



# REGIONAL COURSES IN INTERNATIONAL LAW

Addis Ababa, Ethiopia  
2–27 February 2015



## STUDY MATERIALS INTRODUCTION TO AFRICAN UNION LAW AND INSTITUTIONS

Codification Division of the United Nations Office of Legal Affairs

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**PROFESSOR ADELARDUS KILANGI**

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**INTRODUCTION TO AFRICAN UNION LAW AND INSTITUTIONS**  
**PROFESSOR ADELARDUS KILANGI**

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# **INTRODUCTION TO AFRICAN UNION LAW AND INSTITUTIONS: COURSE OUTLINE**

## **PROFESSOR ADELARDUS KILANGI**

### **1. Introduction**

#### 1.1 African Union Law and Institutions

- i) this is a regional system of law - also called a regional regime of law
- ii) Such a system must have a background and context
- iii) Such a system must have its internal logic

#### 1.2 Categories of Laws in a Regional System or Regional Regime of Law

##### 1.2.1 Hard law

- i) Treaties & conventions
- ii) Statutes

##### 1.2.2 Soft Law

- i) Declarations, decisions, pronouncements
- ii) Statements and common positions of States and the regional body
- iii) Judicial decisions?

#### 1.3 Relationship between Law and Institutions

- Law and the creation of functions and responsibilities, rights, duties and obligations
- Establishment of institutions to cater for the functions and responsibilities, rights, duties and obligations

### **2. Theoretical Considerations which Must Underpin the Discussion on African Union Law and Institutions**

#### 2.1 Significations of the Concept 'African Union Law'

- Is it African international law?
- Is it international law in Africa?

#### 2.2 Background and Context to African Union Law

##### 2.2.1 History of Unity and Cooperation in the Continent of Africa

- 1950s – 1960s - Pan-Africanism associated with colonialism
- 1958 - Initiatives by Ghana, Guinea and Mali (a Charter for Union of African States)

- 1961 – Casablanca Conference - Algerian Republic (CPRA), Tunisia, Nigeria, Liberia and Togo – (An African Charter, setting up an African Military command and an African Common Market)
- Btw October 1960 and March 1961 three conferences by French speaking African countries - Abidjan, Brazzaville and Yaoundé - led to the signing in September 1961, at Antananarivo of a charter establishing the *Union Africaine et Malgache*, later to be named as the *Organisation Commune Africaine et Mauricienne* (OCAM)
- May 1961 - a conference at Monrovia, Liberia - attended by 19 countries [Cameroon, Central African Republic, Chad, Congo Republic, and Côte d'Ivoire, Dahomey (now Benin), Ethiopia, Gabon, Liberia, Madagascar, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Togo, Tunisia and Upper Volta (now Burkina Faso)] - met again (with the exception of Tunisia and with the addition of the ex-Belgian Congo Republic in January 1962 at Lagos, Nigeria), and set up a permanent secretariat and a standing committee of finance ministers and accepted a draft charter for organization of Inter-African and Malagasy States.
- 23 May 1963 - Heads of State Conference in Addis Ababa - drew up the Charter of the Organization of African Unity - signed by 30 States on 25 May 1963.
- Themes covered in the Conference that formed the OAU: (i) creation of the organization of African States; (ii) cooperation among African States in the following fields: economic and social, education, culture and science; and collective defense; iii) decolonization; iv) apartheid and racial discrimination v) effects of economic groupings on the economic development of Africa; vi) disarmament vii) Africa and the United Nations.

### 2.2.2 Other Challenges Facing the Continent of Africa

- Statehood
- Refugees and internal displacement
- Territorial and boundary disputes
- Civil wars and armed conflicts
- Coups d'états and other forms of unconstitutional change of government
- Bad governance and lack of democracy
- Massive violations of human rights
- The need for strengthening economic cooperation, development, and integration among African countries in order to stand the wrath of powerful economic countries
- concerns over the prevailing patterns in international trade and investment



- Exploitation of mineral and other resources of the continent

## 2.3 Elements of African Union Law

### 2.3.1 International Organizations Law

*The AU is established as an international organization – therefore, African Union law must have elements of international organizations law. This law has the following sub-elements:*

#### *i) Establishment*

- Act of establishment
- Membership
- Functions and objectives
- Legal personality
- Rights, privileges and immunities
- Duties and responsibility
- Relations – with member States and other organizations
- Dissolution and succession

#### *ii) Sources of law for the organization*

- Law Made by the Union (treaties - hard law)
- Law Developed through Decisions of Organs (laws made by organs with legislative powers - mostly soft law)
- Law of Member States
- Law Applied by the Union

#### *iii) Institutional framework and decision making system*

- Policy functions - policy organs
- Executive functions - executive organs
- Legislative functions - legislative organs
- Judicial functions - judicial organs

#### *iv) Relationship with member States – concept of supranationality*

- How do States define, and what approach to supranationality?
- Is it transfer of powers?
- Is it creation of an agency?
- Is it creation of a common platform?

### 2.3.2 Regional Integration Law

*The AU is an organization established to foster cooperation and integration in the African continent – therefore it must have elements of regional integration law. This law has the following sub-elements:*

- i) *Defining the concept of integration*
  - What is the purpose of integration?
  - What type or category of integration do States intend pursuing?
  - What do the integrating States envisage doing to achieve their integration dream?
  
- ii) *Defining the frameworks and areas for cooperation, eg:*
  - Economic
  - Political
  - Social
  
- iii) *Defining the processes and mechanisms of integration, eg:*
  - Trade issues (Free Trade Areas)
  - Customs issues (Customs Unions)
  - Movement of goods and services and establishment (Common Markets)
  - Monetary issues (Monetary Unions)
  - Political issues (Political Federations)

## **3. The Main Thematic Areas (Legal Regimes) Covered by African Union Law**

### 3.1 Legal Regime on Establishment of the African Union

#### 3.1.1 Establishment of the OAU

\*1963 Charter of Organization of African Unity

1965 [General Convention on the Privileges and Immunities of the Organization of African Unity](#)

1980 [Additional Protocol to the OAU General Convention on Privileges and immunities](#)

1981 African Charter on Human and Peoples' Rights and Establishment of the African Commission on Human and Peoples' Rights

\*1991 [Treaty Establishing the African Economic Community](#)

1998 [Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights](#)

- 3.1.2 Transformation of the OAU into the AU
  - 1999 [Sirte Declaration](#)
  - 2000 [Constitutive Act of the African Union](#)
  - \*2001 [Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament](#)
  - 2002 [Protocol Relating to the Establishment of the Peace and Security Council of the African Union](#)
  - 2003 [Protocol of the Court of Justice of the African Union](#)
  - 2003 [Protocol on Amendments to the Constitutive Act of the African Union](#)
  - 2008 [Protocol on the Statute of the African Court of Justice and Human Rights](#)
  - 2009 [Statute of the African Union Commission on International Law](#)
  
- 3.2 Legal Regime on Economic Cooperation and Economic Integration of the African Continent
  - 3.2.1 General Economic Development
    - 1975 [Inter-African Convention Establishing an African Technical Co-operation Programme](#)
    - 1991 [Treaty Establishing the African Economic Community](#)
    - 2001 [Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament](#)
  
  - 3.2.2 Trade and Investment
    - 1974 [Constitution of the Association of African Trade Promotion Organizations](#)
    - 2009 [Protocol on the African Investment Bank](#)
  
  - 3.2.3 Agriculture and Food Security
    - 1967 [Phyto-Sanitary Convention for Africa](#)
    - 1985 [Convention for the Establishment of the African Centre for Fertilizer Development](#)
    - 2012 [Agreement for the Establishment of the African Risk Capacity \(ARC\) Agency](#)
  
  - 3.2.4 Infrastructure and Transport
    - 1969 [African Civil Aviation Commission Constitution](#)
    - 1994 [African Maritime Transport Charter](#)
    - 2009 [Revised Constitution of the African Civil Aviation Commission](#)
    - 2010 [Revised African Maritime Transport Charter](#)

- 3.2.5 Energy
  - 2001 [Convention of the African Energy Commission](#)
  
- 3.2.6 Nature and Environment
  - 1968 [African Convention on the Conservation of Nature and Natural Resources](#)
  - 2003 [African Convention on the Conservation of Nature and Natural Resources \(Revised Version\)](#)
  - 2012 [Agreement for the Establishment of the African Risk Capacity \(ARC\) Agency](#)
  
- 3.3 Legal Regime on Social Cooperation and Social Integration of the African Continent
  - 3.3.1 Human Rights, Refugees and Internally Displaced Persons
    - 1969 [OAU Convention Governing the Specific Aspects of Refugee Problems in Africa](#)
    - 1981 [African Charter on Human and Peoples' Rights](#)
    - 1981 Establishment of the African Commission on Human and Peoples' Rights under the African Charter on Human and Peoples' Rights
    - 1990 [African Charter on the Rights and Welfare of the Child](#)
    - 1998 Protocol on the [Establishment of an African Court on Human and Peoples' Rights](#) under the African Charter on Human and Peoples' Rights
    - 2003 [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#)
    - 2008 [Protocol on the Statute of the African Court of Justice and Human Rights](#)
    - 2009 [African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa](#)
  
  - 3.3.2 Social Issues, Health and Education
    - 1985 [Agreement for the Establishment of the African Rehabilitation Institute \(ARI\)](#)
    - 1991 [Bamako Convention on the Ban of the Import into Africa and the Control of Trans-boundary Movement and Management of Hazardous Wastes within Africa](#)
    - 2006 [African Youth Charter](#)
    - 2009 [African Charter on Statistics](#)
    - 2011 [African Charter on Values and Principles of Public Service and Administration](#)

- 3.3.3 Cultural Issues
  - 1976 [Cultural Charter for Africa](#)
  - 2006 [Charter for African Cultural Renaissance](#)
- 3.4 Legal Regime on Political Cooperation and Political Integration of the African Continent
  - 3.4.1 Democracy and Good Governance
    - 2003 [African Union Convention on Preventing and Combating Corruption](#)
    - 2007 [African Charter on Democracy, Elections and Governance](#)
  - 3.4.2 Peace and Security
    - 1977 [Convention for the Elimination of Mercenarism in Africa](#)
    - 1996 [The African Nuclear-Weapon-Free Zone Treaty \(Pelindaba Treaty\)](#)
    - 1999 [OAU Convention on the Prevention and Combating of Terrorism](#)
    - 2002 [Protocol Relating to the Establishment of the Peace and Security Council of the African Union](#)
    - 2004 [Protocol to the OAU Convention on the Prevention and Combating of Terrorism](#)
    - 2005 [The African Union Non-Aggression and Common Defense Pact](#)

## **4. The Main Functional Areas of African Union Institutions**

- 4.1 Policy/Decision Making Function
  - 4.1.1 Decision Making Organs
    - The Assembly of the Union - supreme Organ – all decisions [See: Article 6(2) of Const. Act]
    - Peace and Security Council – on matters of prevention, management and resolution of conflicts [see: Article 2(1) of its Protocol]
    - The Executive Council - Taking decisions in certain areas and report to Assembly [See: Article 13(1) of the Const. Act]
  - 4.1.2 Advisory Organs
    - Pan African Parliament [See: Article 2(3)(i) of its Protocol]
    - Economic, Social and Cultural Council (ECOSOC) [See: Article 22(1) of the Const. Act]
    - African Commission on Human and Peoples' Rights – on matters of human rights only based on the African Charter on Human and Peoples' Rights [See: Article 45 of the Charter]

African Committee of Experts on the Rights and Welfare of the Child – on matters of children’s rights only - based on the African Charter on the Rights and Welfare of the Child [See: Article 42(iii)(c) of the Charter]  
African Court on Human and People’s Rights - currently on interpretation of the African Charter on Human and Peoples’ Rights only [See: Article 4(1) of its Protocol]  
African Union Commission on International Law – on all matters of international law [See: Articles 2(1) and 4-9 of its Statute]

#### 4.2 Law Making Function

##### 4.2.1 Principal Law Making Organs/Institutions

Member States (not an organ) through conclusion of treaties and protocols  
The Assembly of the Union (Through Decisions, Declarations, & Pronouncements – of the Assembly – soft law)

##### 4.2.2 Subsidiary Law Making Organs/Institutions

The Executive Council - Through Decisions of the Executive Council (soft law)  
The African Court on Human and People’s Rights – through its judicial decisions, currently on human rights matters only (soft law)  
African Committee of Experts on the Rights and Welfare of the Child – on matters of children’s rights only - based on the African Charter on the Rights and Welfare of the Child [See: Article 42(ii) of the Charter]

#### 4.3 Judicial Functions

##### 4.3.1 Judicial Organs/Institutions

The African Court on Human and People’s Rights - currently on interpretation of the African Charter on Human and Peoples’ Rights only [See: Article 3(1) of its Protocol]

##### 4.3.2 Quasi-Judicial Organs/Institutions

African Commission on Human and Peoples’ Rights – on matters of human rights only based on the African Charter on Human and Peoples’ Rights [see Article 45 of the Charter]  
African Committee of Experts on the Rights and Welfare of the Child – on matters of children’s rights only - based on the African Charter on the Rights and Welfare of the Child [See: Article 42(iii)(d) of the Charter]

#### 4.4 Executive Functions

##### 4.4.1 Coordination Organs/Institutions

Executive Council - Coordinating for the Assembly [See: Article 13(1&2) of the Const. Act]

Specialized Technical Committees - Reporting to the Executive Council [See: Article 15(a) of the Const. Act]

Permanent Representative Committee - Reporting to Executive Council [See: Article 21 of the Const. Act]

##### 4.4.2 Secretarial Organs/Institutions

African Union Commission [See: Article 20(1) of the Const. Act]

##### 4.4.3 Specialized Agencies/Institutions

###### In Existence

African Development Bank (Created through an agreement establishing the African Development Bank signed by twenty-three African governments on 4 August 1963, which came into force on 10 September 1964. Now it has non-African shareholders and it operates under the Auspices of the Economic Commission for Africa. The Bank has an M.o.U with the AU)

New Partnership for Africa's Development - NEPAD (adopted by the Assembly at the 37th session of the Assembly of Heads of State and Government in July 2001 in Lusaka, Zambia)

African Peer Review Mechanism – APRM (Created in the framework of NEPAD through the Declaration on Democracy, Political, Economic and Corporate Governance by the Assembly of Heads of State of July 2002 in Durban South Africa and brought into existence by a Memorandum of Understanding concluded on 9<sup>th</sup> March 2003 in Abuja, Nigeria)

Proposed [See: Article 19 of the Const. Act]

African Central Bank

African Monetary Fund

African Investment Bank

## 5. Grey Areas Relating to African Union Law and Institutions

### 5.1 African Union Law in a Global Context

5.1.1 AU as Creating *Lex Specialis*

5.1.2 AU law and Fragmentation of International Law

## 5.2 Status and Applicability of AU Law

- 5.2.1 Status and Applicability of the Law of Integration of the AU by the AU Itself
- 5.2.2 Status and Applicability of the Law of Integration of the AU in the Member States
- 5.2.3 Status and Applicability of the Law of Integration of the AU in the International Sphere

## 5.3 AU Law *vis-à-vis* sub-regional law – the Law of the RECs

## 5.4 The Connection/Disconnection between Functions and Institutions

- The Problem of Multiple Roles
- The Problem of Lack of Clarity on Functions of Some Institutions



## **Charter of the Organization of African Unity, 1963**



Have agreed to the present Charter.

## OAU CHARTER

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,

## ESTABLISHMENT

### *Article I*

1. The High Contracting Parties do by the present Charter establish an Organization to be known as the ORGANIZATION OF AFRICAN UNITY.
2. The Organization shall include the Continental African States, Madagascar and other Islands surrounding Africa.

## PURPOSES

### *Article II*

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

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

## 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:

1. The Assembly of Heads of State and Government.
2. The Council of Ministers.
3. The General Secretariat.
4. 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*

1. Each Member State shall have one vote.
2. All resolutions shall be determined by a two-thirds majority of the Members of the Organization.

3. 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.

4. 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*

1. The Council of Ministers shall consist of Foreign Ministers or other Ministers as are designated by the Governments of Member States.

2. 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*

1. 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.

2. 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 conformity with Article II (2) of the present Charter.

### *Article XIV*

1. Each Member State shall have one vote.
2. All resolutions shall be determined by a simple majority of the members of the Council of Ministers.

3. 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.

1. 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.
2. Each member of the Organization undertakes 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:

1. Economic and Social Commission.
2. Educational, Scientific, Cultural and Health Commission.
3. Defence 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 Member 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 percent of the yearly regular budget of the Organization. The Member States agree to pay their respective contributions regularly.

#### SIGNATURE AND RATIFICATION OF CHARTER

##### *Article XXIV*

1. 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.
2. 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.
3. 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 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*

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

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 XXXII*

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,  
25<sup>th</sup> day of May, 1963*





**General Convention on the Privileges and Immunities of the  
Organization of African Unity, 1965**



**GENERAL CONVENTION ON THE PRIVILEGES AND IMMUNITIES  
OF THE ORGANIZATION OF AFRICAN UNITY**

**CAB/LEG/24.2/13**

**CONSIDERING** it necessary that the Organization of African Unity should enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purpose;

**CONSIDERING** it necessary that the representatives of the Members of the Organization of African Unity and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization;

**NOW THEREFORE** the Assembly adopted the following convention:

**SECTION A**

**Article I**

1. The Organization of African Unity shall possess juridical personality and shall have the capacity:

- (a) To enter into contracts including the rights to acquire and dispose of movable and immovable property;
- (b) To institute legal proceedings.

**SECTION B**

**Article II**

**Property, funds, Assets and Transactions of the  
Organization of African Unity**

1. The Organization of African Unity its premises buildings, assets and other property wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case the Organization of African Unity has waived such immunity in accordance with the provisions of this General Convention. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The premises and buildings of the Organization of African Unity shall be inviolable. The property and assets of the Organization of African Unity, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and from any other form of interference, whether by executive, administrative, juridical or legislative action.
3. The archives of the Organization of African Unity and in general all documents belonging to it or held by it shall be inviolable wherever located.

4. Without being restricted by financial controls, regulations or moratoria of any kind;

- (a) The Organization of African Unity may hold funds, gold or currency of any kind and operate accounts of any currency;
- (b) The Organization of African Unity shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.
5. It is provided, however, that in exercising its right under paragraph 4 hereabove, the Organization of African Unity shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without prejudicing the interests of the Organization of African Unity.

### **Article III** **Tax exemptions**

1. The Organization of African Unity, its income assets and properties shall be exempt:
  - (a) From all direct taxes, except that the Organization of African Unity will not claim exemption from taxes or dues which are no more than charges for public utility services;
  - (b) From import and export duties, prohibitions and quantitative restrictions on imports and exports in respect of articles imported or exported by the Organization of African Unity intended for and used for its official purpose. It is provided, however, that articles imported under such exemption shall not be sold with or without consideration in the country into which they were imported except under conditions agreed upon by the appropriate authorities of the Government of that country;

- (c) From customs duties, prohibitions and restrictions on imports and exports in respect of its publications.
2. While the Organization of African Unity will not, as a general rule, claim exemption from excise duties and from transaction taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the Organization of African Unity is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will enact the necessary provisions or make appropriate administrative arrangements for the remission or refund of the amount of duty or tax so charged.

### **Article IV** **Facilities in respect of communications**

1. For its official communication and the transfer of all its documents the Organization of African Unity shall enjoy in the territory of each Member State treatment not less favourable than that accorded by the Government of that Member to any other international Organization as well as any Government, including its diplomatic mission, in matters of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephones and other communications, as well as press rates for information to the press and radio. Official correspondence and other official communications of the Organization of African Unity shall not be subject to censorship.
2. The Organization of African Unity shall have the right to use codes and to despatch and receive its official correspondence, either by courier or in sealed bags which shall have the same immunities and privileges as diplomatic couriers and bags.

### **SECTION C** **Article V** **Representatives of Member States**

1. Representatives of Member States to the principal and subsidiary institutions, as well as to the Specialized Commission of the Organization of African Unity, and to conferences convened by the Organization, shall, while exercising their functions and during their travel to and from the place of meetings, be accorded the following privileges and immunities:
  - (a) Immunity from personal arrest or detention and from any official interrogation as well as from inspection or seizure of their personal baggages;

- (b) Immunity from legal process of every kind in respect of words spoken, written or acts performed or votes cast by them for and in the exercise of their functions;
  - (c) Inviolability for all their papers and documents and the right to use codes and to receive papers or correspondence by courier or in sealed bags;
  - (d) Exemption in respect of themselves and their spouse from immigration restrictions, aliens registration and from national service obligations in the state they are visiting or through which they are passing for and in the exercise of their functions;
  - (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
  - (f) The same immunities and facilities in respect of their personal and official baggages as are accorded to diplomatic envoys;
  - (g) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from exercise duties or sales taxes.
2. In order to secure, for the representatives of Members to the principal and subsidiary institutions as well as to Specialized Commission of the Organization of African Unity and to Conferences convened by the Organization, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken, written or votes cast, and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.
  3. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary institutions as well as to the Specialized Commission of the Organization of African Unity and to Conferences convened by the Organization of African Unity are present in a State for the discharge of their duties shall not be considered as periods of residence.
  4. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Organization of African Unity. Consequently, a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the

immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

5. The provisions of paragraphs 1, 2, and 3 of Article V are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.
6. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

## **SECTION D**

### **Article VI Officials of the Organization of African Unity**

1. The Administration Secretary General will specify the category of officials to which the provisions of this Article and Article VIII shall apply. He shall submit these categories to the Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Government of Members.
2. Officials of the Organization of African Unity shall:
  - (a) Be immune from legal process in respect of words spoken, written and all acts performed by them in their official capacity;
  - (b) Be exempt from taxation on the salaries and emoluments paid to them by the Organization of African Unity;
  - (c) Be immune from national service obligations;
  - (d) Be immune, together with their spouses and relatives residing with and dependent on them, from immigration restrictions and alien registration and finger printing;
  - (e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
  - (f) Be given, together with their spouses and relatives residing with and dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;

- (g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.
3. In addition to the immunities and privileges specified in paragraph 2 of this Article, the Administrative Secretary General and all Assistant Secretaries General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.
4. Privileges and immunities are granted to officials in the interests of the Organization of African Unity and not for the personal benefit of the individuals themselves. The Administrative Secretary General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization of African Unity. In the case of the Administrative Secretary General, the Council of Ministers shall have the right to waive immunity.
5. The Organization of African Unity shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

#### **Article VII** **Experts on missions for the Organization of African Unity**

1. Experts (other than officials coming within the scope of Article VI) performing missions for the Organization of African Unity shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular, they shall be accorded:
- (a) Immunity from personal arrest or detention as well as any official interrogation and from inspections or seizure of their personal baggage;
  - (b) In respect of words spoken, written or votes cast and acts done by them in the course of the performance of their mission; immunity from legal process of every kind; the said immunities from legal process continue to be accorded notwithstanding that persons concerned are no longer employed on missions for the Organization of African Unity;
  - (c) Inviolability for all papers and documents;

- (d) For the purpose of their communications with the Organization of African Unity, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
  - (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;
  - (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.
2. Privileges and immunities are granted to experts in the interests of the Organization of African Unity and not for the personal benefit of the individuals themselves. The Administrative Secretary General shall have the right and the duty to waive the immunities of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization of African Unity.

#### **Article VIII** **Organization of African Unity Laissez-Passer**

1. The Organization of African Unity may issue Organization of African Unity Laissez-Passer to its officials. These Laissez-Passer shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provisions of paragraph 2 of this Article.
2. Applications for visas (where required) from the holders of Organization of African Unity Laissez-Passer, when accompanied by a certificate that they are travelling on the business of the Organization of African Unity, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.
3. Similar facilities to those specified in paragraph 2 of this Article shall be accorded to experts and other persons who, though not the holders of Organization of African Unity Laissez-Passer, have a certificate that they are travelling on the business of the Organization of African Unity.
4. The Administrative Secretary General, Assistant Secretaries General and Directors travelling on Organization of African Unity Laissez-Passer on the business of the Organization of African Unity shall be granted the same facilities as are accorded to diplomatic envoys.

## SECTION E

### Article IX Settlements of disputes

1. The Organization of African Unity shall make provisions for appropriate modes of settlement of:
  - (a) Disputes arising out of contracts or other disputes of a private law character to which the Organization of African Unity is a party;
  - (b) Disputes involving any official of the Organization of African Unity who by reason of his official position enjoys immunity, if immunity has not been waived by the Administrative Secretary General;
2. All differences arising out of the interpretation and/or application of the present Convention shall be referred for arbitration to the Commission of Mediation, Conciliation and Arbitration, unless in any case it is agreed by the parties to have recourse to another mode of settlement;
  - (c) All differences which may arise between the Organization of African Unity on the one hand, and a Member State on the other hand, with respect to the interpretation and/or application of the present Convention; failing settlement by negotiation or any other agreed method of settlement shall be submitted to a tribunal of three arbitrators; one to be named by the Administrative Secretary General of the Organization, one to be named by the Member State, the third to be chosen by the two arbitrators, and/or if they should fail to agree upon the third, then the third shall be chosen by the President of the Commission of Mediation, Conciliation and Arbitration.

### Article X Final Provisions

1. This Convention is submitted to every Member of the Organization of African Unity for accession.
2. The accession provided for in paragraph 1 of this Article shall be effected by the signature of the Heads of State and Government; this signature implies the immediate entering into force of the General Convention on the Privileges and Immunities of the Organization of African Unity.

3. The Administrative Secretary General may conclude with any Member or Members supplementary agreements adjusting the provisions of this Convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the Assembly.

IN FAITH WHEREOF, WE, the Heads of State and Government have signed this Convention, done in the city of Accra, Ghana, this 25<sup>th</sup> day of October 1965.

ALGERIA (Signed)	MALAWI (Signed)
BURUNDI (Signed)	MALI (Signed)
CAMEROON (Signed)	MAURITANIA (Signed)
CENTRAL AFRICAN REPUBLIC (Signed)	MOROCCO (Signed)
CHAD	NIGER
CONGO (Brazzaville) (Signed)	NIGERIA (Signed)
CONGO (Kinshasa) (Signed)	RWANDA (Signed)
DAHOMEY	SENEGAL (Signed)
ETHIOPIA (Signed)	SIERRA LEONE
GABON	SOMALIA (Signed)
GAMBIA (Signed)	SUDAN (Signed)
GHANA (Signed)	TANGANYIKA
GUINEA (Signed)	TOGO
IVORY COAST	TUNISIA (Signed)
KENYA (Signed)	UGANDA (Signed)
LIBERIA (Signed)	UNITED ARAB REPUBLIC (Signed)
LIBYA (Signed)	UPPER VOLTA
MADAGASCAR	ZAMBIA (Signed)

**Additional Protocol to the OAU General Convention on  
Privileges and Immunities, 1980**





**COUNCIL OF MINISTERS  
THIRTY-FIFTH ORDINARY SESSION  
18-28 June 1980  
Freetown, Sierra Leone**

**CM/1034(XXXV) Rev.3  
Annex I**

**ADDITIONAL PROTOCOL TO THE OAU GENERAL  
CONVENTION ON PRIVILEGES AND IMMUNITIES**

The State Parties to the Present Protocol,

**Convinced** of the importance of granting adequate Immunities and Privileges, as well as the issue of the Organization of African Unity Laissez-Passer to personnel of the Organization of African Unity Specialized Agencies to enable them perform their functions efficiently in the territories of Member States of the Organization of African Unity,

**Considering** that the Organization of General Convention Privileges and Immunities (hereinafter referred to as the Convention) does not contain provisions for granting of Privileges and Immunities including the issue of the Organization of African Unity Laissez-Passer to officials and other staff members, and travel certificates to experts and non-nationals of the members of the OAU Specialized Agencies hereinafter referred to as Agencies,

**Considering** that such immunities and privileges as are granted to the Organization of African Unity officials will be adequate for the officials of the Agencies for the efficient performance of their functions in the territories of the Organization of African Unity Member States, have agreed as follows:

**ADDITIONAL PROTOCOL TO THE OAU GENERAL  
CONVENTION ON PRIVILEGES AND IMMUNITIES**

**Article 1  
Definition**

For the purpose of this Protocol the word "Official" means any person employed on a permanent basis at professional level.

For the purpose of this Protocol the word "Expert" means any person other than an official who owing to his special qualifications is recruited on a temporary basis to perform a specific job.

**Immunities and Privileges**

**(A) Officials of the Agencies nationals of OAU Member States**

**Article 2**

1. The Secretary General of the Organization of African Unity shall in consultation with the Heads of the Agencies specify the categories of officials of the Agencies to which the provisions of this Article and Article 3 shall apply. He shall submit these



categories to the Organization of African Unity Assembly of Heads of States and Government. Thereafter the categories shall be communicated to the Government of all Member States. The names of officials included in those categories shall from time to time be made known to the Government of Member States.

2. Officials of the Agencies shall:

- (a) be immune from legal process in respect of words spoken, written and all acts performed by them in their official capacity,
- (b) be exempt from taxation on the salaries and emoluments paid to them by the Organization of African Unity Agencies;
- (c) be immune from arrest and detention;
- (d) be immune from national service obligation;
- (e) be immune, together with their spouses and the members of their immediate families residing with, and dependent on them including their personal employees, from immigration restrictions, alien registration and finger printing;
- (f) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (g) be given, together with their spouses and relatives residing with, and dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (h) import free of duty their furniture and effects at the time of first taking up their appointment in the countries of OAU Member States.

3. The provisions of sub-paragraphs (b) – (h) may not apply to nationals in their country of origin.

4. In addition to the immunities and privileges specified in paragraph 2 of this article, the Secretary General and the Assistant Secretary General of the Agencies shall be accorded in respect of themselves, their spouses and children, the privileges and immunities, exemptions and facilities accorded to Diplomatic envoys in accordance with International Law.

5. Privileges and Immunities are granted to the Personnel of the Agencies in the interest of the Organization of African Unity, and not for the personal benefit of the individuals themselves. The Secretary General of the Organization of African Unity shall have the right and the duty to waive the immunity of any official of the Agencies in any case where in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization of African Unity.

6. The Organization of African Unity and the Agencies shall co-operate at all times with the appropriate authorities of Member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this article.

**(B) Officials of the Agencies with Nationalities other than those of Organization of African Unity Member States and Experts on Mission for the Agencies**

**Article 3**

Experts on Mission for the Agencies and the officials of the Agencies other than those holding the nationality of a Member State of the Organization of African Unity shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular, they shall be accorded:

- (a) immunity from arrest or detention;
- (b) immunity from legal process of any kind in respect of words spoken, written and all acts performed by them in the course of the performance of their mission;
- (c) inviolability for all official papers and documents for the purpose of their communication with the Specialized Agencies and the Organization of African Unity;
- (d) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (e) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

#### Article 4

Privileges and Immunities are granted to the Experts and Officials in the interest of the Organization of African Unity and not for the personal benefit of the individual themselves. The Secretary General of the Organization of African Unity shall have the right and the duty to waive the immunity of any expert or official in any case where in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interest of the Organization of African Unity.

#### Article 5 Organization of African Unity Laissez-Passer

1. The Organization of African Unity may issue Organization of African Unity Laissez-Passer to the officials of the Organization of African Unity Agencies. These Laissez-Passer shall be recognized and accepted as valid travel documents by the authorities of the Organization of African Unity Member States, taking into account the provisions of paragraph of this article.
2. Application for visas from holders of Organization of African Unity Laissez-Passer, when accompanied by travel authorization that they are travelling on the business of the Agencies for the Organization of African Unity, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.
3. The Head of the Organization of African Unity Agencies and their deputies travelling on Organization of African Unity Laissez-Passer on the business of the Organization of African Unity shall be granted the same facilities as are accorded to diplomatic envoys.
4. The Organization of African Unity Laissez-passers may be issued by the Organization of African Unity Secretary General to the Agencies' officials on the application of the Heads of the Agencies.
5. On the termination of the appointment of an official of the Agencies who is a holder of the Organization of African Unity Laissez-Passer, the Agencies shall promptly return the Laissez-Passer to the Organization of African Unity Secretary General, who shall notify all Member States of the cancellation of the Laissez-Passer.

#### Article 6 Organization of African Unity Travel Certificate

1. The Organization of African Unity Travel Certificate may be issued to the officials of the Organization of African Unity Agencies who are not the nationals of the Organization of African Unity Member States, who hold a contract appointment of not more than six months duration with the Organization of African Unity Agencies, to Experts on the missions of the agencies for the Organization of African Unity and such other staff members as the Secretary General of the OAU may determine.
2. Application for visas from holders of OAU Travel Certificate when accompanied by travel authorization that they are travelling on the business of the Agencies for the Organization of African Unity, shall be dealt with as speedily as possible. In addition such persons shall be granted facilities for speedy travel.
3. The Organization of African Unity Travel Certificate may be issued by the Secretary General on application from the Head of an Agency.
4. On the termination of the appointment of a holder of an Organization of African Unity Travel Certificate, the Agency shall return the certificate to the Organization of African Unity Secretary General for cancellation. If for any reason the Travel Certification is not returned, the agency shall inform the OAU Secretary General who shall notify all Member States of the Cancellation of the Certificate.
5. The Organization of African Unity Travel Certificates shall specify the following:
  - (a) full names of holder;
  - (b) nationality;
  - (c) date and place of birth;
  - (d) title;
  - (e) period of validity;
  - (f) general remark.

#### Article 7 Settlement of Disputes

Any disputes arising out of this Protocol shall be settled in accordance with the provisions of Section E Article IX of the General Convention on the Privileges and Immunities of the OAU.

### **Article 8 Amendment**

1. Any state party to the present Protocol may propose an amendment and file it with the Organization of African Unity Secretary General, who thereupon shall communicate the proposed amendment to the State Parties to the present Protocol with a request that they notify him whether they favour a conference of State Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the State Parties favour such conference, the Secretary General shall convene the conference under the auspices of the Organization of African Unity. Any amendment adopted by a majority of the States Parties present and voting at the Conference, shall immediately come into force.
2. In the event, that a conference is not favoured, the Secretary General shall call upon State Parties to indicate to him in writing whether or not they are in favour of the proposed amendment. A simple majority of such indication immediately on receipt by the Secretary General shall bring the amendment into force.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them; either States Parties still being bound by the provisions of the present Protocol and any earlier amendments which they have accepted.

### **Article 9 Denunciation**

1. Any State Party may denounce the present Protocol at any time by a written notification addressed to the Organization of African Unity Secretary General. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary General.
2. The Organization of African Unity Secretary General shall inform all Member States of the following particulars:-
  - (a) Accessions to the present Protocol;
  - (b) The date of entry into force of the present Protocol with respect to the Member depositing an instrument of accession and the date of entry into force of any amendments;
  - (c) Denunciations.

### **Article 10 Final Provisions**

1. This Protocol is submitted to every Member of the Organization of African Unity for accession.
2. Accession shall be effected by the deposit of an Instrument of Accession with the Secretary General of the Organization of African Unity; and the Protocol shall come into force as regards such Member on the date of the deposit of its instrument of accession.
3. The Secretary General of the Organization of African Unity shall inform all Members of the Organization of African Unity of the deposit of each instrument of accession.
4. The Protocol shall continue in force as between the Organization of African Unity and every Member that has deposited an instrument of accession or until a revised Protocol has been approved by the Assembly of Heads of State and Government and that member has become a party to the revised Protocol.
5. The Head of an Agency may conclude with any member or members of the Organization of African Unity supplementary agreements adjusting the provisions of this Protocol with particular reference to the establishment of the agencies' offices, so far as that member or those members are concerned. These supplementary agreements shall in each case be subject to the approval of the Organization of African Unity Assembly of Heads of State and Government.

### **Article 11**

1. The present Protocol of which the Arabic, English and French texts are equally authentic, shall be deposited in the archives of the Organization of African Unity.
2. The Organization of African Unity Secretary General shall transmit copies of the present Protocol to all States Parties.
3. The present Protocol is approved by the Organization of African Unity Assembly of Heads of State and Government at its Seventeenth Ordinary Session at Freetown, Sierra Leone on 3 July, 1980.



**Constitutive Act of the African Union, 2000**

## CONSTITUTIVE ACT OF THE AFRICAN UNION

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 Cote 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 1<sup>st</sup> 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;

"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 cooperation in all fields of human activity to raise the living standards of African peoples;
- (l) Coordinate and harmonize policies between 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 as ensure compliance by all Member States;
  - (f) Adopt the budget of the Union;
  - (g) Give directives to the Executive Council on the management of conflicts, war and other emergency situations and the restoration of peace;

- (h) Appoint and terminate the appointment of the judges of the Court of Justice;
  - (i) Appoint the Chairman of the Commission and his or her deputy or deputies and Commissioners of the Commission and determine their functions and terms of office.
2. The Assembly may delegate any of its powers and functions to any organ of the Union.

**Article 10**  
**The Executive Council**

1. The Executive Council shall be composed of the Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the Governments of Member States.
2. Council shall meet at least twice a year in ordinary session. It shall also meet in an extra-ordinary session at the request of any Member State and upon approval by two-thirds of all Member States.

**Article 11**  
**Decisions of the Executive Council**

1. The Executive Council shall take its decisions by consensus or, failing which, by a two-thirds majority of the Member States. However, procedural matters, including the question of whether a matter is one of procedure or not, shall be decided by a simple majority.
2. Two-thirds of the total membership of the Union shall form a quorum at any meeting of the Executive Council.

**Article 12**  
**Rules of Procedure of the Executive Council**

The Executive Council shall adopt its own Rules of Procedure.

**Article 13**  
**Functions of the Executive Council**

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

- (a) Foreign trade;
  - (b) Energy, industry and mineral resources;
  - (c) Food, agricultural and animal resources, livestock production and forestry;
  - (d) Water resources and irrigation;
  - (e) Environmental protection, humanitarian action and disaster response and relief;
  - (f) Transport and communications;
  - (g) Insurance;
  - (h) Education, culture, health and human resources development;
  - (i) Science and technology;
  - (j) Nationality, residency and immigration matters;
  - (k) Social security, including the formulation of mother and child care policies, as well as policies relating to the disabled and the handicapped;
  - (l) Establishment of a system of African awards, medals and prizes.
2. The Executive Council shall be responsible to the Assembly. It shall consider issues referred to it and monitor the implementation of policies formulated by the Assembly.
3. The Executive Council may delegate any of its powers and functions mentioned in paragraph 1 of this Article to the 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 in 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 provision 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**

1. 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 Lomé, Togo, this 11<sup>th</sup> day of July, 2000.



**Protocol of the Court of Justice of the African Union, 2003**

**PROTOCOL OF THE COURT OF JUSTICE  
OF THE AFRICAN UNION**

**PROTOCOL OF THE COURT OF JUSTICE  
OF THE AFRICAN UNION**

The Member States of the African Union:

**Considering** that the Constitutive Act established the Court of Justice of the African Union;

**Firmly convinced** that the attainment of the objectives of the African Union requires the establishment of the Court of Justice of the African Union;

**HAVE AGREED AS FOLLOWS:**

**CHAPTER I**

Article 1  
**DEFINITIONS**

In this Protocol unless otherwise specifically stated:

“**Act**” means the Constitutive Act of the Union;

“**Assembly**” means the Assembly of Heads of State and Government of the Union;

“**Commission**” means the Commission of the Union;

“**Court**” means the Court of Justice of the Union;

“**ECOSOCC**” means the Economic, Social and Cultural Council of the Union;

“**Executive Council**” means the Executive Council of Ministers of the Union;

“**Financial Institutions**” means the Financial Institutions established by the Constitutive Act;

“**Judge**” means a judge of the Court;



“**Member State**” means a Member State of the Union;  
 “**Parliament**” means the Pan-African Parliament of the Union;

“**Peace and Security Council**” means the Peace and Security Council of the Union;

“**President**” means the President of the Court;

“**Protocol**” means this Protocol defining the composition, powers and functions of the Court;

“**Regions**” means the geographical regions into which the continent of Africa, at any time, is divided pursuant to a decision of the Assembly;

“**Rules of Court**” means the Rules of Court under Article 58;

“**Registrar**” means the Registrar of the Court;

“**States Parties**” means the Member States that have ratified or acceded to this Protocol;

“**Union**” means the African Union established by the Act;

“**Vice President**” means the Vice President of the Court;

#### Article 2

### **ESTABLISHMENT OF THE COURT**

1. The Court established by the Act shall function in accordance with the provisions of the Act and this Protocol.
2. The Court shall be the principal judicial organ of the Union.

#### Article 3

### **COMPOSITION**

1. The Court shall consist of eleven (11) Judges who are nationals of States Parties.

2. The Assembly may, when it deems it necessary, review the number of Judges.

3. The Judges shall be assisted by the necessary staff for the smooth functioning of the Court.

4. No two (2) Judges shall be nationals of the same State Party.

5. In the Court as a whole, the representation of the principal legal traditions of Africa shall be assured.

6. Each region shall be represented by no less than two (2) Judges.

## **CHAPTER II**

### Article 4

### **QUALIFICATIONS**

The Court shall be composed of impartial and independent Judges elected from among persons of high moral character, who possess the necessary qualifications required in their respective countries for appointment to the highest judicial offices, or are jurists of recognized competence in international law.

### Article 5

### **SUBMISSION OF CANDIDATES**

1. Upon entry into force of this Protocol, the Chairperson of the Commission shall request each State Party to submit in writing within ninety (90) days of such a request, its nomination for the office of a Judge of the Court.
2. Each State Party may nominate only one (1) candidate having the qualifications prescribed in Article 4 of this Protocol.
3. Due consideration shall be given to adequate gender representation in the nomination process.

### Article 6

### **LIST OF CANDIDATES**

The Chairperson of the Commission shall prepare a list of the candidates nominated, in alphabetical order and transmit it to the

Member States at least thirty (30) days prior to the ordinary session of the Assembly at which the Judges are to be elected.

Article 7

**ELECTION OF JUDGES OF THE COURT**

- 1. The Assembly shall elect the Judges by secret ballot and by two-thirds majority of the Member States eligible to vote.
- 2. Where one or more candidates fail to obtain the two-thirds majority required for an election, the balloting shall continue until the required number of Judges has been elected. However, the next ballots shall be restricted to the candidates who obtain the greatest number of votes.
- 3. In the election of the Judges, the Assembly shall ensure that there is equal gender representation.

Article 8

**TENURE OF OFFICE**

- 1. The Judges shall be elected for a period of six (6) years and may be re-elected only once. The term of five (5) Judges elected at the first election shall expire at the end of four (4) years and the other Judges shall serve the full term.
- 2. The Judges whose terms are to expire at the end of the initial period of four (4) years shall be chosen by lot to be drawn by the Chairperson of the Assembly immediately after the first election has been completed.
- 3. A Judge elected to replace another Judge whose term of office has not expired shall be from the same region and shall hold office for the remainder of the predecessor's term.

Article 9

**OATH OF OFFICE**

- 1. Before taking up his or her duties each Judge shall in open court take the following oath:

“I ..... Do solemnly swear (or affirm or declare) that I shall faithfully exercise the duties of my office as Judge of the Court of Justice of the African Union impartially and conscientiously, without fear or favour, affection or illwill and that I will preserve the secrecy of the deliberations of the Court.”

- 2. The oath of office shall be administered by the Chairperson of the Assembly or his or her duly authorized representative.

Article 10

**PRESIDENCY OF THE COURT**

- 1. The Court shall elect its President and Vice-President for a period of three (3) years. The President and Vice-President may be re-elected once.
- 2. The President shall reside at the seat of the Court.
- 3. The modalities for elections of the President and the Vice-President and their functions shall be set out in the Rules of Court.

Article 11

**RESIGNATION, SUSPENSION AND REMOVAL FROM OFFICE**

- 1. A Judge may resign his or her position in writing addressed to the President for transmission to the Chairperson of the Assembly.
- 2. A Judge shall not be suspended or removed from office save where, on the unanimous recommendation of the other Judges, he or she no longer fulfils the requisite conditions to be a Judge.
- 3. The President shall communicate the recommendation for the suspension or removal of a judge to the Chairperson of the Assembly and the Chairperson of the Commission.
- 4. Such a recommendation of the Court shall become final upon its adoption by the Assembly.

Article 12  
**VACANCIES**

1. A vacancy shall arise in the Court under the following circumstances:
  - (a) death;
  - (b) resignation;
  - (c) removal from office.
2. In the case of death or resignation of a Judge, the President shall immediately inform the Chairperson of the Assembly in writing, who shall declare the seat vacant.
3. The same procedure and consideration for the election of a Judge shall also be followed in filling vacancies.

Article 13  
**INDEPENDENCE**

1. The independence of the Judges shall be fully ensured in accordance with international law.
2. No Judge may participate in the decision of any case in which he or she 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 commission of inquiry, or in any other capacity.
3. Any doubt on this point shall be settled by decision of the Court.

Article 14  
**PRIVILEGES AND IMMUNITIES**

1. The Judges shall enjoy, from the time of their election and throughout their term of office, the full privileges and immunities extended to diplomatic agents in accordance with international law.
2. The Judges shall be immune from legal proceedings for any act or omission committed in the discharge of their judicial functions.
3. The Judges shall continue, after they have ceased to hold office, to enjoy immunity in respect of acts performed by them when engaged in their official capacity.

Article 15  
**INCOMPATIBILITY**

1. The position of a Judge shall be 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 Court.
2. Any doubt on this point shall be settled by the Court.

Article 16  
**QUORUM**

1. The full Court shall sit except where it is expressly provided otherwise in this Protocol;
2. Except when sitting in Chamber, the Court shall only examine cases brought before it, if it has a quorum of at least seven (7) Judges;
3. The quorum for a Special Chamber shall be set out in the Rules of Court.

Article 17  
**REMUNERATION OF JUDGES**

1. A Judge shall receive an annual allowance and, for each day on which he or she exercises his or her functions, a special allowance, provided that in any year the total sum payable to any Judge as special allowance shall not exceed the amount of the annual allowance.
2. The President shall receive an additional special annual allowance.
3. The Vice-President shall receive an additional special allowance for each day on which he or she acts as President.
4. The allowances shall be determined from time to time by the Assembly upon the recommendation of the Executive Council, taking into account the workload of the Court. They may not be decreased during the term of office.

5. Regulations adopted by the Assembly upon the recommendation of the Executive Council shall determine the conditions under which retirement pensions shall be given to the Judges and the terms and conditions under which their travel expenses shall be paid or refunded.
6. The allowances shall be free of all taxation.

#### Article 18

### **ELIGIBILITY TO SUBMIT CASES**

1. The following are entitled to submit cases to the Court:
- (a) States Parties to this Protocol;
  - (b) The Assembly, the Parliament and other organs of the Union authorised by the Assembly;
  - (c) The Commission or a member of staff of the Commission in a dispute between them within the limits and under the conditions laid down in the Staff Rules and Regulations of the Union;
  - (d) Third Parties under conditions to be determined by the Assembly and with the consent of the State Party concerned.

2. The conditions under which the Court shall be open to third parties shall, subject to the special provisions contained in treaties in force, be laid down by the Assembly, but in no case shall such conditions place the parties in a position of inequality before the Court.
3. The States which are not members of the Union shall not be allowed to submit cases to the Court. The Court shall have no jurisdiction to deal with a dispute involving a Member State that has not ratified this Protocol.

#### Article 19

### **COMPETENCE/JURISDICTION**

1. The Court shall have jurisdiction over all disputes and applications referred to it in accordance with the Act and this Protocol which relate to:
- (a) the interpretation and application of the Act;
  - (b) the interpretation, application or validity of Union treaties and all subsidiary legal instruments adopted within the framework of the Union;

- (c) any question of international law;
- (d) all acts, decisions, regulations and directives of the organs of the Union;
- (e) all matters specifically provided for in any other agreements that States Parties may conclude among themselves or with the Union and which confer jurisdiction on the Court;
- (f) the existence of any fact which, if established, would constitute a breach of an obligation owed to a State Party or to the Union;
- (g) the nature or extent of the reparation to be made for the breach of an obligation.

2. The Assembly may confer on the Court power to assume jurisdiction over any dispute other than those referred to in this Article.

## **CHAPTER III**

### Article 20

### **SOURCES OF LAW**

1. The Court, whose function is to decide in accordance with international law such disputes, as are submitted to it, shall have regard to:
- (a) The Act;
  - (b) International treaties whether general or particular, establishing rules expressly recognized by the contesting states;
  - (c) International custom, as evidence of a general practice accepted as law;
  - (d) The general principles of law recognized universally or by African States;
  - (e) Subject to Article 37 of this Protocol, judicial decisions and the writings of the most highly qualified publicists of various nations as well as the regulations, directives and decisions of the Union as subsidiary means for the determination of the rules of law.
2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties, agree thereto.

**CHAPTER IV**

Article 21

**SUBMISSION OF A DISPUTE**

- 1. Disputes shall be submitted to the Court by a written application to the Registrar. The subject of the dispute, the applicable law and basis of the jurisdiction shall be indicated.
- 2. The Registrar shall forthwith give notice of the application to all concerned parties.
- 3. The Registrar shall also notify all Member States, the Chairperson of the Commission and any third parties entitled to appear before the Court.

Article 22

**PROVISIONAL MEASURES**

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

Article 23

**REPRESENTATION OF PARTIES**

- 1. The parties may be represented before the Court by agents.
- 2. An agent or party may have the assistance of counsel or advocate before the Court.
- 3. The organs of the Union, where relevant, shall be represented by the Chairperson of the Commission or his or her representative.
- 4. The agents, counsel and advocates of the parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

Article 24

**PROCEDURE BEFORE THE COURT**

- 1. The procedure before the Court shall consist of two parts: written and oral.
- 2. The written procedure shall consist of the communications to the Court, the parties and the institutions of the Union whose decisions are in dispute, of applications, statements of the case, defences and observations and of replies if any, as well as all papers and documents in support, or of certified copies thereof.
- 3. The communications shall be made through the Registrar, in the order and time fixed by the Court either in the Rules or the case.
- 4. A certified copy of every document produced by one party shall be communicated to the other party.
- 5. The oral proceedings shall, if necessary, consist of hearing by the Court of witnesses, experts, agents, counsels and advocates.

Article 25

**SERVICE OF NOTICE**

- 1. For the service of all notices upon persons other than parties, agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.
- 2. The same provision shall apply whenever steps are to be taken to procure evidence locally in the territory of the State concerned.

Article 26

**PUBLIC HEARING**

The hearing in Court shall be public, unless the Court, on its own motion or upon application by the parties, decides that the public not be admitted.



## Article 27

**RECORD OF PROCEEDINGS**

1. A record of proceedings shall be made at each hearing and shall be signed by the presiding Judge and the Registrar of the session.
2. Such a record shall be kept by the Registrar and shall be the authentic record of the case.

## Article 28

**REGULATION OF PROCEEDINGS**

1. The Court shall have the power to regulate its own proceedings. It shall have the power to make orders for the conduct of the case before it.
2. It shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

## Article 29

**PRODUCTION OF DOCUMENTS**

The Court may, before the hearing begins, call upon the agents to produce any relevant document or to supply any relevant explanation. Formal note shall be taken of any refusal to produce documents or supply an explanation requested by it.

## Article 30

**ENQUIRIES**

The Court may, at any time, entrust any individual, body, bureau, commission, or other organisation that it may select, and accepted by the parties to the dispute, with the task of carrying out an enquiry or giving an expert opinion.

## Article 31

**REFUSAL OF EVIDENCE**

After the Court has received the proofs and evidence within the time specified for the purpose, it may, unless it decides that the interests of justice so require, refuse to accept any further oral or written evidence that any party may desire to present.

## Article 32

**DEFAULT JUDGMENTS**

1. Whenever one of the parties does not appear before the Court, or fails to defend the case against it, the other party may call upon the Court to give its judgment.
2. The Court must before doing so, satisfy itself, not only that it has jurisdiction in accordance with Article 19, but also that the claim is well founded in fact and in law and that the other party had due notice.
3. An objection by the party concerned may be lodged against the judgment within ninety (90) days of it being notified of the default judgment. The objection shall not have the effect of staying the enforcement of the judgment by default.

## Article 33

**CONSIDERATION OF THE JUDGMENT**

1. When, subject to the control of the Court, the agent, counsel and advocates have completed their submissions of the case, the President shall declare the hearing closed.
2. The Court shall adjourn to consider its judgment.
3. The deliberations of the Court shall take place in private and shall remain secret at all times.

## Article 34

**MAJORITY NECESSARY FOR DECISION**

1. All questions shall be decided by a majority of the Judges present.
2. In the event of equality of votes, the presiding Judge shall have a casting vote.

Article 35  
**JUDGMENT**

1. The judgment shall state the reasons on which it is based.
2. The judgment shall state the names of Judges who have taken part in the decision.
3. The judgment shall be signed by all the Judges and certified by the President and the Registrar. It shall be read in open session, due notice having been given to the agents.
4. Subject to Article 32 and 41 of this Protocol, the judgment shall be final.

Article 36

**SEPARATE OR DISSENTING OPINION**

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

Article 37

**BINDING FORCE OF JUDGMENTS**

The judgments of the Court shall be binding on the parties and in respect of that particular case.

Article 38

**DECISIONS ON INTERPRETATION AND APPLICATION OF THE ACT**

1. Decisions of the Court on the interpretation and application of the Act shall be binding on Member States and organs of the Union notwithstanding the provisions of Article 37 of this Protocol.
2. Whenever questions of interpretation of the Act arise in a case in which States other than those concerned have expressed an interest, the Registrar shall notify all such States and organs of the Union forthwith.

3. Every Member State and organ of the Union so notified has the right to intervene in the proceedings.
4. Any decision taken in application of Articles 38 and 39 of this Protocol shall be by a qualified majority of at least two (2) votes and in the presence of at least nine (9) Judges.

Article 39

**INTERPRETATION OF OTHER TREATIES**

1. Whenever the question of interpretation of a treaty arises in a case in which States other than those concerned have expressed an interest, the Registrar shall notify all such States and organs of the Union forthwith.
2. Every State Party and organ of the Union so notified has the right to intervene in the proceedings and the interpretation given by the judgment will be equally binding upon it.

Article 40

**INTERPRETATION OF A JUDGEMENT**

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

Article 41

**REVISION**

1. An application for revision of a judgment may be made only when it is based upon discovery of a new fact of such nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, provided that such ignorance was not due to negligence.
2. The proceedings for revision shall be opened by a ruling of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the revision admissible on this ground.
3. The Court may require prior compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision shall be made within six (6) months of the discovery of the new fact.
5. No application may be made after the lapse of ten (10) years from the date of the judgment.

Article 42

**INTERVENTION**

1. Any Member State that has an interest of a legal nature, which may be affected by the decision in the case, may submit a request to the Court to be permitted to intervene.
2. The Court shall decide upon the request.

Article 43

**COSTS**

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

Article 44

**ADVISORY OPINION**

1. The Court may give an advisory opinion on any legal question at the request of the Assembly, the Parliament, the Executive Council, the Peace and Security Council, the ECOSOCC, any of the Financial Institutions, a Regional Economic Community or such other organs of the Union as may be authorized by the Assembly.
2. A request for an advisory opinion under paragraph 1 of this Article shall be in writing and shall contain an exact statement of the question upon which the opinion is required and shall be accompanied by all relevant documents.

**CHAPTER V**

Article 45

**PROCEDURE FOR AMENDMENTS**

1. This Protocol may be amended if a State Party makes a written request to that effect to the Chairperson of the Assembly.

