may be useful as a guide to the interpretation of provisions of the African Charter or the Women’s Rights Protocol.

### **a. European Court of Human Rights and European Commission on Human Rights**

The African Commission has cited the ECHR or the European Commission on Human Rights in the decisions of at least three cases brought before it, although none of these African Commission cases specifically dealt with women’s rights or sex discrimination.<sup>161</sup> The ECHR is responsible for monitoring the implementation

of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention of Human Rights), which entered into force in 1953. It has been ratified by all forty-seven member States of the Council of Europe, including the members of the European Union as well as most Eastern European countries. Article 14 of the European Convention states, “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex...” Below are some examples of women’s rights jurisprudence that has evolved from the European Convention of Human Rights.

### **Sexual and reproductive rights**

#### ■ **Case of A, B, and C v. Ireland** <sup>162</sup>

Under Irish law, a woman is only allowed to seek an abortion within Ireland in the case of a pregnancy posing risk to her life. Otherwise, she is allowed to travel abroad to obtain an abortion for health reasons only. Applicant A, a former alcoholic with a history of depression during her prior pregnancies, travelled to England for an abortion. Applicant B, who became pregnant unintentionally and could not take care of a baby on her own, also travelled to England for an abortion. Applicant C, a former cancer patient, became pregnant unintentionally and travelled to England for an abortion a result of the insufficient information given to her in Ireland about the “impact of the pregnancy on her health and life and of her prior tests for cancer on the foetus”.<sup>163</sup>

The ECHR found that the government violated applicant C’s right to “private life” (Article 8 of the European Convention on Human Rights) by failing to provide a “legislative or regulatory regime providing an accessible and effective procedure by which [she] could have established whether she qualified for a lawful abortion in Ireland . . .”<sup>164</sup> The ECHR also found, however, that Applicant A and B’s rights were not violated as “the impugned prohibition in Ireland struck a fair balance between the right of the first and second applicants to respect for their private lives and the rights invoked on behalf of the unborn.”<sup>165</sup>

The Women’s Rights Protocol, under Article 14(2)(c), gives a specific right to seek abortion for women in A and C’s, and possibly B’s, situation as it allows abortion where the health, and not just the life, of the mother is endangered. Articles 4 (right to life and integrity of the person), 5 (right to dignity) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter might also be relevant.

#### ■ **Tysic v. Poland** <sup>166</sup>

The applicant was refused an abortion even though under Polish law pregnancy termination is permitted where the health of the mother is in danger. The applicant had been warned by three ophthalmologists that pregnancy and delivery could risk her eyesight. Following the delivery of her baby, her eyesight did in fact deteriorate to the point where she was at risk of blindness. The ECHR found that the government violated the complainant’s right to “private life” (Article 8 of the European Convention on Human Rights) by failing to meet its positive obligations “to secure the physical integrity of mothers-to-be”.<sup>167</sup>

The Women’s Rights Protocol, under Article 14(2)(c), gives a specific right to seek abortion in such a case. Articles 4 (right to life and integrity of the person), 5 (right to dignity) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter might also be relevant.

#### ■ **Jabari v. Turkey** <sup>168</sup>

The ECHR held that an Iranian woman accused of adultery had a well-founded fear of persecution for the purposes of awarding her asylum, and that Turkey’s execution of the order for her deportation would violate Article 3 of the European Convention on Human Rights, which protects against cruel and inhuman treatment, as well as Article 13 which provides for an effective remedy before national authorities.

Such a case might fall under Articles 4 (right to life and integrity of the person), and 5 (right to dignity) of the African Charter, or Articles 3 (right to dignity) and 4 (right to life, integrity and security of the person) of the Women’s Rights Protocol.

### ■ ***Paton v. The United Kingdom*** <sup>169</sup>

The applicant sought to enjoin his wife from having an abortion. Although the case was found inadmissible “as being manifestly ill-founded within the meaning of Article 27(2),”<sup>170</sup> the European Commission on Human Rights found that the right to life enshrined in Article 2 of the European Convention on Human Rights did not extend to the unborn and noted the limitation of such implied right based on concerns about the life and health of the mother. The European Commission on Human Rights also disagreed with the applicant’s claims that the abortion violated the right to respect for family life in Article 8. Instead it found that his wife’s decision, to “avert the risk of injury to her physical or mental health,” was justified under Article 8(2) “as being necessary for the protection of the rights of another person.”<sup>171</sup>

Such a case might fall under Article 14 (health and reproductive rights) of the Women’s Rights Protocol.

### ■ ***Open Door and Dublin Well Woman v. Ireland*** <sup>172</sup>

The ECHR held that the Supreme Court of Ireland’s injunction restraining counselling agencies from providing pregnant women with information concerning abortion facilities abroad violated Article 10 of the European Convention on Human Rights. The ECHR considered that the injunction interfered with the right of two non-profit organizations to provide information on family planning options and with the ability of women to receive information. The ECHR reasoned that although Ireland has a legitimate interest in protecting the life of the unborn, the injunction had a disproportionate impact, because it prohibited counselling regardless of the age, health, or circumstances of pregnant women. The ECHR noted that the injunction posed a health risk to women, who would likely terminate pregnancies at later stages without adequate counselling.

The Women’s Rights Protocol gives a specific right under Article 14(2)(a) to information about family planning and abortion.

## Gender-based violence

### ■ ***Bevacqua and S v. Bulgaria*** <sup>173</sup>

The applicants, a young woman and her minor son, brought a complaint under Articles 3 (torture and inhuman or degrading treatment or punishment), 8 (respect for family life), 13 (effective remedy) and 14 (prohibition of discrimination) of the European Convention on Human Rights alleging that Bulgarian authorities failed to take necessary measures to secure respect for their family life and failed to protect the woman from the violent behaviour of her former husband who beat the woman in the presence of their son and accused her of abducting their son. The ECHR found that Bulgaria violated Article 8 by failing to adopt interim custody orders and take sufficient measures in reaction to the applicant’s husband’s violent behaviour.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person), and 5 (dignity) of the African Charter, or Articles 3 (right to dignity), 4 (rights to life, integrity and security of the person) and 8 (access to justice and equal protection before the law) of the Women’s Rights Protocol.

### ■ ***Algur v. Turkey*** <sup>174</sup>

The applicant brought a complaint under Article 3 of the European Convention on Human Rights (prohibition of torture and inhuman or degrading treatment or punishment) asserting that, while in police custody, she had been punched and kicked repeatedly, threatened with death and rape, and verbally abused. She stated that she had been subjected to suspension by the arms and that she had also been given electric shocks by means of electrodes attached to her breasts, feet and upper body.<sup>175</sup> In finding a breach of the Convention, the ECHR pointed out that the State was responsible for all persons in custody, and the authorities were under a duty to protect them. It emphasized that strict application of fundamental safeguards such as the right to request an examination by a doctor of one’s choosing and access to a lawyer and a relative, coupled with prompt judicial intervention, made it possible to detect and prevent ill-treatment to which detainees were in danger of being subjected.

Such a case might fall under Articles 4 (right to life and integrity of the person) and 5 (right to dignity) of the African Charter, or Articles 3 (right to dignity) and 4 (right to life, integrity and security of the person) of the Women's Rights Protocol.

■ **Aydin v. Turkey** <sup>176</sup>

The ECHR, adopting the findings of fact as established by the European Commission on Human Rights, found that rape of a detainee by an official of the State must be considered “an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim.”<sup>177</sup> The Court concluded that the accumulation of acts of physical and mental violence, in addition to the especially cruel act of rape, amounted to torture in violation of Article 3 of the European Convention on Human Rights.<sup>178</sup>

Such a case might fall under Articles 4 (right to life and integrity of the person) and 5 (right to dignity) of the African Charter, or Articles 3 (right to dignity) and 4 (right to life, integrity and security of the person) of the Women's Rights Protocol.<sup>179</sup>

■ **Salmanoğlu and Polattaş v. Turkey** <sup>180</sup>

The two female applicants were arrested by police officers in relation to their alleged membership in an illegal organization. The head of the Anti-Terrorist Branch of the police headquarters requested that a hospital determine their virginity status and determine whether they had engaged in recent sexual relations, although there was no medical or legal necessity for such an evaluation. The petitioners also alleged that they were subjected to ill-treatment, including physical and sexual abuse, while in police custody. The ECHR found a violation of Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) of the European Convention on Human Rights. The Court held it unnecessary to separately consider whether there was a violation of Article 14 (prohibition of discrimination).

Such a case might fall under Articles 3 (equality before, and equal protection of, the law) and 5 (right to dignity) of the African Charter, or Articles 3 (right to dignity), 4 (right to life, integrity and security of the person) and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

■ **M.C. v. Bulgaria** <sup>181</sup>

The ECHR determined that the failure of the State to fully investigate the allegations of rape by the applicant, even in the absence of “direct” proof of rape or “resistance,” amounted to a failure to establish and effectively apply a criminal law regime to punish rape and sexual abuse. This was considered to constitute a violation of Articles 3 and 8 of the European Convention on Human Rights relating to torture and the right to a private life respectively.

Such a case might fall under Articles 4 (right to life and integrity of the person), 5 (right to dignity) and 18(4) (special measures for the aged and the disabled) of the African Charter, or Articles 3 (right to dignity), 4 (right to life, integrity and security of the person) and 8 (access to justice and equal protection before the law) of the Women's Right Protocol.

■ **X and Y v. The Netherlands** <sup>182</sup>

The ECHR found that a father's legal inability to institute criminal proceedings on behalf of his daughter, a mentally-disabled rape victim, was a violation of her right to respect for private life under Article 8 of the European Convention on Human Rights. The Netherlands was found in breach of its human rights responsibilities by failing to create appropriate criminal legislation to respond to the rape of a mentally-disabled woman.

Such a case might fall under Articles 4 (right to life and integrity of the person) and 5 (right to dignity) of the African Charter, or Articles 3 (right to dignity), 4 (right to life, integrity and security of the person), and 23 (special protection of women with disabilities) of the Women's Rights Protocol.

■ **Opuz v. Turkey** <sup>183</sup>

Ms. Opuz applied to the ECHR following the killing of her mother at the hands of Ms. Opuz's husband after years of persistent domestic abuse. The violence was reported repeatedly to the authorities,

although many complaints were subsequently withdrawn upon the threat of further violence, and no protective measures were taken. The husband was even released pending his appeal of a guilty verdict in the murder of the applicant's mother because of his alleged "provocation" by the applicant. Examining the jurisprudence of the UN Committee on the Elimination of the All Forms of Discrimination Against Women and other international law, as well as the research reports of NGOs, the ECHR found that Turkey violated Article 2 (right to life) in not effectively protecting the applicant's mother; Article 3 (torture) in failing to take protective measures to deter Ms. Opuz's husband from injuring her; and Article 14 (discrimination on the basis of gender). The ECHR held that "the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional"<sup>184</sup> and awarded Ms. Opuz significant damages.

Such a case might fall under Articles 2 (non-discrimination in enjoyment of rights), 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person) and 18 (3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination), 3 (right to dignity, including protection from violence), and 4 (right to life, integrity and security of the person) and 8 (access to justice and equal protection of the law) of the Women's Rights Protocol.

#### ■ ***Wiktorko v. Poland*** <sup>185</sup>

After refusing to pay an allegedly exorbitant taxi fare, the applicant was taken by the taxi driver to a sobering-up center. Although she claimed she was not intoxicated, she was forcibly stripped naked by male staff members, placed in restraining belts, and locked in a cell overnight. The petitioner's forcible undressing by two male staff members diminished her dignity and humiliated her. The Court found a violation of Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) of the European Convention on Human Rights.

Such a case might fall under Articles 5 (right to dignity) and 6 (right to liberty and security of person) of the African Charter, or Articles 3 (right to dignity) and 4 (right to life, integrity and security of the person) of the Women's Rights Protocol.

### **Gender discrimination**

#### ■ ***Airey v. Ireland*** <sup>186</sup>

The ECHR found that the inability to obtain a legal separation from her husband constituted a violation of applicant's right to respect for her family and private life under Article 8 of the European Convention on Human Rights and a breach of Article 6, which provides a right to access the courts.

This lack of access to the court raises issues under Article 7 (right to have your cause heard and no retroactive application of the law) of the African Charter, and Article 8 (access to justice and equal protection of the law) of the Women's Rights Protocol.

#### ■ ***Wessels-Bergervoet v. The Netherlands*** <sup>187</sup>

The ECHR found that a social security scheme that provided no entitlement for married women to benefits in their own right constituted discrimination on the grounds of sex and marital status in violation of Article 14 (non-discrimination) of the European Convention on Human Rights taken in conjunction with Article 1 of Protocol 1 of the European Convention, which provides a right to "possessions" which would include pensions. The ECHR found that the State Party reduced the applicant's benefits based solely on the fact that she was a married woman, and that no objective and reasonable justification existed for such disparate treatment.

These issues could arise under Articles 2 (non-discrimination in enjoyment of rights), 3 (equality before, and equal protection of, the law) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, and Articles 2 (elimination of discrimination), 8 (access to justice and equal protection of the law) and 13 (f) (system of social insurance for women in the informal sector) of the Women's Rights Protocol.

### ■ **Ünal Tekeli v. Turkey** <sup>188</sup>

The applicant claimed that domestic legislation mandating married women to use their husband's name, or, in the alternative, permitting the use of the wife's maiden name in front of the husband's surname only, constitutes a violation of Articles 8 (right to respect for private and family life) and 14 (non-discrimination) of the European Convention on Human Rights. The ECHR determined that the distinction between genders created by the impugned law amounted to unjustifiable discrimination on the grounds of sex, violating Article 14 in conjunction with Article 8.

These issues could arise under Articles 2 (non-discrimination in the enjoyment of rights), 3 (equality before, and equal protection of, the law) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, and Articles 2 (elimination of discrimination), 8 (access to justice and equal protection of the law) and 13(f) (system of social insurance for women in the informal sector) of the Women's Rights Protocol.

#### **Right to respect for family life**

### ■ **Marckx v. Belgium** <sup>189</sup>

The applicants challenged provisions of the Belgian Civil Code which discriminated against children born out of wedlock and unmarried mothers. Under the code, an unmarried mother had to formally recognize the child on the birth certificate or adopt the child in a court proceeding to establish maternal affiliation with the child. Only after the formal adoption of her daughter did Ms. Marckx's child acquire full inheritance rights over her mother's estate, but had no rights to inherit from any other member of her mother's family. The ECHR in finding a breach of Article 8 of the European Convention on Human Rights, considered that there may be positive obligations on the part of the State inherent in an effective 'respect' for family life.<sup>190</sup>

These issues could arise under Articles 2 (non-discrimination in the enjoyment of rights) and 3 (equal protection of the law) of the African Charter, and Articles 2 (elimination of discrimination) and 8 (access to justice and equal protection of the law) of the Women's Rights Protocol.

### ■ **K. H. and Others v. Slovakia** <sup>191</sup>

The applicants are Slovakian nationals of Roma origin. After being treated at gynecological and obstetrics departments in two hospitals during their pregnancies and caesarean deliveries, they were unable to conceive again. They suspected that the hospitals performed sterilization procedures on them during their deliveries. However, the hospitals refused to release the patients' medical records. Although the Health Care Act 1994 then in force stated that "[a] patient, his or her legal representative ... shall have the right to consult medical records and to make excerpts thereof..." the Ministry of Health declared that the term "legal representative" applied only to underage children or patients deprived of legal capacity.

The ECHR noted that Article 8 of the European Convention on Human Rights contains both negative and positive obligations to ensure effective respect for the applicants' private and family lives. The Court then found that the Health Care Act 1994 violated the state's positive obligation inherent in Article 8 and Article 6 (right of access to a court) was violated as a result of the refusal to provide them with copies of their medical records.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 5 (right to dignity), 18(1) (protection of the family), and 18(2) (duty to assist the family) of the African Charter, or Articles 3 (right to dignity) and 14 (health and reproductive rights) of the Women's Rights Protocol.

#### **Right to equality in the enjoyment of other economic and social rights and access to economic resources**

### ■ **Schuler-Zgraggen v Switzerland** <sup>192</sup>

The applicant received a full state disability pension as a result of an illness which incapacitated her for work. After the birth of her child, this pension was cancelled. The ECHR found, *inter alia*, that the Swiss

Federal Insurance Court made its decision on the assumption that women gave up paid work on the birth of a child. The ECHR held that this assumption introduced a difference of treatment based on the ground of sex only.

These issues could arise under Articles 2 (non-discrimination in the enjoyment of rights), 3 (equality before, and equal protection of, the law) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, and Articles 2 (elimination of discrimination), 8 (access to justice and equal protection of the law), 13(f) (system of social insurance for women in the informal sector) and possibly 24 (special protection of women in distress), of the Women's Rights Protocol.

## **b. Inter-American Commission on Human Rights**

The Inter-American human rights system, which operates under the auspices of the Organization of American States (OAS), is a two-tiered system which enforces several treaties adopted by OAS Member States, including the American Convention on Human Rights (the American Convention) and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (the Belém do Pará Convention), which came into force in 1995. The Inter-American Commission on Human Rights (the IACHR) has jurisdiction to hear claims brought under the treaties by individuals, NGOs, or States Parties. The Inter-American Court on Human Rights (the Inter-American Court) can hear cases on appeal, referred from the IACHR or from States that have consented to its jurisdiction.

Below are some examples of the women's rights jurisprudence that has evolved from the American Convention and, more recently, the Belém do Pará Convention.

### **Gender discrimination**

#### ■ ***X and Y v. Argentina*** <sup>193</sup>

The IACHR declared the practice of mandatory vaginal exams of women by prison officials a violation of Articles 5 (humane treatment and respect for personal integrity), 11 (right to privacy), 17 (protection of the family) and 19 (rights of the child) of the American Convention. It also constituted a form of discrimination against women, since men were not subjected to a similar search. Prisons in Argentina required women and girls who wished to visit inmates to undergo a physical check which included a vaginal inspection. In this case the petitioner and her daughter, a minor, were forced to undergo this intrusive search every time they wished to visit the petitioner's husband in prison. This decision is particularly significant for establishing a close connection between the right to privacy and the right to physical and psychological integrity.

This case is relevant to Articles 4 (right to life and integrity of the person), 5 (right to dignity), 6 (right to liberty and security of the person) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, and to Articles 2 (elimination of discrimination), 3 (right to dignity) and 4 (right to life, integrity and security of the person) of the Women's Rights Protocol, though neither the African Charter nor the Women's Rights Protocol refers to privacy explicitly.

#### ■ ***MCG v. Chile*** <sup>194</sup>

This case involved discrimination against a pregnant student by a partially State-funded educational institution. The petition argued that Chile was in violation of the applicant's right to protection of honor and dignity and equality before the law due to its "abusive interference" in her "private life" by expelling her for having become pregnant. The case resulted in friendly settlement, approved by the IACHR, and included a State scholarship for MCG to continue her studies.

This case is relevant to Articles 2 (non-discrimination in the enjoyment of rights), 5 (right to dignity), 7 (right to have your cause heard) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, and to Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (right to life, integrity and security of the person) and 24(b) (right to dignity for pregnant women in detention) of the Women's Rights Protocol.

## Rights in marriage

### ■ ***Maria Eugenia Morales de Sierra v. Guatemala*** <sup>195</sup>

This case concerned provisions of Guatemala's Civil Code that gave the husband representational powers in a marital union, including of the exclusive right to administer marital property; conferred upon the wife the special "right and obligation" to care for minor children and the home; and conditioned a married woman's employment upon the permission of her husband and upon such employment not jeopardizing her role as a mother and homemaker. The IACHR found these provisions in violation of Articles 1(1) (obligation to respect rights), 2 (adopt measures to give effect to those rights of the victim), 11(2) (private and family life), 17(4) (respect for family life) read in conjunction with Article 16(1) of CEDAW and 24 (equal protection) of the American Convention.

This case is relevant to Articles 2 (non-discrimination in the enjoyment of rights), 3 (equality before, and equal protection of, the law), 7 (right to have your cause heard) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, and to Articles 2 (elimination of discrimination), 6 (marriage) and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

## Domestic violence

### ■ ***Maria da Penha v. Brazil*** <sup>196</sup>

This case involved the failure of Brazilian authorities to respond to continuous reports of abuse. After 15 years of physical abuse, Penha's husband attempted to murder her and left her paralyzed. The IACHR declared that Brazil had an affirmative obligation to take all measures to prevent and end violence against women, including prosecution of domestic violence. Brazil was found in violation of Articles 8 (right to fair trial) and 25 (judicial protection) of the American Convention in relation to the general obligation under Article 1(1) (to respect all rights in the Convention without discrimination) and under Article 7 (violence against women) of the Belém do Pará Convention.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person), 5 (right to dignity), 7 (right to have your cause heard) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (right to life, integrity and security of the person), and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

## Rape and protection under the law

### ■ ***Ana, Beatriz & Celia González Pérez v. Mexico*** <sup>197</sup>

The petitioners, three indigenous sisters, were raped by officers in Chiapas, Mexico in the course of interrogation. The case went before the IACHR which ruled that the rape and subsequent lack of inquiry by Mexican authorities constituted a violation of these victims' rights to humane treatment, privacy, personal liberty, a fair trial and judicial protection under Articles 5, 7, 8, 11, and 25 of the American Convention. One of the victims in this case was a minor and as such was entitled to special protection under Article 19 of the American Convention. The IACHR also found that Mexico violated Article 8 of the Inter-American Convention to Prevent and Punish Torture.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person), 5 (right to dignity), 7 (right to have your cause heard) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (right to life, integrity and security of the person) and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.



■ **Raquel Martin de Mejía v. Peru** <sup>198</sup>

Ms. Mejía was subjected to rape by military personnel during the abduction of her husband. Because Ms. Mejía was raped by a member of the State security force with the aim of intimidating and punishing her, the IACHR found a breach of Article 5 of the American Convention (prohibition of torture), as well as of Article 11 (right to privacy), reasoning that sexual abuse implied a deliberate outrage of a person's dignity. It also found that Peru had breached Article 25 of the American Convention because there had been no criminal prosecution of the rape, making it impossible for Ms. Mejía to exercise her right to obtain compensation.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person), 5 (right to dignity), 7 (right to have your cause heard) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (right to life, integrity and security of the person), and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

■ **Flor de María Hernández Rivas v. El Salvador**, <sup>199</sup> and

■ **María Dolores Rivas Quintanilla v. El Salvador** <sup>200</sup>

In these cases, the IACHR held the government of El Salvador responsible for the rape of minors by members of the army. In both cases, the Commission found El Salvador responsible for violation of the rights to physical and psychological integrity, the rights of the child, and the right to judicial protection under Articles 5, 19 and 25 of the American Convention.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person), 5 (right to dignity), 7 (right to have your cause heard) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (right to life, integrity and security of the person), and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

### Forced sterilisation

■ **María Mamérita Mestanza Chávez v. Peru** <sup>201</sup>

This case settled before the IACHR. Health officials threatened a woman with criminal charges if she did not submit to a sterilization procedure. Complications resulted from the procedure, which led to her death after being denied further medical treatment. In the settlement, the Peruvian government agreed immediately to address these issues with its health and human rights officials. In doing so it also acknowledged its violations of its international obligations under Articles 1(1), 4, 5 and 24 of the American Convention as well as Article 7 of the Belém do Pará Convention.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person), 5 (right to dignity), 6 (right to liberty and security of the person), 16 (right to health) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (right to life, integrity and security of the person) and 14 (health and reproductive rights) of the Women's Rights Protocol.

