

PART 2

7. BASIC AFRICAN TEXTS

Chapter 7 Summary: Basic African Texts

While it was the *Charter of the Organization of African Unity* that expressly encouraged international cooperation based on the *Universal Declaration of Human Rights*, it was the *African Charter* that acknowledged the need for a vehicle that takes into account the importance that Africans traditionally attach to these rights and freedoms. Building from the premise set by the two Charters, the documents featured in chapter seven constitute the principle declarations of the African nations on human rights, including women's rights, and regional cooperation. In recognition of the particular human rights violations suffered by women, the *Protocol on the Rights of Women* establishes the necessary requirements for the effective protection of women's rights. The *African Charter on the Rights and Welfare of the Child*, meanwhile, provides for the welfare of the children through the assignment of specific duties to states and organizations.

In its aim to reform the regional organization in a manner which deals with the existing situation in Africa, the *Constitutive Act of the African Union* sets out the main objectives and principles of the AU and the Organs of the Union. *The Protocol to the African Charter on the Establishment of an African Court of Human and Peoples' Rights (Protocol of the African Court)* designates the African Court on Human and Peoples' Rights to settle disputes concerning the interpretation and application of the *African Charter* and other African human rights conventions. On a more detailed vein, the *Rules of Procedure of the African Commission on Human and Peoples' Rights (Rules of Procedure)* outline the structure and function of the African Commission including the order of its activities and the roles of its officers. In articulating universal human rights and principles, these documents are crucial in properly contextualizing the struggles and goals of African women in the realm of reproductive and sexual health rights and beyond.

These documents represent the basic African texts within the regional human rights system, including those related to the rights of women in Africa. Included are declarations from the heads of government making up the Organization of African Unity (now replaced by the African Union). Combined, the documents constitute the principle declarations of the African nations on human rights and regional cooperation. Human rights principles are established in the *Charter of the Organization of African Unity* and sustained in the *Constitutive Act of the African Union*. This fundamental concern is further elaborated in the other texts included in this chapter.

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Charter of the Organization of African Unity

In response to the aspirations of the African people for unity in a larger collective, the *Charter of the Organization of African Unity (OAU Charter)* established the Organization of African Unity (OAU) in 1963. The central objectives of the *OAU Charter* are to promote unity and solidarity among the African states, to defend their sovereignty, to eradicate colonialism in the continent, and to promote international cooperation based on the *Universal Declaration of Human Rights* (Article 1). Human rights are pursued concurrently with the recognition of the sovereignty and equality of African states, and the principle of non-interference in internal affairs of member states (art. 3). The *OAU Charter* establishes various organs entrusted with running the activities of the OAU, including: the assembly of heads of state and government (art. 8); the council of ministers (Article 12); general secretariat (Article 14); commission of mediation, conciliation and arbitration (Article 19); and specialized commission (Article 20). It should be noted that the OAU has recently been replaced with the new African Union (AU), which was established by the *Constitutive Act of African Union*, a document which is also reproduced in this chapter.

This document may be accessed at <http://www1.umn.edu/humanrts/instree/afriinst.htm>.

Charter of the Organization of African Unity

479 U.N.T.S. 39, entered into force Sept. 13, 1963.

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

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

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

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

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

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

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

Dedicated to the general progress of Africa,

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

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

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

Have agreed to the present Charter.

ESTABLISHMENT

Article I

The High Contracting Parties do by the present Charter establish an Organization to be known as the ORGANIZATION OF AFRICAN UNITY.

The Organization shall include the continental African States, Madagascar and other Islands surrounding Africa.

PURPOSES

Article II

The Organization shall have the following purposes: To promote the unity and solidarity of the African States;

To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa;

To defend their sovereignty, their territorial integrity and independence,

To eradicate all forms of colonialism from Africa;

To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

To these ends, the Member States shall coordinate and harmonize their general policies, especially in the following fields: Political and diplomatic cooperation;

Economic cooperation, including transport and communications;

Educational and cultural cooperation;

Health, sanitation and nutritional cooperation;

Scientific and technical cooperation;

Cooperation for defense and security.

PRINCIPLES

Article III

The Member States, in pursuit of the purposes stated in Article II, solemnly affirm and declare their adherence to the following principles:

The sovereign equality of all Member States.

Non- interference in the internal affairs of States.

Respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence.

Peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration.

Unreserved condemnation, in all its forms, of political assassination as well as of subversive activities on the part of neighboring States or any other States.

Absolute dedication to the total emancipation of the African territories which are still dependent.

Affirmation of a policy of non-alignment with regard to all blocs.

MEMBERSHIP

Article IV

Each independent sovereign African State shall be entitled to become a Member of the Organization.

RIGHTS AND DUTIES OF MEMBER STATES

Article V

All Member States shall enjoy equal rights and have equal duties.

Article VI

The Member States pledge themselves to observe scrupulously the principles enumerated in Article III of the present Charter.

INSTITUTIONS

Article VII

The Organization shall accomplish its purposes through the following principal institutions:
The Assembly of Heads of State and Government.

The Council of Ministers.

The General Secretariat.

The Commission of Mediation, Conciliation and Arbitration.

THE ASSEMBLY OF HEADS OF STATE AND GOVERNMENT

Article VIII

The Assembly of Heads of State and Government shall be the supreme organ of the Organization. It shall, subject to the provisions of this Charter, discuss matters of common concern to Africa with a view to coordinating and harmonizing the general policy of the Organization. It may in addition review the structure, functions and acts of all the organs and any specialized agencies which may be created in accordance with the present Charter.

Article IX

The Assembly shall be composed of the Heads of State and Government or their duly accredited representatives and it shall meet at least once a year. At the request of any Member State and on approval by a two-thirds majority of the Member States, the Assembly shall meet in extraordinary session.

Article X

Each Member State shall have one vote.

All resolutions shall be determined by a two-thirds majority of the Members of the Organization.

Questions of procedure shall require a simple majority. Whether or not a question is one of procedure shall be determined by a simple majority of all Member States of the Organization.

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

Article XI

The Assembly shall have the power to determine its own rules of procedure.

THE COUNCIL OF MINISTERS

Article XII

The Council of Ministers shall consist of Foreign Ministers or such other Ministers as are designated by the Governments of Member States. The Council of Ministers shall meet at least twice a year. When requested by any Member State and approved by two-thirds of all Member States, it shall meet in extraordinary session.

Article XIII

The Council of Ministers shall be responsible to the Assembly of Heads of State and Government. It shall be entrusted with the responsibility of preparing conferences of the Assembly.

It shall take cognisance of any matter referred to it by the Assembly. It shall be entrusted with the implementation of the decision of the Assembly of Heads of State and Government. It shall coordinate inter-African cooperation in accordance with the instructions of the Assembly and in conformity with Article II (2) of the present Charter.

Article XIV

Each Member State shall have one vote.

All resolutions shall be determined by a simple majority of the members of the Council of Ministers.

Two-thirds of the total membership of the Council of Ministers shall form a quorum for any meeting of the Council.

Article XV

The Council shall have the power to determine its own rules of procedure.

GENERAL SECRETARIAT

Article XVI

There shall be a Secretary-General of the Organization, who shall be appointed by the Assembly of Heads of State and Government. The Secretary-General shall direct the affairs of the Secretariat.

Article XVII

There shall be one or more Assistant Secretaries – General of the Organization, who shall be appointed by the Assembly of Heads of State and Government.

Article XVIII

The functions and conditions of service of the Secretary-General, of the Assistant Secretaries-General and other employees of the Secretariat shall be governed by the provisions of this Charter and the regulations approved by the Assembly of Heads of State and Government.

In the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

Each member of the Organization undertake to respect the exclusive character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

COMMISSION OF MEDIATION CONCILIATION AND ARBITRATION

Article XIX

Member States pledge to settle all disputes among themselves by peaceful means and, to this end decide to establish a Commission of Mediation, Conciliation and Arbitration, the composition of which and conditions of service shall be defined by a separate Protocol to be approved by the Assembly of Heads of State and Government. Said Protocol shall be regarded as forming an integral part of the present Charter.

SPECIALIZED COMMISSION

Article XX

The Assembly shall establish such Specialized Commissions as it may deem necessary, including the following:

Economic and Social Commission.

Educational, Scientific, Cultural and Health Commission.

Defense Commission.

Article XXI

Each Specialized Commission referred to in Article XX shall be composed of the Ministers concerned or other Ministers or Plenipotentiaries designated by the Governments of the Members States.

Article XXII

The functions of the Specialized Commissions shall be carried out in accordance with the provisions of the present Charter and of the regulations approved by the Council of Ministers.

THE BUDGET

Article XXIII

The budget of the Organization prepared by the Secretary-General shall be approved by the Council of Ministers. The budget shall be provided by contribution from Member States in accordance with the scale of assessment of the United Nations; provided, however, that no Member State shall be assessed an amount exceeding twenty per cent of the yearly regular budget of the Organization. The Member States agree to pay their respective contributions regularly.

SIGNATURE AND RATIFICATION OF THE CHARTER

Article XXIV

This Charter shall be open for signature to all independent sovereign African States and shall be ratified by the signatory States in accordance with their respective constitutional processes.

The original instrument, done, if possible in African Languages, in English and French, all texts being equally authentic, shall be deposited

with the Government of Ethiopia which shall transmit certified copies thereof to all independent sovereign African States.

Instruments of ratification shall be deposited with the Government of Ethiopia, which shall notify all signatories of each such deposit.

ENTRY INTO FORCE

Article XXV

This Charter shall enter into force immediately upon receipt by the Government of Ethiopia of the instruments of ratification from two-thirds of the signatory States.

REGISTRATION OF THE CHARTER

Article XXVI

This Charter shall, after due ratification, be registered with the Secretariat of the United Nations through the Government of Ethiopia in conformity with Article 102 of the Charter of the United Nations.

INTERPRETATION OF THE CHARTER

Article XXVII

Any question which may arise concerning the interpretation of this Charter shall be decided by a vote of two-thirds of the Assembly of Heads of State and Government of the Organization.

ADHESION AND ACCESSION

Article XXVIII

Any independent sovereign African State may at any time notify the Secretary-General of its intention to adhere or accede to this Charter.

The Secretary-General shall, on receipt of such notification, communicate a copy of it to all the Member States. Admission shall be decided by a simple majority of the Member States. The decision of each Member State shall be transmitted to the Secretary-General, who shall, upon receipt of the required number of votes, communicate the decision to the State concerned.

MISCELLANEOUS

Article XXIX

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

Article XXX

The Secretary-General may accept, on behalf of the Organization, gifts, bequests and other donations made to the Organization, provided that this is approved by the Council of Ministers.

Article XXXI

The Council of Ministers shall decide on the privileges and immunities to be accorded to the personnel of the Secretariat in the respective territories of the Member States.

CESSATION OF MEMBERSHIP

Article XXXII

Any State which desires to renounce its membership shall forward a written notification to the Secretary-General. At the end of one year from the date of such notification, if not withdrawn, the Charter shall cease to apply with respect to the renouncing State, which shall thereby cease to belong to the Organization.

AMENDMENT OF THE CHARTER

Article XXXIII

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

IN FAITH WHEREOF, We, the Heads of African States and Governments have signed this Charter.