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

3. The Assembly may adopt by a simple majority, the draft amendment after the Court has given its opinion on the amendment.

Article 46

**POWER OF THE COURT TO PROPOSE AMENDMENTS**

The Court shall have the power to propose such amendments to this Protocol as it may deem necessary to the Assembly through written communication to the Chairperson of the Commission for consideration in conformity with Article 45 of this Protocol.

**CHAPTER VI**

Article 47

**SEAT AND SEAL OF THE COURT**

1. The seat of the Court shall be determined by the Assembly from among States Parties. However, the Court may sit in any other Member State if circumstances warrant and with the consent of the Member State concerned. The seat of the Court may be changed by the Assembly after due consultations with the Court.
2. The Court shall have a seal bearing the inscription "The Court of Justice of the African Union".

**CHAPTER VII**

Article 48

**APPOINTMENT OF REGISTRAR**

1. The Court shall appoint the Registrar and Deputy Registrar(s) from amongst candidates proposed by the Judges of the Court, as it considers necessary, in accordance with the Rules of Court.
2. The Registrar and Deputy Registrar(s) shall be elected for a term of four (4) years. They may be re-appointed once. They shall reside at the seat of the Court.



3. The salary and conditions of service of the Registrar and Deputy Registrar(s) shall be determined by the Assembly upon recommendation of the Court through the Executive Council.

Article 49

#### **APPOINTMENT AND TERMS OF SERVICE OF OTHER STAFF**

1. The Court shall employ such staff as may be required to enable the Court to perform its functions and who shall hold office in the service of the Court.
2. The salary and other allowances of the other staff of the Court shall be determined by the Assembly upon the recommendation of the Court through the Executive Council.

Article 50

#### **OFFICIAL LANGUAGES OF THE COURT**

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

### **CHAPTER VIII**

Article 51

#### **EXECUTION OF JUDGMENT**

The State Parties shall comply with the judgment in any dispute to which they are parties within the time stipulated by the Court and shall guarantee its execution.

Article 52

#### **NON-COMPLIANCE WITH JUDGMENT**

1. Where a party has failed to comply with a judgment, the Court may, upon application by either party, refer the matter to the Assembly, which may decide upon measures to be taken to give effect to the judgment.
2. The Assembly may impose sanctions under paragraph 2 of Article 23 of the Act.

Article 53

#### **REPORT TO THE ASSEMBLY**

The Court shall submit to each ordinary 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.

### **CHAPTER IX**

Article 54

#### **BUDGET**

1. The Court shall elaborate its draft annual budget and shall submit it to the Assembly through the Executive Council.
2. The budget of the Court shall be borne by the Member States.

Article 55

#### **SUMMARY PROCEDURE**

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five (5) Judges, which, at the request of the parties, may hear and determine cases by summary procedure in accordance with the Rules of Court. In addition, two (2) Judges shall be selected from among themselves for the purpose of replacing Judges who find it impossible to sit.

Article 56

#### **SPECIAL CHAMBERS**

The Court may from time to time form one or more chambers, composed of three (3) or more Judges as the Court may determine, for dealing with particular categories of cases.

Article 57

#### **JUDGMENT GIVEN BY A CHAMBER**

A judgment given by any of the chambers provided for in Articles 55 and 56 of this Protocol shall be considered as rendered by the Court.

**PROTOCOL OF THE COURT OF JUSTICE  
OF THE AFRICAN UNION**

**CHAPTER X**

**Article 58  
RULES OF COURT**

The Court shall frame rules for carrying out its functions and generally for giving effect to this Protocol. In particular, it shall lay down rules of procedure in conformity with this Protocol.

**1. People’s Democratic Republic of Algeria**

.....

**Article 59**

**SIGNATURE, RATIFICATION AND ACCESSION**

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

**2. Republic of Angola**

.....

**3. Republic of Benin**

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

.....

**4. Republic of Botswana**

**Article 60**

**ENTRY INTO FORCE**

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by fifteen (15) Member States.

.....

**5. Burkina Faso**

.....

**Adopted by the 2<sup>nd</sup> Ordinary Session  
of the Assembly of the Union**

**6. Republic of Burundi**

**Maputo, 11 July 2003**

.....

**7. Republic of Cameroon**

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**8. Republic of Cape Verde**

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**9. Central African Republic**

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**10. Republic of Chad**

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**11. Union of the Comoros**

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**12. Republic of the Congo**

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**13. Republic of Côte d'Ivoire**

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**14. Democratic Republic of Congo**

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**15. Republic of Djibouti**

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**16. Arab Republic of Egypt**

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**17. State of Eritrea**

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**18. Federal Democratic Republic of Ethiopia**

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**19. Republic of Equatorial Guinea**

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**20. Republic of Gabon**

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21. Republic of The Gambia

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22. Republic of Ghana

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23. Republic of Guinea

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24. Republic of Guinea Bissau

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25. Republic of Kenya

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26. Kingdom of Lesotho

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27. Republic of Liberia

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28. Great Socialist People's Libyan Arab Jamahiriya

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29. Republic of Madagascar

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30. Republic of Malawi

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31. Republic of Mali

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32. Islamic Republic of Mauritania

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33. Republic of Mauritius

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34. Republic of Mozambique

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35. Republic of Namibia

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36. Republic of Niger

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37. Federal Republic of Nigeria

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38. Republic of Rwanda

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39. Sahrawi Arab Democratic Republic

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40. Republic of Sao Tome and Principe

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41. Republic of Senegal

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42. Republic of Seychelles

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43. Republic of Sierra Leone

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44. Republic of Somalia

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45. Republic of South Africa

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46. Republic of Sudan

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47. Kingdom of Swaziland

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48. United Republic of Tanzania

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**49. Republic of Togo**

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**50. Republic of Tunisia**

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**51. Republic of Uganda**

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**52. Republic of Zambia**

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**53. Republic of Zimbabwe**

.....

**Protocol on Amendments to the Constitutive Act of the African  
Union, 2003**

**PROTOCOL ON AMENDMENTS TO THE CONSTITUTIVE  
ACT OF THE AFRICAN UNION**

The Member States of the African Union States Parties to the Constitutive Act of the African Union

**HAVE AGREED TO ADOPT AMENDMENTS TO THE CONSTITUTIVE ACT  
AS FOLLOWS:**

**Article 1  
Definitions**

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

"Act" means the Constitutive Act

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

"Chairperson" means chairperson of the Assembly

"Court" means the Court of Justice of the Union and Court of Justice has the same meaning

"Union" means the African Union

**Article 2  
Preamble**

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



**PROTOCOL ON AMENDMENTS TO THE CONSTITUTIVE  
ACT OF THE AFRICAN UNION**





**Article 3  
Objectives**

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

The objectives of the Union shall be to:

.....

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

.....

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

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

**Article 4  
Principles**

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

.....

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

.....



(q) restraint by any Member State from entering into any treaty or alliance that is incompatible with the principles and objectives of the Union;

(r) prohibition of any Member State from allowing the use of its territory as a base for subversion against another Member State.

**Article 5  
Organs of the Union**

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

.....

(f) The Peace and Security Council

.....

**Article 6  
The Assembly**

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

.....

- 3. The Assembly shall meet at least once a year in ordinary session.
- 4. At the initiative of the Chairperson after due consultation with all Member States, or at the request of any Member State and upon approval by two-thirds majority of Member States, the Assembly shall meet in Extraordinary Session.



5. The Assembly shall elect its Chairperson from among the Heads of State or Government at the beginning of each ordinary session and on the basis of rotation for a period of one year renewable.
6. The Chairperson shall be assisted by a Bureau chosen by the Assembly on the basis of equitable geographical representation.
7. Where the Assembly meets at the Headquarters, an election of the Chairperson shall be held taking into account the principle of rotation.

#### **Article 7**

##### **Functions of the Chairperson of the Assembly**

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

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

#### **Article 8**

##### **The Executive Council**

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

.....

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



#### **Article 9** **Peace and Security Council**

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

1. There is hereby established, a Peace and Security Council (PSC) of the Union, which shall be the standing decision-making organ for the prevention, management and resolution of conflicts.
2. The functions, powers, composition and organization of the PSC shall be determined by the Assembly and set out in a protocol relating thereto.

#### **Article 10**

##### **The Permanent Representatives Committee**

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

.....

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

#### **Article 11**

##### **Official Languages**

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

1. The official languages of the Union and all its institutions shall be Arabic, English, French, Portuguese, Spanish, Kiswahili and any other African language.
2. The Executive Council shall determine the process and practical modalities for the use of official languages as working languages.



**Article 12**  
**Cessation of Membership**

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

**Article 13**  
**Entry into Force**

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

**Adopted by the 1<sup>st</sup> Extraordinary Session  
of the Assembly of the Union in Addis  
Ababa, Ethiopia on 3 February 2003**

**and**

**by the 2<sup>nd</sup> Ordinary Session of the  
Assembly of the Union in Maputo,  
Mozambique on 11 July 2003**





**Statute of the African Union Commission on International  
Law, 2009**



**EXECUTIVE COUNCIL**  
**Fourteenth Ordinary Session**  
**26 - 30 January 2009**  
**Addis Ababa, ETHIOPIA**

**EX.CL/478 (XIV) a**

**EX.CL/478 (XIV) a**

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**STATUTE OF THE AFRICAN UNION**  
**COMMISSION ON INTERNATIONAL LAW**

## PREAMBLE

**The Member States of the African Union,**

**BEARING IN MIND** the importance of treaties in international relations, notably in the area of maintenance of peace, consolidation and promotion of international law;

**RECALLING** Decision Assembly/AU/Dec. 66(IV) adopted by the Assembly of the Union in Abuja, Nigeria, in January 2005 reaffirming *inter alia* the need for the establishment of the African Union Commission on International Law;

**FURTHER RECALLING** Decision EX.CL/Dec.129 (V) on the establishment of the African Union Commission on International Law adopted by the Fifth Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia in July 2004;

**INSPIRED** by the common objectives and principles enshrined in the Constitutive Act of the African Union, notably Articles 3 and 4 which underscore the importance of accelerating the socio-economic development of the Continent through the promotion of research in all fields;

**ALSO INSPIRED** by our common goal to strengthen and consolidate the principles of international law and to remain at the forefront of international legal development, and to continue to work towards maintaining standards in important areas of international law;

**ACKNOWLEDGING** the contributions of the African Union including the Regional Economic Communities in the promotion of all fields of research with a view to advancing the codification of international law;

**DETERMINED** to promote the universal values and progressive principles of international law at continental level in the light of the historical and cultural conditions in Africa;

**FURTHER DETERMINED** to promote in the African continent a culture of respect for emerging international norms and rules which have a potential for eventual crystallization into firm rules of international law;

**CONVINCED** of the value of the dissemination of, and research in international law, which lies in the ability to foster the creation of an environment that is conducive to the respect for and acceptance of the principles of international law, and the peaceful settlement of conflicts;

**REAFFIRMING** the collective will to work relentlessly for the development and codification of international law in the African continent;

**HAVE AGREED AS FOLLOWS:**

## Article 1 Definitions

In this Statute, unless otherwise indicated:

«**Assembly**» means the Assembly of Heads of State and Government of the African Union;

«**AUCIL**» means the African Union Commission on International Law;

«**Chairperson**» means the Chairperson of the AUCIL;

«**Chairperson of the Commission**» means the Chairperson of the Commission of the African Union;

«**Commission**» means the Commission of the African Union;

«**Constitutive Act**» means the Constitutive Act of the African Union;

«**Executive Council**» means the Executive Council of Ministers of the African Union;

«**Member**» means a Member of the AUCIL;

«**Member States**» means Member States of the African Union;

«**Peace and Security Council**» means the Peace and Security Council of the African Union;

«**Statute**» means the present Statute of the African Union Commission on International Law;

«**Union**» means the African Union.

## Article 2 Establishment of the African Union Commission on International Law (AUCIL)

1. The AUCIL is hereby established as an independent advisory organ of the Union in accordance with Article 5(2) of the Constitutive Act.
  2. The structure, objectives and functions of the AUCIL shall be defined in this Statute.
- 
1. The AUCIL shall consist of eleven (11) members of recognised competence in international law, who are nationals of Member States and who shall serve in their personal capacities.

## Article 3 Composition

2. No two (2) members shall be nationals of the same State.
  3. The composition of the AUCIL shall reflect and respect the principles of equitable geographical representation, the principal legal systems of the Continent and equitable gender representation.
- Article 4  
Objectives**
- The AUCIL shall act at the instance of the Policy and other Organs of the Union. It shall have the following specific objectives:
- a) to undertake activities relating to codification and progressive development of international law in the African continent with particular attention to the laws of the Union as embodied in the treaties of the Union, in the decisions of the policy organs of the Union and in African customary international law arising from the practice of Member States;
  - b) to propose draft framework agreements, model regulations, formulations and analyses of emerging trends in States' practice to facilitate the codification and progressive development of international law;
  - c) to assist in the revision of existing treaties, assist in the identification of areas in which new treaties are required and prepare drafts thereof;
  - d) to conduct studies on legal matters of interest to the Union and its Member States;
  - e) to encourage the teaching, study, publication and dissemination of literature on international law in particular the laws of the Union with a view to promoting acceptance of and respect for the principles of international law, the peaceful resolution of conflicts, respect for the Union and recourse to its Organs, when necessary.

**Article 5**

**Progressive Development of International Law**

1. The AUCIL shall identify and prepare draft instruments and studies in areas which have not yet been regulated by international law in the African continent or been sufficiently developed in the practice of African States.
2. Where the Assembly or the Executive Council or any other organ refers to the AUCIL a specific proposal for study with a view to advancing the progressive development of international law, the AUCIL shall, in general, adopt the following procedure in carrying out its work:
  - a) appoint one of its Members to be Rapporteur;
  - b) circulate a questionnaire to Member States and invite them to supply, within a specified time information relevant to its work;

- c) consult with relevant institutions and experts;
  - d) request where it considers a draft to be satisfactory, the Chairperson of the Commission to issue the draft as an AUCIL document. The Commission shall publicise this document, together with such explanatory and supporting material as the AUCIL considers appropriate. The document shall include any information supplied to the AUCIL in reply to the questionnaire referred to in sub-paragraph c) of this paragraph;
  - e) invite Member States, organs or institutions of the Union to submit their comments on this document within a specified time frame.
3. The Rapporteur and the Members appointed under this Article shall review the draft, taking into consideration the comments by Member States, Organs or Institutions of the Union and shall prepare the final draft with an explanatory report which they shall submit to the AUCIL for finalization.
  4. The AUCIL shall submit the final draft with its recommendations to the Assembly, through the Executive Council, and may on its own motion or at the request of the Organ or Institution of the Union make an interim report to the Organ or Institution that submitted the proposal or draft.
  5. The AUCIL shall also consider proposals and draft multilateral conventions submitted by Member States and Organs of the Union to encourage and facilitate the progressive development of international law and its codification.

**Article 6**

**Codification of International Law**

1. The AUCIL shall, with a view to establishing an authoritative statement of international law, be responsible for the codification of international law by way of a systematic and precise formulation of rules of international law in fields where there has already been extensive State practice, precedent and doctrine in the African continent.
2. When the AUCIL considers that codification of a particular area of international law is necessary, it shall study the area and shall submit its recommendations to the Assembly, through the Executive Council.
3. The AUCIL may on its own initiative survey the whole field of international law in the African continent with a view to selecting areas for codification, bearing in mind existing draft codes.
4. The AUCIL shall give priority to requests for codification submitted to it by the Assembly or other Organs of the Union.
5. The AUCIL shall adopt the plan of work it considers appropriate in each case.



6. The AUCIL shall, through the Chairperson of the Commission, address to Member States a detailed request to furnish to it the texts of law, regulations, decrees, judicial decisions, treaties, diplomatic correspondence and any other document relevant to the topic being studied and which it considers necessary.

7. The AUCIL shall prepare its drafts in the form of Articles and shall submit them to the Assembly, through the Executive Council, together with a commentary containing:

- (a) Adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine;
- (b) Conclusions defining:
  - i) the extent of agreement on each point in the practice of States and in doctrine;
  - ii) divergencies and disagreements which exist, as well as arguments invoked in favour of each solution.

8. When the AUCIL considers a draft to be satisfactory, it shall request the Chairperson of the Commission to issue it as an AUCIL document. The Commission shall publicize the document with such explanatory material, as it may consider appropriate. The publication shall include any information supplied by AU Member States. The AUCIL shall decide whether the opinions of any relevant institution or individual expert consulted shall be included in the publication.

9. The AUCIL shall request Member States to submit their comments on the AUCIL document for consideration within ninety (90) days.

10. Taking into consideration the comments and observations of Member States, the AUCIL shall prepare a final draft document together with its recommendations and an explanatory report, which it shall submit to the Assembly through the Executive Council.

11. The AUCIL may recommend that the Assembly, through the Executive Council:

- a) take no action;
- b) take note of the report;
- c) adopt the report;
- d) recommend the draft to Member States with a view to the conclusion of a convention.

12. The Assembly shall, where it considers it appropriate, refer drafts back to the AUCIL for reconsideration or redrafting.

13. The AUCIL shall consider mechanisms for making evidence of customary international law more readily available, through the collection and publication of documents concerning State practice and the decisions of national and

international courts on questions of international law, and shall submit a report of its work in this regard to the Assembly through the Executive Council.

### Article 7 Contribution to objectives and principles of the Union

In carrying out its functions on the progressive development of international law and codification of international law, the AUCIL shall contribute to the objectives and principles of the Union as enshrined in Articles 3 and 4 of the Constitutive Act, and in particular to study all legal matters related to the promotion of peace and security in the African continent, the demarcation and delineation of African borders as well as legal matters relating to the political and socio-economic integration of the Continent.

### Article 8 Revision of Treaties

1. The AUCIL shall be entitled to propose, if necessary, the revision of OAU/AU Treaties with a view to:

- a) ensuring harmony between AU treaties and current legal developments;
- b) ensuring that the process of contributing to the development of international law through encouraging standard-setting by member states continues;
- c) ensuring that standard-setting within the Union is and remains both relevant and appropriate;
- d) promoting the harmonization of international obligations.

### Article 9 The Teaching, Study and Dissemination of International Law

With a view to encouraging the teaching, study and dissemination of international law and African Union law, in particular, the AUCIL shall co-operate with universities, institutions and other educational and research centres as well as with bar associations and other associations of lawyers.

### Article 10 Candidatures

- 1. Upon coming into effect of this Statute, the Chairperson of the Commission shall invite each Member State to submit, in writing, within ninety (90) days, the names of its candidates, together with their curricula vitae, for election to the AUCIL.
- 2. Each Member State may nominate a maximum of two (2) candidates taking into account equitable gender representation.
- 3. The Chairperson of the Commission shall prepare a list in alphabetical order of the names of candidates submitted and shall communicate the list with the

curriculum vitae of each candidate to Member States, at least thirty (30) days before the holding of the session of the Executive Council at which the members are to be elected.

**Article 11**  
**Election of Members**

The Executive Council shall elect the Members by secret ballot. The election of the Members shall be governed by this Statute and the Rules of Procedure of the Executive Council.

**Article 12**  
**Term of Office of Members**

1. Members shall be elected for a period of five (5) years and shall be eligible for re-election only once. However, the term of office of five (5) of the members elected at the first election shall expire at the end of three (3) years and they shall be eligible for re-election only once.
2. Members whose terms are to expire at the end of the initial period of three (3) years shall be chosen by a lot drawn by the Chairperson of the Executive Council, immediately after the first elections.
3. A Member to be elected to replace a member whose term of office has not yet expired shall be from the same region.
4. He/she shall hold office for the remainder of the predecessor's term.

**Article 13**  
**Resignation, Suspension and Removal from Office**

1. A Member may resign by addressing a letter of resignation to the Chairperson who shall transmit the letter to the Chairperson of the Commission.
2. A Member may only be suspended or removed from office on the recommendation of two-thirds of the other Members that the member no longer meets the requisite conditions specified in this Statute and the Rules of Procedure of the AUCIL to continue being a Member.
3. The Chairperson shall bring the recommendation for suspension or removal of a Member from office to the attention of the Executive Council through the Chairperson of the Commission. Suspension or removal from office shall be carried out in conformity with the AUCIL Rules of Procedure.
4. The recommendation shall become final upon its adoption by the Executive Council.

**Article 14**  
**Vacancies**

1. A seat on the AUCIL shall be vacant under the following circumstances:

- (a) Death;
- (b) Resignation;
- (c) Removal from office in accordance with Article 13 above.

2. In the event of death, resignation or removal from office of a Member, the Chairperson, through the Chairperson of the Commission, shall immediately inform the Member States in writing. Thereafter, the Chairperson of the Commission shall declare the seat vacant.
3. The same procedure for the election of Members shall be followed in filling vacancies.

**Article 15**  
**Sessions**

1. The Members of the AUCIL shall perform their functions on a part-time basis.
2. The AUCIL shall meet twice (2) a year in ordinary sessions. It may meet in extraordinary sessions at the request of the Chairperson or two thirds of the membership.
3. The duration of the sessions shall be determined by the Rules of Procedure of the AUCIL.
4. Sessions of the AUCIL shall be held at the Headquarters of the Union. However, where the AUCIL is invited to meet elsewhere other than at the Headquarters, that Member State shall be responsible for the expenses over and above what would have been incurred had the meeting been held at the Headquarters.

**Article 16**  
**Quorum**

The quorum for a meeting of the AUCIL shall be six (6) Members.

**Article 17**  
**Election of the Chairperson and Vice-Chairperson of the AUCIL**

1. The Members of the AUCIL shall elect from among themselves the Chairperson and the Vice Chairperson, who shall serve for a period of two (2) years. The elected Chairperson and the Vice Chairperson shall be eligible for re-election only once.
2. The modalities for the election of the Chairperson and the Vice Chairperson as well as their duties shall be defined in the AUCIL Rules of Procedure which shall be approved.

**Article 18  
Remuneration**

1. The Members shall be paid emoluments and allowances, which shall be determined by the Assembly.
2. Save for consultants or experts whose conditions of service shall be governed entirely by the terms of their contract, the terms and conditions of service of staff members of the AUCIL shall be in accordance with the African Union Staff Regulations and Rules.

**Article 19  
Rules of Procedure**

The AUCIL shall determine its own rules of procedure for carrying out its functions and submit them to the Executive Council for approval.

**Article 20  
Languages**

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

**Article 21  
Human and Material Resources**

The Commission shall provide the necessary means, staff and infrastructure to the AUCIL Secretariat to enable it carry out its duties effectively.

**Article 22  
Privileges and Immunities**

Members will enjoy, from the date of their election and throughout their term of office, the privileges and immunities applicable to other senior Officials of the Union.

**Article 23  
Budget**

1. The budget of the AUCIL shall form part of the budget of the Union.
2. The AUCIL shall prepare and submit its draft budget to the Union for approval and inclusion in the Union's budget.
3. The Initial Budget of the AUCIL shall be prepared by the Commission.

**Article 24  
Cooperation with other Organs of the African Union**

The AUCIL may if it considers it necessary consult, with any organ of the Union on any subject which is within the competence of that organ. All documents circulated to

Member States by the AUCIL shall also be circulated to relevant organs of the Union for their information, comments and proposals or necessary action.

**Article 25  
Cooperation with Other Organizations**

1. In order to broaden its consultation base, the AUCIL may consult with any inter-governmental, international or national organization that it may consider relevant, on any subject entrusted to it, if it believes that such a procedure might aid it in the performance of its functions.
2. For the purpose of distribution of AUCIL documents, the Chairperson of the Commission, after consultation with the AUCIL, shall draw up a list of national and international organizations concerned with questions of international law such as the National Law Reform Commissions. The Chairperson of the Commission shall endeavour to include on this list at least one (1) national organization of each Member State.
3. In order to promote international law on the African continent, the AUCIL shall establish close collaboration with the United Nations International Law Commission.

**Article 26  
Amendments**

1. The present Statute may be amended by the Assembly:
  - i) upon recommendation of the Executive Council after it has obtained the opinion of the AUCIL; or
  - ii) upon the recommendation of the AUCIL.
2. The amendments shall come into effect upon their adoption by the Assembly.

**Article 27  
Entry into Effect**

The present Statute shall come into effect upon its adoption by the Assembly.



**Convention Governing the Specific Aspects of Refugee  
Problems in Africa, 1969**



## CONVENTION GOVERNING THE SPECIFIC ASPECTS OF

### REFUGEE PROBLEMS IN AFRICA

#### *PREAMBLE*

We, the Heads of State and Government assembled in the city of Addis Ababa, from 6-10 September 1969,

1. Noting with concern the constantly increasing numbers of refugees in Africa and desirous of finding ways and means of alleviating their misery and suffering as well as providing them with a better life and future,
2. Recognizing the need for and essentially humanitarian approach towards solving the problems of refugees,
3. Aware, however, that refugee problems are a source of friction among many Member States, and desirous of eliminating the source of such discord,
4. Anxious to make a distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside,
5. Determined that the activities of such subversive elements should be discouraged, in accordance with the Declaration on the Problem of Subversion and Resolution on the Problem of Refugees adopted at Accra in 1965,
6. Bearing in mind that the Charter of the United Nations and the Universal Declaration of Human Rights have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,
7. Recalling Resolution 2312 (XXII) of 14 December 1967 of the United Nations General Assembly, relating to the Declaration on Territorial Asylum,

8. Convinced that all the problems of our continent must be solved in the spirit of the Charter of the Organization of African Unity and in the African context,
9. Recognizing that the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment,
10. Recalling Resolutions 26 and 104 of the OAU Assemblies of Heads of State and Government, calling upon Member States of the Organization who had not already done so to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa,
11. Convinced that the efficiency of the measures recommended by the present Convention to solve the problem of refugees in Africa necessitates close and continuous collaboration between the Organization of African Unity and the Office of the United Nations High Commissioner for Refugees,

Have agreed as follows:

#### *Article I*

##### *Definition of the term "Refugee"*

1. For the purposes of this Convention, the term "refugee" shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.
2. The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.
3. In the case of a person who has several nationalities, the term "a country of which he is a national" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of which he is a national if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.



4. This Convention shall cease to apply to any refugee if: (a) he has voluntarily re-availed himself of the protection of the country of his nationality, or, (b) having lost his nationality, he has voluntarily reacquired it, or, (c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or, (d) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or, (e) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or, (f) he has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee, or, (g) he has seriously infringed the purposes and objectives of this Convention.

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

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

6. For the purposes of this Convention, the Contracting State of Asylum shall determine whether an applicant is a refugee.

#### *Article 2*

#### *Asylum*

1. Member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

2. The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.

3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory

where his life, physical integrity or liberty would be threatened for the reasons set out in Article 1, paragraphs 1 and 2.

4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.

5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with the preceding paragraph.

6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

#### *Article 3*

#### *Prohibition of Subversive Activities*

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.

2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

#### *Article 4*

#### *Non-Discrimination*

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

*Article 5*

*Voluntary Repatriation*

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

*Article 6*

*Travel Documents*

1. Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.

2. Where an African country of second asylum accepts a refugee from a country of first asylum, the country of first asylum may be dispensed from issuing a document with a return clause.

3. Travel documents issued to refugees under previous international agreements by States Parties thereto shall be recognized and treated by Member States in the same way as if they had been issued to refugees pursuant to this Article.

*Article 7*

*Co-operation of the National Authorities with the Organization of African Unity*

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

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

*Article 8*

*Cooperation with the Office of the United Nations High Commissioner for Refugees*

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

*Article 9*

*Settlement of Disputes*

Any dispute between States signatories to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the Commission for Mediation, Conciliation and Arbitration of the Organization of African Unity, at the request of any one of the Parties to the dispute.



*Article 10**Signature and Ratification*

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

*Article 11**Entry into force*

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

*Article 12**Amendment*

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

*Article 13**Denunciation*

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

*Article 14*

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

*Article 15**Notifications by the Administrative Secretary-General of the Organization of African Unity*

The Administrative Secretary-General of the Organization of African Unity shall inform all Members of the Organization: (a) of signatures, ratifications and accessions in accordance with Article X; (b) of entry into force, in accordance with Article XI; (c) of requests for amendments submitted under the terms of Article XII; (d) of denunciations, in accordance with Article XIII.

IN WITNESS WHEREOF WE, the Heads of African State and Government, have signed this Convention.

DONE in the City of Addis Ababa this 10th day of September 1969.



**African Charter on Human and Peoples' Rights, 1981**



## **AFRICAN (BANJUL) CHARTER ON HUMAN AND PEOPLES' RIGHTS**

*(Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986)*

### *Preamble*

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

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

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

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations, and the Universal Declaration of Human Rights;

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

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings which justifies their national and 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 a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex, 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 instrument adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;

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

Have agreed as follows:

### *Part I: Rights and Duties*

#### **Chapter I: Human and Peoples' Rights**

##### **Article 1**

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

##### **Article 2**

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

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 3

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

#### Article 4

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

#### Article 5

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

#### Article 6

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

#### Article 7

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

#### Article 8

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

#### Article 9

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

#### Article 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in 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 laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.

5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

#### Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

#### Article 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

#### Article 15

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

#### Article 16

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

#### Article 17

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

community shall be the duty of the State.

#### Article 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian or morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

#### Article 19

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

#### Article 20

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

#### Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

#### Article 25

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

#### Article 26

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

### Chapter II: Duties

#### Article 27

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

#### Article 28

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

#### Article 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;

2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

#### Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

#### Article 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that: (a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter; (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

#### Article 24

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



3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defense in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

*Part II: Measures of Safeguard*

Chapter I: Establishment and Organization of the African  
Commission on Human and Peoples' Rights

Article 30

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

Article 31

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

Article 32

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

Article 33

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the States parties to the present Charter.

Article 34

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

Article 35

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

Article 36

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

Article 37

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

Article 38

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



#### Article 39

1. In case of death or resignation of a member of the Commission the Chairman of the Commission shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.

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

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

#### Article 40

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

#### Article 41

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

#### Article 42

1. The Commission shall elect its Chairman and Vice Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form 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 not participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

#### Article 43

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

#### Article 44

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

### Chapter II -- Mandate of the Commission

#### Article 45

The functions of the Commission shall be:

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

### Chapter III -- Procedure of the Commission

#### Article 46

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

#### Communication from States

#### Article 47

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

#### Article 48

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

#### Article 49

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

#### Article 50

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

#### Article 51

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

#### Article 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in 48, a report stating the facts and its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government.

#### Article 53

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

#### Article 54

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

#### Other Communications

#### Article 55

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

#### Article 56

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

1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news discriminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and
7. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

#### Article 57

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

#### Article 58

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

request an in-depth study.

#### Article 59

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

#### Chapter IV -- Applicable Principles

#### Article 60

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

#### Article 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and people's rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

#### Article 62

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

Article 63

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

*Part III: General Provisions*

Article 64

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

Article 65

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

Article 66

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

Article 67

The Secretary General of the Organization of African Unity shall inform member states of the Organization of the deposit of each instrument of ratification or adherence.

Article 68

The present Charter may be amended if a State party makes a written request to that effect to the Secretary General of the Organization of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the States parties

have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the States parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

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

**African Charter on the Rights and Welfare of the Child, 1990**



**AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD**

OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 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 to the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child.

HAVE AGREED AS FOLLOWS:

**PART 1: RIGHTS AND DUTIES**

**CHAPTER ONE: RIGHTS AND WELFARE OF THE CHILD**

**Article 1: Obligation of States Parties**

1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.

2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.

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

**Article 2: Definition of a Child**



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

#### Article 3: Non-Discrimination

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

#### Article 4: Best Interests of the Child

1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.
2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

#### Article 5: Survival and Development

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

#### Article 6: Name and Nationality

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

#### Article 7: Freedom of Expression

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

#### Article 8: Freedom of Association

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

#### Article 9: Freedom of Thought, Conscience and Religion

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

#### Article 10: Protection of Privacy

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

#### Article 11: Education

1. Every child shall have the right to an education.
2. The education of the child shall be directed to:
  - (a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - (b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on

- human and peoples' rights and international human rights declarations and conventions;
- (c) the preservation and strengthening of positive African morals, traditional values and cultures;
  - (d) the preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;
  - (e) the preservation of national independence and territorial integrity;
  - (f) the promotion and achievements of African Unity and Solidarity;
  - (g) the development of respect for the environment and natural resources;
  - (h) the promotion of the child's understanding of primary health care.
3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:
- (a) provide free and compulsory basic education;
  - (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
  - (c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
  - (d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;
  - (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.
4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.
5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.
6. States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education

shall have an opportunity to continue with their education on the basis of their individual ability.

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

#### Article 12: Leisure, Recreation and Cultural Activities

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

#### Article 13: Handicapped Children

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.
2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.

3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

#### Article 14: Health and Health Services

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:



- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
- (d) promote the dissemination of information on the hazards of child labour to all sectors of the community.

#### Article 16: Protection Against Child Abuse and Torture

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

#### Article 17: Administration of Juvenile Justice

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.
2. States Parties to the present Charter shall in particular:
  - (a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;
  - (b) ensure that children are separated from adults in their place of detention or imprisonment;
  - (c) ensure that every child accused in infringing the penal law:
    - (i) shall be presumed innocent until duly recognized guilty;
    - (ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
    - (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;

- (a) to reduce infant and child mortality rate;
- (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) to ensure the provision of adequate nutrition and safe drinking water;
- (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
- (e) to ensure appropriate health care for expectant and nursing mothers;
- (f) to develop preventive health care and family life education and provision of service;
- (g) to integrate basic health service programmes in national development plans;
- (h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
- (i) to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children;
- (j) to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

#### Article 15: Child Labour

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:
  - (a) provide through legislation, minimum wages for admission to every employment;
  - (b) provide for appropriate regulation of hours and conditions of employment;

- (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;
- (d) prohibit the press and the public from trial.
3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.
4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

#### Article 18: Protection of the Family

1. The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the State for its establishment and development.
2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.
3. No child shall be deprived of maintenance by reference to the parents' marital status.

#### Article 19: Parent Care and Protection

1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.
2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.
3. Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.
4. Where a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.

#### Article 20: Parental Responsibilities

1. Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development of the child and shall have the duty:
- (a) to ensure that the best interests of the child are their basic concern at all times-
  - (b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and
  - (c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.
2. States Parties to the present Charter shall in accordance with their means and national conditions take all appropriate measures;
- (a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;
  - (b) to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and
  - (c) to ensure that the children of working parents are provided with care services and facilities.

#### Article 21: Protection against Harmful Social and Cultural Practices

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
- (a) those customs and practices prejudicial to the health or life of the child; and
  - (b) those customs and practices discriminatory to the child on the grounds of sex or other status.
2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

#### Article 22: Armed Conflicts

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.

2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

#### Article 23: Refugee Children

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.

2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.

3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

4. The provisions of this Article apply *mutatis mutandis* to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

#### Article 24: Adoption

States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

(a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives

and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counselling;

(b) recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

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

(d) take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;

(e) promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;

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

#### Article 25: Separation from Parents

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

2. States Parties to the present Charter:

(a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;

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

3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background.

#### Article 26: Protection Against Apartheid and Discrimination

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

**Article 27: Sexual Exploitation**

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

- (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
- (b) the use of children in prostitution or other sexual practices;
- (c) the use of children in pornographic activities, performances and materials.

**Article 28: Drug Abuse**

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

**Article 29: Sale, Trafficking and Abduction**

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

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

**Article 30: Children of Imprisoned Mothers**

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

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

**Article 31: Responsibility of the Child**

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

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

**PART 11**

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**CHAPTER TWO: ESTABLISHMENT AND ORGANIZATION OF THE COMMITTEE ON THE RIGHTS AND WELFARE OF THE CHILD**

**Article 32: The Committee**

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

**Article 33: Composition**

1. The Committee shall consist of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.
2. The members of the Committee shall serve in their personal capacity.
3. The Committee shall not include more than one national of the same State.

**Article 34: Election**

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

**Article 35: Candidates**

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

**Article 36**

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

**Article 37: Term of Office**

1. The members of the Committee shall be elected for a term of five years and may not be re-elected, however, the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years.
2. Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to determine the names of those members referred to in sub-paragraph 1 of this Article.
3. The Secretary-General of the Organization of African Unity shall convene the first meeting of Committee at the Headquarters of the Organization within six months of the election of the members of the Committee, and thereafter the Committee shall be convened by its Chairman whenever necessary, at least once a year.

**Article 38: Bureau**

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

**Article 39: Vacancy**

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

**Article 40: Secretariat**

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

**Article 41: Privileges and Immunities**

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



### CHAPTER THREE: MANDATE AND PROCEDURE OF THE COMMITTEE

#### Article 42: Mandate

The functions of the Committee shall be:

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

#### Article 43: Reporting Procedure

1. Every State Party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:
  - (a) within two years of the entry into force of the Charter for the State Party concerned; and
  - (b) and thereafter, every *three* years.
2. Every report made under this Article shall:

(a) contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and

(b) shall indicate factors and difficulties, if any, affecting the fulfillment of the obligations contained in the Charter.

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

#### Article 44: Communications

1. The Committee may receive communication, from any person, group or 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.
2. Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.

#### Article 45: Investigations by the Committee

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

### CHAPTER FOUR: MISCELLANEOUS PROVISIONS

#### Article 46: Sources of Inspiration

The Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal

Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

**Article 47: Signature, Ratification or Adherence**

1. The present Charter shall be open to signature by all the Member States of the Organization of African Unity.
2. The present Charter shall be subject to ratification or adherence by Member States of the Organization of African Unity. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary-General of the Organization of African Unity.
3. The present Charter shall come into force 30 days after the reception by the Secretary-General of the Organization of African Unity of the instruments of ratification or adherence of 15 Member States of the Organization of African Unity.

**Article 48: Amendment and Revision of the Charter**

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





**Protocol to the African Charter on Human And Peoples'  
Rights on the Establishment of an African Court on Human  
and Peoples' Rights, 1998**

There shall be established within the Organization of African Unity an African Court on Human and Peoples' Rights (hereinafter referred to as "the Court"), the organization, jurisdiction and functioning of which shall be governed by the present Protocol.

#### Article 2 RELATIONSHIP BETWEEN THE COURT AND THE COMMISSION

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

#### Article 3 JURISDICTION

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.

2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

#### Article 4 ADVISORY OPINIONS

1. At the request of a Member State of the OAU, the OAU, any of its organs, or any African organization recognized by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.

2. The Court shall give reasons for its advisory opinions provided that every judge shall be entitled to deliver a separate or dissenting decision.

#### Article 5 ACCESS TO THE COURT

1. The following are entitled to submit cases to the Court

- a. The Commission;
- b. The State Party which has lodged a complaint to the Commission;
- c. The State Party against which the complaint has been lodged at the Commission;
- d. The State Party whose citizen is a victim of human rights violation;
- e. African Intergovernmental Organizations.

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

#### PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE ESTABLISHMENT OF AN AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

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

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

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

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

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

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

Noting the first and second Government legal experts' meetings held respectively in Cape Town, South Africa (September, 1995) and Nouakchott, Mauritania (April, 1997), and the third Government Legal Experts meeting held in Addis Ababa, Ethiopia (December, 1997), which was enlarged to include Diplomats;

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

HAVE AGREED AS FOLLOWS:

#### Article 1 ESTABLISHMENT OF THE COURT

permitted to join.

3. The Court may entitle relevant Non Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.

#### Article 6 ADMISSIBILITY OF CASES

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

#### Article 7 SOURCES OF LAW

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

#### Article 8 CONSIDERATION OF CASES

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

#### Article 9 AMICABLE SETTLEMENT

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

#### Article 10 HEARINGS AND REPRESENTATION

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

#### Article 11 COMPOSITION

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

#### Article 12 NOMINATIONS

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

#### Article 13 LIST OF CANDIDATES

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

#### Article 14 ELECTIONS

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

#### Article 15 TERM OF OFFICE

1. The judges of the Court shall be elected for a period of six years and may be re-elected only once. The terms of four judges elected at the first election shall expire at the end of two years, and the terms of four more judges shall expire at the end of four years.

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

#### Article 20 VACANCIES

1. In case of death or resignation of a judge of the Court, the President of the Court shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.

2. The Assembly shall replace the judge whose office became vacant unless the remaining period of the term is less than one hundred and eighty (180) days.

3. The same procedure and considerations as set out in Articles 12, 13 and 14 shall be followed for the filling of vacancies.

#### Article 21 PRESIDENCY OF THE COURT

1. The Court shall elect its President and one Vice-President for a period of two years. They may be re-elected only once.

2. The President shall perform judicial functions on a full-time basis and shall reside at the seat of the Court.

3. The functions of the President and the Vice-President shall be set out in the Rules of Procedure of the Court.

#### Article 22 EXCLUSION

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

#### Article 23 QUORUM

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

#### Article 24 REGISTRY OF THE COURT

1. The Court shall appoint its own Registrar and other staff of the registry from among nationals of Member States of the OAU according to the Rules of Procedure.

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

#### Article 25 SEAT OF THE COURT

2. The judges whose terms are to expire at the end of the initial periods of two and four years shall be chosen by lot to be drawn by the Secretary-General of the OAU immediately after the first election has been completed.

3. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of the predecessor's term.

4. All judges except the President shall perform their functions on a part-time basis. However, the Assembly may change this arrangement as it deems appropriate.

#### Article 16 OATH OF OFFICE

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

#### Article 17 INDEPENDENCE

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

2. No judge may hear any case in which the same judge has previously taken part as agent, counsel or advocate for one of the parties or as a member of a national or international court or a commission of enquiry or in any other capacity. Any doubt on this point shall be settled by decision of the Court.

3. The judges of the Court shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law.

4. At no time shall the judges of the Court be held liable for any decision or opinion issued in the exercise of their functions.

#### Article 18 INCOMPATIBILITY

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

#### Article 19 CESSATION OF OFFICE

1. A judge shall not be suspended or removed from office unless, by the unanimous decision of the other judges of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court.

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

#### Article 26 EVIDENCE

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

#### Article 27 FINDINGS

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

#### Article 28 JUDGMENT

1. The Court shall render its judgment within ninety (90) days of having completed its deliberations.
2. The judgment of the Court decided by majority shall be final and not subject to appeal.
3. Without prejudice to sub-article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure.
4. The Court may interpret its own decision.
5. The judgment of the Court shall be read in open court, due notice having been given to the parties.
6. Reasons shall be given for the judgment of the Court.
7. If the judgment of the Court does not represent, in whole or in part, the unanimous decision of the judges, any judge shall be entitled to deliver a separate or dissenting opinion.

#### Article 29 NOTIFICATION OF JUDGMENT

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

#### Article 30 EXECUTION OF JUDGMENT

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

#### Article 31 REPORT

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

#### Article 32 BUDGET

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

#### Article 33 RULES OF PROCEDURE

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

#### Article 34 RATIFICATION

1. This Protocol shall be open for signature and ratification or accession by any State Party to the Charter.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Secretary-General of the OAU.
3. The Protocol shall come into force thirty days after fifteen instruments of ratification or accession have been deposited.
4. For any State Party ratifying or acceding subsequently, the present Protocol shall come into force in respect of that State on the date of the deposit of its instrument of ratification or accession.

5. The Secretary-General of the OAU shall inform all Member States of the entry into force of the present Protocol.
6. At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a declaration.
7. Declarations made under sub-article (6) above shall be deposited with the Secretary General, who shall transmit copies thereof to the State parties.

#### Article 35 AMENDMENTS

1. The present Protocol may be amended if a State Party to the Protocol makes a written request to that effect to the Secretary-General of the OAU. The Assembly may adopt, by simple majority, the draft amendment after all the States Parties to the present Protocol have been duly informed of it and the Court has given its opinion on the amendment.
2. The Court shall also be entitled to propose such amendments to the present Protocol as it may deem necessary, through the Secretary-General of the OAU.
3. The amendment shall come into force for each State Party which has accepted it thirty days after the Secretary-General of the OAU has received notice of the acceptance.

**Grand Bay (Mauritius) Declaration and Plan of Action  
(Organization of African Unity, First Ministerial Conference  
on Human Rights in Africa, Declaration I, 16 April 1999)**





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

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

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

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

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

Recognizing the progress achieved by African States in the domain of human rights and the significant contribution of the African continent to the universalization of these rights;

Further Recognizing the contribution made by African non-governmental organizations (NGOs) to the promotion and protection of human rights in Africa;

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

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

1. The Ministerial Conference affirms the principle that human rights are universal, indivisible, interdependent and inter-related and urges governments, in their policies, to give parity to economic, social and cultural rights as well as civil and political rights;
2. The Conference also affirms that the right to development, the right to a generally satisfactory healthy environment and the right to national and international peace and security are universal and inalienable rights which form an integral part of fundamental human rights;

## GRAND BAY (MAURITIUS) DECLARATION AND PLAN OF ACTION

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

### **SOLEMNLY ADOPTS THIS GRAND BAY (MAURITIUS) DECLARATION AND PLAN OF ACTION.**

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

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

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

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

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

Deeply Concerned about acts of genocide and other crimes against humanity perpetrated in certain parts of Africa;



3. The Conference further affirms the interdependence of the principles of good governance, the rule of law, democracy and development.
4. The Conference recognizes that the development of the rule of law, democracy and human rights calls for an independent, open, accessible and impartial judiciary, which can deliver justice promptly and at an affordable cost. To this end, such a system requires a body of professional and competent judges enjoying conducive conditions.
5. The Conference recognizes that the core values on which human rights are founded, particularly (a) respect for the sanctity of life and human dignity (b) tolerance of differences, and (c) desire for liberty, order, fairness, prosperity and stability, are shared across all cultures. In this connection, integrating positive traditional and cultural values of Africa into the human rights debate will be useful in ensuring their transmission to future generations.
6. The Conference notes that women and children's rights issues remain of concern to all. The Conference, therefore, welcomes the decision to elaborate a protocol to the African Charter for the more effective protection of women's rights and calls on the OAU to convene a meeting of government experts to examine the instrument. It urges all African States to work assiduously towards the elimination of discrimination against women and the abolition of cultural practices which dehumanize or demean women and children. The Conference also recommends to States to take the necessary measures to stop the phenomenon and use of child-soldiers and to reinforce the protection of civilian populations, particularly children in conflict situations. The Conference further recommends that States adopt measures to eradicate violence against women and children, child labour, sexual exploitation of children, trafficking in children and to protect children in conflict with the law as well as refugee children.
7. The Conference notes that the rights of people with disability and people living with HIV-AIDS, in particular women and children, are not always observed and urges all African States to work towards ensuring the full respect of these rights.

8. The Conference is aware that violations of human rights in Africa are caused, among others, by:
  - (a) Contemporary forms of slavery;
  - (b) Neo-colonialism, racism and religious intolerance;
  - (c) Poverty, disease, ignorance and illiteracy;
  - (d) Conflicts leading to refugee outflows and internal population displacement;
  - (e) Social dislocations which may arise from the implementation of certain aspects of structural adjustment programmes;
  - (f) The debt problem;
  - (g) Mismanagement, bad governance and corruption;
  - (h) Lack of accountability in the management of public affairs;

- (i) Monopoly in the exercise of power;
- (j) Harmful traditional practices;
- (k) Lack of independence of the judiciary;
- (l) Lack of independent human rights institutions;
- (m) Lack of freedom of the press and association;
- (n) Environmental degradation;
- (o) Non-compliance with the provisions of the OAU Charter on territorial integrity and inviolability of colonial borders and the right to self-determination;
- (p) Unconstitutional changes of governments;
- (q) Terrorism;
- (r) Nepotism; and
- (s) Exploitation of ethnicity.

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

9. While welcoming the improvements which have taken place in addressing the refugee problem, the Conference believes that the high number of refugees, displaced persons and returnees in Africa constitutes an impediment to development. It recognizes the link between human rights violations and population displacement and calls for redoubled and concerted efforts by States and the OAU to address the problem.
10. The Conference recognizes that the development and energization of civil society, the strengthening of the family unit as the basis of human society, the removal of harmful traditional practices and consultation with community leaders should all be seen as building blocs in the process of creating an environment conducive to human rights in Africa and as tools for fostering solidarity among her peoples.
11. Deeply concerned about the acts of genocide, crimes against humanity and other war crimes being perpetuated in certain parts of Africa, the Conference appeals to African States to ensure that such acts are definitively eradicated on the continent and recommends that these serious acts of violation be adequately dealt with.
12. Also concerned by the scourge of terrorism as a source of serious human rights violations, especially the most basic of such rights, namely the right to life, the Conference urges African countries to formulate and implement an African convention for cooperation in combating this scourge.
13. The Conference reaffirms the commitment of Africa to the promotion, protection and observance of human rights obligations. In this framework, the Conference requests those states which have not yet done so to give consideration to the ratification of all major OAU and UN human rights conventions, in particular:
  - (a) The African Charter on Human and Peoples' Rights;

- (b) The African Charter on the Rights and Welfare of the Child;
- (c) The Convention Governing the Specific Aspects of Refugee Problems in Africa;
- (d) The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
- (e) International Covenant on Economic, Social and Cultural Rights;
- (f) International Covenant on Civil and Political Rights;
- (g) United Nations Convention on the Rights of the Child;
- (h) United Nations Convention relating to the Status of Refugees and its Protocol;
- (i) Convention on the Elimination of All Forms of Discrimination Against Women;
- (j) The Four Geneva Conventions of 1949 as well as the two Additional Protocols;
- (k) UN Convention Against Torture;
- (l) UN Convention on the Elimination of All Forms of Racial Discrimination; and
- (m) The Statute of the International Criminal Court.

14. The Conference recognizes the necessity for States to give effect to the African Charter on Human and Peoples' Rights, international humanitarian law and other major international human rights instruments which they have ratified in their national legislations for wider effect throughout Africa.
15. The Conference reiterates the fact that the primary responsibility for the promotion and protection of human rights lies with the State. It therefore urges States to establish national human rights institutions and to provide them with adequate financial resources and ensure their independence.
16. The Conference recognizes that the reporting obligation of States Parties under the African Charter on Human and Peoples' Rights provides an important mechanism and an opportunity for African governments to engage in a process of continuous dialogue with the African Commission on Human and Peoples' Rights. Accordingly, the Conference recommends that States Parties take appropriate measures to meet their reporting obligations under the Charter.
17. The Conference recognizes the importance of promoting an African civil society, particularly NGOs, rooted in the realities of the African continent and calls on African governments to offer their constructive assistance with the aim of consolidating democracy and durable development.
18. The Conference calls upon all international organizations – governmental, inter-governmental and non-governmental – to cooperate and harmonize their initiatives with the OAU and its relevant organs as well as the various sub-regional bodies within Africa for a more coordinated approach to the implementation of human rights in Africa and for maximum effect of such programmes and initiatives.

19. The Conference notes that the adoption of the UN Declaration on the Protection of Human Rights Defenders by the 54<sup>th</sup> Session of the UN Commission on Human Rights marks a significant turning point, and calls on African governments to take appropriate steps to implement the Declaration in Africa.
20. The Conference appeals to the Secretary General of the OAU and the African Commission on Human and Peoples' Rights to develop appropriate strategies and take measures to sensitize and raise the awareness of African peoples about human rights and international humanitarian law through formal and non-formal educational processes comprising, among others, a special module in school curricula.
21. The Conference recognizes that the media are important actors for building bridges between governments and peoples; it, therefore, urges States to guarantee a free and independent press within their national borders to enable it play a role in the promotion of human rights in Africa. To this end, the Conference appeals to the Secretary General of the OAU to look into the possibility of providing assistance to media organizations on the continent.
22. To ensure that human rights considerations are integrated into all OAU activities, the Conference recognizes the need for human rights to be reflected in the programmes of the Organization.
23. The Conference, noting that the working of the African Commission on Human and Peoples' Rights is critical to the due observance of human rights in Africa, believes that there is a need to evaluate the structure and functioning of the Commission and to ascertain the extent to which it is implementing the Mauritius Plan of Action during the period 1996-2001, and to assist it to remove all obstacles to the effective discharge of its functions. There is also an urgent need to provide the Commission with adequate human, material and financial resources.
24. The Conference notes that, under the African Charter on Human and Peoples' Rights, it is the Assembly of Heads of State and Government that is authorized to take decisive action on the activity reports of the African Commission on Human and Peoples' Rights and expresses the hope that the Assembly would consider delegating this task to the Council of Ministers.
25. The Conference underscores the fact that co-operation between the African Commission and national human rights institutions will greatly enhance respect for human rights in Africa. In that regard, the Conference welcomes the decision by the African Commission on Human and Peoples' Rights to grant affiliated status to national human rights institutions.
26. Concerned by the fact that the external debt burden is crippling the development efforts of Africa and undermining the fostering and sustenance of respect for human

rights, the Conference appeals to the international community, especially multilateral financial agencies, to alleviate the external debt and take all steps necessary to reduce this burden on States to enable them to realize fully the economic emancipation of their peoples and enhance the maximum enjoyment of human rights by African peoples.

27. The Conference requests the Secretary General of the OAU to submit this Declaration to the Assembly of Heads of State and Government, all Member States, the African Commission on Human and Peoples' Rights, the UN High Commissioner for Human Rights and other relevant UN organs and agencies and to examine the feasibility of making this conference a regular feature of OAU activities.
28. The conference recommends to States to formulate and adopt national action plans for the promotion and protection of human rights.
29. Finally, the Conference requests the Secretary General of the OAU to submit a report to the next session of the Council of Ministers on the outcome of this Conference.

Adopted at Grand Bay, Mauritius, on 16 April, 1999.



**Kigali Declaration**  
**(African Union, First Ministerial Conference on Human Rights**  
**in Africa, Declaration 1 (I), 8 May 2003)**

AFRICAN UNION

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UNION AFRICAINE

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Addis Ababa, ETHIOPIA P. O. Box 3243 Telephone 517 700 Fax : 517844

**THE FIRST AU MINISTERIAL  
CONFERENCE ON HUMAN  
RIGHTS IN AFRICA  
8 MAY 2003  
KIGALI, RWANDA**

**DRAFT KIGALI DECLARATION**

The 1<sup>st</sup> African Union (AU) Ministerial Conference on Human Rights in Africa meeting *on 8 May* 2003 in Kigali, Rwanda;

**SOLEMLY ADOPTS THIS KIGALI DECLARATION**

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

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

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

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

**Recalling** the report of the International Panel of Eminent Persons (IPEP) entitled "The Preventable Genocide" endorsed by the 36<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Lomé, Togo, in July 2000 and the decision of the Assembly requesting the Secretary General to actively pursue the implementation of the recommendations contained in the Report;

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

**Deeply concerned** that in spite of the progress made in resolving conflicts on the Continent, the continuing armed and civil conflicts in **some** parts of Africa lead to gross violations of human rights and international

**KIGALI DECLARATION**



humanitarian law, and create massive movements of refugee populations and internally displaced persons.