### State's positive obligations to prevent violations of human rights

■ **Velásquez Rodríguez v State of Honduras** <sup>202</sup>

This case involved a student who was allegedly detained without warrant, tortured by police, and forcibly disappeared. The case is notable for a comprehensive statement by the court of a State's human rights obligations. The Inter-American Court confirmed that "the State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, impose the appropriate punishment and ensure the victim adequate compensation."<sup>203</sup>

## 2. International Conventions

Advocates may also want to refer in their submissions to the following United Nations Conventions, which contain provisions relevant to women's rights: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Convention against Torture (CAT). The instruments are of particular importance in the interpretation of rights, particularly at domestic level, since many African States are parties to one or more of these instruments.

It might also be helpful to cite decisions from the Committee on the Elimination of Discrimination against Women (the CEDAW Committee), which has addressed complaints on violence against women and girls, as well as some decisions of other human rights treaty monitoring bodies. Other useful sources, as discussed in Chapter III C, are General Comments/ Recommendations issued by various treaty monitoring bodies which relate to the rights of women. These documents interpret States Parties' obligations under the respective treaties. Although the latter are not binding on States Parties, they may be useful in identifying legal arguments to present to the African Commission or the African Court.

### a. Committee on the Elimination of Discrimination against Women

The CEDAW Committee, the body that monitors the implementation of CEDAW, has considered several cases under CEDAW's Optional Protocol. Those below might be particularly helpful in presenting arguments to the Commission.

#### Forced sterilization

##### ■ **A. S. v. Hungary** <sup>204</sup>

This case addressed the issue of forced sterilization. The CEDAW Committee determined that Hungary had violated the complainant's rights under Articles 10(h) (right to information about family planning), 12 (discrimination in health) and 16 (1)(e) (right to decide number and spacing of children) of CEDAW when a public hospital forced her to undergo a sterilization procedure. It cited its General Recommendation 19 which states that "[C]ompulsory sterilization . . . adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children."<sup>205</sup>

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person), 5 (right to dignity), 16 (right to health) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (right to life, integrity and security of the person) and 14 (health and reproductive rights) of the Women's Rights Protocol.

#### Domestic violence

##### ■ **A.T. v. Hungary** <sup>206</sup>

This complaint was based on the State's failure to protect Ms. A.T. from severe domestic violence at the hands of her common-law husband and father of her two children despite her repeated requests for assistance from child protection authorities. There were no protection or restraining orders available and no shelters equipped to take her and her disabled child. The CEDAW Committee noted that "[w]omen's human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy."<sup>207</sup> It ruled that her right to security of person had been violated and "the obligations of the State Party set out in Article 2 (a), (b), and (e) of the Convention extend to the prevention of and protection from violence against women . . ."<sup>208</sup>

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person), 5 (right to dignity), 7 (right to have your cause heard) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (right to life, integrity

and security of the person) and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

- **Goekce v. Austria** <sup>209</sup>, and
- **Fatima Yildirim v. Austria** <sup>210</sup>

These cases involved similar facts. In each case the woman on whose behalf the case had been brought had been killed by her husband after a series of violent incidents over a lengthy period and despite the appeal by the two women for assistance from law enforcement agencies and the courts on a number of occasions. The CEDAW Committee found a violation of the right to life and physical and mental integrity under Articles 2 (elimination of discrimination) and 3 (equality) of CEDAW, read together with Article 1 (non-discrimination) and General Recommendation 19 (violence against women). The CEDAW Committee considered that given the combination of factors, the police knew, or should have known, that the victims were in serious danger, and therefore the police were accountable for failing to exercise due diligence.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person), 5 (right to dignity), 7 (right to have your cause heard) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (right to life, integrity and security of the person) and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

### Femicide

- **Inquiry under Article 8 of the CEDAW's Optional Protocol in regard to Mexico** <sup>211</sup>

In its inquiry into the many abductions, rapes and murders of women in and around Ciudad Juárez, Mexico, which also resulted in a visit to Mexico in October 2003, the CEDAW Committee identified "serious lapses in compliance" by the Mexican government with Articles 1 (discrimination includes gender-based violence), 2 (elimination of discrimination), 3 (equality), 5 (elimination of stereotypes), 6 (suppression of trafficking and prostitution) and 15 (equality before the law), and tolerance of severe and systematic abuses of women's rights.

Such an inquiry might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person), 5 (right to dignity), 7 (right to have your cause heard) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (right to life, integrity and security of the person) and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

## **b. The Human Rights Committee**

Several cases relating to women's rights have been dealt with by the Human Rights Committee which monitors the implementation of the ICCPR.

### Gender discrimination in regard to resident status

- **Aumeeruddy-Cziffra v. Mauritius** <sup>212</sup>

This case was a challenge to Mauritian immigration laws, which limited the right of foreign husbands, but not foreign wives, to attain resident status. The Human Rights Committee adopted the view that the law made a distinction on the grounds of sex and was in breach of the right to be free from arbitrary and unlawful interference with family provided under the ICCPR.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination) and 6 (marriage) of the Women's Rights Protocol.

## Discrimination in regard to social security

- ***S.W.M. Broeks v. The Netherlands*** <sup>213</sup>, and
- ***F.H.Zwaan-de Vries v. The Netherlands*** <sup>214</sup>

Netherlands social security laws required women seeking unemployment benefits to meet conditions which did not apply to men. These laws were found to violate equality rights.

These issues could arise under Articles 2 (non-discrimination), 3 (equality before, and equal protection of, the law), and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, and Articles 2 (elimination of discrimination), 6 (marriage), 8 (access to justice and equal protection before the law) and 13(f) (social insurance for women working in the informal sector) of the Women's Rights Protocol.

## Property

- ***Graciela Ato del Avellanal v. Peru*** <sup>215</sup>

This case involved a challenge to the Peruvian law under which only the husband, and not the wife, could take action in respect of matrimonial property claims against third parties. The Human Rights Committee found that the law denied women equality before the courts (Article 14(1) of the ICCPR). The Committee also found a violation of Articles 3 (non-discrimination) and 26 (equality before the law and entitlement to equal protection) of the ICCPR.

Such issues might fall under Articles 2 (non-discrimination), 3 (equality before, and equal protection of, the law) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, and Articles 2 (elimination of discrimination), 6 (marriage) and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

## Reproductive Rights

- ***Karen Noelia Llantoy Huamán v. Peru*** <sup>216</sup>

This case involved a minor who was carrying a foetus with a fatal anomaly and was denied an abortion, despite Peruvian law allowing pregnancy termination for health reasons. The young woman was compelled to carry the foetus to term and to feed the baby until its inevitable death several days later. The Human Rights Committee found a violation of Article 17 (arbitrary interference with privacy) and Article 7 (cruel, inhuman or degrading treatment) of the ICCPR, reasoning that the author suffered mental distress due to the refusal of the medical authorities to carry out a therapeutic abortion.<sup>217</sup> It noted the author's particularly vulnerable position as a female minor and the failure of the State to give her adequate medical and psychological support.<sup>218</sup> Peru was consequently found in breach of Articles 24 (right to special measures of protection for minors) and 2 (obligation to ensure and protect rights) of the ICCPR.

The Women's Rights Protocol gives a specific right to seek abortion in such a case under Article 14(2) (c). Articles 4 (right to life and integrity of the person), 5 (right to dignity) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter could also be implicated.

## **c. Committee against Torture**

Cases relating to women's rights have been dealt with by the Committee Against Torture which monitors the implementation of the Convention Against Torture.

- ***Kisoki v. Sweden*** <sup>219</sup>

Ms. Kisoki, a Zairian, sought refugee status in Sweden which was rejected. In finding that Ms. Kisoki, who was raped at home in front of her children and in prison, was personally at risk of being subject to torture if returned to Zaire, the Committee against Torture took account of all relevant considerations, including Ms. Kisoki's political affiliation and activities, her history of detention and torture and the

existence of a consistent pattern of gross, flagrant or mass human rights violations.<sup>220</sup> The Committee found that Ms. Kioski's forced return to Zaire would violate Article 3 (non-refoulement) of the Convention against Torture (CAT).

Such a case might fall under Articles 4 (right to life and integrity of the person) and 5 (right to dignity) of the African Charter, or Articles 3 (right to dignity) and 4 (right to life, integrity and security of the person) of the Women's Rights Protocol.

#### ■ **A.S. v. Sweden** <sup>221</sup>

The applicant was an Iranian citizen, seeking refugee status in Sweden after being forced into a short-term marriage (*sighe*) where she did not live with her husband, but was at his disposal for sexual services whenever required. A.S. fell in love with a Christian man, was caught and arrested by the police and taken to her husband's home, where she was severely beaten by him. Subsequently, she left the country with her son. After her case for asylum was rejected by the Swedish Immigration Board, she brought the case before the Committee against Torture. The Committee decided that she risked torture and execution upon return to Iran and that forced return would constitute a violation of Article 3 of the CAT (non-refoulement).

Such a case might fall under Articles 4 (right to life and integrity of the person) and 5 (right to dignity) of the African Charter, or Articles 3 (right to dignity) and 4 (right to life, integrity and security of the person) of the Women's Rights Protocol.

#### ■ **Saadia Ali v. Tunisia** <sup>222</sup>

The petitioner, a dual French and Tunisian citizen, criticized a Tunisian court official while attempting to retrieve a document her brother needed for his forthcoming wedding. She was forcibly taken to a basement in the courthouse, where a guard punched and kicked her, ripped off her scarf and dress so she was half-naked in front of about 50 men, dragged her by her hair, and beat her until she lost consciousness. After the incident, the petitioner tried unsuccessfully to file a complaint and seek domestic remedies under Tunisian law. The Committee against Torture found violations of Articles 1 (definition of torture), 12 (prompt and impartial investigation), 13 (right to complain), and 14 (right to fair and adequate compensation) of the Convention against Torture (CAT).

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 5 (right to dignity), 6 (right to liberty and security of person), and 7 (right to have your cause heard) of the African Charter, or Articles 3 (right to dignity), 4 (right to life, integrity and security of the person), and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

## C. Relevant Cases from the International Criminal Tribunals

The United Nations Security Council created ad-hoc international criminal tribunals in the former Yugoslavia (ICTY) and Rwanda (ICTR) to address violations of international law during the conflicts in Yugoslavia and Rwanda in the 1990s. Although these tribunals address individual criminal responsibility as opposed to the responsibility of the State, their jurisprudence has significantly enhanced the role of the international criminal justice system in providing accountability for violence against women in armed conflict. Below is some of the jurisprudence from these tribunals. All of these cases could fall under Articles 4 (right to life and integrity of person) and 5 (right to dignity) of the African Charter, or Articles 3 (right to dignity), 4 (right to life, integrity and security of the person) and 11 (protection of women in armed conflict) of the Women's Rights Protocol.

### 1. International Criminal Tribunal for Rwanda (ICTR)

#### ■ **Prosecutor v. Akayesu** <sup>223</sup>

The ICTR held that sexual violence is not limited to physical invasion, but may include acts which do not involve penetration or physical contact. Rape was defined as "a physical invasion of a sexual nature, committed on a person under circumstances, which are coercive. Sexual violence includes rape, and is

considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.”<sup>224</sup> The ICTR emphasized that coercive circumstances need not be evidenced by a show of physical force, but that threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion.<sup>225</sup> Rape and sexual violence can also constitute genocide if committed with the specific intent to destroy, in whole or in part, a particular group.<sup>226</sup>

The definitions of rape and sexual violence are relevant to Article 4(2) of the Women’s Rights Protocol.

■ ***Gacumbitsi v. Prosecutor***<sup>227</sup>

Gacumbitsi was bourgmestre of the Rusumo commune. He publicly instigated the rape of Tutsi girls by specifying that sticks should be inserted into their genitals if they resisted. The rapes of eight women were a direct consequence of this instigation. The ICTR found Gacumbitsi guilty of, inter alia, rape as a crime against humanity.

■ ***Muhimana v. Prosecutor***<sup>228</sup>

Muhimana was conseiller of the Gishyita secteur. He committed multiple rapes against, and encouraged others to rape, Tutsi victims. He also raped a young Hutu girl whom he believed to be Tutsi, later apologizing to her after discovering she was Hutu. The ICTR found Muhimana guilty of, inter alia, rape as a crime against humanity. Muhimana also disemboweled a pregnant victim by cutting her open from her breasts to her vagina with a machete and removing the baby from her womb and the ICTR held him responsible for murder.

■ ***Niyitegeka v. Prosecutor***<sup>229</sup>

Niyitegeka was chairman of the MDR opposition party for the Kibuye prefecture. He ordered the Interahamwe to undress the dead body of a woman and insert a sharpened piece of wood into her genitalia. The woman’s body was left in that condition by the road for three days. The ICTR found Niyitegeka guilty of, inter alia, inhumane acts as a crime against humanity.

■ ***Prosecutor v. Semanza***<sup>230</sup>

Semanza told a crowd that they must rape Tutsi women before killing them. Immediately thereafter, one of the men in the crowd raped a Tutsi victim in a nearby home, telling her that he had permission to do so. The ICTR determined that Semanza’s instruction to the crowd instigated the rape and thus found Semanza guilty of, inter alia, rape as a crime against humanity.

■ ***Prosecutor v. Renzaho***<sup>231</sup>

Renzaho was prefect of Kigali-Ville prefecture. He encouraged Interahamwe soldiers and policemen to commit multiple rapes against Tutsi women and girls in his prefecture. The ICTR found Renzaho guilty of, inter alia, rape as a crime against humanity and rape as a violation of Article 3 Common to the Geneva Conventions (war crimes).

## 2. International Criminal Tribunal for the former Yugoslavia (ICTY)

■ ***Prosecutor v. Tadić***<sup>232</sup>

The ICTY recognised that rape and sexual violence can be considered as constituent elements of a widespread and systematic campaign of terror against a civilian population. It is not necessary to prove that rape itself was widespread or systematic but that rape was one of many types of crimes, the spectrum of which was committed on a widespread or systematic basis and comprised an aggressor’s campaign of terror.<sup>233</sup>

■ ***Prosecutor v. Delalić et al***<sup>234</sup>

Following the definition of rape articulated by the ICTR in Akayesu,<sup>235</sup> the ICTY emphasized that in situations of armed conflict, rape at the instigation of or with the consent or acquiescence of an official typically occurs for a purpose that involves punishment, coercion, discrimination or intimidation, and thus amounts to torture.<sup>236</sup>

■ ***Prosecutor v. Furundzija*** <sup>237</sup>

Anto Furundzija, a local commander in a special Croatian Defence Council military police unit, was convicted of torture as a co-perpetrator in the rape of a Bosnian Muslim woman during interrogation, as well as of aiding and abetting in the rape. The ICTY stated the elements of torture in armed conflicts include that at least one of the persons involved in the torture be a public official or from “any other authority-wielding entity.”<sup>238</sup>

■ ***Prosecutor v. Kunarac et al*** <sup>239</sup>

The case concerned the detention of Muslim women in soldiers’ residences and other military facilities, where they were repeatedly raped. The accused were found guilty, and the Appeals Chamber of the ICTY reaffirmed that proof of the non-consensual character of sexual relations did not depend on specific evidence of force on the part of the perpetrators or resistance on the part of the victims. It found that the victims’ detentions amounted to “circumstances that were so coercive as to negate any possibility of consent.”<sup>240</sup>

## D. Relevant Cases Pending before International and Regional Bodies as of May 2011

Below is an analysis of cases that were **pending** as of the date of publication of this manual, which may be useful for potential jurisprudence cases once they are decided:

### 1. African Commission

#### Non-enumerated rights

■ ***Al-Kheir and Others v. Egypt*** (Pending)

This case concerns failure of State authorities to prevent and subsequently investigate violent sexual harassment of female journalists at freedom of speech protest. The case was submitted in May 2006 and declared admissible in November 2006. A decision is still pending.

The issues in this case could fall under Articles 3 (right to dignity) and 4 (rights to life, integrity and security of person) of the Women’s Rights Protocol.

### 2. Inter-American Commission on Human Rights

#### Gender discrimination

■ ***I.V. v. Bolivia*** – (Pending)<sup>241</sup>

During a caesarean delivery, the petitioner was submitted to a sterilization procedure allegedly without her informed consent. The petitioner claims that these violations arose from gender-based discrimination because the doctors had a paternalistic attitude towards women and exploited their vulnerability. The IACHR declared that the alleged involuntary sterilization procedure may constitute a violation of Articles 5(1) (right to physical, mental, and moral integrity), 8(1) (right to fair trial), 11(2) (right to non-interference in private life), 13 (freedom of thought and expression), and 17 (rights of the family) of the American Convention, as well as of Article 7 (prohibition of all forms of violence against women) of the Belém do Pará Convention. The case was found admissible in July 2008, and a decision is pending.

Such a case might fall under Articles 5 (right to dignity) and 18 (protection of the family) of the African Charter, or Articles 3 (right to dignity) and 14 (health and reproductive rights) of the Women’s Rights Protocol.

#### Domestic violence

■ ***Jessica Gonzales and Others v. United States*** – (Pending)<sup>242</sup>

The petitioner was granted a permanent restraining order to protect herself and her three daughters from physical abuse by her husband. The petitioner’s husband took the children in violation of the restraining

order. Despite multiple calls from the petitioner during a period of almost ten hours, the police failed to respond to the alleged abduction. The petitioner's husband eventually showed up in his truck at the police station and opened fire. He was shot dead by police officers, who then found the bodies of the three murdered daughters in the back of the truck.

The IACHR declared that the alleged events may constitute violations of, inter alia, Articles 1 (right to life, liberty and personal security), 2 (right to equality), 5 (right to protection of honor, personal reputation, and private and family life), 6 (right to family and protection thereof), 7 (right to protection for mothers and children), 18 (right to resort to the courts) and 24 (right to obtain a prompt decision) of the American Declaration on the Rights and Duties of Man. The case was found admissible in July 2007, and a merits hearing was held in October 2008. A decision from the IACHR is now pending.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of person), and 18 (protection of the family) of the African Charter, or Articles 4 (right to life, integrity and security of the person) and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

#### Rape and protection under the law

##### ■ ***Paola del Rosario Guzmán Albarracín v. Ecuador*** - (Pending)<sup>243</sup>

This case concerns the suicide of a student who was sexually abused by her school's vice principal for two years, as a consequence of which she became pregnant. While charges have been brought against the vice-principal, but he remains in hiding and the legal system is slow and inefficient. A petition filed before the IACHR argues that Ecuador has deprived Paola Guzmán of her rights to life, personal integrity, personal security, freedom from violence, non-discrimination, judicial guarantees, judicial protection, and the measures of protection required by her condition as a minor under regional and international instruments. The case was found admissible in October 2008 and a decision from the IACHR is pending.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 4 (right to life and integrity of the person), 5 (right to dignity), 7 (right to have your cause heard), 17 (right to education) and 18(3) (elimination of discrimination against women as stipulated in international declarations and conventions) of the African Charter, or Articles 2 (elimination of discrimination), 3 (right to dignity), 4 (right to life, integrity and security of the person), 8 (access to justice and equal protection before the law) and 12 (right to education and training) of the Women's Rights Protocol.

##### ■ ***V.R.P. and V.P.C. v. Nicaragua*** – (Pending)<sup>244</sup>

This petition alleges that V.R.P.'s nine-year-old daughter, V.P.C., was sexually abused by her father, H.R.A. The child was later diagnosed with Human Papilloma Virus. The petition alleges that the State of Nicaragua is responsible for procedural irregularities and the failure to render a final judgment in the criminal proceedings against H.R.A. The petition also alleges that there is impunity for most sexual violence crimes against minors in Nicaragua. The IACHR declared that there may be a violation of, inter alia, Article 7 (prohibition of all forms of violence against women) of the Belém do Pará Convention. The case was found admissible in February 2009, and a decision is pending.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law) and 7 (right to have your cause heard) of the African Charter, or Articles 3 (right to dignity), 4 (right to life, integrity and security of the person), and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

##### ■ ***Samanta Nunes da Silva v. Brazil*** – (Pending)<sup>245</sup>

The 16-year-old petitioner alleged that she was sexually molested during a visit with a private orthopedic physician. She also alleged that minimum standards of due process were not observed during the subsequent criminal trial, in which the physician was acquitted of sexual aggression, and that she was discriminated against due to her gender, race, age, and economic situation. For example, her credibility was evaluated based in part on her sexual behavior and history. The IACHR declared that there may be a violation of, inter alia, Article 7 (prohibition of all forms of violence against women) of the Belém do



Pará Convention. The case was found admissible in September 2009, and a decision is pending.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 5 (right to dignity), and 7 (right to have your cause heard) of the African Charter, or Articles 3 (right to dignity), 4 (right to life, integrity and security of the person), and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

■ **Marcela Alejandra Porco v. Bolivia** – (Pending)<sup>246</sup>

The petitioner, who suffered from a serious mental illness, was detained on charges of transporting cocaine. The petitioner alleged that the state failed to provide her with timely medical treatment during her detention and that she was forced to stay in inhumane conditions. The petitioner also alleged that she was sexually abused by guards. The IACHR declared that the alleged mistreatment and sexual abuse of the petitioner may constitute a violation of Articles 5(1) (right to physical, mental, and moral integrity) and 11(1) (right to honor and dignity) of the American Convention. The case was found admissible in March 2008, and a decision is pending.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law) and 5 (right to dignity) of the African Charter, or Articles 3 (right to dignity), 4 (right to life, integrity and security of the person), and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

■ **Blas Valencia Campos et al. v. Bolivia** – (Pending)<sup>247</sup>

Twenty-six petitioners were arrested as part of an investigation related to a robbery and were forced to incriminate themselves. The women were allegedly sexually abused and undressed in front of police and prosecutors. One of the women was beaten so severely that she suffered a miscarriage. The IACHR declared that the alleged events may constitute a violation of, inter alia, Articles 5 (right to humane treatment), 7 (right to personal liberty), 11 (right to privacy), and 25 (right to judicial protection) of the American Convention, as well as of Article 7 (prohibition of all forms of violence against women) of the Belém do Pará Convention. The case was found admissible in October 2008, and a decision is pending.

Such a case might fall under Articles 3 (equality before, and equal protection of, the law), 5 (right to dignity), and 7 (right to have your cause heard) of the African Charter, or Articles 3 (right to dignity), 4 (right to life, integrity and security of the person), and 8 (access to justice and equal protection before the law) of the Women's Rights Protocol.

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141 *Curtis Francis Doebbler v. Sudan* (Comm. No. 236/2000 (2003)).

142 *Id.* at 36.

143 *Id.* at 37.

144 *Organisation Mondiale Contre La Torture v. Rwanda* (Comm. Nos. 27/89, 46/91, 49/91, 99/93 (1996)).

