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# **The Protocol on the Rights of Women in Africa:**

## **Strengthening the promotion and protection of women's human rights in Africa**

### **1. Introduction**

On 11 July 2003, the African Union (AU) Assembly of Heads of State and Government adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Protocol) during its Second Ordinary Summit in Maputo, Mozambique.<sup>1</sup> The Protocol would enter into force thirty days after the date of the deposit of the fifteenth instrument of ratification or accession.

As of May 2004, only Comoros has ratified the Protocol, although twenty-eight countries have signed the document. They are: Algeria; Benin; Burkina Faso; Burundi; Côte d'Ivoire; Congo; Djibouti; Democratic Republic of Congo; Gambia; Ghana; Guinea; Kenya; Libya; Lesotho; Liberia; Madagascar; Mali; Mozambique; Namibia; Nigeria; Rwanda; South Africa; Senegal; Sierra Leone; Tanzania; Togo; Uganda, and Zimbabwe.

Amnesty International welcomed the adoption of the Protocol as a landmark step in enhancing the promotion and protection of women's human rights on the continent, providing a comprehensive legal framework for holding African governments accountable for their violation of those human rights. The Protocol is consistent with the Universal Declaration of Human Rights' (UDHR) proclamation that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, *sex* ... or other status." (Article 2 - emphasis added).

Although the African Charter on Human and Peoples' Rights (African Charter) imposes obligations on states parties to eliminate discrimination against women and to ensure the protection of internationally recognized women's human rights, the

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<sup>1</sup> The decision was made in 1995 to draft a protocol on women's human rights when the OAU Assembly of Heads of State and Government at its 31<sup>st</sup> Ordinary Session in Addis Ababa, Ethiopia requested the African Commission on Human and Peoples' Rights (African Commission) to prepare a Protocol on the Rights of Women in Africa. See Resolution AHG/Res.240 (XXXI) of the OAU Assembly of Heads of State and Government, adopted at its 31<sup>st</sup> Ordinary Session held in Addis Ababa, Ethiopia, in July 1995.

Protocol provides more comprehensive and specific guarantees with regard to women's human rights than the Charter.

The Protocol recognizes and guarantees a wide range of women's civil and political rights as well as economic, social and cultural rights, thus reaffirming the universality, indivisibility and interdependency of all internationally recognized human rights of women. These rights include the right to life, integrity and security of person; protection from harmful traditional practices; prohibition of discrimination; and the protection of women in armed conflict. Furthermore, the Protocol guarantees to every woman the right to respect as a person and to the full development of her personality; prohibition of exploitation or degradation; access to justice and equal protection before the law; participation in the political and decision making process.

The Protocol also guarantees the right to health and reproductive rights of women; the right to food security, and the right to adequate housing. The Protocol also commits states parties, if they have not already done so, to include in their national constitutions and other legislative instruments these fundamental principles and ensure their effective implementation. In addition, it obligates them to integrate a gender perspective in their policy decisions, legislation, development plans, and activities, and to ensure the overall well-being of women.

The African Commission will monitor the implementation of the Protocol through states submission of periodic reports under the African Charter but the African Court on Human and Peoples' Rights (African Court) "shall be seized with matters of interpretation arising from the application on implementation of this Protocol." However, the African Commission shall have the mandate to interpret the Protocol pending the full establishment of the African Court.

Numerous violations of women's human rights – solely or primarily because of their gender – still occur on a daily basis in Africa. They include female genital mutilation, forced marriage, discrimination, domestic violence, sexual exploitation and rape. These abuses result from, and are compounded by, women's social and economic inequality: lack of access to education, land, financial resources and health care and their inequality within the family.

The challenge is for African governments and other stakeholders to translate the fine statements of the Protocol into reality regionally and nationally. Amnesty International calls on African governments to ratify the Protocol, and ensure its prompt entry into force. African inter-governmental organizations, including the AU Commission and the African Commission should encourage the full ratification and implementation of the Protocol at the national level. Although implementation is the primary responsibility of governments, inter-governmental organizations have a crucial role to play in this respect.

This document summarizes the main provisions of the Protocol and gives a brief overview of the monitoring mechanisms that it establishes. Its aim is to raise awareness of the Protocol and to encourage states to ratify it as a matter of priority.