### The Conference:

1. **Reaffirms** the principle that all human rights are universal, indivisible, inter-dependent and inter-related.
2. **Notes** with satisfaction the achievements made by Member States in the promotion and protection of human and peoples' rights, especially since the adoption of the Grand Bay Declaration and Plan of Action, and **recognizes** the need for Member States to build upon these achievements for the benefit and welfare of all African peoples;
3. **Reaffirms** the right to development, and **calls upon** the international community to support Member States in their continuing efforts to realize this right.
4. **Urges** Member States and regional institutions to accord the same importance to economic, social and cultural rights and civil and political rights, and apply, at all levels, a rights-based approach to policy, programme planning, implementation and evaluation.
5. **Calls upon** Member States to guarantee genuine independence, accessibility, affordability and due process of the Justice systems on the Continent, as a prerequisite to the entrenchment of the rule of law and democracy.
6. **Reiterates** the rejection of impunity and **reaffirms** the commitment to prosecute those responsible for genocide, war crimes and crimes against humanity, and **appeals** to all Member States to fully cooperate with and provide political and financial support to the International Criminal Tribunal for Rwanda, particularly, as regards the arrest of suspects/accused, the protection of witnesses/victims, the enforcement of sentences and the compensation of victims and their beneficiaries.
7. **Welcomes** the Decision of the 2<sup>nd</sup> Ordinary Session of the Executive Council of the AU held in N'Djamena, Chad, in March 2003 that 7 April 2004, the 10<sup>th</sup> Anniversary of the Rwandan Genocide, be commemorated by the AU as a day of remembrance of the victims of genocide in Rwanda, and reaffirmation of Africa's resolve to prevent and fight genocide on the continent.
8. **Reiterates** the recommendation of the Executive Council to the United Nations, the international community at large and civil society to commemorate 7 April as a day of reflection on the Rwandan Genocide and of a renewed commitment to the prevention of genocide in the world.

9. **Expresses** its concern about the scourge of terrorism as a source of serious violations of human rights, particularly the right to life and to security, and **urges** the Member States to implement the Convention on the Prevention and Combating of Terrorism adopted by the 35<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Algiers in July 1999.
10. **Notes** to important contribution made by the Durban World Conference Against Racism, Xenophobia and Related Intolerance and **calls** on all Member States to strengthen their efforts to combat the scourge of racism, xenophobia and related intolerance and discrimination.
11. **Takes note** with satisfaction of the on-going efforts to address the plight of refugees, asylum seekers and internally displaced persons, and **calls upon** Member States to recognise forced displacement as a grave violation of fundamental rights to peace, security and dignity, and to take all necessary measures to address the problem.
12. **Further calls upon** all Member States to implement all the relevant international and African instruments relating to the protection of refugees, internally displaced persons and returnees, and in particular to discharge their obligations under the AU Convention Governing the Specific Aspects of Refugee Problems in Africa.
13. **Calls upon** the Member States that have not yet ratified the AU Convention Governing the Specific Aspects of Refugee Problems in Africa and any of the relevant international treaties to do so as soon as possible.
14. **Requests** the relevant organs of the AU, in the exercise of their peace building and conflict resolution functions, to ensure the inclusion of human rights, humanitarian principles and other legal protection measures in peace agreements, in order to facilitate the voluntary repatriation and reintegration of refugees, returnees and former combatants in their countries of origin.
15. **Welcomes** the signing of a Memorandum of Understanding between the African Commission on Human and Peoples' Rights and the United Nations High Commissioner for Refugees (UNHCR), and **calls upon** the international community and other stakeholders to support the efforts of the African continent to address the problems of refugees, returnees and internally displaced persons in a spirit of international solidarity and burden sharing.
16. **Notes with great concern** that the rights of women and children in spite of the progress achieved, remain insufficiently protected in many African countries; **welcomes** the progress made towards the adoption of the Draft Protocol on the Rights of Women in Africa, and **calls upon** Member States to take all necessary measures for its early adoption, signature and ratification, and upon coming into force, its timely implementation by States Parties to it

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

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

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

20. **Further calls upon** Member States to develop a Protocol on the protection of the rights of people with disabilities and the elderly.

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

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

23. **Notes** with satisfaction that the African Charter on Human and Peoples' Rights has been ratified by all Member States, and **calls upon** the AU policy organs to provide the African Commission with suitable Headquarters, an appropriate structure and adequate human and financial resources for its proper functioning, including the establishment of a Fund to be financed through voluntary contributions from Member States, international and regional institutions.

24. **Calls upon** the AU Policy Organs to review the operation and composition of the African Commission on Peoples' Rights with a view to strengthening its independence and operational integrity and ensuring appropriate gender representativity and to report on the progress made to the appropriate AU Organs as soon as possible.

25. **Urges** Member States which have not yet done so to incorporate in their domestic legislation, provisions of the African Charter on Human and Peoples' Rights, its protocols, international humanitarian law in particular the Four (4) Geneva Convention (1949) and their Additional Protocols (1977) and other major international human rights instruments, which they have ratified, and to honour their obligations thereon, including reporting, where applicable.

26. **Notes with concern** that the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights which requires fifteen (15) ratifications to come into force, has been ratified by nine (9) Member States only, and, therefore, **appeals** to those Member States that have not yet done so, to sign and/or ratify the Protocol to enable it to come into force by July 2003 as required by Dec. AHG/Dec.171 (XXXVIII).

27. **Reiterates** that the primary responsibility for the promotion and protection of human rights rests with Member States and, therefore, **urges** those Member States which have not yet done so, to establish independent national human rights institutions, provide them with adequate financial and other resources for their proper functioning, and guarantee their independence.

28. **Recognizes** the important role of civil society organizations (CSOs) in general and human rights defenders in particular, in the promotion and protection of human rights in Africa, **calls upon** Member States and regional institutions to protect them and encourage the participation of CSOs in decision-making processes with the aim of consolidating participatory democracy and sustainable development, and **underscores** the need for CSOs to be independent and transparent.

29. **Recognizes** the media as important vehicles for the realization of the right to information, and therefore, **urges** Member States to guarantee, through appropriate legislative and policy measures, a free and independent press.

30. **Mindful** of the fact that the legal norms contained in the international and regional human rights conventions and the establishment of human rights protection and promotion mechanisms cannot by themselves guarantee entrenchment of the principles of human rights and their observance by all, and **appeals** to Member States to make the teaching of human rights a permanent feature in their school curricula, especially for law enforcement agents. To this end, it **calls upon** Member States to step up their efforts with a view to a better and wider dissemination of the human rights culture, and urges them to popularize the international and regional conventions.

31. **Calls** for African solidarity with the peoples whose fundamental rights are grossly violated.



32. **Welcomes** the creation by the AU Assembly in Durban (South Africa) in July 2002, of a Portfolio within the AU Commission responsible for the issues of democracy, human rights, governance and civil society that would contribute to spearheading efforts aimed at promoting human rights on the Continent.
33. **Recognizes** that implementation, monitoring and evaluation are critical to the effective realization of the Grand Bay and this Declaration, **requests** the Chairperson of the AU Commission to coordinate the follow up of the implementation of these declarations and **urges** Members States to submit reports on implementation to the AU Commission.
34. **Expresses** its satisfaction at the holding of this Conference, **requests** the Chairperson of the AU Commission to submit a report to the next Ordinary Session of the Executive Council on the outcome of this Conference, and **recommends** that the Ministerial Conference on Human Rights be held at intervals of not more than four years.

**Adopted at Kigali, Rwanda on 8 May 2003**



**Protocol to the African Charter on Human and Peoples' Rights  
on the Rights of Women in Africa, 2003**

**PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA**

The States Parties to this Protocol,

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

**CONSIDERING** that Article 2 of the African Charter on Human and Peoples' Rights enshrines the principle of non-discrimination on the grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social 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



**PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA**



African Charter on the Rights and Welfare of the Child, and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights;

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

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

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

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

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

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

**CONCERNED** that despite the ratification of the African Charter on Human and Peoples' Rights and other international human rights instruments by the majority of States Parties, and their solemn



commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices;

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

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

**HAVE AGREED AS FOLLOWS:**

**Article 1**  
**Definitions**

For the purpose of the present Protocol:

- a) "African Charter" means the African Charter on Human and Peoples' Rights;
- b) "African Commission" means the African Commission on Human and Peoples' Rights;
- c) "Assembly" means the Assembly of Heads of State and Government of the African Union;
- d) "AU" means the African Union;
- e) "Constitutive Act" means the Constitutive Act of the African Union;
- f) "Discrimination against women" means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by



women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life;

- g) "Harmful Practices" means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;
- h) "NEPAD" means the New Partnership for Africa's Development established by the Assembly;
- i) "States Parties" means the States Parties to this Protocol;
- j) "Violence against women" means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war;
- k) "Women" means persons of female gender, including girls.

### **Article 2**

#### **Elimination of Discrimination Against Women**

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
  - a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
  - b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those



harmful practices which endanger the health and general well-being of women;

- c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
  - d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
  - e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.
2. States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

### **Article 3**

#### **Right to Dignity**

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



dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

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

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.
2. States Parties shall take appropriate and effective measures to:
  - a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
  - b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
  - c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
  - d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;
  - e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
  - f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;



- g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
- h) prohibit all medical or scientific experiments on women without their informed consent;
- i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
- j) ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;
- k) ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.

**Article 5**  
**Elimination of Harmful Practices**

- States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:
- a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;
  - b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;





- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;
- d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

**Article 6**  
**Marriage**

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

- a) no marriage shall take place without the free and full consent of both parties;
- b) the minimum age of marriage for women shall be 18 years;
- c) monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;
- d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;
- e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
- f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname;



- g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;
- h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;
- i) a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
- j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

**Article 7**  
**Separation, Divorce and Annulment of Marriage**

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

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





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

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

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

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

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:
  - a) women participate without any discrimination in all elections;



- b) women are represented equally at all levels with men in all electoral processes;
- c) women are equal partners with men at all levels of development and implementation of State policies and development programmes .
2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

**Article 10**  
**Right to Peace**

1. Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.
2. States Parties shall take all appropriate measures to ensure the increased participation of women:
  - a) in programmes of education for peace and a culture of peace;
  - b) in the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;
  - c) in the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;
  - d) in all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;



- e) in all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation.
3. States Parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.

**Article 11**  
**Protection of Women in Armed Conflicts**

1. States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women.
2. States Parties shall, in accordance with the obligations incumbent upon them under international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.
3. States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.
4. States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.

**Article 12**  
**Right to Education and Training**

1. States Parties shall take all appropriate measures to:
  - a) eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;



- b) eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination;
  - c) protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;
  - d) provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment;
  - e) integrate gender sensitisation and human rights education at all levels of education curricula including teacher training.
2. States Parties shall take specific positive action to:
- a) promote literacy among women;
  - b) promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology;
  - c) promote the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely.

**Article 13**  
**Economic and Social Welfare Rights**

- States Parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. In this respect, they shall:
- a) promote equality of access to employment;



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



- l) recognise that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the State and the private sector have secondary responsibility;
- m) take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

**Article 14**  
**Health and Reproductive Rights**

1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:
  - a) the right to control their fertility;
  - b) the right to decide whether to have children, the number of children and the spacing of children;
  - c) the right to choose any method of contraception;
  - d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
  - e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices;
  - g) the right to have family planning education.
2. States Parties shall take all appropriate measures to:
  - a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;



- b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
- c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

#### **Article 15**

#### **Right to Food Security**

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

- a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;
- b) establish adequate systems of supply and storage to ensure food security.

#### **Article 16**

#### **Right to Adequate Housing**

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

#### **Article 17**

#### **Right to Positive Cultural Context**

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



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

#### **Article 18**

#### **Right to a Healthy and Sustainable Environment**

- 1. Women shall have the right to live in a healthy and sustainable environment.
- 2. States Parties shall take all appropriate measures to:
  - a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;
  - b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control;
  - c) protect and enable the development of women's indigenous knowledge systems;
  - c) regulate the management, processing, storage and disposal of domestic waste;
  - d) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

#### **Article 19**

#### **Right to Sustainable Development**

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



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

**Article 20**  
**Widows' Rights**

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

- a) that widows are not subjected to inhuman, humiliating or degrading treatment;
- b) that a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;



- c) that a widow shall have the right to remarry, and in that event, to marry the person of her choice.

**Article 21**  
**Right to Inheritance**

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

**Article 22**  
**Special Protection of Elderly Women**

The States Parties undertake to:

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

**Article 23**  
**Special Protection of Women with Disabilities**

The States Parties undertake to:

- a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to





employment, professional and vocational training as well as their participation in decision-making;

- b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

#### **Article 24**

##### **Special Protection of Women in Distress**

The States Parties undertake to:

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

#### **Article 25** **Remedies**

States Parties shall undertake to:

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



#### **Article 26** **Implementation and Monitoring**

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

#### **Article 27** **Interpretation**

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

#### **Article 28** **Signature, Ratification and Accession**

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

#### **Article 29** **Entry into Force**

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



2. For each State Party that accedes to this Protocol after its coming into force, the Protocol shall come into force on the date of deposit of the instrument of accession.

3. The Chairperson of the Commission of the AU shall notify all Member States of the coming into force of this Protocol.

**Article 30**  
**Amendment and Revision**

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

2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.

3. The Assembly, upon advice of the African Commission, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this article.

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

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

**Article 31**  
**Status of the Present Protocol**

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



**Article 32**  
**Transitional Provisions**

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

**Adopted by the 2<sup>nd</sup> Ordinary Session  
of the Assembly of the Union**

**Maputo, 11 July 2003**





**PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA**

- 1. People's Democratic Republic of Algeria  
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- 2. Republic of Angola  
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- 3. Republic of Benin  
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- 4. Republic of Botswana  
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- 5. Burkina Faso  
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- 6. Republic of Burundi  
.....



- 7. Republic of Cameroon  
.....
- 8. Republic of Cape Verde  
.....
- 9. Central African Republic  
.....
- 10. Republic of Chad  
.....
- 11. Union of the Comoros  
.....
- 12. Republic of the Congo  
.....



13. **Republic of Côte d'Ivoire**

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14. **Democratic Republic of Congo**

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15. **Republic of Djibouti**

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16. **Arab Republic of Egypt**

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17. **State of Eritrea**

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18. **Federal Democratic Republic of Ethiopia**

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19. **Republic of Equatorial Guinea**

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20. **Republic of Gabon**

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21. **Republic of The Gambia**

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22. **Republic of Ghana**

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23. **Republic of Guinea**

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24. **Republic of Guinea Bissau**

.....



25. Republic of Kenya

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26. Kingdom of Lesotho

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27. Republic of Liberia

.....

28. Great Socialist People's Libyan Arab Jamahiriya

.....

29. Republic of Madagascar

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30. Republic of Malawi

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31. Republic of Mali

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32. Islamic Republic of Mauritania

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33. Republic of Mauritius

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34. Republic of Mozambique

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35. Republic of Namibia

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36. Republic of Niger

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37. **Federal Republic of Nigeria**

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38. **Republic of Rwanda**

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39. **Sahrawi Arab Democratic Republic**

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40. **Republic of Sao Tome and Principe**

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41. **Republic of Senegal**

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42. **Republic of Seychelles**

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43. **Republic of Sierra Leone**

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44. **Republic of Somalia**

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45. **Republic of South Africa**

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46. **Republic of Sudan**

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47. **Kingdom of Swaziland**

.....

48. **United Republic of Tanzania**

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**49. Republic of Togo**

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**50. Republic of Tunisia**

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**51. Republic of Uganda**

.....

**52. Republic of Zambia**

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**53. Republic of Zimbabwe**

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**African Youth Charter, 2006**

## PREAMBLE

**GUIDED** by the Constitutive Act of the African Union, the States Parties to the present "African Youth Charter",

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

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

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

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

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

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

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

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

**RECOGNISING** the efforts made by States Parties and civil societies to address the economic, social, educational, cultural and spiritual needs of youth;

**NOTING** with concern the situation of African youth, many of whom are marginalized from mainstream society through inequalities in income, wealth and



## AFRICAN YOUTH CHARTER





power, unemployment and underemployment, infected and affected by the HIV/AIDS pandemic, living in situations of poverty and hunger, experiencing illiteracy and poor quality educational systems, restricted access to health services and to information, exposure to violence including gender violence, engaging in armed conflicts and experiencing various forms of discrimination;

**RECALLING** the United Nations World Programme of Action for Youth to the Year 2000 and beyond and the ten priority areas identified for youth (education, employment, hunger and poverty, health, environment, drug abuse, juvenile delinquency, leisure-time activities, girls and young women and youth participating in decision-making), and the five additional areas (HIV/AIDS, ICT, Inter-generational dialogue,...) adopted at the 2005 UN General assembly;

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

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

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

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

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

**ACKNOWLEDGING ALSO** the call in Bamako (2005) by the youth organisations across Africa to empower youth by building their capacity, leadership, responsibilities and provide access to information such that they can take up their rightful place as active agents in decision-making and governance;

**TAKING INTO CONSIDERATION** the inter-relatedness of the challenges facing youth and the need for cross-sectoral policies and programmes that attend to the needs of youth in a holistic manner;

**CONSIDERING** that the promotion and protection of the rights of youth also implies the performance of duties by youth as by all other actors in society;

**TAKING INTO CONSIDERATION** the needs and aspirations of young displaced persons, refugees and youth with special needs;

**HAVE AGREED AS FOLLOWS:**



## DEFINITIONS

**“Chairperson”** shall mean the Chairperson of the African Union Commission;

**“Charter”** shall mean the African Youth Charter;

**“Commission”** shall mean the Commission of African Union

**“Diaspora”** shall mean peoples of African descent and heritage living outside the continent, irrespective of their citizenship and who remain committed to contribute to the development of the continent and the building of the African Union (DOC.EX.CL/164(VII))

**“Member States”** shall mean Member States of the African Union

**“Minors”** shall mean young people aged 15 to 17 years subject to each country's laws

**“States Parties”** shall mean Member States, which have ratified or acceded to the present Charter;

**“Union”** shall mean the African Union

**“Youth”** For the purposes of this Charter, *youth* or *young people* shall refer to every person between the ages of 15 and 35 years.



## **PART 1: RIGHTS AND DUTIES**

### **Article 1: Obligation of State Parties**

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

### **Article 2: Non-discrimination**

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

### **Article 3: Freedom of Movement**

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

### **Article 4: Freedom of Expression**

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

### **Article 5: Freedom of Association**

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

2. Young people shall not be compelled to belong to an association.

### **Article 6: Freedom of Thought, Conscience and Religion**

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

### **Article 7: Protection of Private Life**

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

### **Article 8: Protection of the Family**

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

### **Article 9: Property**

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

### **Article 10: Development**

1. Every young person shall have the right to social, economic, political and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind.
2. States Parties shall encourage youth organizations to lead youth programmes and to ensure the exercise of the right to development.
3. States Parties shall:
  - a) Encourage the media to disseminate information that will be of economic, political, social and cultural benefit to youth;



- b) Promote the development of youth media for the dissemination of information to young people;
- c) Encourage international co-operation in the production, exchange and dissemination of information from both national and international sources that are of economic, social and cultural value to youth;
- d) Provide access to information and education and training for young people to learn their rights and responsibilities, to be schooled in democratic processes, citizenship, decision-making, governance and leadership such that they develop the technical skills and confidence to participate in these processes;

#### **Article 11: Youth Participation**

1. Every young person shall have the right to participate in all spheres of society.
2. States Parties shall take the following measures to promote active youth participation in society:

They shall:

- a) Guarantee the participation of youth in parliament and other decision-making bodies in accordance with the prescribed laws;
- b) Facilitate the creation or strengthening of platforms for youth participation in decision-making at local, national, regional, and continental levels of governance;
- c) Ensure equal access to young men and young women to participate in decision-making and in fulfilling civic duties;
- d) Give priority to policies and programmes including youth advocacy and peer-to-peer programmes for marginalised youth, such as out-of-school and out-of-work youth, to offer them the opportunity and motivation to re-integrate into mainstream society;
- e) Provide access to information such that young people become aware of their rights and of opportunities to participate in decision-making and civic life;
- f) Institute measures to professionalize youth work and introduce relevant training programmes in higher education and other such training institutions;
- g) Provide technical and financial support to build the institutional capacity of youth organisations;



- h) Institute policy and programmes of youth voluntarism at local, national, regional and international levels as an important form of youth participation and as a means of peer-to-peer training.
- i) Provide access to information and services that will empower youth to become aware of their rights and responsibilities,
- j) Include youth representatives as part of delegations to ordinary sessions and other relevant meetings to broaden channels of communication and enhance the discussion of youth related issues.

#### **Article 12: National Youth Policy**

1. Every State Parties shall develop a comprehensive and coherent national youth policy.
  - a) The policy shall be cross-sectoral in nature considering the inter-relatedness of the challenges facing young people;
  - b) The development of a national youth policy shall be informed by extensive consultation with young people and cater for their active participation in decision-making at all levels of governance in issues concerning youth and society as a whole;
  - c) A youth perspective shall be integrated and mainstreamed into all planning and decision-making as well as programme development. The appointment of youth focal points in government structures shall enable this process;
  - d) Mechanisms to address these youth challenges shall be framed within the national development framework of the country;
  - e) The policy shall provide guidelines on the definition of youth adopted and specify subgroups that shall be targeted for development;
  - f) The policy shall advocate equal opportunities for young men and for young women;
  - g) A baseline evaluation or situation analysis shall inform the policy on the priority issues for youth development;
  - h) The policy shall be adopted by parliament and enacted into law;
  - i) A national youth coordinating mechanism shall be set up and shall provide a platform as well as serve as a linking agent for youth organisations to participate in youth policy development as well as the implementation, monitoring and evaluation of related programmes;



- j) National programmes of action shall be developed that are time bound and that are connected to an implementation and evaluation strategy for which indicators shall be outlined;
- k) Such a programme of action shall be accompanied by adequate and sustained budgetary allocation.

### **Article 13: Education and Skills Development**

1. Every young person shall have the right to education of good quality.
2. The value of multiple forms of education, including formal, non-formal, informal, distance learning and life-long learning, to meet the diverse needs of young people shall be embraced.
3. The education of young people shall be directed to:
  - a) The promotion and holistic development of the young person's cognitive and creative and emotional abilities to their full potential;
  - b) Fostering respect for human rights and fundamental freedoms as set out in the provisions of the various African human and people's rights and international human rights declarations and conventions;
  - c) Preparing young people for responsible lives in free societies that promote peace, understanding, tolerance, dialogue, mutual respect and friendship among all nations and across all groupings of people;
  - d) The preservation and strengthening of positive African morals, traditional values and cultures and the development of national and African identity and pride;
  - e) The development of respect for the environment and natural resources;
  - f) The development of life skills to function effectively in society and include issues such as HIV/AIDS, reproductive health, substance abuse prevention and cultural practices that are harmful to the health of young girls and women as part of the education curricula;
4. States Parties shall take all appropriate measures with a view to achieving full realisation of this right and shall, in particular:
  - a) Provide free and compulsory basic education and take steps to minimise the indirect costs of education;
  - b) Make all forms of secondary education more readily available and accessible by all possible means including progressively free;



- c) Take steps to encourage regular school attendance and reduce drop-out rates;
- d) Strengthen participation in and the quality of training in science and technology;
- e) Revitalise vocational education and training relevant to current and prospective employment opportunities and expand access by developing centres in rural and remote areas;
- f) Make higher education equally accessible to all including establishing distance learning centres of excellence;
- g) Avail multiple access points for education and skills development including opportunities outside of mainstream educational institutions e.g., workplace skills development, distance learning, adult literacy and national youth service programmes;
- h) Ensure, where applicable, that girls and young women who become pregnant or married before completing their education shall have the opportunity to continue their education;
- i) Allocate resources to upgrade the quality of education delivered and ensure that it is relevant to the needs of contemporary society and engenders critical thinking rather than rote learning;
- j) Adopt pedagogy that incorporates the benefits of and trains young people in the use of modern information and communication technology such that youth are better prepared for the world of work;
- k) Encourage youth participation in community work as part of education to build a sense of civic duty;
- l) Introduce scholarship and bursary programmes to encourage entry into post-primary school education and into higher education outstanding youth from disadvantaged communities, especially young girls;
- m) Establish and encourage participation of all young men and young women in sport, cultural and recreational activities as part of holistic development;
- n) Promote culturally appropriate, age specific sexuality and responsible parenthood education;
- o) Promote the equivalence of degrees between African educational institutions to enable the youth to study and work in State Parties;





- p) Adopt preferential recruitment policies for African youth with specialised skills amongst States Parties.
5. Youth are determined to transform the continent in the fields of science and technology. Therefore they are committed to:
- a) Promoting and using science and technology in Africa;
  - b) Conducting research towards science and technology.
6. State Parties should encourage youth to conduct research. In this regard, an African discoveries day should be established along with mechanism of awarding prizes at the continental level.
7. Enterprises that are located in Africa should establish partnerships with training institutions to contribute to technology transfer for the benefit of African students and researchers.

#### **Article 14: Poverty Eradication and Socio-economic Integration of Youth**

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



In this regard, States Parties shall take the necessary measures to achieve the full realisation of these rights in accordance with their national law especially when the security of food tenure, clothing, housing and other basic needs are compromised.

#### **Article 15: Sustainable Livelihoods and Youth Employment**

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



- g) Institute incentive schemes for employers to invest in the skills development of employed and unemployed youth;
- h) Institute national youth service programmes to engender community participation and skills development for entry into the labour market.

#### **Article 16: Health**

1. Every young person shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States Parties shall undertake to pursue the full implementation of this right and in particular shall take measures to:
  - a) Make available equitable and ready access to medical assistance and health care especially in rural and poor urban areas with an emphasis on the development of primary health care;
  - b) Secure the full involvement of youth in identifying their reproductive and health needs and designing programmes that respond to these needs with special attention to vulnerable and disadvantaged youth;
  - c) Provide access to youth friendly reproductive health services including contraceptives, antenatal and post natal services;
  - d) Institute programmes to address health pandemics in Africa such as HIV/AIDS, tuberculosis and malaria;
  - e) Institute comprehensive programmes to prevent the transmission of sexually transmitted infections and HIV/AIDS by providing education, information, communication and awareness creation as well as making protective measures and reproductive health services available;
  - f) Expand the availability and encourage the uptake of voluntary counselling and confidential testing for HIV/AIDS;
  - g) Provide timely access to treatment for young people infected with HIV/AIDS including prevention of mother to child transmission, post rape prophylaxis, and anti-retroviral therapy and creation of health services specific for young people;
  - h) Provide food security for people living with HIV/AIDS;
  - i) Institute comprehensive programmes including legislative steps to prevent unsafe abortions;
  - j) Take legislative steps such as banning advertising and increasing price in addition to instituting comprehensive preventative and



curative programmes to control the consumption of tobacco, exposure to environmental tobacco smoke and alcohol abuse;

- k) Raise awareness amongst youth on the dangers of drug abuse through partnerships with youth, youth organisations and the community;
- l) Strengthen local, national, regional and international partnerships to eradicate the demand, supply and trafficking of drugs including using youth to traffic drugs;
- m) Provide rehabilitation for young people abusing drugs such that they can be re-integrated into social and economic life;
- n) Provide technical and financial support to build the institutional capacity of youth organisations to address public health concerns including issues concerning youth with disabilities and young people married at an early age.

#### **Article 17: Peace and Security**

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

- a) Strengthen the capacity of young people and youth organisations in peace building, conflict prevention and conflict resolution through the promotion of intercultural learning, civic education, tolerance, human rights education and democracy, mutual respect for cultural, ethnic and religious diversity, the importance of dialogue and cooperation, responsibility, solidarity and international cooperation;
- b) Institute mechanisms to promote a culture of peace and tolerance amongst young people that discourages their participation in acts of violence, terrorism, xenophobia, racial discrimination, gender-based discrimination, foreign occupation and trafficking in arms and drugs;
- c) Institute education to promote a culture of peace and dialogue in all schools and training centres at all levels;
- d) Condemn armed conflict and prevent the participation, involvement, recruitment and sexual slavery of young people in armed conflict;
- e) Take all feasible measures to protect the civilian population, including youth, who are affected and displaced by armed conflict;



- f) Mobilise youth for the reconstruction of areas devastated by war, bringing help to refugees and war victims and promoting peace, reconciliation and rehabilitation activities;
- g) Take appropriate measures to promote physical and psychological recovery and social reintegration of young victims of armed conflict and war by providing access to education and skills development such as vocational training to resume social and economic life.

#### **Article 18: Law Enforcement**

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

#### **Article 19: Sustainable Development and Protection of the Environment**

1. States Parties shall ensure the use of sustainable methods to improve the lives of young people such that measures instituted do not jeopardise opportunities for future generations.
2. States Parties shall recognise the vested interest of young people in protecting the natural environment as the inheritors of the environment. In this regard, they shall:

- a) Encourage the media, youth organisations, in partnership with national and international organisations, to produce, exchange and disseminate information on environmental preservation and best practices to protect the environment;
- b) Train youth in the use of technologies that protect and conserve the environment;
- c) Support youth organisations in instituting programmes that encourage environmental preservation such as waste reduction, recycling and tree planting programmes;
- d) Facilitate youth participation in the design, implementation and evaluation of environmental policies including the conservation of African natural resources at local, national, regional and international levels;
- e) Develop realistic and flexible strategies for the regeneration of forests;
- f) Initiate intensive actions to prevent the expansion of deserts.

#### **Article 20: Youth and Culture**

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





- g) Promote inter-cultural awareness by organising exchange programmes between young people and youth organisations within and across States Parties.
2. States Parties recognise that the shift towards a knowledge-based economy is dependent on information and communication technology which in turn has contributed towards a dynamic youth culture and global consciousness. In this regard, they shall:
- a) Promote widespread access to information and communication technology as a means for education, employment creation, interacting effectively with the world and building understanding, tolerance and appreciation of other youth cultures;
  - b) Encourage the local production of and access to information and communication technology content;
  - c) Engage young people and youth organisations to understand the nexus between contemporary youth culture and traditional African culture, and enable them to express this fusion through drama, art, writing, music and other cultural and artistic forms;
  - d) Help young people to use positive elements of globalisation such as science and technology and information and communication technology to promote new cultural forms that link the past to the future;

#### **Article 21: Youth in the Diaspora**

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

- a) Promote the equivalence of degrees between African educational institutions to enable the youth to study and work in State Parties;
- b) Promote the recruitment of African youth with specialized skills, in the spirit of African solutions for African problems, according to national policies and priorities;
- c) Facilitate youth organisations to liaise and collaborate with the African youth Diaspora;
- d) Establish structures that encourage and assist the youth in the diaspora to return to and fully re-integrate into the social and economic life in Africa;



- e) Promote and protect the rights of young people living in the diaspora;
- f) Encourage young people in the diaspora to engage themselves in development activities in their country of origin.

#### **Article 22: Leisure, Recreation, Sportive and Cultural Activities**

1. Young people shall have the right to rest and leisure and to engage in play and recreational activities that are part of a health lifestyle as well as to participate freely in sport, physical education drama, the arts, music and other forms of cultural life. In this regard, States Parties shall:
  - a) Make provision for equal access for young men and young women to sport, physical education, cultural, artistic, recreational and leisure activities;
  - b) Put in place adequate infrastructure and services in rural and urban areas for youth to participate in sport, physical education, cultural, artistic, recreational and leisure activities.

#### **Article 23: Girls and Young Women**

1. States Parties acknowledge the need to eliminate discrimination against girls and young women according to obligations stipulated in various international, regional and national human rights conventions and instruments designed to protect and promote women's rights. In this regard, they shall:
  - a) Introduce legislative measures that eliminate all forms of discrimination against girls and young women and ensure their human rights and fundamental freedoms;
  - b) Ensure that girls and young women are able to participate actively, equally and effectively with boys at all levels of social, educational, economic, political, cultural, civic life and leadership as well as scientific endeavours;
  - c) Institute programmes to make girls and young women aware of their rights and of opportunities to participate as equal members of society;
  - d) Guarantee universal and equal access to and completion of a minimum of nine years of formal education;
  - e) Guarantee equal access to and completion of vocational, secondary and higher education in order to effectively address the existing imbalance between young men and women in certain professions;



- f) Ensure that education material and teaching practices are gender sensitive and encourage girls and young women to undertake studies in the sciences;
- g) Provide educational systems that do not impede girls and young women, including married and/or pregnant young women, from attending;
- h) Take steps to provide equal access to health care services and nutrition for girls and young women;
- i) Protect girls and young women from economic exploitation and from performing work that is hazardous, takes them away from education or that is harmful to their mental or physical health;
- j) Offer equal access to young women to employment and promote their participation in all sectors of employment;
- k) Introduce special legislation and programmes of action that make available opportunities to girls and young women including access to education as a prerequisite and a priority for rapid social and economic development;
- l) Enact and enforce legislation that protect girls and young women from all forms of violence, genital mutilation, incest, rape, sexual abuse, sexual exploitation, trafficking, prostitution and pornography;
- m) Develop programmes of action that provide legal, physical and psychological support to girls and young women who have been subjected to violence and abuse such that they can fully re-integrate into social and economic life;
- n) Secure the right for young women to maternity leave.

**Article 24: Mentally and Physically Challenged Youth**

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



**Article 25: Elimination of Harmful Social and Cultural Practices**

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

- a) Customs and practices that harm the health, life or dignity of the youth;
- b) Customs and practices discriminatory to youth on the basis of gender, age or other status.

**Article 26: Responsibilities of Youth**

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

- a) Become the custodians of their own development;
- b) Protect and work for family life and cohesion;
- c) Have full respect for parents and elders and assist them anytime in cases of need in the context of positive African values;
- d) Partake fully in citizenship duties including voting, decision making and governance;
- e) Engage in peer-to-peer education to promote youth development in areas such as literacy, use of information and communication technology, HIV/AIDS prevention, violence prevention and peace building;
- f) Contribute to the promotion of the economic development of States Parties and Africa by placing their physical and intellectual abilities at its service;
- g) Espouse an honest work ethic and reject and expose corruption;
- h) Work towards a society free from substance abuse, violence, coercion, crime, degradation, exploitation and intimidation;
- i) Promote tolerance, understanding, dialogue, consultation and respect for others regardless of age, race, ethnicity, colour, gender, ability, religion, status or political affiliation;
- j) Defend democracy, the rule of law and all human rights and fundamental freedoms;



- k) Encourage a culture of voluntarism and human rights protection as well as participation in civil society activities;
- l) Promote patriotism towards and unity and cohesion of Africa;
- m) Promote, preserve and respect African traditions and cultural heritage and pass on this legacy to future generations;
- n) Become the vanguard of re-presenting cultural heritage in languages and in forms to which youth are able to relate;
- o) Protect the environment and conserve nature.

**Article 27: Popularization of the Charter**

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

**Article 28: Duties of the African Union Commission**

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

- a) Collaborating with governmental, non-governmental institutions and developmental partners to identify best practices on youth policy formulation and implementation and encouraging the adaptation of principles and experiences among States Parties;
- b) Inviting States Parties to include youth representatives as part of their delegations to the ordinary sessions of the African Union and other relevant meetings of the policy organs to broaden the channels of communication and enhance the discussion of youth-related issues;
- c) Instituting measures to create awareness of its activities and make information on its activities more readily available and accessible to youth;
- d) Facilitating exchange and co-operation between youth organisations across national borders in order to develop regional youth solidarity, political consciousness and democratic participation in collaboration with development partners.



**PART 2: Final Provisions**

**Article 29: Savings clause**

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

**Article 30: Signature, Ratification or Adherence**

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

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

**Article 31: Amendment and Revision of the Charter**

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

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

**ADOPTED BY THE SEVENTH ORDINARY SESSION  
OF THE ASSEMBLY, HELD IN BANJUL, THE GAMBIA  
ON 2<sup>ND</sup> JULY 2006**

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**Protocol on the Statute of the African Court of Justice and  
Human Rights, 2008**

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**PROTOCOL ON THE STATUTE OF THE AFRICAN  
COURT OF JUSTICE AND HUMAN RIGHTS**

The Member States of the African Union, Parties to this Protocol,

**RECALLING** the objectives and principles enunciated in the Constitutive Act of the African Union, adopted on 11 July 2000 in Lomé, Togo, in particular the commitment to settle their disputes through peaceful means;

**BEARING IN MIND** their commitment to promote peace, security and stability on the Continent and to protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant instruments relating to human rights;

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

**FURTHER CONSIDERING** Decisions Assembly/AU/Dec.45 (III) and Assembly/AU/Dec.83 (V) of the Assembly of the Union, adopted respectively at its Third (6-8 July 2004, Addis Ababa, Ethiopia) and Fifth (4-5 July 2005, Sirte, Libya), Ordinary Sessions, to merge the African Court on Human and Peoples' Rights and the Court of Justice of the African Union into a single Court,

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

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

**TAKING DUE ACCOUNT ALSO** of the Protocol of the Court of Justice of the African Union, adopted by the Assembly of the Union on 11 July 2003 in Maputo Mozambique;



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

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

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

**HAVE AGREED AS FOLLOWS:**

**CHAPTER I**

**MERGER OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS  
AND THE COURT OF JUSTICE OF THE AFRICAN UNION**

**Article 1**

**Replacement of the 1998 and 2003 Protocols**

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

**Article 2**

**Establishment of a single Court**

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

**Article 3**

**Reference to the single Court in the Constitutive Act**

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





**CHAPTER II  
TRANSITIONAL PROVISIONS**

**Article 4  
Term of Office of the Judges of the African Court on Human  
and Peoples' Rights**

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

**Article 5  
Cases Pending before the African Court on Human and Peoples' Rights**

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

**Article 6  
Registry of the Court**

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

**Article 7  
Provisional validity of the 1998 Protocol**

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



**CHAPTER III  
FINAL PROVISIONS**

**Article 8  
Signature, Ratification and Accession**

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

**Article 9  
Entry into force**

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

**ADOPTED BY THE ELEVENTH ORDINARY SESSION OF THE  
ASSEMBLY, HELD IN SHARM EL-SHEIKH, EGYPT,  
1<sup>ST</sup> JULY 2008**

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## ANNEX

### STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS

#### CHAPTER I GENERAL PROVISIONS

##### Article 1 Definitions

In this Statute, except otherwise indicated, the following shall mean:

- “**African Charter**” means the African Charter on Human and Peoples’ Rights;
- “**African Commission**” means the African Commission on Human and Peoples’ Rights;
- “**African Committee of Experts**” means the African Committee of Experts on the Rights and Welfare of the Child;
- “**African Intergovernmental Organisations**” means an organisation that has been established with the aim of ensuring socio-economic integration, and to which some Member States have ceded certain competences to act on their behalf, as well as other sub-regional, regional or inter-African Organisations;
- “**African Non-Governmental Organizations**” means Non-Governmental Organizations at the sub-regional, regional or inter-African levels as well as those in the Diaspora as may be defined by the Executive Council;
- “**Agent**” means a person mandated in writing to represent a party in a case before the Court;
- “**Assembly**” means the Assembly of Heads of State and Government of the Union;
- “**Chamber(s)**” means a Chamber established in accordance with Article 19 of the Statute.
- “**Constitutive Act**” means the Constitutive Act of the African Union;
- “**Commission**”: means the Commission of the Union;
- “**Court**” means the African Court of Justice and Human Rights as well as its sections and chambers;
- “**Executive Council**” means the Executive Council of Ministers of the Union;



“**Full Court**” means joint sitting of the General Affairs and Human Rights Sections of the Court;

“**Human Rights Section**” means the Human and Peoples’ Rights Section of the Court; “**Judge**” means a judge of the Court;

“**Member State**” means a Member State of the Union;

“**National Human Rights Institutions**” means public institutions established by a state to promote and protect human rights;

“**President**” means the President of the Court elected in accordance with Article 22(1) of the Statute;

“**Protocol**” means the Protocol to the Statute of the African Court of Justice and Human Rights;

“**Registrar**” means the person appointed as such in accordance with Article 22 (4) of the Statute;

“**Rules**” means the Rules of the Court;

“**Section**” means the General Affairs or the Human Rights Section of the Court;

“**Senior Judge**” means the person defined as such in the Rules of Court;

“**States Parties**” means Member States, which have ratified or acceded to this Protocol;

“**Statute**” means the present Statute;

“**Union**” means the African Union established by the Constitutive Act;

“**Vice President**” means the Vice President of the Court elected in accordance with Article 22 (1) of the Statute.

#### Article 2 Functions of the Court

1. The African Court of Justice and Human Rights shall be the main judicial organ of the African Union.
2. The Court shall be constituted and function in accordance with the provisions of the present Statute.



## CHAPTER II ORGANIZATION OF THE COURT

### Article 3 Composition

1. The Court shall consist of sixteen (16) Judges who are nationals of States Parties. Upon recommendation of the Court, the Assembly, may, review the number of Judges.
2. The Court shall not, at any one time, have more than one judge from a single Member State.
3. Each geographical region of the Continent, as determined by the Decisions of the Assembly shall, where possible, be represented by three (3) Judges except the Western Region which shall have four (4) Judges.

### Article 4 Qualifications of Judges

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

### Article 5 Presentation of Candidates

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

### Article 6 List of candidates

1. For the purpose of election, the Chairperson of the Commission shall establish two alphabetical lists of candidates presented as follows:
  - i) List A containing the names of candidates having recognized competence and experience in International law; and



- ii) List B containing the names of candidates possessing recognized competence and experience in Human Rights law.
2. States Parties that nominate candidates possessing the competences required on the two lists shall choose the list on which their candidates may be placed.
3. At the first election, eight (8) Judges shall be elected from amongst the candidates of list A and eight (8) from among the candidates of list B. The elections shall be organized in a way as to maintain the same proportion of judges elected on the two lists.
4. The Chairperson of the Commission shall communicate the two lists to Member States, at least thirty (30) days before the Ordinary Session of the Assembly or of the Council, during which the elections shall take place.

### Article 7 Election of judges

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

### Article 8 Term of Office

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



2. The Judges, whose term of office shall end after the initial period of four (4) years, shall be determined for each section, by lot drawn by the Chairperson of the Assembly or the Executive Council, immediately after the first election.
3. A Judge, elected to replace another whose term of office has not expired, shall complete the term of office of his predecessor.
4. All the Judges except the President and the Vice-President, shall perform their functions on a part-time basis.

#### **Article 9 Resignation, Suspension and Removal from Office**

1. A Judge may resign his/her position in writing addressed to the President for transmission to the Chairperson of the Assembly through the Chairperson of the Commission.
2. A Judge shall not be suspended or removed from office save, where, on the recommendation of two-thirds majority of the other members, he/she no longer meets the requisite conditions to be a Judge.
3. The President shall communicate the recommendation for the suspension or removal of a Judge to the Chairperson of the Assembly through the Chairperson of the Commission.
4. Such a recommendation of the Court shall become final upon its adoption by the Assembly.

#### **Article 10 Vacancies**

1. A vacancy shall arise in the Court under the following circumstances:
  - a. Death;
  - b. Resignation;
  - c. Removal from office.
2. In the case of death or resignation of a Judge, the President shall immediately inform the Chairperson of the Assembly through the Chairperson of the Commission in writing, who shall declare the seat vacant.
3. The same procedure and consideration for the election of a Judge shall also be followed in filling the vacancies.



#### **Article 11 Solemn Declaration**

1. After the first election, the Judges shall, at the first session of the Court and in the presence of the Chairperson of the Assembly, make a Solemn Declaration as follows:
 

“ I ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,, Do solemnly swear (or affirm or declare) that I shall faithfully exercise the duties of my office as Judge of the African Court of Justice and Human Rights of the African Union impartially and conscientiously, without fear or favour, affection or ill will and that I will preserve the integrity of the Court.
2. The Chairperson of the Assembly or his/her duly authorized representative shall administer the Solemn Declaration.
3. Subsequently, the Solemn Declaration shall be made before the President of the Court.

#### **Article 12 Independence**

1. The independence of the judges shall be fully ensured in accordance with international law.
2. The Court shall act impartially, fairly and justly.
3. In performance of the judicial functions and duties, the Court and its Judges shall not be subject to the direction or control of any person or body.

#### **Article 13 Conflict of Interest**

1. Functions of a Judge are incompatible with all other activities, which might infringe on the need for independence or impartiality of the judicial profession. In case of doubt, the Court shall decide.
2. A Judge shall not exercise the function of agent, or counsel, or lawyer in any case before the Court.

#### **Article 14 Conditions Governing the Participation of Members in the Settlement of a Specific Case**

1. Where a particular judge feels he/she has a conflicting interest in a particular case, he/she shall so declare. In any event, he/she shall not participate in the settlement of a case for which he/she was previously involved as agent, counsel or lawyer of one of





the parties, or as a member of a national or international Court or Tribunal, or a Commission of enquiry or in any other capacity.

2. If the President considers that a Judge should not participate in a particular case, he/she shall notify the judge concerned. Such notification from the President shall, after agreement by the Court, exclude that Judge from participating in that particular case.
3. A Judge of the nationality of a State Party to a case before the full Court or one of its Sections shall not have the right to sit on the case.
4. Where there is doubt on these points, the Court shall decide.

#### **Article 15 Privileges and Immunities**

1. The Judges shall enjoy, from the time of their election and throughout their term of office, the full privileges and immunities extended to diplomatic agents in accordance with international law.
2. The Judges shall be immune from legal proceedings for any act or omission committed in the discharge of their judicial functions.
3. The Judges shall continue, after they have ceased to hold office, to enjoy immunity in respect of acts performed by them when engaged in their official capacity.

#### **Article 16 Sections of the Court**

The Court *shall have two (2) Sections*; a General Affairs Section composed of eight (8) Judges and a Human Rights Section composed of eight (8) Judges.

#### **Article 17 Assignment of matters to Sections**

1. The General Affairs Section shall be competent to hear all cases submitted under Article 28 of this Statute *save those concerning human and/or peoples' rights issues*.
2. The Human Rights Section shall be competent to hear all cases relating to human and/or peoples rights.

#### **Article 18 Referral of matters to the Full Court**

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



#### **Article 19 Chambers**

1. The General Affairs Section and the Human Rights Section may, at any time, constitute one or several chambers. The quorum required to constitute such chambers shall be determined in the Rules of Court.
2. A judgment given by any Section or Chamber shall be considered as rendered by the Court.

#### **Article 20 Sessions**

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

#### **Article 21 Quorum**

1. A quorum of nine (9) Judges shall be required for deliberations of the Full Court.
2. A quorum of five (5) Judges shall be required for the deliberations of the General Affairs Section.
3. A quorum of five (5) Judges shall be required for the deliberations of the Human and Peoples' Rights Section.

#### **Article 22 Presidency, Vice-Presidency and Registry**

1. At its first ordinary session after the election of the judges, the full Court shall elect its President as well as the Vice-President from the different lists for a period of three (3) years. The President and the Vice-President may be re-elected once.
2. The President shall preside over all sessions of the full Court and those of the Section to which he/she belongs; in the event of being unable to sit, the President shall be replaced by the Vice president for the full Court and by the most Senior Judge for the sessions of his/her Section.



3. The Vice-President shall preside over all sessions of the section to which he/she belongs. In the event of being unable to sit, the Vice-President shall be replaced by the most Senior Judge of that Section.
4. The Court shall appoint a Registrar and may provide for the appointment of such other officers as may be necessary.
5. The President, the Vice-President and the Registrar shall reside at the seat of the Court.

**Article 23**  
**Remuneration of Judges**

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

**Article 24**  
**Conditions of Service of the Registrar  
and Members of the Registry**

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

**Article 25**  
**Seat and Seal of the Court**

1. The Seat of the Court shall be same as the Seat of the African Court on Human and Peoples' Rights. However, the Court may sit in any other Member State, if circumstances warrant, and with the consent of the Member State concerned. The Assembly may change the seat of the Court after due consultations with the Court.



2. The Court shall have a seal bearing the inscription "The African Court of Justice and Human Rights"

**Article 26**  
**Budget**

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

**Article 27**  
**Rules of Court**

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

**CHAPTER III**  
**COMPETENCE OF THE COURT**

**Article 28**  
**Jurisdiction of the Court**

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

- a) the interpretation and application of the Constitutive Act;
- b) the interpretation, application or validity of other Union Treaties and all subsidiary legal instruments adopted within the framework of the Union or the Organization of African Unity;
- c) the interpretation and the application of the African Charter, the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of



Women in Africa, or any other legal instrument relating to human rights, ratified by the States Parties concerned;

- d) any question of international law;
- e) all acts, decisions, regulations and directives of the organs of the Union;
- f) all matters specifically provided for in any other agreements that States Parties may conclude among themselves, or with the Union and which confer jurisdiction on the Court;
- g) the existence of any fact which, if established, would constitute a breach of an obligation owed to a State Party or to the Union;
- h) the nature or extent of the reparation to be made for the breach of an international obligation.

#### Article 29

##### Entities Eligible to Submit Cases to the Court

1. The following entities shall be entitled to submit cases to the Court on any issue or dispute provided for in Article 28:
  - a) State Parties to the present Protocol;
  - b) The Assembly, the Parliament and other organs of the Union authorized by the Assembly;
  - c) A staff member of the African Union on appeal, in a dispute and within the limits and under the terms and conditions laid down in the Staff Rules and Regulations of the Union;
2. The Court shall not be open to States, which are not members of the Union. The Court shall also have no jurisdiction to deal with a dispute involving a Member State that has not ratified the Protocol.

#### Article 30

##### Other Entities Eligible to Submit Cases to the Court

The following entities shall also be entitled to submit cases to the Court on any violation of a right guaranteed by the African Charter, by the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the



Rights of Women in Africa, or any other legal instrument relevant to human rights ratified by the States Parties concerned:

- a) State Parties to the present Protocol;
- b) the African Commission on Human and Peoples' Rights;
- c) the African Committee of Experts on the Rights and Welfare of the Child;
- d) African Intergovernmental Organizations accredited to the Union or its organs;
- e) African National Human Rights Institutions;
- f) Individuals or relevant Non-Governmental Organizations accredited to the African Union or to its organs, subject to the provisions of Article 8 of the Protocol.

#### Article 31

##### Applicable Law

1. In carrying out its functions, the Court shall have regard to:
  - a) The Constitutive Act;
  - b) International treaties, whether general or particular, ratified by the contesting States;
  - c) International custom, as evidence of a general practice accepted as law;
  - d) The general principles of law recognized universally or by African States;
  - e) Subject to the provisions of paragraph 1, of Article 46 of the present Statute, judicial decisions and writings of the most highly qualified publicists of various nations as well as the regulations, directives and decisions of the Union, as subsidiary means for the determination of the rules of law;
  - f) Any other law relevant to the determination of the case.
2. This Article shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.





## CHAPTER IV PROCEDURE

### Article 32 Official Languages

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

### Article 33 Institution of Proceedings before the General Affairs Section

1. Cases brought before the Court by virtue of Article 29 of the present Statute shall be submitted by written application addressed to the Registrar. The subject of the dispute, the applicable law and basis of jurisdiction shall be indicated.
2. The Registrar shall forthwith give notice of the application to the Parties concerned.
3. The Registrar shall also notify, through the Chairperson of the Commission, all Member States and, if necessary, the organs of the Union whose decisions are in dispute.

### Article 34 Institution of Proceedings before the Human Rights Section

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

### Article 35 Provisional Measures

1. The Court shall have the power, on its own motion or on application by the parties, to indicate, if it considers that circumstances so require any provisional measures which ought to be taken to preserve the respective rights of the parties.



2. Pending the final decision, notice of the provisional measures shall forthwith be given to the parties and the Chairperson of the Commission, who shall inform the Assembly.

### Article 36 Representation of Parties

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

### Article 37 Communications and Notices

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



**Article 38**  
**Procedure Before the Court**

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

**Article 39**  
**Public Hearing**

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

**Article 40**  
**Record of Proceedings**

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

**Article 41**  
**Default Judgment**

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

**Article 42**  
**Majority Required for Decision of the Court**

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



**Article 43**  
**Judgments and Decisions**

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

**Article 44**  
**Dissenting Opinion**

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

**Article 45**  
**Compensation**

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

**Article 46**  
**Binding Force and Execution of Judgments**

1. The decision of the Court shall be binding on the parties.
2. Subject to the provisions of paragraph 3, Article 41 of the present Statute, the judgment of the Court is final.



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

#### **Article 47 Interpretation**

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

#### **Article 48 Revision**

1. An application for revision of a judgment may be made to the Court only when it is based upon discovery of a new fact of such nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, provided that such ignorance was not due to negligence.
2. The proceedings for revision shall be opened by a ruling of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the revision admissible on this ground.

3. The Court may require prior compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision shall be made within six (6) months of the discovery of the new fact.

5. No application may be made after the lapse of ten (10) years from the date of the judgment.

#### **Article 49 Intervention**

1. Should a Member State or organ of the Union consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene. It shall be for the Court to decide upon this request.



2. If a Member State or organ of the Union should exercise the option offered under paragraph 1 of the present Article, the interpretation contained in the decision shall be equally binding upon it.

3. In the interest of the effective administration of justice, the Court may invite any Member State that is not a party to the case, any organ of the Union or any person concerned other than the claimant, to present written observations or take part in hearings.

#### **Article 50 Intervention in a Case Concerning the Interpretation of the Constitutive Act**

1. Whenever the question of interpretation of the Constitutive Act arises, in a case in which Member States other than the parties to the dispute have expressed an interest, the Registrar shall notify all such States and organs of the Union forthwith.

2. Every State Party and organ of the Union so notified has the right to intervene in the proceedings.

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

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

#### **Article 51 Intervention in a Case concerning the Interpretation of Other Treaties**

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

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

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



**Article 52**  
**Costs**

1. Unless otherwise decided by the Court, each party shall bear its own costs.
2. Should it be required in the interest of justice, free legal aid may be provided for the person presenting an individual communication, under conditions to be set out in the Rules of Court.

**CHAPTER V**  
**ADVISORY OPINION**

**Article 53**  
**Request for Advisory Opinion**

1. The Court may give an advisory opinion on any legal question at the request of the Assembly, the Parliament, the Executive Council, the Peace and Security Council, the Economic, Social and Cultural Council (ECOSOCC), the Financial Institutions or any other organ of the Union as may be authorized by the Assembly.
2. A request for an advisory opinion shall be in writing and shall contain an exact statement of the question upon which the opinion is required and shall be accompanied by all relevant documents.
3. A request for an advisory opinion must not be related to a pending application before the African Commission or the African Committee of Experts.

**Article 54**  
**Service of Notice**

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all States or organs entitled to appear before the Court by virtue of Article 30 of the present Statute.
2. The Registrar shall also, by means of a special and direct communication, notify any State entitled to appear before the Court or any Intergovernmental Organization considered by the Court, or should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.
3. Should any such State entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such State may express the desire to submit a written statement or to be heard, and the Court shall decide.



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

**Article 55**  
**Delivery of Advisory Opinion**

The Court shall deliver its advisory opinion in open court, notice having been given to the Chairperson of the Commission and Member States, and other International Organizations directly concerned.