Done in the City of Addis Ababa, Ethiopia,

25th day of May, 1963

African Charter on Human and Peoples' Rights

The duty to promote and protect human and peoples' rights and freedoms requires a vehicle that takes into account the importance traditionally attached to these rights and freedoms in Africa. Also known as the *Banjul Charter*, the *African Charter on Human and Peoples' Rights* (*African Charter*) was adopted by the 18th Assembly of the Heads of State and Government of the Organization of African Unity in 1981 and was entered into force on October 1986. Among the fundamental freedoms it protects are key rights relating to reproductive and sexual health. These include: right to non-discrimination (Articles 2 and 18(3)), right to life (Article 4), right to liberty and security of the person (Article 6), right to receive information (Article 9), right to health (Article 16), and rights of the family (Article 18). Part II, Chapter II contains the mandate of the African Commission on Human and Peoples' Rights which, among others, ensures the protection of human and peoples' rights as enumerated in Article 45(2), and interprets the *African Charter's* provisions (as articulated in Article 45(3)).

This document may be accessed at http://www.achpr.org/english/info/news_en.html

African Charter on Human and Peoples' Rights

OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982),
entered into force Oct. 21, 1986

PREAMBLE

The African States members of the Organisation of African Unity, parties to the present Convention entitled "African Charter on Human and Peoples' Rights

Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of "a preliminary draft on an African Charter on Human and Peoples' Rights, providing inter alia for the establishment of bodies to promote and protect human and peoples' rights";

Considering the Charter of the Organisation of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples";

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate

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

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

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

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

Convinced that it is henceforth essential to pay particular attention to the right to development

and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights; Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, language, religion or political opinions;

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organisation of African Unity, the Movement of Non-Aligned Countries and the United Nations;

Firmly convinced of their duty to promote and protect human and peoples' rights and freedoms and taking into account the importance traditionally attached to these rights and freedoms in Africa;

HAVE AGREED AS FOLLOWS:

PART I: RIGHTS AND DUTIES
CHAPTER I: HUMAN AND PEOPLES'
RIGHTS
ARTICLE 1

The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

ARTICLE 2

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

ARTICLE 3

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

ARTICLE 4

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

ARTICLE 5

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

ARTICLE 6

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

ARTICLE 7

1. Every individual shall have the right to have his cause heard. This comprises:
 - a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
 - b. The right to be presumed innocent until proved guilty by a competent court or tribunal;
 - c. The right to defence, including the right to be defended by counsel of his choice;
 - d. The right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

ARTICLE 8

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

measures restricting the exercise of these freedoms.

ARTICLE 9

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

ARTICLE 10

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

ARTICLE 11

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

ARTICLE 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. 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. State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick

ARTICLE 17

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

ARTICLE 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of

morals and traditional values recognized by the community.

3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

ARTICLE 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

ARTICLE 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the State Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

ARTICLE 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting

international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.
5. State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

ARTICLE 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

ARTICLE 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organisation of African Unity shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, State Parties to the present Charter shall ensure that:
 - a. any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State Party to the present Charter;
 - b. their territories shall not be used as bases for subversive or

terrorist activities against the people of any other State Party to the present Charter.

ARTICLE 24

All peoples shall have the right to a general satisfactory environment favourable to their development.

ARTICLE 25

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

ARTICLE 26

State Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

CHAPTER II: DUTIES

ARTICLE 27

1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

ARTICLE 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

ARTICLE 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need.
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;

4. To preserve and strengthen social and national solidarity, particularly when the latter is strengthened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to his defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

PART 11: MEASURES OF SAFEGUARD

CHAPTER 1: ESTABLISHMENT AND ORGANISATION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

ARTICLE 30

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organisation of African Unity to promote human and peoples' rights and ensure their protection in Africa.

ARTICLE 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity.

ARTICLE 32

The Commission shall not include more than one national of the same State.

ARTICLE 33

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of

State and Government, from a list of persons nominated by the State Parties to the present Charter.

ARTICLE 34

Each State Party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the State Parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

ARTICLE 35

1. The Secretary General of the Organisation of African Unity shall invite State Parties to the present Charter at least four months before the elections to nominate candidates;
2. The Secretary General of the Organisation of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections;

ARTICLE 36

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

ARTICLE 37

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

ARTICLE 38

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

ARTICLE 39

1. In case of death or resignation of a member of the Commission, the Chairman of the Commission shall immediately inform the Secretary General of the Organisation of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the

Commission shall inform the Secretary General of the Organisation of African Unity, who shall then declare the seat vacant.

3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term, unless the period is less than six months.

ARTICLE 40

Every member of the Commission shall be in office until the date his successor assumes office.

ARTICLE 41

The Secretary General of the Organisation of African Unity shall appoint the Secretary of the Commission. He shall provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organisation of African Unity shall bear cost of the staff and services.

ARTICLE 42

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

ARTICLE 43

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

ARTICLE 44

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organisation of African Unity.

CHAPTER II: MANDATE OF THE
COMMISSION
ARTICLE 45

The functions of the Commission shall be:

1. To promote human and peoples' rights and in particular:
 - a. to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights and, should the case arise, give its views or make recommendations to Governments.
 - b. to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation.
 - c. cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State Party, an institution of the OAU or an African Organisation recognised by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

CHAPTER III: PROCEDURE OF THE
COMMISSION
ARTICLE 46

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organisation of African

Unity or any other person capable of enlightening it.

COMMUNICATION FROM STATES
ARTICLE 47

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

ARTICLE 48

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

ARTICLE 49

Notwithstanding the provisions of Article 47, if a State Party to the present Charter considers that another State Party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organisation of African Unity and the State concerned.

ARTICLE 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

ARTICLE 51

1. The Commission may ask the State concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

ARTICLE 52

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

ARTICLE 53

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

ARTICLE 54

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

ARTICLE 55

1. Before each Session, the Secretary of the Commission shall make a list of the Communications other than those of State Parties to the present Charter and transmit them to Members of the Commission, who shall indicate which Communications should be considered by the Commission.
2. A Communication shall be considered by the Commission if a simple majority of its members so decide.

ARTICLE 56

Communications relating to Human and Peoples' rights referred to in Article 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter requests anonymity,
2. Are compatible with the Charter of the Organisation of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity,
4. Are not based exclusively on news disseminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,

6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter, and
7. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter.

ARTICLE 57

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

ARTICLE 58

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

ARTICLE 59

1. All measures taken within the provisions of the present Chapter shall remain confidential until the Assembly of Heads of State and Government shall otherwise decide.
2. However the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.

3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

CHAPTER IV: APPLICABLE PRINCIPLES

ARTICLE 60

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

ARTICLE 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognised by Member States of the Organisation of African Unity, African practices consistent with international norms on Human and Peoples' Rights, customs generally accepted as law, general principles of law recognised by African States as well as legal precedents and doctrine.

ARTICLE 62

Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter.

ARTICLE 63

1. The present Charter shall be open to signature, ratification or adherence of the Member States of the Organisation of African Unity. 2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organisation of African Unity. 3. The present Charter shall come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the Member States of the Organisation of African Unity.

PART III: GENERAL PROVISIONS

ARTICLE 64

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.
2. The Secretary General of the Organisation of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organisation within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

ARTICLE 65

For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by that State of the instrument of ratification or adherence.

ARTICLE 66

Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

ARTICLE 67

The Secretary General of the Organisation of African Unity shall inform members of the Organisation of the deposit of each instrument of ratification or adherence.

ARTICLE 68

The present Charter may be amended if a State Party makes a written request to that effect to the Secretary General of the Organisation of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the State Parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the State Parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

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

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

The *Rules of Procedure of the African Commission on Human and Peoples' Rights (Rules of Procedure)* detail the structure and tasks of the African Commission on Human and Peoples' Rights (African Commission), such as the role of the Chairman and Vice Chairman and the frequency and location of African Commission sessions. Acting in accordance with Article 42.2 of the *African Charter on Human and Peoples' Rights*, the African Commission adopted the revised *Rules of Procedure* at its 18th session in October 1986. The procedural mandates may dictate the structure of the organization. They may also detail the nature of the African Commission's activities. For example, Chapters 15 and 16 outline the African Commission's role in promoting human rights through the examination of state reports and in protecting human rights by receiving communications. Rule 72 permits the African Commission to "invite any organization or persons capable of enlightening it to participate in its deliberation without voting rights." This is complimented by Rules 75 and 76, which address the relations between NGO's and the African Commission - the subject of two African Commission resolutions reproduced in Chapter 9 of this handbook.

This document may be accessed at <http://www1.umn.edu/humanrts/instreet/afrinst.htm>

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

Adopted on 6 October 1995

The African Commission on Human and Peoples' Rights,

Having Considered the African Charter on Human and Peoples' Rights,

Acting in accordance with Article 42.2 of the Charter,

Has adopted the present revised Rules of Procedure:

GENERAL PROVISIONS

ORGANISATION OF THE COMMISSION

CHAPTER I - SESSIONS

Rule 1 - Number of Sessions

The African Commission on Human and Peoples' Rights (hereinafter referred to as "the

Commission" shall hold the sessions which may be necessary to enable it to carry out satisfactorily its functions in conformity with the African Charter on Human and Peoples' Rights (hereinafter referred to as "The Charter").

Rule 2 - Opening Date

1. The Commission shall normally hold two ordinary sessions a year each lasting for about two weeks.

2. The ordinary sessions of the Commission shall be convened on a date fixed by the Commission on the proposal of its Chairman and in consultation with the Secretary General of the Organisation of African Unity (OAU) (hereinafter referred to as "The Secretary General").

3. The Secretary General may change under exceptional circumstances, the opening date of a

session, in consultation with the Chairman of the Commission.

Rule 3 - Extraordinary session

1. The Commission may decide to hold extraordinary sessions, When the Commission is not in session, the Chairman may convene extraordinary sessions in consultation with the members of the Commission.

The Chairman of the Commission shall also convene extraordinary sessions:

a. At the request of the majority of the members of the Commission or

b. At the request of the current Chairman of the Organisation of African Unity.

2. Extraordinary sessions shall be convened as soon as possible on a date fixed by the Chairman, in consultation with the Secretary General and the other members of the Commission.

Rule 4 - Place of meetings

The sessions shall normally be held at the Headquarters of the Commission. The Commission, in consideration with the Secretary General decide to hold a Session elsewhere.

Rule 5 - Notifications of the Opening Date of the Sessions

The Secretary of the commission (hereinafter referred to as the Secretary, shall inform members of the Commission of the date and venue of the first meeting of each session. This notification shall be sent, in the case of an Ordinary Session, at least eight (8) weeks, if possible, before the Session.

CHAPTER II - AGENDA

Rule 6 - Drawing up the Provisional Agenda

1. The Provisional Agenda for each Ordinary Session shall be drawn up by the Secretary in consultation with the Chairman of the Commission in accordance with the provisions of the Charter and these Rules.

2. The Provisional Agenda shall include if necessary, items on: "Communications from States", and "Other Communications" in

conformity with the provisions of Article 55 of the Charter. It should not contain any information relating to such communications.

3. Except as specified above on the communications, the Provisional Agenda shall include all the items listed by the present Rules of Procedure as well as the items proposed by.

a) The Commission at a previous Session;

b) The Chairman of the Commission or another member of the Commission;

c) A State party to the Charter;

d) The Assembly of Heads of State and Government or the Council of Ministers of the Organisation of African Unity;

e) The Secretary General of the Organisation of African Unity on any issue relating to the functions assigned to him by the Charter;

f) A national liberation movement recognized by the Organisation of African Unity or by a non-governmental organisation;

g) A specialized institution of which the State parties to the Charter are members.

4. The items to be included in the provisional agenda under sub paragraphs b, c, f and g of paragraph 3 must be communicated to the Secretary, accompanied by essential documents, not later than eight (8) weeks before the Opening of the Session.

5.a) All national liberation movements, specialised institutions, intergovernmental or non-governmental organisations wishing to propose the inclusion of an item in the Provisional Agenda must inform the Secretary at least ten (10) weeks before the opening of the meeting. Before formally proposing the inclusion of an item in the Provisional Agenda, the observations likely to be made by the Secretary must duly be taken into account;

b) All proposals made under the provisions of the present paragraph shall be included only in the Provisional Agenda of the Commission, if at least two thirds (2/3) of the members present and voting so decide.