## **2. Summary of guarantees under the Protocol**

The text of the Protocol comprises of a preamble and twenty-nine articles. The Protocol aims to give greater attention to the human rights of women in Africa. Specifically, it aims to promote the principles of equality, peace, freedom, dignity, justice, solidarity and democracy. Furthermore, the Protocol defines “discrimination against women”<sup>2</sup> and “violence against women”<sup>3</sup>, and outlines measures which states parties are required to take in both the public and private spheres to end such practices. It covers a range of topics, including employment, education, voting rights, nationality laws, rights in marriage and divorce, health care, reproductive rights, and equality before the law.

The Protocol requires states parties to adopt legislative, institutional and other measures to eliminate all forms of discrimination against women. As stated above, states parties must integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities. They are also required to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, in order to eliminate harmful cultural, traditional and other practices based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

Furthermore, states parties agree to adopt and implement measures to: prohibit exploitation or degradation of women; protect women from all forms of violence, including sexual and verbal violence whether the violence takes place in private or public; and generally prevent, punish and eradicate violence against women. They also agree to identify the causes and consequences of violence against women and

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<sup>2</sup> Under the Protocol, “Discrimination against women” means “any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.”

<sup>3</sup> Under the Protocol, “violence against women” means “all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.”

adopt measures to address them; eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate violence against women; and establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women. Additionally, the Protocol requires states parties to prevent and condemn trafficking in women; prosecute the perpetrators of such acts; protect those women most at risk; prohibit medical or scientific experiments on women without their informed consent; and provide adequate budgetary and other resources for the implementation and monitoring of actions to prevent violence against women.

Moreover, the Protocol requires states parties to prohibit and condemn practices such as “female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation” which negatively affect the human rights of women and which are contrary to recognised international standards. They must provide necessary support to victims, including through health services, legal and judicial support, emotional and psychological counselling as well as vocational training. Furthermore, they must ensure effective access by women to judicial and legal services, including legal aid; provide adequate training for law enforcement officials to effectively interpret and enforce gender equality rights; and allow equal representation of women in the judiciary and law enforcement agencies.

The Protocol also requires states parties to ensure, through legislative and other measures, that: women and men enjoy equal rights and are regarded as equal partners in marriage; no marriage shall take place without the free and full consent of both parties; and that the minimum age of marriage for women shall be 18 years. According to the Protocol, states parties must “encourage monogamy as the preferred form of marriage.”

Under the Protocol, states parties have an obligation to take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures. The Protocol also guarantees to every woman the right to peace and obligates states parties to ensure the participation of women in processes for conflict prevention, management and resolution at all levels; and in planning, formulation and implementation of post-conflict reconstruction and rehabilitation.

The Protocol also requires states parties to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women; protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence; ensure that

rape and other forms of sexual exploitation are considered war crimes, genocide and/or crimes against humanity; and bring suspected perpetrators to justice before a competent criminal jurisdiction. Furthermore, they must ensure that “no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.”

The Protocol obligates states parties to ensure that women and men enjoy equal rights of access to refugee status determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law; and in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women.

In addition, states parties are required to: guarantee equal opportunity and access to women in the sphere of education and training; eliminate all stereotypes in textbooks, syllabuses and the media; protect women, especially the girl-child from all forms of abuse; and provide for sanctions against suspected perpetrators of such practices. They must also provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment; integrate gender sensitisation and human rights education at all levels of education curricula; and promote literacy among women. Furthermore, states parties must adopt measures to promote equality of access to employment; promote the right to equal remuneration for jobs of equal value for women and men; ensure transparency in recruitment, promotion and dismissal of women and punish sexual harassment in the workplace.

The Protocol also requires states parties to guarantee to women the freedom to choose their occupation, and their human rights as recognised by conventions and laws must be fully guaranteed and respected. States parties are required to create conditions to promote and support the occupations and economic activities of women; establish a system of protection and social insurance for women working in the informal sector and sensitise them to adhere to it. They must introduce a minimum age for work and prohibit the employment of children below that age, and prohibit and punish “all forms of exploitation of children, especially the girl-child and take measures to recognise the economic value of the work of women in the home.”