**Article 56**  
**Application by Analogy of the Provisions of the Statute Applicable to Contentious Cases**

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

**CHAPTER VI**  
**REPORT TO THE ASSEMBLY**

**Article 57**  
**Annual Activity Report**

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

**CHAPTER VII**  
**PROCEDURE FOR AMENDMENTS**

**Article 58**  
**Proposed Amendments from a State Party**

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



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

**Article 59  
Proposed Amendments from the Court**

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

**Article 60  
Entry into Force of Amendments**

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

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**African Union Convention for the Protection and Assistance of  
Internally Displaced Persons in Africa, 2009**





## Preamble

**We, the Heads of State and Government of the Member States of the African Union;**

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

**ALSO CONSCIOUS** of the suffering and specific vulnerability of internally displaced persons;

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

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

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

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

**REAFFIRMING** the principle of the respect of the sovereign equality of States Parties, their territorial integrity and political independence as stipulated in the Constitutive Act of the African Union and the United Nations Charter;

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

## AFRICAN UNION CONVENTION FOR THE PROTECTION AND ASSISTANCE OF INTERNALLY DISPLACED PERSONS IN AFRICA (KAMPALA CONVENTION)





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

**RECOGNISING** the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for the protection of internally displaced persons;

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

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

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

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

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



## HAVE AGREED AS FOLLOWS:

### Article 1 Definitions

For the purpose of the present Convention:

- a. "African Charter" means the African Charter on Human and Peoples' Rights;
- b. "African Commission" means the African Commission on Human and Peoples' Rights;
- c. "African Court of Justice and Human Rights" means the African Court of Justice and Human Rights;
- d. Arbitrary displacement means arbitrary displacement as referred to in Article 4 (4) (a) to (h);
- e. "Armed Groups" means dissident armed forces or other organized armed groups that are distinct from the armed forces of the state;
- f. "AU" means the African Union;
- g. "AU Commission" means the Secretariat of the African Union, which is the depository of the regional instruments;
- h. "Child" means every human being below the age of 18 years;
- i. "Constitutive Act" means the Constitutive Act of the African Union;
- j. "Harmful Practices" means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education;
- k. "Internally Displaced Persons" means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border;
- l. "Internal displacement" means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders;



- m. "Member State" means a Member State of the African Union;
- n. "Non-state actors" means private actors who are not public officials of the State, including other armed groups not referred to in article 1(d) above, and whose acts cannot be officially attributed to the State;
- o. "OAU" means the Organization of African Unity;
- p. "Women" mean persons of the female gender, including girls;
- q. "Sphere standards" mean standards for monitoring and evaluating the effectiveness and impact of humanitarian assistance; and
- r. "States Parties" means African States which have ratified or acceded to this Convention.

### Article 2

#### Objectives

The objectives of this Convention are to:

- a. Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;
- b. Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa;
- c. Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences;
- d. Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons;
- e. Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons;



### Article 3

#### General Obligations Relating to States Parties

- 1. States Parties undertake to respect and ensure respect for the present Convention. In particular, States Parties shall:
  - a. Refrain from, prohibit and prevent arbitrary displacement of populations;
  - b. Prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion;
  - c. Respect and ensure respect for the principles of humanity and human dignity of internally displaced persons;
  - d. Respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law;
  - e. Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons.;
  - f. Respect and ensure respect for the humanitarian and civilian character of the protection of and assistance to internally displaced persons, including ensuring that such persons do not engage in subversive activities;
  - g. Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law;
  - h. Ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;
  - i. Ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement;
  - j. Ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel;
  - k. Promote self-reliance and sustainable livelihoods amongst internally displaced persons, provided that such measures shall not be used as a basis for neglecting the protection of and assistance to internally displaced persons, without prejudice to other means of assistance;



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

#### Article 4

##### **Obligations of States Parties relating to Protection from Internal Displacement**

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



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

#### Article 5

##### **Obligations of States Parties relating to Protection and Assistance**

1. States Parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind.
2. States Parties shall cooperate with each other upon the request of the concerned State Party or the Conference of State Parties in protecting and assisting internally displaced persons.



3. States Parties shall respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organizations in providing protection and assistance to internally displaced persons, in accordance with international law.
4. States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.
5. States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities, in cooperation with international organizations or agencies.
6. States Parties shall provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organizations and humanitarian agencies, civil society organizations and other relevant actors. Such organizations may offer their services to all those in need.
7. States Parties shall take necessary steps to effectively organize, relief action that is humanitarian, and impartial in character, and guarantee security. States Parties shall allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons. States Parties shall also enable and facilitate the role of local and international organizations and humanitarian agencies, civil society organizations and other relevant actors, to provide protection and assistance to internally displaced persons. States Parties shall have the right to prescribe the technical arrangements under which such passage is permitted.
8. States Parties shall uphold and ensure respect for the humanitarian principles of humanity, neutrality, impartiality and independence of humanitarian actors.
9. States Parties shall respect the right of internally displaced persons to peacefully request or seek protection and assistance, in accordance with relevant national and international laws, a right for which they shall not be persecuted, prosecuted or punished.
10. States Parties shall respect, protect and not attack or otherwise harm humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons.
11. States Parties shall take measures aimed at ensuring that armed groups act in conformity with their obligations under Article 7.



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

## **Article 6**

### **Obligations Relating to International Organizations and Humanitarian Agencies**

1. International organizations and humanitarian agencies shall discharge their obligations under this Convention in conformity with international law and the laws of the country in which they operate.
2. In providing protection and assistance to Internally Displaced Persons, international organizations and humanitarian agencies shall respect the rights of such persons in accordance with international law.
3. International organizations and humanitarian agencies shall be bound by the principles of humanity, neutrality, impartiality and independence of humanitarian actors, and ensure respect for relevant international standards and codes of conduct.

## **Article 7**

### **Protection and Assistance to Internally Displaced Persons in Situations of Armed Conflict**

1. The provisions of this Article shall not, in any way whatsoever, be construed as affording legal status or legitimizing or recognizing armed groups and are without prejudice to the individual criminal responsibility of the members of such groups under domestic or international criminal law.
2. Nothing in this Convention shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
3. The protection and assistance to internally displaced persons under this Article shall be governed by international law and in particular international humanitarian law.
4. Members of Armed groups shall be held criminally responsible for their acts which violate the rights of internally displaced persons under international law and national law.
5. Members of armed groups shall be prohibited from:





- a. Carrying out arbitrary displacement;
- b. Hampering the provision of protection and assistance to internally displaced persons under any circumstances;
- c. Denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family;
- d. Restricting the freedom of movement of internally displaced persons within and outside their areas of residence;
- e. Recruiting children or requiring or permitting them to take part in hostilities under any circumstances;
- f. Forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children;
- g. Impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons;
- h. Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons and shall not destroy, confiscate or divert such materials; and
- i. Violating the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such places.

#### **Article 8**

##### **Obligations relating to the African Union**

1. The African Union shall have the right to intervene in a Member State pursuant to a decision of the Assembly in accordance with Article 4(h) of the Constitutive Act in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity;
2. The African Union shall respect the right of States Parties to request intervention from the Union in order to restore peace and security in accordance with Article 4(j) of the Constitutive Act and thus contribute to the creation of favourable conditions for finding durable solutions to the problem of internal displacement;



3. The African Union shall support the efforts of the States Parties to protect and assist internally displaced persons under this Convention. In particular, the Union shall:
  - a. Strengthen the institutional framework and capacity of the African Union with respect to protection and assistance to internally displaced persons;
  - b. Coordinate the mobilisation of resources for protection and assistance to internally displaced persons;
  - c. Collaborate with international organizations and humanitarian agencies, civil society organizations and other relevant actors in accordance with their mandates, to support measures taken by States Parties to protect and assist internally displaced persons.
  - d. Cooperate directly with African States and international organizations and humanitarian agencies, civil society organizations and other relevant actors, with respect to appropriate measures to be taken in relation to the protection of and assistance to internally displaced persons;
  - e. Share information with the African Commission on Human and Peoples' Rights on the situation of displacement, and the protection and assistance accorded to internally displaced persons in Africa; and
  - f. Cooperate with the Special Rapporteur of the African Commission on Human and Peoples' Rights for Refugees, Returnees, IDPs and Asylum Seekers in addressing issues of internally displaced persons.

#### **Article 9**

##### **Obligations of States Parties Relating to Protection and Assistance during Internal Displacement**

1. States Parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others:
  - a. Discrimination against such persons in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons;
  - b. Genocide, crimes against humanity, war crimes and other violations of international humanitarian law against internally displaced persons;
  - c. Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance or torture and other forms of cruel, inhuman or degrading treatment or punishment;



- d. Sexual and gender based violence in all its forms, notably rape, enforced prostitution, sexual exploitation and harmful practices, slavery, recruitment of children and their use in hostilities, forced labour and human trafficking and smuggling; and
- e. Starvation.

2. States Parties shall:

- a. Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security;
- b. Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities;
- c. Provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases;
- d. Take special measures to protect and provide for the reproductive and sexual health of internally displaced women as well as appropriate psycho-social support for victims of sexual and other related abuses;
- e. Respect and ensure the right to seek safety in another part of the State and to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk;
- f. Guarantee the freedom of movement and choice of residence of internally displaced persons, except where restrictions on such movement and residence are necessary, justified and proportionate to the requirements of ensuring security for internally displaced persons or maintaining public security, public order and public health;
- g. Respect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons;



- h. Take necessary measures, including the establishment of specialized mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties;
  - i. Take necessary measures to protect individual, collective and cultural property left behind by displaced persons as well as in areas where internally displaced persons are located, either within the jurisdiction of the State Parties, or in areas under their effective control;
  - j. Take necessary measures to safeguard against environmental degradation in areas where internally displaced persons are located, either within the jurisdiction of the State Parties, or in areas under their effective control;
  - k. States Parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance;
  - l. Take necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, the right to vote and to be elected to public office; and
  - m. Put in place measures for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to internally displaced persons in accordance with relevant practice, including the Sphere Standards.
3. States Parties shall discharge these obligations, where appropriate, with assistance from international organizations and humanitarian agencies, civil society organizations, and other relevant actors.

**Article 10**

**Displacement induced by Projects**

- 1. States Parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors;
- 2. States Parties shall ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects;
- 3. States parties shall carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.



### Article 11

#### Obligations of States Parties relating to Sustainable Return, Local Integration or Relocation

1. States Parties shall seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity.
2. States Parties shall enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions.
3. States Parties shall cooperate, where appropriate, with the African Union and international organizations or humanitarian agencies and civil society organizations, in providing protection and assistance in the course of finding and implementing solutions for sustainable return, local integration or relocation and long-term reconstruction.
4. States Parties shall establish appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons.
5. States Parties shall take all appropriate measures, whenever possible, to restore the lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration, and reinsertion.

### Article 12

#### Compensation

1. States Parties shall provide persons affected by displacement with effective remedies.
2. States Parties shall establish an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards.
3. A State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.



### Article 13

#### Registration and Personal Documentation

1. States Parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control. In doing so, States Parties may collaborate with international organizations or humanitarian agencies or civil society organizations.
2. States Parties shall ensure that internally displaced persons shall be issued with relevant documents necessary for the enjoyment and exercise of their rights, such as passports, personal identification documents, civil certificates, birth certificates and marriage certificates.
3. States Parties shall facilitate the issuance of new documents or the replacement of documents lost or destroyed in the course of displacement, without imposing unreasonable conditions, such as requiring return to one's area of habitual residence in order to obtain these or other required documents. The failure to issue internally displaced persons with such documents shall not in any way impair the exercise or enjoyment of their human rights.
4. Women and men as well as separated and unaccompanied children shall have equal rights to obtain such necessary identity documents and shall have the right to have such documentation issued in their own names.

### Article 14

#### Monitoring Compliance

1. States Parties agree to establish a Conference of States Parties to this Convention to monitor and review the implementation of the objectives of this Convention.
2. States Parties shall enhance their capacity for cooperation and mutual support under the auspices of the Conference of the States Parties.
3. States Parties agree that the Conference of the States Parties shall be convened regularly and facilitated by the African Union.
4. States Parties shall, when presenting their reports under Article 62 of the African Charter on Human and Peoples' Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention.





## Final Provisions

### Article 15

#### Application

1. States Parties agree that except where expressly stated in this Convention, its provisions apply to all situations of internal displacement regardless of its causes.
2. States Parties agree that nothing in this Convention shall be construed as affording legal status or legitimizing or recognizing armed groups and that its provisions are without prejudice to the individual criminal responsibility of their members under domestic or international criminal law.

### Article 16

#### Signature, ratification and membership

1. This Convention shall be open to signature, ratification or accession by Member States of the AU in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the African Union Commission.

### Article 17

#### Entry into force

1. This Convention shall enter into force thirty (30) days after the deposit of the instruments of ratification or accession by fifteen (15) Member States.
2. The Chairperson of the AU Commission shall notify Member States of the coming into force of this Convention.

### Article 18

#### Amendment and Revision

1. States Parties may submit proposals for the amendment or revision of this Convention.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.



3. The Conference of States Parties, upon advice of the Executive Council, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this Article.
4. Amendments or revision shall be adopted by the Conference of States Parties by a simple majority of the States Parties present and voting.
5. Amendments shall come into force thirty (30) days following the depositing of the fifteenth (15) instrument of ratification by the States Parties with the Chairperson of the AU Commission.

### Article 19

#### Denunciation

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

### Article 20

#### Saving Clause

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



Justice and Human Rights, or any other competent international body shall in no way be affected by this Convention.

4. The provisions of this Convention shall be without prejudice to the individual criminal responsibility of internally displaced persons, within the framework of national or international criminal law and their duties by virtue of the African Charter on Human and Peoples' Rights.

#### **Article 21**

##### **Reservations**

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

#### **Article 22**

##### **Settlement of Disputes**

1. Any dispute or differences arising between the States Parties with regard to the interpretation or application of this Convention shall be settled amicably through direct consultations between the States Parties concerned. In the event of failure to settle the dispute or differences, either State may refer the dispute to the African Court of Justice and Human Rights.
2. Until such time as and when the latter shall have been established, the dispute or differences shall be submitted to the Conference of the States Parties, which will decide by consensus or, failing which, by a two-third (2/3) majority of the States Parties present and voting.

#### **Article 23**

##### **Depository**

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

**ADOPTED BY THE SPECIAL SUMMIT OF THE UNION  
HELD IN KAMPALA, UGANDA,  
23<sup>RD</sup> OCTOBER 2009**





**Human Rights Strategy for Africa, Department of Political  
Affairs, African Union Commission (14 December 2011)**

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# **HUMAN RIGHTS STRATEGY FOR AFRICA**

**DEPARTMENT OF POLITICAL AFFAIRS  
AFRICAN UNION COMMISSION**

## ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
AfCHPR	African Court on Human and Peoples' Rights
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
AGA	African Governance Architecture
APRM	African Peer Review Mechanism
AU	African Union
APSA	African Peace and Security Architecture
AUABC	African Union Advisory Board on Corruption
AUC	African Union Commission
AUCIL	African Union Commission on International Law
CA	Constitutive Act
CEN-SAD	Community of Sahel-Saharan States
COMESA	Common Market for Eastern and Southern Africa
CSO	Civil Society Organizations
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOSOCC	Economic, Social and Cultural Council
ECOWAS	Economic Community of West African States
EC	Executive Council
HRSA	Human Rights Strategy for Africa
IGAD	Inter-Governmental Development Authority
NEPAD	New Partnership for Africa's Development
NHRI	National Human Rights Institution
OAU	Organization of African Unity
PAP	Pan-African Parliament
PRC	Permanent Representatives Committee
PSC	Peace and Security Council
PSD	Peace and Security Department
RECs	Regional Economic Communities
SADC	Southern African Development Community
UDHR	Universal Declaration on Human Rights
UMA	Arab Maghreb Union
UN	United Nations
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UNSC	United Nations Security Council
UNWOMEN	United Nations Entity for Gender Equality and Empowerment of Women

## EXECUTIVE SUMMARY

1. The Human Rights Strategy for Africa is a guiding framework for collective action by AU, RECs and member states aimed at strengthening the African human rights system. The Strategy seeks to address the current challenges of the African human rights system in order to ensure effective promotion and protection of human rights on the continent. These challenges include:
  - Inadequate coordination and collaboration among AU and RECs organs and institutions;
  - Limited capacity of human rights institutions;
  - Insufficient implementation and enforcement of human rights norms and decisions; and
  - Limited awareness and access to the African human rights mechanisms.
2. In order to effectively address these challenges, the Strategy's objectives are to:
  - Enhance coordination and collaboration among AU and RECs organs and institutions and member states
  - Strengthen the capacity of AU and RECs institutions with a human rights mandate
  - Accelerate ratification of human rights instruments
  - Ensure effective implementation of human rights instruments and decisions
  - Increase promotion and popularization of African human rights norms
3. The Strategy is based on principles, standards, and norms that permeate the various legal and policy instruments of the AU and RECs within the realm of human rights, democracy and governance. The Strategy strengthens ongoing AU and RECs initiatives to build synergy and avoid duplication of efforts and resources in order to ensure effective functioning of the African human rights system.
4. The Human Rights Strategy for Africa is part of a broader process to establish greater coordination amongst AU organs and institutions within the framework of the African Governance Architecture (AGA), the African Peace and Security Architecture (APSA) (Dec. EX.CL/619 XVIII), the Humanitarian Policy Framework, the Africa Fit for Children and the African Women's Decade 2010-2020.
5. The African Governance Platform will provide the overall mechanism for implementation and review of the Strategy building on existing mandates and relationships amongst AU organs and institutions, RECs and member states.
6. The Strategy does not create new obligations, but rather it seeks to complement the efforts of member states to discharge their existing duties and responsibilities under AU, RECs and international human rights instruments.

## INTRODUCTION

7. The Constitutive Act of the African Union, in its Article 3(h) provides a clear mandate to AU organs and institutions to promote and protect human and peoples' rights on the continent.
8. The African Charter on Human and Peoples' Rights commits AU Member States to the adherence of the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the African Union and the United Nations and their duty to promote and protect human and peoples' rights and all freedoms and taking into account the importance traditionally attached to these rights and freedoms in Africa.
9. The Protocol Relating to the Establishment of the Peace and Security Council of the African Union, in its Article 4(c), implores AU Member States to respect the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law.
10. The Strategic Plan of the African Union Commission (AUC) (2009-2012) gives the AUC the mandate to achieve good governance, democracy, human rights, rights-based approaches to development, including social, economic, cultural and environmental rights.
11. The strategy is also an opportunity to achieve the objectives of the African women's decade, the youth decade, the second decade on education for Africa, the AU COMMIT campaign on trafficking in human beings, the plan of action on child survival and development of children in Africa, the 2<sup>nd</sup> Decade of Education for Africa (2006 - 2015) and the Call for Accelerated Action on the Implementation of the Plan of Action Towards Africa Fit for Children (2008 - 2012) the Outcomes of the Kampala Special Summit on the Protection and Assistance of Internally displaced persons (IDPs) in Africa.
12. The AU organs and institutions developed this Strategy in partnership with the UN System within the 10 Year Capacity Building Programme for AU (TYCBP-AU), as well as other stakeholders.

## Process

13. To develop the structure of this strategy, a mapping questionnaire was developed and shared with all concerned stakeholders for input. The input informed the process of establishing the Human Rights Strategy for Africa (the Strategy). A consultant was engaged to assist in the process of consolidating the information and help to draft a clear and concise strategy for discussion and finalization through consultations amongst AU organs and stakeholders.
14. The methodology of developing the Strategy consisted of an analysis of response in questionnaires and in related reports as well as studies resulting from a series of meetings and consultations held with AU Organs and Institutions with a human rights mandate and other stakeholders including CSOs.
15. AU Organs with a human rights mandate held a number of meetings and consultations during which they discussed the scope and framework of the

Strategy. This culminated in the development of this Strategy which focuses on three main areas. These are: a brief overview of the African Human Rights System since the adoption of the African Charter in 1981; an in-depth assessment of the current state of coordination and collaboration through the examination of the AU Organs with a human rights mandate, institutions and RECs, and their inter-relationships; a Strategic Plan and finally, the formulation of a roadmap based on the Strategy's recommendations with a view to enhancing the promotion and protection of human rights in Africa.



## CONTEXT

16. The elaboration of the Strategy takes place in the context of great political, economic and social transformation in Africa.

17. Since the adoption of the African Charter on Human and Peoples' Rights in 1981, Member States have demonstrated a commitment to collectively securing the promotion and protection of human rights on the continent. At the continental and regional levels, this commitment is evident in the content of instruments adopted and efforts directed at creating and enhancing institutions that would implement them.

18. At the national level efforts have been made to set up mechanisms such as national human rights institutions that reinforce the human rights promotion and protection system.

19. As a reflection of the overall progress that has been achieved there is a continental consensus to fight impunity. The Union has also been mandated to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, in accordance with Article 4(h) of the Constitutive Act.

20. However, the continent continues to face challenges including the slow pace of ratification, domestication and implementation of instruments and decisions of human rights bodies. In addition, there is inadequate coordination and coherence among the AU organs and institutions and the RECs in terms of policy initiation, development and implementation. The capacity and resources for implementation have not matched the progress achieved in adopting human rights instruments and establishing institutions.

21. There is a need, therefore, to address these challenges in order to enhance the capacity of the AU organs and institutions and Member States to better respond to instances of serious or massive violations of human rights in Africa.

22. The Strategy has been formulated as part of the evolving African governance architecture. It is also formulated within the context of accelerating continental integration through Shared Values and the review of the African human rights system after thirty years of the African Charter on Human and Peoples' Rights.

23. The Human Rights Strategy for Africa is a guiding framework for collective action by AU, RECs and member states aimed at strengthening the African human rights system. The Strategy seeks to address the current challenges of the African human rights system in order to ensure effective promotion and protection of human rights on the continent. These include:

- Inadequate coordination and collaboration among AU and RECs organs and institutions;
- Limited capacity of human rights institutions;
- Insufficient implementation and enforcement of human rights norms and decisions; and
- Limited awareness and access to the African human rights mechanisms.

24. In order to effectively address these challenges, the Strategy's objectives are to:

- Enhance coordination and collaboration among AU and RECs organs and institutions and member states
- Strengthen the capacity of AU and RECs institutions with a human rights mandate
- Accelerate ratification of human rights instruments
- Ensure effective implementation of human rights instruments and decisions
- Increase promotion and popularization of African human rights norms

25. The overall vision of the strategy is a unified well governed Africa respectful of human dignity and in which a culture of human rights and democracy is institutionalized.

26. The expected outcomes of the Strategy are as follows:

- a. Strengthened human rights system capable of deepening a culture of human rights and democracy in conformity with the African Charter on Human and Peoples' Rights and other relevant instruments
- b. Enhanced coordination and coherence among AU organs, RECs and Member States on human rights
- c. Strengthened capacity of institutions at continental, regional and national levels for an effective human rights system
- d. Accelerated ratification of human rights instruments
- e. Effective implementation of human rights instruments and decisions; and
- f. Increased promotion and popularization of African human rights norms

## PRINCIPLES

27. The Strategy is based on principles, standards, norms and instruments that permeate the various policy pronouncements of the AU. The strategy shall be guided in particular by the following principles:

- a. Respect for human rights and democratic principles;
- b. Respect for the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law;
- c. Interdependence between socio-economic development and the security of peoples and States;
- d. Universality of rights;
- e. Gender equality;
- f. Effective participation of citizens in governance and development;
- g. Transparency, accountability and fairness;
- h. 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;
- i. Complementarity and subsidiarity amongst AU organs and institutions, RECs and Member States.

## PURPOSE OF THE STRATEGY

28. The purpose of the Strategy is to strengthen the African human rights system to deepen the culture of democracy and human rights in conformity with the objectives of the African Charter on Human and Peoples' Rights and other relevant instruments.

## SPECIFIC OBJECTIVES

29. The specific objectives of the Strategy include the following:

- (a) Enhanced policy, programmes and institutional coordination and coherence among AU, RECs and Member States;
- (b) Strengthened capacity of institutions at continental, regional and national levels;
- (c) Accelerated ratification, domestication and effective implementation of human rights instruments as well as reporting;
- (d) Increased promotion and popularization of African human rights norms.

## IMPLEMENTATION MECHANISMS

30. In order to facilitate the implementation of the Strategy, an action plan has been developed (see annexure 1) indicating various activities to be undertaken by the AU, RECs, member states and relevant stakeholders at continental, regional and national levels.

31. The AGA is the overall political and institutional framework for the promotion and protection of democracy, governance and human rights in Africa. The AGA is thus the framework to facilitate, coordinate and promote structural conflict prevention in Africa. As a result, the Strategy as part of the AGA seeks to support and complement efforts by Member States to achieve their commitments to promote

and protect human rights and to support the efforts made by the AU organs and institutions.

32. The African Governance Platform (the Platform) is the implementation mechanism of the Strategy, which includes the AUC, ACHPR, AfCHPR, ACERWC, PAP, and Secretariat of the APRM, ECOSOCC, AUABC, and RECs.

33. In order to implement the Strategy, a five (5) year action plan shall be developed with detailed annual operational plans. The proposed Action Plan is included as annexure I.

## ROLES AND RESPONSIBILITIES OF STAKEHOLDERS

34. The key stakeholders for implementation of the Strategy are at three levels: continental, regional and national.

35. At the continental level, the AU has the responsibility of providing direction, guidance and general political orientation on adoption of standards. It has the competence for decision making and in particular deciding on strategic interventions. It is vested with the competence to enforce decisions of its organs and institutions.

36. The AU organs and institutions also have mandates to promote and protect human rights by examining, and reviewing Member States' performance.

37. At the regional level, RECs contribute to the promotion, protection, and strengthening of the human rights system on the continent by encouraging its members to ratify, domesticate and implement human rights instruments. RECs shall also play an important role in the harmonization and coherence of policies, programmes and institutional co-ordination at the continental level.

38. Member states should ensure that the Strategy is implemented in a way that enhances compliance to the continental and regional instruments. This includes the ratification, domestication, and popularization of human rights norms and mechanisms, as well as the implementation of decisions of AU organs and institutions, and the RECs. NHRIs play an important role in popularization of human rights norms and mechanisms, monitoring state compliance with their obligations, and contribute to the implementation of the decisions of AU organs and institutions and of the RECs.

39. Other African stakeholders, including civil society organizations shall always be consulted and effectively involved. They play an important role in popularization of human rights norms and mechanisms, monitoring state compliance with their obligations, and contribute to the implementation of the decisions of AU organs and institutions and of the RECs.

40. International stakeholders' participation in the implementation of the Strategy shall be based on specific arrangement with the AU organs and institutions, RECs and Member States. These stakeholders, as partners, should coordinate among themselves where appropriate and as well as align their support and programmes with the Strategic objectives, programmes and identified needs of stakeholders of the AU organs and institutions, RECs and Member States.

**HUMAN RIGHTS STRATEGY FOR AFRICA  
ACTION PLAN 2012 -2016**

Human Rights Strategy Action Plan Description			
The Human Rights Strategy for Africa is a guiding framework for collective action by AU, RECs and member states aimed at strengthening the African human rights system. The Strategy seeks to address the current challenges of the African human rights system in order to ensure effective promotion and protection of human rights on the continent.			
Summary of Outcome			
Expected project outcome	Indicators	Means of verification	Assumptions
The African human rights system is strengthened in order to deepen the culture of democracy and human rights in conformity with the objectives of the African Charter on Human and Peoples' Rights and other relevant instruments	1.1 Improved coordination and collaboration among AU organs, RECs and member states for better protection and promotion of human rights in Africa	1.1 Reports: ACHPR, AfCHPR, ACRWC, APRM, RECs, UNOHCR, UNDP, UNHCR,	Commitment by AU organs, RECs, member states and other stakeholders

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41. Institutional arrangements for the implementation of the Strategy will involve all the stakeholders. In the process of implementing the Strategy close consultation, coordination and collaboration with relevant regional, continental, and international organizations, civil society organizations and the private sector will be ensured.

**RESOURCE MOBILISATION**

42. AU organs and institutions, RECs and Member States shall have the primary responsibility to secure resources for the effective implementation of the Strategy. AU organs and institutions and the RECs shall in their yearly budget include allocation for the implementation of the Strategy.

**MONITORING, EVALUATION AND REPORTING**

43. The Strategy shall be reviewed in accordance with the planning cycle of the AUC.

44. The Platform will be responsible for the regular monitoring and evaluation of the implementation of the Strategy.

45. The Platform shall be responsible for reporting on progress made in the implementation of the Strategy.

<b>2B</b>	Implement the capacity needs assessment recommendations					2014
<b>2C</b>	Develop and adopt instrument establishing the PAIHR					2013
<b>2D</b>	Operationalise the PAIHR					2015
<b>2E</b>	Develop a database of African human rights experts, institutions, think tanks, and CSOs capable of effectively providing technical support in relation to legal policy, institutional capacity building, advocacy and dissemination, strategic planning and M&E needs of the various human rights-mandated bodies at continental, regional and national levels					2013
<b>2F</b>	AU human rights-mandated organs' annual budgets reflect resources for implementation of the African Human Rights System					2013
<b>2G</b>	Utilise the governance facility for channelling of voluntary contributions to support the implementation of the human rights strategy					2014
	<b>Project Output 3</b>	<b>Indicators</b>	<b>Means of verification</b>	<b>Assumptions</b>	<b>Lead responsibility</b>	<b>By When</b>
	<b>3</b> Ratification of human rights instruments is accelerated	3.1 At least two (2) human rights instruments are universally ratified	3.1 AU treaty monitoring chart ; Summit report on the status of OAU/AU treaties ratification	3.1 Commitment from member states; member states capacity to ratify	Secretariat of AGA Platform (DPA)	2014
		3.2 Four (4) member states make a declaration allowing individuals and CSOs direct access to the Courts	3.2 AU treaty monitoring chart			3.2 Merger instrument on the African Court on Justice and Human Rights is not yet in force
	<b>Activities</b>					
<b>3A</b>	Develop and implement advocacy and technical support provision initiatives aimed at encouraging ratification of outstanding human rights instruments					ongoing
<b>3B</b>	Engage member states on challenges of ratification					ongoing
	<b>Project Output 4</b>	<b>Indicators</b>	<b>Means of verification</b>	<b>Assumptions</b>	<b>Lead responsibility</b>	<b>By When</b>
	<b>4</b> Effective implementation of human rights instruments and decisions	4.1 At least five countries domesticate human rights instruments	4.1 State reports	4.1 - 4.2 Commitment from member states; Member states' capacity to implement	Secretariat of AGA Platform (DPA)	2015
		4.2 10% increase in member states reporting	4.2 Treaty monitoring bodies' annual reports			2015
	<b>Activities</b>					
<b>4A</b>	Develop and implement advocacy and technical support initiatives aimed at encouraging implementation of outstanding human rights instruments, decision and recommendations					2014
<b>4B</b>	Strengthen enforcement and monitoring mechanism for compliance with decisions of AU human rights mandated organs					ongoing

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	Summary of outputs					
	<b>Project Output 1</b>	<b>Indicators</b>	<b>Means of verification</b>	<b>Assumptions</b>	<b>Lead responsibility</b>	<b>By When</b>
	<b>1</b> Enhanced coordination and coherence among AU organs, RECs and member states on human rights	1.1 Operationalisation of the human rights thematic cluster co-ordinating framework (AGA Platform)	1.1 Minutes of platform meetings on human rights thematic group	1.2-1.3 African Governance Architecture platform is operational	Secretariat of AGA Platform (DPA)	2011
		1.2 At least 2 common policy actions on implementation of human rights instruments by 2013	1.2 Reports by AU organs, RECs and member states on policy actions			2013
	<b>Activities</b>					
<b>1A</b>	Facilitate regularly-held meetings with and between institutions in order to identify synergies, gaps, complementarities and exchange experiences/ lessons/knowledge (including jurisprudence) and avoid unnecessary duplication of efforts					ongoing
<b>1B</b>	Consolidate and review co-ordination, complementarities and subsidiarity gaps and overlaps in the African human rights system, as well as reform of affected instruments in the human rights framework for policy decision and action to be taken					2013
<b>1C</b>	Implement regularly scheduled, appropriately designed and facilitated joint-trainings for African institutions with a human rights mandate in order for these institutions to stay up-to-date with African human rights system initiatives and developments					ongoing
<b>1D</b>	Operationalise the strategy through the AGA platform					2012
	<b>Project Output 2</b>	<b>Indicators</b>	<b>Means of verification</b>	<b>Assumptions</b>	<b>Lead responsibility</b>	<b>By When</b>
	<b>2</b> Strengthened capacity of institutions at continental, regional and national levels for an effective human rights system	2.1 At least 10% annual increase in funding	2.1 Annual AU budget of human rights organs	2.1 - 2.3 Member states commitment at all levels; Governance process facility is efficiently, transparently and accountably managed; Capacity of institutions to absorb increased funding; Overall AU budgeting process is improved	Secretariat of AGA Platform (DPA)	annually
		2.2 Establishment and operationalisation of Pan African Institute for Human Rights (PAIHR)	2.2 Framework and modality establishing PAIHR			2015
		2.3 Rate of retention of skilled staff in AU organs and institutions improves by at least 10%	2.3 AU Human Resource Department annual report			2014
	<b>Activities</b>					
<b>2A</b>	Conduct capacity needs assessment of the various institutions comprising the African human rights system for policy decision and action to be taken					2013

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<b>4C</b>	Undertake study to establish an African legal aid mechanism and fund to support complainants that are indigent or are members of vulnerable groups such as women, children, minorities, etc					2014
	<b>Project Output 5</b>	<b>Indicators</b>	<b>Means of verification</b>	<b>Assumptions</b>	<b>Lead responsibility</b>	<b>By When</b>
<b>5</b>	Increased promotion and popularisation of African human rights norms	5.1 Increased useage of African Human Rights Norms at national level	5.1 State reports; ACHPR reports; implementation of ACHPR and AUC decisions and recommendations	5.1 Political will and commitment from Member states; Member states capacity to implement	Secretariat of AGA Platform (DPA)	2014
<b>Activities</b>						
<b>5A</b>	Advocate for initiatives aimed at applying human rights based approach into development policy development and planning					ongoing
<b>5B</b>	Provide technical support to AU and RECs organs and institutions, and member states on applying human rights based approach					ongoing
<b>5C</b>	Facilitate a series of contextually-relevant human rights dialogues at the national level (linked to issues raised during activities 1B & 1C)					ongoing
<b>5D</b>	Develop thematic human rights educational and promotional materials that can be used effectively at various human rights-mandated continental, regional and national level institutions					2014
<b>5E</b>	Undertake capacity building on media human rights reporting at national and regional levels, targeting local and international media					2014
<b>5F</b>	Encourage development of "Model AU" system at African educational institutions, including website with downloadable supporting materials					2013
<b>5G</b>	Re-invigorate existing array of annual African Human Rights-related Day commemorations and celebrations on the continent, via a broad range of appropriately accessible media and communications strategies					ongoing
<b>5H</b>	Design and launch an Annual Nelson Mandela Award Scheme for the personality or organisation from civil society which has distinguished him/her/itself for their actions in the field of human rights in Africa					2016



**Phyto-Sanitary Convention for Africa, 1967**





## CAB/LEG/24.4/11

**PHYTO-SANITARY CONVENTION FOR AFRICA**

WE, the Heads of African State and Government of the Organization of African Unity:

**CONSIDERING** that all possible steps should be taken –

- (a) to prevent the introduction of diseases, insect pests, and other enemies of plants into any part of Africa;
- (b) to eradicate or control them in so far as they are present in the area; and
- (c) to prevent their spread to other territories within the area;

**CONSIDERING FURTHER** that the former Commission for Technical cooperation in Africa has been integrated into the Organization of African Unity (hereinafter referred to as "OAU") and that the Phyto-sanitary Convention for Africa South of the Sahara, done at London on July 29, 1954, as amended in 1961, should be remodeled and expanded to meet the requirements of the African States;

**RECOGNISING** that the cooperation amongst the African States in controlling pests and diseases of plants and plant products and in preventing their introduction and spread across national boundaries would be a vital contribution towards the realization of stronger solidarity amongst their peoples;

**RECOGNISING** further the usefulness of the international cooperation provided for in the International Plant Protection Convention signed at Rome on December 6<sup>th</sup>, 1951, and the need for coordination of activities in this field;

**RESOLVED** to reinforce the links between our States by establishing and strengthening common institutions;

**HAVE AGREED AS FOLLOWS:**

**Article I**

1. The Phyto-sanitary Convention for Africa South of the Sahara done at London on July, 1954, and amended by Protocol done at London on October 11, 1961, is, and remain abrogated as far as it concerns the African Continent.

2. The present Convention shall apply to all Member States of the Organization of African Unity, herein after referred to as "Member States".

#### **Article II** **Measures of protection**

Each Member State shall take such measures of quarantine, certification or inspection, or such other measures as may be considered necessary by the OAU in respect of any living organisms, plants, plant material, seeds, soil, compost or packing material (including containers) and any other article the importation of which has been considered by the OAU to constitute a threat to agriculture in any part of Africa.

#### **Article III**

Each Member State shall take such measures of quarantine, certification or inspection, or such other measures as may be considered necessary by the OAU in respect of any living organisms, plants, plant material, seeds, soil, compost or packing material (including containers) and any other article the importation of which has been considered by the OAU to constitute a threat to agriculture in any part of Africa.

#### **Article IV**

Each Member State shall prohibit, for such period of time as the OAU may propose, the importation of any living organisms, plants, plant material, seeds, soil, compost or packing material (including containers) and any other article the importation of which the OAU has considered shall be refused admittance into any part of Africa.

#### **Article V**

Each Member State shall take such action as may be desirable to deal effectively with diseases, insect pests and other enemies of plants in its territory which the OAU considers have become, or are likely to become, a serious danger within Africa.

#### **Article VI**

Nothing in the foregoing Articles of the present Convention shall prevent any Member State from importing, under the safeguards to be recommended by the OAU, and for pure or applied scientific investigations, small quantities of plants, plant material or seeds or any other prohibited material. It is understood, however, that such importation of prohibited materials shall only be made in cases of absolute necessity and after ensuring that the risks involved would be kept at the barest minimum. The Member State concerned shall, however, inform the OAU of each importation of otherwise prohibited plants, plant material, seeds, or any other material which is made, and the OAU shall so inform all other Member States.

#### **Article VII** **Panel of Scientific Consultants**

1. There shall be established a Panel of Scientific Consultants composed of Specialists in plant Pathology, Entomology, Nematology and other related disciplines.
2. The panel of Scientific Consultants shall advise the OAU on various technical problems relating to plant health and protection.
3. The Members of the Panel of Scientific Consultants shall be appointed by the Council of Ministers at the recommendation of the Educational, Scientific, Cultural and Health Commission. The Scientific Council of Africa shall make proposals of possible candidates to the Educational, Scientific, Cultural and Health Commission. Each Member of the Panel shall serve for a period of four years, and may be re-appointed.
4. Consultation shall normally be done by mail, but when the volume of work warrants it meeting of the Panel may be called to deal with the work.

#### **Article VIII** **Meeting of Phyto-sanitary matters**

1. At the request of the Educational, Scientific, Cultural and Health Commission, or at the request of a Member State and after approval by half of the OAU Membership, a meeting of Plant Experts of Member States may be called to deal with phyto-sanitary matters.
2. The draft agenda shall be circulated at the time that the meeting is announced.

3. The Rules of procedure of the Educational, Scientific, Cultural and Health Commission shall be applied during such a meeting.

4. If at any time two-thirds of the Member States have renounced membership of the OAU, the remaining Member States shall hold a special meeting to decide whether or not the Convention shall continue to exist, and if so what administrative, financial and other arrangements would govern its continued existence.

**Article IX**  
**Miscellaneous provisions**

The OAU General Secretariat shall service the operation of this Convention and also shall implement duly approved decisions of the OAU which may be taken as a result of the application and operation of the Convention.

**Article X**

Any dispute concerning the interpretation or application of this Convention which cannot be resolved by the Educational, Scientific, Cultural and Health Commission shall be referred to the Commission of Mediation, Conciliation and Arbitration of the OAU.

**Article XI**

The Convention may be amended or revised by the Educational, Scientific, Cultural and Health Commission in accordance with the provisions of Article XXXIII of the OAU Charter.

**IN FAITH WHEREOF, WE THE HEADS OF AFRICAN STATE AND GOVERNMENT HAVE APPROVED THIS CONVENTION.**

Done at Kinshasa in the Democratic Republic of Congo on the 13<sup>th</sup> day of September, 1967.

**MEMBER STATES OF THE ORGANIZATION OF AFRICAN UNITY**

Algeria	Madagascar
Botswana	Malawi
Burundi	Mali
Cameroun	Mauritania
Central African Republic	Morocco
Chad	Niger
Congo (Brazzaville)	Nigeria
Congo (Kinshasa)	Rwanda
Dahomey	Senegal
Ethiopia	Sierra Leone
Gabon	Somalia
Gambia	Sudan
Ghana	Tanzania
Guinea	Togo
Ivory Coast	Tunisia
Kenya	Uganda
Lesotho	United Arab Republic
Liberia	Upper Volta
Libya	Zambia

13<sup>th</sup> September, 1967

**African Convention on the Conservation of Nature and  
Natural Resources, 1968**



***AFRICAN CONVENTION ON THE CONSERVATION  
OF NATURE AND NATURAL RESOURCES***

CAB/LEG/24.1

**PREAMBLE**

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

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

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

***AFRICAN CONVENTION ON THE CONSERVATION  
OF NATURE AND NATURAL RESOURCES***

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

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

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

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

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

**HAVE AGREED AS FOLLOWS:**

**Article I**

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

**Article II  
Fundamental Principle**

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

**Article III  
Definitions**

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

- (a) "Natural Resources" means renewable resources, that is soil, water, flora and fauna;
- (b) "Specimen" means an individual example of a species of wild animal or wild plant or part of a wild plant;
- (c) "Trophy" means any dead animal specimen or part thereof whether included in a manufactured or processed object or otherwise dealt with, unless it has lost its original identity; also nests, eggs and eggshells;
- (d) "Conservation area" means any protected natural resource area, whether it be a strict natural reserve, a national park or a special reserve.

(1) "Strict nature reserve" means an area:

- (i) under State control and the boundaries of which may not be altered nor any portion alienated except by the competent legislative authority;
- (ii) throughout which any form of hunting or fishing, any undertaking connected with forestry, agriculture or mining, any grazing, any excavation or prospecting, drilling, leveling of the ground or construction, any work tending to alter the configuration of the soil or the character of the vegetation, any water pollution and, generally, any act likely to harm or disturb the fauna of fora, including introduction of zoological or botanical species, whether indigenous or imported, wild or domesticated, are strictly forbidden;

(iii) where it shall be forbidden to reside, enter, traverse or camp, and where it shall be forbidden to fly over at low altitude, without a special written permit from the competent authority, and in special scientific investigations (including removal of animals and plants in order to maintain an ecosystem) may only be undertaken by permission of the competent authority.

(2) "national park" means an area:

- (i) under State control and the boundaries of which may not be altered or any portion alienated except by the competent legislative authority;
- (ii) exclusively set aside for the propagation, protection, conservation and management of vegetation and wild animals as well as for the protection of sites, land-spaces or geological formations of particular scientific or aesthetic value, for the benefit and enjoyment of the general public; and
- (iii) in which the killing, hunting and capture of animals and the destruction or collection of plants are prohibited except for scientific and management purposes and on the condition that such measures are taken under the direction or control of the competent authority;
- (iv) covering any aquatic environment to which all of the provisions of section (b) (1-3) above are applicable.

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

(3) "special reserve" means other protected areas such as:

- (i) "game reserve" which shall denote an area
  - (a) set aside for the conservation, management and propagation of wild animal life and the protection and management of its habitat;

**Article V  
Water**

- (b) within which the hunting, killing or capture of fauna shall be prohibited except by or under the direction or control of the reserve authorities;
  - (c) where settlement and other human activities shall be controlled or prohibited.
1. The contracting States shall establish policies for conservation, utilization and development of underground and surface water, and shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water, taking appropriate measures with due regard to –
    - (a) the study of water cycles and the investigation of each catchment area;
    - (b) the co-ordination and planning of water resources development projects;
    - (c) the administration and control of all water utilization; and
    - (d) prevention and control of water pollution.

2. Where surface or underground water resources are shared by two or more of the contracting States, the latter shall act in consultation, and if the need arises, set up inter-State Commissions to study and resolve problems arising from the joint use of these resources, and for the joint development and conservation thereof.

**Article VI  
Flora**

1. The contracting States shall take all necessary measures for the protection of flora and to ensure its best utilization and development. To this end the Contracting States shall:
  - (a) adopt scientifically-based conservation, utilization and management plans of forests and rangeland, taking into account the social and economic needs of the States concerned, the importance of the vegetation cover for the maintenance of the water balance of an area, the productivity of soils and the habitat requirements of the fauna;
  - (b) observe section (a) above by paying particular attention to controlling bush fires, forest exploitation, land clearing for cultivation, and over-grazing by domestic and wild animals;
  - (c) set aside areas for forest reserve and carry out afforestation programmes where necessary;

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

**Article IV  
Soil**

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



- (d) limitation of forest grazing to season and intensities that will not prevent forest regeneration; and
  - (e) establish botanical gardens to perpetuate plant species of particular interest.
2. The Contracting States also shall undertake the conservation of plant species or communities, which are threatened and/or of special scientific or aesthetic value by ensuring that they are included in conservation areas.

**Article VII  
Faunal Resources**

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

2. The Contracting States shall adopt adequate legislation on hunting, capture and fishing, under which:

- (a) the issue of permits is properly regulated;
- (b) unauthorized methods are prohibited;
- (c) the following methods of hunting, capture and fishing are prohibited:
  - (1) any method liable to cause a mass destruction of wild animals;
  - (2) the use of drugs; poisons, poisoned weapons or poisoned baits;
  - (3) the use of explosives;

- (4) the following methods of hunting and capture are particularly prohibited:
  - (i) the use of mechanically propelled vehicles;
  - (ii) the use of fire;
  - (iii) the use of fire arms capable of firing more than one round at each pull of the trigger;
  - (iv) hunting or capture at night;
  - (v) the use of missiles containing detonators.

- (d) the following methods of hunting or capture are as far as possible prohibited:

- (1) the use of nets and stockades;
- (2) the use of concealed traps, pits, snares, set-gun traps, deadfalls, and hunting from a blind or hide.
- (e) with a view to as rational use as possible of game meat the abandonment by hunters of carcasses of animals, which represent a food resource, is prohibited.

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

**Article VIII  
Protected Species**

1. The Contracting States recognize that it is important and urgent to accord a special protection to those animal and plant species that are threatened with extinction, or which may become so, and to the habitat necessary to their survival. Where such a species is represented only in the territory of one Contracting State, that State has a particular responsibility for its protection. These species which are, or may be listed, according to the degree of protection that shall be given to them are placed in Class A or B of the Annex to this Convention, and shall be protected by Contracting States as follows:

- (a) species in Class A shall be totally protected throughout the entire territory of the Contracting States; the hunting, killing, capture or collection of specimens

shall be permitted only on the authorization in each case of the highest competent authority and only if required in the national interest or for scientific purposes; and

- (b) species in Class B shall be totally protected, but may be hunted, killed, captured or collected under special authorization granted by the competent authority.
2. The competent authority of each Contracting State shall examine the necessity of applying the provisions of this article to species not listed in the annex, in order to conserve the indigenous flora and fauna of their respective countries. Such additional species shall be placed in Class A or B by the State concerned, according to its specific requirements.

**Article IX**  
**Traffic in Specimens and Trophies**

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

- (5) which shall be on a standard form, as may be arranged under Article XVI.
- (c) make the import and transit of such specimens and trophies subject to the presentation of the authorization required under section (b) above, with due provision for the confiscation of specimens and trophies exported illegally, without prejudice to the application of other penalties.

**Article X**  
**Conservation Areas**

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

**Article XV**  
**Organization of National Conservation Services**

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

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

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

2. The Contracting States shall supply the Organization of African Unity with:

- (a) the text of laws, decrees, regulations and instructions in force in their territories, which are intended to ensure the implementation of this Convention;
  - (b) reports on the results achieved in applying the provisions of this Convention; and
  - (c) all the information necessary for the complete documentation of matters dealt with by this Convention if requested.
3. If so requested by Contracting States, the Organization of African Unity shall organize any meeting which may be necessary to dispose of any matters covered by this Convention. Requests for such meetings must be made by at least three of the Contracting States and be approved by two thirds of the States which it is proposed should participate in such meetings.
4. Any expenditure arising from this Convention, which devolves upon the Organization of African Unity shall be included in its regular budget, unless shared by the Contracting States or otherwise defrayed.

#### **Article XVII**

##### **Provision for Exceptions**

1. The provisions of this Convention shall not affect the responsibilities of Contracting States concerning:

- (a) the paramount interest of the State;
  - (b) “force majeure”;
  - (c) defence of human life.
2. The provisions of this Convention shall not prevent Contracting States:
- (a) in time of famine;
  - (b) for the protection of public health;
  - (c) in defence of property;

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

#### **Article XVIII** **Settlement of Disputes**

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

#### **Article XIX** **Signature and Ratification**

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

#### **Article XX** **Reservations**

1. At the time of signature, ratification or accession, any State may declare its acceptance of this Convention in part only, provided that such reservation may not apply to the provisions of Articles II – XI.
  2. Reservations made in conformity with the preceding paragraph shall be deposited together with the instruments of ratification or accession.
  3. Any Contracting State which has formulated a reservation in conformity with the preceding paragraph may at any time withdraw it by notifying the Administrative Secretary General of the Organization of African Unity.
- #### **Article XXI** **Entry into force**
1. This Convention shall come into force on the thirtieth day following the date of deposit of the fourth instrument of ratification or accession with the Administrative Secretary General of the Organization of African Unity, who shall inform participating States accordingly.

2. In the event of such a request the appropriate organ of the Organization of African Unity shall deal with the matter in accordance with the provision of sections 3 and 4 of Article XVI of this Convention.
3. (i) At the request of one or more Contracting States and notwithstanding the provisions of paragraphs (1) and (2) of this Article, the annex to the Convention may be revised or added to by the appropriate organ of the Organization of African Unity.  
(ii) Such revision or addition shall come into force three months after the approval by the appropriate organ of the Organization of African Unity.

**Article XXII**  
**Accession**

1. After the date of approval specified in Article XIX paragraph (1), this Convention shall be open to accession by any independent and sovereign African State.
2. The instruments of accession shall be deposited with the Administrative Secretary General of the Organization of African Unity.

**Article XXIII**  
**Denunciation**

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

**Article XXIV**  
**Revision**

1. After the expiry of a period of five years from the date of entry into force of this Convention, any Contracting State may at any time make a request for the revision of part or the whole of this Convention by notification in writing addressed to the Administrative Secretary General of the Organization of African Unity.