6. The Provisional Agenda of the Extraordinary Session of the Commission shall include only the item proposed to be considered at that Extraordinary Session.

Rule 7 - Transmission and Distribution of the Provisional Agenda

1. The Provisional Agenda and the essential documents relating to each item shall be distributed to the members of the Commission by the Secretary who shall endeavour to transmit them to members at least six (6) weeks before the opening of the Session.

2. The Secretary shall communicate the Provisional Agenda of that session and have the essential documents relating to each Agenda item distributed at least six weeks before the opening of the Session of the Commission to the members of the Commission, member States parties to the Charter, to the current Chairman of the Organisation of African Unity and observers.

3. The draft agenda shall also be sent to the specialised agencies, to non governmental organisations and to the national liberation movements concerned with the agenda.

4. In exceptional cases the Secretary may, while giving his reasons in writing, have the essential documents relating to some items of the Provisional Agenda distributed at least four (4) weeks prior to the opening of the Session.

Rule 8 - Adoption of the Agenda

At the beginning of each session, the Commission shall if necessary, after the election of officers in conformity with rule 17, adopt the agenda of the Session on the basis of the Provisional Agenda referred to in Rule 6.

Rule 9 - Revision of the Agenda

The Commission may, during the Session, revise the Agenda if need be, adjourn, cancel or amend items. During the Session, only urgent and important issues may be added to the Agenda.

Rule 10 - Draft Provisional Agenda for Next Session

The Secretary shall, at each session of the Commission, submit a Draft Provisional Agenda for the next session of the Commission,

indicating with respect to each item, the documents to be submitted on that item and the decisions of the deliberative organ which authorized their preparation so as to enable the Commission to consider these documents as regards the contribution they make to its proceedings, as well as their urgency and relevance to the prevailing situation.

CHAPTER III - MEMBERS OF THE COMMISSION

Rule 11 - Composition of the Commission

The Commission shall be composed of eleven (11) members elected by the Assembly of Heads of State and Government hereinafter referred to as "the Assembly", in conformity with the relevant provisions of the Charter.

Rule 12 - Status of the Member

1. The members of the Commission shall be eleven (11) personalities appointed in conformity with the provisions of Article 31 of the Charter.

2. Each member of the Commission shall sit on the Commission in a personal capacity. No member may be represented by another person.

Rule 13 - Term of Office of the Members

1. The term of office of the members of the Commission elected on 29 July 1987 shall begin from that date. The term of office of the members of the Commission elected at subsequent elections shall take effect the day following the expiry date of the term of office of the members of the Commission they shall replace.

2. However, if a member is re-elected at the expiry of his or her term of office, or elected to replace a member whose term of office has expired or will expire, the term of office shall begin from that expiry date.

3. In conformity with Article 39 (3) of the Charter, the member elected to replace a member whose term has not expired, shall complete the term of office of his or her predecessor, unless the remaining term of office is less than six (6) months. In the latter case, there shall be no replacement.

Rule 14 - Cessation of Functions

1. If in the unanimous opinion of the other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organisation of African Unity, who shall then declare the seat vacant.

2. In case of the death or resignation of a member of the Commission, the Chairman shall immediately inform the Secretary General who shall declare the seat vacant from the date of the death or from that on which the resignation took effect. The member of the Commission who resigns shall address a written notification of his or her resignation directly to the Chairman or to the Secretary General and steps to declare his or her seat vacant shall only be taken after receiving the said notification. The resignation shall make the seat vacant.

Rule 15 - Vacant seat

Every seat declared vacant in conformity with Rule 14 of the present Rules of Procedure shall be filled on the basis of Article 39 of the Charter.

Rule 16 - Oath

Before coming into office, every member of the Commission shall make the following solemn commitment at a public sitting. "I swear to carry out my duties well and faithfully in all impartiality".

CHAPTER IV - OFFICERS

Rule 17 - Election of Officers

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

2. The elections referred to in the present Rule shall be held by secret ballot. Only the members present shall vote, the member who shall obtain the two-thirds majority of the votes of the members present and voting shall be elected.

3. If no member obtains this two-thirds majority in a second, third and fourth ballot, the member having the highest number of votes at the fifth ballot shall be elected.

4. The officers of the Commission shall be elected for a period of two (2) years. They shall

be eligible for re-election. None of them, may, however, exercise his or her functions if he or she ceases to be a member of the Commission.

Rule 18 - Power of the Chairman

The Chairman shall carry out the functions assigned to him by the Charter, the Rules of Procedure and the decisions of the Commission. In the exercise of his functions the Chairman shall be under the authority of the Commission.

Rule 19 - Absence of the Chairman

1. The Vice Chairman shall replace the Chairman during a session if the latter is unable to attend a whole or part of a sitting of a session.

2. In the absence of both the Chairman and Vice Chairman, members shall elect an acting Chairman.

Rule 20 - Functions of the Vice Chairman

The Vice Chairman, acting in the capacity of the Chairman, shall have the same rights and the same duties as the Chairman.

Rule 21 - Cessation of the Functions of an Officer

If any of the officers ceases to carry out his or her functions or declares that he or she is no longer able to serve as an officer or exercise the functions of a member of the Commission, a new officer shall be elected for the remaining term of office of his or her predecessor.

CHAPTER V - SECRETARIAT

Rule 22 - Function of the Secretary General

1. The Secretary General or his representative may attend the meeting of the Commission. He shall neither participate in the deliberations, nor in the voting. He may, however, be called upon by the Chairman of the Commission to make written or oral statements at the sittings of the Commission.

2. He shall appoint, in consultation with the Chairman of the Commission, a Secretary of the Commission.

3. He shall, in consultation with the Chairman provide the Commission with the necessary staff,

means and services for it to carry out effectively the functions and missions assigned to it under the Charter.

4. The Secretary General acting through the Secretary shall take all the necessary steps for the meetings of the Commission.

Rule 23 - Functions of the Secretary to the Commission

The Secretary of the Commission shall be responsible for the activities of the Secretariat under the general supervision of the Chairman, and particularly:

- a) He/she shall assist the Commission and its members in the exercise of their functions;
- b) He/she shall serve as an intermediary for all the communications concerning the Commission;
- c) He/she shall be the custodian of the archives of the Commission;
- d) The Secretary shall bring immediately to the knowledge of the members of the Commission all the issues that will be submitted to him/her.

Rule 24 - Estimates

Before the Commission approves a proposal entailing expenses, the Secretary shall prepare and distribute, as soon as possible, to the members of the Commission, the financial implications to the proposal. It is incumbent on the Chairman to draw the attention of the members to those implications so that they discuss them when the proposal is considered by the Commission.

Rule 25 - Financial Rules

The Financial Rules adopted pursuant to the provisions of Articles 41 and 44 of the Charter, shall be appended to the present Rules of Procedure.

Rule 26 - Financial responsibility

The Organisation of African Unity shall bear the expenses of the staff and the facilities and services placed at the disposal of the Commission to carry out its functions.

Rule 27 - Records of Cases

A special record, with a reference number and initialed, in which shall be entered the date of registration of each petition and communication and that of the closure of the procedure relating to them before the Commission, shall be kept at the Secretariat.

CHAPTER VI - SUBSIDIARY BODIES

Rule 28 - Establishment of Committees and Working Groups

1. The Commission may during a session, taking into account the provisions of the Charter establish, if it deems it necessary for the exercise of its functions, committees or working groups, composed of the members of the Commission and send them any agenda item for consideration and report.

2. These committees or working groups may, in consultation with the Secretary General, be authorized to sit when the Commission is not in session.

3. The members of the committees or working groups shall be appointed by the Chairman subject to the approval of the absolute majority of the other members of the Commission.

Rule 29 - Establishment of Sub-Commissions

1. The Commission may establish Sub Commissions of experts after the prior approval of the Assembly.

2. Unless the Assembly decides otherwise, the Commission shall determine the functions and composition of each Sub Commission.

Rule 30 - Offices of the Subsidiary bodies

Unless the Commission decides otherwise, the subsidiary bodies of the Commission shall elect their own officers.

Rule 31 - Rules of Procedure

The Rules of Procedure of the Commission shall apply, as far as possible to the proceedings of its subsidiary bodies.

CHAPTER VII - PUBLIC SESSIONS AND PRIVATE SESSIONS

Rule 32 - General principle

The sittings of the Commission and of its subsidiary bodies shall be held in public unless the Commission decides otherwise or it appears from the relevant provisions of the Charter that the meeting shall be held in private.

Rule 33 - Publication of Proceedings

At the end of each private or public sitting, the Commission or its subsidiary bodies may issue a communiqué.

CHAPTER VIII - LANGUAGES

Rule 34 - Working Languages

The working languages of the Commission and of all its institutions shall be those of the Organisation of African Unity.

Rule 35 - Interpretation

1. The address delivered in one of the working languages shall be interpreted in the other working languages.

2. Any person addressing the Commission in a language other than one of the working languages, shall, in principle, ensure the interpretation in one of the working languages. The interpreters of the Secretariat may take the interpretation of the original language as source language for their interpretation in the other working languages.

Rule 36 - Languages to be used for Minutes of Proceedings

The summary minutes of the sittings of the Commission shall be drafted in the working languages.

Rule 37 - Languages to be used for resolutions and other official decisions

All the official decisions and documents of the Commission will be rendered in the working languages.

Rule 38 - Tape recordings of the Session

The Secretariat shall record and preserve the tapes of the sessions of the Commission. It may also record and conserve the tapes of the sessions

of the committees, working groups and sub-commissions if the Commission so decides.

Rule 39 - Summary Minutes of the Sessions

The Secretariat shall draft the summary minutes of the public and private sessions of the Commission and of its subsidiary bodies. It shall distribute them as soon as possible in a draft form to the members of the Commission and to all other participants in the session. All those participants may, in the thirty (30) days following the receipt of the draft minutes of the session, submit corrections to the Secretariat. The Chairman may, under special circumstances, in consultation with the Secretary-General, extend the time for the submission of the corrections.

In case the corrections are contested, the Chairman of the Commission or the Chairman of the subsidiary body whose minutes they are, shall resolve the disagreement after having listened to, if necessary, the tape recordings of the discussions. If the disagreement persists, the Commission or the subsidiary body shall decide. The corrections shall be published in a distinct volume after the closure of the session.

Rule 40 - Distribution of the Minutes of the Private Sessions and Public Sessions

1. The final summary minutes of the public and private sessions shall be the document intended for general distribution unless, the Commission decides otherwise.

2. The minutes of the private sessions of the Commission shall be distributed forthwith to all members of the Commission.

Rule 41 - Reports to be submitted after each session

The Commission shall submit to the current Chairman of the Organisation of African Unity, a report on the deliberations of each session. This report shall contain a brief summary of the recommendations and statements on issues to which the Commission would like to draw the attention of the current Chairman and member States of the Organisation of African Unity.

Rule 42 - Submission of official decisions and reports

The text of the decisions and reports officially adopted by the Commission shall be distributed to all members of the Commission as soon as possible.

CHAPTER X - CONDUCT OF THE DEBATES

Rule 43 - Quorum

The quorum shall be constituted by seven (7) members of the Commission, as specified in Article 42 (3) of the Charter.

Rule 44 - Additional Powers of the Chairman

1. In addition to the powers entrusted to him/her under other provisions of the present Rules of Procedure, the Chairman shall have the responsibility to open and close each session; he/she shall direct the debates, ensure the application of the present Rules of Procedure, grant the use of floor, submit to a vote matters under discussion and announce the result of the vote taken.