The Protocol obligates states parties to guarantee to women adequate and paid pre- and post-natal maternity leave. Furthermore, states parties are required to respect, protect and promote the right to health of women, including sexual and reproductive. Such rights recognized under the Protocol include: the right to control their fertility; the right to decide whether to have children, the number of children and the spacing of children; the right to choose any method of contraception; and the right to protection

against sexually transmitted infections, including HIV/AIDS. Other similar rights are: the right to be informed on one's health status and on the health status of one's partner; and the right to have family planning education.

States parties are also required to adopt measures to provide adequate, affordable and accessible health services, including information, education and communication programmes to women; establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding. They must protect the reproductive rights of women “by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.” The Protocol also obligates states parties to provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food, and establish adequate systems of supply and storage to ensure food security.

With respect to the right to adequate housing, states parties are required to guarantee to women the right to equal access to housing and to acceptable living conditions in a healthy environment. According to the Protocol, “women shall also have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.” In this regard, the Protocol obligates states parties to adopt measures to enhance the participation of women in the formulation of cultural policies at all levels.

The Protocol also extends protection to widows. Accordingly, it requires states parties to ensure that “widows are not subjected to inhuman, humiliating or degrading treatment, that a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children; that a widow shall have the right to remarry, and in that event, to marry the person of her choice, that a widow shall have the right to an equitable share in the inheritance of the property of her husband.” States parties must also ensure that women and men enjoy the right to inherit, in equitable shares, their parents' properties.

States parties are further required to provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training; and ensure the right of elderly women to freedom from violence. They must also ensure the protection of women with disabilities and adopt measures to facilitate their access to employment, professional and vocational training as well as their participation in decision-making.

Furthermore, states parties are required to ensure: “the protection of poor women and women heads of families, the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.”

Under the Protocol, any woman whose rights have been violated will be entitled to “appropriate remedies” to be determined by competent judicial, administrative, legislative or any other competent authority provided for by law. In addition, states parties are required to provide budgetary and other resources for the full and effective implementation of the rights recognized under the Protocol. States parties are also required to “reduce military expenditure significantly in favour of spending on social development in general and the promotion of women in particular.”

### **3. Implementation Mechanism**

As stated above, the Protocol also provides for an implementing mechanism. According to Article 26, “States Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognised.”<sup>4</sup> Furthermore, “the African Court on Human and Peoples' Rights shall be seized with matters of interpretation arising from the application or implementation of this Protocol.”

However, pending the full establishment of the African Court, the African Commission “shall be seized with matters of interpretation arising from the application and implementation of this Protocol.” The African Commission has been established under Article 30 of the African Charter. The African Commission’s primary responsibility under the Charter is to promote and ensure the protection of human rights on the continent. Its four areas of mandate are: promotional activities, protective activities (including complaints), the examination of state party reports and the interpretation of the African Charter. The African Commission holds regular

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<sup>4</sup> The African Charter on Human and Peoples’ Rights was adopted in 1981 by the OAU Assembly of Heads of State and Government. The Charter which came into force on 21 October 1986 has been ratified by all OAU(AU) member states. The African Charter guarantees civil, political, economic, social and cultural rights. Specifically, the Charter includes the right to life and the integrity of the person; right to fair trial; freedom from torture, cruel, inhuman or degrading punishment; right to liberty and security of person; right to health and right to education. Unlike other international or regional human rights treaties, the Charter does not allow states parties to derogate from their treaty obligations even during armed conflict.

sessions twice a year around April and November, and can hold extraordinary sessions.

The African Commission is composed of 11 members who serve part-time on the Commission. Although they are elected by the AU Assembly of Heads of State and Government from a list of persons nominated by states parties to the African Charter, they are “independent experts” and act in their personal capacities rather than as representatives of their governments. The African Court, established pursuant to a Protocol adopted by the OAU (AU) Assembly of Heads of State and Government in 1998, would have the power to entertain cases challenging violations of the human rights, including civil and political rights and economic, social and cultural rights guaranteed under the African Charter. The Court consists of eleven judges who must be nationals of the member states of the AU. Judges are elected in an individual capacity and not as representatives of states. The Protocol establishing the Court has entered into force and the election of judges to the Court is scheduled to be held during the forthcoming Third Ordinary Summit of the AU Assembly of Heads of State and Government in July 2004, in Addis Ababa, Ethiopia.