**Article XXV**  
**Final provisions**

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

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

1. ALGERIA (Signed)
2. BOTSWANA (Signed)
3. BURUNDI (Signed)
4. CAMEROON (Signed)
5. CENTRAL AFRICAN REPUBLIC (Signed)
6. CHAD (Signed)
7. CONGO (BRAZZAVILLE) (Signed)
8. DEMOCRATIC REPUBLIC OF CONGO (Signed)
9. DAHOMEY (Signed)
10. ETHIOPIA (Signed)
11. GABON (Signed)
12. GAMBIA (Signed)
13. GHANA (Signed)
14. GUINEA (Signed)
15. IVORY COAST (Signed)
16. KENYA (Signed)

<u>LIST OF PROTECTED SPECIES</u>			
<b>Class A</b>			
17. LESOTHO	(Signed)	<i>Mammalia</i>	
18. LIBERIA	(Signed)	<i>Primates</i>	
19. LIBYA	(Signed)	Lemuroidea	
20. MADAGASCAR	(Signed)	<i>Macaca sylvana</i>	All Malagasy lemuroids
21. MALAWI	(Signed)	<i>Theropithecus gelada</i>	Barbary ape
22. MALI	(Signed)	<i>Cercocebus galeritus galeritus</i>	Gelada baboon
23. MAURITANIA	(Signed)	<i>Cercopithecus diana</i>	Tana River mangabey
24. MAURITIUS	(Signed)	<i>Colobus badius kirkii</i>	Diana monkey
25. MOROCCO	(Signed)	<i>Colobus badius rufomitratus</i>	Zanzibar red colobus
26. NIGER	(Signed)	<i>Colobus badius gordonorum</i>	Tana River red colobus
27. NIGERIA	(Signed)	<i>Colobus verus</i>	Uhehe red colobus
28. RWANDA	(Signed)	<i>Pan troglodytes</i>	Green colobus
29. SENEGAL	(Signed)	<i>Pan paniscus</i>	Chimpanzee
30. SIERRA LEONE	(Signed)	<i>Gorilla gorilla</i>	Pygmy chimpanzee
31. SOMALIA	(Signed)	<i>Rodentia</i>	Gorilla
32. SUDAN	(Signed)	<i>Epixerus spp.</i>	<i>Rodentia</i>
33. SWAZILAND	(Signed)	<i>Carnivora</i>	African palm squirrels
34. TOGO	(Signed)	<i>Canis simensis</i>	<i>Carnivora</i>
35. TUNISIA	(Signed)	<i>Osbornictis piscivora</i>	Simenian jackal
36. UGANDA	(Signed)	<i>Fossa fossa</i>	Water civet
37. UNITED ARAB REPUBLIC	(Signed)	<i>Eupleres spp.</i>	Malagasy civet
38. UNITED REPUBLIC OF TANZANIA	(Signed)	<i>Felis nigripes</i>	<i>Falanouc</i>
39. UPPER VOLTA	(Signed)	<i>Felis aurata</i>	Black-footed cat
40. ZAMBIA	(Signed)	<i>Acinonyx jubatus</i>	African golden cat
		<i>Pinnipedia</i>	Cheetah
		<i>Monachus monachus</i>	<i>Pennipedia</i>
		<i>Sirenia</i>	Mediterranean monk seal
		<i>Dugong dugon</i>	<i>Sirenia</i>
		<i>Trichechus senegalensis</i>	Dugong
		<i>Perissodactyla</i>	West African manatee
		<i>Equus asinus</i>	<i>Perissodactyla</i>
		<i>Equus zebra zebra</i>	Wild ass
		<i>Ceratotherium simum</i>	Cape mountain zebra
		<i>Artiodactyla</i>	Square-lipped rhinoceros
		<i>Choeropsis liberiensis</i>	<i>Artiodactyla</i>
		<i>Cervus elaphus barbarus</i>	Pygmy hippopotamus
		<i>Okapia johnstoni</i>	Barbary stag
		<i>Taurotragus derbianus derbianus</i>	Okapi
			Western giant eland

*Cephalophus jentinki*  
*Hippotragus niger variani*  
*Alcelaphus buselaphus tora*  
*Alcelaphus buselaphus swaynoi*  
*Nesotragus moschatus moschatus*  
*Dorcatragus megalotis*  
*Gazella dorcas neglecta*  
*Gazella dorcas massaesyla*  
*Gazella gazella cuvieri*  
*Gazella leptocerus leptocerus*  
*Gazella pelzelni*  
*Gazella spekei*  
*Gazella dama mhorr*  
*Gazella dama tazonis*  
*Capra walie*  
**Aves**  
**Pelecanidae**  
*Ciconiidae, Scopidae et Ardeidae*  
**Phoenicopteridae**  
*Sagittarius serpentarius*  
*Aegypius, Gyps, Pseudogyps, Torgos*  
*Tringaceps, Neophron et Necrosyrtes*  
*Gypaetus barbatus*  
*Stephanoaetus coronatus*  
*Falco fasciinucha*  
*Agelastes meleagrides*  
*Afropavo congensis*  
**Gruidae**  
*Bucorvus spp.*  
*Picarthartes oreas*  
*Warsanglia johannis*  
**Reptilia**  
**Chelonitidae, Dermochelyidae**  
*Testudo gigantea*  
*Testudo ynikphora*  
*Testudo radiata*  
*Macroscincus coctei*  
*Gecko uroplates*  
*Casarea dussumieri*  
*Bolioria multicaarinata*  
*Acrantophis madagascariensi*

Jentink's duiker  
 Giant sable antelope  
 Tora Hartebeest  
 Swayne's hartebeest  
 Zanzibar suni  
 Beira antelope  
 Algerian dorcas gazelle  
 Moroccan dorcas gazelle  
 Cuvier's gazelle  
 Slender-horned gazelle  
 Pelseln's gazelle  
 Speke's gazelle  
 Mhorr gazelle  
 Rio de Oro dama gazelle  
 Walia ibex  
**Birds**  
 All pelicans  
 All storks, hammerkops, ibises, spoonbills, herons, egrets and bitterns  
 All Flamingos  
 Secretary bird  
 All vultures  
 Lammergeyer  
 Crowned hawk-eagle  
 Teita falcon  
 White-headed guineafowl  
 Congo peacock  
 All cranes  
 All ground hornbills  
 White-necked rockfowl  
 Grey-necked rockfowl  
**Reptiles**  
 All marine turtles  
 Giant tortoise  
 Angulated tortoise  
 Testudo radiata  
 Cape Verde skink  
 Leaf-tailed gecko  
 Plate Island boa  
 Ronde Island boa  
 Acrantophis madagascariensi

*Acrantophis dumerili*  
**Amphibia**  
 Cameroon toad  
 Viviparous toad  
**Fishes**  
 Blind fishes  
 “ “  
 “ “  
**Plantes**  
*Welwitschia*  
 Eucephalartos  
 Eucephalartos  
**Class B**  
**Mammals**  
**Insectivora**  
 All other shrews of the family  
 Potamogalidae  
**Primates**  
 All prosimians of the family  
 Lorisidae  
**Lorisidae**  
 All monkeys except common baboons  
**Pholidota**  
 Giant pangolin  
 Cape pangolin  
 Tree pangolin  
 Long-tailed tree pangolin  
**Carnivora**  
 All others of the sub-family Lutrinae  
**Lutrinae**  
 Aardwolf  
 Brown hyaena  
 Barbary hyaena  
 Caracal lynx  
 Serval  
 Lion  
 Leopard  
 Madagascar Tenrecs (all species) Fossa

*Acrantophis dumerili*  
**Amphibia**  
*Bufo supereiliaris*  
*Nectophrynoides occidentalis*  
**Pisces**  
*Caecobarbus, Cacomastacembelus*  
*Eitichtys, Typhleotris*  
*Phreatichthys, Uegitglanis*  
**Plantes**  
*Welwitschia bainesii*  
*Eucephalartos laurentianus*  
*Eucephalartos septentrionalis*

*Mammalia*  
**Insectivora**  
**Primates**  
**Lorisidae**  
**Primates**  
**Pholidota**  
*Manis gigantea*  
*Manis temmincki*  
*Manis tricuspis*  
*Manis longicaudata*  
**Carnivora**  
**Lutrinae**  
*Proteles cristatus*  
*Hyaena brumnea*  
*Hyaena hyaena barbara*  
*Felis caracal*  
*Felis serval*  
*Felis leo*  
*Pant hera pardus*  
**Tenrecidae**



<i>Cryptoprocta ferex</i>	Foassa
<i>Galidiinae</i>	All Malagasy mongooses of the sub-family Galidinae
<i>Tubul identata</i>	<i>Tubul identata</i>
<i>Olycteropus afer</i>	Aarwark
<i>Proscidae</i>	<i>Proscidea</i>
<i>Loxodonta africana</i>	Elephant
<i>Perissodactyla</i>	<i>Perissodactyla</i>
<i>Equus zebra bartmannae</i>	Hartmann's mountain zebra
<i>Equus burchelli</i>	Burchell's zebra
<i>Equus grevyi</i>	Grevy's zebra
<i>Diceros bicornis</i>	Black rhinoceros
<i>Hylochoerus meinertzhageni</i>	<i>Artiodactyla</i>
<i>Hippopotamus amphibius</i>	Giant forest hog
<i>Hyemoschus aquaticus</i>	Hippopotamus
<i>Giraffa camelopardalis</i>	Water chevrotain
<i>Tragelaphus angasi</i>	Giraffe
<i>Tragelaphus buxtoni</i>	Nyala
<i>Tragelaphus spekei</i>	Mountain nyala
<i>Tragelaphus imberbis</i>	Situtunga
<i>Tragelaphus strepsiceros</i>	Lesser Kudu
<i>Taurotragus oryx</i>	Greater Kudu
<i>Taurotragus derbianus</i>	Eland
<i>Boocercus eurycerus</i>	Giant eland
<i>Syncerus caffer</i>	Bongo
<i>Cephalophus adersi</i>	Buffalo
<i>Cephalophus ogilbyi</i>	Zanzibar duiker
<i>Cephalophus silvicultor</i>	Ogilby's duiker
<i>Cephalophus spadix</i>	Yellow-baked duiker
<i>Cephalophus zebra</i>	Abbott's duiker
<i>Kobus ellipsiprymnus</i>	Banded duiker
<i>Kobus defassa</i>	Waterbuck
<i>Kobus leche</i>	Defassa waterbuck
<i>Kobus megaceros</i>	Lechwe
<i>Adenota kob</i>	Nile lechwe Kob
<i>Redunca arundinum</i>	Reedbuck
<i>Redunca fulvorufula</i>	Mountain reedbuck
<i>Redunca equinus</i>	Bohor reedbuck
<i>Hippotragus equinus</i>	Roan antelope
<i>Hippotragus niger</i>	Sable antelope
<i>Oryx gazella</i>	Oryx

<i>Oryx tao</i>	Scimitar-horned oryx
<i>Adax nasomaculatus</i>	Adax
<i>Damaliscus lunatus</i>	Tsessebe (Sassaby)
<i>Damaliscus korrigum</i>	Topi
<i>Damaliscus dorcas dorcas</i>	Bontebok
<i>Damaliscus dorcas phillipsi</i>	Blesbok
<i>Damaliscus hunteri</i>	Hunter's hartebeest
<i>Alcelaphus buselaphus</i>	Hartebeest
<i>Alcelaphus lichtensteini</i>	Lichtenstein's hartebeest
<i>Connochaetes gnou</i>	Black wildebeest
<i>Connochaetes taurinus</i>	Wildebeest
<i>Oreotragus oreotragus</i>	Klipspringer
<i>Ourebia spp.</i>	Oribis (All species)
<i>Neotragus pygmaeus</i>	Royal antelope
<i>Neotragus batesi</i>	Dwarf antelope
<i>Madoqua kirki</i>	Damara dikdik
<i>Aepyceros melampus</i>	Impala
<i>Ammolorcas clarkei</i>	Dibatag
<i>Litodranus walleri</i>	Gerenuk
<i>Gazella dorcas</i>	Dorcas gazelle
<i>Gazella ruffifrons</i>	Korin gazelle
<i>Gazella tilonura</i>	Houglin's gazelle
<i>Gazella dama</i>	Dama gazelle
<i>Gazella scommerringi</i>	Doemmering's gazelle
<i>Capra ibex nubiana</i>	Nubian ibex
<i>Ammotragus lervia</i>	Barbary sheep (Aoudad)
<i>Aves</i>	<i>Birds</i>
<i>Struthio camelus</i>	Ostrich
<i>Falconiformes et Strigiformes</i>	All birds of prey and all owls not in
<i>Otididae</i>	All bustards
<i>Reptilia</i>	<i>Reptiles</i>
<i>Crocodylia</i>	All crocodiles





**Bamako Convention on the Ban of the Import into Africa and  
the Control of Transboundary Movement and Management of  
Hazardous Wastes within Africa, 1991**

**BAMAKO CONVENTION ON THE BAN OF THE IMPORT INTO AFRICA AND THE CONTROL OF TRANSBOUNDARY MOVEMENT AND MANAGEMENT OF HAZARDOUS WASTES WITHIN AFRICA**

**PREAMBLE**

The Parties to this Convention,

1. Mindful of the growing threat to health and the environment posed by the increased generation and the complexity of hazardous wastes,
2. Further mindful that the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential.
3. Aware of the risk of damage to human health and the environment caused by transboundary movements of hazardous wastes,
4. Reiterating that States should ensure that the generator should carry out his responsibilities with regard to the transport and disposal of hazardous wastes in a manner that is consistent with the protection of human health and environment, whatever the place of disposal,
5. Recalling relevant Chapters of the Charter of the Organization of African Unity (OAU) on environmental protection, the African Charter on Human and Peoples' Rights, Chapter IX of the Lagos Plan of Action and other Recommendations adopted by the Organization of African Unity on the environment,
6. Further recognizing the sovereignty of States to ban the importation into, and the transit through, their territory, of hazardous wastes and substances for human health and environmental reasons,
7. Recognizing also the increasing mobilization in Africa for the prohibition of transboundary movements of hazardous wastes and their disposal in African countries,
8. Convinced that hazardous wastes should, as far as is compatible with environmentally sound and efficient management, be disposed in the State where they were generated,
9. Convinced that the effective control and minimization of transboundary movements of hazardous wastes will act as an incentive, in Africa and elsewhere, for the reduction of the volume of the generation of such wastes,
10. Noting that a number of international and regional agreements deal with the problem of the protection and preservation of the environment with regard to the transit of dangerous goods,

11. Taking into account the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNEP) by Decision 14/30 of 17 June, 1987, the Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods (formulated in 1957 and updated biennially), the Charter of Human Rights, relevant recommendations, declarations, instruments and regulations adopted within the United Nations System, the relevant articles of the 1989 Brussels Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal which allow for the establishment of regional agreements which may be equal to or stronger than its own provisions, Article 39 of the Lome IV Convention relating to the international movement of hazardous wastes and radioactive wastes, African intergovernmental organizations and the work and studies done within other international and regional organizations,
12. Mindful of the spirit, principles, aims and functions of the African Convention on the Conservation of Nature and Natural Resources adopted by the African Heads of State and Government in Algiers (1968) and the World Charter for Nature adopted by the General Assembly of the United Nations at its Thirty-seventh Session (1982) as the rule of ethics in respect of the protection of the human environment and the conservation of natural resources,
13. Concerned by the problem of transboundary traffic in hazardous wastes,
14. Recognizing the need to promote the development of clean production methods, including clean technologies, for the sound management of hazardous wastes produced in Africa, in particular, to avoid, minimize and eliminate the generation of such wastes,
15. Recognizing also that where necessary hazardous wastes should be transported in accordance with relevant international conventions and recommendations,
16. Determined to protect, by strict control, the human health of the African population and the environment against the adverse effects which may result from the generation of hazardous wastes,
17. Affirming a commitment also to responsibly address the problem of hazardous wastes originating within the Continent of Africa,

**HAVE AGREED AS FOLLOWS:**

**ARTICLE 1  
Definitions**

For the purpose of this Convention:

1. "Wastes" are substances or materials which are disposed of, or are intended to be disposed of, or are required to be disposed of by the provisions of national law;
  2. "Hazardous wastes" means wastes as specified in Article 2 of this Convention;
  3. "Management" means the prevention and reduction of hazardous wastes and the collection, transport, storage, and treatment either for the reuse or disposal, of hazardous wastes including after-care of disposal sites;
  4. "Transboundary movement" means any movement of hazardous wastes from an area under the national jurisdiction of any State to or through an area under the national jurisdiction of another State, or to or through an area not under the national jurisdiction of another State, provided at least two States are involved in the movement;
  5. "Clean production methods" means production or industrial systems which avoid, or eliminate the generation of hazardous wastes and hazardous products in conformity with Article 4, section 3 (f) and (g) of this Convention;
  6. "Disposal" means any operation specified in Annex III to this Convention;
  7. "Approval site or facility" means a site or facility for the disposal of hazardous wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;
  8. "Competent authority" means governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit, for receiving the notification of a transboundary movement of hazardous wastes and any information related to it, and for responding to such a notification, as provided in Article 6 of this Convention;
  9. "Focal point" means the entity of a Party referred to in Article 5 of this Convention responsible for receiving and submitting information as provided for in Articles 13 and 16;
  10. "Environmentally sound management of hazardous wastes" means taking all practicable steps to ensure that hazardous wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;
  11. "Area under the national jurisdiction of a State" means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;
  12. "State of export" means a State from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated;
  13. "State of import" means a State to which a transboundary movement is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;
  14. "State of transit" means any State, other than the State of export or import, through which a movement of hazardous wastes is planned or takes place;
  15. "States concerned" means States of export or import, or transit states, whether or not Parties;
  16. "Person" means any natural or legal person;
  17. "Exporter" means any person under the jurisdiction of the State of export who arranges for hazardous wastes to be exported;
  18. "Importer" means any person under the jurisdiction of the State of import who arranges for hazardous wastes to be imported;
  19. "Carrier" means any person who carries out the transport of hazardous wastes;
  20. "Generator" means any person whose activity produces hazardous wastes, or, if that person is not known, the person who is in possession and/or control of those wastes;
  21. "Disposer" means any person to whom hazardous wastes are shipped and who carries out the disposal of such wastes;
  22. "Illegal traffic" means any transboundary movement of hazardous wastes as specified in Article 9 of this Convention;
  23. "Dumping at sea" means the deliberate disposal of hazardous wastes at sea from vessels, aircraft, platforms or other man-made structures at sea, and includes ocean incineration and disposal into the seabed and sub-seabed.
- ARTICLE 2**  
**Scope of the Convention**
1. The following substances shall be "hazardous wastes" for the purposes of this convention:
    - (a) Wastes that belong to any category contained in Annex I of this Convention;
    - (b) Wastes that are not covered under paragraph (a) above but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the State of export, import or transit;

(c) Wastes which possess any of the characteristics contained in Annex II of this Convention;

(d) Hazardous substances which have been banned, cancelled or refused registration by government regulatory action, or voluntarily withdrawn from registration in the country of manufacture, for human health or environmental reasons.

2. Wastes which, as a result of being radioactive, are subject to any international control systems, including international instruments, applying specifically to radioactive materials, are included in the scope of this Convention.

3. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, shall not fall within the scope of this Convention.

### ARTICLE 3

#### National Definitions of Hazardous Wastes

1. Each State shall, within six months of becoming a Party to this Convention, inform the Secretariat of the Convention of the wastes, other than those listed in Annex I of this Convention, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.

2. Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to Paragraph 1 of this Article.

3. The Secretariat shall forthwith inform all Parties of the information it has received pursuant to paragraphs 1 and 2 of this Article.

4. Parties shall be responsible for making the information transmitted to them by the Secretariat under Paragraph 3 of this Article available to their exporters and other appropriate bodies.

### ARTICLE 4

#### General Obligations

##### 1. Hazardous Waste Import Ban.

All Parties shall take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the import of all hazardous wastes, for any reason, into Africa from non-Contracting Parties. Such import shall be deemed illegal and a criminal act. All Parties shall:

(a) forward as soon as possible, all information relating to such illegal hazardous waste import activity to the Secretariat who shall distribute the information to all Contracting Parties;

(b) co-operate to ensure that no imports of hazardous wastes from a non-Party enter a Party to this Convention. To this end, the Parties shall, at the Conference of the Contracting Parties, consider other enforcement mechanisms.

##### 2. Ban on Dumping of Hazardous Wastes at Sea and Internal Waters.

(a) Parties, in conformity with related international conventions and instruments shall, in the exercise of their jurisdiction within their internal waters, territorial seas, exclusive economic zones and continental shelf, adopt legal, administrative and other appropriate measures to control all carriers from non-Parties, and prohibit the dumping at sea of hazardous wastes, including their incineration at sea and their disposal in the seabed and sub-seabed. Any dumping of hazardous wastes at sea, including incineration at sea as well as seabed and sub-seabed disposal, by Contracting Parties, whether in internal waters, territorial seas, exclusive economic zones or high seas all be deemed to be illegal;

(b) Parties shall forward, as soon as possible, all information relating to dumping of hazardous wastes to the Secretariat which shall distribute the information to all Contracting Parties.

##### 3. Waste generation in Africa.

Each Party shall:

(a) ensure that hazardous waste generators submit to the Secretariat reports regarding the wastes that they generate in order to enable the Secretariat of the Convention to produce a complete hazardous waste audit;

(b) impose strict, unlimited liability as well as joint and several liability of hazardous waste generators;

(c) ensure that the generation of hazardous wastes within the area under its jurisdiction is reduced to a minimum taking into account social, technological and economic aspects;

(d) ensure the availability of adequate treatment and/or disposal facilities, for the environmentally sound management of hazardous wastes which shall be located, to the extent possible, within its jurisdiction;

(e) ensure that persons involved in the management of hazardous wastes within its jurisdiction take such steps as are necessary to prevent pollution arising from such wastes and, if such pollution occurs, to minimize the consequence thereof for human health and the environment;

### ***The Adoption of Precautionary Measures:***

**(f)** Each Party shall strive to adopt and implement the preventive, precautionary approach to pollution problems which entails, *inter alia*, preventing the release into the environment of substances which may cause harm to humans or the environment without waiting for scientific proof regarding such harm. The Parties shall cooperate with each other in taking the appropriate measures to implement the precautionary principle to pollution prevention through the application of clean production methods, rather than the pursuit of permissible emissions approach based on assimilative capacity assumption;

**(g)** In this respect Parties shall promote clean production methods applicable to entire product life cycles including:

- raw material selection, extraction and processing;
- product conceptualization, design, manufacture and assemblage;
- materials transport during all phases;
- industrial and household usage;
- reintroduction of the product into industrial systems or nature when it no longer services a useful function;

Clean production shall not include "end-of-pipe" pollution controls such as filters and scrubbers, or chemical, physical or biological treatment. Measures which reduce the volume of waste by incineration or concentration, mask the hazard by dilution, or transfer pollutants from one environment medium to another, are also excluded;

**(h)** The issue of preventing the transfer to Africa of polluting technologies shall be kept under systematic review by the Secretariat of the Conference and periodic report shall be made to the Conference of the Parties;

Obligations in Transport and Transboundary Movement of Hazardous Wastes from Contracting Parties:

**(i)** each Party shall prevent the export of hazardous wastes to States which have prohibited by their legislation or international agreement all such imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;

**(j)** a Party shall not permit hazardous wastes to be exported to a State which does not have the facilities for disposing of them in an environmentally sound manner;

**(k)** each Party shall ensure that hazardous wastes to be exported are managed in an environmentally sound manner in the State of import and transit. Technical guidelines for the environmentally sound management of wastes subject to this Convention shall be decided by the Parties at their first meeting;

**(l)** the Parties agree not to allow the export of hazardous wastes for disposal within the area South of 60 degrees South Latitude, whether or not such wastes are subject to transboundary movement;

**(m)** further, each Party shall:

**(i)** prohibit all persons under its national jurisdiction from transporting, storing or disposing of hazardous wastes unless such persons are authorized or allowed to perform such operations;

**(ii)** ensure that hazardous wastes that are to be the subject of a transboundary movement are packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices;

**(iii)** ensure that hazardous wastes be accompanied by a movement document, containing information specified in Annex IV B, from the point of which a transboundary movement commences to the point of disposal;

**(n)** Parties shall take the appropriate measures to ensure that the transboundary movements of hazardous wastes only are allowed if:

**(i)** the State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or

**(ii)** the transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention;

**(o)** Under this Convention, the obligation of States in which hazardous wastes are generated, requiring that those wastes are managed in an environmentally sound manner, may not under any circumstances be transferred to the States of important or transit;

**(p)** Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes which are exported to other States;

**(q)** Parties exercising their right to prohibit the import of hazardous wastes for disposal shall inform the other Parties of their decision pursuant to Article 13 of this Convention;

**(r)** Parties shall prohibit or shall not permit the export of hazardous wastes to States which have prohibited the import of such wastes, when notified by the Secretariat or any competent authority pursuant to sub-paragraph (q) above;



(s) Parties shall prohibit or shall not permit the export of hazardous wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes;

(t) Parties shall ensure that the transboundary movement of hazardous wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;

(u) Parties shall require that information about a proposed transboundary movement of hazardous wastes be provided to the States concerned, according to Annex IV A of this Convention, and clearly state the potential effects of the proposed movement on human health and the environment.

#### ***Furthermore***

(a) Parties shall undertake to enforce the obligations of this Convention against offenders and infringements according to relevant national laws and/or international law;

(b) Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order to better protect human health and the environment;

(c) This Convention recognizes the sovereignty of States over their territorial sea, waterways, and air space established in accordance with international law, and jurisdiction which States have in their exclusive economic zone and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigation rights and freedoms as provided for in international law and as reflected in relevant international instruments.

#### ***ARTICLE 5 Designation of Competent Authorities, Focal Point and Dumpwatch***

To facilitate the implementation of this Convention, the Parties shall:

1. Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit.

2. Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities.

3. Inform the Secretariat, within one month of the date of decision, of any changes regarding the designations made by them under paragraph 2 above.

4. Appoint a national body to act as a Dumpwatch. In such capacity as a Dumpwatch, the designated national body only will be required to co-ordinate with the concerned governmental and non-governmental bodies.

#### **ARTICLE 6 Transboundary Movement and Notification Procedures**

1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes. Such notification shall contain the declarations and information specified in Annex IV A of this Convention, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.

2. The State of import shall respond to the notifier in writing consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned that are Parties to this Convention.

3. The State of export shall not allow the transboundary movement until it has received:

(a) written consent of the State of import; and

(b) from the State of import, written confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.

4. Each State of transit which is a Party to this Convention shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit.

5. In the case of a transboundary movement of hazardous wastes where the wastes are legally defined as or considered to be hazardous wastes only:

(a) By the State of export, the requirements of paragraph 8 of this Article that apply to the importer or disposer and the State of import shall apply *mutatis mutandis* to the exporter and State of export, respectively;

(b) By the Party of import, or by the States of import and transit which are Parties to this Convention, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the



exporter and State of export shall apply *mutatis mutandis* to the importer or disposer and Party of import, respectively; or

(c) By any State of transit which is a Party to this Convention, the provisions of paragraph 4 of this Article shall apply to such State.

6. The State of export shall use a shipment specific notification even where hazardous wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of entry of the State of import, and in the case of transit, via the same customs office of entry and exit of the State or States of transit; specific notification of each and every shipment.

7. Each Party to this Convention shall limit their points or ports of entry and notify the Secretariat to this effect for distribution to all Contracting Parties. Such points and ports shall be the only ones permitted for the transboundary movement of hazardous wastes.

8. The Parties to this Convention shall require that each person who takes charge of a transboundary movement of hazardous wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.

9. The notification and response required by this Article shall be transmitted to the competent authority of the States concerned.

10. Any transboundary movement of hazardous wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import, or any State of transit which is a Party to this Convention.

#### **ARTICLE 7** ***Transboundary Movement from a Party through States which are not Parties***

Paragraphs 2 and 4 of Article 6 of this Convention shall apply *mutatis mutandis* to transboundary movements of hazardous wastes from a Party through a State or States which are not Parties.

#### **ARTICLE 8** **Duty to Re-import**

When a transboundary movement of hazardous wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure

that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner within a maximum of 90 days from the time that the importing State informed the State of export and the Secretariat. To this end, the State of export and any State of transit shall not oppose, hinder or prevent the return of those waste to the State of export.

#### **ARTICLE 9** **Illegal traffic**

1. For the purpose of this Convention, any transboundary movement of hazardous wastes under the following situations shall be deemed to be illegal traffic:

(a) if carried out without notification, pursuant to the provisions of this Convention, to all States concerned; or

(b) if carried out without the consent, pursuant to the provisions of this Convention, of a State concerned; or

(c) if consent is obtained from States concerned through falsification, misrepresentation or fraud; or

(d) if it does not conform in a material way with the documents; or

(e) if it results in deliberate disposal of hazardous wastes in contravention of this Convention and of general principles of international law.

2. Each Party shall introduce appropriate national legislation for imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports. Such penalties shall be sufficiently high to both punish and deter such conduct.

3. In case of a transboundary movement of hazardous wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are taken back by the exporter or the wastes in question are taken back by the exporter or generator or if necessary by itself into the State of export, within 30 days from the time the State of export has been informed about the illegal traffic. To this end the States concerned shall not oppose, hinder or prevent the return of those wastes to the State of export and appropriate legal action shall be taken against the contravenor(s).

4. In the case of a transboundary movement of hazardous wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are returned to the exporter by the importer and that legal proceedings according to the provisions of this Convention are taken against the contravenor(s).

**ARTICLE 10**  
**Intra-African Cooperation**

1. The Parties to this Convention shall co-operate with one another and with relevant African organizations, to improve and achieve the environmentally sound management of hazardous wastes.
2. To this end, the Parties shall:
  - (a) make available information, whether on a bilateral or multilateral basis, with a view to promoting clean production methods and the environmentally sound management of hazardous wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes;
  - (b) co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment;
  - (c) co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound clean production technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new and improved technologies;
  - (d) co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound clean production technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new and improved technologies;
  - (e) co-operate in developing appropriate technical guidelines and/or codes of practice;
  - (f) co-operate in the exchange and dissemination of information on the movement of hazardous wastes in conformity with Article 13 of this Convention.

**ARTICLE 11**  
**International Co-operation**  
**Bilateral, Multilateral and Regional Agreements**

1. Parties to this Convention may enter into bilateral, multilateral, or regional agreements or arrangements regarding the transboundary movement and management of hazardous wastes generated in Africa with Parties or non-Parties provided that such agreements or

arrangements do not derogate from the environmentally sound management of hazardous wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are no less environmentally sound than those provided for by this Convention.

2. Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 of this Article and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes as required by this Convention.
3. Each Contracting Party shall prohibit vessels flying its flag or aircraft registered in its territory from carrying out activities in contravention of this Convention.
4. Parties shall use appropriate measures to promote South-South co-operation in the implementation of this Convention.
5. Taking into account the needs of developing countries, co-operation between international organizations is encouraged in order to promote, among other things, public awareness, the development of rational management of hazardous waste, and the adoption of new and non/less polluting technologies.

**ARTICLE 12**  
**Liabilities and Compensation**

The Conference of Parties shall set up an ad hoc expert organ to prepare a draft protocol setting out appropriate rules and procedures in the field of liabilities and compensation for damage resulting from the transboundary movement of hazardous wastes.

**ARTICLE 13**  
**Transmission of Information**

1. The Parties shall ensure that in the case of an accident occurring during the transboundary movement of hazardous wastes or their disposal which is likely to present risks to human health and the environment in other States, those States are immediately informed.
2. The States shall inform each other, through the Secretariat, of:
  - (a) changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5 of this Convention;

- (b) changes in their national definition of hazardous wastes, pursuant to Article 3 of this Convention;
  - (c) decisions made by them to limit or ban the import of hazardous wastes;
  - (d) any other information required pursuant to paragraph 4 of this Article.
3. The Parties, consistent with national laws and regulations, shall set up information collection and dissemination mechanisms on hazardous wastes. They shall transmit such information through the Secretariat, to the Conference of the Parties established under Article 15 of this Convention, before the end of each calendar year, in a report on the previous calendar year, containing the following information:

- (a) competent authorities, dumpwatch, and focal points that have been designated by them pursuant to Article 5 of this Convention;
- (b) information regarding transboundary movements of hazardous wastes in which they have been involved, including:
  - (i) the quantity of hazardous wastes exported, their category, characteristics, destination, any transit country and disposal method as stated in the notification;
  - (ii) the amount of hazardous wastes imported, their category, characteristics, origin, and disposal methods;
  - (iii) disposal which did not proceed as intended;
  - (iv) efforts to achieve a reduction of the amount of hazardous wastes subject to transboundary movement;

(c) information on the measures adopted by them in the implementation of this Convention;

(d) information on available qualified statistics - which have been compiled by them on the effects on human health and the environment of the generation, transportation, and disposal of hazardous wastes - as part of the information required in conformity with Article 4 Section 3 (a) of this Convention;

(e) information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention;

(f) information on accidents occurring during the transboundary movements, treatment and disposal of hazardous wastes and on the measures undertaken to deal with them;

(g) information on treatment and disposal options operated within the area under their national jurisdiction;

(h) information on measures undertaken for the development of clean production methods, including clean production technologies, for the reduction and/or elimination of the production of hazardous wastes; and

(i) such other matters as the Conference of the Parties shall deem relevant.

4. The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes, and the response to it, are sent to the Secretariat.

#### **ARTICLE 14** **Financial Aspects**

1. The regular budget of the Conference of Parties, as required in Articles 15 and 16 of this Convention, shall be prepared by the Secretariat and approved by the Conference.

2. Parties shall, at the first meeting of the Conference of the Parties, agree on a scale of contributions to the recurrent budget of the Secretariat.

3. The Parties shall also consider the establishment of a revolving fund to assist, on an interim basis, in case of emergency situations to minimize damage from disasters or accidents arising from transboundary movements of hazardous wastes or during the disposal of such wastes.

4. The Parties agree that, according to the specific needs of different regions and sub-regions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and minimization of their generation should be established, as well as appropriate funding mechanisms of a voluntary nature.

#### **ARTICLE 15** **Conference of the Parties**

1. A Conference of the Parties, made up of Ministers having the environment as their mandate, is hereby established. The first meeting of the Conference of the parties shall be convened by the Secretary General of the OAU not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. The Conference of the Parties to this Convention shall adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial rules to determine in particular the financial participation of the Parties to this Convention.

3. The Parties to this Convention at their first meeting shall consider any additional measures needed to assist them in fulfilling their responsibilities with respect to the

protection and the preservation of the marine and inland waters environments in the context of this Convention.

4. The Conference of the Parties shall keep under continued review and evaluation the effective implementation of this Convention, and in addition, shall:

- (a) promote the harmonization of appropriate policies, strategies and measures for minimizing harm to human health and the environment by hazardous wastes;
- (b) consider and adopt amendments to this Convention and its annexes, taking into consideration, inter alia, available scientific, technical, economic and environmental information;
- (c) consider and undertake any additional action that may be required for the achievement of the purpose of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11 of this Convention;
- (d) consider and adopt protocols as required;
- (e) establish such subsidiary bodies as are deemed necessary for the implementation of this Convention; and

(f) make decisions for the peaceful settlement of disputes arising from the transboundary movement of hazardous wastes, if need be, according to international law.

5. Organizations may be represented as observers at meetings of the Conference of the Parties. Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes which has informed the Secretariat, may be represented as an observer at a meeting of the Conference of the Parties. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

#### **ARTICLE 16** **Secretariat**

1. The functions of the Secretariat shall be:

- (a) to arrange for, and service, meetings provided for in Articles 15 and 17 of this Convention;
- (b) to prepare and transmit reports based upon information received in accordance with Articles 3, 4, 6, 11 and 13 of this Convention as well as upon information derived from meetings of subsidiary bodies established under Article 15 of this Convention as well as upon as appropriate information provided by relevant inter-governmental and non-governmental entities;

(c) to prepare reports on its activities carried out in the implementation of its functions under this Convention and present them to the Conference of the Parties;

(d) to ensure the necessary co-ordination with relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(e) to communicate with focal points, competent authorities and Dumpwatch established by the Parties in accordance with Article 5 of this Convention as well as appropriate inter-governmental and non-governmental organizations which may provide assistance in the implementation of this Convention;

(f) to compile information concerning approved national sites and facilities of Parties to this Convention available for the disposal and treatment of their hazardous wastes and to circulate this information;

(g) to receive and convey information from and to Parties on:

- sources of technical assistance and training;
- available technical and scientific know-how;
- sources of advice and expertise; and
- availability of resources;

This information will assist them in,

- the management of the notification system of this Convention;
- environmentally sound clean production methods relating to hazardous wastes, such as clean production technologies;
- the assessment of disposal capabilities and sites;
- the monitoring of hazardous wastes; and
- emergency responses;

(h) to provide Parties to this Convention with information on consultants or consulting firms having the necessary technical competence in the field, which can assist them with examining a notification for a transboundary movement, the concurrence of a shipment of hazardous wastes with the relevant notification, and/or whether the proposed disposal facilities for hazardous wastes are environmentally sound, when they have reason to believe that the wastes in question will not be managed in an environmentally sound manner. Any such examinations would not be at the expense of the Secretariat;

(i) to assist Parties to this Convention in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;



(j) to co-operate with Parties to this Convention and with relevant and competent international organizations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and

(k) to perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties to this Convention.

2. The Secretariat's functions shall be carried out on an interim basis by the Organization of African Unity (OAU) jointly with the United Nations Economic Commission for Africa (ECA) until the completion of the first meeting of the Conference of the Parties held pursuant to Article 15 of this Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1 above, and decide upon the structures appropriate for those functions.

#### **ARTICLE 17**

##### ***Amendment of the Convention and of Protocols***

1. Any Party may propose amendments to this Convention and any Party to a Protocol may propose amendments to that Protocol. Such amendments shall take due account, inter alia, of relevant scientific, technical, environmental and social considerations.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any Protocol shall be adopted at a meeting of the Parties to the Protocol in question. The text of any proposed amendment to this Convention or to any Protocol, except as may otherwise be provided in such Protocol, shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the Signatories to this Convention for their information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting at the meeting. It shall then be submitted by the depositary to all Parties for ratification, approval, formal confirmation or acceptance.

##### ***Amendment of Protocols to this Convention***

4. The procedure specified in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that Protocol present and voting at the meeting shall suffice for their adoption.

##### **General Provisions**

5. Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraph 3 or 4 above shall enter into force between Parties having accepted them, on the ninetieth day after the receipt by the Depositary of the instrument of ratification, approval, formal confirmation or acceptance by at least two-thirds of the Parties who accepted the amendments to the Protocol concerned, except as may otherwise be provided in such Protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments.

6. For the purpose of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

#### **ARTICLE 18**

##### ***Adoption and Amendment of Annexes***

1. The annexes to this Convention or to any Protocol shall form an integral part of this Convention or of such Protocol, as the case may be and, unless expressly provided otherwise, a reference to this Convention or its Protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.

2. Except as may be otherwise provided in any Protocol with respect to its annexes, the following procedures shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:

(a) annexes to this Convention and its Protocols shall be proposed and adopted according to the procedure laid down in Article 17, paragraphs 1, 2, 3 and 4 of this Convention;

(b) any Party that is unable to accept an additional annex to this convention or an annex to any Protocol to which it is Party shall so notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;

(c) upon the expiration of six months from the date of the circulation of the communication by the Depositary, the annex shall become effective for all Parties to this Convention or to any Protocol concerned with the provision of sub-paragraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any Protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a Protocol. Annexes and amendments thereto shall take due account, inter alia, of relevant scientific and technical considerations.

4. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any Protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the Protocol enters into force.

**ARTICLE 19**  
**Verification**

Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention must inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. The Secretariat shall carry out a verification of the substance of the allegation and submit a report thereof to all the Parties to this Convention.

**ARTICLE 20**  
**Settlement of Disputes**

1. In case of dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any Protocol thereto, the Parties shall seek a settlement of the dispute through negotiations or any other peaceful means of their own choice.

2. If the Parties concerned cannot settle their dispute as provided in paragraph 1 of this Article, the dispute shall be submitted either to an ad hoc organ set up by the Conference for this purpose, or to the International Court of Justice.

3. The conduct of arbitration of disputes between Parties by the ad hoc organ provided for in paragraph 2 of this Article shall be as provided in Annex V of this Convention.

**ARTICLE 21**  
**Signature**

This Convention shall be open for signature by Member States of the OAU in Bamako and Addis Ababa for a period of six months from 30 January 1991 to 31 July 1991.

**ARTICLE 22**  
**Ratification, Acceptance, Formal Confirmation or Approval**

1. This Convention shall be subject to ratification, acceptance, formal confirmation, or approval by Member States of the OAU. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depository.

2. Parties shall be bound by all obligations of this Convention.

**ARTICLE 23**  
**Accession**

This Convention shall be open for accession by Member States of the OAU from the day after the date on which the Convention is closed for signature. The instruments of accession shall be deposited with the Depository.

**ARTICLE 24**  
**Right to Vote**

Each Contracting Party to this Convention shall have one vote.

**ARTICLE 25**  
**Entry into Force**

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the tenth instrument of ratification from Parties signatory to this Convention.

2. For each State which ratifies this Convention or accedes thereto after the date of the deposit of the tenth instrument of ratification, it shall enter into force on the ninetieth day after the date of deposit by such State of its instrument of accession or ratification.

**ARTICLE 26**  
**Reservations and Declarations**

1. No reservations or exception may be made to this Convention.

2. Paragraph 1 of this Article does not preclude a State when signing, ratifying, or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention in their application to that State.

**ARTICLE 27**  
**Withdrawal**

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depository.

2. Withdrawal shall be effective one year after receipt of notification by the Depository, or on such later date as may be specified in the notification.

3. Withdrawal shall not exempt the withdrawing Party from fulfilling any obligations it might have incurred under this Convention.

**ARTICLE 28**  
**Depositary**

The Secretary General of the Organization of African Unity shall be the Depositary for this Convention and of any Protocol thereto.

**ARTICLE 29**  
**Registration**

This Convention, as soon as it enters into force, shall be registered with the Secretary General of the United Nations Organization (UNO) in conformity with Article 102 of the Charter of the UNO.

**ARTICLE 30**  
**Authentic Texts**

The Arabic, English, French and Portuguese texts of this Convention are equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Adopted in Bamako, Mali,  
on 30 January, 1991

**ANNEX I**  
**CATEGORIES OF WASTES WHICH ARE HAZARDOUS WASTES**

Waste Streams:

- Y0 All wastes containing or contaminated by radionuclides, the concentration or properties of which result from human activity;
- Y1 Clinical wastes from medical care in hospitals, medical centres and clinics;
- Y2 Wastes from the production and preparation of pharmaceutical products;
- Y3 Waste pharmaceutical, drugs and medicines;
- Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals;
- Y5 Wastes from the manufacture, formulation and use of organic solvents;
- Y6 Wastes from the production, formulation and use of organic solvents;
- Y7 Wastes from heat treatment and tempering operations containing cyanides;
- Y8 Waste mineral oils unfit for their originally intended use;
- Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions;
- Y10 Waste substances and articles containing or contaminated with polychlorinated

biphenyl (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyl (PBBs);

Y11 Wastes tarry residues arising from refining, distillation and any pyrolytic treatment;

Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish;

Y13 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives;

Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or the environment are not known;

Y15 Wastes of an explosive nature not subject to other legislation;

Y16 Wastes from production, formulation and use of photographic chemicals and processing materials;

Y17 Wastes resulting from surface treatment of metals and plastics;

Y18 Residues arising from industrial waste disposal operations;

Y46 Wastes collected from households, including sewage and sewage sludges;

Y47 Residues arising from the incineration of household wastes;

Wastes having as constituents:

Y19 Metal carbonyls;

Y20 Beryllium; beryllium compounds;

Y21 Hexavalent chromium compounds;

Y22 Copper compounds;

Y23 Zinc compounds

Y24 Arsenic, arsenic compounds;

Y25 Selenium; selenium compounds;

Y26 Cadmium; cadmium compounds;

Y27 Antimony; antimony compounds;

Y28 Tellurium; tellurium compounds;

Y29 Mercury, mercury compounds;

Y30 Thallium; thallium compounds;

Y31 Lead; lead compounds;

Y32 Inorganic fluorine compounds excluding calcium fluoride;

Y33 Inorganic cyanides;

Y34 Acidic solutions or acids in solid form;

Y35 Basic solutions or bases in solid form;

Y36 Asbestos (dust and fibres);

Y37 Organic phosphorous compounds;

Y38 Organic cyanides;

Y39 Phenols; phenol compounds including chlorophenols;

Y40 Ethers;

Y41 Halogenated organic solvents;

Y42 Organic solvents excluding halogenated solvents;

Y43 Any congener of polychlorinated dibenzo-furan;

Y44 Any congener of polychlorinated dibenzo-p-dioxin;



Y45 Organohalogen compounds other than substances referred to in this Annex (e.g., Y39, Y41, Y42, Y43, Y44).

## **ANNEX II LIST OF HAZARDOUS CHARACTERISTICS**

UN code Characteristics  
Class\*

### **1 H1 Explosive**

An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction or producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.

\* Corresponds to the hazardous classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/Secretary General/AC.10/1/Rev.5, United Nations, New York, 1988).

### **H3 Flammable liquids**

The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures or liquids, or liquids containing solids in solution or suspension (for example paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5 degrees C, closed cup test, or not more than 65.6 degrees C, open-cup test. (Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such difference would be within the spirit of this definition).

#### **4.1 H4.1 Flammable solids**

Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.

#### **4.2 H4.2 Substances or wastes liable to spontaneous combustion**

Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.

4.3 H4.3 Substances or wastes which, by interaction with water are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.

#### **5.1 H5.1 Oxidizing**

Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen, cause or contribute to the combustion of other materials.

#### **5.2 H5.2 Organic peroxides**

Organic substances or wastes which contain the bivalent-0-0-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.

#### **6.1 H6.1 Poisonous (Acute)**

Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.

### **6.2 H6.2 Infectious substances**

Substances or wastes containing viable micro organisms or their toxins which are known or suspected to cause disease in animals or humans.

### **8 H8 Corrosives**

Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy other goods or the means of transport; they may also cause other hazards.

9 H10 Liberation of toxic gases in contact with air or water.

Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.

### **9 H11 Toxic (Delayed or chronic)**

Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.

### **9 H12 Exotoxic**

Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.

9 H13 Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above.

## **ANNEX III DISPOSAL OPERATIONS**

D1 Deposit into or onto land, (e.g., landfill, etc.)

D2 Land treatment, (e.g., biodegradation of liquid or sludgy discards in soils, etc.)

D3 Deep injection, (e.g., injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)

D4 Surface impoundment, (e.g., placement of liquid or sludge discards into pits, ponds, or lagoons, etc)

D5 Specially engineered landfill, (e.g., placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)

D6 Release into a water body except seas/oceans

D7 Release into seas/oceans including sea-bed insertion

D8 Biological treatment not specified elsewhere in this Annex which results in final compound or mixtures which are discarded by means of any of the operations in Annex III

D9 Physico-chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Annex III, (e.g., evaporation, drying, calcination, neutralization, precipitation, etc.)

D10 Incineration on land

D11 Incineration at sea

D12 Permanent storage, (e.g., emplacement of containers in a mine, etc.)

D13 Blending or mixing prior to submission to any of the operations in Annex III

- D14 Repackaging prior to submission to any of the operations in Annex III
- D15 Storage pending any of the operations in Annex III
- D16 Use as a fuel (other than in direct incineration) or other means to generate energy
- D17 Solvent reclamation/regeneration
- D18 Recycling/reclamation of organic substances which are not used as solvents
- D19 Recycling/reclamation of metals and metal compounds
- D20 Recycling/reclamation of other inorganic materials
- D21 Regeneration of acids and bases
- D22 Recovery of components used for pollution abatement
- D23 Recovery of components from catalysts
- D24 Used oil re-refining or other reuses of previously used oil
- D25 Land treatment resulting in benefit to agriculture or ecological improvement
- D26 Uses of residual materials obtained from any of the operations numbered D1-D25
- D27 Exchange of wastes for submission to any of the operations numbered D1-D26
- D28 Accumulation of material intended for any operation in Annex III

**ANNEX IV A**  
**INFORMATION TO BE PROVIDED ON NOTIFICATION**

1. Reason for waste export
2. Exporter of the waste 1/
3. Generator(s) of the waste and site of generation 1/
4. Importer and Disposer of the waste and actual site of disposal 1/
5. Intended carrier(s) of the waste or their agents, if known 1/
6. Country of export of the waste  
Competent authority 2/
7. Countries of transit  
Competent authority 2/
8. Country of import of the waste  
Competent authority 2/
9. Projected date of shipment and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit)
10. Means of transport envisaged (road, rail, sea, air, inland waters)
11. Information relating to insurance<sup>3/</sup>
12. Designation and physical description of the waste including Y number and UN number and its composition <sup>4/</sup> and information on any special handling requirements including emergency provisions in case of accidents
13. Type of packing envisaged (e.g. bulk, drummer, tanker)
14. Estimated quantity in weight/volume
15. Process by which the waste is generated <sup>5/</sup>
16. Waste classifications from Annex II of this Convention: Hazardous characteristics, H number, and UN class
17. Method of disposal as per annex III of this Convention
18. Declaration by the generator and exporter that the information is correct

**NOTES**

- 1/ Full name and address, telephone, telex or telefax number and the name, address, telephone, telex, or telefax number of the person to be contacted.
- 2/ Full name and address, telephone, telex or telefax number.
- 3/ Information to be provided on relevant insurance requirements and how they are met by exporter, carrier, and disposer.
- 4/ The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.
- 5/ In so far as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operations.
19. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there was no reason to believe that the wastes will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import.
20. Information concerning the contract between the exporter and disposer.

**ANNEX IV B**  
**INFORMATION TO BE PROVIDED ON THE MOVEMENT DOCUMENT**

1. Exporter of the waste 1/
2. Generator(s) of the waste and site of generation 1/
3. Disposer of the waste and actual site of disposal 1/
4. Carrier(s) of the waste 1/ or his agent(s)
5. The date the transboundary movement started and date(s) and signature on receipt by each person who take charge of the waste
6. Means of transport (road, rail, inland waterway, sea, air) including countries or export, transit and import, also point of entry and exist where have been designated.

**NOTES**

- The information required on the movement document shall where possible be integrated into one document with that required under transport rules. Where this is not possible, the information should complement rather than duplicate that required under the transport rules. The movement document shall carry instructions as to who is to provide information and fill-out any form.
- 1/ Full name and address, telephone, telex or telefax number of the person to be contacted in case of emergency.
  7. General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and H number as applicable)

8. Information on special handling requirements including emergency provisions in case of accidents
9. Type and number of packages
10. Quantity in weight/volume
11. Declaration by the generator or exporter that the information is correct
12. Declaration by the generator or exporter indicating no objection from the competent authorities of all States concerned
13. Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the appropriate date of disposal

## **ANNEX V ARBITRATION**

### **ARTICLE 1**

Unless the agreement referred to in Article 20 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with Articles 2 to 10 below.

### **ARTICLE 2**

The claimant Party shall notify the Secretariat that the Parties have agreed to submit the dispute to arbitration pursuant to paragraph 1 or paragraph 2 of Article 20 of this Convention and include, in particular, the Articles of the Convention, and the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Parties to the Convention.

### **ARTICLE 3**

The arbitral tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in one of the Parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

### **ARTICLE 4**

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary General of the OAU shall, at the request of either Party, designate him within a further two months period.
2. If one of the Parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other Party may inform the Secretary General of the OAU who shall designate the chairman of the arbitral tribunal within a further two months period. Upon designation, the chairman of the arbitral tribunal shall request the Party

which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary General of the OAU who shall make this appointment within a further two month's period.

### **ARTICLE 5**

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.
2. Any arbitral tribunal constituted under the provisions of this Annex shall draw up its own rules of procedure.

### **ARTICLE 6**

1. The decisions of the arbitral tribunal both on procedure and on substance, shall be taken by majority vote of its members.
2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the Parties, recommend essential interim measures of protection.
3. The Parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.
4. The absence or default of a Party in the dispute shall not constitute an impediment to the proceedings.

### **ARTICLE 7**

The tribunal may hear and determine counter-claims arising directly out of the subjects matter of the dispute.

### **ARTICLE 8**

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the Parties.

### **ARTICLE 9**

Any Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

### **ARTICLE 10**

1. The tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time-limit for a period which should not exceed five months.
2. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the Parties to the dispute.
3. Any dispute which may arise between the Parties concerning the interpretation or execution of the award may be submitted by either Party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

**ADOPTED BY THE CONFERENCE OF  
ENVIRONMENT MINISTERS AT  
BAMAKO, MALI  
JANUARY 1991**

ALGERIA  
ANGOLA  
BENIN  
BOTSWANA  
BURKINA FASO  
BURUNDI  
CAMEROON  
CAPE VERDE  
CENTRAL AFRICAN REPUBLIC  
CHAD  
COMOROS  
CONGO  
COTE D'IVOIRE  
DJIBOUTI  
EGYPT  
EQUATORIAL GUINEA  
ETHIOPIA  
GABON  
GAMBIA  
GHANA  
GUINEA  
GUINEA BISSAU  
KENYA  
LESOTHO  
LIBERIA  
SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA  
MADAGASCAR

MALAWI  
MALI  
MAURITANIA  
MAURITIUS  
MOZAMBIQUE  
NAMIBIA  
NIGER  
NIGERIA  
RWANDA  
SAHARAWI ARAB DEMOCRATIC REPUBLIC  
SAO TOME AND PRINCIPE  
SENEGAL  
SEYCHELLES  
SIERRA LEONE  
SOMALIA  
SUDAN  
SWAZILAND  
TANZANIA  
TOGO  
TUNISIA  
UGANDA  
ZAIRE  
ZAMBIA  
ZIMBABWE



**African Convention on the Conservation of Nature and  
Natural Resources, 2003**





## AFRICAN CONVENTION ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES

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## PREAMBLE

We, the Heads of State and Government of the Member States of the African Union (AU),

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

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

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

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

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

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

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

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

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

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

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



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

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

**Have agreed** as follows:

### Article I. SCOPE

This Convention shall apply

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

### Article II. OBJECTIVES

The objectives of this Convention are:

1. to enhance environmental protection;
2. to foster the conservation and sustainable use of natural resources; and
3. to harmonize and coordinate policies in these fields

with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes.

### Article III. PRINCIPLES

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

1. the right of all peoples to a satisfactory environment favourable to their development;
2. the duty of States, individually and collectively to ensure the enjoyment of the right to development;



3. the duty of States to ensure that developmental and environmental needs are met in a sustainable, fair and equitable manner.

#### **Article IV. FUNDAMENTAL OBLIGATION**

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

#### **Article V. USE OF TERMS**

For purposes of this Convention:

1. "Natural Resources" means renewable resources, tangible and non tangible, including soil, water, flora and fauna and non renewable resources. Whenever the text of the Convention refers to non renewable resources this will be specified.

2. "Specimen" means any animal or plant or micro organism, alive or dead.

3. "Product" means any part or derivative of a specimen.

4. "Species" means any species, sub species, or geographically separate population thereof.

5. "Threatened Species" means any species of fauna or flora which is considered critically endangered, endangered, or vulnerable, for which definitions are contained in Annex 1 to this Convention, and for which criteria may be adopted and from time to time reviewed by the Conference of the Parties, taking into consideration the work of competent international organisations in this field.

6. "Conservation area" means

- a) any protected area designated and managed mainly or wholly for one of the following purposes:
  - i) science or wilderness protection (Strict Nature Reserve/Wilderness Areas);
  - ii) ecosystem protection and recreation (National Parks);
  - iii) conservation of specific natural features (National Monuments);
  - iv) conservation through management interventions (Habitat/Species Management Areas);

- v) landscape/seascape conservation and recreation (Protected Landscapes/Seascapes);

- vi) the sustainable use of natural ecosystems (Managed Resource Protected Areas).

for which definitions and management objectives are contained in Annex 2 to this Convention, as well as

- b) other areas designated and/or managed primarily for the conservation and sustainable use of natural resources, for which criteria may be adopted and from time to time reviewed by the Conference of the Parties.

7. Biological Diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine, or other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

8. "Original Convention" means the African Convention on the Conservation of Nature and Natural Resources, adopted in 1968 in Algiers.

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

#### **Article VI. LAND AND SOIL**

1. The Parties shall take effective measures to prevent land degradation, and to that effect shall develop long-term integrated strategies for the conservation and sustainable management of land resources, including soil, vegetation and related hydrological processes.
2. They shall in particular adopt measures for the conservation and improvement of the soil, to, inter alia, combat its erosion and misuse as well as the deterioration of its physical, chemical and biological or economic properties.

3. To this end:

- a) they shall establish land-use plans based on scientific investigations as well as local knowledge and experience and, in particular, classification and land-use capability;
- b) they shall, when implementing agricultural practices and agrarian reforms,



- i) improve soil conservation and introduce sustainable farming and forestry practices, which ensure long-term productivity of the land,
  - ii) control erosion caused by land misuse and mismanagement which may lead to long-term loss of surface soils and vegetation cover,
  - iii) control pollution caused by agricultural activities, including aquaculture and animal husbandry;
  - c) they shall ensure that non-agricultural forms of land use, including but not limited to public works, mining and the disposal of wastes, do not result in erosion, pollution, or any other form of land degradation;
  - d) they shall, in areas affected by land degradation, plan and implement mitigation and rehabilitation measures.
4. Parties shall develop and implement land tenure policies able to facilitate the above measures, inter alia by taking into account the rights of local communities.

#### **Article VII. WATER**

1. The Parties shall manage their water resources so as to maintain them at the highest possible quantitative and qualitative levels. They shall, to that effect, take measures designed to:
  - a) maintain water-based essential ecological processes as well as to protect human health against pollutants and water-borne diseases,
  - b) prevent damage that could affect human health or natural resource in another State by the discharge of pollutants, and
  - c) prevent excessive abstraction, to the benefit of downstream communities and States.
2. The Parties shall establish and implement policies for the planning, conservation, management, utilization and development of underground and surface water, as well as the harvesting and use of rain water, and shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water, taking appropriate measures with due regard to:
  - a) the study of water cycles and the investigation of each catchment area,
  - b) the integrated management of water resources,



- c) the conservation of forested and other catchment areas and the co-ordination and planning of water resources development projects,
  - d) the inventory and management of all water resources, including the administration and control of all water utilization, and
  - e) the prevention and control of water pollution through, inter alia, the establishment of effluent and water quality standards.
3. Where surface or underground water resources and related ecosystems, including wetlands, are transboundary to two or more of the Parties, the latter shall act in consultation, and if the need arises, set up inter-State Commissions for their rational management and equitable utilization and to resolve disputes arising from the use of these resources, and for the cooperative development, management and conservation thereof.
4. The Parties undertake, individually or within sub-regional arrangements, to cooperate in rational water husbandry and conservation in irrigated agriculture for improved food security and sustainable agro-based industrialization.

#### **Article VIII. VEGETATION COVER**

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

#### **Article IX. SPECIES AND GENETIC DIVERSITY**



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

2. The Parties shall ensure the conservation of species and their habitats within the framework of land-use planning and of sustainable development. Management of species and their habitats shall be based on the results of continued scientific research and Parties shall:

- a) manage plant and animal populations inside conservation areas according to the objectives of such areas;
- b) manage harvestable populations outside such areas in a sustainable manner, compatible with and complementary to other sustainable land uses;
- c) establish and/or strengthen existing facilities for ex situ conservation to perpetuate animal or plant species of particular interest;
- d) manage and protect aquatic environments, whether in fresh, brackish or marine water, with a view to minimising deleterious effects of any water and land use practice which might adversely affect aquatic habitats;
- e) undertake inventories of species of fauna and flora and prepare maps of their distribution and abundance, and conduct regular reviews to facilitate the monitoring of the status of such species and their habitats with a view to:
  - i) providing the appropriate scientific basis for decisions pertaining to their conservation and use,
  - ii) identifying species that are threatened or may become so, and providing them accordingly with appropriate protection, and
  - iii) identifying species that are migratory or congregatory and therefore confined to specific areas at particular seasons, and providing them with appropriate protection;
- f) identify areas of critical importance for the survival of species of fauna and flora which are threatened;



- g) preserve as many varieties as possible of domestic or cultivated species and their wild relatives, as well as of other economically valuable species, including forest trees and micro-organisms;
  - h) strictly control the intentional and, in as far as possible, accidental introduction, in any area, of species which are not native to that area, including modified organisms, and endeavour to eradicate those already introduced where the consequences are detrimental to native species or to the environment in general;
  - i) take appropriate measures to control pests and eradicate animal and plant diseases;
  - j) provide for fair and equitable access to genetic resources, on terms mutually agreed between the providers and users of such resources; and
  - k) provide for the fair and equitable sharing of benefits arising out of biotechnologies based upon genetic resources and related traditional knowledge with the providers of such resources.
3. Parties shall adopt legislation regulating all forms of taking, including hunting, capture and fishing and collection of whole or parts of plants under which:
- a) the conditions and procedures for issue of permits are appropriately regulated;
  - b) taking is regulated with a view to ensuring that the use of any population is sustainable. Measures to that effect shall include:
    - i) closed seasons,
    - ii) temporary or local prohibitions of exploitation, as needed to restore satisfactory population levels,
    - iii) the prohibition of the use of all indiscriminate means of taking and of the use of all means capable of causing mass destructions, as well as local disappearance of, or serious disturbance to, populations of a species, in particular the means specified in Annex 3;
  - c) with a view to as rational use as possible, the products of hunting and fishing, the use and abandonment of such products, and plant collection are regulated;
  - d) operations carried out by, or under the control of, the competent authority for management purposes may nevertheless be exempted from specific restrictions.