2. Subject to the provisions of the present Rules of Procedure, the Chairman shall direct the discussions of the Commission and ensure order during meeting. The Chairman may during the discussion of an agenda item, propose to the Commission to limit the time allotted to speakers, as well as the number of interventions of each speaker on the same issue and close the list of speakers.

3. He/she shall rule on the points of order. He/she shall also have the power to propose the adjournment and the closure of debates as well as the adjournment and suspension of a sitting. The debates shall deal solely with the issues submitted to the Commission and the Chairman may call a speaker, whose remarks are irrelevant to the matter under discussion, to order.

Rule 45 - Points of Order

1. During the debate of any matter a member may, at any time, raise a point of order and the point of order shall be immediately decided by the Chairman, in accordance with the Rules of Procedure. If a member appeals against the decision, the appeal shall immediately be put to the vote and if the Chairman's ruling is not overruled by the majority of the members present, it shall be maintained.

2. A member raising a point of order cannot, in his or her comments, deal with the substance of the matter under discussion.

Rule 46 - Adjournment of Debates

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

Rule 47 - Limit the Time accorded to Speakers

The Commission may limit the time accorded to each speaker on any matter, when the time allotted for debates is limited and a speaker spends more time than the time accorded, the Chairman shall immediately call him to order.

Rule 48 - Closing the list of speakers

The Chairman may, during a debate, read out the list of speakers and with the approval of the Commission, declare the list closed. Where there are no more speakers, the Chairman shall, with the approval of the Commission, declare the debate closed.

Rule 49 - Closure of Debate

A member may, at any time, move for the closure of the debate on the matter under discussion, even if the other members or representatives expressed the desire to take the floor. The authorisation to take the floor on the closure of the debate shall be given only to two speakers before the closure, after which the motion shall immediately be put to the vote. Rule 50 - Suspension or Adjournment of the Meeting

During the discussion of any matter, a member may move for the suspension or adjournment of the meeting. No discussion on any such motion shall be permitted and it shall be immediately put to the vote. Rule 51 - Order of the Motions

Subject to the provisions of Rule 45 of the present Rule of Procedure the following motions shall have precedence in the following order over all the other proposals or motions before the meeting.

- a) To suspend the meeting
- b) To adjourn the meeting]
- c) To adjourn the debate on the item under discussion
- d) For the closure of the debate of the item under discussion.

Rule 52 - Submission of Proposals and Amendment of Substance.

Unless the Commission decides otherwise the proposals, amendments or motions of substance made by members shall be submitted in writing to the Secretariat; they shall be considered at the first sitting following their submission.

Rule 53 - Decisions on Competence

Subject to the provisions of Rule 45 of the Procedure, any motion tabled by a member for a decision on the competence of the Commission to adopt a proposal submitted to it shall immediately be put to the vote. Rule 54 - Withdrawal of a Proposal or a Motion

The sponsor of a motion or a proposal may still withdraw it before it is put to the vote, provided that it has not been amended. A motion or a proposal thus withdrawn may be submitted again by another member.

Rule 55 - New Consideration or a Motion

When a proposal is adopted or rejected, it shall not be considered again at the same session, unless the Commission decides otherwise. When a member moves the new consideration of a proposal, only one member may speak in favour of and one against the motion, after which it shall immediately be put to the vote. Rule 56 - Interventions

1. No member may take the floor at a meeting of the Commission without prior authorisation on the Chairman. Subject to Rules 45, 48, 49 and 50 the Chairman shall grant the use of the floor to the speakers in the order in which it has been requested.

2. The debates shall deal solely with the matter submitted to the Commission and the Chairman may call to order a speaker whose remarks are irrelevant to the matter under discussion.

3. The Chairman may limit the time accorded to speakers and the number of the interventions which each member may make on the same issue, in accordance with Rule 44 of the present Rules.

4. Only two members in favour and two against the motion of fixing such time limits shall be granted the use of the floor after which the motion shall immediately be put to the vote. For questions of procedure the time allotted to each speaker shall not exceed five minutes, unless the Chairman decides otherwise. When the time allotted discussions is limited and a speaker exceeds the time accorded the Chairman shall immediately call him to order.

Rule 57 - Right to Reply

The right of reply shall be granted by the Chairman to any member requesting it. The member must, while exercising this right, be as brief as possible and take the floor preferably at the end of the sitting at which this right has been requested.

Rule 58 - Congratulations

The congratulations addressed to the newly elected members to the commission shall only be presented by the Chairman or a member designated by the latter. Those addressed to the newly elected officers shall only be presented by the outgoing Chairman or a member designated by him.

Rule 59 - Condolences

Condolences shall be exclusively presented by the Chairman on behalf of all the members. The Chairman may, with the consent of the Commission, send a message of condolence.

CHAPTER XI - VOTE AND ELECTIONS

Rule 60 - Right to Vote

Each member of the Commission shall have one vote. In the case of equal number of votes the Chairman shall have a casting vote.

Rule 61 - Asking for a Vote

A proposal or a motion submitted for the decision of the Commission shall be put to the vote if a member so requests. If no member asks

for a vote, the Commission may adopt a proposal or a motion without a vote.

Rule 62 - Required majority

1. Except as otherwise provided by the Charter or other Rules of the present Rules of Procedure, decisions of the Commission shall be taken by a simple majority of the members present and voting.

2. For the purpose of the present Rules of Procedure, the expression "members present and voting" shall mean members voting for or against. The members who shall abstain from voting shall be considered as non-voting members.

3. Decisions may be taken by consensus, failing which, Commission shall resort to voting. Rule 63 - Method of Voting

1. Subject to the provisions of Rule 68, the commission, unless it otherwise decides, shall normally vote by show of hands, but any member may request the roll-call vote, which shall be taken in the alphabetical order of the names of the members of the Commission beginning with the member whose name is drawn by lot by the Chairman. In all the votes by roll-call each member shall reply "yes", "no" or "abstention". The Commission may decide to hold a secret ballot.

2. In case of vote by roll-call, the vote of each member participating in the ballot shall be recorded in the minutes.

Rule 64 - Explanation of Vote

Members may make brief statements for the only purpose of explaining their vote, before the beginning of the vote or once the vote has been taken. The member who is the sponsor of a proposal or a motion cannot explain his vote on that proposal or notion except if it has been amended.

Rule 65 - Rules to be observed while voting

A ballot shall not be interrupted except if a member raises a point of order relating to manner in which the ballot is held. The Chairman may allow members to intervene briefly, whether before the ballot beginning or when it is closed, but solely to explain their vote.

Rule 66 - Division of Proposals and Amendments

Proposals and amendments may be separated if requested. The parts of the proposals or of the amendments which have been adopted shall later be put to the vote as a whole; if all the operative parts of a proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Rule 67 - Amendment

An amendment to a proposal is an addition to, deletion from or revision of part of that proposal.

Rule 68 - Order of Vote on amendments

When an amendment is moved to a proposal, the amendment shall be voted on first.

When two or more amendments are moved to a proposal, the Commission shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all the amendments have been put to the vote. Nevertheless when the adoption of an amendment implies the rejection of another amendment, the latter shall not be put to the vote. If one or several amendments are adopted, the amended proposal shall then be put to the vote.

Rule 69 - Order of Vote on the Proposals

1. If two or more proposals are made on the same matter, the Commission, unless it decides otherwise, shall vote on these proposals in the order in which they were submitted.

2. After each vote the Commission may decide whether it shall put the next proposal to the vote.

3. However, the motions which are not on the substance of the proposals shall be voted upon before the said proposals.

Rule 70 - Elections

Elections shall be held by secret ballot unless the election is for a post for which only one candidate has been proposed and that candidate has been agreed upon by the members of the Commission.

CHAPTER XII - PARTICIPATION OF NON-MEMBERS OF THE COMMISSION

Rule 71 - Participation of States in the deliberations

1. The Commission or its subsidiary bodies may invite any State to participate in the discussion of any issue that shall be of particular interest to that State.

2. A State thus invited shall have no voting right, but may submit proposals which may be put to the vote at the request of any member of the Commission or of the subsidiary body concerned.

Rule 72 - Participation of other Persons or Organisations

The Commission may invite any organisation or persons capable of enlightening it to participate in its deliberations without voting rights.

Rule 73 - Participation of Specialised Institutions and Consultation with the latter

1. Pursuant to the agreements concluded between the Organisation of African Unity and the Specialised Institutions, the latter shall have the right to:

a) Be represented in the public sessions of the Commission and its subsidiary bodies;

b) Participate, without voting rights, through their representatives in deliberations on issues which shall be of interest to them and to submit, on these issues, proposals which may be put to vote at the request of any member of the Commission or the interested subsidiary body.

2. Before placing on the provisional agenda an issue submitted by a Specialised Institution, the Secretary General should initiate such preliminary consultations as may be necessary, with this institution.

3. When an issue proposed for inclusion in the provisional agenda of a session, or which has been added to the agenda of a session pursuant to Rule 5 of the present Rules of Procedure, contains a proposal requesting the Organisation of African Unity to undertake additional activities relating to issues concerning directly one or more specialised institutions, the Secretary General should enter in to consultation

with the institutions concerned and inform the Commission of the ways and means of ensuring coordinated utilisation of the resources of the various institutions.

4. When at a meeting of the Commission, a proposal calling upon the Organisation of African Unity to undertake additional activities relating to issues directly concerning one or several specialised institutions, the Secretary General, after consulting as far as possible, the representatives of the interested institutions, should draw the attention of the Commission to the effects of that proposal.

5. Before taking a decision on the proposals mentioned above, the Commission shall make sure that the institutions concerned have been duly consulted.

Rule 74 - Participation of other Inter-Governmental Organisations

1. The Secretary shall inform, not later than 4 weeks before a session, non-governmental organisations with observer status of the days and agenda of a forthcoming session.

2. Representatives of Inter-Governmental Organisations to which the Organisation of African Unity has granted permanent observer status and other Organisations recognised by the Commission, may participate, without voting rights, in the deliberations of the Commission on issues falling within the framework of the activities of these organisations.

CHAPTER XIII - RELATIONS WITH AND REPRESENTATION OF NON-GOVERNMENTAL ORGANISATIONS

Rule 75 - Representation

Non-governmental organisations, granted observer status by the Commission, may appoint authorised observers to participate in the public sessions of the Commission and of its subsidiary bodies.

Rule 76 - Consultation

The Commission may consult the non-governmental organisations either directly or through one or several committees set up for this purpose. These consultations may be held at the

invitation of the Commission or at the request of the organisation.

CHAPTER XIV - PUBLICATION AND DISTRIBUTION OF THE REPORTS AND OTHER OFFICIAL DOCUMENTS OF THE COMMISSION

Rule 77 - Report of the Commission

Within the framework of the procedure of communication among States parties to the Charter, referred to in Articles 47 and 49 of the Charter, the Commission shall submit to the Assembly a report containing, where possible, recommendations it shall deem necessary.

The report shall be confidential. However, it shall be published by the Chairman of the Commission after reporting unless the Assembly directs otherwise.

Rule 78 - Periodical Reports of Member States

Periodical Reports and other information submitted by States parties to the Charter as requested under Article 62 of the Charter, shall be documents for general distribution. The same thing shall apply to other information supplied by a State party to the Charter, unless the Commission decides otherwise.

Rule 79 - Reports on the Activities of the Commission

1. As stipulated in Article 54 of the Charter, the Commission shall each year submit to the Assembly, a report on its deliberations, in which it shall include a summary of the activities.

2. The report shall be published by the Chairman after the Assembly has considered it.

Rule 80 - Translation of reports and other documents

The Secretary shall endeavour to translate all reports and other document of the Commission into the working languages.

