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[front cover]

## **A Guide to the African Charter on Human and Peoples' Rights**

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### AMNESTY INTERNATIONAL

Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights to be respected and protected.

Our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards, including the African Charter on Human and Peoples' Rights.

Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights – civil and political rights as well as economic, social and cultural rights.

Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Amnesty International is a democratic, self-governing movement. Major policy decisions are taken by a two-yearly International Council made up of representatives from all national sections. The Council elects an International Executive Committee of volunteers which carries out its decisions.

Amnesty International has more than 1.8 million members and supporters in over 150 countries and territories in every region of the world. It is funded largely by its worldwide membership and public donations. No funds are sought or accepted from governments for Amnesty International's work investigating and campaigning against human rights violations.

Amnesty International members around the world have been campaigning for the past 45 years for an end to human rights violations in every country in Africa, and have many local groups and sections working in the continent.

Amnesty International was in the first group of non-governmental organizations to be granted observer status with the African Commission on Human and Peoples' Rights. It also has a collaborative working relationship with the African Union Commission.  
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## ***A GUIDE TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS***

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Amnesty International would like to thank the Dutch non-governmental organization Hivos, the Humanist Institute for Cooperation with Developing Countries, for all its support and encouragement in the production of this second edition of the Guide to the African Charter on Human and Peoples' Rights.

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## Preface

Amnesty International published the first edition of this booklet in 1991 to mark the 10th anniversary of the adoption of the African Charter on Human and Peoples' Rights (African Charter) in 1981 and the fifth anniversary of its entry into force on 21 October 1986.

Since then, there have been many important developments relating to the Charter and its implementation. New standards have been set, particularly on economic, social and cultural rights as well as the rights of women and children. The African Court on Human and Peoples' Rights has been established to provide an effective enforcement mechanism for the Charter. The African Union (AU) replaced the Organization of African Unity (OAU) in 2000 and has explicitly committed itself to protecting and promoting human rights. All 53 members of the AU have now formally promised to uphold the African Charter.

These developments have prompted Amnesty International to publish a revised and updated second edition of the booklet to coincide with the Charter's 20th anniversary. It aims to:

- provide a clear guide to the human and peoples' rights guaranteed under the African Charter
- explain how these rights are promoted and protected by the African Commission on Human and Peoples' Rights (African Commission), and how people can complain about violations of these rights to the African Commission
- summarize recent developments in the African regional human rights system

Amnesty International hopes the booklet will raise awareness about the African Charter and encourage people, especially victims of human rights violations and those working on their behalf, to approach the African Commission for redress. It complements Amnesty International's publication and distribution in Africa of thousands of copies of the African Charter in Arabic, Bambara, English, French, Hausa, Portuguese and other African languages. Amnesty International members will also send thousands of copies of this booklet in a range of languages to education and religious institutions, human rights and community groups, journalists and many others all over Africa.

Amnesty International bears sole responsibility for the contents of this booklet and the interpretations given to the various rights and duties mentioned. The booklet is not meant to be an official legal interpretation of all the rights and freedoms contained in the African Charter. Rather, it explains these rights so that they can be understood by the widest possible audience.

August 2006

## 1. INTRODUCTION

### ***What are 'rights' and 'freedoms'?***

Everyone has certain human rights and fundamental freedoms that governments must uphold and respect. This concept is rooted in most of the world's religions and cultures and is reflected in many legal systems. It is based on the belief that all people, wherever they live, have the same basic needs.

Human rights and fundamental freedoms that are universally recognized have developed over the decades. They include:

- the right to life, liberty and security
- freedom from slavery
- freedom from torture and other cruel, inhuman or degrading treatment or punishment
- the right to recognition as a person before the law
- the right not to face discrimination because of racial or ethnic origin, or religion
- freedom from arbitrary arrest, detention or exile
- the right to a fair trial
- the right to equal protection of the law
- the right to freedom of movement and residence
- freedom of opinion and expression
- freedom of thought, conscience and religion
- freedom of assembly and association
- the right to participate in government
- the right to property
- the right to social security
- the right to work and equal pay for equal work
- the right to enjoy the best attainable health
- the right to education
- the right to take part in the cultural life of the community
- the right to food and water
- the right to an adequate standard of living, including housing
- the right of peoples to freely dispose of their natural wealth and resources

Agreement on some of these basic rights was reached by many countries in 1948 when the United Nations (UN) General Assembly adopted the Universal Declaration of Human Rights (UDHR). The Declaration stated that:

“...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”

At the time of this Declaration, only two African countries were not under European rule and were members of the UN – Ethiopia and Liberia. South Africa was under apartheid rule and abstained from voting for the UDHR.

Since 1948, the human rights and fundamental freedoms recognized in the UDHR have been developed and further defined in treaties, declarations and resolutions adopted by UN and regional bodies, including the OAU/AU. Contributing to this process were many of the formerly colonized countries in Africa and elsewhere that had been denied a voice in defining the nature of human rights and fundamental freedoms.

One of the regional treaties to emerge was the African Charter, drawn up in 1981 by African countries through the OAU.

All of these treaties, declarations and resolutions reinforce the universally held belief that every government is obliged to protect the rights of the people within its borders. Despite this, governments continue to violate human rights and often try to justify their actions on grounds of “security” or “sovereignty”. It is therefore up to the international community as a whole to protect these rights on behalf of people all over the world – an aim central to the work of Amnesty International.

### ***Amnesty International’s work in Africa***

Amnesty International has campaigned against human rights violations in Africa since the organization was formed in 1961. Its members in Africa have also been working to develop a strong human rights movement in the continent.

Amnesty International is a global movement of activists and volunteers. Its members work to achieve the rule of law and respect for human rights at the international, regional and national levels.

Amnesty International’s initial work on Africa focused on securing respect for civil and political rights. For example, members campaigned for the release of prisoners of conscience held for championing independence in countries that have since become independent, including Angola and what was Southern Rhodesia. They also worked on campaigns to stop torture and abolish the death penalty.

Since then, the organization has broadened its mandate to include work on economic, social and cultural rights. For example, members have campaigned against forced evictions of people from their homes in Angola and Zimbabwe; for justice and compensation for people whose lives have been damaged by pollution and human rights abuses in Ogoniland, Nigeria; to prevent violence against women in the armed conflicts in the Democratic Republic of the Congo and Darfur, Sudan; and to promote human rights in the context of the HIV/AIDS pandemic in Swaziland and South Africa.

In recent years, awareness of human rights and organizations such as Amnesty

International has grown throughout Africa. Numerous organizations have been formed by Africans to defend human rights at a local level. Some of these are based on particular professions, such as lawyers' human rights groups; others encourage participation by anyone who is interested.

Amnesty International's campaigns have been directed at almost every government in Africa since 1961. The end of colonialism did not mean the end of human rights violations. Corruption, mismanagement and a climate of impunity have resulted not only in serious abuses of human rights but have also prevented victims receiving justice.

Amnesty International hopes that the second edition of this booklet will help all human rights activists in Africa and elsewhere in their campaigns to protect and promote human rights in Africa. Governments are much less likely to violate human rights if people know what their rights are and what they can do if these rights are not respected. This is recognized by the African Charter, which says that governments have a duty to inform people of their rights through education and publicity. However, lack of resources and political will has left this duty largely unfulfilled.