145 *Id.*

146 *Media Rights Agenda v. Nigeria* (Comm. No. 224/98 (2000)).

147 *Id.* at 71.

148 *D.R. Congo v. Burundi, Rwanda and Uganda* (Comm. No. 227/99) ((2003)).

149 *Purohit and Moore v. The Gambia* (Comm. No. 241/01 (2003)).

150 *Amnesty International v. Zambia* (Comm. 212/98 (1999)).

151 *Id.* at 50.

152 *Bah Ould Rabah v. Mauritania* (Comm. No. 197/97 (2004)).

153 *Amnesty International and Others v. Sudan* (Comm. 48/90/ 50/91, 52/91, 89/93 (1999)).

154 *Id.* at 73.

155 *The Social and Economic Rights Action and the Center for Economic and Social Rights v. Nigeria* (Comm. 155/96 (2001)).

156 *Id.* at 60-61.

157 *Id.* at 65.

158 *Hadijatou Mani v. The Republic of Niger*, Judgment No.ECW/CCJ/JUD/06/08 of 27 October 2008.

159 *Civil Liberties Organisation Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria* (Comm. No. 218/98 (1998)); *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria* (Comm. No. 155/96 (2001)); *Curtis Francis*

*Doebbler v. Sudan*, *supra* note 1.

160 *Case of A, B and C v. Ireland* (App. No. 25579/05 (2010)).

161 *Id.* at 24.

162 *Id.* at 267.

163 *Id.* at 241.

164 *Tysiqc v. Poland* (App. No. 5410/03, (2007)).

165 *Id.* at 107.

166 *Jabari v. Turkey* (App. No. 40035/98 (2000)).

167 *Paton v. The United Kingdom* (App. No. 8416/78, (1980)).

168 Article 27(2) of the European Convention (since amended and now under Article 35(3)) states, “The Commission shall consider inadmissible any petition submitted under Article 25 which it considers incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the right of petition.”

169 *Id.* at 26.

170 *Open Door and Dublin Well Woman v. Ireland* (App. No. 14234/88, (1992)), upheld in *Women on Waves v. Portugal* (App. No. 31276/05 (2009)).

171 *Bevacqua and S. v. Bulgaria* (App. No. 71127/01 (2008))

172 *Algur v. Turkey* (App. No. 32574/96 (2002)).

173 The applicant also brought complaints under articles 6(1) (right to a fair hearing), and 6(3)(c) (right to legal assistance).

174 *Aydin v. Turkey* (App. No. 23178/94 (1997)).

175 *Id.* at 83.

176 *Id.* at 86.

177 However, note that these instruments do not expressly cover the right to privacy.

178 *Salmanoğlu and Polattaş v. Turkey* (App. No. 15828/03 (2009)).

179 *M.C. v. Bulgaria* (App. No. 39272/98 (2003)).

180 *X and Y v. The Netherlands* (App. No. 8978/80 (1985)).

181 *Opuz v. Turkey* (App. No. 33401/02 (2009)).

182 *Id.* at 191.

183 *Wiktorko v. Poland* (App. No. 14612/02 (2009)).

184 *Airey v. Ireland* (App. No. 6289/73, (1979)).

185 *Wessels-Bergervoet v. The Netherlands* (App. No. 34462/97 (2002)).

186 *Ünal Tekeli v. Turkey* (App. No. 29865/96 (2004)).

187 *Marckx v. Belgium* (App. No. 6833/74 (1979)).

188 *Id.* at 31.

189 *K.H. and Others v. Slovakia* (App. No. 32881/04 (2009)).

190 *Schuler-Zraggen v. Switzerland* (App. No. 14518/89 (1993)).

191 *X and Y v. Argentina*, Case 10.506, Inter-Am. C.H.R. 38/96 (1996).

192 *Mónica Carabantes Galleguillos v. Chile*, Petition 12.046, Inter-Am. C.H.R. 33/02 (2002).

193 *Maria Eugenia Morales de Sierra v. Guatemala*, Case 11.625, Inter-Am. C.H.R. 4/01 (2001).

194 *Maria da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. C.H.R. 54/01 (2001).

195 *Ana, Beatriz & Celia González Pérez v. Mexico*, Case 11.565, Inter-Am. C.H.R. 53/01 (2001).

196 *Raquel Martin de Mejía v. Peru*, Case 10.970, Inter-Am. C.H.R. 5/96 (1996).

197 *Flor de María Hernández Rivas v. El Salvador*, Case 10.911, Inter-Am. C.H.R. 7/94 (1994).

198 *María Dolores Rivas Quintanilla v. El Salvador*, Case 10.772, Inter-Am. C.H.R. 6/94 (1994).

199 *María Mamérita Mestanza Chávez v. Peru*, Petition 12.191, Inter-Am. C.H.R. 71/03 (2003).

200 *Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Inter-Am Ct.H.R. (Ser. C) No. 4 (1988).

201 *Id.* at 174.

202 *Ms A.S. v. Hungary* (Comm. No. 4/2004 (2006)).

203 *Id.* at 11.4.

204 *Ms A.T. v. Hungary* (Comm. No. 2/2003 (2005)).

205 *Id.* at 9.3.

206 *Id.*

207 *Goekce v. Austria* (Comm. No. 5/2005 (2007)).

208 *Yildirim v. Austria* (Comm. No. 6/2005 (2007)).

209 Report on Mexico produced by the Committee on the Elimination of All Forms of Discrimination against Women under Article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico (CEDAW/C/2005/OP.8/Mexico).

210 *Aumeeruddy-Cziffra v. Mauritius* (Comm. No. 35/1978 (1981)).

211 *S.W.M. Broeks v. The Netherlands* (Comm. No. 172/1984 (1987)).

212 *F.H.Zwaan-de Vries v. The Netherlands* (Comm. No. 182/1984 (1987)).

213 *Graciela Ato del Avellanal v. Peru* (Comm. No. 202/1986 (1988)).

214 *Karen Noelia Llantoy Huamán v. Peru* (Comm. No. 1153/2003 (2005)).

215 *Id.* at 6.3-6.4.

216 *Id.* at 6.5.

217 *Pauline Muzonzo Paku Kisoki v. Sweden* (Comm. No. 41/1996 (1996)).

218 *Id.* at 9.2-9.3.

219 *A.S. v. Sweden* (Comm. No. 149/1999 (2001)).

220 *Saadia Ali v. Tunisia* (Comm. No. 291/2006 (2008)).

221 *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber, (Sept. 2, 1998).

222 *Id.* at 688.

223 *Id.*

224 *Id.* at 507-508.

225 *Gacumbitisi v. The Prosecutor*, Case No. ICTR-01-64-A, Appeals Chamber, (July 7, 2006).

226 *Muhimana v. The Prosecutor*, Case No. ICTR-95-1B-A, Appeals Chamber, (May 21, 2007).

227 *Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Appeals Chamber, (July 9, 2004).

228 *The Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Trial Chamber, (May 15, 2003).

229 *The Prosecutor v. Renzaho*, Case No. ICTR-97-31-T, Trial Chamber, (July 14, 2009).

230 *Prosecutor v. Dusko Tadić*, Case No. IT-94-1, Trial Chamber II (May 7, 1997).

231 *Id.* at 704 and 649.

232 *Prosecutor v. Zejnil Delalić et al*, Case No. IT-96-21, Trial Chamber II (Nov. 16, 1998).

233 *Id.* at 479.

234 *Id.* at 495-496.

235 *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1, Trial Chamber II, (Dec. 10, 1998).

236 *Id.* at 162.

237 *Prosecutor v. Dragoljub Kunarac et. al*, Case Nos. IT-96-23-T-II & IT-96-23/1-T-II23/I, (Feb. 11, 2002), *aff'd* Case Nos. IT-96-23-A & IT-96-23/1-A (June 12, 2002).

238 *Prosecutor v. Dragoljub Kunarac et. al*, Case No. IT-96-23 & IT-96-23/1-A, Appeals Chamber, (June 12, 2002) at 132.

239 *I.V. v. Bolivia*, *Petition 270-07*, Inter-Am. C.H.R. 40/08 (2008).

240 *Jessica Gonzales and Others v. United States*, *Petition 1490-05*, Inter-Am. C.H.R. 52/07 (2007).

241 *Paola del Rosario Guzmán Albarracín v. Ecuador*, *Petition 1055-06*, Inter-Am. C. H.R. 76/08 (2008).

242 *V.R.P. and V.P.C. v. Nicaragua*, *Petition 4408-02*, Inter-Am. C.H.R. 3/09 (2009).

243 *Samanta Nunes da Silva v. Brazil*, *Petition 337-07*, Inter-Am. C.H.R. 93/09 (2009).

244 *Marcela Alejandra Porco v. Bolivia*, Case 11.426, Inter-Am. C.H.R. 8/08 (2008).

245 *Blas Valencia Campos et al. v. Bolivia*, *Petition 40-03*, Inter-Am. C.H.R. 84/08 (2008).

# VII. Other Strategies to Promote the Women's Rights Protocol

Civil society groups can adopt various strategies, at both the national and regional levels, in order to enhance implementation of the Women's Rights Protocol.<sup>248</sup>

## A. Advocacy at the national level

Various strategies can be used at the national level to promote awareness about, and the use of, the Women's Rights Protocol. The ultimate goal of all such strategies is the meaningful implementation of the provisions of the Women's Rights Protocol for the benefit of women.

### 1. Ratification campaigns

Not all Member States of the AU are party to the Women's Rights Protocol (see Box 1.4). In States which have yet to ratify the Women's Rights Protocol, advocacy strategies will no doubt focus on ratification. NGOs, in many countries, have successfully formed networks and alliances to run campaigns on ratification. In this regard, they have used key figures in the struggle for women's rights and other prominent actors at domestic level to champion the campaigns. Encouraging ratification has been done through, among other things, awareness-raising campaigns and discussions with government officials at sessions of the African Commission, AU Summits, the AU missions in Addis Ababa, Ethiopia, and at the country level.<sup>249</sup>



SOAWR members in Nairobi, October 2009

#### Box 7.1. SOAWR campaign for ratification of the Women's Rights Protocol<sup>250</sup>

Solidarity for African Women's Rights (SOAWR), is a coalition of 37 women's rights groups in Africa, formed to encourage governments to ratify the Women's Rights Protocol and to ensure its domestication. Advocacy strategies so far have included the following:

- A petition to heads of State, posted on the Pambazuka News website, attracting a lot of support across Africa.
- A "Text Now 4 Women's Rights" campaign, which mobilized hundreds of mobile phone users.
- Production and wide dissemination of advocacy materials, including during AU summits.
- Strategic use of press conferences, TV/radio interviews and press releases to popularize the Women's Rights Protocol.
- Distribution of colour coded cards to Member States of the AU (scorecard based on the status of a State's ratification of the Women's Rights Protocol).
- Dialogue with Member States about the progress of ratification and obstacles thereto.
- Direct communication with Heads of State on a regular basis.
- Organization of public events.

### 2. Awareness-raising

NGOs and women's rights organizations are playing an important role in creating awareness of the rights and obligations set out in the Women's Rights Protocol. Awareness raising strategies used by these groups recognize that a variety of stakeholders, including women themselves, are unaware of the provisions of the Women's Rights Protocol and the decisions and recommendations of the African Commission, and that such awareness is a first step in efforts to domesticate the Woman's Rights Protocol.

NGOs and activists can play a key role in engaging in advocacy around the decisions and/or recommendations of the African Commission under the Women's Rights Protocol, including by:

- ***Creating a media strategy to raise awareness of the decisions/recommendations of the African Commission and relevance of the Women's Rights Protocol***

Although the Women's Rights Protocol cannot always be the central subject matter of news media stories and pitches, activists can think of creative ways to link provisions in the Women's Rights Protocol to existing stories of abuse and discrimination against women. There are several tactics that activists can employ in creating a media strategy that will highlight the Women's Rights Protocol, such as:

- Organize press conferences
- Issue press releases and advisories
- Pitch stories about individual cases of violations to reporters
- Write letters to the editor in response to published articles in the papers
- Write opinion editorials
- Lobby the editorial boards of newspapers to write an editorial on the status of the government's implementation of its obligations under the Women's Rights Protocol;
- Reach out to radio and TV shows.

In reaching out to the media, some tips to keep in mind are as follows:

- Closely track news stories and learn about the previous work/interests of the reporter to be sure the subject matter of your pitch is relevant to the reporter's current field of work
- Build long-term relationships with reporters by meeting them in person. Your best allies in the media could be shows or publications that focus on women's issues or public interest issues. Target such programs and publications first
- Give yourself plenty of time to pitch an event/story. Start to issue press advisories and releases at least a week before your press conference. Advertise your event/press conference in the day book of the Associated Press (if there is one)
- TV shows look for strong visual elements, so if you are planning a rally and are looking to invite TV think visually. Make sure the event has a strong visual component, for example the use of puppets, posters, masks, etc.;
- Make use of important dates like Independence Day, International Women's Day, International Day for the Elimination of Violence against Women and Zero Tolerance Day to publish an opinion piece in the newspaper. You will have to plan a month in advance to write and pitch the piece.



*Journalist training, Zambia 2010*

### Box 7.2. Sample press release on decision of the African Commission\*

**For Immediate Release:**

Monday, 30 April 2007

Contact information: [name, phone, email]

#### **AFRICAN COMMISSION RULES IN FAVOR OF SOUTH AFRICAN SCHOOL GIRL SEXUALLY ASSAULTED BY HER TEACHER COMMISSION CALLS ON SOUTH AFRICA TO TAKE ALL APPROPRIATE MEASURES TO END TEACHER RAPE**

Cape Town - On 29 April 2007, the African Commission on Human and People's Rights reached a groundbreaking decision in favor of Sara Nefer, a 16 year old South African school girl who was raped by her teacher. The Women's Right Action Centre, which appeared as counsel for Ms. Nefer, commends the Commission for this landmark decision that will have far-reaching implications in ensuring protection for girls from teacher rape.

On 11 November 2005, Sara Nefer, a 16 year old South African girl studying at Hermanus Secondary School was raped by her teacher George Frayha. The parents reported the case to the police which took no action. The school too did little more than dismiss Mr. Frayha for two weeks, after which Ms. Nefer was once again placed under his tutelage. She was again sexually harassed by Mr. Frayha, and on 16 December 2005, he asked her to stay behind after class and raped her a second time. Ms. Nefer brought a suit against Mr. Frayha, the school, the Ministry of Justice, and Ministry of Education demanding that she be compensated, Mr. Frayha be prosecuted and preventive mechanisms be put in place so that other girls do not suffer the same fate in the future.

In May 2008, about three months after the Supreme Court of South Africa had rejected Ms. Nefer's claims and she had thereby exhausted all local remedies, the Women's Rights Action Centre submitted a formal complaint to the African Commission on behalf of Ms. Nefer urging the Commission to investigate the case and hold the government of South Africa accountable for the lapse in justice. The complaint highlighted that South Africa had violated several provisions under the Women's Rights Protocol, to which it had been a State Party, including Ms. Nefer's right to education, to dignity, and to the integrity of her person.

In its landmark decision the African Commission called on the South African government to effectively prosecute Mr. Frayha for the rapes of Ms. Nefer. The Commission acknowledged that by failing to investigate, prosecute and punish the perpetrator and protect the victim, South Africa was complicit in the crime. It recommended that South Africa reform domestic legislation by providing harsher punishment for teachers who sexually assault pupils, and ensure effective implementation of these laws. It also recommended that the Ministry of Education issue guidelines in schools, which would prevent the occurrence of rapes. "Although student rape by teachers is common not only in South Africa but regionally, it is still not acknowledged as an issue of wide public concern. We hope this groundbreaking decision will raise much needed awareness and the government of South Africa will implement the recommendations of the Commission. Such action by the government would prove that South Africa will no longer tolerate the rape of students by their teachers," said the Julie Bloggs, lawyer from the Women's Rights Action Centre.

\*Note that this sample press release is fictitious.

#### ■ ***Developing a plan for wide dissemination of the Women's Rights Protocol and decisions or recommendations of the African Commission***

A plan for dissemination of the Women's Rights Protocol should:

- Target a range of stakeholders including the judiciary, the Ministry of Justice and other key line ministries, the law commission, bar associations, schools and universities, workers' and employers' unions, and traditional and religious leaders
- Ensure that information is made available in the main languages spoken in that country
- Ensure that information is also distributed in audio or other format that will reach illiterate populations
- Place special focus on reaching communities in remote areas that are less likely to have access to such information;
- Make use of technology (such as the internet and mobile phones) and social networking sites to reach wider audiences.

### 3. Engaging the government to implement recommendations of the African Commission

Suggested elements to engage the government on steps taken to implement the recommendations include:

- Identifying the government institutions responsible for implementing the recommendations (such as the Ministry of Women's Affairs and other key ministries, law enforcement, judiciary, public health officials, public school administrators, etc.);
- Identifying all relevant stakeholders (could include civil society, teachers, doctors, religious and community leaders, etc) involved in the issue;
- Convening, or helping the government convene, a meeting of all relevant stakeholders to create coalitions and strategize about the implementation of the recommendations, including identifying obstacles;
- Creating a plan of action or strategy, with time lines, to push for implementations of the recommendations building on the strengths and advantages of each stakeholder;
- Developing a coalition to monitor implementation; and
- In the case of non-compliance, raising the matter at the public sessions of the African Commission, including through submitting a shadow report to a State report to raise the issue of non-compliance. *See Chapter VII B above.*



*Equality Now with representatives from UNIFEM, AU and Oxfam GB at a meeting on domestication of the protocol in Kigali, Rwanda, July 2009*

### 4. Training and capacity-building

Many stakeholders, including activists, NGOs, community leaders, policymakers, government officials, lawyers, magistrates, judges, law enforcement and media personnel, do not have knowledge of the African human rights system or of the Women's Rights Protocol.<sup>251</sup> Strategic trainings of such stakeholders can play a critical role in the domestication of the Women's Rights Protocol. Such trainings should not only be geared towards providing relevant information but they should also strategically explore ways in which each group can advance the rights enshrined in the Women's Rights Protocol. For example:

- Training for judges should explore ways in which judges and magistrates can make reference to relevant chapters of the Women's Rights Protocol in their rulings and so help to domesticate the Women's Rights Protocol.
- Training for lawyers and law students should aim to arm them with ways to use the Women's Rights Protocol in both domestic cases and those taken to regional bodies.
- Trainings for doctors and health officials should equip them to recognize cases of violence against women and harmful traditional practices and appropriately address and report such violations.
- Trainings for law enforcement officials should aim to sensitize such officials to gender issues and in particular all forms of violence against women, so as to ensure speedy and effective response to cases involving women.
- Trainings for, and/or engagement of, community/traditional leaders should focus on ways in which cultural practices can be harmful to women and ways of preserving and even elevating culture by getting rid of such practices – the focus of such training could be on issues such as the rights of widows, harmful traditional practices, reproductive rights and education.



*Paralegal Training in Zambia*

### 5. Changing laws and policies

NGOs and activists can also use provisions of the Women's Right Protocol in advocating for the enactment or the reform of legislation or policies.<sup>252</sup> In States where enabling legislation is required to make the

Women's Rights Protocol operational, the first push should be for such enabling legislation. See Chapter III A. 1.

Under the Women's Rights Protocol, governments are required to integrate women's rights into their policies and programmes, enact laws or amend existing legislation in order to afford greater protections to women,<sup>253</sup> and provide budgetary and other resources.<sup>254</sup> Accordingly, activists can use the Women's Rights Protocol to, among other things:

- Initiate drafting of legislation, including laws prohibiting all forms of female genital mutilation, authorizing abortion, and/or criminalising domestic violence and sexual violence;
- Conduct a review of existing legislation with a view to identifying laws that are not compatible with, or fail to provide the level of protection required under, the Women's Rights Protocol and revising discriminatory and/or inadequate laws that are not in line with the Women's Rights Protocol; and
- Assess national budgets in order to advocate for and monitor the allocation of financial resources for programmes and policies aimed at improving the rights of women as a useful advocacy strategy.<sup>255</sup>

### Box 7.3. A campaign for a law against FGM in Mali

In 2004, Equality Now initiated a "Women's Action" for the enactment of a law against female genital mutilation in Mali. In this campaign, Equality Now highlighted the case of Fanta Camara who became incontinent as a result of undergoing female genital mutilation at age 5 and continues to suffer the consequences of this procedure. In 2008, Equality Now renewed this call through a Women's Action Update that refers to Mali's obligations under the Women's Rights Protocol stating in relevant part:

*"In 2005 Mali ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which in Article 5(b) requires States Parties to prohibit FGM through legislative measures backed by sanctions. This is in addition to Article 1 of Mali's Constitution, which sets forth the right of all citizens to integrity of person and guarantees the protection of all citizens from inhumane, cruel and degrading treatment, as do other similar international obligations of Mali. Elections were held recently in Mali and a new cabinet appointed. Both the Speaker of the National Assembly, Mr. Diounounda Traoré, and the Chair of the Committee on Health, Dr. Omar Mariko, have publicly stated their opposition to FGM. Dr. Mariko, an opposition Member of Parliament, offered to draft a specific law against FGM. More advocacy is now needed to encourage the government to honour its commitments and to enact a strong law against FGM as well as supporting education and outreach to relevant communities on the dangers of FGM."*



Fanta Camara in 2005

FGM is not unique to Mali. Around the world it is estimated that more than 130 million women and girls have been subjected to FGM and 2 million girls every year, or 6,000 every day, are at risk of FGM. An extreme form of the many traditional practices used by communities to deny women equality, FGM is defended by both men and women as a rite of passage and a social prerequisite for marriage. It is used in an effort to control women's sexuality. However, 18 of the 28 African countries where FGM is practiced have adopted laws to protect girls from this harmful practice. These laws appear to be having an impact on reducing the prevalence of FGM, particularly in those countries such as Burkina Faso where the law is publicized and enforced."

Other examples of strategies on formulating domestic policy include assisting the government in:

- Formulation of anti-discrimination policy directives for government agencies;
- Creation of mechanisms and policies to handle sexual harassment cases at schools and in the work place;
- Development of policies and protocols for police intervention in, and processing of, cases of violence against women;
- Development of policies to address harmful traditional practices by traditional authorities;
- Drafting or revising government training manuals for the judiciary, military, prosecutors and the police in order to incorporate relevant provisions of the Women's Rights Protocol; and
- Working for the establishment of special desks or units devoted to women's rights in various ministries, law enforcement departments, and courts to influence the implementation of the Women's Rights Protocol.



## B. Advocacy at the African Commission

In addition to bringing complaints as described in Chapter IV, there are other methods that can be used to advocate for change at the African Commission. NGOs with observer status can advocate for change by engaging with the African Commission in several ways. These include:

- Working with and supporting the activities of the Special Rapporteur on the Rights of Women in Africa;
- Raising issues affecting the rights of women in Africa during the public sessions of the African Commission;
- Submitting shadow reports to State Party reports drawing the attention of the African Commission to violations of the rights of women<sup>256</sup> see Chapter III B; and
- Participating in the NGO Forum.