PART TWO

PROVISIONS RELATING TO THE FUNCTIONS OF THE COMMISSION

CHAPTER XV - PROMOTIONAL ACTIVITIES

REPORT SUBMITTED BY STATES PARTIES TO THE CHARTER UNDER ARTICLE 62 OF THE CHARTER

Rule 81 - Contents of Reports

1. States parties to the Charter shall submit reports in the form required by the Commission on measures they have taken to give effect to the rights recognised by the Charter and on the progress made with regard to the enjoyment of these rights.

The reports should indicate, where possible, the factors and difficulties impeding the implementation of the provisions of the Charter.

2. If a State party fails to comply with Article 62 of the Charter, the Commission shall fix the date for the submission of that State party's report.

3. The Commission may, through the Secretary-General, inform State parties to the Charter of its wishes regarding the form and contents of the reports to be submitted under Article 62 of the Charter.

Rule 82 - Transmission of the Reports

1. The Secretary may, after consultation with the Commission, communicate to the specialised institutions concerned, copies of all parts of the reports which may relate to their areas of competence, produced by member States of these institutions.

2. The Commission may invite the specialised institutions to which the Secretary has communicated parts of the report, to submit observations relating to these parts within a time limit that it may specify.

Rule 83 - Submission of Reports

The Commission shall inform, as early as possible, member States parties to the Charter, through the Secretary, of the opening date, duration and venue of the Session at which their respective reports shall be considered.

Representatives of the States parties to the Charter may participate in the sessions of the Commission at which their reports shall be

considered. The Commission may also inform a State party to the Charter from which it wanted complementary information, that it may authorise its representative to participate in a specific session. This representative should be able to reply to questions put to him/her by the Commission and make statements on reports already submitted by this State. He may also furnish additional information from his State.

Rule 84 - Non-submission of Reports

1. The Secretary shall, at each session, inform the Commission of all cases of non-submission of reports or of additional information requested pursuant to Rules 81 and 85 of the Rules of Procedure. In such cases, the Commission may send, through the Secretary, to the State party to the Charter concerned, a report or reminder relating to the submission of the report or additional information.

2. If, after the reminder referred to in paragraph 1 of this Rule, a State party to the Charter does not submit the report or the additional information requested pursuant to Rules 81 and 85 of the Rules of Procedure, the Commission shall point it out in its yearly report to the Assembly.

Rule 85 - Examination of information contained in reports

1. When considering a report submitted by a State party to the Charter under Article 62 of the Charter, the Commission should first make sure that the report provides all the necessary information including relevant legislation pursuant to the provisions of Rule 81 of the Rules of Procedure.

2. If, in the opinion of the Commission, a report submitted by a State party to the Charter, does not contain adequate information, the Commission may request this State to furnish the additional information required, by indicating the date on which the information needed should be submitted.

3. If, following the consideration of the reports, and the information submitted by a State party to the Charter, the Commission decides that the State has not discharged some of its obligations under the Charter, it may address all general observations to the State concerned as it may deem necessary.

Rule 86 - Adjournment and Transmission of the Reports

1. The Commission shall, through the Secretary, communicate to States parties to the Charter for comments, its general observations made following the consideration of the reports and the information submitted by States parties to the Charter. The Commission may, when necessary fix a time limit for the submission of the comments by the States parties to the Charter.

2. The Commission may also transmit to the Assembly, the observations mentioned in paragraph 1 of this Rule, accompanied by copies of the reports it has received from the States parties to the Charter as well as the comments supplied by the latter if possible.

Rule 87 - Promotional Activities

1. The Commission shall adopt and carry out a program of action which gives effect to its obligations under the Charter, particularly Article 45 (1).

2. The Commission shall carry out other promotional activities in member states and elsewhere on a continuing basis.

3. Each member of the Commission shall file a written report on his/her activities at each session including countries visited and organisations contacted.

CHAPTER XVI - PROTECTION ACTIVITIES COMMUNICATIONS FROM THE STATES PARTIES TO THE CHARTER

SECTION I - PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS RECEIVED IN CONFORMITY WITH ARTICLE 47 OF THE CHARTER: PROCEDURE FOR COMMUNICATIONS-NEGOTIATIONS

Rule 88 - Procedure

1. A communication under Article 47 of the Charter should be submitted to the Secretary General, the Chairman of the Commission and the State party concerned.

2. The communication referred to above should be in writing and contain a detailed and comprehensive statement on the actions

denounced as well as the provisions of the Charter alleged to have been violated.

3. The notification of the communication to the State party to the Charter, the Secretary General and the Chairman of the Commission shall be done through the most practicable and reliable means.

Rule 89 - Register of Communications

The Secretary shall keep a permanent register for all communications received under Article 47 of the Charter.

Rule 90 - Reply and time limit

1. The reply of the State party to the Charter to which a communication is addressed should reach the requesting State party to the Charter within 3 months following the receipt of the notification of the communication.

2. It shall be accompanied particularly by:

- a) Written explanations, declarations or statements relating to the issues raised;
- b) Possible indications and measures taken to end the situation denounced;
- c) Indications on the law and rules of procedure applicable or applied;
- d) Indications on the local procedures for appeal already used, in process or still open.

Rule 91 - Non-Settlement of the Issue

1. If within three (3) months from the date the notification of the original communication is received by the addressee State, the issue has not been settled to the satisfaction of the two interested parties, through the selected channel of negotiation or through any other peaceful procedure selected by common consent of the parties, the issue shall be referred to the Commission, in accordance with the provisions of Article 48 of the Charter.

2. The issue shall also be referred to the Commission if the addressee State party to the Charter fails to react to the request made under Article 47 of the Charter, within the same 3 months' period of time.

Rule 92 - Seizing of the Commission

At the expiration of the 3 months' time limit referred to in Article 47 of the Charter, and in the absence of a satisfactory reply or in case the addressee State party may submit the communication to the Commission through a notification addressed to its Chairman, the other interested State party and the Secretary General.

SECTION II - PROCEDURE FOR THE CONSIDERATION OF THE COMMUNICATIONS RECEIVED IN CONFORMITY WITH ARTICLES 48 AND 49 OF THE CHARTER: PROCEDURE FOR COMMUNICATION-COMPLAINT

Rule 93 - Seizing of the Commission

1. Any communication submitted under Articles 48 and 49 of the Charter may be submitted to the Commission by any one of the interested States parties through notification addressed to the Chairman of the Commission, the Secretary General and the State party concerned.

2. The notification referred to in paragraph 1 of the present Rule shall contain information on the following elements or accompanied particularly by:

- a) Measures taken to try to resolve the issue pursuant to Article 47 of the Charter including the text of the initial communications and any future written explanation from the interested States parties to the Charter relating to the issue;
- b) Measures taken to exhaust local procedure for appeal;
- c) Any other procedure for the international investigation or international settlement to which the interested States parties have resorted.

Rule 94 - Permanent Register of Communications

The Secretary shall keep a permanent register for all communications received by the Commission under Articles 48 and 49 of the Charter.

Rule 95 - Seizing of the Members of the Commission

The Secretary shall immediately inform the members of the Commission of any notification

received pursuant to Rule 91 of the Rules of Procedure and shall send to them, as early as possible, a copy of the notification as well as the relevant information.

Rule 96 - Private Session and Press Release

1. The Commission shall consider the communications referred to in Articles 48 and 49 of the Charter in closed session.
2. After consulting the interested States parties to the Charter, the Commission may issue through the Secretary, release on its private sessions for the attention of the media and the public.

Rule 97 - Consideration of the Communication

The Commission shall consider a communication only when:

- a) The procedure offered to the States parties by Article 47 of the Charter has been exhausted;
- b) The time limit set in Article 48 of the Charter has expired;
- c) The Commission is certain that all the available local remedies have been utilised and exhausted, in accordance with the generally recognized principles of international law, or that the application of these remedies is unreasonably prolonged or that there are no effective remedies.

Rule 98 Amicable Settlement

Except the provisions of the present Rules of Procedure, the Commission shall place its good offices at the disposal of the interested States parties to the Charter so as to reach an amicable solution on the issue based on the respect of human rights and fundamental liberties, as recognized by the Charter.

Rule 99 - Additional Information

The Commission may through the Secretary, request the States parties or one of them to communicate additional information or observations orally or in writing. The Commission shall fix a time limit for the submission of the written information or observations.

Rule 100 - Representation of States Parties

1. The States parties to the Charter concerned shall have the right to be represented during the consideration of the issue by the Commission and to submit observations orally and in writing or in either form.

2. The Commission shall notify, as soon as possible, the States parties concerned, through the Secretary of the opening day, the duration and the venue of the session at which the issue will be examined.

3. The procedure to be followed for the presentation of oral or written observations shall be determined by the Commission.

Rule 101 - Report of the Commission

1. The Commission shall adopt a report pursuant to Article 52 of the Charter within 12 months, following the notification referred to in Article 48 of the Charter and Rule 90 of the present Rules of Procedure.

2. The provisions of paragraph 1 of Rule 99 of these Rules of Procedure shall not apply to the deliberations of the Commission relating to the adoption of the report.

3. The report referred to above shall concern the decisions and conclusions that the Commission will reach.

4. The report of the Commission shall be communicated to the States parties concerned through the Secretary.

5. The report of the Commission shall be sent to the Assembly through the Secretary General, together with the recommendations that it shall deem useful.

CHAPTER XVII - OTHER COMMUNICATIONS PROCEDURE FOR THE CONSIDERATION OF THE COMMUNICATIONS RECEIVED IN CONFORMITY WITH ARTICLE 55 OF THE CHARTER

SECTION I - TRANSMISSION OF COMMUNICATIONS TO THE COMMISSION

Rule 102 - Seizing of the Commission

1. Pursuant to these Rules of Procedure, the Secretary shall transmit to the Commission the

communications submitted to him for consideration by the Commission in accordance with the Charter.

2. No communications concerning a State which is not a party to the Charter shall be received by the Commission or placed in a list under Rule 103 of the present Rules.

Rule 103 - List of Communications

1. The Secretary of the Commission shall prepare lists of communications submitted to the Commission pursuant to Rule 101 above, to which he/she shall attach a brief summary to their contents and regularly cause the lists to be distributed to members of the Commission. Besides, the Secretary shall keep a permanent register of all these communications which shall be made public.

2. The full text of each communication referred to the Commission shall be communicated to each member of the Commission on request.

Rule 104 - Request for Clarifications

1. The Commission, through the Secretary, may request the author of a communication to furnish clarifications on the applicability of the Charter to his/her communication, and to specify in particular:

- a) His name, address, age and profession by justifying his very identity, if ever he/she is requesting the Commission to be kept anonymous;
- b) Name of the State party referred to in the communication;
- c) Purpose of the communication;
- d) Provision(s) of the Charter allegedly violated;
- e) The facts of the claim;
- f) Measures taken by the author to exhaust local remedies, or explanation why local remedies will be futile;
- g) The extent to which the same issue has been settled by another international investigation or settlement body.

2. When asking for clarification or information, the Commission shall fix an appropriate time limit for the author to submit the communication so as to avoid undue delay in the procedure provided for by the Charter.

3. The Commission may adopt a questionnaire for the use by the author of the communication in providing the above-mentioned information.

4. The request for clarification referred to in paragraph 1 of this rule shall not prevent the inclusion of the communication on the lists mentioned in paragraph 1 of Rule 102 above.

Rule 105 - Distribution of Communications

For each communication recorded, the Secretary shall prepare as soon as possible, a summary of the relevant information received, which shall be distributed to the members of the Commission.