The African Commission, which monitors implementation of the Charter, also has limited funds. It has welcomed Amnesty International's role in informing people in Africa of their human rights and fundamental freedoms through the publication of this booklet and other related initiatives.

## **2. WHAT IS THE AFRICAN CHARTER?**

### ***Development of the Charter***

In the 1960s and 1970s, several conferences were organized in Africa by the UN, African governments and non-governmental organizations (NGOs) to discuss an African regional system to promote and protect human rights and fundamental freedoms in the light of international standards as well as the experiences of particular regions.

One result was the African Charter, which was unanimously adopted at an OAU meeting of African heads of state and governments held in Kenya on 27 June 1981.

The Charter laid out a range of rights and duties that should always be respected. It also established the African Commission to oversee its implementation. However, the Commission is not a judicial body and can only make recommendations, which are often ignored by governments.

This lack of an effective enforcement mechanism led to calls for the establishment of an African Court on Human and Peoples' Rights, and in June 1998 the OAU adopted a protocol to establish such a court.

It took six years for the Protocol to enter into force, and it was only in January 2006 that the AU Assembly of Heads of State and Government (AU Assembly) elected the 11 judges to

serve in the Court. The Court was due to begin its work by the end of 2006.

Other Protocols have been adopted to expand specific rights guaranteed by the African Charter. Among them are:

- the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol), which entered into force in November 2005
- the AU Convention on Preventing and Combating Corruption (2003)
- the African Charter on the Rights and Welfare of the Child (1999)

The African Commission itself has adopted several guidelines and declarations to expand the human rights and fundamental freedoms under the African Charter. These include:

- the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003)
- the Declaration of Principles on Freedom of Expression in Africa (2002)
- Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines – 2002)

### ***A human rights standard***

The African Charter is a set of rules, called Articles, guaranteeing certain human rights and fundamental freedoms for individuals. It also guarantees certain rights of entire peoples.

The Charter is a human rights treaty. When a state ratifies a treaty, it becomes a state party to the treaty. It is then legally obliged to protect the rights specified in the treaty. It is also obliged to submit itself to scrutiny of its human rights record.

All AU member states have ratified the Charter and must therefore respect and fulfil in good faith all the human rights and obligations contained in it.

The majority of the human rights and fundamental freedoms in the African Charter are the same as those contained in international human rights treaties adopted by the UN. Many African states have ratified these treaties and have therefore agreed to be bound by their provisions.

Among the most important international human rights treaties are:

- the International Covenant on Civil and Political Rights and its two Optional Protocols — the First Optional Protocol (1976) created an individual petition procedure for complaints; the Second Optional Protocol (1991) aims at abolishing the death penalty
- the International Covenant on Economic, Social and Cultural Rights
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol that established an individual complaints procedure

- the Convention on the Prevention and Punishment of the Crime of Genocide
- the Convention relating to the Status of Refugees and its 1967 Protocol
- the International Convention on the Elimination of All Forms of Racial Discrimination
- the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol
- the Convention on the Rights of the Child and its two Optional Protocols
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

There are, in addition, many international human rights standards developed by the UN: any states that are members of the UN are expected to follow these rules. These standards include:

- the Standard Minimum Rules for the Treatment of Prisoners
- the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- the Safeguards guaranteeing protection of the rights of those facing the death penalty

The African Charter is similar to two other regional treaty-based systems established to promote and protect human rights:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953)
- the American Convention on Human Rights (1978)

### ***Distinctive features***

The Committee that drafted the Charter was guided by the principle that “it should reflect the African conception of human rights [and] should take as a pattern the African philosophy of law and meet the needs of Africa”.

It also recognized the value of international human rights standards that many African countries had already promised to respect. As a result, the Charter sets out to combine the specific needs and values of African cultures with standards that have been recognized as universally valid.

The African Charter contains, in a single document, legally recognized civil, political, economic, social and cultural rights. Another of the Charter’s distinctive features is that it recognizes the rights of peoples, such as the right of all peoples to self-determination, as well as the right of peoples to freely dispose of their natural wealth and resources.

The African Commission has stated that there are “no rights in the African Charter that cannot be made effective”. This was highlighted in a case it considered in 2001 relating to

Ogoniland, Nigeria. The Commission found that Nigeria had violated several rights, including the rights to health, housing and life, through failing to take sufficient measures to protect the Ogoni people from the adverse effects of oil exploration in the Niger Delta. It also found that the right of the Ogoni people to dispose of their wealth and natural resources had been violated. The Commission thereby implicitly recognized the Ogoni local population as a “people” within the context of the African Charter, even though it did not define the term “people” in the case.

The Charter is also unique in emphasizing the duties of the individual towards the community and the state, and for giving people fleeing persecution the right not just to seek asylum, but also to obtain it.

### ***Monitoring implementation***

Implementation of the Charter is monitored by the African Commission. The Commission is made up of 11 members and has six main areas of responsibility:

- ensuring protection of the rights and duties covered by the African Charter
- interpreting what the Charter says
- examining complaints made by one state party against another
- examining complaints submitted by individuals and NGOs against states that have ratified the Charter
- promoting human rights through education and publicity
- developing principles and rules to further the protection of human rights.

The Charter also directs the Commission to draw inspiration from international law on human and peoples’ rights. The Commission refers to African and international standards, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, when determining principles of law. This is important because for some human rights issues, international treaties and standards offer greater protection than the African Charter.

The new African Court on Human and Peoples’ rights (see chapter 11) will be able to make legally binding decisions relating to violations of rights and freedom guaranteed in the African charter.

## **3. INDIVIDUAL CIVIL AND POLITICAL RIGHTS**

### [\(Articles 2 to 13\)](#)

Individual civil and political rights include the right to life, the right not to be tortured, the right not to be arrested without good reason, the right to believe what you like, the right to write and speak freely, and the right to join any organization you like, including trade unions and opposition political parties.

## ***Equal treatment***

### [\(Articles 2 and 3\)](#)

The Charter says that everyone has equal rights and freedoms. This means it is illegal for the state to discriminate against you, including for any of the following reasons:

- your racial or national origin
- your ethnic group, tribe or clan
- the colour of your skin
- your sex (whether you are male or female)
- the language or dialect you speak
- your religion
- your opinions or political beliefs
- your social class or how rich or poor you are
- your status at birth, such as whether your parents were married

This list is not exhaustive. The Charter prohibits discrimination based on “other status”, which would include discrimination based on sexual orientation, age or disability.

This part of the Charter also means that the authorities must offer the same protection to everyone. It is therefore illegal for the police or courts to treat people differently because, for instance, they have different ethnic backgrounds or religious views, or because they are rich or poor.

## ***Right to life and safety***

### [\(Article 4\)](#)

The Charter says that everyone is entitled to respect for his or her life and safety. It also states that no one may be arbitrarily deprived of their right to life.

This means that police officers or soldiers may not use lethal force – such as firing live ammunition at people – unless their own lives or the lives of others are in immediate danger and less extreme measures would not avert the danger.

To make sure this right is respected, governments must indicate clearly to soldiers and others armed with lethal weapons when and in what circumstances they are allowed to use their weapons. For example, soldiers and police officers must be forbidden from firing on peaceful demonstrators who are waving placards and shouting anti-government slogans – even if the government has banned the demonstration.