### Box 7.4. NGO Forum<sup>257</sup>

Before each session of the African Commission, the Gambia-based Africa Centre for Democracy and Human Rights Studies organizes a two and a half day NGO Forum, in collaboration with the African Commission. The main objectives of this event are to:

- foster closer collaboration and co-operation among NGOs and the African Commission for promotion and protection of human rights in Africa;
- provide a discussion platform for organizations working on democracy and human rights issues in the continent; and
- promote inter-regional/organizational networking for the implementation of decisions of the Forum as contained in the Communiqué of the Africa Centre for Democracy and Human Rights.

Members of the African Commission attend and participate in the Forum, which culminates in the formulation of resolutions that are submitted to the African Commission for consideration. Arguably, the Forum's resolutions influence the African Commission's resolutions on human rights situation in specific countries or themes.

NGOs can work jointly in coalitions or individually on specific issues by organizing workshops, seminars, book launches or panel discussions ahead of, or parallel to, the African Commission session. The sessions which are attended by States Parties, interested parties, NGOs and the media, provide a useful space to encourage debate on women's rights issues.

<sup>245</sup> For advocacy strategies on the Women's Rights Protocol, See Firoz Manji, Faiza Jama Mohammed and Roselynn Musa (eds), *Breathing life into the African Union Protocol on Women's Rights in Africa*, Solidarity for African Women's Rights and African Union Commission, Directorate of Women, Gender and Development, Fahamu-Networks for Social Justice, 2006; see also Center for Reproductive Rights, *The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights*, Briefing Paper, February 2006, available at <http://reproductiverights.org>.

<sup>246</sup> See for example activities of Solidarity for African Women's Rights (SOAWR) at <http://www.soawr.org> and Fahamu-Networks for Social Justice around the ratification of the Women's Rights Protocol at <http://www.fahamu.org/>

<sup>247</sup> Faiza Jama Mohamed, "African Union Protocol on the Rights of Women in Africa: The SOAWR Campaign" in Firoz Manji, Faiza Jama Mohammed and Roselynn Musa (eds), *Breathing life into the African Union Protocol on Women's Rights in Africa*, supra note 1.

<sup>248</sup> Chidi Anselm Odinkalu and Ibrahim Kane, 'An assessment of Information and Training Resources,' in Abdullahi Ahmed An-Na'im (ed), *Universal Rights. Local Remedies*, London: Interights/Afronet/GTZ, 1999, ISBN: 1 869940 07 5, pp. 97-8.

<sup>249</sup> Mary Wandia, 'Institutionalising strategies for the Protocol,' in Firoz Manji, Faiza Jama Mohammed and Roselynn Musa (eds), *Breathing life into the African Union Protocol on Women's Rights in Africa*, supra note 1.

<sup>250</sup> Women's Rights Protocol, Article 2.

<sup>251</sup> Women's Rights Protocol, Article 26(2).

<sup>252</sup> See, e.g., the South African experience in Debbie Budlender (ed), *The Women's Budget*, Cape Town: Institute for Democracy in South Africa, 1996.

<sup>253</sup> Ahmed Motala, 'Non-governmental organisations in the African system,' in Malcolm D Evans and Rachel Murray (eds), *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2000*, Cambridge: Cambridge University Press, 2002, pp 259-62.

<sup>254</sup> More information about the NGO Forum can be found at [www.acdhr.org](http://www.acdhr.org).

# Conclusion

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The Women's Rights Protocol provides an opportunity for advocates to stimulate changes in discriminatory laws and practice, lobby for the enactment of new laws and policies on women's rights and enhance the rights enjoyed by women in Africa.

There is an expansive set of rights enshrined in the Women's Rights Protocol, and now that it is finally in place, strong advocacy is critical to illustrate the relevance and applicability of these rights within the various African States. The popularization of the Women's Rights Protocol presents the possibility to reopen and refresh dialogue on women's rights issues in Africa. Its domestication is important for the realization of the rights enshrined, at the local and national levels.

This manual is intended as a resource to help and guide the process of selecting cases and strategies to make the Women's Rights Protocol an effective tool to safeguard the human rights of women and girls and/or ensure that justice is done when violations occur. We hope that it will be a useful tool in ending discrimination and violence against women and girls.

A copy of this manual is available on Equality Now's website at [www.equalitynow.org](http://www.equalitynow.org) and the Solidarity for African Women's Rights website at [www.soawr.org](http://www.soawr.org). Please let us know, at [equalitynownairobi@equalitynow.org](mailto:equalitynownairobi@equalitynow.org) if this manual is useful and how it can be improved. Please also let us know of any cases where the Women's Rights Protocol is being or has been used.

## Appendix A: Protocol 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, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

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

**Noting** that Articles 60 and 61 of the African Charter on Human and Peoples' Rights recognize 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 recognized and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the African Charter on the Rights and Welfare of the Child, and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights;

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

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

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

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

**Recognizing** 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, realized and protected in order to enable them to enjoy fully all their human rights;

**Have Agreed as Follows:**

### Article 1 Definitions

For the purpose of the present Protocol:

- a) "African Charter" means the African Charter on Human and Peoples' Rights;
- b) "African Commission" means the African Commission on Human and Peoples' Rights;

- c) “Assembly” means the Assembly of Heads of State and Government of the African Union;
- d) “AU” means the African Union;
- e) “Constitutive Act” means the Constitutive Act of the African Union;
- f) “Discrimination against women” means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life;
- g) “Harmful Practices” means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;
- h) “NEPAD” means the New Partnership for Africa’s Development established by the Assembly;
- i) “States Parties” means the States Parties to this Protocol;
- j) “Violence against women” means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war;
- k) “Women” means persons of female gender, including girls.

## **Article 2**

### **Elimination of Discrimination Against Women**

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

## **Article 3**

### **Right to Dignity**

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

## **Article 4**

### **The Rights to Life, Integrity and Security of the Person**

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.
2. States Parties shall take appropriate and effective measures to:
  - a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
  - b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
  - c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
  - d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against women;
  - e) punish the perpetrators of violence against women and implement programs 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 recognized 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, medicalization and para-medicalization of female genital mutilation and all other practices in order to eradicate them;
- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;
- d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

### **Article 6** **Marriage**

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

- a) no marriage shall take place without the free and full consent of both parties;
- b) the minimum age of marriage for women shall be 18 years;
- c) monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;
- d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;
- e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
- f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname;
- g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;
- h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;
- i) a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
- j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

### **Article 7** **Separation, Divorce and Annulment of Marriage**

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

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

### **Article 8** **Access to Justice and Equal Protection before the Law**

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

- a) effective access by women to judicial and legal services, including legal aid;
- b) support to local, national, regional and continental initiatives directed at providing women access to legal services,

- including legal aid;
- c) the establishment of adequate educational and other appropriate structures with particular attention) to women and to sensitise everyone to the rights of women;
- d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;
- e) that women are represented equally in the judiciary and law enforcement organs;
- f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

### **Article 9** **Right to Participation in the Political and Decision-Making Process**

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:
  - a) women participate without any discrimination in all elections;
  - b) women are represented equally at all levels with men in all electoral processes;
  - c) women are equal partners with men at all levels of development and implementation of State policies and development programs.
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 programs 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 favor 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 organization of programs 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 recognized 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 recognize 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) recognize 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) recognize that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the State and the private sector have secondary responsibility;
- m) take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

### **Article 14** **Health and Reproductive Rights**

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

- a) the right to control their fertility;
- b) the right to decide whether to have children, the number of children and the spacing of children;
- c) the right to choose any method of contraception;
- d) the right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS;
- e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices;
- f) the right to have family planning education.

2. States Parties shall take all appropriate measures to:

- a) provide adequate, affordable and accessible health services, including information, education and communication programs to women especially those in rural areas;
- b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
- c) protect the reproductive rights of women by authorizing 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 fetus.

### **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 measures to:

- a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;
- b) establish adequate systems of supply and storage to ensure food security.

### **Article 16** **Right to Adequate Housing**

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

**Article 17**  
**Right to Positive Cultural Context**

1. Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.
2. States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.

**Article 18**  
**Right to a Healthy and Sustainable Environment**

1. Women shall have the right to live in a healthy and sustainable environment.
2. States Parties shall take all appropriate measures to:
  - a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;
  - b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control;
  - c) protect and enable the development of women's indigenous knowledge systems;
  - d) regulate the management, processing, storage and disposal of domestic waste;
  - e) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

**Article 19**  
**Right to Sustainable Development**

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

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

**Article 20**  
**Widows' Rights**

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

- a) that widows are not subjected to inhuman, humiliating or degrading treatment;
- b) 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 the person of her choice.

**Article 21**  
**Right to Inheritance**

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

**Article 22**  
**Special Protection of Elderly Women**

The States Parties undertake to:

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



### **Article 23**

#### **Special Protection of Women with Disabilities**

The States Parties undertake to:

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

### **Article 24**

#### **Special Protection of Women in Distress**

The States Parties undertake to:

- a) ensure the protection of poor women and women heads of families including women from marginalised population groups and provide them 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 favorable provisions for the realization 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.

**Adopted by the 2nd Ordinary Session of the Assembly of the Union**  
**Maputo, 11 July 2003**

## Appendix B: African Charter on Human and Peoples' Rights

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### Preamble

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

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

**Considering** the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and 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 Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;

**Firmly convinced** of their duty to promote and protect human and peoples' rights and freedoms 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 Organization of African Unity, parties to the present Charter shall recognize 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 recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, 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 defense, including the right to be defended by counsel of his choice;
  - d) The right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

#### **Article 8**

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

#### **Article 9**

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

#### **Article 10**

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

#### **Article 11**

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

#### **Article 12**

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

### **Article 13**

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of 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. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

### **Article 17**

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

### **Article 18**

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

### **Article 19**

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

### **Article 20**

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

### **Article 21**

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. States Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.
5. States Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

### **Article 22**

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

### **Article 23**

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, States Parties to the present Charter shall ensure that:
  - a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State Party to the present Charter;
  - b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State Party to the present Charter.

### **Article 24**

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

### **Article 25**

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

### **Article 26**

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

## **Chapter II Duties**

### **Article 27**

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

### **Article 28**

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

## **Article 29**

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need.
2. To serve his national community by placing his physical and intellectual abilities at its service.
3. Not to compromise the security of the State whose national or resident he is.
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened.
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to his defense 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 Organization of the African Commission on Human and Peoples' Rights**

### **Article 30**

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

### **Article 31**

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

### **Article 32**

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

### **Article 33**

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

### **Article 34**

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

### **Article 35**

1. The Secretary-General of the Organization of African Unity shall invite States Parties to the present Charter at least four months before the elections to nominate candidates.
2. The Secretary-General of the Organization of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections.

### **Article 36**

The members of the Commission shall be elected for a six year period and shall be eligible for re-election. However, the term of

office of four of the members elected at the first election shall terminate after two years and the term of office of three others, at the end of four years.

#### **Article 37**

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

#### **Article 38**

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

#### **Article 39**

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

#### **Article 40**

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

#### **Article 41**

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

#### **Article 42**

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

#### **Article 43**

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

#### **Article 44**

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

## **Chapter II Mandate of the Commission**

#### **Article 45**

The functions of the Commission shall be:

1. To promote human and peoples' rights and in particular:



- a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights and, should the case arise, give its views or make recommendations to Governments;
- b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation;
- c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.

3. Interpret all the provisions of the present Charter at the request of a State Party, an institution of the OAU or an African Organization recognized by the OAU.

4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

### **Chapter III Procedure of the Commission**

#### **Article 46**

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

#### **Communication from States**

#### **Article 47**

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

#### **Article 48**

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

#### **Article 49**

Notwithstanding the provisions of Article 47, if a State Party to the present Charter considers that another State Party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary-General of the Organization of African Unity and the State concerned.

#### **Article 50**

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

#### **Article 51**

1 The Commission may ask the 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 States Parties to the present Charter and transmit them to the members of the Commission, who shall indicate which Communications should be considered by the Commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

#### **Article 56**

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 Organization of African Unity or with the present Charter.
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity.
4. Are not based exclusively on news disseminated through the mass media.
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter.
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 Organization of African Unity or the provisions of the present Charter.

#### **Article 57**

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

#### **Article 58**

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

#### **Article 59**

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

## Chapter IV Applicable Principles

### Article 60

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

### Article 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by Member States of the Organization of African Unity, African practices consistent with international norms on Human and Peoples' Rights, customs generally accepted as law, general principles of law recognized by African States as well as legal precedents and doctrine.

### Article 62

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

### Article 63

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

## Part III General Provisions

### Article 64

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

### Article 65

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

### Article 68

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

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

## Appendix C: The Rules of Procedure for the Commission (2010)

### Preliminary Provisions

#### *Rule 1--Objective*

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

#### *Rule 2--Definitions*

For the purpose of these Rules:

- “**African Charter**” refers to the African Charter on Human and Peoples' Rights.  
“**African Children's Charter**” refers to the African Charter on the Rights and Welfare of the Child.  
“**African Commission**” or “**Commission**” refers to the African Commission on Human and Peoples' Rights.  
“**African Court Protocol**” refers to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.  
“**African Court**” refers to the African Court on Human and Peoples' Rights.  
“**Amendment to a proposed motion**” is an addition to, deletion from or revision of part of that motion.  
“**Assembly**” refers to the Assembly of Heads of State and Government of the African Union.  
“**Bureau**” refers to the Chairperson and Vice Chairperson.  
“**Chairperson**” refers to the Chairperson of the African Commission on Human and Peoples' Rights.  
“**Child Rights Committee**” refers to the African Committee of Experts on the Rights and Welfare of the Child.  
“**Commissioner**” refers to a member of the African Commission on Human and Peoples' Rights.  
“**Day**” shall be understood to be a natural day.  
“**Executive Council**” refers to the Executive Council of the African Union.  
“**Member state**” refers to a Member State of the African Union.  
“**Secretary**” refers to the Secretary to the African Commission on Human and Peoples' Rights.  
“**Serious or massive violations**” refers to grave human rights violations as distinguished by their scale and importance.  
“**Session**” refers to the statutory meetings of the Commission. This includes Ordinary and Extraordinary sessions.  
“**Specialized organs**” refers to specialized organs put in place by the United Nations and African Union.  
“**State Party**” refers to African States that have ratified the African Charter on Human and Peoples' Rights.  
“**Subsidiary mechanism**” refers to any mechanism established in accordance with Rule 23 of these Rules.  
“**Third party**” refers to any other party than the complaining or defending parties.  
“**Union**” refers to the African Union.  
“**Vice-Chairperson**” refers to the Vice-Chairperson of the African Commission on Human and Peoples' Rights.  
“**Working language**” refers to the working languages of the African Union.

### Part One: General Rules

#### Chapter I: Status and Composition

##### *Rule 3--Status*

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

##### *Rule 4--Composition*

1. In conformity with Article 31 of the African Charter, the Commission shall consist of eleven (11) members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights, particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity.

## Chapter II: Membership

### *Rule 5--Term of office*

1. Members of the Commission are elected for six years and shall be eligible for re-election.
2. If a member of the Commission is re-elected at the expiry of his or her term of office, or elected to replace a member whose term of office has expired or will expire, the term of office shall begin from that expiry date.
3. In conformity with Article 39(3) of the African Charter, the member of the Commission elected to replace a member whose term has not expired, shall complete the term of his or her predecessor. However, if the remaining term of office is less than six months, there shall be no replacement.

### *Rule 6--Order of precedence*

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

### *Rule 7--Incompatibility*

1. The position of member of the Commission is incompatible with any activity that might interfere with the independence or impartiality of such a member or demands of the office such as a member of government, a Minister or under-secretary of State, a diplomatic representative, a director of a ministry, or one of his subordinates, or the legal adviser to a foreign office or any other political binding function or participate in any activity of the nature that will compromise the independence and impartiality.
2. The Bureau of the Commission shall ensure that the requirements in Rule 7(1) above are enforced in accordance with Articles 31(1 & 2) and 39(2) of the African Charter.
3. In the case of incompatibility, the Chairperson of the Commission shall inform the Chairperson of the African Union Commission, who shall declare the seat vacant.

### *Rule 8--Cessation of function*

1. If in the unanimous opinion of the other members of the Commission, a member has stopped discharging his or her duty for any reason other than temporary absence, the Chairperson of the Commission shall inform the Chairperson of the African Union Commission, who shall declare the seat vacant.
2. A member of the Commission may resign from his or her position at any time. He or she shall do so through a written notification addressed to the Chairperson of the Commission who shall transmit it to the Chairperson of the African Union Commission.
3. The resignation shall take effect three months from the date of submission of the letter of resignation.
4. The Chairperson of the African Union Commission shall upon receipt of the notification, declare the seat vacant. The vacancy shall be effective from the date the resignation takes effect.
5. In the case of death of a member of the Commission, the Chairperson shall immediately inform the Chairperson of the African Union Commission who shall declare the seat vacant from the date of the death.
6. Every seat declared vacant in conformity with the present Rule shall be filled in accordance with paragraph 3 of Article 39 of the African Charter.

### *Rule 9--Solemn declaration*

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

## Chapter III: Bureau of the Commission

### *Rule 10--Composition of the Bureau*

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

### ***Rule 11--Election of the Bureau***

1. The Commission shall elect from among its members a Chairperson and a Vice-Chairperson.
2. Election shall be held by secret ballot. Only members present shall vote. A member who obtains a simple majority of the votes of the members of the Commission present and voting shall be elected.

### ***Rule 12--Duration of the term of the members of the Bureau***

The members of the Bureau of the Commission shall be elected for a period of two years. They shall be eligible for re-election only once. None of them may, however, exercise his or her functions if he or she ceases to be a member of the Commission.

### ***Rule 13--Powers and functions of the Bureau***

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

### ***Rule 14—Powers and functions of the Chairperson***

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

### ***Rule 15--Powers and functions of the Vice-Chairperson***

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

### ***Rule 16--Resignation, vacancy and replacement***

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

## **Chapter IV: Secretariat to the Commission**

### ***Rule 17--Composition, Structure and Status of the Secretariat***

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

### ***Rule 18--Functions of the Secretary to the Commission***

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

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

### ***Rule 19--Financial responsibility***

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

### ***Rule 20--Financial Rules***

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

### ***Rule 21--Estimate***

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

### ***Rule 22--Confidentiality of the work of the Commission***

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

## **Chapter V: Subsidiary Mechanisms**

### ***Rule 23--Special Rapporteurs, Committees and Working Groups***

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

### ***Rule 24--Applicable rules for Subsidiary Mechanisms***

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

## **Chapter VI: Sessions**

### ***Rule 25--General principles***

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

### ***Rule 26--Ordinary Sessions***

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

### ***Rule 27--Extraordinary Sessions***

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

### ***Rule 28--Place of meetings***

1. The sessions of the Commission shall be held at its headquarters, or in the territory of any other State Party which invites the Commission.
2. In the event that a State Party invites the Commission to hold a session in its country, that State Party shall sign an agreement with the Commission to host the session of the Commission, which agreement shall vest the State Party with the responsibility for all additional expenses incurred by the Commission as a result of the session being held outside its headquarters, in conformity with the relevant rules of the African Union.
3. A State Party offering to host a session of the Commission shall not be under any suspension of the African Union. Any country wishing to host a session of the Commission should commit itself to respecting the provisions of Article 62, and should comply with all the recommendations of the African Commission, where necessary.
4. The Commission may, in consultation with the Chairperson of the African Union Commission, hold a session at the headquarters of the African Union. The sharing of costs for such session shall be as agreed with the African Union Commission.
5. The Commission may hold joint sessions in consultation with the African Court on Human and Peoples' Rights, the Committee of Experts on the Rights and Welfare of the Child, or any other African regional human rights organ.

### ***Rule 29--Notification of the Opening Date of the Sessions***

1. The Secretary shall inform members of the Commission of the date and venue of each session. This notice shall be sent, in the case of an Ordinary Session, at least sixty (60) days before the Session unless exceptional circumstances require otherwise.
2. In the case of an Extraordinary Session, the notice shall be sent as soon as possible before the beginning of the session.

### ***Rule 30--Quorum***

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

### ***Rule 31--Private Sessions***

1. Private Sessions of the Commission shall be held in private and deliberations shall remain confidential.
2. During a Private Session, the Secretary to the Commission, members of the Secretariat and persons providing technical or secretarial assistance to the Commission shall be present unless the Commission decides otherwise.
3. The Commission shall ensure the confidentiality of all case files, including pleadings. This provision shall not be interpreted to prohibit the prompt sharing of pleadings with the parties to a Communication.
4. The Chairperson of the Commission may communicate to the public general information on deliberations in Private Sessions, subject to the exigencies of Article 59 of the Charter and any special directions by the Commission.

## **Chapter VII: Agenda**

### ***Rule 32--Provisional Agenda***

1. The Provisional Agenda for each Ordinary Session shall be drawn up by the Secretary in consultation with the Bureau of the Commission and in accordance with the provisions of the Charter and the present Rules of Procedure.
2. The Provisional Agenda shall include but not be limited to, items on "Communications from States" and "Other Communications" in conformity with the provisions of Articles 48, 49, and 55 of the Charter.
3. Pursuant to paragraph 1 of this Rule, the Provisional Agenda may also include items proposed by:
  - a. The Commission at a previous Session;
  - b. The Chairperson of the Commission or a member of the Commission;
  - c. A State Party to the African Charter;



- d. Any African Union organ;
  - e. An organisation recognized by the African Union, a national human rights institution with affiliate status or a non-governmental organisation with observer status;
  - f. A specialized institution of the United Nations of which the State Parties to the African Charter are members.
4. The items to be included in the provisional agenda under sub-paragraphs d, e and f of paragraph 3 above shall be communicated to the Secretary, accompanied by supporting documents, not later than sixty (60) days before the opening of the Session at which these items are to be discussed.
  5. The decision to include an item on the provisional agenda is taken by the Bureau of the Commission. If the request is accepted, the Secretary shall include the item on the Provisional Agenda of the session and inform the requesting party of this decision within one month.
  6. The Provisional Agenda of an Extraordinary Session of the Commission shall include only the items in the notification issued by the Chairperson.

### ***Rule 33--Transmission and distribution of the Provisional Agenda***

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

### ***Rule 34--Adoption of the Agenda***

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

### ***Rule 35--Revision of the Agenda***

The Commission may, during the Session, revise its Agenda.

## **Chapter VIII: Language**

### ***Rule 36--Working Languages***

1. The Working Languages of the Commission and all its subsidiary mechanisms are those of the African Union.
2. The proceedings of the Commission shall be conducted in any of the Working Languages of the African Union.
3. Any person addressing the Commission in a language other than one of the Working Languages shall ensure the interpretation into one of the Working Languages of the Commission. The interpreters of the Commission shall take this interpretation as the source language for their interpretation in the other Working Languages of the Commission.

## **Chapter IX: Records and Reports**

### ***Rule 37--Records and reports of Sessions***

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

### ***Rule 38--Publication and distribution of Session Reports***

1. The Final Report of the Public Session shall be posted on the website unless the Commission decides otherwise.
2. The Final Report of the private sessions of the Commission shall be distributed to all members of the Commission.