#### Article X. PROTECTED SPECIES



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

#### **Article XI. TRADE IN SPECIMENS AND PRODUCTS THEREOF**

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

#### **Article XII. CONSERVATION AREAS**

1. The Parties shall establish, maintain and extend, as appropriate, conservation areas. They shall, preferably within the framework of environmental and natural resources policies, legislation and programmes, also assess the potential impacts and necessity of establishing additional conservation areas and wherever possible designate such areas, in order to ensure the long term conservation of biological diversity, in particular to:
  - a) conserve those ecosystems which are most representative of and peculiar to areas under their jurisdiction, or are characterized by a high degree of biological diversity;
  - b) ensure the conservation of all species and particularly of those which are:



- i) only represented in areas under their jurisdiction;
  - ii) threatened, or of special scientific or aesthetic value; and of the habitats that are critical for the survival of such species.
2. The Parties shall seek to identify areas critically important to the goals referred to in sub paragraph 1 (a) and 1(b) above which are not yet included in conservation areas, taking into consideration the work of competent international organisations in this field.
  3. The Parties shall promote the establishment by local communities of areas managed by them primarily for the conservation and sustainable use of natural resources.
  4. The Parties shall, where necessary and if possible, control activities outside conservation areas which are detrimental to the achievement of the purpose for which the conservation areas were created, and establish for that purpose buffer zones around their borders.

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

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

#### **Article XIV. SUSTAINABLE DEVELOPMENT AND NATURAL RESOURCES**





1. The Parties shall ensure that
  - a) conservation and management of natural resources are treated as an integral part of national and/or local development plans;
  - b) in the formulation of all development plans, full consideration is given to ecological, as well as to economic, cultural and social factors in order to promote sustainable development.
2. To this end, the Parties shall:
  - a) to the maximum extent possible, take all necessary measures to ensure that development activities and projects are based on sound environmental policies and do not have adverse effects on natural resources and the environment in general;
  - b) ensure that policies, plans, programmes, strategies, projects and activities likely to affect natural resources, ecosystems and the environment in general are the subject of adequate impact assessment at the earliest possible stage and that regular environmental monitoring and audit are conducted;
  - c) monitor the state of their natural resources as well as the impact of development activities and projects upon such resources.

#### **Article XV. MILITARY AND HOSTILE ACTIVITIES**

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



2. The Parties shall cooperate to establish and further develop and implement rules and measures to protect the environment during armed conflicts.

#### **Article XVI. PROCEDURAL RIGHTS**

1. The Parties shall adopt legislative and regulatory measures necessary to ensure timely and appropriate
  - a) dissemination of environmental information;
  - b) access of the public to environmental information;
  - c) participation of the public in decision-making with a potentially significant environmental impact; and
  - d) access to justice in matters related to protection of environment and natural resources.
2. Each Party from which a transboundary environmental harm originates shall ensure that any person in another Party affected by such harm has a right of access to administrative and judicial procedures equal to that afforded to nationals or residents of the Party of origin in cases of domestic environmental harm.

#### **Article XVII. TRADITIONAL RIGHTS OF LOCAL COMMUNITIES AND INDIGENOUS KNOWLEDGE**

1. The Parties shall take legislative and other measures to ensure that traditional rights and intellectual property rights of local communities including farmers' rights are respected in accordance with the provisions of this Convention.
2. The Parties shall require that access to indigenous knowledge and its use be subject to the prior informed consent of the concerned communities and to specific regulations recognizing their rights to, and appropriate economic value of, such knowledge.
3. The Parties shall take the measures necessary to enable active participation by the local communities in the process of planning and management of natural resources upon which such communities depend with a view to creating local incentives for the conservation and sustainable use of such resources.

#### **Article XVIII. RESEARCH**

1. The Parties shall strengthen their capabilities to carry out scientific and technological research in conservation, sustainable utilization and management of natural resources paying particular attention to ecological and socio-economic factors as well as their integration, and



shall ensure the application of research results to the development and implementation of their environmental conservation policies.

2. The Parties shall promote cooperation in scientific and technological research, as well as in economic and marketing systems, between themselves and with third parties in the field of environmental conservation and sustainable use of natural resources.

To that end, they shall in particular:

- a) coordinate their research programmes with a view to achieving maximum synergy and complementarity;
- b) promote the exchange of research results; and
- c) promote the development of joint research activities and programmes

in the fields covered by this Convention.

#### **Article XIX. DEVELOPMENT AND TRANSFER OF TECHNOLOGY**

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

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

#### **Article XX. CAPACITY BUILDING, EDUCATION AND TRAINING**

1. a) The Parties shall promote environmental education, training and awareness creation at all levels in order to enhance their peoples' appreciation of their close dependence on natural resources and their understanding of the reasons and rules for the sustainable use of these resources.
- b) For this purpose they shall ensure that environmental matters:
  - i) are included in educational and training programmes at all levels, and



- ii) form the object of information campaigns capable of acquainting the public with, and winning it over to, the concepts of conservation and sustainable use of natural resources.

- c) In order to put into effect paragraphs a) and b) above, the Parties shall make maximum use of the educational and training value of conservation areas and the experience of local communities.

2. Parties shall develop their capacities in the field of education and training relating to environmental and natural resources conservation and use, in particular through the promotion and development of:
  - a) training of trainers programmes;
  - b) appropriate teaching and training materials ;
  - c) available and accessible educational and training opportunities at all levels.

- a) training of trainers programmes;
- b) appropriate teaching and training materials ;

- c) available and accessible educational and training opportunities at all levels.

2. In order to facilitate the implementation of paragraphs 1 and 2 above, the Parties shall cooperate among themselves, in particular with a view to strengthening or establishing
  - a) regional or sub-regional training institutions;
  - b) joint training programmes;
  - c) libraries and documentation centres; and
  - d) a continuous exchange of information and experience

- a) regional or sub-regional training institutions;

- b) joint training programmes;

- c) libraries and documentation centres; and

- d) a continuous exchange of information and experience

in the fields covered by this convention.

#### **Article XXI. NATIONAL AUTHORITIES**

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

#### **Article XXII. CO-OPERATION**



1. The Parties shall co-operate between themselves and, where appropriate and possible, with other States:

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

2. In particular:

- a) whenever an environmental emergency or natural disaster occurring in a Party is likely to affect the natural resources of another State, the latter shall be provided with all relevant available data by the former as early as practicable;
- b) when a Party has reasons to believe that a programme, activity or project to be carried out in areas under its jurisdiction may have adverse effects on the natural resources of another State, it shall provide that other State with relevant information on the proposed measures and their possible effects, and shall consult with that State;
- c) whenever a Party objects to an activity referred to in sub-paragraph b) above, they shall enter into negotiations;
- d) Parties shall develop disaster preparedness, prevention and management programmes, and as the need arises hold consultations towards mutual assistance initiatives;
- e) whenever a natural resource or an ecosystem is transboundary, the Parties concerned shall undertake to cooperate in the conservation, development and management of such resource or ecosystem and if the need arises, set up interstate commissions for their conservation and sustainable use;
- f) the Parties shall, prior to the export of hazardous substances, or of alien or modified organisms, undertake to secure the prior informed consent of the importing, and where appropriate, transit States;



g) the Parties shall take concerted action regarding the transboundary movement, management and processing of hazardous wastes, with a view to supporting, individually and jointly, international accords in this field, and to implementing African instruments related thereto;

h) the Parties shall exchange information bilaterally or through competent international agencies on activities and events likely to affect the natural resources and the environment of areas beyond national jurisdiction.

#### **Article XXIII. COMPLIANCE**

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

#### **Article XXIV. LIABILITY**

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

#### **Article XXV. EXCEPTIONS**

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



#### Article XXVI. CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established at ministerial level, as the decision-making body of this Convention. The first meeting of the Conference of the Parties shall be convened by the Chairperson of the Commission of the African Union not later than one year after the entry into force of the Convention. Thereafter ordinary meetings shall be convened at least once every two years, unless the Conference decides otherwise.
2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.
3. At its first meeting, the Conference of the Parties shall adopt rules of procedure for itself and for any subsidiary body it may establish, as well as determine the rules governing the funding and operation of the Secretariat; Parties shall make every effort to reach these decisions by consensus; if all efforts at consensus have been exhausted, and no agreement reached, the decisions shall as a last resort be adopted by a two-third majority of the Parties present and voting.
4. At each of its ordinary meetings, the Conference of the Parties shall adopt a programme and budget for the financial period until the next ordinary meeting.
5. The Conference of the Parties shall keep under review and promote the effective implementation of this Convention, and, for this purpose, shall:
  - a) make recommendations to the Parties on any matters related to the implementation of this Convention;
  - b) receive and consider information and reports presented by the Secretariat or by any Party and make recommendations thereto;
  - c) establish such subsidiary bodies as are deemed necessary for the implementation of this Convention, in particular to provide scientific and technical advice;
  - d) review reports submitted by any subsidiary body and provide guidance to them;
  - e) promote and facilitate the exchange of information on measures proposed or adopted by the Parties;
  - f) consider and undertake any additional action that may be required for the achievement of the purposes of this Convention;



- g) consider and adopt, as required, amendments to this Convention;
  - h) consider and adopt, as required, additional Annexes and amendments to the Annexes to this Convention;
  - i) seek, through the Secretariat, the co-operation of, and utilize the services of and information provided by, competent bodies or agencies, whether national or international, governmental or non-governmental, and strengthen the relationship with other relevant conventions; and
  - j) consider any other matter within the scope of this Convention.
6. African Regional Economic Communities, as well as African regional and sub-regional intergovernmental organizations may be represented at meetings of the Conference of the Parties without the right to vote. The United Nations, its specialized agencies and any State Party to the original Convention not party to this Convention, may be represented at meetings of the Conference of the Parties and participate as observers. Any non-governmental organization, whether national, continental, regional or sub-regional, or international, which is qualified in matters covered by the Convention, and which has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The participation of Observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

#### Article XXVII. THE SECRETARIAT

1. A Secretariat to this Convention is hereby established.
2. At its first meeting, the Conference of the Parties shall designate an organisation to carry out the Secretariat functions under the Convention or shall appoint its own Secretariat and determine its location.
3. The functions of the Secretariat shall be:
  - a) to arrange for and service meetings of the Conference of the Parties and of its subsidiary bodies;
  - b) to execute the decisions addressed to it by the Conference of the Parties;
  - c) to draw the attention of the Conference of the Parties to matters pertaining to the objectives of this Convention and its implementation;





- d) to gather and disseminate among the Parties the texts of laws, decrees, regulations and instructions in force which are intended to ensure the implementation of this Convention, as well as reports pertaining to such implementation;
- e) to administer the budget for the Convention and if established, its conservation fund;
- f) to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
- g) to prepare studies and reports on its activities carried out in the implementation of its functions under this Convention and present them to the Conference of Parties;
- h) to coordinate its activities with the secretariats of other relevant international bodies and conventions;
- i) to provide information for the general public concerning the Convention and its objectives; and
- j) to perform such other functions as may be assigned to it by this Convention, or determined by the Conference of the Parties.

#### **Article XXVIII. FINANCIAL RESOURCES**

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



multilateral funding resources and mechanisms, using consortia, joint programmes and parallel financing, and shall seek to involve private sector funding resources and mechanisms, including those of non-governmental organizations.

#### **Article XXIX. REPORTS AND INFORMATION**

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

#### **Article XXX. SETTLEMENT OF DISPUTES**

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

#### **Article XXXI. AMENDMENTS OF THE CONVENTION**

1. Any Party may propose amendments to this Convention.



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

#### **Article XXXII. ADOPTION AND AMENDMENTS OF ANNEXES**

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



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

#### **Article XXXIII. RIGHT TO VOTE**

Each Party to this Convention shall have one vote.

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

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

#### **Article XXXV. RELATIONSHIP WITH OTHER INTERNATIONAL CONVENTIONS**





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

**Article XXXVI SIGNATURE AND RATIFICATION**

1. This Convention shall be open for signature immediately after being adopted by the Assembly of the African Union.
2. The Convention shall be subject to ratification, acceptance or approval by each of the States referred to in paragraph 1 above. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

**Article XXXVII. ACCESSION**

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

**Article XXXVIII. ENTRY INTO FORCE**

1. This Convention shall come into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification, acceptance, approval or accession with the Depositary, who shall inform the States referred to in Articles XXXVI and XXXVII accordingly.
2. For each State which ratifies, accepts or approves this Convention or accedes thereto after the depositing of the fifteenth instrument of ratification, acceptance, approval or accession, this

Convention shall come into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

3. Any State that becomes a party to the present Convention that was not a party to the 1968 Algiers Convention shall take necessary steps to withdraw from the London Convention of 1933 on the Conservation of Flora and Fauna in their Natural state.
4. No instrument of accession to the 1968 Algiers Convention may be deposited after the adoption of this Convention.

**Article XXXIX. RESERVATIONS**

No reservation may be made to this Convention.



**Article XL. WITHDRAWAL**

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

**Article XLI. SECRETARIAT INTERIM ARRANGEMENTS**

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

**Article XLII. DEPOSITARY**

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

**Article XLIII. AUTHENTIC TEXTS**

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

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



## ANNEX 1

## THREATENED SPECIES DEFINITION

A threatened species is a species which is either:

*a)* Critically Endangered:

A taxon is "critically endangered" when the best available evidence indicates that it is considered to be facing an extremely high risk of extinction in the wild.

*b)* Endangered:

A taxon is "endangered" when the available evidence indicates that it is considered to be facing a very high risk of extinction in the wild.

*c)* Vulnerable:

A taxon is "vulnerable" when the best available evidence indicates that it is considered to be facing a high risk of extinction in the wild.



## ANNEX 2

## CONSERVATION AREAS

## Definitions and Management Objectives

**Strict Nature Reserve: protected area managed mainly for science**

## Definition

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

## Objectives of Management

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

**Wilderness Area: protected area managed mainly for wilderness protection**

## Definition

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



- to take into account the needs of local communities, including subsistence resource use, in so far as these will not adversely affect the other objectives of management.

#### Objectives of Management

- to ensure that future generations have the opportunity to experience understanding and enjoyment of areas that have been largely undisturbed by human action over a long period of time;
- to maintain the essential natural attributes and qualities of the environment over the long term;
- to provide for public access at levels and of a type which will serve best the physical and spiritual well-being of visitors and maintain the wilderness qualities of the area for present and future generations; and

to enable local communities living at low density and in balance with the available resources to maintain their life style.

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

##### Definition

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

#### Objectives of Management

- to protect natural and scenic areas of national and international significance for spiritual, scientific, educational, recreational or tourist purposes;
- to perpetual, in as natural a state as possible, representative examples of physiographic regions, biotic communities, genetic resources, and species, to provide ecological stability and diversity;
- to manage visitor use for inspirational, educational, cultural and recreational purposes at a level which will maintain the area in a natural or near natural state;
- to eliminate and thereafter prevent exploitation or occupation inimical to the purposes of designation;
- to maintain respect for the ecological, geomorphologic, sacred or aesthetic attributes which warranted designation; and



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

##### Definition

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

##### Objectives of Management

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

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

##### Definition

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

##### Objectives of Management

- to secure and maintain the habitat conditions necessary to protect significant species, groups of species, biotic communities or physical features of the environment where these require specific human manipulation for optimum management;
- to facilitate scientific research and environmental monitoring as primary activities associated with sustainable resource management;



- to develop limited areas for public education and appreciation of the characteristics of the habitats concerned and of the work of wildlife management;
- to eliminate and thereafter prevent exploitation or occupation inimical to the purposes of designation; and
- to deliver such benefits to people living within the designated area as are consistent with the other objectives of management.

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

**Definition**

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

**Objectives of Management**

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



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

**Definition**

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

**Objectives of Management**

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



## ANNEX 3

**Prohibited means of taking**

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

## ANNEXE 3

**Moyens de prélèvement interdits**

- Collets
- Animaux vivants utilisés comme appelants aveuglés ou mutilés
- Enregistreurs
- Appareils électriques capables de tuer ou d'assommer
- Sources lumineuses artificielles
- Miroirs et autres objets aveuglants
- Dispositifs pour éclairer les cibles
- Dispositifs de visée comportant un convertisseur d'image ou un amplificateur d'image électronique pour tir de nuit
- Explosifs
- Feu
- Filets (excepté dans les cas spécifiés par la Conférence des Parties)
- Pièges-trappes
- Poison et appâts empoisonnés ou tranquillisants
- Gazage et enfumage
- Armes semi-automatiques dont le chargeur peut contenir plus de deux cartouches
- Avions
- Véhicules automobiles en déplacement



**Revised African Maritime Transport Charter, 2010**



## PREAMBLE

We, Heads of State and Government of the Member States of the African Union (AU),

**Inspired** by the objectives stated in the Constitutive Act of the African Union, particularly Article 3;

**Considering** the treaty establishing the African Economic Community, particularly the relevant provisions dealing with maritime transport;

**Considering** the relevant provisions of the Convention relating to Transit Trade of Land-locked States, signed on 8 July 1965 in New York;

**Recognizing** the specific character of maritime transport as a regional, continental and international activity;

**Recognizing also** the role of maritime transport in the facilitation and development of trade between Africa and other parts of the world and the need to implement an effective maritime transport policy with a view to promoting intra-African trade and trade between African States and other continents;

**Recognizing further** the essential obligations of coastal States in maritime governance and port state control;

**Considering** the importance of cooperation in the implementation of maritime conventions and regulations, particularly in the areas of safety, security, protection of the marine environment and maritime labour;

**Conscious** of the interdependence between economic development and a sustainable policy for the protection and preservation of the marine environment;

**Recognizing** the importance and the role of efficient transport infrastructure and services in the political, economic and social integration of Africa;

**Considering** further the roles of United Nations agencies and other international and regional organizations in maritime transport;

**Bearing in mind** further the need for Africa to fully and effectively implement the 2003 Almaty declaration and Programme of Action on addressing the Special Needs of Landlocked Developing Countries;

**Conscious** of the need to establish and strengthen cooperation in order to coordinate and harmonize maritime, port and inland waterways policies,



## REVISED

## AFRICAN MARITIME TRANSPORT CHARTER



regulations and procedures both in our mutual relations and in our relations with third States;

**Considering** that the implementation of maritime policies requires heavy investments especially in terms of infrastructure and equipment and that these investments should in the first place be provided by the Member States of the Union, including the Maritime industry itself;

**Concerned** by the diversity and disparity of maritime and inland waterways policies, regulations and procedures between and within Member States;

**Conscious** of the importance of the role of maritime transport in the promotion of economic development and the achievement of the Millennium Development Goals;

**Conscious** of the need to develop African merchant fleets, to ensure development of maritime transport in Africa;

**Preoccupied** by the special difficulties of island countries to fit themselves into the process of integration and development of African nations;

**Resolved** to implement Decision N° EX.CL/Dec.358 (XI) of the Executive Council of the African Union which endorses the Abuja Declaration and Plan of Action on Maritime Transports in Africa, particularly point 1 relating to the updating of the African Maritime Transport Charter adopted in 1993.

## HAVE AGREED AS FOLLOWS:

### CHAPTER I

#### Definitions and Scope of Application

##### Article 1 Definitions

For the purpose of the Charter:

**“Chairperson”** means the Chairperson of the African Union Commission;

**“Charter”** means African Maritime Transport Charter;

**“Committee on port issues”** means a committee established at port level by a Member State, which comprises, inter alia, representatives of shippers, ship owners, maritime, customs and port



administration and which is charged with the promotion of safe and efficient port operations;

**“Commission”** means the African Union Commission;

**“Executive Council”** means the Executive Council of Ministers of the Union;

**“Freight exchange”** means the place where supply and demand for goods transport meets. It is also the place where information on trade flows, regulations, tariff and other elements relating to international transport can be obtained;

**“IMO”**

means the International Maritime Organization, a specialized agency of the United Nations with a purpose of providing mechanism and framework for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade;

**“Inland waterways”** means any navigable rivers, creeks, lakes, tidelands, lagoons, below water baseline, or channel leading into such place having facilities for ships to moor and load or discharge including offshore cargo handling facilities, harbour, berths, jetties, pontoons or bouys and wharves within the limits of the inland waterways in any place in a country and includes any place declared to be an inland waterways under relevant national legislation;

**“International Multimodal Transport”**, means the carriage of goods by at least two different modes of transport, one of which is a sea mode on the basis of a unique transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery in a different country;

**“Landlocked States party”**, means a States party without a sea coast;

**“Maritime Transport”** means all types of carriage of goods and passengers by sea;

**“Maritime transport auxiliaries”**, means any business entity, which contributes to implementation of operations linked or related to maritime transport;



“**Member States**”, means Member States of the African Union;

“**Region**”, means the regions of the African Union as provided for by Resolution CM/Res.464 (XXVI) of the Council of Ministers of the Organization of African Unity on the division of Africa into five (5) regions, namely: Northern, Western, Central, Eastern and Southern Africa;

“**Ship**” means a vessel or mobile facility of any type whatsoever operating in the marine and or in-land waterways environments and includes hydrofoil boat, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms operated for the purpose of providing movement of goods and passengers and the provision of marine services;

“**Shipper**” means a person or entity who exports or imports goods wholly or partly by sea, or any person or entity through whom or for whom a contract of carriage is concluded with a carrier and shall also be interpreted as the person or entity through whom or on behalf of whom the goods are handed to the carrier in relation to the contract of carriage;

“**Shippers’ Council**” means a statutory council, or equivalent body, which assists, promotes, represents and protects the interests of shippers;

“**State Parties**” means Member States, which have ratified or acceded to the present Charter;

“**Sub-region**” means at least three (3) States of one (or several) region (s);

“**Third State**” means a State other than a State Party;

“**Trans-African Cabotage**” means the exercise of maritime transport and related activities between ports of Member States;

“**Transit State Party**” means a State Party with or without seacoast whose territory is used in carrying import and export commodities for one or several Member States;

“**Union**” means the African Union.

## Article 2 Scope of Application



The Charter falls within the scope of international law encompassing maritime transport and related activities in the coastal, inland waterways, territorial seas including the Exclusive Economic Zones of States Parties and shall by further extension, to related activities in landlocked States Parties.

## CHAPTER II Objectives and Principles of Cooperation

### Article 3 Objectives

The objectives of the African Maritime Charter are as follows to:

1. Declare, articulate and implement harmonized maritime transport policies capable of promoting sustained growth and development of African merchant fleets and to foster closer cooperation among the States Parties of the same region and between the regions.
2. Facilitate and encourage regular consultations for determining African common positions on issues of international maritime policy and to define, for each given problem, concerted solutions.
3. Promote effective implementation of international maritime instruments to which Member States are parties.
4. Promote bilateral and multilateral cooperation among the maritime administrations of States Parties, and their respective operational organizations in the field of maritime and inland waterways transport and port activities.
5. Promote the funding, undertaking of research studies by national institutions that encourage the promotion and development of cooperation in maritime and inland waterways transport and port operations among States Parties and regions.
6. Encourage the establishment and support of maritime and ports administrations.
7. Encourage the establishment of shippers’ councils and support them in the performance of their functions.
8. Promote the establishment of national and regional shipping lines and provide them the assistance necessary for their success.



9. Develop and promote mutual assistance and cooperation between States Parties in the area of maritime safety, security and protection of the marine environment.
10. Promote the sharing of best practices among States parties in the overall management and operation of Maritime Administrations and other maritime entities established in terms of this Charter.
11. Promote the provision of maritime education and training at all levels including secondary schools.
12. Promote the employment of seafarers, decent working conditions and training of seafarers.
13. Promote development of multimodal transport and integration of all modes of transport.

#### **Article 4 Principles**

1. This Charter is aimed at strengthening cooperation among States Parties in maritime transport, inland waterways navigation, ports and related activities.
2. The Charter further seeks to promote cooperation between States parties, regional and international organizations.
3. States parties hereby adopt the following fundamental principles:
  - a) Sovereignty, solidarity, cooperation, and interdependence of States;
  - b) Harmonization and coordination of States parties' policies and procedures where practicable in all relevant areas connected with international maritime transport inland waterways and ports;
  - c) Efficiency, safety, security and global competitiveness of maritime, port infrastructure and operations in order to promote economic and social development;
  - d) Safe, secure and efficient shipping on clean oceans and sustainable maritime, port policies and implementation strategies;
  - e) Rights of access to and from the sea and freedom of transit for every landlocked State parties within the framework of international law;
  - f) Transparency and accountability in maritime and port operations.



### **CHAPTER III**

#### **Institutional Framework for Coordination of Activities Relating to Cooperation in Maritime Administration and Port Operations**

##### **Article 5 Continental Organizations**

1. In order to ensure the effective coordination of maritime transport policies and programmes, the Union shall establish a Continental Unit for the coordination of activities of regional cooperation in shipping marine pollution and ports operations.
2. States parties further undertake to establish at continental level and coordinated by the Commission, an Association of African Maritime Administrations (AAMA).

##### **Article 6 Regional and Sub-Regional Organizations**

1. States parties shall strive to establish, wherever they do not exist, regional and sub-regional cooperation organizations in maritime transport, inland waterways and port operations, and to make them operational as early as possible.
2. States parties also agree to promote the strengthening of specialised sub-regional maritime organisations.
3. States parties agree to further encourage interaction among Regional Economic Communities and specialized organizations.

##### **Article 7 Maritime Administrations**

1. States Parties shall promote the establishment wherever they do not exist, Maritime Administration and National Ports Authorities and to make them functional and sustainable.
2. States Parties shall enhance the capacity and performance of maritime Administrations in charge of the implementation of laws and regulations applicable in the areas of maritime navigation, safety, security and marine environment.





3. States Parties shall further endeavour to utilize IMO's mechanisms and procedures to assess the level of performance of Maritime Administrations.
4. States Parties shall individually ensure the provision of an appropriate and dedicated budget for the proper management, functioning and operation of their Maritime Administration.

**Article 8**  
**Maritime Training Institutions**

1. States Parties shall endeavour to establish or strengthen national, regional maritime training, education and research institutions.
2. States Parties shall strive to encourage collaboration among different training, education and research institutions for the purposes of cooperation in research, innovation, education and training on matters of policy, strategy and regulation of shipping and ports.
3. States Parties shall support allocation or sourcing of funding, for national and regional maritime training, research and education institutions as well as granting of training scholarships.
4. States Parties agree to strengthen existing regional specialized institutions in maritime, inland waterways transport and port operations.
5. States Parties shall encourage cooperation in seafarer education, training and employment exchanges.
6. States Parties shall comply with international maritime standards of seafarer training, certification and watch keeping.
7. States Parties shall promote the securing of training berths and opportunities for African seafarers on African owned vessels and on foreign owned vessels.
8. States Parties agree to introduce and adopt a common system and standard for the mutual recognition of diplomas and certificates awarded by national and regional institutions in order to foster the employment of seafarers in the continent.
9. In order to enhance maritime human safety, States Parties shall endeavour to improve regulation and monitoring connected with the identification of seafarers, facilities for their professional activities and the exercise of the



- right to maritime employment, in conformity with the relevant international conventions in the area.
10. Promote the sharing of best practices in the overall management and operation of Maritime Administrations and other maritime entities established on the basis of this Charter.
  11. Promote the provision of maritime education and training at all levels.

**CHAPTER IV**  
**Cooperation among of Shippers' Council**

**Article 9**  
**Shippers' Councils**

1. States Parties agree to promote the establishment of shippers' councils wherever they do not exist, to create an enabling legal framework for their operation and to support them in the performance of their duties.
2. Shippers' Councils are responsible for protecting and defending the interest of shippers by focusing on the simplification of transport and trade procedures, as well as the negotiation of transport costs and conditions. They are also responsible for assisting shippers in their activities specially in training in the area of international transport and trade.
3. Shippers' Councils shall establish appropriate and integrated database for the benefit of shippers and operators in the transport chain.

**Article 10**  
**Transport Observatories**

States Parties agree to establish at national, sub-regional and regional levels, transport observatories, an essential information tool to facilitate the provision to economic operators, transporters, shippers and public authorities of reliable information in real time.

**Article 11**  
**Establishment of freight exchanges**

States Parties undertake to establish freight exchanges at national and regional level with a view to:

1. Promoting and developing trade;



2. Mastering the management and grouping of freight;
3. Fostering a common forum for the supply and demand for goods and transport.

## CHAPTER V

### Cooperation in Maritime and Inland Waterways Transport

#### Article 12

##### General Cooperation

1. In order to facilitate effective cooperation, States Parties shall endeavour to engage in consultations at regional, continental and international levels and harmonize their policies in the area of maritime, multimodal transport and inland waterways.
2. States Parties agree to cooperate at bilateral, sub regional and regional levels on all matters contained in this Charter to promote safe, secure, clean waters and environmentally sustainable maritime inland waterways transport practices.
3. States Parties agree to cooperate in the field of shipping and ports operations and Search and Rescue on the basis of the principles embodied in this Charter.
4. States Parties agree to cooperate at regional, continental and international levels to prevent and control maritime pollution in order to protect and conserve the marine environment and to suppress all unlawful acts, piracy, terrorism, etc.
5. States Parties commit themselves to cooperate to promote integration conditions and the sectoral development of landlocked and island States.

#### Article 13

##### Cooperation among African shipping companies

In promoting cooperation among African shipping lines, States Parties agree to:

1. Encourage, the establishment and development of African shipping lines by adopting, as a top priority national policies, regulations and programs that attract public and private investment in ships and shipping in general;



2. Promote the establishment at all levels of common and/or joint maritime agencies within and outside Africa in order to enable African shipping lines to improve on the co-ordination of their schedule and cargo handling operations;
3. Promote the creation of dedicated fund for the development of the African shipping lines.

#### Article 14

##### Cooperation in Transport Auxiliaries

1. States Parties agree to structure and organise maritime transport auxiliary services in order to enhance competitiveness and better quality services delivery for the benefit of their economies.
2. In this regard States Parties shall endeavour to:
  - a) Promote access of African operators to maritime transport auxiliary services or professions;
  - b) Create an enabling environment to foster equity investment by African operators in foreign companies operating in Africa in maritime professions and transport auxiliary;
  - c) Encourage African operators to pool resources including expertise in order to foster the emergence of African maritime transport auxiliary groupings capable of competing effectively in the global industry.

#### Article 15

##### Trans-African Cabotage

1. States Parties shall promote Cabotage and effective participation of private sector operators at national, regional and continental levels.
2. To this end, the establishment of national and regional maritime Cabotage shipping lines should be encouraged in order to promote intra-African trade and facilitate the economic and socio-economic integration of the continent.

#### Article 16

##### Cooperation in the area of Inland Waterways

States Parties shall endeavour to intensify their cooperation in the management of efficient, safe, secure and environmentally friendly inland waterways in full respect





of the environment and infrastructure linking the different centres of economic activity at national and regional levels.

## CHAPTER VI

### Cooperation between Landlocked States parties and Transit States parties

#### Article 17

##### Transit Trade of Landlocked States parties

Transit States Parties commit themselves to grant facilities and benefits to Landlocked States Parties using their port infrastructure and equipment including inland container depots and to apply to transit goods, favourable administrative, fiscal and customs measures in accordance with the principles of this Charter and the rights and obligations resulting from relevant and applicable national law and international conventions.

#### Article 18

##### Coordination of Policies and Actions

Transit States Parties and landlocked States Parties agree to coordinate their policies on the acquisition and putting into service of land (rail and road), river, air, maritime and port transport facilities. They agree to coordinate actions and instruments relating to the implementation of their national maritime policies, particularly the grouping and operation of shipping services as well as consignment, handling and transit.

#### Article 19

##### International Transit Agreements and Conventions

States Parties are encouraged to enter into bilateral and multilateral transit agreements and apply in a concerted manner, the relevant regional and international conventions in force, particularly those relating to transit.

#### Article 20

##### Cooperation in the Field of Maritime Transport Infrastructure and Inland Waterways, Shipbuilding and Repair

In order to obtain essential support for the sustainable development of maritime transport and inland waterways in Africa, States Parties undertake notably to foster cooperation in the area of maritime transport infrastructure and auxiliary services by:

1. Coordinating their needs in respect of ship building and repair;
2. Establishing at continental level shipyards that are able to provide quality, durable and efficient service to the maritime industry inland waterways;
3. Adopting national policies and international conventions to foster the use of shipyards of States Parties where possible, and to enhance their negotiating power vis-à-vis shipyards of Third States with the aim of realizing substantial economies of scale;
4. Establishing regional and sub-regional facilities for the manufacture and repair of containers;
5. Encouraging port authorities of States Parties to conclude partnership agreements on dredging aimed at rationalizing the use of available resources at sub-regional, regional and continental level.

## CHAPTER VII

### Development of Multimodal Transport and Port Management

#### Article 21

##### Promotion of Multimodal Transport

1. States Parties shall promote multimodal transport at national and regional levels through the:
  - a) Development of an appropriate regulatory framework;
  - b) Improvement of existing facilitation and transit policies;
  - c) Promotion of the development of integrated transport master plan for all modes of transport at national, sub-regional, regional and continental levels;
  - d) Construction, rehabilitation and modernization of infrastructure, equipment and transport services;
  - e) Training of transport services professionals;
  - f) Establishment of economic community and logistics platforms.



2. States Parties shall work towards the establishment of a harmonized legislative and regulatory framework capable of ensuring the promotion and the guaranteeing of stability of multimodal joint ventures.

3. States Parties shall endeavour to participate in the negotiation, adoption and implementation of regional and international conventions on multimodal transport.

#### **Article 22** **Reform of Ports Services**

1. States Parties undertake to cooperate towards the reform and efficiency of port services and promotion of competitiveness of African ports.
2. In this connection, States parties shall strive to encourage the:
  - a) Promotion of private sector participation in port operations;
  - b) Promotion of capacity building for port operators;
  - c) Adoption of a system of harmonized framework of port statistics and performance indicators;
  - d) Strengthening of the existing Regional organizations and associations of ports for the benefit of port development;
  - e) Promotion of the linkage of ports with development corridors;
  - f) Facilitation of development and acquisition of modern port facilities and equipment;
  - g) Promotion of efficient and effective channel management and port approaches;
  - h) Promotion of safe, secure and efficient port operations;
  - i) Application of internationally acceptable quality standards in port services;
  - j) Encouragement of consultation among the various port stakeholders through the establishment of port committees.

### **CHAPTER VIII**



## **Enhancing Maritime Safety and Security**

### **Article 23** **Cooperation in the Field of Maritime Legislation**

States Parties shall endeavour to ensure cooperation in the implementation of relevant legislation in the field of maritime transport, inland waterways and port operations and in this regard agree to:

1. Adapt, and where necessary, update their existing maritime legislations in order to make them compatible with the promotion of safe, secure and environmentally friendly shipping, inland waterways and port activities.
2. Examine with a view to revising and harmonizing, if necessary, their maritime, port and inland waterways legislations in order to make them compatible with international instruments.
3. Consult with each other in international bodies with a view to harmonizing their positions in the area of negotiation in maritime transport and multimodal transport.

### **Article 24** **Sharing of information and Mutual Assistance**

1. States Parties undertake to put in place an efficient maritime communication network in order to make optimum use of mechanisms for control, follow-up and intervention at sea and ensure better organization of maritime traffic.
2. States Parties should strive to create a strategic framework for the exchange of information and mutual assistance in order to enhance measures that can improve the safety, security and prevention systems and make it possible to combat unlawful acts perpetrated at sea.

### **Article 25** **Aids to Navigation and Provision of Hydrographic Services**

States Parties shall encourage the cooperation, coordination and sharing of expertise and service provision in the fields of Navigation and hydrography in accordance with the specifications and the rules of the International Association of Lighthouses Authorities (IALA) and the International Hydrographic Organization (IHO).

### **Article 26** **International Instrument Relating**



### **To Maritime Safety, Maritime Security and Combating Piracy**

1. States Parties shall enact legislation and take all the necessary measures to give full effect to this Charter and all other relevant international instrument codes and regulations in the area of maritime, port safety and security in order to ensure safe, secure and efficient shipping and port operations.
2. States Parties shall adopt effective measures to combat acts of piracy, armed robbery and other unlawful acts against shipping through co-operation with other international bodies.

#### **Article 27**

### **Ports and Places of Refuge**

States Parties shall seek to articulate within the framework of international maritime law, national, sub-regional or regional strategies concerning places of refuge for ships in distress taking into consideration real and potential danger they pose to the marine environment and maritime navigation.

#### **CHAPTER IX**

### **Protection of Marine Environment**

#### **Article 28**

### **Protection and Preservation of the Marine Environment**

1. States Parties shall seek to intensify their efforts at, regional and international levels, directly or with the support of competent regional and international organizations, to ensure the protection and preservation of the marine environment.
2. States Parties shall promote, either individually or in regional cooperation, develop contingency plan and other measures aimed at preventing and combating pollution incidents arising from marine transport.
3. States Parties commit themselves to the creation of a sustainable compensation regime to cover marine incidents of pollution of the sea that are not covered by existing international compensation regimes.
4. States Parties shall seek to implement a common policy aimed at preventing and combating marine pollution from ships and other sources of pollution.
5. To fully implement the provisions of this Article, they shall ensure:



- a) Acceptance, ratification and implementation of marine environment protection conventions and instruments ;
- b) Strengthening of mechanisms for national, bilateral, sub-regional, regional and international cooperation to prevent and combat pollution from all sources and the dumping of toxic wastes in African waters;
- c) Establishment of mechanisms of control and monitoring activities in the maritime domain;
- d) Development of national and regional contingency plans for marine pollution preparedness and response in partnership with the oil industry at national, regional and international levels.

#### **Article 29**

### **Port Reception Facilities**

1. States Parties shall, individually or collectively, within the framework of relevant international, regional and national instruments, take all the necessary steps such that port reception facilities comply with the needs of ships. They shall ensure the efficient use of such facilities, making sure that this does not lead to unjustified delays to ships.
2. States Parties agree to take all the necessary steps to ensure the proper functioning of port reception facilities in order to limit the impact of pollution from ships.
3. States Parties shall notify ships using their ports of all necessary precautions and up-to-date information relating to the obligations laid down by relevant international conventions and the national legislation applicable.

#### **CHAPTER X**

### **Information and Communication Technologies, Facilitation of Maritime Traffic**

#### **Article 30**

### **Information and Communication Technologies**

1. States Parties shall share information and promote the general application and modernization of current information technologies.



2. States Parties shall encourage the use of such electronic data exchange systems for the dissemination among African States and regional and sub-regional institutions of information on the movement of ships.
3. States Parties shall promote the use of information technologies in all maritime and port activities.

**Article 31**  
**Measures to Facilitate Maritime Traffic**

States Parties should encourage, at national sub-regional and regional level, the establishment of committees for facilitation, harmonization and simplification of administrative and customs procedures, the use of information and communication technologies and in this regard promote the adoption of relevant international conventions aimed at the promotion of facilitation of maritime traffic.

**CHAPTER XI**

**Development of Maritime and Inland Waterways**

**Article 32**  
**Improvement of the Safety and Security of Maritime and Inland Waterways Transport**

States Parties shall endeavour to improve the safety of vessels not covered by relevant IMO Conventions including fishing, cargo, passenger ships and other small crafts operating in inland waterways. In this regard States Parties may be inspired to consider adopting the IMO Model legislation for the regulation of safety on inland waterways.

**Article 33**  
**Concerted Actions for the Development of Passenger Transport**

States Parties shall establish at national and regional level a concerted plan of action for the development of maritime and inland waterways passenger transport which is reliable, competitive and sustainable.

**CHAPTER XII**

**Financing of Maritime and Inland Waterways Transport**

**Article 34**



**Monitoring, Evaluation and Financing of Maritime Transport and Inland Waterways Transport**

Within the framework of the mobilization of the necessary resources for financing maritime and inland waterways transport activities, States Parties shall as a priority, budget appropriately for the provision of a safe, secure and environmentally friendly maritime transport infrastructure:

1. Promote regular studies to evaluate and strengthen the performance of African shipping lines;
2. Encourage financial institutions to support States Parties and continental efforts in the strategic development of the maritime industry, including the acquisition and operational of ships, related equipment and development of maritime sector;
3. Promote the establishment of a national and/or regional maritime fund, including the creation of financial institutions for the development of maritime transport industry and inland waterways.

**Article 35**

**Encouragement of Private Initiative in Maritime and Inland Waterways Investment**

1. States Parties shall encourage the participation of the private sector in maritime and inland waterways transport activities.
2. States Parties shall promote the creation of partnerships of African operators in order to increase their financing capacities.

**CHAPTER XIII**

**Human Resource Development**

**Article 36**

**Training and Capacity Building and Upgrading of Professionals in the Maritime Sector**

States Parties shall endeavour to invest in and finance established programmes for education and training in relevant maritime skills and for upgrading maritime professionals in all areas of the maritime and ports industry.

**Article 37**

**Gender Balance and Participation of Women**





1. States Parties agree to promote and adopt policies that create opportunities for the advancement of gender equality, and vigorously promote economic opportunities; recruitment, placement, promotion and progression of women in the maritime sector.
2. States Parties shall endeavour to enact relevant legislation to give effect to the acceleration of women empowerment in the maritime sector including encouragement of specific education, mentoring and training of women at all levels.

**Article 38**  
**Health and Safety**

1. States Parties agree to promote the adoption of relevant regional and international instruments for the promotion of social security, and occupational health and safety in the maritime industry.
2. States Parties further agree to harmonize, co-ordinate and cooperate in the implementation of measures to improve the lives and working conditions of seafarers and port employees within clearly defined national, regional and international framework.
3. States Parties shall promote and implement awareness and training programmes on contagious disease and occupational health hazards across the maritime industry and at educational and training institutions.
4. States Parties agree to promote seafarers health through the training of medical and paramedical personnel.

**Article 39**  
**Research and Information Centres**

1. States Parties agree to promote research and sharing of research reports on matters of common interest, establish or reactivate research, and information centres.
2. To this end, States Parties shall endeavour to:
  - a) Establish or strengthen national, regional maritime research and development centres;
  - b) Promote harmonized regional approach to maritime training through the adoption and coordination of programmes, exchange of instructors and trainees within the framework of applicable conventions;



- c) Develop cooperation in the area of research and training with maritime industry at regional, governmental, non-governmental and inter-governmental organizations.

**CHAPTER XIV**  
**Commitment of States Parties, Implementation, Monitoring and Evaluation Mechanisms**

**Article 40**  
**Commitment of State Parties**

States Parties accept the objectives and principles enshrined in this Charter to reinforce their national maritime transport and inland waterways policies and systems and undertake to institute appropriate measures, especially legislative, regulatory and administrative to ensure that their laws and regulations are consistent with this Charter.

**Article 41**  
**National Level**

States Parties shall take necessary steps to ensure the implementation of this Charter in their respective countries through the elaboration of national maritime transport and inland waterways plans of action.

**Article 42**  
**Regional and Sub-Regional Levels**

States Parties shall ensure that the objectives and principles governing maritime transport at regional and sub-regional levels are consistent with this Charter. In this regard, regional and sub regional organizations shall also develop maritime transport and inland waterways plans of action and see to it that they are implemented.

**Article 43**  
**Continental Level**

1. The Commission shall, in collaboration with States Parties, Regional Economic Communities, specialized institutions and competent international organizations, institute an appropriate mechanism for implementation, monitoring and evaluation of this Charter.



2. The Commission, central coordination organ for the implementation of the Charter must play an advocacy role for the development of maritime transport as the key vehicle for Africa's renaissance.

To this effect, it has the responsibility of:

- a) Assisting States Parties in implementation of this Charter;
- b) Coordinating measures geared to evaluating implementation of this Charter;
- c) Ensuring that States Parties establish national funds for Maritime Transport development and inland waterways;
- d) Contributing to the promotion of a culture of Maritime Transport and inland waterways.

#### **Article 44 Charter Follow-up Mechanism**

1. A follow up Committee composed of fifteen (15) representatives of States Parties, designated by the Ministers Responsible for Maritime Transport, on the basis of geographical representation and rules and procedures of the Union for a period of two years is hereby created.
2. The Committee shall be charged specifically with:
  - a) Promoting and fostering of the implementation of the principles and objectives set out in the present Charter;
  - b) Monitoring and conducting evaluation of the impact of the implementation of the Charter;
  - c) Preparing, submitting and publishing through the Commission an annual report and recommendations on the status of implementation to States Parties.
3. The rules of procedure of this Committee shall be adopted by the conference of African Ministers Responsible for Maritime Transport.
4. The Committee may, for the execution of its missions, request for the support of the Regional Economic Communities, relevant specialized



institutions, sub-regional, regional and continental and international organizations.

## **CHAPTER XV**

### **Final Provisions**

#### **Article 45 Safeguard Clause**

1. Nothing in this Charter shall prejudice the rights and obligations of any State Party under the United Nations Convention on the Law of the Sea, 1982, and under the customary international law of the sea.
2. Nothing in this Charter shall prejudice the rights and responsibilities of Parties under other relevant and applicable international agreements.
3. No provision of the Charter shall be used to waive the application of the principles and values contained in other instruments for the promotion of the development of maritime transport in Africa, which have been ratified by the States Parties concerned.

#### **Article 46 Competence**

The African Court of Justice and Human Rights shall be the competent organ for matters arising from the interpretation or application of this Charter. Pending its establishment, such matters shall be submitted to the Assembly of the Union, which shall decide by consensus or by a two-thirds (2/3) majority of States Parties.

#### **Article 47 Settlement of Disputes**

States Parties undertake to settle their disputes regarding the interpretation or the application of the provisions of this Charter by negotiations or any other peaceful means agreed upon by them, which may include enquiry, mediation, conciliation, arbitration, and judicial settlement.

#### **Article 48 Signature, Ratification and Accession**





1. This Charter shall be open to signature, ratification and accession by the Member States of the Union in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission.

**Article 49**  
**Entry into Force**

1. This Charter shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification with the Chairperson of the Commission.
2. For each Member State that ratifies or accedes this Charter after its entry into force, the Charter shall become effective on the date the Member State deposits its instrument of accession with the Chairperson of the Commission.
3. The Chairperson of the Commission shall notify Member States of the entry into force of this Charter at most within a time limit of thirty (30) days.

**Article 50**  
**Amendment or Revision of the Charter**

1. Any State Party may submit proposals for the amendment or revision of the present charter.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit same to States Parties within a maximum period of thirty (30) days after they have been received. The Executive Council shall be seized of the proposals for amendment or revision of the Charter only when all the States Parties have been duly notified and after a period of one year.
3. The amendments shall be adopted by the Assembly and shall be submitted to States Parties for ratification/accession in conformity with their respective constitutional procedures.

**Article 51**  
**Entry into Force of Amendments**



1. Amendments shall come into force Thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification with the Chairperson of the Commission.
2. Without prejudice to Article 49, paragraph 2, any Member State which becomes party to the Charter after the entry into force of an amendment shall be deemed to be party to the unamended Charter with regard to any contracting State which is not bound by the said amendment.

**Article 52**  
**Withdrawal**

A State Party may, by written notification addressed to the Chairperson of the Commission, specifying the reasons, withdraw from this Charter. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

**Article 53**  
**Authentic Texts and Depository**

1. The Charter, drafted in four original texts in Arabic, English, French and Portuguese, the four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit a certified true copy thereof to all Members States.
2. The Chairperson of the Commission shall notify Member States of the dates of deposit of the instruments of ratification or accession and shall, upon the entry into force of this Charter, register the Charter with the Secretary General of the United Nations.

**Article 54**  
**Abrogation**

This Charter shall abrogate and supersede, as of the date of its entry into force, the African Maritime Transport Charter adopted at Addis Ababa, Ethiopia on 15<sup>th</sup> December 1993.

**ADOPTED BY THE FIFTEENTH ORDINARY SESSION OF  
THE ASSEMBLY, HELD IN KAMPALA, UGANDA,  
26<sup>TH</sup> JULY 2010**



**OAU Convention for the Elimination of Mercenarism in Africa,  
1977**



CM/817 (XXIX)  
Annex II Rev.1

PREAMBLE

We, the Heads of State and Government of the Member States of the Organization of African Unity;

CONSIDERING the grave threat which the activities of mercenaries present to the independence, sovereignty, territorial integrity and harmonious development of Member States of the Organization of African Unity;

CONCERNED with the threat which the activities of mercenaries pose to the legitimate exercise of the right of African People under colonial and racist domination to their independence and freedom;

CONVINCED that total solidarity and co-operation between Member States are indispensable for putting an end to the subversive activities of mercenaries in Africa;

CONSIDERING that the resolutions of the UN and the OAU, the statements of attitude and the practice of a great number of States are indicative of the development of new rules of international law making mercenarism an international crime;

DETERMINED to take all necessary measures to eliminate from the African continent the scourge that mercenarism represents;

Have agreed as follows:

**ARTICLE 1 – DEFINITION**

1. A mercenary is any person who:-
  - a) is specially recruited locally or abroad in order to fight in an armed conflict;
  - b) does in fact take a direct part in the hostilities;
  - c) is motivated to take part in the hostilities essentially by the desire for private gain and in fact is promised by or on behalf of a party to the conflict material compensation;
  - d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
  - e) is not a member of the armed forces of a party to the conflict; and
  - f) is not sent by a state other than a party to the conflict on official mission as a member of the armed forces of the said state.

2. The crime of mercenarism is committed by the individual, group or association, representative of a State and the State itself who with the aim of opposing by armed violence a process of self-determination stability or the territorial integrity of another State, that practises any of the following acts:

- a) Shelters, organises, finances, assists, equips, trains, promotes, supports or in any manner employs bands of mercenaries;
- b) Enlists, enrolls or tries to enrol in the said bands;
- c) Allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above mentioned forces.

3. Any person, natural or juridical who commits the crime of mercenarism as defined in paragraph 1 of this Article commits an offence considered as a crime against peace and security in Africa and shall be punished as such.

**ARTICLE 2 – AGGRAVATING CIRCUMSTANCE**

The fact of assuming command over or giving orders to mercenaries shall be considered as an aggravating circumstance.

**ARTICLE 3 – STATUS OF MERCENARIES**

Mercenaries shall not enjoy the status of combatants and shall not be entitled to the prisoners of war status.

**ARTICLE 4 – SCOPE OF CRIMINAL RESPONSIBILITY**

A mercenary is responsible both for the crime of mercenarism and all related offences, without prejudice to any other offences for which he may be prosecuted.

**ARTICLE 5 – GENERAL RESPONSIBILITY OF STATES AND THEIR REPRESENTATIVES**

1. When the representative of a State is responsible by virtue of the provisions of Article 1 of this Convention for acts or omissions declared by the aforesaid article to be criminal, he shall be punished for such an act or omission.
2. When a State is accused by virtue of the provisions of Article 1 of this Convention for acts or omissions declared by the aforesaid article to be criminal, any other party to the present Convention may invoke the provisions of this Convention in its relations with the offending State and before any competent OAU or International Organization tribunal or body.

**ARTICLE 6 – OBLIGATIONS OF STATES**

The contracting parties shall take all necessary measures to eradicate all mercenary activities in Africa.

To this end, each contracting State shall undertake to:

- (a) Prevent its nationals or foreigners on its territory from engaging in any of the acts mentioned in Article 1 of this Convention;
- (b) Prevent entry into or passage through its territory of any mercenary or any equipment destined for mercenary use;
- (c) Prohibit on its territory any activities by persons or organisations who use mercenaries against any African State member of the Organization of African Unity or the people of Africa in their struggle for liberation;
- (d) Communicate to the other Member States of the Organization of African Unity either directly or through the Secretariat of the OAU any information related to the activities of mercenaries as soon as it comes to its knowledge;
- (e) Forbid on its territory the recruitment, training, financing and equipment of mercenaries and any other form of activities likely to promote mercenarism;
- (f) Take all the necessary legislative and other measures to ensure the immediate entry into force of this Convention.

**ARTICLE 7 – PENALTIES**

Each contracting State shall undertake to make the offence defined in Article 1 of this Convention punishable by the severest penalties under its laws including capital punishment.

**ARTICLE 8 – JURISDICTION**

Each contracting State shall undertake to take such measures as may be necessary to punish, in accordance with the provisions of Article 7, any person who commits an offence under Article 1 of this Convention and who is found on its territory if it does not extradite him to the State against which the offence has been committed.

**ARTICLE 9 – EXTRADITION**

1. The crimes defined in Article 1 of this Convention, are not covered by national legislation excluding extradition for political offences.
2. A request for extradition shall not be refused unless the requested State undertakes to exercise jurisdiction over the offender in accordance with the provisions of Article 8.
3. Where a national is involved in the request for extradition, the requested State shall take proceedings against him for the offence committed if extradition is refused.
4. Where proceedings have been initiated in accordance with paragraphs 2 and 3 of this Article, the requested State shall inform the requesting State or any other State member of the OAU interested in the proceedings, of the result thereof.
5. A State shall be deemed interested in the proceedings within the meaning of paragraph 4 of this Article if the offence is linked in any way with its territory or is directed against its interests.

**ARTICLE 10 – MUTUAL ASSISTANCE**

The contracting States shall afford one another the greatest measures of assistance in connection with the investigation and criminal proceedings brought in respect of the offence and other acts connected with the activities of the offender.

**ARTICLE 11 – JUDICIAL GUARANTEE**

Any person or group of persons on trial for the crime defined in Article 1 of this Convention shall be entitled to all the guarantees normally granted to any ordinary person by the State on whose territory he is being tried.

(b) The date of entry into force of this Convention.

**ARTICLE 12 - SETTLEMENT OF DISPUTES**

Any dispute regarding the interpretation and application of the provisions of this Convention shall be settled by the interested parties in accordance with the principle of the Charter of the Organization of African Unity and the Charter of the United Nations.

2. The Administrative Secretary General of the Organization of African Unity shall transmit certified copies of the Convention to all Member States of the Organization.
3. The Administrative Secretary General of the Organization of African Unity shall, as soon as this Convention comes into force, register it pursuant to Article 102 of the Charter of the United Nations.

**ARTICLE 13 - SIGNATURE, RATIFICATION AND ENTRY INTO FORCE**

1. This Convention shall be open for signature by the Members of the Organization of African Unity. It shall be ratified. The instruments of ratification shall be deposited with the Administrative Secretary General of the Organization.

IN WITNESS WHEREOF, We, the Heads of State and Government of the Member States of the Organization of African Unity have appended our signatures to this Convention.

2. This Convention shall come into force 30 days after the date of the deposit of the Seventeenth instrument of ratification.