The integration of the Protocol into the African Charter implementing mechanism is consistent with the provisions of the Charter itself, and will ensure that women whose rights have been violated under the Protocol will have a final recourse to the African Commission and the African Court to have their rights established and enforced. Furthermore, individuals other than the victims themselves, and human rights non-governmental organizations can bring a complaint on behalf of victims. This is important because of the political, economic, social and cultural factors that so often restrict access by women to information and to practical opportunities to claim their rights. Women’s organizations are well placed to make submissions on their behalf.

#### **4. Conclusions and recommendations**

The adoption of the Protocol on the Rights of Women in Africa is a significant development and would ensure the full integration of women's human rights concerns in the regional human rights framework. The Protocol helps fill a major gap in the regional human rights system, which until now has not developed a comprehensive framework for the promotion and protection of women’s human rights.

Amnesty International believes that the Protocol will allow both the African Commission and the African Court to elaborate how the rights recognized under it should be guaranteed in real life situations. Furthermore, the Protocol would allow

these institutions to develop a fuller jurisprudence and a platform for the articulation of international legal principles regarding women's human rights at the regional level as well as direction and precedents for domestic courts and other international institutions such as the UN treaty bodies.

Most importantly however, the Protocol offers a real remedy for women at the regional level. This will give women victims of human rights violations somewhere to turn to, providing them with practical access to bodies which will understand the implications of their experience. But this potential will only be fulfilled if states parties ensure that they meet the needs of women's human rights in practice, and work to implement the commitments they have made. Amnesty International calls on African governments that have not yet done so to:

- Publicly condemn all violations of women's human rights and refrain from engaging in such violations;
- Take action to investigate all allegations of violations of women's human rights by members of the police, security and armed forces and others acting with the acquiescence of the state and bring to justice those suspected to be responsible;
- Ratify the Protocol on the Rights of Women in Africa without further delay and without reservations;
- Implement the Protocol by reviewing all national laws, policies, practices and procedures to ensure that they meet the obligations set out in the Protocol. States parties should incorporate the rights enshrined in the Protocol into their domestic legislation and take all other necessary measures to implement the instrument in good faith;
- Review and amend criminal laws and procedures to eliminate discrimination against women and ensure that women defendants, victims and/or witnesses are not victimized or discriminated against in the investigation and prosecution of crimes;
- Provide constitutional guarantees to prohibit discrimination and ensure equality of men and women;
- Ratify all other regional and international human rights instruments essential for the effective promotion and protection of women's human rights in Africa, including the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and the African Union Convention on Preventing and Combating Corruption. They should also ratify: the International Covenant on Civil and Political Rights and

its two Optional Protocols; the International Covenant on Economic, Social and Cultural Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the Convention relating to the Status of Refugees; and the Rome Statute of the International Criminal Court. Governments who have already ratified these instruments should examine any limiting reservations, with a view to withdrawing them. This is particularly important in the case of the Convention on the Elimination of All Forms of Discrimination against Women, where the commitment of many governments is seriously undermined by the extent of their reservations;

- Upon ratification, formulate national plans of action to tackle violence against women. Such national plans of action should include time-bound targets for implementing the commitments contained in the Protocol and address the issue of allocation or reallocation of resources for their implementation. Ensuring equality and non-discrimination in law and in practice would mean: addressing impunity for violations of women's human rights; creating and strengthening national institutions for the promotion and protection of human rights; undertaking to review national laws, policies and practices; developing a comprehensive human rights education programme;
- Initiate strategies to develop legal and administrative mechanisms to ensure effective justice for women victims of violence;
- Ensure the provision of specialized assistance for the support and rehabilitation of women whose rights have been violated under the Protocol;
- Train and sensitize judicial and police officials with regards to the women's human rights recognized under the Protocol and other relevant instruments and;
- Take measures to report on the implementation of their obligations under the Protocol and other relevant instruments and to include information on measures taken to implement the commitments contained in the Protocol.