## **Chapter X: Conduct of Business**

### ***Rule 39--Additional powers of the Chairperson***

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

### ***Rule 40--Points of Order***

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

### ***Rule 41--Adjournment of debates***

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

### ***Rule 42--Time limit accorded to speakers***

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

### ***Rule 43--Closing the list of speakers***

1. The Chairperson of the Commission may, before the beginning of a debate, read out the list of speakers and with the consent of the Commission, declare the list closed.
2. The Chairperson of the Commission may, however, accord the right of reply to any speaker if a speech delivered after the list has been closed makes this desirable.

### ***Rule 44--Closure of debate***

1. A member of the Commission may, at any time during a debate, move for the closure of the debate on the item under discussion, even if the other members of the Commission or representatives have expressed the desire to take the floor. The authorization to take the floor on the closure of the debate shall be given only to two speakers for and against the closure, after which the motion shall immediately be put to a vote.
2. When the debate on an item is concluded, the Chairperson of the Commission shall declare the debate closed.

### ***Rule 45--Adjournment or closure of session***

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

### ***Rule 46--Order of the Motions***

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

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

### ***Rule 47--Submission of motion and amendment of substance***

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

### ***Rule 48--Withdrawal and re-submission of a motion***

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

### ***Rule 49--Oral interventions***

1. No one may take the floor at a meeting of the Commission without the authorization of the Chairperson of the Commission. The Chairperson of the Commission shall grant the floor to speakers in the order in which it has been requested.
2. Oral intervention shall deal solely with the matter under discussion by the Commission and the Chairperson of the Commission shall call to order any speaker whose remarks are irrelevant.
3. The Chairperson of the Commission may limit the time accorded to speakers as well as the number of interventions in accordance with the present Rules of Procedure. The time limit for each speaker shall be determined by the Chairperson.

### ***Rule 50--Right of reply***

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

## **Chapter XI: Voting**

### ***Rule 51--Right to vote***

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

### ***Rule 52--Required majority***

1. Except as otherwise provided by the African Charter or the present Rules of Procedure, decisions of the Commission shall be taken by a simple majority of the members present and voting.
2. For the purpose of the Rules of Procedure, the expression "members present and voting" shall mean members voting for or against. The members who shall abstain from voting shall be considered as non-voting members.

### ***Rule 53--Method of voting***

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

### ***Rule 54--Explanation of vote***

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

### ***Rule 55--Rules to be observed while voting***

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

### ***Rule 56--Elections***

Elections shall be held by secret ballot unless the election is for a post for which only one candidate has been proposed and that candidate has been agreed upon by the members of the Commission.

## **Chapter XII: Motions and Proposals**

### ***Rule 57--Division of proposals***

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

### ***Rule 58--Order of voting on proposals***

1. If two or more proposals are made on the same matter, the Commission, unless it decides otherwise, shall vote on these proposals in the order in which they were submitted.
2. After each vote, the Commission may decide whether it shall put the next proposal to a vote.
3. However, motions which are not on the substance of a proposal shall be voted upon before the said proposals.

## **Chapter XIII: Reports of the Commission**

### ***Rule 59--Activity Reports***

1. The Commission shall submit an Activity Report of its promotion, protection and other activities to each Ordinary Session of the Assembly.
2. The content of the Activity Report of the Commission to be presented to the Assembly by its Chairperson or his/her representative shall be determined by the Commission.
3. Once the Activity Report is considered by the Assembly, the Secretary shall publish it, including posting on the website, and shall transmit it to State Parties, African Union organs, National Human Rights Institutions and Civil Society Organizations.

### ***Rule 60--Mission Reports***

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

### ***Rule 61--Distribution of reports and other official documents***

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

## **Chapter XIV: Relationship with State Parties, Intergovernmental Institutions, National Human Rights Institutions, Non-Governmental Organizations, and Other Partners**

### ***Rule 62--General Principle***

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

### ***Rules 63--Discussions on Human Rights Situations***

1. In conformity with Rule 32(3) of the present Rules of Procedure, any State Party, African Union organ, specialized agency or body of the United Nations or other organisation recognized by the African Union, national human rights institution with affiliate status, or non-governmental organisation with observer status, may request that the African Commission include in its agenda for an Ordinary Session a discussion on any human rights issue. Such a request shall be made sixty (60) days in advance of the session at which the discussion is to take place.
2. Where the discussion requires the presence of other partners and parties, the requesting party shall so indicate in the documents that it presents to the Commission pursuant to Rule 34(2) of the present Rules. If the Bureau of the Commission decides that the participation of additional partners and parties is necessary, it shall invite them to attend and transmit to them all relevant documentation and information on the proposed discussion from the requesting party.

### ***Rule 64--Participation of States Parties***

1. The Commission or its subsidiary mechanisms may invite any State Party to participate in the discussion of any issue that shall be of particular interest to that State.
2. A State thus invited shall have no voting right, but may submit proposals which may be put to a vote at the request of any member of the Commission or of the subsidiary mechanism concerned.

### ***Rule 65--Participation of specialized agencies, intergovernmental organisations and United Nations bodies***

1. Specialized agencies, intergovernmental organisations and United Nations bodies may take part in the Public Sessions of the Commission.
2. The Commission may permit representatives of these bodies to make oral or submit written statements during its session.
3. Pursuant to Articles 45(1) and 46 of the African Charter, the Commission may invite these bodies to submit reports on the implementation of the African Charter in areas of common concern.
4. The Commission may take part in the activities of specialized agencies, intergovernmental organisations and United Nations bodies and agree through a Memorandum of Understanding on areas of common concern.

### ***Rule 66--Donors***

1. Subject to Article 41 of the Charter, the Commission may negotiate financial agreements with donors. These financial agreements shall be signed by the Secretary after approval by the Bureau. Original copies of such agreements shall be kept at the Secretariat of the Commission.
2. The Commission shall inform the African Union Commission of any proposal to accept funds from any donor including details of the amount of money to be provided, the project or projects for which the funds are sought and any condition of receipt of such funding.
3. Such agreements shall specify expected outcomes, monitoring and evaluation of the project funded by the donor.
4. The Secretary shall prepare and submit reports on the implementation of the agreement to the Commission at each Ordinary Session.
5. Donors may be invited to attend sessions of the Commission.

### ***Rule 67--National Human Rights Institutions***

1. National Human Rights Institutions established by States Parties and functioning according to internationally and regionally recognized norms and standards may be granted affiliate status with the Commission.
2. National Human Rights Institutions having affiliate status with the Commission shall enjoy the rights and perform the duties stipulated in the Resolution on the Granting of Affiliate Status to National Human Rights Institutions in Africa.
3. The African Commission shall grant affiliate status to only one National Human Rights Institution in each State Party.
4. The African Commission may invite other National Human Rights Institutions that do not meet the criteria provided in paragraphs 1 and 2 of the present Rules to attend its sessions as observers.

### ***Rule 68--Non-governmental organisations***

1. Non-governmental organisations working in the field of human rights in Africa may be granted observer status with the Commission.
2. Non-governmental organisations having observer status with the Commission shall enjoy the rights and perform the duties stipulated in the Resolution on the Granting of Observer Status.
3. Non-Governmental organisations with observer status with the Commission shall fulfil their obligations stipulated under the Resolution referred to in paragraph 2 of the present Rules.

## **PART TWO: Promotion Activities**

### **Chapter I: General Provisions**

#### ***Rule 69--Program of promotion activities***

The Commission shall adopt and carry out a program of promotion activities to give effect to its mandate under the African Charter, in accordance with Article 45(1).

#### ***Rule 70--Promotion missions***

1. The Commission shall carry out promotion missions, to States Parties.
2. Promotion missions shall be governed by the Commission's Guidelines for Missions as well as the Format for Pre-mission Reports.
3. For each promotion mission, the Commission shall develop terms of reference bearing in mind the human rights situation in the country.

### ***Rule 71--Other promotion activities***

1. The Commission shall undertake promotion activities other than promotion missions, including seminars, conferences, symposia etc.
2. These activities shall be undertaken either on its own or in collaboration with partners.
3. Where the Commission receives an invitation to participate in any promotion activity, the Secretary shall inform the Bureau immediately, and the latter shall decide on the course of action.

### ***Rule 72--Activity Reports of Commissioners***

At each Ordinary Session, each member of the Commission shall submit a written report of his or her promotion activities undertaken during the inter-session.

## **Chapter II: The State Reporting Procedure Under Article 62 of The Charter**

### ***Rule 73--Contents of State Reports***

1. Pursuant to Article 62 of the African Charter and other relevant legal instruments which supplement them, including the Protocol to the African Charter on the Rights of Women in Africa in its Article 26, States Parties shall submit reports in accordance with the guidelines of the Commission, on the measures they have taken to give effect to the provisions of the African Charter and on the progress they have made. Reports shall indicate the challenges, if any, affecting the implementation of the African Charter and its relevant protocols.
2. The Secretary to the Commission shall send to States Parties the Guidelines on State Reports.

### ***Rule 74--Transmission of State Reports***

1. Upon receipt of a State Report, the Secretary shall upload the Report on the Commission's website and indicate when the Report will be examined by the Commission.
2. Institutions, organizations or any interested party wishing to contribute to the examination of the Report and the human rights situation in the country concerned, shall send their contributions, including shadow reports, to the Secretary at least 60 days prior to the examination of the Report.
3. The Secretary may also invite specific institutions to submit information relating to the state report within a time limit that he/she may specify.

### ***Rule 75 --Consideration of Reports***

1. The Chairperson of the Commission shall, through the Secretary inform States Parties of the opening date and venue of the Session at which their respective reports shall be considered.
2. States Parties shall be represented in the sessions of the Commission at which their reports are to be considered.
3. Representatives of States Parties shall respond to the questions prepared by the Commission, and questions of the members of the Commission and provide when necessary, any other information requested during or after the session.
4. If a State Party fails to send a representative to the session of the Commission at which its report is to be examined, consideration of the report shall be rescheduled for the next session. If, at the said session, the concerned State Party, after due notification, fails to send a representative, the Commission shall consider the State Report.
5. During the consideration of the state report submitted by a State Party in accordance with Article 62 of the Charter, the Commission shall explore all the pertinent information relating to the human rights situation in the State concerned, including statements and shadow reports from National Human Rights Institutions and NGOs.

### ***Rule 76--Non-submission of Reports***

1. The Commission shall, at the beginning of each year, inform the States Parties which are not up to date with their obligations under Article 62 of the deadlines of their submission of their reports and the date at which they are expected to comply.
2. At the beginning of each Ordinary Session, the Secretary shall inform the Commission of all cases of non-submission of reports or of additional information requested by the Commission. In such cases, the Chairperson of the Commission may send a reminder, through the Secretary, to the State Party concerned.
3. The Activity Report of the Commission shall point out the status of initial and Periodic Report of States Parties.

### ***Rule 77--Concluding Observations***

1. The Commission shall, after consideration of the report of a State Party, formulate Concluding Observations.
2. The Concluding Observations of the Commission shall comply with the Guidelines of the Commission on Concluding Observations.
3. The Concluding Observations shall be transmitted to the State Party concerned within thirty (30) days after the session at which the Observations were adopted. They shall form part of the Commission's activity report and be posted on the website of the Commission after the adoption of the Activity Report.

### ***Rule 78--Follow-up of implementation of Concluding Observations of State Reports***

1. In the Concluding Observations, the Commission shall specify, if necessary, the issues that require urgent attention on the part of the State Party. The date of the presentation of the next Periodic Report by the State Party shall be included in the Concluding Observations.
2. The Members of the Commission shall ensure the follow-up on the implementation of the recommendations from the Concluding Observations within the framework of their promotion activities to the States Parties concerned.
3. The Commission shall also transmit to the Assembly the observations mentioned in Rule 77(1), with copies of the reports it has received from the States Parties as well as the comments supplied by the latter, if any.

## **PART III: Protection Activities**

### **Chapter I: Matters of Emergency**

#### ***Rule 79--Decision on Matters of Emergency***

1. The Commission shall treat a situation as a matter of emergency under Article 58(3) of the African Charter, when:
  - a. it is one of serious or massive human rights violations;
  - b. it presents the danger of irreparable harm or requires urgent action to avoid irreparable damage;
2. When a situation of emergency arises during a session of the Commission, the decision to treat it as such shall be taken by the Commission.
3. When a situation arises during the Commission's inter-session period, the decision to treat it as a matter of emergency shall be taken by the Bureau of the Commission, which shall keep other members of the Commission informed and present a report on the situation at the next session of the Commission.

#### ***Rule 80--Action on Matters of Emergency***

1. When the Commission has decided to treat a situation as one of emergency, it shall:
  - a. Draw the attention of the Chairperson of the Assembly of Heads of State and Government of the African Union to the matter in accordance with Article 58(3) of the Charter;
  - b. Draw the attention of the Peace and Security Council to the matter in accordance with Article 19 of the Protocol on Peace and Security Council;
  - c. Inform the Executive Council;
  - d. Inform the Chairperson of the African Union Commission of the matter.
2. The Commission as well as its subsidiary mechanisms under the Charter and present Rules, shall also take any appropriate action, including Urgent Appeals.

### **Chapter II: Protection Missions**

#### ***Rule 81--General provisions***

1. If it deems it necessary and advisable, the Commission may carry out a protection mission to a State Party.
2. States Parties shall provide the Commission with an open invitation for protection missions and respond promptly to any request by the Commission for authorisation to undertake a protection mission.
3. Any protection mission agreed upon between the Commission and a State Party shall be conducted in accordance with the Commission's Guidelines for Missions.
4. The expenses incurred by a mission undertaken at the request of any AU organ shall be borne by such organ

#### ***Rule 82--State Party's obligations***

- During a protection mission of the Commission the State Party concerned shall:
- a. Commit itself not to take any kind of reprisal against any persons or entities who provide the mission with information, testimony or evidence;
  - b. Guarantee the free movement of the members of the mission throughout the territory of the country, in this regard, provide corresponding facilities, including any necessary internal authorisation;
  - c. Provide the mission of the Commission with any document that the latter may consider necessary for the preparation of its reports;
  - d. Take necessary security measures to protect members of the delegation and also to guarantee the smooth running of the mission.

## **Chapter III: Consideration of Communications**

### **Section 1 General Provision**

#### ***Rule 83--Records of Communications under Articles 47, 48, 49 and 55 of the Charter***

1. The Commission shall receive or note as the case may be, Communications or notifications under Articles 47, 48, 49 and 55 of the Charter.
2. The Secretary shall maintain a record of each Communication, with a reference number, the names of the parties, the date of registration or notification, and the date of decision or closure of each Communication.

#### ***Rule 84--Situation of serious or massive violation of human rights***

1. When the Commission considers that one or more Communications relate to a series of serious or massive human rights violations, it shall bring the matter to the attention of the Assembly of Heads of State and Government of the African Union and the Peace and Security Council of the African Union.
2. The Commission may also, in conformity with Article 5 of the African Court Protocol and Rule 118(3) of the present Rules of Procedure, refer the matter to the African Court.

#### ***Rule 85--Other interventions***

The Commission may decide to solicit or accept interventions by parties other than the Complainant and the Respondent State that it considers could provide it with information relevant to making a decision on a Communication.

### **Section 2 Consideration of Communications Received in Conformity with Article 47 of the Charter: Communications-Negotiations of States Parties**

#### ***Rule 86--Submission of a Communication***

1. A Communication under Article 47 of the Charter shall be submitted to the Chairperson, through the Secretary of the Commission.
2. The Communication referred to above shall be in writing and shall contain a comprehensive statement of the facts as well as the provisions of the African Charter alleged to have been violated.
3. Notification of the Communication to the State Party concerned, the Chairperson of the African Union Commission and the Chairperson of the Commission shall be done through the most practical and reliable means.
4. The Secretary to the Commission shall, on behalf of the Chairperson, acknowledge receipt, by note verbale, receipt of the Communication and request the parties to keep the Commission informed of developments which could arise within the framework of ongoing negotiations.

### **Section 3 Consideration of Communications Received Under Articles 48 & 49 of The Charter: Communications-Complaints of States Parties**

#### ***Rule 87--Seizure of the Commission***

1. Any Communication under Articles 48 and 49 of the Charter may be submitted to the Chairperson of the Commission through the Secretary by an interested State Party.
2. The Communication shall contain information on the following or be accompanied particularly by:
  - a. Measures taken to resolve the issue pursuant to Article 47 of the African Charter including the text of the initial communication and any subsequent written explanation from the interested States Parties relating to the issue;
  - b. Measures taken to exhaust regional or international procedures of settlement or good offices;
  - c. Any other procedure of international investigation or international settlement to which the interested States Parties have resorted.

#### ***Rule 88--Consideration of the Communication***

1. Where, pursuant to Articles 48 and 49 of the African Charter, a Communication is brought before the Commission by a State Party, the Chairperson of the Commission, through the Secretary, shall give notice of such Communication to the State Party against which the complaint is made and shall invite it to submit to the Commission its observations in writing on the admissibility of the Communication within ninety (90) days. The observations so obtained in writing shall be immediately communicated to the complaining State Party, which shall respond within ninety (90) days of receipt of the observations.
2. The Commission shall designate one or more of its members as Rapporteur for the Communication.
3. Rapporteurs, through the Secretary, may:
  - a. Request relevant information on matters connected with the Communication from the States Parties concerned. Such information shall be provided by both parties within ninety (90) days of receipt of such request;
  - b. Transmit any information obtained from one party to the other for comments. The parties shall be given ninety (90) days to respond to the observations made by the other party.
4. Prior to the session at which the Communication is to be considered, the Rapporteurs shall prepare a report on the admissibility of the Communication. Such report shall contain:



- a. The relevant facts, including any information or comments obtained under paragraph 3 of this Rule;
  - b. The provision(s) of the African Charter alleged to have been violated in the Communication;
  - c. A recommendation on admissibility and on any other action to be taken, as the case may require.
5. Before deciding upon the admissibility of the Communication, the Commission may invite the parties to submit further observations in writing and shall fix a time limit of ninety (90) days for the submission of these observations. The written observations or information shall be transmitted to the opposing party.
  6. The Commission may also allow the parties to make additional observations orally.

### ***Rule 89--Decision on admissibility***

1. The Commission shall consider the report of the Rapporteurs, decide on the admissibility of the Communication, and shall inform the parties accordingly.
2. The Commission shall give reasons for its decision on admissibility.

### ***Rule 90--Amicable settlement***

1. When the Commission declares that a Communication is admissible, it shall place its good offices at the disposal of the interested States Parties with the objective of reaching an amicable settlement under the terms of the African Charter.
2. For the purpose of the Commission's good offices, the Bureau of the Commission shall establish contact with the relevant authorities of the States Parties.
3. The Bureau shall report its findings and recommendations to the Commission at the Commission's next session.
4. The Commission shall thereafter decide on the appropriate action to take, which may include the following:
  - a. appointing a Rapporteur;
  - b. convening, in consultation with the States Parties concerned, meetings with the aim of achieving an amicable settlement of the dispute;
  - c. Facilitating the drafting of a Memorandum of Understanding, when the parties accept the principle of an amicable settlement, containing the terms of settlement being proposed having regard to the progress made.
5. In the case of acceptance of the draft Memorandum of Understanding, the States Parties concerned shall sign the agreement under the auspices of the Commission.
6. The Rapporteur shall then prepare a draft report, which shall be submitted to the Commission for adoption at its next session.
7. When adopted, the report shall be sent to the States Parties concerned and communicated to the Assembly.
8. The Commission, through the Rapporteur shall then follow-up on monitoring the implementation of the terms of the agreement and report on the said implementation to each subsequent Ordinary Session of the Commission until the settlement is concluded. Such a report shall form part of the Activity Report of the Commission to the Assembly.

### ***Rule 91--Failure to settle the dispute amicably***

1. If the amicable settlement of the dispute fails, the Commission shall request the States Parties concerned to provide, within a period of thirty (30) days, their written submissions.
2. The Commission shall communicate any information obtained from one party to the other for comments. The States Parties concerned shall be given thirty (30) days to respond.
3. The Rapporteur shall prepare a report containing the facts, findings and recommendations for consideration by the Commission.
4. Before adopting the report of the Rapporteur, the Commission may convene a hearing at which it may allow the parties to make additional oral observations.

### ***Rule 92--Decision of the Commission***

1. Within twelve months of receipt of a Communication, the Commission shall adopt a decision, prepare a report and make recommendations, pursuant to Article 53 of the African Charter following the notification referred to in Article 48 of the African Charter and the present Rules of Procedure.
2. The report of the Commission on the Communication shall be communicated to the States Parties concerned through the Secretary.
3. The report of the Commission on the communication shall be submitted as part of the Commission's Activity Report to the Assembly.

## **Section 4 Consideration of Communications Received in Conformity with Article 55 of the African Charter: Other Communications**

### ***Sub-Section 1: General Provisions***

### ***Rule 93--Seizure of the Commission***

1. A Communication submitted under Article 55 of the African Charter may be addressed to the Chairperson of the Commission through the Secretary by any natural or legal person.
2. The Secretary shall ensure that Communications addressed to the Commission contain the following information:
  - a. The name, nationality and signature of the person or persons filing it; or in cases where the Complainant is a non-

- governmental entity, the name and signature of its legal representative(s);
  - b. Whether the Complainant wishes that his or her identity be withheld from the State;
  - c. The address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and email address;
  - d. An account of the act or situation complained of, specifying the place, date and nature of the alleged violations;
  - e. The name of the victim, in a case where he or she is not the Complainant;
  - f. Any public authority that has taken cognisance of the fact or situation alleged;
  - g. The name of the State(s) alleged to be responsible for the violation of the African Charter, even if no specific reference is made to the article(s) alleged to have been violated;
  - h. Compliance with the period prescribed in the African Charter for submission of the Communication;
  - i. Any steps taken to exhaust domestic remedies, or if the applicant alleges the impossibility or unavailability of domestic remedies, the grounds in support of such allegation; and
  - j. An indication that the complaint has not been submitted to another international settlement proceeding as provided in Article 56(7) of the African Charter.
3. In cases where the victim has not asked for anonymity and is represented by an NGO or other agent, the victim shall be the Complainant of record and the fact of representation or agency shall be recognized.
  4. Where a Communication does not contain some of the documents and information listed in paragraph 2 of the present Rule, the Secretary shall request the Complainant to furnish the same.
  5. When the Secretary is satisfied that all necessary information has been furnished, it shall transmit the file to the Commission which shall make a decision on seizure on the Communication.

### ***Rule 94--Representation***

1. States Parties shall be represented before the Commission by their representatives.
2. Natural or legal persons may either appear in person or be represented by their appointed representative before the Commission.

### ***Rule 95--Order of consideration of Communications***

Unless otherwise decided, the Commission shall consider Communications in the order in which they have been received by the Secretary.

### ***Rule 96--Joinder and disjoinder of Communications***

1. If two or more Communications against the same State Party address similar facts, or reveal the same pattern of violation of rights, the Commission may join them and consider them together as a single Communication.
2. Notwithstanding paragraph 1 of the present Rule, the Commission may decide not to join the Communications if it is of the opinion that the joinder will not serve the interest of justice.
3. Where in accordance with paragraph 1 of the present Rule, the Commission decides to join two or more Communications, it may subsequently, where it deems appropriate, decide to disjoin the Communications.