DONE at Libreville, Gabon this 3<sup>rd</sup> day of July, 1977 in the Arabic, English and French languages, all texts being equally authoritative, in a single original copy which shall be deposited in the archives of the Organization of African Unity.

3. As regards any signatory subsequently ratifying the Convention, it shall come into force 30 days after the date of the deposit of its instrument of ratification.

**ARTICLE 14 - ACCESSION**

1. Any Member State of the Organization of African Unity may accede to this Convention.

2. Accession shall be by deposit with the Administrative Secretary General of the Organization of an instrument of accession, which shall take effect 30 days after the date of its deposit.

**ARTICLE 15 - NOTIFICATION AND REGISTRATION**

1. The Administrative Secretary General of the Organization of African Unity shall notify the Member States of the Organization of:

- (a) The deposit of any instrument of ratification or accession;





**Declaration on the Framework for an OAU response to  
Unconstitutional Changes of Government (Lomé Declaration)  
(Organization of African Unity, Assembly of Heads of State  
and Government, Declaration 5 (XXXVI), 12 July 2000)**

DECLARATION ON THE FRAMEWORK FOR AN OAU RESPONSE TO  
UNCONSTITUTIONAL CHANGES OF GOVERNMENT

We, Heads of State and Governments of the Organization of African Unity, meeting at the Thirty-sixth Ordinary Session of our Assembly in Lome, Togo from 10 – 12 July, 2000 have undertaken a review of the Political Developments on the Continent and in particular the state of consolidating democracy in Africa.

We express our grave concern about the resurgence of coup d’etat in Africa. We recognize that these developments are a threat to peace and security of the Continent and they constitute a very disturbing trend and serious set back to the on-going process of democratization in the Continent.

We recognize that the phenomenon of coup d’etat has resulted in flagrant violations of the basic principles of our Continental Organization and of the United Nations.

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

We recall our Decision AHG/Dec.141 (XXXV), adopted during the Thirty-fifth Ordinary Session of our Assembly, in which we unanimously rejected any unconstitutional change as an unacceptable and anachronistic act, which is in contradiction of our commitment to promote democratic principles and conditions.

We recall further the mandate by the Seventieth Ordinary Session of the Council of Ministers, held in Algiers, in July 1997, to the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution to reactivate, as a matter of urgency, the sub-committee on unconstitutional change, in order to finalize its work in the light of the Harare discussions particularly, as regards the



ASSEMBLY OF HEADS OF STATE  
AND GOVERNMENT  
Thirty-Sixth Ordinary Session/  
Fourth Ordinary Session of the  
African Economic Community  
10-12 July, 2000  
Lome, Togo

AHG/Decl.1-6 (XXXVI)  
AHG/Dec. 143-159  
(XXXVI)  
AHG/OAU/AEC/Dec.1 (IV)

DECLARATIONS AND DECISIONS ADOPTED BY THE THIRTY-  
SIXTH ORDINARY SESSION OF THE ASSEMBLY OF HEADS OF  
STATE AND GOVERNMENT

measures to apply in coup d'état situations occurring in Member States.

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

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

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

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

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

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

- i) adoption of a democratic Constitution: its preparation, content and method of

revision should be in conformity with generally acceptable principles of democracy;

- ii) respect for the Constitution and adherence to the provisions of the law and other legislative enactments adopted by Parliament;

- iii) separation of powers and independence of the judiciary;

- iv) promotion of political pluralism or any other form of participatory democracy and the role of the African civil society, including enhancing and ensuring gender balance in the political process;

- v) the principle of democratic change and recognition of a role for the opposition;

- vi) organization of free and regular elections, in conformity with existing texts;

- vii) guarantee of freedom of expression and freedom of the press, including guaranteeing access to the media for all political stake-holders;

- viii) constitutional recognition of fundamental rights and freedoms in conformity with the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981;

- ix) guarantee and promotion of human rights.

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

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

- i) military coup d'état against a democratically elected Government;
- ii) intervention by mercenaries to replace a democratically elected Government;
- iii) replacement of democratically elected Governments by armed dissident groups and rebel movements;

iv) the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections.

We have also decided that:

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

At the request of its Chairman, the Secretary-General or any OAU Member State, the Central Organ may be convened to consider any given situation that could be considered as constituting an unconstitutional change.

Following the initial response of condemning the unconstitutional change by the Central Organ:

(a) A period of up to six months should be given to the perpetrators of the unconstitutional change to restore constitutional order. During the six month period, the government concerned should be suspended from participating in the Policy Organs of the OAU. Apart from the sanctions provided for under Article 115 of the OAU Financial Rules and Regulations, the governments concerned should not participate in meetings of the Central Organ and Sessions of the Council of Ministers and the Assembly of Heads of State and Government. Its exclusion from participating in the OAU Policy Organs should not affect the country's membership in the OAU and therefore will not preclude it from honouring its basic obligations towards the Organization including financial contributions to the OAU regular budget;

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

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

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

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

**Protocol Relating to the Establishment of the Peace and  
Security Council of the African Union, 2002**



**PROTOCOL RELATING TO THE ESTABLISHMENT OF THE PEACE  
AND SECURITY COUNCIL OF THE AFRICAN UNION**

**WE**, the Heads of State and Government of the Member States of the African Union;

**CONSIDERING** the Constitutive Act of the African Union and the Treaty establishing the African Economic Community, as well as the Charter of the United Nations;

**RECALLING** the Declaration on the establishment, within the Organization of African Unity (OAU), of a Mechanism for Conflict Prevention, Management and Resolution, adopted by the 29<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Cairo, Egypt, from 28 to 30 June 1993;

**RECALLING** also Decision AHG/Dec.160 (XXXVII) adopted by the 37<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lusaka, Zambia, from 9 to 11 July 2001, by which the Assembly decided to incorporate the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution as one of the organs of the Union, in accordance with Article 5(2) of the Constitutive Act of the African Union, and, in the regard, requested the Secretary-General to undertake a review of the structures, procedures and working methods of the Central Organ, including the possibility of changing its name;

**MINDFUL** of the provisions of the Charter of the United Nations, conferring on the Security Council primary responsibility for the maintenance of international peace and security, as well as the provisions of the Charter on the role of regional arrangements or agencies in the maintenance of international peace and security, and the need to forge closer cooperation and partnership between the United Nations, other international organizations and the African Union, in the promotion and maintenance of peace, security and stability in Africa;

**ACKNOWLEDGING** the contribution of African Regional Mechanisms for Conflict Prevention, Management and Resolution in the maintenance and promotion of peace, security and stability on the Continent and the need to develop formal coordination and cooperation arrangements between these Regional Mechanisms and the African Union;

**PROTOCOL RELATING TO THE  
ESTABLISHMENT OF THE PEACE  
AND SECURITY COUNCIL OF  
THE AFRICAN UNION**

**RECALLING** Decisions AHG/Dec.141 (XXXV) and AHG/Dec.142 (XXXV) on Unconstitutional Changes of Government, adopted by the 35<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Algiers, Algeria, from 12 to 14 July 1999, and Declaration AHG/Decl.5 (XXXVI) on the Framework for an OAU Response to Unconstitutional Changes of Government, adopted by the 36<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lomé, Togo, from 10 to 12 July 2000;

**REAFFIRMING** our commitment to Solemn Declaration AHG/Decl.4 (XXXVI) on the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), adopted by the 36<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lomé, Togo, from 10 to 12 July 2000, as well as Declaration AHG/Decl.1 (XXXVII) on the New Partnership for Africa's Development (NEPAD), which was adopted by the 37<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lusaka, Zambia, from 9 to 11 July 2001.;

**AFFIRMING** our further commitment to Declaration AHG/Decl.2 (XXX) on the Code of Conduct for Inter-African Relations, adopted by the 30<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Tunis, Tunisia, from 13 to 15 June 1994, as well as the Convention on the Prevention and Combating of Terrorism, adopted by the 35<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Algiers, Algeria, from 12 to 14 July 1999;

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

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

**CONCERNED FURTHER** about the scourge of landmines in the Continent and **RECALLING**, in this respect, the Plan of Action on a Landmine Free Africa, adopted by the 1<sup>st</sup> Continental Conference of African Experts on

Anti-Personnel Mines, held in Kempton Park, South Africa, from 17 to 19 May 1997, and endorsed by the 66<sup>th</sup> Ordinary Session of the OAU Council of Ministers, held in Harare, Zimbabwe, from 26 to 30 May 1997, as well as subsequent decisions adopted by the OAU on this issue;

**CONCERNED ALSO** about the impact of the illicit proliferation, circulation and trafficking of small arms and light weapons in threatening peace and security in Africa and undermining efforts to improve the living standards of African peoples and **RECALLING**, in this respect, the Declaration on the Common African Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, adopted by the OAU Ministerial Conference held in Bamako, Mali, from 30 November to 1 December 2000, as well as all subsequent OAU decisions on this issue;

**AWARE** that the problems caused by landmines and the illicit proliferation, circulation and trafficking of small arms and light weapons constitute a serious impediment to Africa's social and economic development, and that they can only be resolved within the framework of increased and well coordinated continental cooperation;

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

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

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

**HEREBY AGREE ON THE FOLLOWING:**

**ARTICLE 1**  
**DEFINITIONS**

For the purpose of this Protocol:

- a) "Protocol" shall mean the present Protocol;
- b) "Cairo Declaration" shall mean the Declaration on the Establishment, within the OAU, of the Mechanism for Conflict Prevention, Management and Resolution;
- c) "Lomé Declaration" shall mean the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government;
- d) "Constitutive Act" shall mean the Constitutive Act of the African Union;
- e) "Union" shall mean the African Union;
- f) "Assembly" shall mean the Assembly of Heads of State and Government of the African Union;
- g) "Commission" shall mean the Commission of the African Union;
- h) "Regional Mechanisms" shall mean the African Regional Mechanisms for Conflict Prevention, Management and Resolution;
- i) "Member States" shall mean Member States of the African Union.

**ARTICLE 2**  
**ESTABLISHMENT, NATURE AND STRUCTURE**

1. There is hereby established, pursuant to Article 5(2) of the Constitutive Act, a Peace and Security Council within the Union, as a standing decision-making organ for the prevention, management and resolution of conflicts. The Peace and Security Council shall be a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa.

2. The Peace and Security Council shall be supported by the Commission, a Panel of the Wise, a Continental Early Warning System, an African Standby Force and a Special Fund.

**ARTICLE 3**  
**OBJECTIVES**

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

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

**ARTICLE 4**  
**PRINCIPLES**

The Peace and Security Council shall be guided by the principles enshrined in the Constitutive Act, the Charter of the United Nations and the Universal

Declaration of Human Rights. It shall, in particular, be guided by the following principles:

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

## **ARTICLE 5** **COMPOSITION**

1. The Peace and Security Council shall be composed of fifteen Members elected on the basis of equal rights, in the following manner:
  - a. ten Members elected for a term of two years; and
  - b. five Members elected for a term of three years in order to ensure continuity.
2. In electing the Members of the Peace and Security Council, the Assembly shall apply the principle of equitable regional representation and rotation, and the following criteria with regard to each prospective Member State:
  - a. commitment to uphold the principles of the Union;
  - b. contribution to the promotion and maintenance of peace and security in Africa – in this respect, experience in peace support operations would be an added advantage;
  - c. capacity and commitment to shoulder the responsibilities entailed in membership;
  - d. participation in conflict resolution, peace-making and peacebuilding at regional and continental levels;
  - e. willingness and ability to take up responsibility for regional and continental conflict resolution initiatives;
  - f. contribution to the Peace Fund and/or Special Fund created for specific purpose;
  - g. respect for constitutional governance, in accordance with the Lomé Declaration, as well as the rule of law and human rights;
  - h. having sufficiently staffed and equipped Permanent Missions at the Headquarters of the Union and the United Nations, to be

able to shoulder the responsibilities which go with the membership; and

- j. commitment to honor financial obligations to the Union.
3. A retiring Member of the Peace and Security Council shall be eligible for immediate re-election.
4. There shall be a periodic review by the Assembly to assess the extent to which the Members of the Peace and Security Council continue to meet the requirements spelt out in article 5 (2) and to take action as appropriate.

#### **ARTICLE 6** **FUNCTIONS**

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

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

#### **ARTICLE 7** **POWERS**

- 1. In conjunction with the Chairperson of the Commission, the Peace and Security Council shall:

- a. anticipate and prevent disputes and conflicts, as well as policies that may lead to genocide and crimes against humanity;
- b. undertake peace-making and peace-building functions to resolve conflicts where they have occurred;
- c. authorize the mounting and deployment of peace support missions;
- d. lay down general guidelines for the conduct of such missions, including the mandate thereof, and undertake periodic reviews of these guidelines;
- e. recommend to the Assembly, pursuant to Article 4(h) of the Constitutive Act, intervention, on behalf of the Union, in a Member State in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, as defined in relevant international conventions and instruments;
- f. approve the modalities for intervention by the Union in a Member State, following a decision by the Assembly, pursuant to article 4(j) of the Constitutive Act;
- g. institute sanctions whenever an unconstitutional change of Government takes place in a Member State, as provided for in the Lomé Declaration;
- h. implement the common defense policy of the Union;
- i. ensure the implementation of the OAU Convention on the Prevention and Combating of Terrorism and other relevant international, continental and regional conventions and instruments and harmonize and coordinate efforts at regional and continental levels to combat international terrorism;
- j. promote close harmonization, co-ordination and co-operation between Regional Mechanisms and the Union in the promotion and maintenance of peace, security and stability in Africa;



- k. promote and develop a strong “partnership for peace and security” between the Union and the United Nations and its agencies, as well as with other relevant international organizations;
- l. develop policies and action required to ensure that any external initiative in the field of peace and security on the continent takes place within the framework of the Union’s objectives and priorities;
- m. follow-up, within the framework of its conflict prevention responsibilities, the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law by Member States;
- n. promote and encourage the implementation of OAU/AU, UN and other relevant international Conventions and Treaties on arms control and disarmament;
- o. examine and take such appropriate action within its mandate in situations where the national independence and sovereignty of a Member State is threatened by acts of aggression, including by mercenaries;
- p. support and facilitate humanitarian action in situations of armed conflicts or major natural disasters;
- q. submit, through its Chairperson, regular reports to the Assembly on its activities and the state of peace and security in Africa; and
- r. decide on any other issue having implications for the maintenance of peace, security and stability on the Continent and exercise powers that may be delegated to it by the Assembly, in accordance with Article 9 (2) of the Constitutive Act.

2. The Member States agree that in carrying out its duties under the present Protocol, the Peace and Security Council acts on their behalf.
3. The Member States agree to accept and implement the decisions of the Peace and Security Council, in accordance with the Constitutive Act.
4. The Member States shall extend full cooperation to, and facilitate action by the Peace and Security Council for the prevention, management and resolution of crises and conflicts, pursuant to the duties entrusted to it under the present Protocol.

### **ARTICLE 8** **PROCEDURE**

#### **Organization and Meetings**

1. The Peace and Security Council shall be so organized as to be able to function continuously. For this purpose, each Member of the Peace and Security Council shall, at all times, be represented at the Headquarters of the Union.
2. The Peace and Security Council shall meet at the level of Permanent Representatives, Ministers or Heads of State and Government. It shall convene as often as required at the level of Permanent Representatives, but at least twice a month. The Ministers and the Heads of State and Government shall meet at least once a year, respectively.
3. The meetings of the Peace and Security Council shall be held at the Headquarters of the Union.
4. In the event a Member State invites the Peace and Security Council to meet in its country, provided that two-thirds of the Peace and Security Council members agree, that Member State shall defray the additional expenses incurred by the Commission as a result of the meeting being held outside the Headquarters of the Union.



### **Subsidiary Bodies and Sub-Committees**

5. The Peace and Security Council may establish such subsidiary bodies as it deems necessary for the performance of its functions. Such subsidiary bodies may include ad hoc committees for mediation, conciliation or enquiry, consisting of an individual State or group of States. The Peace and Security Council shall also seek such military, legal and other forms of expertise as it may require for the performance of its functions.

### **Chairmanship**

6. The chair of the Peace and Security Council shall be held in turn by the Members of the Peace and Security Council in the alphabetical order of their names. Each Chairperson shall hold office for one calendar month.

### **Agenda**

7. The provisional agenda of the Peace and Security Council shall be determined by the Chairperson of the Peace and Security Council on the basis of proposals submitted by the Chairperson of the Commission and Member States. The inclusion of any item in the provisional agenda may not be opposed by a Member State.

### **Quorum**

8. The number of Members required to constitute a quorum shall be two-thirds of the total membership of the Peace and Security Council.

### **Conduct of Business**

9. The Peace and Security Council shall hold closed meetings. Any Member of the Peace and Security Council which is party to a conflict or a situation under consideration by the Peace and Security Council shall not participate either in the discussion or in the decision making process relating to that conflict or situation. Such Member shall be invited to present its case to the Peace and Security Council as appropriate, and shall, thereafter, withdraw from the proceedings.

10. The Peace and Security Council may decide to hold open meetings. In this regard:

- a. any Member State which is not a Member of the Peace and Security Council, if it is party to a conflict or a situation under consideration by the Peace and Security Council, shall be invited to present its case as appropriate and shall participate, without the right to vote, in the discussion;
- b. any Member State which is not a Member of the Peace and Security Council may be invited to participate, without the right to vote, in the discussion of any question brought before the Peace and Security Council whenever that Member State considers that its interests are especially affected;
- c. any Regional Mechanism, international organization or civil society organization involved and/or interested in a conflict or a situation under consideration by the Peace and Security Council may be invited to participate, without the right to vote, in the discussion relating to that conflict or situation.

11. The Peace and Security Council may hold informal consultations with parties concerned by or interested in a conflict or a situation under its consideration, as well as with Regional Mechanisms, international organizations and civil society organizations as may be needed for the discharge of its responsibilities.

### **Voting**

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

### **Rules of Procedure**

14. The Peace and Security Council shall submit its own rules of procedure, including on the convening of its meetings, the conduct of business, the publicity and records of meetings and any other relevant aspect of its work, for consideration and approval by the Assembly.

### **ARTICLE 9**

#### **ENTRY POINTS AND MODALITIES FOR ACTION**

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

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

### **ARTICLE 10**

#### **THE ROLE OF THE CHAIRPERSON OF THE COMMISSION**

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

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

- a. shall bring to the attention of the Peace and Security Council any matter, which, in his/her opinion, may threaten peace, security and stability in the Continent;
- b. may bring to the attention of the Panel of the Wise any matter which, in his/her opinion, deserves their attention;

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

3. The Chairperson of the Commission shall also:

- a. ensure the implementation and follow-up of the decisions of the Peace and Security Council, including mounting and deploying peace support missions authorized by the Peace and Security Council. In this respect, the Chairperson of the Commission shall keep the Peace and Security Council informed of developments relating to the functioning of such missions. All problems likely to affect the continued and effective functioning of these missions shall be referred to the Peace and Security Council, for its consideration and appropriate action;
  - b. ensure the implementation and follow-up of the decisions taken by the Assembly in conformity with Article 4 (h) and (j) of the Constitutive Act;
  - c. prepare comprehensive and periodic reports and documents, as required, to enable the Peace Security Council and its subsidiary bodies to perform their functions effectively.
4. In the exercise of his/her functions and powers, the Chairperson of the Commission shall be assisted by the Commissioner in charge of Peace and Security, who shall be responsible for the affairs of the Peace and Security Council. The Chairperson of the Commission shall rely on human and material resources available at the Commission, for servicing and providing support to the Peace and Security Council. In this regard, a Peace and Security Council Secretariat shall be established within the Directorate dealing with conflict prevention, management and resolution.

**ARTICLE 11**  
**PANEO OF THE WISE**

1. In order to support the efforts of the Peace and Security Council and those of the Chairperson of the Commission, particularly in the area of conflict prevention, a Panel of the Wise shall be established.
2. The Panel of the Wise shall be composed of five highly respected African personalities from various segments of society who have made outstanding contribution to the cause of peace, security and development on the continent. They shall be selected by the Chairperson of the Commission after consultation with the Member States concerned, on the basis of regional representation and appointed by the Assembly to serve for a period of three years.
3. The Panel of the Wise shall advise the Peace and Security Council and the Chairperson of the Commission on all issues pertaining to the promotion, and maintenance of peace, security and stability in Africa.
4. At the request of the Peace and Security Council or the Chairperson of the Commission, or at its own initiative, the Panel of the Wise shall undertake such action deemed appropriate to support the efforts of the Peace and Security Council and those of the Chairperson of the Commission for the prevention of conflicts, and to pronounce itself on issues relating to the promotion and maintenance of peace, security and stability in Africa.
5. The Panel of the Wise shall report to the Peace and Security Council and, through the Peace and Security Council, to the Assembly.
6. The Panel of the Wise shall meet as may be required for the performance of its mandate. The Panel of the Wise shall normally hold its meetings at the Headquarters of the Union. In consultation with the Chairperson of the Commission, the Panel of the Wise may hold meetings at such places other than the Headquarters of the Union.
7. The modalities for the functioning of the Panel of the Wise shall be worked out by the Chairperson of the Commission and approved by the Peace and Security Council.

8. The allowances of members of the Panel of the Wise shall be determined by the Chairperson of the Commission in accordance with the Financial Rules and Regulations of the Union.

**ARTICLE 12**  
**CONTINENTAL EARLY WARNING SYSTEM**

1. In order to facilitate the anticipation and prevention of conflicts, a Continental Early Warning System to be known as the Early Warning System shall be established.
2. The Early Warning System shall consist of:
  - a. an observation and monitoring centre, to be known as "The Situation Room", located at the Conflict Management Directorate of the Union, and responsible for data collection and analysis on the basis of an appropriate early warning indicators module; and
  - b. observation and monitoring units of the Regional Mechanisms to be linked directly through appropriate means of communications to the Situation Room, and which shall collect and process data at their level and transmit the same to the Situation Room.
3. The Commission shall also collaborate with the United Nations, its agencies, other relevant international organizations, research centers, academic institutions and NGOs, to facilitate the effective functioning of the Early Warning System.
4. The Early Warning System shall develop an early warning module based on clearly defined and accepted political, economic, social, military and humanitarian indicators, which shall be used to analyze developments within the continent and to recommend the best course of action.
5. The Chairperson of the Commission shall use the information gathered through the Early Warning System timeously to advise the Peace and Security Council on potential conflicts and threats to peace and security in Africa and recommend the best course of action. The Chairperson of the Commission shall also use this information for the execution of the

responsibilities and functions entrusted to him/her under the present Protocol.

6. The Member States shall commit themselves to facilitate early action by the Peace and Security Council and or the Chairperson of the Commission based on early warning information.
7. The Chairperson of the Commission shall, in consultation with Member States, the Regional Mechanisms, the United Nations and other relevant institutions, work out the practical details for the establishment of the Early Warning System and take all the steps required for its effective functioning.

#### **ARTICLE 13** **AFRICAN STANDBY FORCE**

#### **Composition**

1. In order to enable the Peace and Security Council perform its responsibilities with respect to the deployment of peace support missions and intervention pursuant to article 4 (h) and (j) of the Constitutive Act, an African Standby Force shall be established. Such Force shall be composed of standby multidisciplinary contingents, with civilian and military components in their countries of origin and ready for rapid deployment at appropriate notice.
  2. For that purpose, the Member States shall take steps to establish standby contingents for participation in peace support missions decided on by the Peace and Security Council or intervention authorized by the Assembly. The strength and types of such contingents, their degree of readiness and general location shall be determined in accordance with established African Union Peace Support Standard Operating Procedures (SOPs), and shall be subject to periodic reviews depending on prevailing crisis and conflict situations.
- Mandate**
3. The African Standby Force shall, *inter alia*, perform functions in the following areas:

- a. observation and monitoring missions;
  - b. other types of peace support missions;
  - c. intervention in a Member State in respect of grave circumstances or at the request of a Member State in order to restore peace and security, in accordance with Article 4(h) and (j) of the Constitutive Act;
  - d. preventive deployment in order to prevent (i) a dispute or a conflict from escalating, (ii) an ongoing violent conflict from spreading to neighboring areas or States, and (iii) the resurgence of violence after parties to a conflict have reached an agreement.;
  - e. peace-building, including post-conflict disarmament and demobilization;
  - f. humanitarian assistance to alleviate the suffering of civilian population in conflict areas and support efforts to address major natural disasters; and
  - g. any other functions as may be mandated by the Peace and Security Council or the Assembly.
4. In undertaking these functions, the African Standby Force shall, where appropriate, cooperate with the United Nations and its Agencies, other relevant international organizations and regional organizations, as well as with national authorities and NGOs.
  5. The detailed tasks of the African Standby Force and its modus operandi for each authorized mission shall be considered and approved by the Peace and Security Council upon recommendation of the Commission.
- Chain of Command**
6. For each operation undertaken by the African Standby Force, the Chairperson of the Commission shall appoint a Special Representative and a Force Commander, whose detailed roles and functions shall be spelt out in appropriate directives, in accordance with the Peace Support Standing Operating Procedures.



7. The Special Representative shall, through appropriate channels, report to the Chairperson of the Commission. The Force Commander shall report to the Special Representative. Contingent Commanders shall report to the Force Commander, while the civilian components shall report to the Special Representative.

#### **Military Staff Committee**

8. There shall be established a Military Staff Committee to advise and assist the Peace and Security Council in all questions relating to military and security requirements for the promotion and maintenance of peace and security in Africa.

9. The Military Staff Committee shall be composed of Senior Military Officers of the Members of the Peace and Security Council. Any Member State not represented on the Military Staff Committee may be invited by the Committee to participate in its deliberations when it is so required for the efficient discharge of the Committee's responsibilities.

10. The Military Staff Committee shall meet as often as required to deliberate on matters referred to it by the Peace and Security Council.

11. The Military Staff Committee may also meet at the level of the Chief of Defence Staff of the Members of the Peace and Security Council to discuss questions relating to the military and security requirements for the promotion and maintenance of peace and security in Africa. The Chiefs of Defence Staff shall submit to the Chairperson of the Commission recommendations on how to enhance Africa's peace support capacities.

12. The Chairperson of the Commission shall take all appropriate steps for the convening of and follow-up of the meetings of the Chiefs of Defence Staff of Members of the Peace and Security Council.

#### **Training**

13. The Commission shall provide guidelines for the training of the civilian and military personnel of national standby contingents at both operational and tactical levels. Training on International Humanitarian Law and International Human Rights Law, with particular emphasis on the rights of women and children, shall be an integral part of the training of such personnel

14. To that end, the Commission shall expedite the development and circulation of appropriate Standing Operating Procedures to *inter-alia*:

- a. support standardization of training doctrines, manuals and programmes for national and regional schools of excellence;
- b. co-ordinate the African Standby Force training courses, command and staff exercises, as well as field training exercises.

15. The Commission shall, in collaboration with the United Nations, undertake periodic assessment of African peace support capacities.

16. The Commission shall, in consultation with the United Nations Secretariat, assist in the co-ordination of external initiatives in support of the African Standby Force capacity-building in training, logistics, equipment, communications and funding.

#### **Role of Member States**

17. In addition to their responsibilities as stipulated under the present Protocol:

- a. troop contributing countries shall immediately, upon request by the Commission, following an authorization by the Peace and Security Council or the Assembly, release the stand-by contingents with the necessary equipment for the operations envisaged under Article 9 (3) of the present Protocol;
- b. Member States shall commit themselves to make available to the Union all forms of assistance and support required for the promotion and maintenance of peace, security and stability on the Continent, including rights of passage through their territories.

**ARTICLE 14**  
**PEACE BUILDING**

**Institutional Capacity for Peace-building**

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

**Peace-building during Hostilities**

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

**Peace-building at the End of Hostilities**

3. To assist Member States that have been adversely affected by violent conflicts, the Peace and Security Council shall undertake the following activities:
  - a. consolidation of the peace agreements that have been negotiated;
  - b. establishment of conditions of political, social and economic reconstruction of the society and Government institutions;
  - c. implementation of disarmament, demobilization and reintegration programmes, including those for child soldiers;
  - d. resettlement and reintegration of refugees and internally displaced persons;
  - e. assistance to vulnerable persons, including children, the elderly, women and other traumatized groups in the society.

**ARTICLE 15**  
**HUMANITARIAN ACTION**

1. The Peace and Security Council shall take active part in coordinating and conducting humanitarian action in order to restore life to normalcy in the event of conflicts or natural disasters.
2. In this regard, the Peace and Security Council shall develop its own capacity to efficiently undertake humanitarian action.
3. The African Standby Force shall be adequately equipped to undertake humanitarian activities in their mission areas under the control of the Chairperson of the Commission.
4. The African Standby Force shall facilitate the activities of the humanitarian agencies in the mission areas.

**ARTICLE 16**

**RELATIONSHIP WITH REGIONAL MECHANISMS FOR CONFLICT PREVENTION, MANAGEMENT AND RESOLUTION**

1. The Regional Mechanisms are part of the overall security architecture of the Union, which has the primary responsibility for promoting peace, security and stability in Africa. In this respect, the Peace and Security Council and the Chairperson of the Commission, shall:
  - a) harmonize and coordinate the activities of Regional Mechanisms in the field of peace, security and stability to ensure that these activities are consistent with the objectives and principles of the Union;
  - b) work closely with Regional Mechanisms, to ensure effective partnership between them and the Peace and Security Council in the promotion and maintenance of peace, security and stability. The modalities of such partnership shall be determined by the comparative advantage of each and the prevailing circumstances.
2. The Peace and Security Council shall, in consultation with Regional Mechanisms, promote initiatives aimed at anticipating and preventing



conflicts and, in circumstances where conflicts have occurred, peace-making and peace-building functions.

3. In undertaking these efforts, Regional Mechanisms concerned shall, through the Chairperson of the Commission, keep the Peace and Security Council fully and continuously informed of their activities and ensure that these activities are closely harmonized and coordinated with the activities of Peace and Security Council. The Peace and Security Council shall, through the Chairperson of the Commission, also keep the Regional Mechanisms fully and continuously informed of its activities.
4. In order to ensure close harmonization and coordination and facilitate regular exchange of information, the Chairperson of the Commission shall convene periodic meetings, but at least once a year, with the Chief Executives and/or the officials in charge of peace and security within the Regional Mechanisms.
5. The Chairperson of the Commission shall take the necessary measures, where appropriate, to ensure the full involvement of Regional Mechanisms in the establishment and effective functioning of the Early Warning System and the African Standby Force.
6. Regional Mechanisms shall be invited to participate in the discussion of any question brought before the Peace and Security Council whenever that question is being addressed by a Regional Mechanism is of special interest to that Organization.
7. The Chairperson of the Commission shall be invited to participate in meetings and deliberations of Regional Mechanisms.
8. In order to strengthen coordination and cooperation, the Commission shall establish liaison offices to the Regional Mechanisms. The Regional Mechanisms shall be encouraged to establish liaison offices to the Commission.
9. On the basis of the above provisions, a Memorandum of Understanding on Cooperation shall be concluded between the Commission and the Regional Mechanisms.

**ARTICLE 17**  
**RELATIONSHIP WITH THE UNITED NATIONS AND**  
**OTHER INTERNATIONAL ORGANIZATIONS**

1. In the fulfillment of its mandate in the promotion and maintenance of peace, security and stability in Africa, the Peace and Security Council shall cooperate and work closely with the United Nations Security Council, which has the primary responsibility for the maintenance of international peace and security. The Peace and Security Council shall also cooperate and work closely with other relevant UN Agencies in the promotion of peace, security and stability in Africa.
2. Where necessary, recourse will be made to the United Nations to provide the necessary financial, logistical and military support for the African Unions' activities in the promotion and maintenance of peace, security and stability in Africa, in keeping with the provisions of Chapter VIII of the UN Charter on the role of Regional Organizations in the maintenance of international peace and security.
3. The Peace and Security Council and the Chairperson of the Commission shall maintain close and continued interaction with the United Nations Security Council, its African members, as well as with the Secretary-General, including holding periodic meetings and regular consultations on questions of peace, security and stability in Africa.
4. The Peace and Security Council shall also cooperate and work closely with other relevant international organizations on issues of peace, security and stability in Africa. Such organizations may be invited to address the Peace and Security Council on issues of common interest, if the latter considers that the efficient discharge of its responsibilities does so require.

**ARTICLE 18**  
**RELATIONSHIP WITH THE PAN AFRICAN PARLIAMENT**

1. The Mechanism shall maintain close working relations with the Pan-African Parliament in furtherance of peace, security and stability in Africa.
2. The Peace and Security Council shall, whenever so requested by the Pan African Parliament, submit, through the Chairperson of the Commission, reports to the Pan-African Parliament, in order to facilitate the discharge by

the latter of its responsibilities relating to the maintenance of peace, security and stability in Africa.

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

#### **ARTICLE 19**

##### **RELATIONSHIP WITH THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

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

#### **ARTICLE 20**

##### **RELATIONS WITH CIVIL SOCIETY ORGANIZATIONS**

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

#### **ARTICLE 21** **FUNDING**

##### **Peace Fund**

1. In order to provide the necessary financial resources for peace and support missions and other operational activities related to peace and

security, a Special Fund, to be known as the Peace Fund, shall be established. The operations of the Peace Fund shall be governed by the relevant Financial Rules and Regulations of the Union.

2. The Peace Fund shall be made up of financial appropriations from the regular budget of Union, including arrears of contributions, voluntary contributions from Member States and from other sources within Africa, including the private sector, civil society and individuals, as well as through appropriate fund raising activities.

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

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

##### **Assessment of Cost of Operations and Pre-financing**

5. When required, and following a decision by the relevant Policy Organs of the Union, the cost of the operations envisaged under Article 13 (3) of the present Protocol shall be assessed to Member States based on the scale of their contributions to the regular budget of the Union.

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

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

#### **ARTICLE 22** **FINAL PROVISIONS**

##### **Status of the Protocol in relation to the Cairo Declaration**

1. The present Protocol shall replace the Cairo Declaration.

2. The provisions of this Protocol shall supercede the resolutions and decisions of the OAU relating to the Mechanism for Conflict Prevention, Management and Resolution in Africa, which are in conflict with the present Protocol.

**Signature, Ratification and Accession**

- 3. The present Protocol shall be open for signature, ratification or accession by the Member States of the Union in accordance with their respective constitutional procedures.
- 4. The instruments of ratification shall be deposited with the Chairperson Commission

**Entry into Force**

5. The present Protocol shall enter into force upon the deposit of the instruments of ratification by a simple majority of the Member States of the Union.

**Amendments**

6. Any amendment or revision of the present Protocol shall be in accordance with the provisions of Article 32 of the Constitutive Act.

**Depositary Authority**

7. This Protocol and all instruments of ratification shall be deposited with the Chairperson of the Commission, who shall transmit certified true copies to all Member States and notify them of the dates of deposit of the instruments of ratification by the Member States and shall register it with the United Nations and any other Organization as may be decided by the Union.

**1. People’s Democratic Republic of Algeria**

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**2. Republic of Angola**

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**3. Republic of Benin**

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**4. Republic of Botswana**

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**5. Burkina Faso**

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**6. Republic of Burundi**

.....

**Adopted by the 1<sup>st</sup> Ordinary Session of  
the Assembly of the African Union**

**Durban, 9 July 2002**

7. Republic of Cameroon

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8. Republic of Cape Verde

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9. Central African Republic

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10. Republic of Chad

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11. Islamic Federal Republic of the Comoros

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12. Republic of the Congo

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13. Republic of Côte d'Ivoire

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14. Democratic Republic of Congo

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15. Republic of Djibouti

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16. Arab Republic of Egypt

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17. State of Eritrea

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18. Federal Democratic Republic of Ethiopia

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19. Republic of Equatorial Guinea

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20. Republic of Gabon

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21. Republic of The Gambia

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22. Republic of Ghana

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23. Republic of Guinea

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24. Republic of Guinea Bissau

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25. Republic of Kenya

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26. Kingdom of Lesotho

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27. Republic of Liberia

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28. Great Socialist People's Libyan Arab Jamahiriya

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29. Republic of Madagascar

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30. Republic of Malawi

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31. Republic of Mali

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32. Islamic Republic of Mauritania

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33. Republic of Mauritius

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34. Republic of Mozambique

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35. Republic of Namibia

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36. Republic of Niger

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37. Federal Republic of Nigeria

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38. Republic of Rwanda

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39. Sahrawi Arab Democratic Republic

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40. Republic of Sao Tome and Principe

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41. Republic of Senegal

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42. Republic of Seychelles

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43. Republic of Sierra Leone

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44. Republic of Somalia

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45. Republic of South Africa

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46. Republic of Sudan

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47. Kingdom of Swaziland

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48. United Republic of Tanzania

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49. Republic of Togo

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50. Republic of Tunisia

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51. Republic of Uganda

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52. Republic of Zambia

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53. Republic of Zimbabwe

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**African Union Non-Aggression and Common Defence Pact,  
2005**

**AFRICAN UNION NON-AGGRESSION  
AND COMMON DEFENCE PACT**

**PREAMBLE**

**We, the Heads of State and Government of the Member States of the African Union;**

**CONSCIOUS** of the gravity of the impact of conflicts both within and among African States, on peace, security and stability in the Continent, and their devastating impact on socio-economic development;

**COMMITTED** to our common vision of a united and strong Africa, based on respect for the principles of peaceful co-existence, non-aggression, non-interference in the internal affairs of Member States, mutual respect for individual sovereignty and territorial integrity of each State;

**DETERMINED** to put an end to conflicts of any kind within and among States in Africa, in order to create propitious conditions for socio-economic development and integration of the Continent, as well as the fulfilment of the aspirations of our peoples;

**REAFFIRMING** that appropriate development institutions and promotion of a strong democratic culture through organization of honest and regular elections, respect for human rights and the rule of law, combating corruption and impunity and formulation of sustainable development policies are vital to collective security, peace and stability;

**CONSIDERING** the Constitutive Act of the African Union, the Treaty Establishing the African Economic Community and the Charter of the United Nations;

**CONSIDERING ALSO** the Protocol Relating to the Establishment of the Peace and Security Council of the African Union adopted in Durban, South Africa, on 10 July 2002, particularly its Article 7(h) on the implementation of the Common Defence Policy of the Union;



**AFRICAN UNION NON-AGGRESSION  
AND COMMON DEFENCE PACT**



**REAFFIRMING** our commitment to the Solemn Declaration on the Common African Defence and Security Policy adopted in Sirte, Great Libyan Arab Jamahiriya, by the Second Extraordinary Session of the Assembly of the African Union held from 27 to 28 February 2004, particularly its Chapter III, paragraph (t) which encourages “the conclusion and ratification of non-aggression pacts between and among African States and the harmonization of such agreements”,

**CONVINCED** that the African Union is a community of Member States which decided, among other things, to adopt an African Union Non-Aggression and Common Defence Pact in order to deal with threats to peace, security and stability in the continent and to ensure the well being of the African peoples.

**HAVE AGREED AS FOLLOWS:**

**DEFINITIONS**  
**Article 1**

In this Pact:

- a) **“Acts of Subversion”** means any act that incites, aggravates or creates dissension within or among Member States with the intention or purpose to destabilize or overthrow the existing regime or political order by, among other means, fomenting racial, religious, linguistic, ethnic and other differences, in a manner inconsistent with the Constitutive Act, the Charter of the United Nations and the Lome Declaration;
- b) **“African Standby Force”** means the African Standby Force (ASF) provided in the Protocol Relating to the Establishment of the Peace and Security Council of the African Union;
- c) **“Aggression”** means the use, intentionally and knowingly, of armed force or any other hostile act by a State, a group of States, an organization of States or non-State actor(s) or by

any foreign or external entity, against the sovereignty, political independence, territorial integrity and human security of the population of a State Party to this Pact, which are incompatible with the Charter of the United Nations or the Constitutive Act of the African Union. The following shall constitute acts of aggression, regardless of a declaration of war by a State, group of States, organization of States, or non-State actor(s) or by any foreign entity:

- i. the use of armed forces against the sovereignty, territorial integrity and political independence of a Member State, or any other act inconsistent with the provisions of the Constitutive Act of the African Union and the Charter of the United Nations;
- ii. the invasion or attack by armed forces against the territory of a Member State, or military occupation, however temporary, resulting from such an invasion or attack, or any annexation by the use of force of the territory of a Member State or part thereof;
- iii. the bombardment of the territory of a Member State or the use of any weapon against the territory of a Member State;
- iv. the blockade of the ports, coasts or airspace of a Member State;
- v. the attack on the land, sea or air forces, or marine and fleets of a Member State;
- vi. the use of the armed forces of a Member State which are within the territory of another Member State with the agreement of the latter, in contravention of the conditions provided for in this Pact;
- vii. the action of a Member State in allowing its territory, to be used by another Member State for perpetrating an act of aggression against a third State;



- viii. the sending by, or on behalf of a Member State or the provision of any support to armed groups, mercenaries, and other organized trans-national criminal groups which may carry out hostile acts against a Member State, of such gravity as to amount to the acts listed above, or its substantial involvement therein;
- ix. the acts of espionage which could be used for military aggression against a Member State;
- x. technological assistance of any kind, intelligence and training to another State for use in committing acts of aggression against another Member State; and
- xi. the encouragement, support, harbouring or provision of any assistance for the commission of terrorist acts and other violent trans-national organized crimes against a Member State.

- d) **“Assembly”** means the Assembly of Heads of State and Government of the African Union;
- e) **“Commission”** means the Commission of the African Union;
- f) **“Common African Defence and Security Policy”** means the Solemn Declaration on a Common African Defence and Security Policy adopted by the Second Extraordinary Session of the Assembly, held in Sirte, Great Socialist Libyan Arab Jamahiriya, in February 2004;
- g) **“Constitutive Act”** means the Constitutive Act of the African Union;
- h) **“Court of Justice”** means the Court of Justice of the African Union;
- i) **“Destabilization”** means any act that disrupts the peace and tranquillity of any Member State or which may lead to mass social and political disorder;

- j) **“Dispute”** means any conflict between two or among several Member States or within a Member State, which constitutes a threat to peace and security, or a breach of the peace and security within the African Union, as determined by the Assembly of Heads of State and Government or the Peace and Security Council;
- k) **“Human Security”** means the security of the individual in terms of satisfaction of his/her basic needs. It also includes the creation of social, economic, political, environmental and cultural conditions necessary for the survival and dignity of the individual, the protection of and respect for human rights, good governance and the guarantee for each individual of opportunities and choices for his/her full development;
- l) **“Lome Declaration”** means the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government;
- m) **“Member States”** means Member States of the African Union;
- n) **“Mercenaries”** means mercenaries as defined in the OAU Convention on the Elimination of Mercenarism in Africa;
- o) **“Military Staff Committee”** means the Military Staff Committee (MSC) provided in the Protocol Relating to the Establishment of the Peace and Security Council of the African Union;
- p) **“Non-Aggression”** means peaceful conduct by a Member State, group of Member States, organization of Member States, or non-State actor(s), which does not constitute acts of aggression as defined above;
- q) **“Pact”** means the present Pact;
- r) **“Peace and Security Council”** means the Peace and Security Council (PSC) of the African Union as provided in the Protocol Relating to the Establishment of the Peace and Security Council of the African Union;



- s) **“Protocol”** means the Protocol Relating to the Establishment of the Peace and Security Council of the African Union;
- t) **“Regional Mechanism”** means African Regional Mechanisms for Conflict Prevention, Management and Resolution;
- u) **“State Party”** means a Member State that has ratified or acceded to this Pact;
- v) **“Terrorist Acts”** means those acts or offences defined in the OAU Convention on the Prevention and Combating of Terrorism;
- w) **“Threat of Aggression”** means any harmful conduct or statement by a State, group of States, organization of States, or non-State actor(s) which though falling short of a declaration of war, might lead to an act of aggression as defined above;
- x) **“Trans-national Organized Criminal Group”** means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes which are trans-national in scope, or offences established in accordance with international law, including the United Nations Convention Against Trans-national Organized Crime and its Protocols thereto, the purpose being which to obtain, directly or indirectly financial and other material benefits;
- y) **“Union”** means the African Union;

## **OBJECTIVES** **Article 2**

- a) The objectives of this Pact are:
- (i) to promote cooperation among the Member States in the areas of non-aggression and common defence,
- (ii) to promote peaceful co-existence in Africa,



- (iii) to prevent conflicts of inter-State or intra-State nature, and
- (iv) to ensure that disputes are resolved by peaceful means.
- b) In pursuance of these objectives, this Pact seeks to define a framework under which the Union may intervene or authorise intervention, in preventing or addressing situations of aggression, in conformity with the Constitutive Act, the Protocol and the Common African Defence and Security Policy;
- c) Consequently, any aggression or threat of aggression against any of the Member States shall be deemed to constitute a threat or aggression against all Member States of the Union.

## **OBLIGATIONS** **Article 3**

- a) State Parties undertake, pursuant to the provisions of the Constitutive Act, to resolve any differences by peaceful means, in order to avoid endangering peace and security; to refrain from the use of force or threat to use force in their relations with each other and in any manner whatsoever, incompatible with the United Nations Charter. Consequently, no consideration whatsoever, be it political, economic, military, religious or racial shall justify aggression;
- b) State Parties undertake to develop and strengthen the friendly and peaceful relations among them in accordance with the fundamental principles of the Union;
- c) State Parties undertake to promote such sustainable development policies as are appropriate to enhance the well being of the African people, including the dignity and fundamental rights of every human being in the context of a democratic society as stipulated in the Lome Declaration. In particular, State Parties shall ensure freedom of worship, respect of the cultural identity of peoples and the rights of minorities;





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

#### **Article 4**

a) State Parties undertake to provide mutual assistance towards their common defence and security vis-à-vis any aggression or threats of aggression;

b) State Parties undertake, individually and collectively, to respond by all available means to aggression or threats of aggression against any Member State;

c) State Parties undertake not to recognize any territorial acquisition or special advantage, resulting from the use of aggression;

d) As part of the vision of building a strong and united Africa, State Parties undertake to establish an African Army at the final stage of the political and economic integration of the Continent. In the meantime, State Parties will make best efforts to address the challenges of common defence and security through the effective implementation of the Common African Defence and Security Policy, including the early establishment and operationalisation of the African Standby Force.

#### **Article 5**

a) State Parties undertake to intensify collaboration and cooperation in all aspects related to combating international terrorism and any other form of organized trans-national crime or destabilization of any Member State;

b) Each State Party shall prevent its territory and its people from being used for encouraging or committing acts of subversion, hostility, aggression and other harmful practices that might threaten the territorial integrity and sovereignty of a Member State or regional peace and security;



c) Each State Party shall prohibit the use of its territory for the stationing, transit, withdrawal or incursions of irregular armed groups, mercenaries and terrorist organizations operating in the territory of another Member State.

#### **Article 6**

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

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

#### **Article 7**

State Parties undertake, to cooperate and enhance their military and intelligence capacities through mutual assistance.

#### **Article 8**

a) Each State Party declares not to enter into any international or regional commitment which is in contradiction to the present Pact.

b) Each State Party declares that under no circumstances shall it exempt itself from its obligations under this Pact.

### **IMPLEMENTATION MECHANISMS**

#### **Article 9**

The Peace and Security Council shall be responsible for the implementation of this Pact, under the authority of the Assembly. In this regard, the Peace and Security Council may be assisted by any organ of the Union, pending the setting up of mechanisms and institutions for common defence and security.



### Article 10

- a) State Parties undertake to provide all possible assistance towards the military operations decided by the Peace and Security Council, including the use of the African Standby Force;
- b) State Parties undertake to develop and strengthen the level of their actual collaboration with the Command Headquarters and Military Staff Committee of the African Standby Force in accordance with the provisions of the Protocol and the Policy Framework for the Establishment of the African Standby Force and the Military Staff Committee.

### Article 11

- a) State Parties undertake to develop and strengthen the capacities of African research, information and training institutions to enhance early preventive action against any aggression or threats of aggression;
- b) The Peace and Security Council may also be assisted by the following institutions:

- i. The African Peace Academy;
- ii. The African Centre for Study and Research on Terrorism;
- iii. The African Union Commission on International Law;
- c) The Peace and Security Council may establish any other mechanism as it deems necessary.

### THE AFRICAN PEACE ACADEMY

#### Article 12

- a) State Parties undertake to establish and operationalize the African Peace Academy (APA) to serve as a framework for the promotion of peace and stability in Africa, and as a centre of excellence for research and development of an African peace doctrine;



- b) The organization and operational modalities of the Academy shall be decided upon by the Assembly.

### AFRICAN CENTRE FOR THE STUDY AND RESEARCH ON TERRORISM

#### Article 13

- a) The African Centre for the Study and Research on Terrorism (ACSRT) shall serve to centralize, collect and disseminate information, studies and analysis on terrorism and terrorist groups, and shall provide training programs by organizing, with the assistance of international partners meetings, and symposia, in order to prevent and combat terrorist acts in Africa;
- b) The Centre shall assist Member States develop the expertise and strategies for the prevention and combating of terrorism, particularly with respect to the implementation of the 1999 OAU Convention and its Protocol thereto on the Prevention and Combating of Terrorism, as well as the Plan of Action on the Prevention and Combating of Terrorism in Africa and other relevant decisions adopted by the policy Organs of the Union;

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

### THE AFRICAN UNION COMMISSION ON INTERNATIONAL LAW

#### Article 14

- a) State Parties undertake to establish an African Union Commission on International Law whose objectives shall, among others, be to study all legal matters related to the promotion of peace and security in Africa, including the demarcation and delineation of African borders;
- b) The composition and functions of the African Union Commission on International Law shall be decided upon by the Assembly.



## **PEACEFUL SETTLEMENT OF DISPUTES**

### **Article 15**

State Parties involved in any dispute shall first seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, or resort to regional and continental mechanisms or arrangements, or other peaceful means.

## **INTERPRETATION**

### **Article 16**

State Parties undertake to refer all disputes over the interpretation, implementation and validity of this Pact to the Court of Justice, without prejudice to the competence of the Peace and Security Council.

### **Article 17**

a) This Pact shall not derogate from, and shall not be interpreted as derogating in any way from the obligations of Member States contained in the United Nations Charter and the Constitutive Act, including the Protocol, and from the primary responsibility of the United Nations Security Council for the maintenance of international peace and security.

b) This Pact shall not derogate from, and shall not be interpreted as derogating in any way whatsoever, from the rights of refugees guaranteed by the relevant continental and international instruments.

## **FINAL PROVISIONS**

### **Article 18**

a) This Pact shall be open to signature and ratification or accession by Member States in accordance with their respective constitutional procedures;

b) The instruments of ratification shall be deposited with the Chairperson of the Commission;

c) Any Member State acceding to this Pact after its entry into force shall deposit the instrument of accession with the Chairperson of the Commission;

d) Any State Party may withdraw from this Pact by giving a one (1) year prior notice to the Chairperson of the Commission, who shall notify all the State Parties thereof.

### **Article 19**

This Pact shall enter into force thirty (30) days following the deposit of instruments of ratification by fifteen (15) Member States.

### **Article 20**

a) Any State Party may submit proposals for the amendment or revision of this Pact;

b) Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit same to the State Parties within thirty (30) days of receipt thereof;

c) The amendments shall be examined and approved by the State Parties, by consensus or, failing which, by two-third majority, and thereafter, the amendments shall be formally endorsed by the Assembly;

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

### **Article 21**

There shall be a periodic evaluation of this Pact in order to update it and to enhance its implementation. The evaluation of the Pact shall be done within the context of paragraph 36 of the Solemn Declaration on the Common African Defence and Security Policy which provide for the convening by the Chairperson of the Peace



and Security Council “of a yearly review conference involving all the conflict resolution mechanisms of the various regional organizations as well as mechanisms established by the continental instruments.”

**Article 22**

This Pact, drawn up in four (4) original texts in Arabic, English, French and Portuguese, all four (4) being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit certified copies thereof to each Member State.

**Article 23**

The Chairperson of the Commission shall register this Pact with the United Nations.

**ADOPTED BY THE FOURTH ORDINARY SESSION  
OF THE ASSEMBLY, HELD IN ABUJA, NIGERIA,  
ON MONDAY, 31 JANUARY 2005**

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**African Union Convention on Preventing and Combating  
Corruption, 2003**



**AFRICAN UNION CONVENTION ON PREVENTING AND  
COMBATING CORRUPTION**

**PREAMBLE**

The Member States of the African Union:

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

**Further Considering** that Article 3 of the said Constitutive Act enjoins Member States to coordinate and intensify their cooperation, unity, cohesion and efforts to achieve a better life for the peoples of Africa;

**AFRICAN UNION CONVENTION ON PREVENTING  
AND COMBATING CORRUPTION**

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

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



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

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

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

**Recognizing** the need to address the root causes of corruption on the continent;

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



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

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

**Further Recalling** the decision of the 37<sup>th</sup> ordinary session of the Assembly of Heads of State and Government of the OAU held in Lusaka, Zambia, in July 2001 as well as the Declaration adopted by the first session of the Assembly of the Union held in Durban, South Africa in July 2002, relating to the New Partnership for Africa's Development (NEPAD) which calls for the setting up of a coordinated mechanism to combat corruption effectively.

Have agreed as follows:

## Article 1 Definitions

1. For the purposes of this Convention;

**"Chairperson of the Commission"** means Chairperson of the Commission of the African Union;



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

**“Corruption”** means the acts and practices including related offences proscribed in this Convention;

**“Court of Law”** means a court duly established by a domestic law;

**“Executive Council”** means the Executive Council of the African Union;

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

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

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

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



**“Requested State Party”** means a State Party requested to extradite or to provide assistance under this Convention;

**“Requesting State Party”** means a State Party making a request for extradition or assistance in terms of this Convention;

**“State Party”** means any Member State of the African Union which has ratified or acceded to this Convention and has deposited its instruments of ratification or accession with the Chairperson of the Commission of the African Union.

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

## Article 2 Objectives

The objectives of this Convention are to:

1. Promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.
2. Promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa.
3. Coordinate and harmonize the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent.



4. Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights.
5. Establish the necessary conditions to foster transparency and accountability in the management of public affairs.

### **Article 3 Principles**

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

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



### **Article 4 Scope of Application**

1. This Convention is applicable to the following acts of corruption and related offences:
  - (a) the solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
  - (b) the offering or granting, directly or indirectly, to a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
  - (c) any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
  - (d) the diversion by a public official or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the State or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position;



- (e) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;
- (f) the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;
- (g) illicit enrichment;
- (h) the use or concealment of proceeds derived from any of the acts referred to in this Article; and
- (i) participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or on any other manner in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this article.



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

## Article 5

### Legislative and other Measures

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

1. Adopt legislative and other measures that are required to establish as offences, the acts mentioned in Article 4 paragraph 1 of the present Convention.
2. Strengthen national control measures to ensure that the setting up and operations of foreign companies in the territory of a State Party shall be subject to the respect of the national legislation in force.
3. Establish, maintain and strengthen independent national anti-corruption authorities or agencies.
4. Adopt legislative and other measures to create, maintain and strengthen internal accounting, auditing and follow-up systems, in particular, in the public income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services.



5. Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities.
6. Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals.
7. Adopt national legislative measures in order to punish those who make false and malicious reports against innocent persons in corruption and related offences.
8. Adopt and strengthen mechanisms for promoting the education of populations to respect the public good and public interest, and awareness in the fight against corruption and related offences, including school educational programmes and sensitization of the media, and the promotion of an enabling environment for the respect of ethics.