This right also means that in states which have not yet abolished the death penalty prisoners may never be executed without a fair trial. A fair trial includes the right to appeal

and the right to apply for a reduction in sentence or a pardon. Similarly, soldiers or police hunting suspects may never kill villagers or others just because they believe they are helping rebels or criminals, or in reprisal attacks on entire communities.

Some people, including all members of Amnesty International, interpret the right to life to mean that nobody should ever be sentenced to death or executed – even prisoners who have been found guilty after fair trials of committing appalling crimes.

There is growing agreement around the world that the death penalty is a violation of the right to life. The African Commission has recommended that African states consider establishing a moratorium on executions and abolishing the death penalty.

## ***Exploitation and slavery***

### [\(Article 5\)](#)

The Charter says that it is your right to have your human dignity respected. It specifically forbids all forms of exploitation and degradation, which means that no one may be enslaved, “pawned” or sold into bondage or slavery.

## ***Torture and ill-treatment***

### [\(Article 5\)](#)

The Charter prohibits torture and all forms of cruel, inhuman or degrading punishment and treatment. This means that there are no circumstances which justify police or soldiers hurting or humiliating anyone using methods such as:

- torturing people by deliberately making them suffer pain
- raping or sexually humiliating prisoners
- beating suspected criminals after their arrest (only reasonable force may be used to detain someone who resists arrest)
- denying prisoners food or water to make them co-operate or “confess”

It also means that certain types of punishment are prohibited, such as:

- amputations (for example, cutting off hands or feet)
- any mutilation of the human body
- whipping, flogging and caning

The African Commission has developed guidelines to ensure that states prevent torture and other ill-treatment. In particular, states are obliged to:

- prohibit torture and ill-treatment in law

- investigate, promptly and independently, all complaints and reports of torture and ill-treatment
- prosecute those responsible for torture or ill-treatment

Torture and other ill-treatment often take place while prisoners are held incommunicado – that is, they are unable to contact people outside the prison walls. Incommunicado detention is illegal. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Afterwards, prisoners should have prompt and regular access to relatives, lawyers and doctors.

### ***Liberty and security***

#### [\(Article 6\)](#)

The Charter guarantees in broad terms the right to liberty and security. No one may be arbitrarily arrested or detained. This means that women and men may only be deprived of their liberty if the authorities respect the law when doing so. The “law” means not only national law but also the internationally recognized rights contained in human rights treaties and standards. The right to liberty has been interpreted by the African Commission to include:

- the right to be informed at the time of arrest of the reasons for arrest and to be promptly informed of the charges
- the right of detainees to be brought promptly before a judge or other judicial officers
- the right to be tried within a reasonable time or released
- the right to go to a court to challenge the lawfulness of the detention

In practice, this means:

- the police or others in authority may only arrest you on a criminal charge if they genuinely suspect that you have committed a crime
- the police or others in authority may not detain you indefinitely after arrest on a criminal charge or after detention on some other grounds
- you must be brought promptly before a judge

Detention before trial should be the exception, not the rule. It can only be justified if there are good reasons to believe that the suspect poses a clear and serious risk to others, will interfere with witnesses or will flee.

In some African countries national law requires suspects to be brought before a court or an official linked to a court such as a public prosecutor within a few days. But in many of these countries, the authorities ignore these legal time limits, resulting in arbitrary detention. In other countries arbitrary detention occurs because the law itself allows the authorities to keep people in detention without being brought before a court or an appropriate official for prolonged periods.

In several countries the head of state or government ministers are allowed by national law to impose detention orders on certain people that by-pass the courts. This is forbidden by the Charter if the detainees do not have a right to find out why they are detained or are not given an opportunity to challenge their detention in a way which guarantees that innocent people are not kept in prison. People unlawfully arrested or detained are entitled to adequate compensation.

## **Fair trial**

### [\(Article 7\)](#)

Basic fair trial guarantees are contained in the Charter as part of everyone's general right to have his or her cause heard. Anyone arrested on a criminal charge has these rights, however serious the charges against them.

The rights and fair trial guarantees contained in the Charter include:

- the right to be presumed innocent until proper court proceedings have proved otherwise
- the right to defend yourself and to choose your own lawyer to defend you if you wish
- the right to be tried within a reasonable time: this means you may not be detained indefinitely on a criminal charge
- the right not to be convicted for an act which was not recognized by the law as a criminal offence at the time it was committed
- the right not to be punished for an offence committed by another member of your family or clan: this means the police are not allowed to arrest a relative of someone who has run away in the hope of punishing the person indirectly or forcing the person to surrender
- the court must be competent: this means it must have been previously established by law rather than, for example, by a special tribunal set up after the offence was committed
- the court must be impartial: the judges may not be biased as they might be if they are members of the ruling party and the accused is an opponent of the government
- the courts must be independent: this means, for example, that the government may not remove a judge because he or she has acquitted a defendant, and special courts may not be created to displace ordinary courts

The Charter does not spell out the full scope of the right to a fair trial. However, the African Commission has made clear that the right to fair trial also includes:

- the right of civilians not to be tried by military courts
- the right to a public hearing, including access to the hearing by media and interested members of the public (subject to certain limited exceptions such as cases which might genuinely reveal military secrets or might adversely affect the welfare of children)
- the right to have adequate time and facilities to prepare the defence's case

- the right to be present at your own trial
- the right to be assigned a lawyer, free of charge where necessary in the interests of justice
- the right to examine witnesses
- the right to have the free assistance of an interpreter in court if necessary
- the right not to be compelled to testify against yourself either during trial or in pre-trial detention while you are being interrogated: this also means that evidence obtained through torture or ill-treatment cannot be used, except against a person accused of torture or other ill-treatment
- the right not to be tried or punished for an offence for which you have already been finally convicted or acquitted
- the right to appeal to a higher tribunal

The African Commission has said that no circumstances, whether the threat of war or armed conflict, or any emergency, justifies denying people their right to a fair trial.

It has also said that granting amnesties to absolve perpetrators of human rights violations from accountability violates the right of victims to an effective remedy.

### ***Freedom of conscience and religion***

#### (Article 8)

The Charter says that everyone has the right to freedom of conscience. This includes the right to hold the religious beliefs of your choice. It also says that you have the right to profess and practice your religion publicly.

The Charter prohibits all governments from restricting these rights, except when it is necessary to maintain law and order. A legitimate restriction of practices which some might justify as religious would be, for example, the prohibition of ritual murder.

Restrictions of individual religious denominations on the grounds that their beliefs or practices are illegal or jeopardize national unity are not allowed by the Charter. Moreover, international treaties and standards make clear that the state may never restrict your right to freedom of conscience no matter how extreme the circumstances, and may only restrict your right to profess and practice your religion when it is absolutely necessary to protect the public safety, order, health or morals or fundamental rights and freedoms of others.

Freedom of conscience means that you may change your religion. The state may not punish you for converting to another religion.

Freedom of conscience also means that you may refuse to fight or join the armed forces on account of your conscientiously held beliefs or religion. This right is particularly important in countries where the law says that all young men (and sometimes young women) must perform military service.