### ***Rule 97--Working Groups and Rapporteurs on Communications***

1. The Commission shall appoint a Rapporteur for each Communication from among its members.
2. The Commission may also establish one or more working groups to consider questions of seizure, admissibility and the merits of any Communication(s) and to make recommendations to the Commission.
3. The Commission shall consider the recommendations of the Rapporteur(s) and/or the Working Group(s) and make a decision.

### ***Rule 98--Provisional Measures***

1. At any time after the receipt of a Communication and before a determination on the merits, the Commission may, on its initiative or at the request of a party to the Communication, request that the State concerned adopt Provisional Measures to prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands.
2. If the Commission is not in session at the time that a request for Provisional Measures is received, the Chairperson, or in his or her absence, the Vice-Chairperson, shall take the decision on the Commission's behalf and shall so inform members of the Commission;
3. After the request for Provisional Measures has been transmitted to the State Party, the Commission shall send a copy of the letter requesting Provisional Measures to the victim, the Assembly, the Peace and Security Council, and the African Union Commission.
4. The Commission shall request the State Party concerned to report back on the implementation of the Provisional Measures requested. Such information shall be submitted within fifteen (15) days of the receipt of the request for Provisional Measures;
5. The granting of such measures and their adoption by the State Party concerned shall not constitute a prejudgment on the merits of a Communication.

### ***Rule 99--Procedure for hearings on Communications***

1. At the initiative of the Commission or at the request of one of the parties, a hearing may be held on a Communication.
2. During hearings, the Commission shall permit oral presentations by the parties on new or additional facts or arguments or in

- answer to any questions that it may have concerning all issues relating to the Communication.
3. During a hearing on a Communication or at any stage prior to the conclusion of the matter, the following may be considered:
    - a. The verification of the facts;
    - b. Initiation of a friendly settlement;
    - c. Consideration on the merits; or
    - d. Any other matter pertinent to the Communication.
  4. A party requesting a hearing, shall do so at least ninety (90) days before the beginning of the session in which the Communication is going to be considered.
  5. The Rapporteur of the Communication, in consultation with the Bureau of the Commission, shall decide upon the request.
  6. The Secretary shall inform both parties of the decision on the granting of a hearing within 15 days of the decision referred to under paragraph 5 of the present Rule.
  7. If the request for a hearing is accepted, the notification of the hearing shall include the dates and venue of the session, and period of the session during which the hearing is likely to take place.
  8. Hearings on Communications before the Commission shall be held in camera. Unless the Commission decides otherwise, no person shall be admitted, other than:
    - a. The parties to the Communication or the representatives duly mandated;
    - b. Any person being heard by the Commission as a witness or as an expert;
    - c. The persons referred to in Rule 33 (2) or any person whom the Commission may decide to invite under Article 46 of the African Charter
  9. When it considers it in the interest of the proper conduct of a hearing, the Commission may limit the number of parties' representatives or advisers who may appear.
  10. The parties shall inform the Commission at least ten days before the date of the opening of the hearing of the names and functions of the persons who will appear on their behalf at the hearing.
  11. The Chairperson or his or her representative shall preside over the hearing, and shall verify the identity of any persons before he/she is heard.
  12. Any member of the Commission may put questions to the parties or to the persons heard with the permission of the Chairperson.
  13. Parties to the communication or their representatives may, with the permission of the Chairperson, put questions to any person heard.
  14. The Secretary is responsible for the production of verbatim records of hearings before the Commission. Such records are internal working documents of the Commission. If a party to the communication so requests, the Commission shall provide a copy of such records unless, in the view of the Commission, doing so could create a danger to persons heard.
  15. The State Party to the Communication shall make an undertaking not to victimise or to take any reprisals against the Complainant and/or any person representing them or their family members, or witnesses because of their statements before the Commission.
  16. The Commission may receive *amicus curiae* brief on communication. During the hearing of a Communication in which *amicus curiae* brief has been filed, the Commission, where necessary shall permit the author of the brief or the representative to address the Commission.

### ***Rule 100--Witnesses and experts***

1. The Commission shall determine, at its own initiative, or at the request of one of the parties, when to call independent experts and witnesses of the parties to the Communication whom it considers necessary to hear in a given case. A request to call a witness by one of the parties shall not be rejected unless the Commission has good reasons to believe that such a request constitutes an abuse of process. The invitation to the hearing shall indicate:
  - a. The parties to the Communication;
  - b. A summary of the facts or issues in relation to which the Commission desires to hear the witness or expert.
2. Any such person may, if they do not have sufficient knowledge of the working languages of the Commission, be authorised by the Chairperson to speak in any other language to be interpreted in one of the Working Languages of the Commission.
3. After establishing the identity of the witnesses or experts the Chairperson of the Commission shall request them to take the following oath:
  - a. For witnesses "*I swear/affirm that I will speak the truth, the whole truth and nothing but the truth.*"
  - b. For the experts "*I swear/affirm that my statement will be in accordance with my knowledge, findings and sincere belief.*"
4. The State Party to the communication shall give an undertaking not to victimise or persecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission.

### ***Rule 101-- Inability of a member of the Commission to take part in the examination of a Communication***

1. A member of the Commission shall not be present and take part in the consideration of a Communication if he or she:
  - a. is a national of the State Party concerned;
  - b. has any personal interest in the case;
  - c. is engaged in any political or administrative activity or any professional activity that is incompatible with his or her independence or impartiality;
  - d. has participated in any capacity in any decision at the national level in relation to the Communication; or
  - e. has expressed publicly opinions that might be interpreted as reflecting lack of impartiality with respect to the Communication.
2. Any question that may arise under paragraph 1 above shall be decided by the Commission without the participation of the member concerned.

### ***Rule 102--Withdrawal of a Member***

If, for any reason, a Member of the Commission considers that he or she should not take part or continue to take part in the consideration of a Communication, he or she shall inform the Chairperson of his or her decision to withdraw.

### ***Rule 103--Preliminary objection***

1. A party who intends to raise a preliminary objection at the stage of admissibility or before the Commission takes a decision on the merits of the Communication, shall do so not later than thirty (30) days after receiving notification to submit on admissibility or on the merits. The Commission shall communicate the objection to the other party within fifteen (15) days.
2. A party who intends to respond to a preliminary objection raised by the other party shall submit a written response not later than thirty (30) days after the Secretary to the Commission has transmitted the objection to that party.
3. If no response to a preliminary objection is received within the stipulated period, the Commission shall proceed with the consideration of the preliminary objection on the basis of the available information.
4. When the Commission receives a preliminary objection, it shall first of all determine this objection before any other question relating to the Communication.

### ***Rule 104--Legal aid***

1. The Commission may, either at the request of the author of the communication or at its own initiative, facilitate access to free legal aid to the author in connection with the representation of the case;
2. Free legal aid shall only be facilitated where the Commission is convinced:
  - a. That it is essential for the proper discharge of the Commission's duties, and to ensure equality of the parties before it; and
  - b. The author of the Communication has no sufficient means to meet all or part of the costs involved;
3. In case of urgency or when the Commission is not in session, its Chairperson may exercise the powers conferred on the Commission by this Rule. As soon as the Commission is in session, any action that has been taken under this paragraph shall be brought to its attention for confirmation.

## **Sub-Section 2: Procedure On Admissibility**

### ***Rule 105--Submissions of observations***

1. When the Commission has decided to be seized of a Communication pursuant to the present Rules, it shall promptly transmit a copy of the complaint to the Respondent State. It shall simultaneously inform the Complainant of the decision on seizure, and request the Complainant to present evidence and arguments on admissibility within two months.
2. Upon receipt of the Complainant's observations on admissibility, the Secretariat shall transmit a copy to the respondent state and request the latter to make a written submission, containing its arguments and evidence on admissibility, within two months of its receipt of the Commission's request. The Secretariat shall, within a week of receipt of the state's submission, provide the Complainant with a copy.
3. Upon receiving the observations of the Respondent State on Admissibility, the Complainant may comment on the observations within one month of receipt.
4. In conformity with Rule 88(6), the Commission, while determining Admissibility may ask the parties to present supplementary observations in an oral hearing.

### ***Rule 106-- Admissibility of Communications***

The Communications shall comply with the requirements of Admissibility under Article 56 of the Charter which are cumulative.

### ***Rule 107--Decision on Admissibility***

1. Once it has considered the positions of the parties, the Commission shall make a decision on the admissibility of the Communication and the Secretary shall inform the parties accordingly.
2. Once a Communication has been declared admissible, the Commission shall inform the parties and defer the Communication to the next session for consideration on the merit.
3. The Commission's decisions on the inadmissibility of Communications shall be notified to the parties and attached to its Activity Report.
4. If the Commission has declared a Communication inadmissible this decision may be reviewed at a later date, upon the submission of new evidence, contained in a written request to the Commission by the author.

## **Sub-Section 3: Procedure for the Consideration of Communications on the Merits**

### ***Rule--108 Proceedings***

1. Once a Communication has been declared admissible, the Commission shall set a period of sixty (60) days for the Complainant to submit observations on the merits. These observations shall be transmitted to the State Party concerned for the submission

- of its observations within sixty (60) days;
- Any written statements submitted by the State Party concerned shall be communicated, through the Secretary, to the Complainant, who may submit any additional written information or observations within thirty (30) days. This time limit cannot be extended.

### ***Rule 109--Amicable settlement***

- At any stage of the examination of a Communication, the Commission, on its own initiative or at the request of any of the parties concerned, may offer its good offices for an amicable settlement between the parties.
- The amicable settlement procedure shall be initiated, and may only continue, with the consent of the parties.
- If it deems it necessary, the Commission may entrust to one or more of its members the task of facilitating negotiations between the parties.
- The Commission may terminate its intervention in the amicable settlement procedure at the request of one or both parties, within a period of six months, renewable once, when an amicable settlement is not reached.
- When the Commission receives information from parties that an amicable settlement has been reached, the Commission shall ensure that such amicable settlement:
  - Complies with or respects the human rights and fundamental freedoms enshrined in the African Charter and other applicable instruments;
  - Indicates that the victim of the alleged human rights violation or, his/her successors, as the case may be, have consented to the terms of the settlement and are satisfied with the conditions;
  - Includes an undertaking by the parties to implement the terms of the settlement.
- When the Commission is satisfied that the requirements of paragraph 5 have been complied with, it shall prepare a report which shall contain:
  - A brief statement of the facts;
  - An explanation of the settlement reached;
  - Recommendations by the Commission for steps to be taken by the parties to ensure the maintenance of the settlement;
  - Steps to be taken by the Commission to monitor the parties' compliance with the terms of the settlement.
- If the terms of the amicable settlement are not implemented within six months, or when the terms do not comply with the requirements under paragraph 5 of the present Rule the Commission shall at the request of the Complainant continue to process the Communication in accordance with the relevant provisions of the Charter and the relevant Rules in the present Rules.

### ***Rule 110-- Decision on the merits***

- The Commission, after deliberation on the submissions of both parties, shall adopt a decision on the merits of the Communication.
- The Commission shall deliberate on Communications in private, and all aspects of the discussions shall be confidential.
- The decision of the Commission shall be signed by the Chairperson and the Secretary, shall remain confidential and shall not be transmitted to the parties until its publication is authorized by the Assembly.
- The decision of the Commission shall be posted on the Commission's website after its publication is authorized by the Assembly.

### ***Rule 111--Review of the decision of the Commission on the merits***

- Once the Commission has taken a decision on the merits, it may, on its own initiative or upon the written request of one of the parties, review the decision.
- In determining whether to review its decision on the merits, the Commission shall satisfy itself of the following:
  - that the request is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was not known to the Commission and the party requesting the review, provided that such ignorance was not due to negligence;
  - that the application for review is made within six months of the discovery of the new fact;
  - any other compelling reason or situation that the Commission may deem appropriate or relevant to justify review of a Communication, with a view to ensure fairness, justice and respect for human and peoples' rights.
- No application for review may be made after three years from the date of the decision.

### ***Rule 112--Follow-up on the recommendations of the Commission***

- After the consideration of the Commission's Activity Report by the Assembly, the Secretary shall notify the parties within thirty (30) days that they may disseminate the decision.
- In the event of a decision against a State Party, the parties shall inform the Commission in writing, within one hundred and eighty (180) days of being informed of the decision in accordance with paragraph one, of all measures, if any, taken or being taken by the State Party to implement the decision of the Commission.
- Within ninety (90) days of receipt of the State's written response, the Commission may invite the State concerned to submit further information on the measures it has taken in response to its decision.
- If no response is received from the State, the Commission may send a reminder to the State Party concerned to submit its information within ninety (90) days from the date of the reminder.
- The Rapporteur for the Communication, or any other member of the Commission designated for this purpose, shall monitor the measures taken by the State Party to give effect to the Commission's recommendations on each Communication.
- The Rapporteur may make such contacts and take such action as may be appropriate to fulfill his/her assignment including recommendations for further action by the Commission as may be necessary.

7. At each Ordinary Session, the Rapporteur shall present the report during the Public Session on the implementation of the Commission's recommendations.
8. The Commission shall draw the attention of the Sub-Committee of the Permanent Representatives Committee and the Executive Council on the Implementation of the Decisions of the African Union, to any situations of non-compliance with the Commission's decisions.
9. The Commission shall include information on any follow-up activities in its Activity Report.

#### ***Rule 113--Extension of time***

1. Subject to the provisions of Rule 111, when a deadline is fixed for a particular submission, either party may apply to the Commission for extension of the period stipulated.
2. The Commission may grant an extension which shall not exceed one (1) month, and shall not grant more than one extension per party for any given submission.

### **PART IV Relationships with the African Court**

#### **Chapter I: General Provisions**

#### ***Rule 114--Complementarity with the African Court***

1. Pursuant to Article 2 of the Protocol, the Court shall complement the protective mandate of the Commission as provided for in Articles 30 and 45 (2) of the African Charter.
2. The complementarity relationship between the Commission and the Court is set out and organized by Articles 5, 6(1) & (3), 8 and 33 of the Protocol.

#### ***Rule 115--Consultations with the Court***

1. In pursuance of Article 2 of the Protocol, the Commission shall meet with the Court at least once a year and whenever necessary to ensure good working relationship between the two institutions.
2. The Bureau of the Commission may meet the Bureau of the Court as often as necessary to undertake any functions assigned to them by the two institutions.
3. The conclusions of the meetings of the Bureaus shall be considered and if adopted by the Commission, shall be included in the Activity Report.
4. The Commission shall consult with the Court before the modification of any of its Rules relating to their relationship.

#### ***Rule 116--Interpretation of the Charter by the Commission***

1. If the Commission is requested to interpret the Charter under Article 45(3), it shall immediately inform the President of the Court.
2. A copy of the interpretation of the Charter by the Commission shall be sent to the President of the Court as soon as it is adopted.

#### ***Rule 117--Advisory Opinion***

The Commission may request to be heard by the Court upon being notified by the Court of a request for an Advisory Opinion pursuant to Article 4(1) of the Protocol.

#### ***Rule 118--Seizure of the Court***

1. If the Commission has taken a decision with respect to a communication submitted under Articles 48, 49 or 55 of the Charter and considers that the State has not complied or is unwilling to comply with its recommendations in respect of the communication within the period stated in Rule 112(2), it may submit the communication to the Court pursuant to Article 5 (1)(a) of the Protocol and inform the parties accordingly.
2. If the Commission has made a request for Provisional Measures against a State Party in accordance with Rule 98, and considers that the State has not complied with the Provisional Measures requested, the Commission may pursuant to Article 5 (1)(a) of the Protocol, refer the communication to the Court and inform the Complainant and the State concerned.
3. The Commission may, pursuant to Rule 84(2) submit a communication before the Court against a State Party if a situation that, in its view, constitutes one of serious or massive violations of human rights as provided for under Article 58 of the African Charter, has come to its attention.
4. The Commission may seize the Court at any stage of the examination of a communication if it deems necessary.

#### ***Rule 119--Admissibility under Article 6 of the Protocol***

1. Where, pursuant to Article 6 of the Protocol, the Commission is requested to give its opinion, on the admissibility of a communication pending before the Court or where the Court has transferred a communication to the Commission, it shall

consider the admissibility of this matter in accordance with Article 56 of the Charter and Rules 105, 106 and 107 of the present Rules.

2. Upon conclusion of the examination of the admissibility of the communication referred to it under Article 6 of the Protocol, the Commission shall immediately transmit its opinion or its decision on the admissibility to the Court.

### ***Rule 120--Representation of the Commission before the Court***

When the Commission decides to submit a communication to the Court, pursuant to Article 5(1)(a) of the Protocol and Rule 118, it may appoint one or more Commissioners to represent it before the Court. The Commissioner(s) so designated shall be assisted by one or more Legal Officer(s) of the Commission's Secretariat and/or experts who shall be designated or appointed by the Commission.

### ***Rule 121--Content of the application and file to the Court***

1. When, in pursuance of Article 5 (1)(a) of the Protocol and Rule 120 of the present Rules, the Commission decides to bring a communication before the Court, it shall submit an application seizing the Court in accordance with the Court Rules, accompanied by a summary of the communication and the communication file.  
The summary shall include the names of the representatives of the Commission, the facts of the communication and all the relevant provisions of the African Charter which have been violated.
2. Where necessary, the summary shall include:
  - a. The date on which the Commission adopted its decision, or adopted and sent the request for Provisional Measures;
  - b. The facts which reveal serious or massive violations;
  - c. The date on which the decision of the Commission was transmitted to the State Party concerned;
  - d. Information relating to the deadline stipulated under Rule 113 of the present rules; and
  - e. The parties to the proceedings before the Commission, if applicable.
3. The communication file along with the summary to be transmitted to the Court shall contain all the evidence, documents or information concerning the communication including documents relating to any attempts to secure a friendly settlement, and the Commission's decision

### ***Rule 122--Transmission of communications to the Court and notification of the parties***

1. The Secretary of the Commission shall transmit to the Court the application signed by the Chairperson, the certified copy of the communication file and the summary referred to in Rule 121 of the present rules in conformity with the Rules of Procedure of the Court. At the request of the Court, the Commission shall transmit the original of the communication file.
2. The Secretary shall also immediately notify the Parties who were before the Commission about the referral of the communication to the Court and shall transmit copies of the communication file and the summary thereof.

### ***Rule 123--Lis Pendens***

The commission shall not consider any communication relating to a case still pending before the court, unless the communication has been formally withdrawn.

## **PART FIVE**

### **Relationship with Other African Union Organs, Institutions, and Programmes**

#### ***Rule 124--General rule***

1. The Commission, in fulfilling its mandate, shall establish formal relations of cooperation, including meetings as necessary, with all African Union organs, and institutions and programmes that have a human rights element in their mandate.
2. The Bureau of the Commission may, in addition, meet with the bureaux of these organs, institutions and programmes as often as may be required to ensure their good working relationship.

#### ***Rule 125--Relationship with the policy organs of the African Union***

1. When submitting its Activity Report in accordance with Article 54 of the African Charter, the Commission may request the Assembly to take necessary measures to implement its decisions.
2. The Commission shall bring all its recommendations to the attention of the Sub-Committee on the Implementation of the Decisions of the African Union of the Permanent Representatives Committee.

#### ***Rule 126--Cooperation with the African Union Commission***

1. Prior to the appointment of the Secretary or any staff member of the Commission's Secretariat, the African Union Commission shall consult with the Bureau of the Commission.
2. After transmitting the report on the evaluation of the performance of the Secretary in accordance with Rule 13(3) and 14(2) (c) of the present Rule of Procedure, the Chairperson of the African Union Commission may invite the Bureau of the African

Commission for discussion.

## **PART SIX**

### **Final Provisions**

#### ***Rule 127--Interpretation***

In conformity with Article 45(3) of the Charter, the Commission shall interpret the Charter

#### ***Rule 128--Amendment of the Rules of Procedure***

The present Rules of Procedure may be amended by the Commission.

#### ***Rule 129--Transitional provisions***

Upon the entry into force of the Protocol on the Statute of the African Court of Justice and Human Rights, all references in the present Rules to provisions of the African Court Protocol or the African Court shall be deemed, where applicable, to refer to the relevant provisions of the Protocol on the Statute of the African Court of Justice and Human Rights or to the African Court of Justice and Human Rights, respectively.

#### ***Rule 130--Non-retroactivity***

The present Rules of Procedure shall not have any retrospective effect.

#### ***Rule 131--Suspension***

The Commission may suspend temporarily, the application of any Rule of the present Rules of Procedure, on condition that such a suspension shall not be incompatible with any applicable decision of the Commission or the Assembly or with any relevant provision of the Charter and that the proposal shall have been submitted 24 hours in advance.

#### ***Rule 132--Entry into force of the Rules of Procedure***

The present Rules of Procedure shall enter into force three months after their adoption by a simple majority of members of the Commission present and voting at a session where the Rules are scheduled to be adopted.



# Appendix D: African Commission Guidelines of the Submission of Communications \*

*\*References are to the Commission's previous rules of procedure*

The African Commission on Human and Peoples' Rights Information Sheet No. 2 Guidelines of the Submission of Communications

## Introduction

Most people who suffer human rights abuses sometimes do not know that their rights have been violated, and even if they know, they do not know where or who to turn to for help even within their own countries. It is very important for NGOs and governments to educate people about their human rights and inform them of the local and international remedies available to them when their rights are violated. International intervention is always chosen as a last resort when the local justice delivery system has failed to reinstate the victim in his or her rights.

One of the main functions of the Commission is to attend to communications submitted by individuals, NGOs and States Parties to the African Charter, alleging violations of human rights by these states.

Any person, group of persons of State party alleging a violation, should first of all ascertain whether the State committing the violating has ratified the Charter, and in the case of a State, it must have ratified the Charter before submitting a complaint against another State party to the Charter.

By submitting a communication to the African commission on human and Peoples Rights, victims of human rights abuses who for one reason or another could not obtain justice in their countries after exhausting all the available legal remedies, may obtain help.

Under Article 46 of the Charter, the Commission has the power to use any appropriate method of investigation into allegations of human rights abuses. Where the Commission finds that violations have occurred, it makes recommendations to the State(s) concerned; to ensure that the occurrences are investigated, that the victim(s) is compensated (if necessary) and that measures are taken to prevent the recurrence of the violations.

The Commission's recommendations are submitted to the Assembly of Heads of State and Government of the OAU for adoption. The decision of the Assembly is final.

## The Rights and Freedoms protected in the Charter

Understanding the rights and freedoms guaranteed in the Charter is particularly important for the submission of a communication because for any communication to be considered by the Commission, it must in one way or another demonstrate that the State has violated one or some of the rights in the charter. The complainant need not mention the specific Article of the Charter alleged to have been violated, but the facts of the communication should be such that the Commission can deduce there from the violations alleged.

Two main categories of rights are covered in the Charter.

### 1. Individual Rights

These are the rights and freedoms one enjoys as an individual and not because one belongs to a particular community or social grouping or any other association. These individual rights are divided into civil and political rights on one hand and economic, social and cultural rights on the other.