SECTION II - GENERAL PROVISIONS GOVERNING THE CONSIDERATION OF THE COMMUNICATIONS BY THE COMMISSION OR ITS SUBSIDIARY BODIES

Rule 106 - Private Session

The sessions of the Commission or its subsidiary bodies during which the communications are examined as provided for in the Charter shall be private.

Rule 107 - Public Sessions

The sessions during which the Commission may consider other general issues, such as the application procedure of the Charter, shall be public.

Rule 108 - Press Releases

The Commission may issue, through the Secretary and for the attention of the media and the public, releases on the activities of the Commission in its private session.

Rule 109 - Incompatibility

1. No member shall take part in the consideration of a communication by the Commission

- a) If he/she has any personal interest in the case, or

b) If he /she has participated, in any capacity, in the adoption of any decision relating to the case which is the subject of the communication.

2. Any issue relating to the application of paragraph 1. above shall be resolved by the Commission.

Rule 110 - Withdrawal of a Member

If, for any reason, a member considers that he/she should not take part or continue to take part in the consideration of a communication, he/she shall inform the Chairman of his/her decision to withdraw.

Rules 111 - Provisional Measures

1. Before making its final views known to the Assembly on the communication, the Commission may inform the State party concerned of its views on the appropriateness of taking provisional measures to avoid irreparable damage being caused to the victim of the alleged violation. In so doing, the Commission shall inform the State party that the expression of its views on the adoption of those provisional measures does not imply a decision on the substance of the communication.

2. The Commission, or when it is not in session, the Chairman, in consultation with other members of the Commission, may indicate to the parties any interim measure, the adoption of which seems desirable in the interest of the parties or the proper conduct of the proceedings before it.

3. In case of urgency when the Commission is not in session, the Chairman in consultation with other members of the Commission, may take any necessary action on behalf of the Commission. As soon as the Commission is again in session, the Chairman shall report to it on any action taken.

Rule 112

Prior to any substantive consideration, every communication should be made known to the State concerned through the Chairman of the Commission, pursuant to Article 57 of the Charter

SECTION III - PROCEDURES TO DETERMINE ADMISSIBILITY

Rule 113 - Time Limits for Consideration of the Admissibility

The Commission shall decide, as early as possible and pursuant to the following provisions, whether or not the communication shall be admissible under the Charter.

Rule 114 - Order of Consideration of the Communication

1. Unless otherwise decided, the Commission shall consider the communications in the order they have been received by the Secretariat.

2. The Commission may decide, if it deems it good, to consider jointly two or more communications.

Rule 115 - Working Groups

The Commission may set up one or more working groups; each composed of three of its members at most, to submit recommendations on admissibility as stipulated in Article 56 of the Charter.

Rule 116 - Admissibility of the Communications

The Commission shall determine questions of admissibility pursuant to Article 56 of the Charter.

Rule 117 - Additional Information

1. The Commission or a working group set up under Rule 113, request the State party concerned or the author of the communication to submit in writing additional information or observations relating to the issue of admissibility of the communication. The Commission or the working group shall fix a time limit for the submission of the information or observations to avoid the issue dragging on too long.

2. A communication may be declared admissible if the State party concerned has been given the opportunity to submit the information and observations pursuant to paragraph 1 of this Rule.

3. A request under paragraph 1 of this Rule should indicate clearly that the request does not

mean any decision whatsoever has been taken on the issue of admissibility.

4. However, the Commission shall decide in the issue of admissibility if the State party fails to send a written response within three (3) months from the date of notification of the text of the communication.

Rule 118 - Decision of the Commission on Admissibility

1. If the Commission decides that a communication is inadmissible under the Charter, it shall make its decision known as early as possible, through the Secretary to the author of the communication and, if the communication has been transmitted to a State party concerned, to that State.

2. If the Commission has declared a communication inadmissible under the Charter, it may reconsider this decision at a later date if it receives a request for reconsideration.

SECTION IV - PROCEDURES FOR THE CONSIDERATION OF COMMUNICATIONS

Rule 119 - Proceedings

1. If the Commission decides that a communication is admissible under the Charter, its decision and text of the relevant documents shall as soon as possible, be submitted to the State party concerned, through the Secretary. The author of the communication shall also be informed of the Commission's decision through the Secretary.

2. The State party to the Charter concerned shall, within the 3 ensuing months, submit in writing to the Commission, explanations or statements elucidating the issue under consideration and indicating, if possible, measures it was able to take to remedy the situation.

3. All explanations or statements submitted by a State party pursuant to the present Rule shall be communicated, through the Secretary, to the author of the communication who may submit in writing additional information and observations within a time limit fixed by the Commission.

4. States parties from whom explanations or statements are sought within specified times shall be informed that if they fail to comply

within those times the Commission will act on the evidence before it.

Rule 120 - Final Decision of the Communication

1. If the communication is admissible, the Commission shall consider it in the light of all the information that the individual and the State party concerned has submitted in writing; it shall make known its observations on this issue. To this end, the Commission may refer the communication to a working group, composed of 3 of its members at most, which shall submit recommendations to it.

2. The observations of the Commission shall be communicated to the Assembly through the Secretary General and to the State party concerned.

3. The Assembly or its Chairman may request the Commission to conduct an in-depth study on these cases and to submit a factual report accompanied by its findings and recommendations, in accordance with the provisions of the Charter. The Commission may entrust this function to a Special Rapporteur or a working group.

FINAL CHAPTER - AMENDMENT AND SUSPENSION OF THE RULES OF PROCEDURE

Rule 121 - Method of Amendment

Only the Commission may modify the present Rules of Procedure.

Rule 122 - Method of Suspension

The Commission may suspend temporarily, the application of any Rule of the present Rules of Procedure, on condition that such a suspension shall not be incompatible with any applicable decision of the Commission or the Assembly or with any relevant provision of the Charter and that the proposal shall have been submitted 24 hours in advance. This condition may be set aside if no member opposes it. Such a suspension may take place only with a specific and precise object in view and should be limited to the duration necessary to achieve that aim

DELIBERATED AND ADOPTED BY THE COMMISSION AT ITS 18TH SESSION HELD IN PRAIA, CAPE VERDE

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

The *Protocol to the African Charter Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights (Protocol on African Court)* came into effect in July 2004 and establishes the African Court on Human and Peoples' Rights (African Court), complementing the protective mandate of the African Commission on Human and Peoples' Rights (African Commission). Adopted unanimously by the Organization of African Unity (OAU) Assembly of Heads of State and Government on June 1998, the *Protocol on African Court* designates an African Court to settle disputes submitted to it concerning the interpretation and application of the *African Charter*, the *Protocol on African Court* or any other human rights conventions (Article 3). It also allows the African Court to issue advisory opinions at the request of an OAU member state or any of the OAU organs. While it intended to generally address cases submitted by the African Commission or any state (Article 5), the African Court may also accept, on exceptional grounds, complaints from individuals, non-governmental organizations and groups of individuals on exceptional grounds (Article 6). With the capacity to receive and review written and oral evidence, it shall order an appropriate remedy once a violation is found (Article 24). In July 2004, the African Union Assembly decided to merge the Africa Court on Human and People's Rights with the Court of Justice of the African Union (established by established by Constitutive act). The procedure of this new court remains to be determined.

This document may be accessed at http://www.achpr.org/english/info/court_en.html

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

OAU/LEG/MIN/AFCHPR/PROT.1 rev.2 (1997),
adopted on June 10, 1998

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 two-fold objective of the African Commission on Human and Peoples' Rights is to ensure on the one hand promotion and on the other protection of Human and Peoples' Rights, freedom and duties;

Recognizing further, the efforts of the African Charter on Human and Peoples' Rights in the promotion and protection of Human and Peoples' Rights since its inception in 1987;

Recalling resolution AHGéRes.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' meeting 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
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. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 4 ADVISORY OPINIONS

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. 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

The following are entitled to submit cases to the Court:

The Commission

The State Party, which had lodged a complaint to the Commission

The State Party against which the complaint has been lodged at the Commission

The State Party whose citizen is a victim of human rights violation

African Intergovernmental Organizations

When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.

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

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.

The Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter.

The Court may consider cases or transfer them to the Commission.

Article 7 SOURCES OF LAW

The Court shall apply the provision 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's 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

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.

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.

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

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.

No two judges shall be nationals of the same State.

Article 12 NOMINATIONS

States Parties to the Protocol may each propose up to three candidates, at least two of whom shall be nationals of that State.

Due consideration shall be given to adequate gender representation in nomination process.

Article 13 LIST OF CANDIDATES

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.

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

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.

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.

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

Article 15 TERM OF OFFICE

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.

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.

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.

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

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

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.

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.

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

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. Such a decision of the Court shall become final unless it is set aside by the Assembly at its next session.

Article 20 VACANCIES

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. 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.

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

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

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 the 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

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. The office and residence of the Registrar shall be at the place where the Court has its seat.

Article 25 SEAT OF THE COURT

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. The seat of the Court may be changed by the Assembly after due consultation with the Court.

Article 26 EVIDENCE

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. 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

If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation. 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

The Court shall render its judgment within ninety-(90)-days of having completed its deliberations. The judgment of the Court decided by majority shall be final and not subject to appeal.

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.

The Court may interpret its own decision.

The judgment of the Court shall be read in open court, due notice having been given to the parties.

Reasons shall be given for the judgment of the Court.

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

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.

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

This Protocol shall be open for signature and ratification or accession by any State Party to the Charter.

The instrument of ratification or accession to the present Protocol shall be deposited with the Secretary-General of the OAU.

The Protocol shall come into force thirty days after fifteen instruments of ratification or accession have been deposited.

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.

The Secretary-General of the OAU shall inform all Member States of the entry into force of the present Protocol.

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.

Declarations made under sub-article (6) above shall be deposited with the Secretary-General, who shall transmit copies thereof to the State parties.

Article 35 AMENDMENTS

The present Protocol may be amended if a State Party to the Protocol makes a written request to that effect to the Secretary-General of the OAU. The Assembly may adopt, by simple majority, the draft amendment after all the State Parties to the present Protocol have been duly informed of it and the Court has given its opinion on the amendment.

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.

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.

African Charter on the Rights and Welfare of the Child

The promotion and protection of the rights and welfare of the child implies the performance of duties on the part of all states. Entered into force on November 1999, the *African Charter on the Rights and Welfare of the Child* was adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in recognition of this duty. In addition to covering the basic freedoms and rights of the child, many provisions of this legislation relate to reproductive and sexual health. These articles include: survival and development (Article 5); education, including promotion of the child's understanding of primary health care (Article 11(2)(h)) and the right of children who become pregnant to continue their education (Article 11(6)); health and health services (Article 14), including appropriate health care for expectant and nursing mothers (Article 14(2)(e)); protection against child abuse and torture, including sexual abuse (Article 16); protection against harmful social and cultural practices, including practices that are prejudicial to the health or life of the child, practices that are discriminatory to the child on the grounds of sex and child marriage (Article 21); and sexual exploitation (Article 27). Part II, Chapter Two establishes a Committee on the Rights and Welfare of the Child to monitor compliance with the *African Charter on the Rights and Welfare of the Child*.

This document may be accessed at <http://www1.umn.edu/humanrts/instreet/afrinst.htm>

African Charter on the Rights and Welfare of the Child

OAU Doc. CAB/LEG/24.9/49 (1990),
entered into force November 29, 1999.

PREAMBLE

The African Member States of the Organization of African Unity, Parties to the present Charter entitled 'African Charter on the Rights and Welfare of the Child',

CONSIDERING that the Charter of the Organization of African Unity recognizes the paramountcy of Human Rights and the African Charter on Human and People's Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status,

RECALLING the Declaration on the Rights and Welfare of the African Child (AHG/ST.4 Rev.1) adopted by the Assembly of Heads of State and

Government of the Organization of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia, from 17 to 20 July 1979, recognized the need to take appropriate measures to promote and protect the rights and welfare of the African Child,

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

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

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

TAKING INTO CONSIDERATION the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child,

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

REAFFIRMING ADHERENCE Lo the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child.