## ***Freedom of expression***

### [\(Article 9\)](#)

The Charter says that everyone has the right to receive information and may express themselves in any way they like about any subject they choose.

This means that everyone is allowed to tell others their opinions using any method they wish (such as in conversations, speeches and letters or through newspapers, radio, television, e-mails or the Internet), provided they do so “within the law”.

The Commission has clearly indicated that governments are not allowed to impose restrictions overriding international standards on the right to freedom of expression. These standards only allow restrictions that are necessary to protect the rights or reputations of others, or are needed to safeguard national security, public order, public health or morals.

The Commission has said that any restrictions to freedom of expression should be the exception and are only allowed if a clear causal link can be demonstrated between the expression and the risk of harm to a legitimate interest. This means governments are not allowed to punish people for criticizing official policies or for calling for a different form of government. It means too that the authorities should not use censorship to prevent people from expressing their views. The authorities should not use laws, such as those concerning sedition (inciting others to rebel), against journalists or others who simply criticize government policies or publish well-documented accounts of corruption in government circles.

It may be legitimate for a parliament to pass a law permitting a person to sue someone else for libel or slander (writing or saying some-thing false about someone else that injures that person’s reputation or livelihood). However, the Commission has made it clear that public figures must tolerate a greater degree of criticism.

## ***Freedom of association***

### [\(Article 10\)](#)

The Charter says that everyone has the right to form societies and other associations, as long as they respect the law. This right covers all types of groups that do not intend to break the law, including political, trade union, religious, cultural and clan- or regional-based organizations.

The Charter does not state what legal restrictions on this right are allowed. However, the Commission has stated that governments should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standards. International standards only allow restrictions that are in accordance with the law and are necessary in a democratic society to protect national security, public safety and order,

public health and morals, and the rights and freedoms of others.

This right does not, therefore, mean that criminals may form an “association” or gang to carry out robberies or that people may form political groups whose aims include racial murders. The Commission has ruled that any law on associations should include an objective description that makes it possible to determine the criminal nature of an organization.

Governments are violating the right to association if, for example, they ban peaceful political organizations, forbid workers from forming trade unions, or refuse without a legitimate reason to authorize their associations. Often this is done for political reasons to prevent opposition groups from organizing or to suppress the cultural or political aspirations of ethnic, tribal or religious groups.

The Commission has ruled that the right to freedom of association includes the right not be forced to join an association, such as a political party, or a professional body such as a bar association.

The Commission has also stated that the regulation of the exercise of the right of freedom of association should be consistent with states’ obligations under the African Charter. Governments cannot therefore pass laws that would limit freedom of association in practice.

## ***Freedom of assembly***

### [\(Article 11\)](#)

The Charter says that everyone has the right to meet other people and assemble freely, in private or public. It allows governments to restrict this right only when the restrictions are absolutely necessary and are imposed according to the law, such as those protecting national security, public morals, health and safety, and the rights and freedoms of others.

This means that all people have the right to hold meetings on any issue they choose provided the purpose is not, for example, to incite racial violence. It also means that everyone has the right to join or organize a peaceful demonstration, even if the protest is against the government. If the authorities effectively prevent people from demonstrating by requiring authorization which is then withheld for political reasons, they are violating people’s right to assemble.

The right to assemble is violated if demonstrations and meetings are banned because they are organized by an opposition political party. Any restrictions on assemblies must be clearly explained according to the law and based on a limited number of specific considerations, such as national security. When governments interpret national security so widely that every meeting of a political nature is banned, then they are violating the fundamental right to freedom of assembly.

## ***Freedom of movement***

### [\(Article 12\)](#)

The Charter says that everyone may move about freely within their country. The authorities are allowed to restrict this right only in exceptional circumstances, such as war, when they may temporarily forbid people from leaving their home towns, for example.

Everyone may also travel freely to and from their own country, as long as they have the required travel documents. Restrictions on this right are only allowed if they are necessary to protect national security, law and order, or public health or morals, and are imposed according to the law.

Many governments prevent suspected opponents from leaving their country by refusing them travel documents or confiscating their passports. This may not be done unless the grounds on which it is authorized are based strictly on national security or other legitimate considerations, and the factors taken into account are made explicit in law so they can be challenged before the courts.

## ***Asylum rights***

### [\(Article 12\)](#)

Under the Charter everyone who is persecuted has the right to ask for and obtain asylum. This means that border police or other authorities may not refuse entry to people seeking refuge, nor force them to return to their own country without giving proper consideration to their request for asylum.

In addition, governments may not return refugees or asylum-seekers to countries where they risk serious human rights violations. Governments are not allowed to expel any foreigner who is legally in the country except in accordance with a decision taken by a court following proper procedures.

Governments are also not allowed to expel large numbers of refugees, ethnic or racial groups, or foreigners to other countries. This right covers people whose nationality is disputed by the authorities.

## ***Participation in government***

### [\(Article 13\)](#)

The Charter says that everyone has the political right to choose their government. The Commission has interpreted this right to include the right to vote for the representative of one's choice. It has also ruled that this implies that the results of the free expression of the voters should be respected. This means any annulment of free and fair elections would

violate the Charter.

The Charter also says there must be equal access to public services for everyone. This right is aimed at preventing corruption. It means that public servants are forbidden from showing favouritism to people because of their ethnic origin or other such reason, or because of bribes.

## **4. INDIVIDUAL ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

[\(Articles 14 to 18\)](#)

The Charter recognizes important economic, social and cultural rights and imposes clear obligations on the state to protect and promote them. From its opening statement, the African Charter emphasizes the connection between all human rights by declaring that “civil and political rights cannot be dissociated from economic, social and cultural rights”.

### ***Property***

[\(Article 14\)](#)

Everyone has the right to own property, whether it is a cooking pot, a farm or a factory. This right may only be restricted for the good of the community and in accordance with the law. For example, a government may appropriate someone’s land for an essential public building, but must give the owner adequate compensation.

### ***Work and trade unions***

[\(Article 15\)](#)

The Charter says that everyone has the right to work under equitable and satisfactory conditions. This means that women as well as men are free to choose their occupation and have the right to work in satisfactory conditions. It also means that the state has a duty to ensure that employers protect the health and safety of their workers and provide equal pay for equal work. Women may not face discrimination at work, for example by being paid less than men doing the same job.

The right to work means states should adopt measures and programmes that will create jobs and ensure a good work environment. It also implies the right to promotion where appropriate, the right to follow one’s vocation and to change employment, reasonable hours of work and paid vacation (leisure and rest).

The Charter does not specifically provide for trade union rights, but it does protect freedom of association and assembly (see Chapter 3). The African Commission has said that states

must provide information on laws, regulations and court decisions that are aimed at promoting, regulating or safeguarding trade union rights. These rights include the right of trade unions to federate and function freely, and the right to strike.

To enable it to monitor whether states are fulfilling their obligations in relation to the right to work, the Commission has asked states to provide information on policies and techniques they have adopted to achieve steady economic and social development and full productive employment. Information is also required on training programmes, protection against arbitrary sacking and general protection against unemployment.

The Commission has interpreted the right to work to include aspects of social security, and has asked states to report on measures adopted in both the public and private sectors.