#### a. Civil and Political Rights

- the right not to be discriminated against (Article 2)
- equality before the law (Article 3)
- the right to inherent dignity and freedom from exploitation, slavery and slave trade; freedom from torture, cruel, inhuman or degrading punishment and treatment (Article 5)
- the right to personal liberty and security of the person (Article 6)
- the right to a fair trial (Article 7)
- freedom of conscience, worship and religion (Article 8)
- the right to receive information and freedom of expression (Article 9)
- freedom of association (Article 10)
- freedom of assembly (Article 11)
- freedom of movement, including the right to leave and enter one's country and the right to seek and obtain asylum when persecuted (Article 12)
- the right to participate in the government of one's country and the right of equal access to public service (Article 13)

#### b. Economic, Social and Cultural Rights

- The right to own property (Article 14)
- the right to work under equitable and satisfactory conditions and receive equal pay for equal work

(Article 15)

- the right to physical and mental health (Article 16)
- the right to education and the freedom to take part in cultural activities in one's community (Article 17)
- the family right to protection and assistance from the state, the right to special measures of protection for the aged and disabled and the freedom from discrimination of women and children (Article 18)

## 2. Peoples' Rights

Although the terms 'peoples rights' have not been defined in the Charter, these rights generally refer to the rights of a community (be it ethnic or national) to determine how they should be governed, how their economies and cultures should develop; they include other rights such as the right to national and international peace and security, the right to a clean and satisfactory environment. This category of rights is also called group or solidarity rights.

### Who can submit a Communication to the Commission?

Anybody, either on his or her own behalf or on behalf of someone else, can submit a communication to the commission denouncing a violation of human rights. Ordinary citizens, a group of individuals, NGOs, and states Parties to the Charter can all put in claims. The complainant or author of the communication need not be related to the victim of the abuse in any way, but the victim must be mentioned.

Complaining on behalf of someone else, for example, a prisoner who can't submit a communication himself or who does not want the authorities to know that he is petitioning is very helpful.

### Legal Representation

Since the preparation, submission and processing of a communication is a relatively straightforward procedure, a complainant or author can act on his or her own without the need for professional assistance. However, it is always useful to seek the help of a lawyer. A lawyer would understand the technical aspects better and would therefore be able to advise, recommend, help to interpret the rights alleged to have been violated, draw up additional arguments, and set out the case in an efficient manner that will demonstrate to the Commission that one or more rights have been violated.

The complainant or his/her legal representative (if any), need not travel to the Commission's session to present or defend a case. The case can be started and concluded only through correspondence with the Secretariat of the Commission. However, should the complainant opt to be present at any session of the Commission, the Commission will grant him or her audience.

It should be noted that the Commission does not offer legal assistance to complainants. Persons in need of such assistance may approach one of the various legal assistance groups which exist in most countries or the National Bar Association.

### Conditions for Submitting a Communication<sup>1</sup>

Article 56 of the African charter outlines seven conditions that must be met before a communication can be considered by the Commission. These are as follows:

- the communication must include the author's name even if the author wants to remain anonymous;
- the communication must be compatible with the Charter of the OAU and with the present Charter.
- the communication must not be written in insulting language directed against the state or the OAU;
- the communication must not be based exclusively on news from the media;
- the complainant must have exhausted all available domestic legal remedies;
- the communication must be submitted within a reasonable time from the date of exhaustion of domestic remedies;
- the communication must not deal with a matter which has already been settled by some other international human rights body.

### How many Violations per Communication

From the wordings of Article 58(1), of the Charter, it would seem that the Commission can only consider a communication when the latter reveals a series of serious and massive violation of human and peoples' rights, and only after the Assembly of Heads of state and Government has requested it to do so. However, the practice of the Commission has been to consider every communication even if it refers to only a single violation of the Charter. The rationale behind this practice is that a single violation still violates the dignity of the victim and is an affront to international human rights norms.

### What a Communication should include in order to be valid

All communication must be in writing, and addressed to the Secretary or chairman of the African commission on Human and Peoples' Rights. There is no form or special format that must be followed, but a communication should contain all the relevant information. If the communication is submitted by an individual or group of individuals, it should include the name(s) of the complainant or complainants, their nationalities, occupation or profession, addresses and signatures. If the communication emanates from an NGO, it should include the address of the institution and the names and signatures of its legal representatives.

<sup>1</sup> See Information fact Sheet No. 3 for a detailed explanation of these conditions.

If the communication is from a State Party, the names and signature of the State representative, together with the national seal would be required.

Each communication should describe the violation of human and/or peoples' rights that took place, indicate the date, time (if possible), and place where it occurred. It should also identify the State concerned. The communication should also include the victim's names (even if the latter wants to remain anonymous, in which case, this should be stated), and if possible, the names of any authority familiar with the facts of the case.

It should also provide information indicating that all domestic legal remedies have been exhausted. If all remedies were not exhausted, the communication should indicate the reasons it was not possible to do so.

The complaint should also indicate whether the communication has been or is being considered before any other international human rights body, for instance, the UN human Rights committee.

As a general rule, the communication should state only the facts and not be written in vulgar or insulting language. The complaints should be drafted in a clear, simple and straightforward manner, free from unnecessary rhetoric. Any complainant failing to meet these requirements will be notified and where necessary, asked to furnish the commission with further information.

## Emergency Communications

Every communication should indicate if the victim's life, personal integrity or health is in imminent danger. In such emergency situations, the Commission has the powers under Rule 111 of its Rules of Procedure to adopt provisional measures, thereby urging the State concerned not to take any action that will cause irreparable damage to the victim until the case has been heard by the Commission. The Commission can also adopt other urgent measures as it sees fit.

## Standard format for the Submission of Communications

As mentioned earlier, there is no hard and fast rule or format for the submission of communications to the commission, but the following simplified guidelines will make it much easier for would-be complainants to submit their communications.

The guidelines are in two categories: (inter-State communications) and other (or individual communications)

- A. Guidelines on how to submit communication under Article 48 and 49 (Communications from States)
  1. Complaining State(s) (should state amongst other things, its name, official language, and year in which it ratified the Charter).
  2. State party accused of the violation (state the year the State ratified the African Charter, its official language).
  3. Facts constituting the violation (Please explain in as much a factual detail as possible what happened, specifying place, time and dates of the violation, if possible).
  4. Exhaustion of local remedies (indicate measures that have been taken to resolve the matter amicably why this measure failed, or why it wasn't used at all. Also indicate measures taken to exhaust local remedies. Please attach all relevant documents).
  5. Domestic legal remedies not yet pursued (please give reasons why this has not been done).
  6. Other International avenues (state whether the case has also been referred to any other international settlement body either at the UN or within the OAU system).
  7. Complaints submitted to the Secretary General of the OAU and to the accused State. These complaint letters should be accompanied by any response from these two sources.
  
- B. Guidelines on how to submit a communication pursuant to Article 5 of the Charter (other communications)
  1. Complainant (s) (please indicate whether you are acting on your behalf or on behalf of someone else. Also indicate in your communication whether you are an NGO and whether you wish to remain anonymous).
    - Name
    - Age
    - Nationality
    - Occupation and/or Profession
    - Address
    - Telephone/Fax no
  2. **Government accused of the Violation** (please make sure it is a State Party to the African charter).
  3. **Facts constituting alleged violation** (Explain in as much a factual detail as possible what happened, specifying place, time and dates of the violation).
  4. **Urgency of the case** (Is it a case which could result in loss of life/lives or serious bodily harm if not addressed immediately? State the nature of the case and why you think it deserves immediate action from the Commission).
  5. **Provisions of the Charter alleged to have been violated** (if you are unsure of the specific Articles, please do not mention any).

6. **Names and titles of government authorities** who committed the violation. (if it is a government institution please give the name of the institution as well as that of the head).
7. **Witness to the violation** (include addresses and if possible telephone numbers of witnesses).
8. **Documentary proofs of the violation** (attach for example, letters, legal documents, photos, autopsies, tape recordings etc., to show proof of the violation).
9. **Domestic legal remedies pursued** (Also indicate for example, the courts you've been to, attach copies of court judgments, writs of habeas corpus etc).
10. **Other International Avenue** (Please state whether the case has already been decided or is being heard by some other international human rights body; specify this body and indicate the stage at which the case has reached).

For further information, please contact: The African Commission on Human and Peoples' Rights  
PO Box 673, Banjul, The Gambia  
Tel: 220 392962  
Fax: 220 390764

## Appendix E: African Commission Communications Procedure\*

*\*References are to the Commission's previous rules of procedure*

African Commission on Human and Peoples' Rights Information Sheet No. 3 Communication Procedure

### Introduction

One of the principal functions of the Commission is to protect the rights and freedoms guaranteed in the Charter under conditions laid down therein.

To achieve this, the Commission is empowered, among other things, to receive and consider:

- Communications submitted by one State claiming that another State party to the Charter has violated one or more of the provisions in the Charter (**Articles 48-49**); and
- Other Communications from individuals and organisations alleging that a State party to the Charter has violated one or more of the rights guaranteed therein, (**Article 55**).

Other communications submitted to the Commission pursuant to Article 55 of the Charter are considered within the framework of a written procedure (*see* **Rules 102-120** of the Commission's Rules of Procedure). The author of a communication can withdraw his or her communication at any stage. The Commission in such a case will discontinue proceedings on it without taking any written decision. According to rule **111** of its Rules of Procedure, prior to forwarding its final decisions (recommendations) on a communication to the State party concerned, the Commission may inform that State whether it considers interim measures desirable to prevent irreparable damage to the victim.

### Registration of Communications

Communications meant for the African Commission are usually directed to the Secretariat of the Commission which is based in Banjul, The Gambia. Once a communication is received, it is registered under a file number in the Commission's Official Register of Communications kept at the Secretariat of the Commission. The Secretariat acknowledges receipt of the author's letter of complaint. If more information is required, the author will be informed accordingly.

The number of the communication is written in a manner that reflects the total number of communications received by the Commission, and the year that particular communication was received. Thus, if a communication is numbered, 18/90, "18" will stand for the 18th communication the Commission has received since its inception and "90" will stand for the year the 18th communication was received. It should be noted however that registration of a communication is no guarantee that it is going to be seized by the Commission.

Where the facts of the complaint reveal that the latter is not against a State party to the Charter, the complaint will not be registered and the author will be informed accordingly. The Secretariat will acknowledge receipt of the complaint by sending the author a standard letter enclosing any vital information about the functioning of the Commission including the text of the Charter.

### Seizure

Once a communication has been registered, the Commission has to be seized with it. Article 55 of the Charter provides that "Before each session of the Commission, the Secretary of the Commission prepares a list of all communications submitted to the Secretariat, other than those of States parties ... and transmits them to the members of the Commission, who shall indicate which communications shall be considered by the Commission".

Rule 102 (2) of the Commission's Rules of Procedure provides further that "No communications concerning a State which is not a party to the Charter shall be received by the Commission or placed in a list ..."

Therefore, when the Secretariat of the Commission receives a communication pursuant to Article 55 against a State party to the Charter, as soon as it is registered, a summary is made thereof and is distributed to all the commissioners. A letter is written to the complainant acknowledging receipt of the communication. No letter is sent to the State party concerned at this stage. The Secretariat has to wait for a response from at least seven of the eleven members to indicate that they have received the communication and approved seizure.

Alternatively, if the Secretariat does not receive minimum number of seven responses, the communication shall be presented to all the commissioners at the Commission's next session.

At this session, the Commission shall decide whether to be seized of the communication by determining whether it alleges any prima facie violation of the Charter, or whether it is properly submitted according to the provisions of Article 55 of the Charter. Article 55 (2) of the Charter provides that "A communication shall be considered by the Commission if a simple majority of its members so decide."

If a simple majority of the commissioners (in this case six) decide that the Commission be seized, the Secretariat will then be requested to inform the parties (the complainant and the State concerned) that the communication shall be considered on admissibility at its next session, and that they should within a time limit of three months, from the date the letter was written, submit comments to that effect.

It is only at this stage that the state party is notified of the communication.

### Conditions of admissibility of a communication

Article 56 of the Charter stipulates the admissibility criteria to be applied to individual and similar communications as follows:

- The communication should indicate the author(s) name even if the latter request anonymity.<sup>21</sup> The person submitting the complaint must, as a matter of principle, indicate his or her name.

If the person wishes to remain anonymous, he or she should say so and the communication will be given a letter of the alphabet, say B. It will henceforth be addressed as *B v. the State party concerned*. The author need not give reasons for wanting to be anonymous. If the author is an NGO, the names of the representatives of the NGO would be required. The name and address also make correspondence between the author and the Commission easier. If there is no name or address on the complaint, it will not be considered.

- The communication should be compatible with the Charter of the OAU or with the present Charter.<sup>3</sup> The Communication should invoke the provisions of the African Charter alleged to have been violated and/or the principles enshrined in the OAU Charter.

A communication which does not illustrate a *prima facie* violation of the Banjul Charter or some of the basic principles of the OAU Charter, such as “freedom, equality, justice and dignity”, will not be examined.

- The communication should not be written in disparaging or insulting language directed against the State concerned and its institutions<sup>4</sup> or to the OAU.

The author should state the facts of his or her case without insulting anyone. Political rhetoric and vulgar language is not necessary. Insulting language will render a communication inadmissible, irrespective of the seriousness of the complaint.

- The communication is not based exclusively on news disseminated through the mass media.<sup>5</sup> The author must be able to investigate and ascertain the truth of the facts before requesting for the Commission’s intervention.
- The communication is sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.<sup>6</sup>

The author must have taken the matter to all the available domestic legal remedies. That is, he or she must have taken the case to the highest court of the land.

However, if such remedies are not available, or if they are available but the procedure is unduly prolonged, for example, say by numerous and unnecessary adjournments, the complainant can submit the complaint to the Commission.

- The communication should be submitted to the Commission within a reasonable period from the time local remedies are exhausted. After the exhaustion of local remedies, or where the complainant realises that such remedies shall be unduly prolonged, he or she can submit the complaint to the Commission immediately. The Charter does not give a time limit but talks of reasonable time. It is always advisable to submit a complaint as early as possible.
- The communication does not deal with cases which have been settled in accordance with the principles of the Charter of the UN<sup>7</sup> or the Charter of the OAU or the provisions of the present Charter.

<sup>21</sup> On all but one of the communications submitted to the Commission so far, none of the complainants have requested for anonymity

<sup>3</sup> See Communication 57/91 and 1/88, where failure to prove a *prima facie* violation renders the communication inadmissible; an allegation in a general manner is not enough, see Communication 63/92.

<sup>4</sup> See Communication 65/92 where the communication was declared inadmissible for using words such as ‘regime of tortures’ and ‘a government of barbarism’.

<sup>5</sup> In communications 147/95 and 149/96, the government alleged that the communication should be declared inadmissible because it was based exclusively on news disseminated through the mass media. The Commission however declared the communication admissible.

<sup>6</sup> See communications 43/90 and 45/90 where non exhaustion of local remedies rendered communication inadmissible; but see communication 59/91 where communication was declared admissible where appeal has been pending before the courts for twelve years. This was considered to be unduly prolonged. Communication can also be declared admissible without the exhaustion of local remedy if the remedy is at the discretion of the executive or if the jurisdiction of the ordinary courts has been ousted by a decree or through the establishment of a special tribunal, see in this regard communications: 60/91, 64/92, 68/92 and 78/92.

<sup>7</sup> See communication 15/88 where the UN Human Rights Committee had decided the case in favour of the victim and he submitted the same communication to the Commission. It was declared inadmissible. However, the submission of a complaint to an NGO or an Inter - Governmental Organisation such as the EEC does not render a communication inadmissible, communication-59/91; but a communication already being examined under rule 1503 of the UN does, communication 69/92. ‘The purpose is to avoid usurpation of the jurisdiction of the bodies who may provide a solution or relevant information’.

The communication must not be one which has already been, or is being settled through another international body, like the UN Human rights Committee, or even some organ of the OAU.

### **Admissibility of a Communication**

Once a communication has been seized by the Commission, a decision has to be taken concerning its admissibility. Article 56 of the Charter sets out seven conditions to be met for a communication received pursuant to Article 55 to be considered. Admissibility of a communication is therefore the determination by the Commission to see whether these conditions have been met.

As a matter of principle, all the conditions must be met for a communication to be declared admissible. Otherwise, if one has not been met, the communication will be declared inadmissible and the case closed.

This decision on admissibility can only be taken after the text of the communication or a summary thereof has been transmitted to the State party concerned and it has been given the opportunity to make its observations.

The State party and the author of the communication are given time limits of three months, within which to submit their comments.

After studying the arguments presented by both parties, and bearing in mind the principles of international human rights law, which is basically aimed at protecting the individuals from State's encroachment, the Commission may then make a decision.

When a decision on admissibility is taken on a communication, this is transmitted to both the complainant and the State concerned. In principle, a decision on admissibility is final. For instance, if a communication is declared inadmissible, the reasons for inadmissibility shall be indicated and this will automatically bring consideration of the communication to an end. However, a communication declared inadmissible could be reviewed at a later date if the complainant can provide information to the effect that the grounds for inadmissibility no longer exist.

On the other hand, if the communication is declared admissible, the parties will be informed and requested to send their observations on the merits.

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The communication must not be one which has already been, or is being settled through another international body, like the UN Human rights Committee, or even some organ of the OAU.

## Appendix F: 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

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The African Commission on Human and Peoples' Rights, meeting in its 25th Ordinary Session, held 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;

**Adopts** the new criteria for granting and enjoying observer status, the text of which is annexed to the present resolution;

**Decides** that the new criteria shall immediately enter into force;

**Requests** the Secretary to the Commission to report at every Ordinary Session on the implementation of the present resolution.



# ANNEX - 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 PROCEEDING 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

# Appendix G: Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

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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 States 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.

## Appendix H: Protocol on Statute of the African Court on Justice and Human Rights

The Member States of the African Union, Parties to this Protocol,

**RECALLING** the objectives and principles enunciated in the Constitutive Act of the African Union, adopted on 11 July 2000 in Lomé, Togo, in particular the commitment to settle their disputes through peaceful means;

**BEARING IN MIND** their commitment to promote peace, security and stability on the Continent and to protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant instruments relating to human rights;

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

**FURTHER CONSIDERING** Decisions Assembly/AU/Dec.45 (III) and Assembly/AU/Dec.83 (V) of the Assembly of the Union, adopted respectively at its Third (6-8 July 2004, Addis Ababa, Ethiopia) and Fifth (4-5 July 2005, Sirte, Libya), Ordinary Sessions, to merge the African Court on Human and Peoples' Rights and the Court of Justice of the African Union into a single Court,

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

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

**TAKING DUE ACCOUNT ALSO** of the Protocol of the Court of Justice of the African Union, adopted by the Assembly of the Union on 11 July 2003 in Maputo Mozambique;

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

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

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

**HAVE AGREED AS FOLLOWS:**

### CHAPTER I MERCER OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS AND THE COURT OF JUSTICE OF THE AFRICAN UNION

#### Article 1 Replacement of the 1998 and 2003 Protocols

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

#### Article 2 Establishment of a single Court

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

### **Article 3**

#### **Reference to the single Court in the Constitutive Act**

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

## **CHAPTER II**

### **TRANSITIONAL PROVISIONS**

#### **Article 4**

##### **Term of Office of the Judges of the African Court on Human and Peoples’ Rights**

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

#### **Article 5**

##### **Cases Pending before the African Court on Human and Peoples’ Rights**

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

#### **Article 6**

##### **Registry of the Court**

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

#### **Article 7**

##### **Provisional validity of the 1998 Protocol**

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

## **CHAPTER III**

### **FINAL PROVISIONS**

#### **Article 8**

##### **Signature, Ratification and Accession**

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

#### **Article 9**

##### **Entry into Force**

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

**ADOPTED BY THE ELEVENTH ORDINARY SESSION OF THE ASSEMBLY, HELD IN SHARM EL-SHEIKH, EGYPT,  
1ST JULY 2008**

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# ANNEX

## STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS

### CHAPTER I GENERAL PROVISIONS

#### Article 1 Definitions

In this Statute, except otherwise indicated, the following shall mean:

“**African Charter**” means the African Charter on Human and Peoples’ Rights;

“**African Commission**” means the African Commission on Human and Peoples’ Rights;

“**African Committee of Experts**” means the African Committee of Experts on the Rights and Welfare of the Child;

“**African Intergovernmental Organisations**” means an organisation that has been established with the aim of ensuring socio-economic integration, and to which some Member States have ceded certain competences to act on their behalf, as well as other sub-regional, regional or inter-African Organisations;

“**African Non-Governmental Organizations**” means Non-Governmental Organizations at the sub-regional, regional or inter-African levels as well as those in the Diaspora as may be defined by the Executive Council;

“**Agent**” means a person mandated in writing to represent a party in a case before the Court;

“**Assembly**” means the Assembly of Heads of State and Government of the Union;

“**Chamber(s)**” means a Chamber established in accordance with Article 19 of the Statute.

“**Constitutive Act**” means the Constitutive Act of the African Union;

“**Commission**”: means the Commission of the Union;

“**Court**” means the African Court of Justice and Human Rights as well as its sections and chambers;

“**Executive Council**” means the Executive Council of Ministers of the Union;

“**Full Court**” means joint sitting of the General Affairs and Human Rights Sections of the Court;

“**Human Rights Section**” means the Human and Peoples’ Rights Section of the Court;

“**Judge**” means a judge of the Court;

“**Member State**” means a Member State of the Union;

“**National Human Rights Institutions**” means public institutions established by a state to promote and protect human rights;

“**President**” means the President of the Court elected in accordance with Article 22(1) of the Statute;

“**Protocol**” means the Protocol to the Statute of the African Court of Justice and Human Rights;

“**Registrar**” means the person appointed as such in accordance with Article 22 (4) of the Statute;

“**Rules**” means the Rules of the Court;

“**Section**” means the General Affairs or the Human Rights Section of the Court;

“**Senior Judge**” means the person defined as such in the Rules of Court;

“**States Parties**” means Member States, which have ratified or acceded to this Protocol;

“**Statute**” means the present Statute;

“**Union**” means the African Union established by the Constitutive Act;

“**Vice President**” means the Vice President of the Court elected in accordance with Article 22 (1) of the Statute.

#### Article 2 Functions of the Court

1. The African Court of Justice and Human Rights shall be the main judicial organ of the African Union.
2. The Court shall be constituted and function in accordance with the provisions of the present Statute.

### CHAPTER II ORGANIZATION OF THE COURT

#### Article 3 Composition

1. The Court shall consist of sixteen (16) Judges who are nationals of States Parties. Upon recommendation of the Court, the Assembly, may, review the number of Judges.
2. The Court shall not, at any one time, have more than one judge from a single Member State.
3. Each geographical region of the Continent, as determined by the Decisions of the Assembly shall, where possible, be represented by three (3) Judges except the Western Region which shall have four (4) Judges.