## **Annex 1: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**

The States Parties to this Protocol,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**HAVE AGREED AS FOLLOWS:**

### **Article 1**

#### **Definitions**

For the purpose of the present Protocol:

- a) "African Charter" means the African Charter on Human and Peoples' Rights;
- b) "African Commission" means the African Commission on Human and Peoples' Rights;
- c) "Assembly" means the Assembly of Heads of State and Government of the African Union;
- d) "AU" means the African Union;
- e) "Constitutive Act" means the Constitutive Act of the African Union;
- f) "Discrimination against women" means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life;
- g) "Harmful Practices" means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;
- h) "NEPAD" means the New Partnership for Africa's Development established by the Assembly;
- i) "States Parties" means the States Parties to this Protocol;
- j) "Violence against women" means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war;
- k) "Women" means persons of female gender, including girls.

## **Article 2**

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

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
  - a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
  - b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;
  - c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
  - d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
  - e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.
2. States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

## **Article 3**

### **Right to Dignity**

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

## **Article 4**

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

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.
2. States Parties shall take appropriate and effective measures to:

- a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
- b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
- c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
- d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;
- e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
- f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;
- g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
- h) prohibit all medical or scientific experiments on women without their informed consent;
- i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
- j) ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;
- k) ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.

#### **Article 5**

##### **Elimination of Harmful Practices**

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

- a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;
- b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;
- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;
- d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

### **Article 6**

#### **Marriage**

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

- a) no marriage shall take place without the free and full consent of both parties;
- b) the minimum age of marriage for women shall be 18 years;
- c) monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;
- d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;
- e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
- f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname;
- g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;
- h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;
- i) a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
- j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

### **Article 7**

#### **Separation, Divorce and Annulment of Marriage**

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

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

### **Article 8**

#### **Access to Justice and Equal Protection before the Law**

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

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

#### **Article 9**

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

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:
  - a) women participate without any discrimination in all elections;
  - b) women are represented equally at all levels with men in all electoral processes;
  - c) women are equal partners with men at all levels of development and implementation of State policies and development programmes .
2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

#### **Article 10**

##### **Right to Peace**

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

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

#### **Article 11**

##### **Protection of Women in Armed Conflicts**

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

#### **Article 12**

##### **Right to Education and Training**

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

**Article 13**

**Economic and Social Welfare Rights**

States Parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. In this respect, they shall:

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

**Article 14**

**Health and Reproductive Rights**

1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:
  - a) the right to control their fertility;
  - b) the right to decide whether to have children, the number of children and the spacing of children;
  - c) the right to choose any method of contraception;
  - d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;

- e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices;
  - g) the right to have family planning education.
2. States Parties shall take all appropriate measures to:
- a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
  - b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
  - c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

#### **Article 15**

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

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

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

#### **Article 16**

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

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

#### **Article 17**

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

- 1. Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.
- 2. States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.

#### **Article 18**

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

- 1. Women shall have the right to live in a healthy and sustainable environment.
- 2. States Parties shall take all appropriate measures to:
  - a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;

- b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control;
- c) protect and enable the development of women's indigenous knowledge systems;
- c) regulate the management, processing, storage and disposal of domestic waste;
- d) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

#### **Article 19**

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

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

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

#### **Article 20**

##### **Widows' Rights**

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

- a) that widows are not subjected to inhuman, humiliating or degrading treatment;
- b) that a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;
- c) that a widow shall have the right to remarry, and in that event, to marry the person of her choice.

#### **Article 21**

##### **Right to Inheritance**

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.
2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.

**Article 22**

**Special Protection of Elderly Women**

The States Parties undertake to:

- a) provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training;
- b) ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.

**Article 23**

**Special Protection of Women with Disabilities**

The States Parties undertake to:

- a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making;
- b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

**Article 24**

**Special Protection of Women in Distress**

The States Parties undertake to:

- a) ensure the protection of poor women and women heads of families including women from marginalized population groups and provide an environment suitable to their condition and their special physical, economic and social needs;
- b) ensure the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.