#### **Article 6**

#### **Laundering of the Proceeds of Corruption**

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

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



- b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences;
- c) The acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences;

#### **Article 7**

#### **Fight Against Corruption and Related Offences in the Public Service**

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

1. Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service.
2. Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitize and train public officials on matters of ethics.
3. Develop disciplinary measures and investigation procedures in corruption and related offences with a view to keeping up with technology and increase the efficiency of those responsible in this regard.





4. Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service.
5. Subject to the provisions of domestic legislation, any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials.

**Article 8**  
**Illicit Enrichment**

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

**Article 9**  
**Access to Information**

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



**Article 10**  
**Funding of Political Parties**

- Each State Party shall adopt legislative and other measures to:
- (a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and
  - (b) Incorporate the principle of transparency into funding of political parties.

**Article 11**  
**Private Sector**

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



**Article 12**  
**Civil Society and Media**

State Parties undertake to:

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

**Article 13**  
**Jurisdiction**

1. Each State Party has jurisdiction over acts of corruption and related offences when:
  - (a) the breach is committed wholly or partially inside its territory;



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

**Article 14**  
**Minimum Guarantees of a Fair Trial**

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



### **Article 15 Extradition**

1. This Article shall apply to the offences established by the State Parties in accordance with this Convention.
2. Offences falling within the jurisdiction of this Convention shall be deemed to be included in the internal laws of State Parties as crimes requiring extradition. State Parties shall include such offences as extraditable offences in extradition treaties existing between or among them.
3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from a State Party with which it does not have such treaty, it shall consider this Convention as a legal basis for all offences covered by this Convention.
4. A State Party that does not make extradition conditional on the existence of a treaty shall recognize offences to which this Convention applies as extraditable offences among themselves.
5. Each State Party undertakes to extradite any person charged with or convicted of offences of corruption and related offences, carried out on the territory of another State Party and whose extradition is requested by that State Party, in conformity with their domestic law, any applicable extradition treaties, or extradition agreements or arrangements existing between or among the State Parties.



6. Where a State Party in whose territory any person charged with or convicted of offences is present and has refused to extradite that person on the basis that it has jurisdiction over offences, the Requested State Party shall be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution, unless otherwise agreed with the Requesting State Party, and shall report the final outcome to the Requesting State Party.
7. Subject to the provisions of its domestic law and any applicable extradition treaties, a Requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the Requesting State Party, take into custody a person whose extradition is sought and who is present in its territory, or take other appropriate measures to ensure that the person is present at the extradition proceedings.

### **Article 16**

#### **Confiscation and Seizure of the Proceeds and Instrumentalities of Corruption**

1. Each State Party shall adopt such legislative measures as may be necessary to enable:
  - (a) its competent authorities to search, identify, trace, administer and freeze or seize the instrumentalities and proceeds of corruption pending a final judgement;
  - (b) confiscation of proceeds or property, the value of which corresponds to that of such proceeds, derived, from offences established in accordance with this convention;



(c) repatriation of proceeds of corruption.

2. The Requested State Party shall, in so far as its law permits and at the request of the Requesting State Party, seize and remit any object:

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

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

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



## **Article 17** **Bank Secrecy**

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

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

3. State Parties shall not invoke banking secrecy to justify their refusal to cooperate with regard to acts of corruption and related offences by virtue of this Convention.

4. State Parties commit themselves to enter into bilateral agreements to waive banking secrecy on doubtful accounts and allow competent authorities the right to obtain from banks and financial institutions, under judicial cover, any evidence in their possession.



**Article 18**  
**Cooperation and Mutual Legal Assistance**

1. In accordance with their domestic laws and applicable treaties, State Parties shall provide each other with the greatest possible technical cooperation and assistance in dealing immediately with requests from authorities that are empowered by virtue of their national laws to prevent, detect, investigate and punish acts of corruption and related offences.
2. If two or several State Parties have established relations on the basis of uniform legislation or a particular regime, they may have the option to regulate such mutual relations without prejudice to the provisions of this Convention.
3. State Parties shall co-operate among themselves in conducting and exchanging studies and researches on how to combat corruption and related offences and to exchange expertise relating to preventing and combating corruption and related offences.
4. State Parties shall co-operate among themselves, where possible, in providing any available technical assistance in drawing up programmes, codes of ethics or organizing, where necessary and for the benefit of their personnel, joint training courses involving one or several states in the area of combating corruption and related offences.
5. The provisions of this Article shall not affect the obligations under any other bilateral or multilateral treaty which governs, in whole or in part, mutual legal assistance in criminal matters.



6. Nothing in this Article shall prevent State Parties from according one another more favourable forms of mutual legal assistance allowed under their respective domestic law.

**Article 19**  
**International Cooperation**

In the spirit of international cooperation, State Parties shall:

1. Collaborate with countries of origin of multi-nationals to criminalise and punish the practice of secret commissions and other forms of corrupt practices during international trade transactions.
2. Foster regional, continental and international cooperation to prevent corrupt practices in international trade transactions.
3. Encourage all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin.
4. Work closely with international, regional and sub regional financial organizations to eradicate corruption in development aid and cooperation programmes by defining strict regulations for eligibility and good governance of candidates within the general framework of their development policy.



5. Cooperate in conformity with relevant international instruments on international cooperation on criminal matters for purposes of investigations and procedures in offences within the jurisdiction of this Convention.

**Article 20**  
**National Authorities**

1. For the purposes of cooperation and mutual legal assistance provided under this Convention, each State Party shall communicate to the Chairperson of the Commission at the time of signing or depositing its instrument of ratification, the designation of a national authority or agency in application of offences established under Article 4 (1) of this Convention.
2. The national authorities or agencies shall be responsible for making and receiving the requests for assistance and cooperation referred to in this Convention.
3. The national authorities or agencies shall communicate with each other directly for the purposes of this Convention.
4. The national authorities or agencies shall be allowed the necessary independence and autonomy, to be able to carry out their duties effectively.



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

**Article 21**  
**Relationship with other Agreements**

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

**Article 22**  
**Follow up Mechanism**

1. There shall be an Advisory Board on Corruption within the African Union.
2. The Board shall comprise 11 members elected by the Executive Council from among a list of experts of the highest integrity, impartiality, and recognized competence in matters relating to preventing and combating corruption and related offences, proposed by the State Parties. In the election of the members of the board, the Executive Council shall ensure adequate gender representation, and equitable geographical representation.





3. The members of the Board shall serve in their personal capacity.
4. Members of the Board shall be appointed for a period of two years, renewable once.
5. The functions of the Board shall be to:
  - a. promote and encourage adoption and application of anti-corruption measures on the continent;
  - b. collect and document information on the nature and scope of corruption and related offences in Africa;
  - c. develop methodologies for analyzing the nature and extent of corruption in Africa, and disseminate information and sensitize the public on the negative effects of corruption and related offences;
  - d. advise governments on how to deal with the scourge of corruption and related offences in their domestic jurisdictions;
  - e. collect information and analyze the conduct and behaviour of multi-national corporations operating in Africa and disseminate such information to national authorities designated under Article 18 (1) hereof;
  - f. develop and promote the adoption of harmonized codes of conduct of public officials;



- g. build partnerships with the African Commission on Human and Peoples' Rights, African civil society, governmental, Intergovernmental and non-governmental organizations to facilitate dialogue in the fight against corruption and related offences;
  - h. submit a report to the Executive Council on a regular basis on the progress made by each State Party in complying with the provisions of this Convention;
  - i. perform any other task relating to corruption and related offences that may be assigned to it by the policy organs of the African Union.
6. The Board shall adopt its own rules of procedure.
  7. States Parties shall communicate to the Board within a year after the coming into force of the instrument, on the progress made in the implementation of this Convention. Thereafter, each State Party, through their relevant procedures, shall ensure that the national anti-corruption authorities or agencies report to the Board at least once a year before the ordinary sessions of the policy organs of the AU.



## FINAL CLAUSES

### Article 23

#### Signature, ratification, accession and Entry into Force

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

### Article 24

#### Reservations

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



### Article 25 Amendment

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

### Article 26

#### Denunciation

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



**Article 27**  
**Depositary**

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

**Article 28**  
**Authentic Texts**

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

**IN WITNESS WHEREOF WE**, the Heads of State and Government of the African Union, or our duly authorized representatives have adopted this Convention.

**Adopted by the 2nd Ordinary Session  
of the Assembly of the Union**

**Maputo, 11 July 2003**



**African Charter on Democracy, Elections and Governance,  
2007**

## AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

### PREAMBLE

We, the Member States of the African Union (AU);

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

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

**Reaffirming** our collective will to work relentlessly to deepen and consolidate the rule of law, peace, security and development in our countries;

**Guided** by our common mission to strengthen and consolidate institutions for good governance, continental unity and solidarity;

**Committed** to promote the universal values and principles of democracy, good governance, human rights and the right to development;

**Cognizant** of the historical and cultural conditions in Africa;

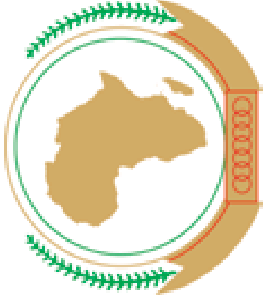
**Seeking** to entrench in the Continent a political culture of change of power based on the holding of regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies;

**Concerned** about the unconstitutional changes of governments that are one of the essential causes of insecurity, instability and violent conflict in Africa;

**Determined** to promote and strengthen good governance through the institutionalization of transparency, accountability and participatory democracy;

**Convinced** of the need to enhance the election observation missions in the role they play, particularly as they are an important contributory factor to ensuring the regularity, transparency and credibility of elections;

**Desirous** to enhance the relevant Declarations and Decisions of the OAU/AU (including the 1990 Declaration on the political and socio-economic situation in Africa and the fundamental changes taking place in the world, the 1995 Cairo Agenda for the Re-launch of Africa's Economic and Social Development, the 1999 Algiers Declaration on Unconstitutional Changes of Government, the 2000



## AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE



Lomé Declaration for an OAU Response to Unconstitutional Changes of Government, the 2002 OAU/AU Declaration on Principles Governing Democratic Elections in Africa, the 2003 Protocol Relating to the Establishment of the Peace and Security Council of the African Union);

**Committed** to implementing Decision EX.CL/Dec.31(III) adopted in Maputo, Mozambique, in July 2003 and Decision EX.CL/124(V) adopted in Addis Ababa, Ethiopia, in May 2004 respectively, by the adoption of an African Charter on Democracy, Elections and Governance;

## **HAVE AGREED AS FOLLOWS:**

### **Chapter 1 Definitions**

#### **Article 1**

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

- “AU” means the African Union;
- “African Human Rights Commission” means the African Commission on Human and Peoples’ Rights;
- “African Peer Review Mechanism” AFRM means the African Peer Review Mechanism;
- “Assembly” means the Assembly of Heads of State and Government of the African Union;
- “Commission” means the Commission of the Union;
- “Constitutive Act” means the Constitutive Act of the Union;
- “Charter” means the African Charter on Democracy, Elections and Governance;
- “Member States” means the Member States of the African Union;
- “National Electoral Body” means a competent authority, established by the relevant legal instruments of a State Party, responsible for organizing and supervising elections;
- “NEPAD” means the New Partnership for Africa’s Development;
- “Peace and Security Council” means the Peace and Security Council of the African Union;
- “Regional Economic Communities” means the regional integration blocs of the African Union;
- “State Party” means any Member State of the African Union which has ratified or acceded to this Charter and deposited the instruments for ratification or accession with the Chairperson of the African Union Commission;
- “Union” means the African Union.

## **Chapter 2 Objectives**

### **Article 2**

The objectives of this Charter are to:

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





### Chapter 3 Principles

#### Article 3

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

1. Respect for human rights and democratic principles;
2. Access to and exercise of state power in accordance with the constitution of the State Party and the principle of the rule of law;
3. Promotion of a system of government that is representative;
4. Holding of regular, transparent, free and fair elections;
5. Separation of powers;
6. Promotion of gender equality in public and private institutions;
7. Effective participation of citizens in democratic and development processes and in governance of public affairs;
8. Transparency and fairness in the management of public affairs;
9. Condemnation and rejection of acts of corruption, related offenses and impunity;
10. Condemnation and total rejection of unconstitutional changes of government;
11. Strengthening political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.

#### Chapter 4

### Democracy, Rule of Law and Human Rights

#### Article 4

1. State Parties shall commit themselves to promote democracy, the principle of the rule of law and human rights.



2. State Parties shall recognize popular participation through universal suffrage as the inalienable right of the people.

#### Article 5

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

#### Article 6

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

#### Article 7

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

#### Article 8

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

#### Article 9

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



### Article 10

1. State Parties shall entrench the principle of the supremacy of the constitution in the political organization of the State.
2. State Parties shall ensure that the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum.
3. State Parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society.

### Chapter 5 The Culture of Democracy and Peace

#### Article 11

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

#### Article 12

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

To this end, State Parties shall:

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

#### Article 13

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



### Chapter 6 Democratic Institutions

#### Article 14

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

#### Article 15

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

#### Article 16

State Parties shall cooperate at regional and continental levels in building and consolidating democracy through exchange of experiences.

### Chapter 7 Democratic Elections

#### Article 17

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



To this end, State Parties shall:

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

#### **Article 18**

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

#### **Article 19**

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

#### **Article 20**

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

#### **Article 21**

1. The Commission shall ensure that these missions are independent and shall provide them with the necessary resources for that purpose.
2. Electoral observer missions shall be conducted by appropriate and competent experts in the area of election monitoring, drawn from continental and national institutions such as, but not limited to, the Pan-African Parliament, national electoral bodies, national legislatures and eminent persons taking due cognizance of the principles of regional representation and gender equality.
3. Electoral observer missions shall be conducted in an objective, impartial and transparent manner.
4. All electoral observer missions shall present the report of their activities to the Chairperson of the Commission within a reasonable time.
5. A copy of the report shall be submitted to the State Party concerned within a reasonable time.

#### **Article 22**

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

#### **Chapter 8**

#### **Sanctions in Cases of Unconstitutional Changes of Government**

#### **Article 23**

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

1. Any putsch or coup d'Etat against a democratically elected government.
2. Any intervention by mercenaries to replace a democratically elected government.
3. Any replacement of a democratically elected government by armed dissidents or rebels.
4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or



5. Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.

#### **Article 24**

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

#### **Article 25**

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



8. State Parties shall not harbour or give sanctuary to perpetrators of unconstitutional changes of government.
9. State Parties shall bring to justice the perpetrators of unconstitutional changes of government or take necessary steps to effect their extradition.
10. State Parties shall encourage conclusion of bilateral extradition agreements as well as the adoption of legal instruments on extradition and mutual legal assistance.

#### **Article 26**

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

### **Chapter 9 Political, Economic and Social Governance**

#### **Article 27**

In order to advance political, economic and social governance, State Parties shall commit themselves to:

1. Strengthening the capacity of parliaments and legally recognised political parties to perform their core functions;
2. Fostering popular participation and partnership with civil society organizations;
3. Undertaking regular reforms of the legal and justice systems;
4. Improving public sector management;
5. Improving efficiency and effectiveness of public services and combating corruption;
6. Promoting the development of the private sector through, inter alia, enabling legislative and regulatory framework;
7. Development and utilisation of information and communication technologies;
8. Promoting freedom of expression, in particular freedom of the press and fostering a professional media;
9. Harnessing the democratic values of the traditional institutions; and
10. Preventing the spread and combating the impact of diseases such as Malaria, Tuberculosis, HIV/AIDS, Ebola fever, and Avian Flu.





### Article 28

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

### Article 29

1. State Parties shall recognize the crucial role of women in development and strengthening of democracy.
2. State Parties shall create the necessary conditions for full and active participation of women in the decision-making processes and structures at all levels as a fundamental element in the promotion and exercise of a democratic culture.
3. State Parties shall take all possible measures to encourage the full and active participation of women in the electoral process and ensure gender parity in representation at all levels, including legislatures.

### Article 30

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

### Article 31

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

### Article 32

State Parties shall strive to institutionalize good political governance through:

1. Accountable, efficient and effective public administration;
2. Strengthening the functioning and effectiveness of parliaments;
3. An independent judiciary;
4. Relevant reforms of public institutions including the security sector;
5. Harmonious relationships in society including civil-military relations;
6. Consolidating sustainable multiparty political systems;



7. Organising regular, free and fair elections; and
8. Entrenching and respecting the principle of the rule of law.

### Article 33

State Parties shall institutionalize good economic and corporate governance through, inter alia:

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

### Article 34

State Parties shall decentralize power to democratically elected local authorities as provided in national laws.

### Article 35

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

### Article 36

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



### Article 37

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

### Article 38

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

### Article 39

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

### Article 40

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

### Article 41

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

### Article 42

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



### Article 43

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

## Chapter 10 Mechanisms for Application

### Article 44

To give effect to the commitments contained in this Charter:

#### 1. Individual State Party Level

State Parties commit themselves to implement the objectives, apply the principles and respect the commitments enshrined in this Charter as follows:

- (a) State Parties shall initiate appropriate measures including legislative, executive and administrative actions to bring State Parties' national laws and regulations into conformity with this Charter;
- (b) State Parties shall take all necessary measures in accordance with constitutional provisions and procedures to ensure the wider dissemination of the Charter and all relevant legislation as may be necessary for the implementation of its fundamental principles;
- (c) State Parties shall promote political will as a necessary condition for the attainment of the goals set forth in this Charter;
- (d) State Parties shall incorporate the commitments and principles of the Charter in their national policies and strategies.

#### 2. Commission Level

##### A. At Continental Level

- (a) The Commission shall develop benchmarks for implementation of the commitments and principles of this Charter and evaluate compliance by State Parties;
- (b) The Commission shall promote the creation of favourable conditions for democratic governance in the African





Continents, in particular by facilitating the harmonization of policies and laws of State Parties;

- (c) The Commission shall take the necessary measures to ensure that the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund provide the needed assistance and resources to State Parties in support of electoral processes;
- (d) The Commission shall ensure that effect is given to the decisions of the Union in regard to unconstitutional change of government on the Continent.

#### **B. At Regional Level**

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

- a) Encourage Member States to ratify or adhere to this Charter.
- b) Designate focal points for coordination, evaluation and monitoring of the implementation of the commitments and principles enshrined in this Charter in order to ensure massive participation of stakeholders, particularly civil society organizations, in the process.

#### **Article 45**

The Commission shall:

- (a) Act as the central coordinating structure for the implementation of this Charter;
- (b) Assist State Parties in implementing the Charter;
- (c) Coordinate evaluation on implementation of the Charter with other key organs of the Union including the Pan-African Parliament, the Peace and Security Council, the African Human Rights Commission, the African Court of Justice and Human Rights, the Economic, Social and Cultural Council, the Regional Economic Communities and appropriate national-level structures.



### **Chapter 11 Final Clauses**

#### **Article 46**

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

#### **Article 47**

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

#### **Article 48**

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

#### **Article 49**

- 1. State Parties shall submit every two years, from the date the Charter comes into force, a report to the Commission on the legislative or other relevant measures taken with a view to giving effect to the principles and commitments of the Charter;
- 2. A copy of the report shall be submitted to the relevant organs of the Union for appropriate action within their respective mandates;
- 3. The Commission shall prepare and submit to the Assembly, through the Executive Council, a synthesized report on the implementation of the Charter;
- 4. The Assembly shall take appropriate measures aimed at addressing issues raised in the report.



### Article 50

1. Any State Party may submit proposals for the amendment or revision of this Charter;
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit same to State Parties within thirty (30) days of receipt thereof;
3. The Assembly, upon the advice of the Executive Council, shall examine these proposals at its session following notification, provided all State Parties have been notified at least three (3) months before the beginning of the session;
4. The Assembly shall adopt amendments or revisions by consensus or failing which, by two-thirds majority;
5. The amendments or revisions shall enter into force when approved by two-thirds majority of State Parties.

### Article 51

1. The Chairperson of the Commission shall be the depository of this Charter;
2. The Chairperson of the Commission shall inform all Member States of the signature, ratification, accession, entry into force, reservations, requests for amendments and approvals thereof;
3. Upon entry into force of this Charter, the Chairperson of the Commission shall register it with the Secretary General of the United Nations in accordance with Article 102 of the Charter of the United Nations.

### Article 52

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

### Article 53

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

## ADOPTED BY THE EIGHTH ORDINARY SESSION OF THE ASSEMBLY, HELD IN ADDIS ABABA, ETHIOPIA, 30 JANUARY 2007

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**African Charter on Values and Principles of Public Service  
and Administration, 2011**

## PREAMBLE

The Member States of the African Union (AU);

**Reiterating** their political commitment to strengthen professionalism and ethics in public service in Africa;

**Determined** to promote the values and principles of democracy, good governance, human rights and the right to development;

**Cognisant** of the mandate of the Public Service and Administration to protect the fundamental values of public service and promote an administrative culture based on respect for the rights of the user;

**Committed** to promoting the values and principles governing the organisation of Public Service and Administration;

**Conscious** of the need to maintain legitimacy of the public service and adapt African public services to evolving needs on the continent;

**Reaffirming** their collective desire to strive tirelessly for the modernisation, improvement and entrenchment of new values of governance in public service;

**Guided** by their common desire to strengthen and consolidate public service with a view to promoting integration and sustainable development on the continent;

**Committed** to promoting a Public Service and Administration that uses the optimum conditions of equity and efficiency;

**Desirous** of ensuring effective application of the Charter, taking into account conditions unique to member states;

**Recalling** Executive Council decision number Ex.CL/Dec.243 (VIII).

**Have agreed as follows:**



## AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION



## CHAPTER I DEFINITIONS, OBJECTIVES AND PRINCIPLES

### Article I Definitions

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

**Administration:** Any institution or organisation at the continental, regional, national and sub-national levels that applies the public policies or undertakes public service duties;

**Assembly:** The Assembly of Heads of State and Government of the African Union;

**AU:** The African Union;

**Charter:** The African Charter on Values and Principles of Public Service and administration;

**Commission:** The Commission of the African Union;

**Conference of States Parties:** The Conference of Member States that have ratified this Charter;

**Constitutive Act:** The Constitutive Act of the African Union;

**Executive Council:** The Council of Ministers of the African Union;

**Member States:** The Member States of the African Union;

**Public Service:** Any service or public-interest activity that is under the authority of the administration;

**Public Service Agent:** Any worker or employee of the state or of its institutions, including those who were selected, appointed or elected to carry out activities in the name or on behalf of the State, at all levels of its structures;

**Public Service Ethics:** Accountability standards by which the work, behaviour and actions of Public Service Agents are scrutinized;

**Regional Economic Communities:** The African Union's regional integration blocs;



**State Party:** Any Member State of the African Union that has ratified or acceded to this charter and deposited the instruments of ratification or accession with the Chairperson of the Commission of the African Union;

**User:** Any juristic or natural person who calls on the public service for a service.

### Article 2 Objectives

The objectives of this Charter are to:

1. Promote the principles and values contained herein.
2. Ensure quality and innovative service delivery that meets the requirements of all users.
3. Encourage the efforts of Member States in modernising administration and strengthening capacity for the improvement of public service.
4. Encourage citizens and users of Public services to actively and effectively participate in public administration processes.
5. Promote the moral values inherent in the activities of Public Service Agents with a view to ensuring transparent service delivery.
6. Improve the working conditions of Public Service Agents and ensure the protection of their rights.
7. Encourage the harmonisation of policies and procedures related to Public Service and Administration among Member States with the aim of promoting regional and continental integration.
8. Promote equality between men and women as well as equality within Public Service and Administration structures.
9. Strengthen cooperation among Member States, Regional Economic Communities and the International Community for the improvement of public service and administration.
10. Encourage the exchange of experiences and best practices in order to create a data base of information within the Member States.

### Article 3 Principles





The Member States agree to implement the Charter in accordance with the following principles:

1. Equality of all users of Public Service and Administration.
2. The prohibition of all forms of discrimination on any basis, including place of origin, race, gender, disability, religion, ethnicity, political opinion, membership in a trade union or any other lawful organization.
3. Impartiality, fairness and due process in the delivery of public services.
4. Continuity of public services under all circumstances.
5. Adaptability of public services to the needs of users.
6. Professionalism and Ethics in Public Service and Administration.
7. Promotion and protection of rights of users and Public Service Agents.
8. Institutionalizing a culture of accountability and integrity and transparency in Public Service and Administration.
9. Effective, efficient and responsible use of resources.

## **CHAPTER II**

### **DUTIES OF THE PUBLIC SERVICE AND ADMINISTRATION**

#### **Article 4**

##### **Respect for Human Rights and Legality**

1. The Public Service and Administration and its agents shall respect the human rights, dignity and integrity of all users.
2. Public services must be delivered in accordance with national laws, regulations and policies in force.
3. Decisions of the Public Service and Administration shall conform to existing national laws and regulatory frameworks.

#### **Article 5**

##### **Access to Public Service**



1. State Parties shall entrench into their national laws and regulations the principles of equal access and non-discrimination.
2. Public Service and Administration shall be organized to ensure and facilitate easy access to adequate services.
3. Public Service and Administration shall be organized in a manner which ensures that services are delivered closer to users.
4. Public Service and Administration shall be participatory in order to ensure the effective involvement of all stakeholders including Civil Society in the planning and delivery of services.

#### **Article 6**

##### **Access to Information**

1. Public Service and Administration shall make available to users information on procedures and formalities pertaining to public service delivery.
2. Public Service and Administration shall inform users of all decisions made concerning them, the reasons behind those decisions, as well as the mechanisms available for appeal.
3. Public Service and Administration shall establish effective communication systems and processes to inform the public about service delivery, to enhance access to information by users, as well as to receive their feedback and inputs.
4. Public Service and Administration shall ensure that administrative procedures and documents are presented in a user-friendly and simplified manner.

#### **Article 7**

##### **Efficient and Quality Service**

1. Public services shall be delivered in the most effective, efficient and economical manner, consistent with the highest possible standards.
2. Public Service and Administration shall establish appropriate mechanisms to periodically monitor and evaluate the effectiveness of public service delivery.
3. Public Service and Administration shall set and respect time-frames for public service delivery.



4. Public Service and Administration shall ensure that its services are adapted to the evolving needs of users.
5. Public Service and Administration shall take the necessary steps to create and maintain trust among public service agents and users.

#### **Article 8**

#### **Modernization of the Public Service and Administration**

1. Public Service and Administration shall facilitate the introduction of modern and innovative procedures and systems for the delivery of its services.
2. Public Service and Administration shall ensure that modern technologies are used to support and improve the delivery of services.
3. Public Service and Administration shall simplify its procedures and ease formalities related to access and delivery of services.

### **CHAPTER III CODE OF CONDUCT FOR PUBLIC SERVICE AGENTS**

#### **Article 9**

#### **Professionalism**

1. Public Service Agents shall demonstrate professionalism, transparency and impartiality in the performance of their duties.
2. Public Service Agents shall demonstrate excellence and innovation in their performance of duties.
3. Public Service Agents shall be required to perform their professional duties and show courtesy, integrity and neutrality in dealing with users.
4. Public Service Agents shall act responsibly and in accordance with the national laws and regulations.

#### **Article 10**

#### **Ethical Behaviour**

1. Public Service Agents shall demonstrate integrity and respect all rules, values and established codes of conduct in the performance of their duties.



2. Public Service Agents shall not solicit, accept, or receive directly or indirectly any payment, gift, donation, or reward in kind or cash, for services rendered.
3. Public Service Agents shall on no account use their positions for political or personal gains. In all circumstances, they shall act with impartiality and loyalty.

#### **Article 11**

#### **Incompatibilities and conflict of Interest**

1. Public Service Agents shall not participate in making decisions or intervene in situations in which they have vested interests in order not to compromise their impartiality or cast doubt over the image of the administration.
2. States Parties shall clearly stipulate norms of incompatibility and conflicts of interest in national laws.
3. Public Service Agents shall not occupy any position, engage in transactions or hold financial, commercial or material interest incompatible with their duties or responsibilities.
4. Public Service Agents shall respect the confidentiality of documents and information in their possession or at their disposal in the exercise of their duties.
5. Public Service Agents shall refrain from unduly profiting from offices they previously occupied.

#### **Article 12**

#### **Preventing and Combating Corruption**

1. States Parties shall enact laws and adopt strategies to fight corruption through the establishment of independent anti-corruption institutions.
2. Public Service and Administration shall constantly sensitise public service agents and users on legal instruments, strategies and mechanisms used to fight corruption.
3. State Parties shall institute national accountability and integrity systems to promote value-based societal behaviour and attitude as a means of preventing corruption.



4. State Parties shall promote and recognize exemplary leadership in creating value-based and corruption-free societies.

#### **Article 13**

##### **Declaration of Assets**

Public Service Agents shall declare their assets and income at the beginning, during and at the end of their service as prescribed in national laws and regulations.

#### **CHAPTER IV**

##### **RIGHTS OF PUBLIC SERVICE AGENTS**

#### **Article 14**

##### **Equality of Public Service Agents**

1. The Public Service and Administration shall promote equality among its agents.
2. Public Service and Administration shall not encourage or perpetuate discrimination based on origin, race, gender, disability, religion, ethnicity, political opinion or any other consideration.

#### **Article 15**

##### **Freedom of Expression and Association**

1. Public Service Agents shall have freedom of expression giving due consideration to their status as public servants.
2. Public Service Agents shall have the right to create or belong to associations, trade unions or any other group to promote and protect their rights in accordance with national laws.
3. Without prejudice to national laws, membership or non-membership in a political party shall, in no way affect the career of a public servant.
4. Public Service Agents shall have the right to engage in collective bargaining, or take industrial action having due regard to national laws and regulations.
5. Representatives of trade unions shall be protected against discriminatory practices and any form of punishment on account of their trade union activities.



6. Public Service and Administration shall promote an enabling environment which enhances dialogue and consultation.
7. Procedures and mechanisms to resolve disputes shall be clearly stipulated in national laws and regulations.

#### **Article 16**

##### **Working Conditions**

1. Public Service and Administration shall provide a working environment that guarantees the safety of its agents.
2. Public Service and Administration shall protect its agents against all forms of threats, insults, harassment or aggression.
3. Public Service and Administration shall protect its agents against all forms of sexual harassment in the performance of their duties.

#### **Article 17**

##### **Remuneration**

Public Service Agents shall have the right, within a coherent and harmonized pay system, to a just and equitable remuneration which corresponds to their qualifications, responsibilities, performance and tenure.

#### **Article 18**

##### **Social Rights**

Public Service Agents shall have the right to leave, social security and retirement benefits.

#### **CHAPTER V**

##### **MANAGEMENT AND DEVELOPMENT OF HUMAN RESOURCES**

#### **Article 19**

##### **Recruitment**

1. Public Service and Administration shall endeavour to establish a human resource policy framework and plan for effective and efficient operation.
2. The recruitment of Public Service Agents shall be based on the principle of merit, equality and non-discrimination.



3. Without prejudice to any provision of this Charter, State Parties shall adopt legislative, executive and administrative measures that guarantee the right to employment of women, ethnic minorities, and people with disabilities, marginalised and vulnerable social groups.
4. State Parties shall adopt procedures for selection and recruitment into the Public Service and Administration that shall be based on principles of competition, merit, equity and transparency.

#### **Article 20**

##### **Performance Management of Public Service Agents**

1. State Parties shall institute a performance culture within the Public Service and Administration.
2. Public Service Agents shall undergo a process of performance management based on clear and measurable criteria.
3. State Parties shall carry out continuous monitoring and evaluation to assess the performance of Public Service Agents in order to determine their promotional requirements, development needs, levels of efficiency and productivity.

#### **Article 21**

##### **Capacity Development**

1. State Parties shall undertake a systematic, comprehensive and evidence-based capacity development programmes to strengthen the effectiveness and efficiency of Public Service and Administration.
2. State Parties shall collaborate with Management Development and Research Institutions as well as leveraging knowledge networks to strengthen capacities of public service agents.
3. State Parties shall provide working tools and create conducive working environment for the application of new knowledge within the limits of available resources.
4. State Parties shall put in place mechanisms and processes for the exchange of expertise, knowledge, information, technology and best practices in capacity enhancement of Public Service and Administration.

#### **Article 22**

##### **Mobility**



1. Public Service and Administration shall adopt the principle of 'mobility' in the management of the career of its agents.
2. Mobility shall take into account the service requirements and needs of Public Service Agents.

### **CHAPTER VI MECHANISMS FOR APPLICATION**

#### **Article 23**

##### **Mechanisms for Application**

To give effect to the commitments contained in this Charter, the following actions shall be undertaken:

#### **1. Individual State Party Level**

State Parties commit themselves to implement the objectives, apply the principles and respect the commitments enshrined in this Charter as follows:

- a) Adopt executive, legislative, and administrative instruments to align their national laws and regulations to this Charter;
- b) Take all necessary measures to ensure broader dissemination of the Charter;
- c) Demonstrate political will as a necessary condition for the achievement of objectives outlined in the Charter;
- d) Integrate commitments, values and principles of the Charter in national policies and strategies;
- e) Take the necessary steps to develop cooperation and share experiences in the area of public service and administration consistent with the objectives, values and principles of the Charter.

#### **2. Commission Level**

##### **i. At Continental Level**

With a view to ensuring and facilitating the implementation of this Charter, the Commission shall:

- a) Ensure that a Conference of State Parties is established.



- b) Develop guidelines on the implementation of the Charter in partnership with the Conference of State Parties.
- c) Establish, in consultation with the Conference of Parties, a Secretariat to coordinate and undertake the implementation of duties, obligations and responsibilities enshrined in this Charter.
- d) Facilitate the creation of conditions for good governance and the delivery of quality public services on the continent through the harmonisation of policies and laws of State Parties.
- e) Assist State Parties to implement the Charter and coordinate the evaluation of its implementation.
- f) Mobilise necessary resources to support State Parties to strengthen their capacity for the implementation of this Charter.
- g) Establish the required mechanisms and create capacities for the implementation of this Charter.
- h) Undertake periodic review of the Charter and make recommendations to the Policy Organs of the African Union.

#### ii. At Regional Level

In accordance with their constitutive instruments, the Regional Economic Communities shall:

- a) Encourage their Member States to ratify or accede to this Charter and implement it;
- b) Integrate and take into account the objectives, principles and values of this Charter in the drafting and adoption of their legal instruments.

#### Article 24 Reporting and Follow-Up Mechanisms

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



2. A copy of the report shall be submitted to the relevant organs of the African Union for appropriate action within their respective mandates.
3. The Commission shall prepare and submit to the Assembly, through the Executive Council and the Conference of States Parties a synthesized report on the implementation of the Charter.
4. The Assembly shall take appropriate measures aimed at addressing issues raised in the report.

#### Article 25 Recognition and Award System

1. State Parties shall institutionalize a transparent and impartial system for recognizing outstanding performance, creativity and innovation in Public Service and Administration.
2. The Conference of State Parties shall promote mechanisms to support activities for the improvement of Public Service and Administration.
3. The Commission shall promote innovative experiences and institute a system of awards for Innovation in Public Service and Administration.

#### CHAPTER VII FINAL CLAUSES

#### Article 26 Cautionary Clauses

1. No clause contained herein shall affect more favourable legislation on public service and Administration or better laws on rights and obligations contained in national legislation of State Parties or in other national, regional or international instruments.
2. In the event of a contradiction between two or more provisions of this Charter, the interpretation that shall prevail is that which favors the rights and legitimate interests of public service users.

#### Article 27 Interpretation

The African Court of Justice and Human Rights shall be seized with matters of interpretation arising from the application or implementation of this Charter. Pending the establishment of the Court, such matters shall be submitted to the Assembly.



**Article 28**  
**Settlement of Disputes**

1. Any dispute or differences arising between the States Parties with regard to the interpretation or application of this Charter shall be settled amicably through direct consultations between the States Parties concerned. In the event of failure to settle the dispute or differences, either State may refer the dispute to the African Court of Justice and Human Rights.
2. Until such time as and when the latter shall have been established, the dispute or differences shall be submitted to the Conference of the States Parties, which will decide by consensus or, failing which, by a two-third (2/3) majority of the States Parties present and voting.

**Article 29**

**Signature, Ratification and Accession**

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

**Article 30**

**Entry into Force**

1. This Charter shall enter into force thirty (30) days after the deposit of the instruments of ratification by fifteen (15) Member States.
2. For each Member State that accedes to this Charter after its entry into force, the Charter shall become effective on the date the State deposits its instrument of accession with the Chairperson of the Commission.
3. The Chairperson of the Commission shall notify Member States of the entry into force of this Charter.

**Article 31**

**Amendment and Revision**

1. Any State Party may submit proposals for amendment or revision of this Charter;
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission who shall transmit copies thereof to the



State Parties within thirty (30) days following the date of receipt of such proposals.

3. The Assembly shall, on the recommendation of the Executive Council, consider such proposals within one (1) year following the notification of State Parties, in keeping with the provisions of paragraph 2 of this Article.
4. Amendments or revision shall be adopted by the Assembly and then submitted for ratification by all Member States in accordance with their respective constitutional procedures. Such amendments or revision shall become effective following the deposit of instruments of ratification by fifteen (15) States Parties.

**Article 32**  
**Depository**

This Charter, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit certified copies thereof to each signatory State and notify them of the dates of the deposit of the instruments of ratification or accession.

**Article 33**  
**Registration of the Charter**

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

**Article 34**  
**Reservations**

State Parties shall not make or enter reservations to this Charter that is incompatible with the object and purpose of this Charter.

**ADOPTED BY THE SIXTEENTH ORDINARY SESSION OF  
THE ASSEMBLY, HELD IN ADDIS ABABA, ETHIOPIA,  
31<sup>ST</sup> JANUARY 2011**

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**Guidelines for African Union Electoral Observation and  
Monitoring Missions (EX.CL/91 (V), 2002)**

**GUIDELINES FOR AFRICAN UNION ELECTORAL  
OBSERVATION AND MONITORING MISSIONS**

**EX.CL/91 (V)  
Annex II**

**1. PRINCIPLES GOVERNING DEMOCRATIC ELECTIONS IN AFRICA**

- 1.1 Principles are important in guiding observers and monitors in coming to final assessments of the election processes and environments. The “*principles*” are divided between the responsibilities of member states and the rights and obligations under which democratic elections must be held.
- 1.2 The Declaration of OAU Principles Governing Democratic Elections in Africa was adopted by the Heads of State and Governments at the 38<sup>th</sup> Ordinary Session of the Organization of African Unity on 8<sup>th</sup> July 2002 in Durban, South Africa, state the principles that should guide observers and monitors. The principles state that:

**GUIDELINES FOR AFRICAN UNION ELECTORAL  
OBSERVATION AND MONITORING MISSIONS**

- i. Democratic elections are the basis of the authority of any representative government;
- ii. Regular elections constitute a key element of the democratization process and therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development;
- iii. The holding of democratic elections is an important dimension in conflict prevention, management and resolution;
- iv. Democratic elections should be conducted:
  - a. freely and fairly;
  - b. under democratic constitutions and in compliance with supportive legal instruments;
  - c. under a system of separation of powers that ensures in particular, the independence of the judiciary;
  - d. at regular intervals, as provided for in National Constitutions;
  - e. by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics;

The principles also spell out Responsibilities of Member States. Under the responsibilities, member states commit their Governments to:

- i. take necessary measures to ensure the scrupulous implementation of the above principles, in accordance with the constitutional processes of our respective countries;
- ii. establish where none exist, appropriate institutions where issues such as codes of conduct, citizenship, residency, age requirements for eligible voters, compilation of voters' registers, etc would be addressed;
- iii. establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections;
- iv. safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes;
- v. promote civic and voters' education on the democratic principles and values in close cooperation with the civil society groups and other relevant stakeholders;
- vi. take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security;
- vii. ensure the availability of adequate logistics and resources for carrying out democratic elections, as well as ensure that adequate provision of funding for all registered political parties to enable them organise their work, including participation in electoral process;
- viii. ensure that adequate security is provided to all parties participating in elections;
- ix. ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting

stations and by accrediting national and/or other observers/monitors;

- x. encourage the participation of African women in all aspects of the electoral process in accordance with the national laws.

Member states also committed themselves to certain rights and obligations under which democratic elections are conducted:

- i. Every citizen shall have the right to participate freely in the government of his or her country, either directly or through freely elected representatives in accordance with the provisions of the law.
- ii. Every citizen has the right to fully participate in the electoral processes of the country, including the right to vote or be voted for, according to the laws of the country and as guaranteed by the Constitution, without any kind of discrimination.
- iii. Every citizen shall have the right to free association and assembly in accordance with the law.
- iv. Every citizen shall have the freedom to establish or to be a member of a political party or Organization in accordance with the law.
- v. Individuals or political parties shall have the right to freedom of movement, to campaign and to express political opinions with full access to the media and information within the limits of the laws of the land.
- vi. Individual or political parties shall have the right to appeal and to obtain timely hearing against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country.
- vii. Candidates or political parties shall have the right to be represented at polling and counting stations by duly designated agents or representatives.
- viii. No individual or political party shall engage in any act that may lead to violence or deprive others of their constitutional rights and freedoms. Hence all stakeholders should refrain from, among others, using abusive language and/or incitement to hate or defamatory allegations and provocative language. These acts should be sanctioned by designated electoral authorities.
- ix. All stakeholders in electoral contests shall publicly renounce the practice of granting favours, to the voting public for the purpose of influencing the outcome of elections.
- x. In covering the electoral process, the media should maintain impartiality and refrain from broadcasting and publishing

abusive language, incitement to hate, and other forms of provocative language that may lead to violence.

xi. Every candidate and political party shall respect the impartiality of the public media by undertaking to refrain from any act which might constrain or limit their electoral adversaries from using the facilities and resources of the public media to air their campaign messages.

xii. Every individual and political party participating in elections shall recognize the authority of the Electoral Commission or any statutory body empowered to oversee the electoral process and accordingly render full cooperation to such a Commission/Body in order to facilitate their duties.

xiii. Every citizen and political party shall accept the results of elections proclaimed to have been free and fair by the competent national bodies as provided for in the Constitution and the electoral laws and accordingly respect the final decision of the competent Electoral Authorities or, challenge the result appropriately according to the law.

## **2. INTRODUCTION**

### **2.1 Definitions**

2.1.1. *Observation*: involves gathering information and making an informed judgement;

2.1.2 *Monitoring*: involves the authority to observe an election process and to intervene in that process if relevant laws or standard procedures are being violated or ignored;

2.1.3 *Election Assessment*: involves on-spot, preliminary evaluation of the conditions within which elections will take place.

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

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

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

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

### **3. BACKGROUND**

3.1 In the OAU Declaration on the Principles Governing Democratic Elections in Africa (2002), Heads of State and Government requested the AU to be fully engaged in the strengthening of the democratisation process, particularly by observing and monitoring elections in Member States, according to strict guidelines.

3.2 Conscious of the democratic strides taken by the African Union (AU) in endorsing the Declaration on the Principles Governing Democratic Elections in Africa and The New Partnership for Africa's Development (NEPAD 2001), member states recognised that transparent and credible elections play a crucial role in ensuring the fundamental and universal right to democratic and participatory government.

3.3 At the 38th Ordinary Session of the Assembly of the OAU in July 2002, African Heads of State and Government considered the Report of the Secretary General on strengthening the role of the OAU in election observation and monitoring and the advancement of the democratization process.

3.4 Leaders considered the principles and objectives of the African Union enshrined in the Constitutive Act of the African Union, particularly in its Articles 3 and 4. They further reaffirmed their commitment to the Algiers Decision of July 1999 and the Lomé Declaration of July 2000 on the Framework for an OAU response to unconstitutional changes of government, which laid down a set of common values and principles for democratic governance.

3.5 Consideration was further given to the CSSDCA Solemn Declaration adopted by the Assembly of Heads of State and Government of the OAU in Lomé, Togo, in July 2000, which underpins the OAU's agenda of promoting democracy and democratic institutions in Africa.

3.6 Through NEPAD's Democracy and Political Governance Initiative, African Leaders undertook to promote and protect democracy and human rights in their respective countries and regions, by developing clear standards of accountability and participatory governance at the national and sub-regional levels.

3.7 Reference should also be made to the importance of the Universal Declaration of Human Rights adopted in December 1948, as well as the International Covenant on Civil and Political Rights adopted in December 1966, which recognized the will of the people expressed through free and fair elections as the basis of the authority of government.

3.8 Another landmark African document, the African Charter on Human and Peoples' Rights adopted in Nairobi, Kenya, in June 1981, recognizes the right of every citizen to participate freely in the government of his or her country whether directly or through democratically elected representatives.

3.9 In the Declaration of the Assembly of Heads of State and Government of the OAU on the Political and socio-economic Situation in Africa and the fundamental changes taking place in the World, adopted in Addis Ababa, in July 1990, OAU Member States undertook to continue with the democratization of African societies and the consolidation of the democratic institutions.

3.10 The African Charter for Popular Participation in Development adopted in Addis Ababa, Ethiopia, in July 1990, emphasized the need to involve the people of Africa in the spheres of economic and political governance.

3.11 Also, the Cairo Agenda for Action adopted in Cairo, Egypt, in 1995, stress the imperative of ensuring democratic governance through popular participation based on the respect for human rights and dignity, free and fair elections, as well as on the respect of the principles of freedom of the press, speech, association and conscience.

3.12 Member States have the sovereign right to choose their political system in accordance with the will of the people and in conformity with the Constitutive Act of the African Union and the universally accepted principles of democracy.

3.13 And Member States and national electoral commissions should support the ever-growing role already played by the AU in the observation/monitoring of elections and the need to strengthen the Organisation's efforts in advancing democracy in Africa.

3.14 In paragraph VI (d) of the OAU Declaration on the Principles Governing Democratic Elections in Africa (2002), Member States directed the Commission to undertake a feasibility study on the establishment, within the Commission, of the Electoral Assistance Unit to help the Commission implement this Declaration.

#### **4. CRITERIA FOR DETERMINING THE NATURE AND SCOPE OF AU ELECTORAL OBSERVATION AND MONITORING**

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

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

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



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

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

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

4.6 The existence of a “level playing field”, which determines the conditions for electoral competition, is an important aspect that needs evaluation when determining the likely character of the electoral process. In advance of the election date, the Head of the AU Election Mission should advise the AU Commission whether the necessary conditions and environment for a free and fair election as agreed in the AU principles governing democratic elections, have been satisfied. Whatever the advice received by the Commission should be confirmed in a public statement by the Chairperson of the Commission. The assessment team will establish whether or not conditions for organizing credible, legitimate, free and fair elections in accordance with the Durban Declaration are in place in the country. The African Union should explore the possibility of observing elections outside the Continent. Issues to consider in the assessment will include the following:

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

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

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

4.6.4 Are the rights of observers guaranteed?

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

4.6.6 Is the situation in the country generally peaceful or is there political violence? If so will the government's security measures provide an environment for a free election campaign or are there

substantial restrictions on the freedom of expression, association and assembly?

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

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

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

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

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

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

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

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

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

4.11 If the decision is not to send an observation or monitoring mission because of the prevailing unsatisfactory conditions in the country, two intermediate responses could be envisaged. First, if the host country is prepared to accept assistance from the AU to remedy the situation, a

technical team or supervisory team could be considered to work with the Election Commission. Second, if the unsatisfactory conditions deteriorate, and the host country is not prepared to accept outside assistance, the AU could consider not sending a mission at all, and this could include referring the matter further within the organs of the Union.

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

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

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

## **5. MANDATES, RIGHTS AND RESPONSIBILITIES OF AU OBSERVATION AND MONITORING MISSIONS**

5.1 After deciding that the necessary conditions exist for genuine elections to take place and that all stakeholders welcome the AU, the Electoral Assessment Team must recommend the size, duration and mandate of the mission to be deployed.

5.2 Although the mandate of the electoral missions recommended may vary, the rights accorded observers and monitors should remain the same. Regional Economic Communities should complement the AU in its monitoring and observation roles. The rights enjoyed by observers and monitors alike are listed below.

5.2.1 Freedom of movement within the host country;

5.2.2 Accreditation as election observers or monitors on a non-discriminatory basis;

5.2.3 Communicate freely with all competing political parties, candidates, other political associations and organizations, and civil society organizations;

5.2.4 Communicate freely with voters except when the electoral law reasonably proscribes such communication in order to protect the secrecy of the vote;

5.2.5 Unhindered access to and communicate freely with the media;

5.2.6 Communicate with and have unimpeded access to the National Election Commission or appropriate electoral authority and all other election administrators;

5.2.7 Communicate and seek the collaboration of the Judiciary, the National Assembly or Parliament, security personnel, and all other appropriate Government departments and agencies involved in the election process;

5.2.8 Free access to all legislation and regulations governing the electoral process and environment;

5.2.9 Free access to all electoral registers or voters' list;

5.2.10 Unimpeded access to all polling stations and counting centres including those used by the military or other specific groups;

5.3 The assessment team will need to decide the scope or mandate of the electoral mission in conformity with the Durban Declaration and cognisance of national law and regulation. These can include:

5.3.1 Observation, which involves gathering information and making an informed judgement;

5.3.2 Monitoring, which involves the authority to observe an election process and to intervene in that process if relevant laws or standard procedures are being violated or ignored;

5.3.3 Mediation, that is third-party intervention in electoral disputes, directed at assisting disputants to find a mutually acceptable outcomes and solutions to electoral disputes;

5.3.4 Technical Assistance, which generally takes the form of technical support and advice to the Electoral Commission;

5.3.5 Supervision and Audit, which involves the process of certifying the validity of all or some of the steps in election processes either prior to or after the election has taken place; and

5.4 The next issue to be considered by the team will be the duration of the mission and/or the frequency of visits envisaged. In general, this will be determined by the timing and duration of:

5.4.1 voter registration/updating of voter registers and periods set aside for the public to check their entry on the register;

5.4.2 party and candidate registration;

5.4.3 candidate and party nominations;

- 5.4.4 the electoral campaign; and
- 5.4.5 the installation in office of the successful candidates.

5.5 The mission could be deployed throughout or it could be deployed at specific times to cover specific events which, based on the assessment of the team, are critical to holding credible elections. Furthermore the Electoral Assessment Team will need to take account of available financial and human resources as well as the situation on the ground. However the AU is committed to the deployment of long term intercessions rather than relying on the assessment of a small group of observers or monitors who are only deployed a few days prior to election day.

5.6 The AU elections and observation mission shall issue out its statement on the electoral environment, process and outcome within the shortest time following the announcement of the election result.

5.7 Finally the Electoral Assessment Team should make recommendations on the number of personnel required to fulfil the mandate of the mission. It is likely that election observation, monitoring and high profile supervisory or audit missions will be led by high profile and respected Africans, backed by skilled and competent managers with relevant technical skills. The terms of reference, scope of work, and mandate of the Mission will be clearly defined, and this will include the designation of the Head of the Mission who will represent the AU and support the activities of all other personnel. The Head of the Mission will also be responsible for any statement made on the conduct of the election on behalf of the AU. In some circumstances he/she will conduct on-going assessments and management roles throughout the mission, in others a suitably qualified technical Deputy Head will be appointed to supervise the work of the rest of the mission.

5.8 If the assessment team recommends that a long-term observation or monitoring mission should be deployed then they should indicate the number of personnel required. In addition to the Head of the AU Mission consideration should be given to what particular aspects of the election require scrutiny. In addition to observing the electoral administration and campaign the assessment team may recommend, for example that specialist personnel be deployed to assess the legal framework and any disputes that might arise, monitoring the media, or evaluation of the electoral registers. These specialists will need to be appointed from an AU pool or roster of suitably qualified personnel from across the continent.

5.9 The number of core staff or experts and long term observers or monitors deployed throughout the host country will influence the number of financial, administrative and logistic staff required.

5.10 For medium to long-term missions, the AU observation or monitoring team shall be deployed throughout the country. Such a team would be engaged in the process from the pre-election, actual election, and post-election phases. In determining the number of long term observers, monitors or supervisors the Electoral Assessment Team will need to take account of a number of factors. These will include:

- 5.10.1 The number of electoral or administrative units across the country;
- 5.10.2 The infrastructure and geography of the host country;
- 5.10.3 Problematic or "hot spot" areas which are likely to be highly contested, have in the past experienced tension, disputes or violence;
- 5.10.4 The human and financial resources available;
- 5.10.5 The deployment of other national or international observers.

5.11 There is need for post-election review to be undertaken, either through an evaluation by the observation team or an independent consultant agreed upon by the AU. The post-election review, with a clearly defined time-frame, must concentrate on performance of the mission (function) and administration of the entire observation mission. The evaluation is conducted in the interest of improving the deployment of future observation missions.

5.12 The AU should explore possibilities for election observation and monitoring outside the continent with a view to share experiences with other parts of the world with respect to election and democracy.

## **6. CODE OF CONDUCT FOR AU ELECTION OBSERVERS AND MONITORS**

6.1 The code of conduct for AU Election Observers and Monitors is binding. Breach of the Code will result in the AU taking appropriate disciplinary proceedings including the repatriation of the person.

6.2 **Observers:**

- 6.2.1 Shall abide by in comply with all national laws and regulations as well as respect the culture of the host country.
- 6.2.2 Shall comply with all national laws and regulations;
- 6.2.3 Shall maintain strict impartiality in the conduct of their duties, and shall at no time express any bias or preference in relation to national authorities, parties and candidates in contention in the election process. Furthermore they will not display or wear any partisan symbols, colours or banners;
- 6.2.4 Shall neither accept nor attempt to procure any gifts, favours or inducements from a candidate, their agent, the parties or any other organization or person involved in the electoral process;
- 6.2.5 Shall immediately disclose to the AU any relationship that could lead to a conflict of interest with their duties or with the process of the observation and assessment of the elections;
- 6.2.6 Shall base all reports and conclusions on well documented, factual, and verifiable evidence from multiple number of credible sources as well as their own eye witness accounts;
- 6.2.7 Shall seek a response from the person or organization concerned before treating any unsubstantiated allegation as valid;
- 6.2.8 Shall identify in their reports the exact information and the sources of the information they have gathered and used as a basis for their assessment of the electoral process or environment;
- 6.2.9 Shall report all information gathered or witnessed by them honestly and accurately;
- 6.2.10 Shall, when meeting election officials, relevant state authorities and public officials, parties, candidates and their agents inform them of the aims and objectives of the AU Electoral Mission;
- 6.2.11 Shall bring irregularities to the attention of the local election officials, but they must never give instructions or countermand decisions of the election officials;
- 6.2.12 Shall carry any prescribed identification issued at all times, and will identify themselves to any interested authority upon request;
- 6.2.13 Shall undertake their duties in an unobtrusive manner, and will not interfere with the election process, polling day procedures, or the vote count;
- 6.2.14 Shall refrain from making personal or premature comments or judgments about their observations to the media or any other interested persons, and will limit any remarks to

general information about the nature of their activity as observers;

- 6.2.15 Shall participate in the briefings/training provided by the AU Electoral Mission;
- 6.2.16 Shall provide their reports on time to their supervisors and attend any debriefings as required.
- 6.2.17 Shall work harmoniously with each other and with observers from other organizations in their area of deployment.

**6.3 Monitors**

- 6.3.1 Shall also comply with the code of conduct as defined in 5.2 above, save that, unlike with the case of observers in 5.2. (x), they shall bring irregularities to the attention of the election authorities and may, in specific circumstances, countermand the instructions of election officials if they are in breach of the electoral law or regulations.