#### Article 4 Qualifications of Judges

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

## **Article 5**

### **Presentation of Candidates**

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

## **Article 6**

### **List of candidates**

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

## **Article 7**

### **Election of judges**

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

## **Article 8**

### **Term of Office**

1. The Judges shall be elected for a period of six (6) years and may be re-elected only once. However, the term of office of eight (8) judges, four (4) from each section, elected during the first election shall end after four (4) years.
2. The Judges, whose term of office shall end after the initial period of four (4) years, shall be determined for each section, by lot drawn by the Chairperson of the Assembly or the Executive Council, immediately after the first election.
3. A Judge, elected to replace another whose term of office has not expired, shall complete the term of office of his predecessor.
4. All the Judges except the President and the Vice-President, shall perform their functions on a part-time basis.

## **Article 9**

### **Resignation, Suspension and Removal from Office**

1. A Judge may resign his/her position in writing addressed to the President for transmission to the Chairperson of the Assembly through the Chairperson of the Commission.
2. A Judge shall not be suspended or removed from office save, where, on the recommendation of two-thirds majority of the other members, he/she no longer meets the requisite conditions to be a Judge.
3. The President shall communicate the recommendation for the suspension or removal of a Judge to the Chairperson of the Assembly through the Chairperson of the Commission.
4. Such a recommendation of the Court shall become final upon its adoption by the Assembly.

## **Article 10**

### **Vacancies**

1. A vacancy shall arise in the Court under the following circumstances:
  - a. Death;
  - b. Resignation;
  - c. Removal from office.
2. In the case of death or resignation of a Judge, the President shall immediately inform the Chairperson of the Assembly through the Chairperson of the Commission in writing, who shall declare the seat vacant.
3. The same procedure and consideration for the election of a Judge shall also be followed in filling the vacancies.

## **Article 11 Solemn Declaration**

1. After the first election, the Judges shall, at the first session of the Court and in the presence of the Chairperson of the Assembly, make a Solemn Declaration as follows:

“ I ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,, Do solemnly swear (or affirm or declare) that I shall faithfully exercise the duties of my office as Judge of the African Court of Justice and Human Rights of the African Union impartially and conscientiously, without fear or favour, affection or ill will and that I will preserve the integrity of the Court.”

2. The Chairperson of the Assembly or his/her duly authorized representative shall administer the Solemn Declaration.
3. Subsequently, the Solemn Declaration shall be made before the President of the Court.

## **Article 12 Independence**

1. The independence of the judges shall be fully ensured in accordance with international law.
2. The Court shall act impartially, fairly and justly.
3. In performance of the judicial functions and duties, the Court and its Judges shall not be subject to the direction or control of any person or body.

## **Article 13 Conflict of Interest**

1. Functions of a Judge are incompatible with all other activities, which might infringe on the need for independence or impartiality of the judicial profession. In case of doubt, the Court shall decide.
2. A Judge shall not exercise the function of agent, or counsel, or lawyer in any case before the Court.

## **Article 14 Conditions Governing the Participation of Members in the Settlement of a Specific Case**

1. Where a particular judge feels he/she has a conflicting interest in a particular case, he/she shall so declare. In any event, he/she shall not participate in the settlement of a case for which he/she was previously involved as agent, counsel or lawyer of one of the parties, or as a member of a national or international Court or Tribunal, or a Commission of enquiry or in any other capacity.
2. If the President considers that a Judge should not participate in a particular case, he/she shall notify the judge concerned. Such notification from the President shall, after agreement by the Court, exclude that Judge from participating in that particular case.
3. A Judge of the nationality of a State Party to a case before the full Court or one of its Sections shall not have the right to sit on the case.
4. Where there is doubt on these points, the Court shall decide.

## **Article 15 Privileges and Immunities**

1. The Judges shall enjoy, from the time of their election and throughout their term of office, the full privileges and immunities extended to diplomatic agents in accordance with international law.
2. The Judges shall be immune from legal proceedings for any act or omission committed in the discharge of their judicial functions.
3. The Judges shall continue, after they have ceased to hold office, to enjoy immunity in respect of acts performed by them when engaged in their official capacity.

## **Article 16 Sections of the Court**

The Court *shall have two (2) Sections*; a General Affairs Section composed of eight (8) Judges and a Human Rights Section composed of eight (8) Judges.

## **Article 17 Assignment of matters to Sections**

1. The General Affairs Section shall be competent to hear all cases submitted under Article 28 of this Statute *save those concerning human and/or peoples' rights issues*.
2. The Human Rights Section shall be competent to hear all cases relating to human and/or peoples' rights.

## **Article 18 Referral of matters to the Full Court**

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

## **Article 19 Chambers**

1. The General Affairs Section and the Human Rights Section may, at any time, constitute one or several chambers.
2. The quorum required to constitute such chambers shall be determined in the Rules of Court.
3. A judgment given by any Section or Chamber shall be considered as rendered by the Court.

## **Article 20 Sessions**

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

## **Article 21 Quorum**

1. A quorum of nine (9) Judges shall be required for deliberations of the Full Court.
2. A quorum of five (5) Judges shall be required for the deliberations of the General Affairs Section.
3. A quorum of five (5) Judges shall be required for the deliberations of the Human and Peoples' Rights Section.

## **Article 22 Presidency, Vice-Presidency and Registry**

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

## **Article 23 Remuneration of Judges**

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

## **Article 24 Conditions of Service of the Registrar and Members of the Registry**

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

## **Article 25 Seat and Seal of the Court**

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

## **Article 26 Budget**

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

## **Article 27**

### **Rules of Court**

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

## **CHAPTER III**

### **COMPETENCE OF THE COURT**

## **Article 28**

### **Jurisdiction of the Court**

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

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

## **Article 29**

### **Entities Eligible to Submit Cases to the Court**

1. The following entities shall be entitled to submit cases to the Court on any issue or dispute provided for in Article 28:
  - a) States Parties to the present Protocol;
  - b) The Assembly, the Parliament and other organs of the Union authorized by the Assembly;
  - c) A staff member of the African Union on appeal, in a dispute and within the limits and under the terms and conditions laid down in the Staff Rules and Regulations of the Union;
2. The Court shall not be open to States, which are not members of the Union. The Court shall also have no jurisdiction to deal with a dispute involving a Member State that has not ratified the Protocol.

## **Article 30**

### **Other Entities Eligible to Submit Cases to the Court**

The following entities shall also be entitled to submit cases to the Court on any violation of a right guaranteed by the African Charter, by the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, or any other legal instrument relevant to human rights ratified by the States Parties concerned:

- a) States Parties to the present Protocol;
- b) the African Commission on Human and Peoples' Rights;
- c) the African Committee of Experts on the Rights and Welfare of the Child;
- d) African Intergovernmental Organizations accredited to the Union or its organs;
- e) African National Human Rights Institutions;
- f) Individuals or relevant Non-Governmental Organizations accredited to the African Union or to its organs, subject to the provisions of Article 8 of the Protocol.

## **Article 31**

### **Applicable Law**

1. In carrying out its functions, the Court shall have regard to:
  - a) The Constitutive Act;
  - b) International treaties, whether general or particular, ratified by the contesting States;
  - c) International custom, as evidence of a general practice accepted as law;
  - d) The general principles of law recognized universally or by African States;
  - e) Subject to the provisions of paragraph 1, of Article 46 of the present Statute, judicial decisions and writings of the most highly qualified publicists of various nations as well as the regulations, directives and decisions of the Union, as subsidiary means for the determination of the rules of law;

- f) Any other law relevant to the determination of the case.
2. This Article shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

## **CHAPTER IV PROCEDURE**

### **Article 32 Official Languages**

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

### **Article 33 Institution of Proceedings before the General Affairs Section**

1. Cases brought before the Court by virtue of Article 29 of the present Statute shall be submitted by written application addressed to the Registrar. The subject of the dispute, the applicable law and basis of jurisdiction shall be indicated.
2. The Registrar shall forthwith give notice of the application to the Parties concerned.
3. The Registrar shall also notify, through the Chairperson of the Commission, all Member States and, if necessary, the organs of the Union whose decisions are in dispute.

### **Article 34 Institution of Proceedings before the Human Rights Section**

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

### **Article 35 Provisional Measures**

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

### **Article 36 Representation of Parties**

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

### **Article 37 Communications and Notices**

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

### **Article 38 Procedure Before the Court**

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

### **Article 39 Public Hearing**

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

### **Article 40 Record of Proceedings**

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

### **Article 41 Default Judgment**

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

### **Article 42 Majority Required for Decision of the Court**

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

### **Article 43 Judgments and Decisions**

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

### **Article 44 Dissenting Opinion**

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

### **Article 45 Compensation**

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

### **Article 46 Binding Force and Execution of Judgments**

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

## **Article 47 Interpretation**

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

## **Article 48 Revision**

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

## **Article 49 Intervention**

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

## **Article 50 Intervention in a Case Concerning the Interpretation of the Constitutive Act**

1. Whenever the question of interpretation of the Constitutive Act arises, in a case in which Member States other than the parties to the dispute have expressed an interest, the Registrar shall notify all such States and organs of the Union forthwith.
2. Every State Party and organ of the Union so notified has the right to intervene in the proceedings.
3. The decisions of the Court concerning the interpretation and application of the Constitutive Act shall be binding on Member States and organs of the Union, notwithstanding the provisions of paragraph 1, of Article 46 of this Statute.
4. Any decision made by virtue of this Article shall be made by a qualified majority of at least two (2) votes and in the presence of at least two-thirds of the Judges.

## **Article 51 Intervention in a Case concerning the Interpretation of Other Treaties**

1. Whenever the question is that of interpretation of other treaties ratified by Member States other than the parties to a dispute, the Registrar shall notify all such States and the organs of the Union forthwith.
2. Every State Party and organ of the Union so notified has the right to intervene in the proceedings, and if it exercises this right, the interpretation given by the judgment shall be equally binding upon it.
3. This Article shall not be applicable to cases relating to alleged violations of a human or peoples' right, submitted by virtue of Articles 29 or 30 of the present Statute.

## **Article 52 Costs**

1. Unless otherwise decided by the Court, each party shall bear its own costs.
2. Should it be required in the interest of justice, free legal aid may be provided for the person presenting an individual communication, under conditions to be set out in the Rules of Court.

## **CHAPTER V ADVISORY OPINION**

### **Article 53 Request for Advisory Opinion**

1. The Court may give an advisory opinion on any legal question at the request of the Assembly, the Parliament, the Executive Council, the Peace and Security Council, the Economic, Social and Cultural Council (ECOSOCC), the Financial Institutions or any other organ of the Union as may be authorized by the Assembly.
2. A request for an advisory opinion shall be in writing and shall contain an exact statement of the question upon which the opinion is



required and shall be accompanied by all relevant documents.

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

#### **Article 54** **Service of Notice**

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

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

3. Should any such State entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such State may express the desire to submit a written statement or to be heard, and the Court shall decide.

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

#### **Article 55** **Delivery of Advisory Opinion**

The Court shall deliver its advisory opinion in open court, notice having been given to the Chairperson of the Commission and Member States, and other International Organizations directly concerned.

#### **Article 56** **Application by Analogy of the Provisions of the Statute Applicable to Contentious Cases**

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

### **CHAPTER VI** **REPORT TO THE ASSEMBLY**

#### **Article 57** **Annual Activity Report**

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

### **CHAPTER VII** **PROCEDURE FOR AMENDMENTS**

#### **Article 58** **Proposed Amendments from a State Party**

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

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

#### **Article 59** **Proposed Amendments from the Court**

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

#### **Article 60** **Entry into Force of Amendments**

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

# Appendix I: 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 Peoples' 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 1: 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 the purposes of this Charter, a child means every human being below the age of 18 years.

#### Article 3: Non-Discrimination

Every child shall be entitled to the enjoyment of the rights and freedoms 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 event 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 of the child and shall have the duty:

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

2. States Parties to the present Charter shall in accordance with their means and national conditions take all appropriate measures;
- (a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;
  - (b) to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and
  - (c) to ensure that the children of working parents are provided with care services and facilities.

### **Article 21: Protection against Harmful Social and Cultural Practices**

1. 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 traffick 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 1 (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.

## Appendix J: Convention on the Elimination of all Forms of Discrimination against Women

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The States Parties to the present Convention,

**Noting** that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

**Noting** that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

**Noting** that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

**Considering** the international conventions concluded under the auspices of the United Nations and the specialised agencies promoting equality of rights of men and women,

**Noting** also the resolutions, declarations and recommendations adopted by the United Nations and the specialised agencies promoting equality of rights of men and women,

**Concerned**, however, that despite these various instruments extensive discrimination against women continues to exist,

**Recalling** that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

**Concerned** that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

**Convinced** that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

**Emphasising** that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

**Affirming** that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realisation of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

**Convinced** that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

**Bearing** in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognised, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

**Aware** that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

**Determined** to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

**Have Agreed on the Following:**

## **PART I**

### **Article 1**

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

### **Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g) To repeal all national penal provisions which constitute discrimination against women.

### **Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

### **Article 4**

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

### **Article 5**

States Parties shall take all appropriate measures:

- a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary 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 men and women;
- b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

### **Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

## PART II

### Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- c) To participate in non-governmental organisations and associations concerned with the public and political life of the country.

### Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organisations.

### Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

## PART III

### Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- d) The same opportunities to benefit from scholarships and other study grants;
- e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely;
- g) The same Opportunities to participate actively in sports and physical education;
- h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

### Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a) The right to work as an inalienable right of all human beings;
- b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

- f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this Article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

## Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this Article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

## Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a) The right to family benefits;
- b) The right to bank loans, mortgages and other forms of financial credit;
- c) The right to participate in recreational activities, sports and all aspects of cultural life.

## Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetised sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- a) To participate in the elaboration and implementation of development planning at all levels;
- b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- c) To benefit directly from social security programmes;
- d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- e) To organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- f) To participate in all community activities;
- g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

## PART IV

### Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them



equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

## Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- a) The same right to enter into marriage;
- b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- c) The same rights and responsibilities during marriage and at its dissolution;
- d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

## PART V

### Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilisation as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this Article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources

on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

### **Article 18**

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

- a) Within one year after the entry into force for the State concerned;
- b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

### **Article 19**

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

### **Article 20**

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with Article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (amendment, status of ratification)

### **Article 21**

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and General Recommendations based on the examination of reports and information received from the States Parties. Such suggestions and General Recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

### **Article 22**

The specialised agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialised agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

## **PART VI**

### **Article 23**

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

### **Article 24**

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realisation of the rights recognised in the present Convention.

### **Article 25**

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

### **Article 26**

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

### **Article 27**

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

### **Article 28**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

### **Article 29**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organisation of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this Article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this Article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

### **Article 30**

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorised, have signed the present Convention.

## Appendix K: Checklists

### Checklist for use of the Women's Rights Protocol at the domestic level

In bringing a complaint of violation of rights under the Women's Rights Protocol complainants may like to refer to the following checklist to ensure that the Women's Rights Protocol is applicable and enforceable:

- Has the State Party ratified the Women's Rights Protocol and deposited the instrument of ratification with the African Union?
- If yes, did the violation occur after the Women's Rights Protocol was ratified by the State Party?
- If yes, does the State Party's legal system require enabling legislation to make the Women's Rights Protocol enforceable (generally in common law systems) or is the Women's Rights Protocol automatically enforceable upon ratification (generally in civil law systems)?
- If enabling legislation is required, has such legislation been enacted and did the violation occur after such legislation was enacted?
- If enabling legislation has not been enacted, have domestic courts ever taken judicial notice of the Women's Rights Protocol?
- If the Women's Rights Protocol is enforceable, has the State Party designated a competent authority (judicial or administrative) to provide remedies for violations of the Women's Rights Protocol?
- If the State has not ratified the Women's Rights Protocol, is there a violation of the African Charter (assuming that the African Charter is enforceable) where the Women's Rights Protocol may be used as an interpretive tool?
- Has the State ratified other international instruments such as CEDAW or CRC that may also be cited?

### Checklist for submitting a communication to the African Commission

- Have you indicated the author of the communication (and victim, if different) and provided contact information?
- Is the victim's life, personal integrity or health in imminent danger? If so, have you asked for temporary provisional measures?
- Have you requested anonymity for the victim, if the victim so desires?
- Is the State against which the communication is brought a party to the instrument it is claimed has been violated?
- Does the communication clearly and specifically set out the alleged violation(s) of the rights of the victim under the African Charter and/or the Women's Rights Protocol by something the State has done or failed to do?
- Have you clearly described the facts of the case?
- Does the communication indicate which government authority is responsible for the violation?
- Is the communication based on events that took place within the jurisdiction of the State Party?
- Is the communication based on events that occurred since the African Charter or Women's Rights Protocol (as applicable) came into force, or events that have continued to occur or whose effects continue past the coming into force of the African Charter or the Women's Rights Protocol (as applicable)?
- Have you ensured that the communication does not contain disparaging or insulting language?
- Have you ensured that the communication is not exclusively based on news disseminated by the media?
- Have you indicated that all local remedies have been exhausted, or specified an exception to the exhaustion of remedies rule that is applicable to your case?
- In the case of exhaustion of domestic remedies, have you described the legal process at the national level and attached all relevant documents to show that the matter has been concluded at the national level?
- Are you submitting the communication within a reasonable time after the exhaustion of local remedies?
- Have you ensured that no other international or regional mechanism has made a decision on the merits of the case or is in the process of considering the complaint?
- Have you included all evidence supporting the complaint?
- Is the communication being submitted in English or French?
- Have you indicated specific types of remedies that you are seeking?

*See Appendix D—African Commission Guidelines for the Submission of Communications*

### Amicable resolution

Once a communication has been declared admissible, the Commission puts itself at the disposal of the parties in a bid to secure a *friendly settlement* of the dispute. The Commission offers its *Good Offices* for friendly settlement at any stage of the proceedings. If both parties express willingness to settle the matter amicably, the Commission will appoint a rapporteur, usually the Commissioner who has been handling the case, or a Commissioner responsible for promotional activities in the State concerned or a group of commissioners.

If a friendly settlement is reached, a report containing the terms of the settlement is presented to the Commission at its session. This will automatically bring consideration of the case to an end. On the other hand, if no agreement is reached, a report is submitted to the Commission accordingly by the commissioner(s) concerned and the Commission will take a decision on the merits of the case.

### Evidence and Burden of Proof

For the purpose of *seizure* and *admissibility*, the author of the communication can confine himself or herself to presenting a *prima facie* case and satisfying the conditions laid down in Article 56 of the Charter. The author should also make precise allegations of facts by attaching relevant documents, if possible, and avoid making allegations in general terms.

Likewise, a rejection of the allegations by a State is not enough. The State party must submit specific responses and evidence refuting the allegations.

### **Consideration on the Merits**

Once a communication has been declared admissible, the Commission will proceed to consider the substantive issues of the case. That is to say, to examine the allegations made by the complainant and the response of the State concerned with due regard to the provisions of the Charter and other international human rights norms.

The Secretariat of the Commission prepares a draft decision on the merits taking into account all the facts at its disposal. This is meant to guide the Commissioners in their deliberations. The parties are notified of the final decision taken by the Commission.

During the session, the parties are liberty to make written or oral presentations to the Commission. Some States send representatives to the Commission's sessions to refute allegations made against them. NGOs and individuals are also granted audience to make oral presentations before the Commission. The Commission puts complainants and the States which are alleged to have violated human and/or people's rights on an equal footing throughout the proceedings.

Decision on the merits is an application of the international human rights law and an interpretation of the Charter vis-à-vis the allegations alleged by the victim. It is an examination of these allegations and all the arguments submitted by the parties within the context of the African Charter in particular, and international human rights law in general.

There are usually instances where a State completely ignores to respond to the allegations made by the complainant, thus refusing to cooperate with the Commission. In such a situation, the Commission has no choice but to rely on the facts at its disposal for its final decision.

However, the fact that the complainant's allegations were not contested, or were partially contested by the State does not mean that the Commission will accept their veracity. The Commission can invoke the powers invested in it under Article 46 to "resort to any appropriate method of investigation ...." To examine such claims *ex officio*, it can get information from alternative sources and from third parties.

After a careful study of the facts and the arguments put forward by both sides, the Commission may then decide whether there has been a violation of the Charter or not. If it finds a violation, it makes recommendations to the State party concerned.

### **Recommendations (or Decisions) of the Commission**

The Commission's final decisions are called recommendations. The recommendations are made after consideration of the facts submitted by the author, his or her complaint, the State party's observations (if any) and the issues and proceedings before the Commission.

These proceedings usually contain the decision on admissibility, an interpretation of the provisions of the Charter invoked by the author, an answer to the question whether the facts as presented disclose a violation of the Charter, and if a violation is found, the required action to be taken by the State party to remedy the violation.

The mandate of the Commission is quasi-judicial and as such, its final recommendations are not in themselves legally binding on the States concerned.

These recommendations are included in the Commissioner's Annual Activity Reports which are submitted to the OAU Assembly of Heads of State and Government in conformity with Article 54 of the Charter. If they are adopted, they become binding on the States parties and are published.

### **Follow-up on the Commission's recommendations**

The Commission has not laid down procedure to supervise the implementation of its recommendations. However, the Secretariat does send letters of reminders to States that have been found to have violated provisions of the Charter calling upon them to honour their obligations under Article 1 of the Charter "... to recognise the rights, duties and freedoms enshrined in this Charter and ... adopt legislative and other measures to give effect to them". The first letters are sent immediately after the adoption of the Commission's Annual Activity Report by the OAU Assembly of Heads of State and Government and subsequent letters are sent as often as necessary.

The major problem however is that of enforcement. There is no mechanism that can compel States to abide by these recommendations. Much remains on the good will of the States.

### **Procedure for inter-state communications**

The submission of communications to the Commission by States parties to the Charter alleging that another State party has violated the provisions of the Charter is governed by two procedures spelt out in Articles 48-53 of the African Charter and Rules 93 to 101 of the Commission's Rules of Procedure.

The first procedure contained in Article 48 mandates the Commission to receive and consider a communication from a State only after the State has tried to settle the dispute with the other State and failed. If after three months the dispute is not settled, either State can

submit the communication to the Commission through the Chairman, and notify the other State.

The second procedure allows a State which does not want to enter into bilateral negotiation with the accused State to refer a matter of human rights violations directly to the Commission, by addressing a communication to the Chairman of the Commission, the OAU Secretary General and the other State concerned.

Unlike the procedure with regards to ‘other communications’, under these two procedures, the Charter requires the Communication to be addressed specifically to the Chairman of the Commission, and also obliges the complaining State to notify the other State itself, instead of the Commission doing so.

Under both procedures, the Commission can proceed to consider a communication only after it has ascertained that all local remedies have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

The Commission may, if it deems it necessary, ask States to provide it with all the relevant information; and when it is considering the matter, it may invite States to make oral or written presentations. The primary goal of the Commission in either procedure is to secure a friendly settlement.

However, after having tried all appropriate means to reach an amicable solution based on the respect for human and people’s rights, the Commission shall prepare a report within a reasonable period of time, to the States concerned and communicate the report to the OAU Assembly. In its report to the Assembly, the Commission can indicate such recommendations as it deems useful.

For further information, please contact: The African Commission on Human and Peoples’ Rights, P O Box 673, Banjul, The Gambia, Tel: 220 392962, Fax: 220 390764



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