HAVE AGREED AS FOLLOWS:

PART I: RIGHTS AND DUTIES
CHAPTER ONE: RIGHTS AND WELFARE
OF THE CHILD

Article 1: Obligation of States Parties

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.

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.

Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter

shall to the extent of such inconsistency be discouraged.

Article 2: Definition of a Child

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

Article 3: Non-Discrimination

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

Article 4: Best Interests of the Child

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

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

Every child has an inherent right to life. This right shall be protected by law.

States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.

Death sentence shall not be pronounced for crimes committed by children.

Article 6: Name and Nationality

Every child shall have the right from his birth no a name.

Every child shall be registered immediately after birth.

Every child has the right to acquire a nationality.

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

Every child shall have the right to freedom of thought conscience and religion.

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.

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

Every child shall have the right to an education.

The education of the child shall be directed to:

the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;

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;

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

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;

the preservation of national independence and territorial integrity;

the promotion and achievements of African Unity and Solidarity;

the development of respect for the environment and natural resources;

the promotion of the child's understanding of primary health care.

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:

provide free and compulsory basic education:

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

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

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

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

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.

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.

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.

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

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.

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

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.

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.

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

Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:

to reduce infant and child mortality rate;

to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

to ensure the provision of adequate nutrition and safe drinking water;

to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;

to ensure appropriate health care for expectant and nursing mothers;

to develop preventive health care and family life education and provision of service;

to integrate basic health service programmes in national development plans;

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;

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;

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

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.

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:

provide through legislation, minimum wages for admission to every employment;

provide for appropriate regulation of hours and conditions of employment;

provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;

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

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.

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

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.

States Parties to the present Charter shall in particular:

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;

ensure that children are separated from adults in their place of detention or imprisonment;

ensure that every child accused in infringing the penal law:

shall be presumed innocent until duly recognized guilty;

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;

shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;

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;

prohibit the press and the public from trial.

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.

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

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.

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.

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

Article 19: Parent Care and Protection

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.

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.

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.

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

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:

to ensure that the best interests of the child are their basic concern at all times-

to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and

to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

States Parties to the present Charter shall in accordance with their means and national conditions take all appropriate measures;

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;

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

to ensure that the children of working parents are provided with care services and facilities.

Article 21: Protection against Harmful Social and Cultural Practices

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:

those customs and practices prejudicial to the health or life of the child; and

those customs and practices discriminatory to the child on the grounds of sex or other status.

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

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.

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.

States Parties to the present Charter shall, in accordance with their obligation 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

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.

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.

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.

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:

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;

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;

ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

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;

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;

establish a machinery to monitor the well-being of the adopted child.

Article 25: Separation from Parents

Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;

States Parties to the present Charter:

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;

shall take all necessary measures to trace and reunite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

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

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.

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.

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

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:

the inducement, coercion or encouragement of a child to engage in any sexual activity;

the use of children in prostitution or other sexual practices;

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:

the abduction, the sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child;

the use of children in all forms of begging.

Article 30: Children of Imprisoned Mothers

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:

ensure that a non-custodial sentence will always be first considered when sentencing such mothers;

establish and promote measures alternative to institutional confinement for the treatment of such mothers;

establish special alternative institutions for holding such mothers;

ensure that a mother shall not be imprisoned with her child;

ensure that a death sentence shall not be imposed on such mothers;

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;

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;

to serve his national community by placing his physical and intellectual abilities at its service;

to preserve and strengthen social and national solidarity;

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;

to preserve and strengthen the independence and the integrity of his country;

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

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.

The members of the Committee shall serve in their personal capacity.

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

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.

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

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.

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.

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

The Committee shall establish its own Rules of Procedure.

The Committee shall elect its officers for a period of two years.

Seven Committee members shall form the quorum.

In case of an equality of votes, the Chairman shall have a casting vote.

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:

To promote and protect the rights enshrined in this Charter and in particular to:

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;

formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa;

cooperate with other African, international and regional Institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.

To monitor the implementation and ensure protection of the rights enshrined in this Charter.

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.

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

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:

within two years of the entry into force of the Charter for the State Party concerned: and

and thereafter, every three years.

Every report made under this Article shall:

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

shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.

A State Party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph I (a) of this Article, repeat the basic information previously provided.

Article 44: Communications

The Committee may receive communication, from any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter.

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

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.

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.

The Committee shall publish its report after it has been considered by the Assembly of Heads of State and Government.

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

The present Charter shall be open to signature by all the Member States of the Organization of African Unity.

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.

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

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.

An amendment shall be approved by a simple majority of the States Parties.

Constitutive Act of African Union

Through the adoption of the *Constitutive Act of the African Union (Constitutive Act)* in July 2002, the Assembly of Heads of State and Government effectively replaced the Organization of African Unity (OAU) with the African Union (AU). The *Constitutive Act* aims to reform the regional organization in order to deal with the existing situation in Africa. It sets out the main objectives and principles of the AU (Articles 3 and 4 respectively) and the Organs of the Union (Article 5). The *Constitutive Act* also provides for the establishment of the Court of Justice, the composition and functions of which will be determined by statute (Article 18). In contrast to the *African Charter on Human and Peoples' Rights*, it is unique in its approach in that it permits the AU to interfere in the internal affairs of states in situations demonstrating gross human rights violations (Article 4(h)). However, until all provisions of the *Constitutive Act* are fully implemented, and the transition to the AU system is completed, the roles of the various organs under the new AU, and its relationship to the *African Commission on Human and Peoples' Rights* and the *African Court on Human and Peoples' Rights*, remain undefined.

This document may be accessed at <http://www1.umn.edu/humanrts/instree/afriinst.htm>.

The Constitutive Act of the African Union

OAU DOC. CAB/LEG/23.15,

ENTERED INTO FORCE MAY 26, 2001

We, Heads of State and Government of the Member States of the Organization of African Unity (OAU):

1. The President of the People's Democratic Republic of Algeria
2. The President of the Republic of Angola
3. The President of the Republic of Benin
4. The President of the Republic of Botswana
5. The President of Burkina Faso
6. The President of the Republic of Burundi
7. The President of the Republic of Cameroon
8. The President of the Republic of Cape Verde
9. The President of the Central African Republic
10. The President of the Republic of Chad
11. The President of the Islamic Federal Republic of the Comoros
12. The President of the Republic of the Congo
13. The President of the Republic of Côte d'Ivoire
14. The President of the Democratic Republic of Congo
15. The President of the Republic of Djibouti
16. The President of the Arab Republic of Egypt
17. The President of the State of Eritrea

18. The Prime Minister of the Federal Democratic Republic of Ethiopia
19. The President of the Republic of Equatorial Guinea
20. The President of the Gabonese Republic
21. The President of the Republic of The Gambia
22. The President of the Republic of Ghana
23. The President of the Republic of Guinea
24. The President of the Republic of Guinea Bissau
25. The President of the Republic of Kenya
26. The Prime Minister of Lesotho
27. The President of the Republic of Liberia
28. The Leader of the 1st of September Revolution of the Great Socialist People's Libyan Arab Jamahiriya
29. The President of the Republic of Madagascar
30. The President of the Republic of Malawi
31. The President of the Republic of Mali
32. The President of the Islamic Republic of Mauritania
33. The Prime Minister of the Republic of Mauritius
34. The President of the Republic of Mozambique
35. The President of the Republic of Namibia

36. The President of the Republic of Niger
37. The President of the Federal Republic of Nigeria
38. The President of the Republic of Rwanda
39. The President of the Sahrawi Arab Democratic Republic
40. The President of the Republic of Sao Tome and Principe
41. The President of the Republic of Senegal
42. The President of the Republic of Seychelles
43. The President of the Republic of Sierra Leone
44. The President of the Republic of Somalia
45. The President of the Republic of South Africa
46. The President of the Republic of Sudan
47. The King of Swaziland
48. The President of the United Republic of Tanzania
49. The President of the Togolese Republic
50. The President of the Republic of Tunisia
51. The President of the Republic of Uganda
52. The President of the Republic of Zambia
53. The President of the Republic of Zimbabwe

INSPIRED by the noble ideals which guided the founding fathers of our Continental Organization and generations of Pan-Africanists in their determination to promote unity, solidarity, cohesion and cooperation among the peoples of Africa and African States;

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

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

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

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

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

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

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

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

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

RECALLING the Declaration which we adopted at the Fourth Extraordinary Session of our Assembly in Sirte, the Great Socialist People's Libyan Arab Jamahiriya, on 9.9. 99, in which we decided to establish an African Union, in conformity with the ultimate objectives of the Charter of our Continental Organization and the Treaty establishing the African Economic Community;

HAVE AGREED AS FOLLOWS:

Article 1
Definitions

In this Constitutive Act:

"Act" means the present Constitutive Act;
"AEC" means the African Economic Community;
"Assembly" means the Assembly of Heads of State and Government of the Union;

"Charter" means the Charter of the OAU;
"Commission" means the Secretariat of the Union;
"Committee" means a Specialized Technical Committee of the Union;
"Council" means the Economic, Social and Cultural Council of the Union;
"Court " means the Court of Justice of the Union;
"Executive Council" means the Executive Council of Ministers of the Union;
"Member State" means a Member State of the Union;
"OAU" means the Organization of African Unity;
"Parliament" means the Pan-African Parliament of the Union;
"Union" means the African Union established by the present Constitutive Act.

Article 2 Establishment

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

Article 3 Objectives

The objectives of the Union shall be to:

- (a) achieve greater unity and solidarity between the African countries and the peoples of Africa;
- (b) defend the sovereignty, territorial integrity and independence of its Member States;
- (c) accelerate the political and socio-economic integration of the continent;
- (d) promote and defend African common positions on issues of interest to the continent and its peoples;
- (e) encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;
- (f) promote peace, security, and stability on the continent;
- (g) promote democratic principles and institutions, popular participation and good governance;
- (h) promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;
- (i) establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;

- (j) promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;
- (k) promote co-operation in all fields of human activity to raise the living standards of African peoples;
- (l) coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;
- (m) advance the development of the continent by promoting research in all fields, in particular in science and technology;
- (n) work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

Article 4 Principles

The Union shall function in accordance with the following principles:

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

- (o) respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;
- (p) condemnation and rejection of unconstitutional changes of governments.

Article 5
Organs of the Union

1. The organs of the Union shall be:
 - (a) The Assembly of the Union;
 - (b) The Executive Council;
 - (c) The Pan-African Parliament;
 - (d) The Court of Justice;
 - (e) The Commission;
 - (f) The Permanent Representatives Committee;
 - (g) The Specialized Technical Committees;
 - (h) The Economic, Social and Cultural Council;
 - (i) The Financial Institutions;
2. Other organs that the Assembly may decide to establish.

Article 6
The Assembly

1. The Assembly shall be composed of Heads of States and Government or their duly accredited representatives.
2. The Assembly shall be the supreme organ of the Union.
3. The Assembly shall meet at least once a year in ordinary session. At the request of any Member State and on approval by a two-thirds majority of the Member States, the Assembly shall meet in extraordinary session.
4. The Office of the Chairman of the Assembly shall be held for a period of one year by a Head of State or Government elected after consultations among the Member States.

Article 7
Decisions of the Assembly

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

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

Article 8
Rules of Procedure of the Assembly

The Assembly shall adopt its own Rules of Procedure.