## ***Health***

### [\(Article 16\)](#)

Everyone has the right to reach the best possible state of physical and mental health. Governments must adopt certain measures to ensure that everyone enjoys this right. For example, they must make sure that all people, including those with little or no money, have access to adequate medical care if they become ill.

Laws and policies must respect and protect the sexual and reproductive rights of women. Action must be taken to end harmful practices, including female genital mutilation.

While a state may not be able to guarantee the physical and mental well-being of everyone, it can and should provide an environment that enhances the enjoyment of good health rather than undermines it.

The Commission has said that the right to health obliges states to identify groups facing greater risks, such as children, women, the poor, detainees and prisoners, and give them access to special health protection that will address their particular health problems. Indeed, some people, such as mothers and children, may require additional health services.

However, the availability of health care to these groups may not be enough to guarantee their right to health in the absence of other measures to safeguard their human dignity, integrity and freedom. The Commission has said that the right to health also includes a right to social security. It has also said that the failure of a government to provide basic services such as safe drinking water, electricity and sufficient supplies of medicine violates the Charter.

For example, in the 2001 Ogoni case (see Chapter 2), the Commission found that while the Nigerian government has the right to produce oil, it must do so in a manner that does not violate people's rights to health and to live in a safe and clean environment.

## ***Education and culture***

### [\(Article 17\)](#)

Everyone has the right to education and to participate freely in the cultural life of their community. It is also the duty of the state to educate people about their rights under the Charter.

The African Charter on the Rights and Welfare of the Child (Children's Charter) requires that states provide free and compulsory basic education and take steps towards providing free secondary education for all. The African Commission has indicated that the right to education comprises the right to primary, secondary and post-secondary education, the right to a choice of schools, and the principle of free and compulsory education for all. The Commission has stressed the importance of educating women, children, internally displaced people and victims of armed conflict. The Commission has also said that the closure of universities and secondary schools for several years constitutes a violation of the African Charter.

## ***Family***

### [\(Article 18\)](#)

The Charter recognizes the family as the natural unit and basis of society, which must be protected by the state. It says that governments must end all discrimination against women, protect the rights of women and children in accordance with international declarations and conventions, and give special protection to the elderly and disabled. The Women's Protocol (see Chapter 10) states that women and men are equal partners in marriage and in bringing up children. The state must act to root out violence against women in the home and the community, and punish those responsible for violent acts.

## ***Housing***

### [\(Article 19\)](#)

The right to housing is not expressly mentioned in the Charter. However, the Commission has underscored two fundamental elements in the realization of this right — states must neither destroy housing nor obstruct people's efforts to rebuild their homes. The combination of the provisions in the Charter protecting the rights to health, property and the family forbids the wanton destruction of shelter because, according to the Commission, "when housing is destroyed, property, health and family life are adversely affected". From this, the Commission has concluded that the Charter does implicitly provide for a right to shelter or housing.

The Commission has said that a right to housing includes the provision of subsidies and tax incentives to increase construction of housing to meet the needs of all, particularly low income families. It has also said that the housing needs of women oblige the state to

provide equal access to housing and acceptable living conditions in a healthy environment. The Commission has further said that the right to housing implies the use of scientific and technical knowledge and international co-operation to develop and improve house construction, which should include safety features to protect homes in the face of earthquakes, floods and other natural hazards. Such knowledge and co-operation should also be used to tackle the special problems of housing, water supply and sanitary conditions in rural areas.

The Commission has also said that tenants should be protected through methods such as rent controls and legal guarantees.

### ***Food***

The rights to adequate food and to freedom from hunger and malnutrition are also not expressly mentioned in the Charter. However, the mandate of the African Commission accommodates some elements of these rights. In fact, the Commission has stated that the right to food is “inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of other rights such as health, education, work and political participation”.

## **5. PEOPLES' RIGHTS**

### [\(Articles 19 to 24\)](#)

The African Charter is unique among human rights treaties in that it recognizes the rights of entire peoples. This means:

- all peoples are equal and entitled to the same respect and rights
- there are no circumstances that justify the domination or oppression of one people by another
- all peoples have the right to exist, to self-determination and to choose their political status
- all peoples may pursue their economic and social development according to any principles they choose

### ***Self-determination***

### [\(Articles 19 and 20\)](#)

The Charter says that colonized and oppressed peoples have the right to free themselves using any internationally recognized means. It gives peoples the right to take up arms to liberate themselves from foreign domination, as long as they abide by international humanitarian standards such as not attacking civilians. It also says that all such struggles must be supported and aided by other African states.

## ***Economic rights***

[\(Articles 21 and 22\)](#)

All peoples have economic rights under the Charter. They have the right to prevent the wealth and natural resources of their country being exploited by foreigners. They also have the right to use their wealth for the good of the people as a whole and to strengthen African unity. For example, the Charter gives peoples the right to set up trade agreements to protect and develop their wealth.

## ***Peace and security***

[\(Article 23\)](#)

All peoples are entitled to other more general rights under the Charter, such as national and international peace and security. Their land must not be used as a base for subversive or terrorist activities against the people of any other African state. The definition of subversive activities, however, must be consistent with the Charter's guarantees of freedom of conscience, religion, expression, opinion, association and assembly.

## ***Healthy environment***

[\(Articles 23 and 24\)](#)

The Charter goes further than other international treaties by including the right to a healthy environment. This means, for example, that all peoples have the right not to have their air or water supplies polluted by others, and that their land may not be used for other peoples' wars.

The Commission has ruled that a state must not carry out or allow any practice, policy or legal measures that would be harmful to peoples' physical and mental health. In the 2001 Ogoni case mentioned above, the Commission ordered the Nigerian government to clean up damaged areas and develop good planning and monitoring systems to prevent future oil contamination.

## **6. DUTIES OF STATES**

[\(Articles 1, 25 and 26\)](#)

States have several duties under the African Charter. Most importantly, each must recognize the rights, duties and freedoms contained in the Charter and adopt legislative or other measures to give effect to them. In practice, however, many states that have ratified the Charter have yet to do this.

All AU states must promote the rights contained in the Charter and ensure respect for them, through education and publicity. They must also guarantee the independence of courts and allow national human rights organizations to develop.

## 7. DUTIES OF INDIVIDUALS

[\(Articles 27 to 29\)](#)

The Charter says that everyone has certain duties towards the community and state, and that each person must exercise his or her rights and freedoms without damaging the rights of others. This reflects the importance of the community in Africa.

The Charter states that your individual duties to the community include:

- treating others without discrimination
- preserving the harmonious development of the family
- working in the best way you can
- paying taxes imposed according to law
- preserving and strengthening positive African cultural values in a spirit of tolerance, dialogue and consultation
- promoting African unity

The Charter states that your duties to the state are:

- not to undermine national security
- to preserve and strengthen social and national solidarity
- to preserve and strengthen the national independence and territorial integrity of your country and contribute to its defence in accordance with the law

It is clear that these duties are intended to complement – not contradict – the various rights of individuals recognized by the Charter. In particular, the duty to contribute to the national defence in accordance with the law must be qualified by the right to freedom of conscience and religion.

## 8. THE AFRICAN COMMISSION

### *How the Commission works*

[\(Articles 30 to 62\)](#)

The African Commission, which monitors implementation of the African Charter, was established at a meeting in Ethiopia in July 1987. Its Secretariat is based in Banjul, Gambia. Its working languages are Arabic, English and French.