**Article 25**

**Remedies**

States Parties shall undertake to:

- a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated;
- b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

**Article 26**

**Implementation and Monitoring**

1. States Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognised.

2. States Parties undertake to adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognised.

#### **Article 27**

##### **Interpretation**

The African Court on Human and Peoples' Rights shall be seized with matters of interpretation arising from the application or implementation of this Protocol.

#### **Article 28**

##### **Signature, Ratification and Accession**

1. This Protocol shall be open for signature, ratification and accession by the States Parties, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the AU.

#### **Article 29**

##### **Entry into Force**

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15) instrument of ratification.
2. For each State Party that accedes to this Protocol after its coming into force, the Protocol shall come into force on the date of deposit of the instrument of accession.
3. The Chairperson of the Commission of the AU shall notify all Member States of the coming into force of this Protocol.

#### **Article 30**

##### **Amendment and Revision**

1. Any State Party may submit proposals for the amendment or revision of this Protocol.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.
3. The Assembly, upon advice of the African Commission, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this article.
4. Amendments or revision shall be adopted by the Assembly by a simple majority.
5. The amendment shall come into force for each State Party, which has accepted it thirty (30) days after the Chairperson of the Commission of the AU has received notice of the acceptance.

### **Article 31**

#### **Status of the Present Protocol**

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

### **Article 32**

#### **Transitional Provisions**

Pending the establishment of the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights shall be seized with matters of interpretation arising from the application and implementation of this Protocol.

*Adopted by the 2nd Ordinary Session of the Assembly of the Union –Maputo, 11 July 2003*

## **Annex 2: African Charter on Human and Peoples' Rights**

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

### **Preamble**

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

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

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

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

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

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

**Considering** that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone; Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

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

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

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

**Have agreed as follows:**

## **Part I: Rights and Duties**

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

#### **Article 1**

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

#### **Article 2**

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

#### **Article 3**

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

**Article 4**

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

**Article 5**

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

**Article 6**

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

**Article 7**

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

**Article 8**

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

**Article 9**

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

**Article 10**

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

**Article 11**

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

**Article 12**

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

**Article 13**

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

**Article 14**

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

**Article 15**

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

**Article 16**

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

**Article 17**

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

**Article 18**

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian 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 States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

**Article 21**

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

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

#### **Article 22**

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

#### **Article 23**

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

#### **Article 24**

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

#### **Article 25**

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

#### **Article 26**

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

## **Chapter II: Duties**

### **Article 27**

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

### **Article 28**

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

### **Article 29**

The individual shall also have the duty:

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

## **Part II: Measures of Safeguard**

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

### **Article 30**

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

**Article 31**

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

**Article 32**

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

**Article 33**

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

**Article 34**

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

**Article 35**

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

**Article 36**

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

**Article 37**

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

**Article 38**

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

**Article 39**

1. In case of death or resignation of a member of the Commission the Chairman of the Commission shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organization of African Unity, who shall then declare the seat vacant.
3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term unless the period is less than six months.

**Article 40**

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

**Article 41**

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

**Article 42**

1. The Commission shall elect its Chairman and Vice Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The Secretary General may attend the meetings of the Commission. He shall not participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

**Article 43**

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

**Article 44**

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

## **Chapter II -- Mandate of the Commission**

### **Article 45**

The functions of the Commission shall be:

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

## **Chapter III -- Procedure of the Commission**

### **Article 46**

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

### **Communication from States**

#### **Article 47**

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

#### **Article 48**

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through

bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

**Article 49**

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

**Article 50**

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

**Article 51**

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

**Article 52**

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

**Article 53**

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

**Article 54**

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

**Other Communications**

**Article 55**

1. Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.

2. A communication shall be considered by the Commission if a simple majority of its members so decide.

#### **Article 56**

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

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

#### **Article 57**

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

#### **Article 58**

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

#### **Article 59**

1. All measures taken within the provisions of the present Charter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.

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

#### **Chapter IV -- Applicable Principles**

##### **Article 60**

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

##### **Article 61**

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

##### **Article 62**

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

##### **Article 63**

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

#### **Part III: General Provisions**

##### **Article 64**

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.

2. The Secretary General of the Organization of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organization within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

**Article 65**

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

**Article 66**

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

**Article 67**

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

**Article 68**

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

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