Article 9
Powers and Functions of the Assembly

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

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

Article 10
The Executive Council

1. The Executive Council shall be composed of the Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the Governments of Member States.

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

Article 11
Decisions of the Executive Council

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

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

Article 12

Rules of Procedure of the Executive Council

The Executive Council shall adopt its own Rules of Procedure.

Article 13

Functions of the Executive Council

1. The Executive Council shall coordinate and take decisions on policies in areas of common interest to the Member States, including the following:

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

(l) establishment of a system of African awards, medals and prizes.

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

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

Article 14

The Specialized Technical Committees Establishment and Composition

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

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

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

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

Article 15

Functions of the Specialized Technical Committees

Each Committee shall within its field of competence:

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

Article 16
Meetings

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

Article 17
The Pan-African Parliament

1. In order to ensure the full participation of African peoples in the development and economic integration of the continent, a Pan-African Parliament shall be established.

2. The composition, powers, functions and organization of the Pan-African Parliament shall be defined in a protocol relating thereto.

Article 18
The Court of Justice

1. A Court of Justice of the Union shall be established;

2. The statute, composition and functions of the Court of Justice shall be defined in a protocol relating thereto.

Article 19
The Financial Institutions

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

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

Article 20
The Commission

1. There shall be established a Commission of the Union, which shall be the Secretariat of the Union.

2. The Commission shall be composed of the Chairman, his or her deputy or deputies and the Commissioners. They shall be assisted by the necessary staff for the smooth functioning of the Commission.

3. The structure, functions and regulations of the Commission shall be determined by the Assembly.

Article 21
The Permanent Representatives Committee

1. There shall be established a Permanent Representatives Committee. It shall be composed of Permanent Representatives to the Union and other Plenipotentiaries of Member States.

2. The Permanent Representatives Committee shall be charged with the responsibility of preparing the work of the Executive Council and acting on the Executive Council's instructions. It may set up such sub-committees or working groups as it may deem necessary.

Article 22
The Economic, Social and Cultural Council

1. The Economic, Social and Cultural Council shall be an advisory organ composed of different social and professional groups of the Member States of the Union.

2. The functions, powers, composition and organization of the Economic, Social and Cultural Council shall be determined by the Assembly.

Article 23
Imposition of Sanctions

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

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

Article 24
The Headquarters of the Union

1. The Headquarters of the Union shall be in Addis Ababa in the Federal Democratic Republic of Ethiopia.

2. There may be established such other offices of the Union as the Assembly may, on the recommendation of the Executive Council, determine.

Article 25
Working Languages

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

Article 26
Interpretation

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

Article 27
Signature, Ratification and Accession

1. This Act shall be open to signature, ratification and accession by the Member States of the OAU in accordance with their respective constitutional procedures.

2. The instruments of ratification shall be deposited with the Secretary-General of the OAU.

3. Any Member State of the OAU acceding to this Act after its entry into force shall deposit the instrument of accession with the Chairman of the Commission.

Article 28
Entry into Force

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

Article 29
Admission to Membership

1. Any African State may, at any time after the entry into force of this Act, notify the Chairman

of the Commission of its intention to accede to this Act and to be admitted as a member of the Union.

2. The Chairman of the Commission shall, upon receipt of such notification, transmit copies thereof to all Member States. Admission shall be decided by a simple majority of the Member States. The decision of each Member State shall be transmitted to the Chairman of the Commission who shall, upon receipt of the required number of votes, communicate the decision to the State concerned.

Article 30
Suspension

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

Article 31
Cessation of Membership

1. Any State which desires to renounce its membership shall forward a written notification to the Chairman of the Commission, who shall inform Member States thereof. At the end of one year from the date of such notification, if not withdrawn, the Act shall cease to apply with respect to the renouncing State, which shall thereby cease to belong to the Union.

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

Article 32
Amendment and Revision

1. Any Member State may submit proposals for the amendment or revision of this Act.

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

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

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

Article 33

Transitional Arrangements and Final Provisions

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

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

3. Upon the entry into force of this Act, all necessary measures shall be undertaken to implement its provisions and to ensure the establishment of the organs provided for under the Act in accordance with any directives or

decisions which may be adopted in this regard by the Parties thereto within the transitional period stipulated above.

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

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

IN WITNESS WHEREOF, WE have adopted this Act.

Done at Lome, Togo, this 11th day of July, 2000.

CONSTITUTIVE ACT OF THE AFRICAN UNION
ADOPTED BY THE THIRTY-SIXTH
ORDINARY SESSION OF THE ASSEMBLY
OF HEADS OF STATE AND GOVERNMENT
11 JULY, 2000 - LOME, TOGO

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

As a supplement to the provisions of the *African Charter on Human and Peoples' Rights (African Charter)*, the *Protocol to the African Charter on Human and Peoples' Rights Concerning the Rights of Women in Africa (Protocol on Rights of Women)* recognizes the particular human rights violations suffered by women as well as the necessary requirements for effective protection of women's rights. Adopted at the Meeting of Ministers in March 2003, the latest version generally describes women's reproductive and sexual health rights in a way that is consistent with its premise of enhancing women's status and eliminating discrimination against them. The *Protocol on Rights of Women* was recently adopted at the AU Heads of State Summit in July 2003. On 25 November 2005, when the 15th State ratified the protocol, the *Protocol on the Rights of Women* came into force.

Provisions dealing explicitly with reproductive and sexual health issues include prohibitions against: trafficking in women (Article 4); exploitation and degradation of women, such as violence against women (Article 3); medical or scientific experiments on women (Article 4); as well as traditional and cultural practices that are physically harmful to women and girls, including female genital cutting (Article 5). The *Protocol on Rights of Women* also includes provisions relating to: the establishment of a minimum age for and rights in marriage (Article 6); protection from violence, including sexual violence and sexual harassment (Article 4); guaranteed adequate pre/post-natal maternity leave (Article 13); authorization of "medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the unborn child" (Article 14); as well as the right to health services, including the right to control fertility and to decide whether to have children and space pregnancies, choose methods of contraception, and to protect against sexually transmitted infections, including HIV/AIDS (Article 14).

This document can be accessed at http://www.achpr.org/english/_info/women_en.h

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

MIN/WOM.RTS/DRAFT. PROT (II) Rev. 5,

(as adopted by the Meeting of Ministers, Addis Ababa, Ethiopia on 28 March 2003 and adopted by the African Union Heads of States in Maputo, July 7, 2003)

[Entered into force 25 November 2005]

The States Parties to this Protocol,
CONSIDERING that Article 66 of the African Charter on Human and Peoples' Rights provides for special protocols or agreements, if necessary, to supplement the provisions of the African Charter, and that the Assembly of Heads of State and Government of the Organization of African Unity meeting in its Thirty-first Ordinary Session in Addis Ababa, Ethiopia, in June 1995, endorsed by resolution AHG/Res.240 (XXXI) the recommendation of the African Commission on Human and Peoples' Rights to elaborate a Protocol on the Rights of Women in Africa;
CONSIDERING that Article 2 of the African Charter on Human and Peoples' Rights enshrines

the principle of non-discrimination on the grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

FURTHER CONSIDERING that Article 18 of the African Charter on Human and Peoples' Rights calls on all States Parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions;

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

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

NOTING that women's rights and women's essential role in development, have been reaffirmed in the United Nations Plans of Action on the Environment and Development in 1992, on Human Rights in 1993, on Population and Development in 1994 and on Social Development in 1995; RECALLING ALSO United Nations Security Council's Resolution 1325 (2000) on the role of Women in promoting peace and security;

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

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

RECOGNISING the crucial role of women in the preservation of African values based on the

principles of equality, peace, freedom, dignity, justice, solidarity and democracy;

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

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

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

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

HAVE AGREED AS FOLLOWS:

Article 1: Definitions

For the purpose of the present Protocol:

"African Charter" means the African Charter on Human and Peoples' Rights;

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

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

"AU" means the African Union;

"Constitutive Act" means the Constitutive Act of the African Union;

"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;

"NEPAD" means the New Partnership for Africa's Development established by the Assembly;

"States Parties" means the States Parties to this Protocol;

"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;

"Women" means persons of female gender, including girls;

Article 2: Elimination of Discrimination Against Women

States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:

- 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;
- 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;
- integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
- take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
- support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.

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

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;

Every woman shall have the right to respect as a person and to the free development of her personality;

States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women;

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

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.

States Parties shall take appropriate and effective measures 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;
- 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;
- identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
- actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;
- punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
- establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;
- prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
- prohibit all medical or scientific experiments on women without their informed consent;
- provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
- ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women.

ensure that women and men enjoy equal rights in terms of access to refugee status, determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents;

Article 5: Elimination of Harmful Practices
States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

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

prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;

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;

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:

no marriage shall take place without the free and full consent of both parties;

the minimum age of marriage for women shall be 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;

every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;

the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;

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;

a woman shall have the right to retain her nationality or to acquire the nationality of her husband;

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;

a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;

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: separation, divorce or annulment of a marriage shall be effected by judicial order;

women and men shall have the same rights to seek separation, divorce or annulment of a marriage;

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;

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:

effective access by women to judicial and legal services, including legal aid;

support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;

the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women;

that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;

that women are represented equally in the judiciary and law enforcement organs;

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

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:

women participate without any discrimination in all elections;

women are represented equally at all levels with men in all electoral processes;

women are equal partners with men at all levels of development and implementation of State policies and development programmes .

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

Article 10: Right to Peace

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

States Parties shall take all appropriate measures to ensure the increased participation of women:

in programmes of education for peace and a culture of peace;

in the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;

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;

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;

in all aspects of planning, formulation and implementation of post conflict reconstruction and rehabilitation.

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

Article 11: Protection of Women in Armed Conflicts

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.

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.

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.

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
States Parties shall take all appropriate measures to:

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

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

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;

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

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

States Parties shall take specific positive action to:

promote literacy among women;

promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology;

promote the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely.

Article 13: Economic and Social Welfare Rights

States Parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement

and other economic opportunities. In this respect, they shall:

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

Article 14: Health and Reproductive Rights
 States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:
 the right to control their fertility;
 the right to decide whether to have children, the number of children and the spacing of children;
 the right to choose any method of contraception;
 the right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS;
 the right to be informed on one's health status and on the health status of one's partner,

particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices;
 the right to have family planning education.

States Parties shall take all appropriate measures to:

provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
 establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
 protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

Article 15: Right to Food Security

States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:
 provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;
 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

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

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

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

States Parties shall take all appropriate measures to:

ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;
 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;
 protect and enable the development of women's indigenous knowledge systems;
 (c. sic.) regulate the management, processing, storage and disposal of domestic waste;
 (d. sic.) 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:
 introduce the gender perspective in the national development planning procedures;
 ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;
 promote women's access to and control over productive resources such as land and guarantee their right to property;
 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;
 take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes; and
 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:

that widows are not subjected to inhuman, humiliating or degrading treatment;
 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;
 a widow shall have the right to remarry, and in that event, to marry the person of her choice.

Article 21: Right to Inheritance
 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.

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:

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;

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:

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;
 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:

ensure the protection of poor women and women heads of families including women from marginalized population groups and provide them an environment suitable to their condition and their special physical, economic and social needs;
 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:

provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated;

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
 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.

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

This Protocol shall be open for signature, ratification and accession by the States Parties, in accordance with their respective constitutional procedures.

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

Article 29: Entry into Force

This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15) instrument of ratification.

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.

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

Any State Party may submit proposals for the amendment or revision of this Protocol.

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.

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. Amendments or revision shall be adopted by the Assembly by a simple majority.

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

Article 31: Status of the Present Protocol

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

Article 32: Transitional Provisions

Pending the establishment of the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights shall be the 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