The rules that govern the organization and operation of the Commission were adopted in Senegal in February 1988. The Commission has appointed a working group to review the rules with a view to amending them. In 2005 the Commission established a working group on specific issues relevant to its work, including the review of its rules of procedure in light of the establishment of the AU and its organs as well as the agreement to establish the

African Court on Human and Peoples' Rights.

The Commission's 11 members are nominated by states parties and then elected by the AU Assembly. Commissioners serve six-year terms in their personal capacity rather than as a representative of their government, and are eligible for re-election.

The Commission has appointed some of its members as Special Rapporteurs or members of Working Groups on specific issues. Special Rapporteurs have been established on:

- extrajudicial, summary or arbitrary executions (although the mandate was not renewed)
- prisons and conditions of detention
- the rights of women
- human rights defenders
- freedom of expression
- refugees, asylum-seekers and internally displaced people

Special Rapporteurs undertake promotion and protection activities, which include country visits (by invitation from the state concerned), and report back to the Commission.

Working Groups, which may include members of civil society, have been established on:

- indigenous populations and communities
- economic, social and cultural rights
- the death penalty

The Commission normally holds two ordinary sessions each year, in May and November. The Chairperson of the Commission may call extraordinary sessions in consultation with other members of the Commission. So far, the Commission has held three extraordinary sessions. Ordinary sessions usually take place in Gambia, but other African countries may host them.

The agenda for a session is based on proposals made by the Secretary and Chairperson of the Commission. Others who may submit proposals for the agenda are:

- members of the Commission
- the AU Assembly
- any state that has ratified the Charter
- NGOs

Representatives of intergovernmental organizations granted observer status by the AU and of NGOs granted observer status by the African Commission may participate, without a vote, in discussions of interest to them. Amnesty International was in the first group of NGOs to be granted observer status by the Commission.

Some meetings during the sessions of the African Commission are open to the public. In

these, the Commission considers the human rights situation in Africa (here, NGOs may raise country or thematic issues in their oral statements), reports submitted by states on their implementation of the Charter, and other relevant issues.

The Commission examines communications (complaints) about a state and adopts its reports, decisions and resolutions in private meetings. Amnesty International regularly attends sessions and participates in discussions of importance to the organization, including through making statements to the Commission.

After each session, the Commission publishes a final communiqué summarizing the discussion. It prepares an annual report of its activities, which includes the text of the resolutions and decisions on complaints adopted by the Commission. The annual report is published after approval by the AU Assembly.

### ***Promoting human rights***

[\(Articles 45 and 59\)](#)

The African Charter says the Commission should promote human rights in the following ways:

#### **Interpreting human rights**

The Commission may interpret the Charter at the request of a state party, an AU institution or an African organization recognized by the AU.

#### **Developing principles and rules**

The Commission may develop principles and rules aimed at solving legal problems relating to human rights on which governments may base their legislation. These include, so far:

- the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines – 2002)
- the Declaration of Principles on Freedom of Expression in Africa (2002)
- the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003)

#### **Organizing studies and seminars**

The Commission may undertake studies, organize conferences and distribute information to promote human rights. It has held seminars on various issues, including on women's rights (1995), the draft protocol on women's rights (1997), conditions of detention (1996), fair trial (1999) and freedom of expression (2000). Some seminars are organized in co-operation with NGOs and may result in action by the Commission, such as the establishment in 1996 of a Special Rapporteur on the rights of women in Africa.

#### **Making promotional visits**

Commissioners may go on promotional country visits during which they meet government officials, NGOs and members of the public to raise awareness about the Charter and the work of the Commission, and to urge the state to take steps to implement human rights.

### **Promoting African Day**

The Commission has campaigned for all AU states to observe 21 October every year as the African Day of Human and Peoples' Rights – the day the Charter entered into force in 1986.

### **Undertaking other tasks requested by the AU Assembly**

One example of this was when the AU Peace and Security Council asked the African Commission in 2004 to visit Darfur, Sudan, to investigate alleged violations of human rights and international humanitarian law in the country. The Commission submitted its findings to the AU, but the AU has yet to authorize publication of the Commission's report.

### ***Protecting human rights***

[\(Articles 46 to 62\)](#)

The Commission has several important powers to protect human rights:

#### **Investigations**

The Commission has broad powers to investigate human rights issues and concerns. It has visited several countries to investigate reports of human rights violations. These visits, which differ from the promotional visits mentioned above, allow the Commission to document violations and make recommendations to the state concerned. Reports of such visits are made public, although sometimes long after the visit.

#### **Review of periodic reports**

The Commission reviews periodic reports which states parties are required to submit every two years on legal and other measures they have taken to implement the Charter. However, only a limited number of governments have presented the required reports. NGOs such as Amnesty International have submitted back-ground information to assist the Commission in conducting its review of reports. The reviews are done in the Commission's public session in the presence of government representatives whom Commissioners question.

#### **Examination of complaints by states**

The Commission may review complaints by any state party alleging that another has violated the Charter. The complaining state can submit its complaint first to the other state. If the issue is not settled to the satisfaction of both states within three months, either state may submit the matter directly to the Commission. Alternatively, the state making the complaint may submit the matter directly to the Commission. If an amicable solution cannot be reached, the Commission prepares a report stating the facts, its findings and any recommendations it wishes to make. These are sent to the states concerned and to the AU Assembly.

### **Examination of other complaints**

The Commission may consider complaints from individuals and NGOs denouncing a violation of the Charter. Complaints must meet seven criteria (see Chapter 10). The author of the complaint does not have to be the victim of the violation.

The Commission examines the complaint and makes its decisions in private. The decisions are contained in the activity report to the AU Assembly.

In instances when it appears to the Commission that one or more complaints reveal a series of serious or massive violations, the Commission informs the AU Assembly (see Chapter 10).

## **9. HOW TO MAKE A COMPLAINT TO THE AFRICAN COMMISSION**

### **Who can make a complaint?**

Any individual or NGO, wherever they live or are based, may make a complaint, known as a communication, to the African Commission concerning a violation by a state party of any of the rights guaranteed by the African Charter. The author of the complaint can be any of the following:

- the victim of an alleged human rights violation by the government or officials of a state that has ratified the Charter
- a person or organization acting on the victim's behalf when the victim is unable to make a complaint
- an individual or organization alleging, with evidence, a series of serious or massive violations of human or peoples' rights

### **Against whom can the complaint be made?**

The complaint must be against a state that has ratified the Charter.

### **What must be in the complaint?**

Complaints must satisfy seven requirements. These are:

1. The complaint must indicate who is writing it. If the author is an individual, the complaint should indicate the person's name, address, age and profession. The author must be identified, even if they do not want their name or organization known to the government of the state being complained about. The Commission will protect the anonymity of the author if requested to do so by the author.
2. The complaint must not be incompatible with the OAU Charter/Constitutive Act of the AU or the African Charter. It must allege a violation by a state party of a right or duty guaranteed by the African Charter which took place after the Charter became

- legally binding on that state.
3. The complaint must not be written in disparaging or insulting language. It should simply state the facts and indicate how they constitute a violation of a right or duty protected by the Charter.
  4. The complaint must not be based exclusively on information gathered from media reports. Part of it must be based on other sources such as personal knowledge, statements of witnesses or government documents (such as court decisions or official gazettes).
  5. The complaint must be sent after national remedies, if any, have been exhausted, unless it is obvious that these are unduly prolonged. The complaint should indicate which national remedies have been tried and the results. If the remedy is discretionary – such as the right to seek pardon or commutation of a prison or death sentence – the Commission might decide that the remedy would not have to be used. It is likely that the Commission will decide that if the national remedy is likely to be futile, then it need not be used.
  6. The complaint must be submitted promptly after national remedies have been exhausted.
  7. The complaint must not deal with cases that have been settled by the states involved in accordance with the principles of the UN Charter, the OAU Charter/ Constitutive Act of the AU or the African Charter. Complaints should not be about cases that have been or are being considered by another treaty monitoring body such as the UN Human Rights Committee.

### **Where to send a complaint**

The Secretary  
African Commission on Human and Peoples' Rights  
Kairaba Avenue  
P.O. Box 673  
Banjul, Gambia  
Telephone: (220) 4392962  
Fax: (220) 4390 764  
E-mail: [achpr@achpr.org](mailto:achpr@achpr.org)

### **What happens to the complaint?**

The Secretary of the Commission registers the complaint when it is received. Before each session, the registered complaints are sent by the Secretary to the members of the Commission.

The states concerned are given the chance to comment on the complaint. The Commission then decides by a simple majority whether the complaint satisfies the seven requirements

outlined above and therefore should be considered.

If the Commission decides that the complaint is inadmissible, it will promptly tell the complaint's author and the state concerned. It may reconsider this decision if the author writes again and demonstrates that the grounds for deciding that the complaint was inadmissible no longer exist.

If the Commission decides that the complaint is admissible, it will inform the author and the state. The state must send a reply to the Commission within four months. This reply must explain the issues and indicate, if possible, any steps it has taken to remedy the situation.

The Commission will send a copy of the reply to the author of the complaint, who may submit additional information and observations within a time limit fixed by the Commission.

The Commission will then consider the merits of the complaint in the light of all information submitted in writing by the author of the complaint and the state. It then sends its observations on the complaint to the AU Assembly, which may authorize the Commission to publish its observations.

When the Commission decides that one or more complaints apparently reveal a series of serious or massive violations of human and peoples' rights, it informs the AU Assembly. The Assembly may then ask the Commission to study these cases in greater depth and make a factual report, accompanied by its findings and recommendations. In emergencies, the Chairperson of the Assembly may request the in-depth study. The Commission will publish the report of the in-depth study after approval by the Assembly.

## **10. WOMEN'S PROTOCOL**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol), which entered into force on 25 November 2005, provides more comprehensive and specific guarantees in relation to women's human rights than the Charter. It will be monitored by the African Commission through states submitting periodic reports under the African Charter.

At the time of writing, 18 states had ratified the Protocol: Benin, Cape Verde, Comoros, Djibouti, Gambia, Lesotho, Libya, Malawi, Mali, Mauritania, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Seychelles, South Africa and Togo.

The following states had not yet ratified it: Algeria, Angola, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Democratic Republic of Congo, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Mauritius, Niger, Sahrawi Arab Democratic Republic, Sao Tome and Principe, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania,

Tunisia, Uganda, Zambia and Zimbabwe.

The Women's Protocol recognizes and guarantees a wide range of women's civil, political, economic, social and cultural rights. Its main provisions include the following articles:

### ***Elimination of discrimination***

[\(Articles 2, 8 and 9\)](#)

States must adopt legal, institutional and other measures to eliminate all forms of discrimination against women. They must also initiate education, awareness-raising and other programmes of action to eliminate harmful cultural, traditional and other practices based on the idea of the inferiority or superiority of either of the sexes, or on stereotyped roles for women and men.

States must also ensure that women are treated equally before the law and are given equal opportunities to participate in government and decision-making.

### ***Elimination of violence against women***

[\(Articles 3 to 5\)](#)

Women may not be exploited or degraded. States must protect women from all forms of violence, including sexual and verbal violence, whether the abuse takes place in the home or in public. To achieve this, states must take steps to prevent, punish and eradicate violence against women.

Trafficking in women must be prevented and traffickers must be prosecuted.

All forms of harmful practices such as female genital mutilation must be prohibited by law. Victims of such practices must receive all necessary support, including access to health services, legal support and counselling.

### ***Equality in marriage, divorce and inheritance***

[\(Articles 6, 7, 20 and 21\)](#)

With regards to marriage:

- women and men have equal rights and are equal partners
- no marriage may happen without the free and full consent of both parties
- women must be 18 years old before they marry

With regards to widows:

- a widow must not be treated in ways that are inhuman, humiliating or degrading

- a widow automatically becomes the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests of the children
- a widow has the right to remarry and to remarry the person of her choice
- a widow has the right to an equitable share in the inheritance of her husband's property

### ***Peace and protection during conflicts***

#### [\(Articles 10 and 11\)](#)

Women have the right to participate in the promotion and maintenance of peace. This means, for example, that they have the right to participate in peace negotiations.

Rape and other forms of sexual exploitation during conflicts must be considered as war crimes, genocide or crimes against humanity.

Children under the age of 18 must not take part in wars and must not be recruited as soldiers.

### ***Education***

#### [\(Article 12\)](#)

Women should have the same opportunities as men to education and training. All stereotypes discriminating against women should be eliminated from textbooks and other education materials as well as in the media.

### ***Equal opportunities in work***

#### [\(Article 13\)](#)

Women must be given equal opportunities as men in their work and careers. This includes:

- the right to choose their occupation and not to be exploited
- the right to be paid the same as men who do the same kind of job
- the right to maternity leave

All forms of sexual harassment in the workplace must be prohibited.

### ***Health and reproductive rights***

#### [\(Article 14\)](#)

Women's right to health, including sexual and reproductive health, includes:

- the right to control their fertility

- the right to decide whether or when to have children, and the number of children
- the right to choose any method of contraception
- the right to protection against sexually transmitted infections, including HIV/AIDS

States must ensure that women have access to adequate and affordable health services, including pre- and post-natal health and nutritional services.

States must also protect the reproductive rights of women by authorizing abortion in cases of sexual assault, rape, incest and where the continued pregnancy endangers the mental or physical health of the mother or the life of the mother or the foetus.

### ***Special protection***

[\(Articles 22 to 24\)](#)

States must provide special protection for elderly women, women with disabilities, women from marginalized communities and low income families, and pregnant and nursing women.

## **11. AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

The African Court on Human and Peoples' Rights was established by a protocol to the African Charter that was adopted in 1998 and entered into force in January 2004. The Court is due to begin work in late 2006.

At the time of writing, 23 states had ratified the Protocol: Algeria, Burkina Faso, Burundi, Comoros, Côte d'Ivoire, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya Mali, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Rwanda, Senegal, South Africa, Tanzania, Togo and Uganda.

The following states had yet to ratify it: Angola, Benin, Botswana, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Liberia, Madagascar, Malawi, Namibia, Sahrawi Arab Democratic Republic, Sao Tome and Principe, Seychelles, Sierra Leone, Somalia, Sudan, Swaziland, Tunisia, Zambia and Zimbabwe.

The Court will complement and reinforce the work of the African Commission. It will consider cases of human rights violations brought by the Commission, by states and, in some cases, directly by the victims themselves or their representatives, including NGOs.

If the Court finds that a human rights violation has occurred its judgment will be final and binding upon the state concerned. This means that the state will be obliged to act to remedy the human rights violation, in accordance with the judgment, including by paying compensation to the victims.

In May 2006 negotiations began on a new protocol that will integrate into a single court the

African Court on Human and Peoples' Rights and the AU's African Court of Justice. It is envisaged that the new court will have two chambers — a general chamber and a chamber dedicated to human rights.

## **12. WHAT YOU CAN DO**

- Give copies of the African Charter and this booklet to as many people and organizations as you can.
- Distribute the Charter and this booklet to schools and universities.
- Work with people in the media to raise awareness of the rights in the Charter.
- Work with lawyers to ensure that the rights in the Charter are upheld in your country in law and practice.
- Show this booklet to anyone who wants to complain about a violation of their rights to the African Commission.

### ***Materials are available***

This booklet and copies of the African Charter in Arabic, English, French, Portuguese, Swahili and other African languages\* are available from:

Amnesty International  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom

They are also available from the offices of Amnesty International sections and groups in Africa

\* Copies in some of the languages may not be available until early 2007.

African Commission documents, including its annual activity reports and periodic reports of states parties, are available from:

The Secretary  
African Commission on Human and Peoples' Rights  
Kairaba Avenue  
PO Box 673  
Banjul, Gambia  
Telephone: (220) 4392962  
Fax: (220) 4390 764  
E-mail: [achpr@achpr.org](mailto:achpr@achpr.org)

## **APPENDIX: SELECTED ARTICLES FROM THE AFRICAN CHARTER ON 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 Charter and shall undertake to adopt legislative or other measures to give effect to them.

**Article 2**

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

**Article 3**

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

**Article 4**

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

**Article 5**

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

**Article 6**

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

**Article 7**

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

for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

#### **Article 8**

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

#### **Article 9**

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

#### **Article 10**

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

#### **Article 11**

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

#### **Article 12**

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the 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 and moral health.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

#### **Article 19**

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

#### **Article 20**

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the State parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

#### **Article 21**

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

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

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

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

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

#### **Article 22**

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

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

#### **Article 23**

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the

United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:

(a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;

(b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

#### **Article 24**

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

#### **Article 25**

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

#### **Article 26**

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

#### **Article 27**

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.

2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

#### **Article 28**

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

#### **Article 29**

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;

2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to 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 the 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.

[Inside back cover]

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[back cover]

The African Charter on Human and Peoples' Rights came into force in 1986. All 53 members of the African Union have now promised to respect the rights and freedoms it guarantees.

This booklet, updated and republished to mark the Charter's 20th anniversary, explains in simple terms what these rights are.

Under the Charter, everyone has a wide range of individual civil, political, economic, social and cultural rights. These include the rights to life, to food and clean drinking water, to speak freely and to join a trade union or political party of your choice.

Entire peoples also have rights under the Charter, such as the right to self-determination and to freely dispose of their wealth and natural resources.

Amnesty International is publishing this guide in the knowledge that governments are less likely and less able to violate human rights if people know what their rights are and what they can do if these rights are not respected.

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[Photo captions]

School children in Mali.

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Amnesty International Benin launching its Stop Violence Against Women campaign in Porto-Novo, Benin, March 2004.

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Children in Uganda being taught under a programme run by the Gulu Support the Children Organization, which helps reintegrate former child soldiers into their communities.  
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The modern skyline of Dakar, capital of Senegal.  
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Masai women during a demonstration against the sale of their communal land, Kenya, January 2005.  
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A Gay Rights march in Windhoek, Namibia, April 2001.  
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A carer looking after a woman with AIDS in Addis Ababa, Ethiopia.  
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M'barcka Minte Billal, second from left, a former slave, drinking tea with relatives in Nouakchott, Mauritania, November 2000.  
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Inside the People's Court in Libya. The Court, which allowed for grossly unfair trials, was abolished in early 2005.  
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School children line up outside the new courthouse in Freetown for the official opening of the Special Court for Sierra Leone.  
© Special Court for Sierra Leone

A rally outside the journalists' union in Cairo, Egypt, June 2005. Women activists were protesting against the alleged molestation of women reporters covering earlier political demonstrations.  
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Police surround protesters gathered at Freedom Statue in Lusaka, Zambia, December 2004.  
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Members of the Manegre women's group, who have been backed by the Namanegbzanga Union of Village Groups, working collectively to produce soaps and creams in Burkina Faso, June 2004.  
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School students demonstrate against the use of child soldiers, Sierra Leone, March 2000.  
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Fishermen by the Indian Ocean at Ilha de Mozambique, Mozambique.

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Asylum-seekers from Rwanda in Busiga, Ngozi Province, Burundi, May 2005.

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Election day in Monrovia, Liberia, November 2005.

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The view along the main street of Tunis, Tunisia.

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Harvesting papaya at Nsawam, Ghana.

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opposite: A health centre in Tanzania.

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School children at play in Darfur, Sudan.

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Women and children waiting for food to be given out in Niger during the 2005 famine.

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opposite: A boy helping his father with a television aerial on top of his home in a squatter camp in Gabon, November 2003.

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Children in Benin.

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Aerial view of Algiers, Algeria, a nation that fought for many years for independence from colonial rule.

© David Astley

Modern buildings are very much part of Africa's skyline in the 21st century: the Attorney General's Chambers and the Department of Taxes building in Gaborone, Botswana.

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Children at play during a programme run by a non-governmental organization in Zambia that helps young people develop strategies to avoid sexual abuse.

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A Sudanese child in Bong refugee camp, Ethiopia, March 2003.

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A young girl doing writing exercises in Akosombo, Ghana.

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Women demanding affordable food and social justice on a demonstration in Harare, Zimbabwe, February 2006. Such women are frequently arrested when they demonstrate for social justice.

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Woman drinking, Burkina Faso.

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Protesters marching through Lagos, Nigeria, in September 2005 to protest against fuel price hikes.

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The end of the Alternative Rites of Passage ritual when girls receive a certificate saying they have passed into womanhood without being cut, Kenya.

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House demolitions in Makoko, Nigeria, January 2006.

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A wedding of an Ethiopian couple who opposes female genital mutilation (FGM) in southern Ethiopia, 2004. The picture was taken after an anti-FGM workshop and public rally where young men declared opposition to FGM and stated they would only marry a bride who had not undergone FGM.

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“We say no to sexual violence”: the banner of the Women’s Network for Associative Development and the Women’s Movement, Uvira, Democratic Republic of Congo, March 2004.

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Widows and orphans support organization, Soweto slum, Nairobi, Kenya.

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Hartisheikh refugee camp, Ethiopia.

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Children reading in a camp for internally displaced people in Darfur, Sudan.

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Women at a marketplace in Somalia.

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Delegates and protesters on a “Global march for access to HIV/AIDS treatment” in Durban, South Africa, July 2000.

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Internally displaced and returnee women in Sierra Leone learn carpentry at a Forum for African Women Educationalists' skills training centre in Grafton, outside Freetown.

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